IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 235

HC/Registrar's Appeal from State Court No 22 of 2018

Between

Uni Development Pte Ltd

… *Appellant*

And

(1) Ranjit Singh s/o Mukhtar Singh formerly trading as Ranco Transport and Services
(2) Shriperkash Rai s/o Ramgobind Rai
(3) Jasveer s/o Jassa Singh

… *Respondents*

In the matter of MC/Magistrate Court Suit No 18287 of 2014

Between

Uni Development Pte Ltd

… *Plaintiff*

And

(1) Ranjit Singh s/o Mukhtar Singh formerly trading as Ranco Transport and Services
(2) Shriperkash Rai s/o Ramgobind Rai
(3) Jasveer s/o Jassa Singh

… *Defendants*

JUDGMENT

[Credit and security] — [Hire-purchase] — [Remedies]

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v
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Ang Cheng Hock JC
10 September 2018

31 October 2018 Judgment reserved.

Ang Cheng Hock JC:

Introduction

1 This is an appeal against a decision by a District Judge, who had dismissed an appeal brought against the decision of a Deputy Registrar made in an assessment of damages hearing. What was immediately notable about the Deputy Registrar's decision was that the plaintiff hire purchase company, which was having its damages assessed for amounts due to it in a typical claim arising from default of instalment payments under a hire purchase agreement, ended up being ordered to pay a sum of money to the defendant hirer, even though judgment on liability had been entered for the plaintiff on its claim by consent of the parties. The key question before me was whether the Deputy Registrar had misapprehended the scope of the assessment hearing and also the contractual arrangements between the parties, and thus erred in making the

various orders that she did.

Facts

The parties

2 Uni Development Pte Ltd ("the Appellant") is a hire purchase company incorporated and carrying on business in Singapore. It has been a member of the Hire Purchase, Finance and Leasing Association of Singapore since 1998.

3 Ranjit Singh s/o Mukhtar Singh ("the 1st Respondent") is the operations manager of Ranco Transport and Services, a sole proprietorship carrying on a transport business. His wife is the sole proprietor. The Appellant says that the 1st Respondent used to own the business himself, but that is denied by the 1st Respondent. He claims that the business has always been in his wife's name and he simply worked for her. But, nothing really turns on this point.

4 Shriperkash Rai s/o Ramgobind Rai ("the 2nd Respondent") is a close friend of the 1st Respondent. Jasveer s/o Jassa Singh ("the 3rd Respondent") is the 1st Respondent's brother-in-law.

Background to the dispute

5 The 1st Respondent wanted to buy a 49-seater new Isuzu air-conditioned bus and needed financing. The Appellant and 1st Respondent then entered into a hire purchase agreement dated 2 January 2001 ("the HP Agreement") in respect of the bus which bore the registration number PZ515E. The interest rate was 5.25% per annum and the instalment payments were to be made monthly for six years. It was a term of the HP Agreement that, if the 1st Respondent defaults on his instalments, an interest charge on the overdue instalments at 18%

per annum simple interest calculated on a daily basis would be levied. The 2nd and 3rd Respondents were guarantors for the 1st Respondent in relation to his obligations under the HP Agreement.

6 At the same time, the 1st Respondent had purchased two other buses which were also financed by the Appellant. He signed two other hire purchase agreements on similar terms as the HP Agreement.[1] There were no problems in relation to the 1st Respondent's hire purchase instalment payments for these two other buses, which had the registration numbers PZ1100L and PZ642X.

7 As for bus PZ515E, the 1st Respondent fell into arrears not long after the bus was purchased. It appears that the Appellant exercised its right to terminate the HP Agreement and it repossessed the vehicle on 11 March 2003.[2] Then, on 20 May 2003, the Appellant commenced DC 2101/2003/W against the Respondents to recover the amounts owed under the HP Agreement.

8 The Appellant and the 1st Respondent then entered into a new agreement on 1 August 2003, which they titled as "Memorandum" ("the Memorandum"), to revive and vary the terms of the HP Agreement. The Appellant then discontinued DC 2101/2003/W on 15 August 2003.

9 The Memorandum states it "is supplemental to the [HP Agreement] and is to be read in conjunction with the [HP Agreement]". It sets out a schedule which provides certain agreed amounts to be paid in the following manner:

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1 See AEIC of Cindy Sng Ee Lyn dated 16 Nov 2015 para 4.

2 See AEIC of Cindy Sng Ee Lyn dated 16 Nov 2015, p 17 for the terms and conditions of the HP Agreement. The right to retake possession of the vehicle arises when the HP Agreement is determined by the Appellant.

Price & Payments

(a) Cash Price	$140,000.00
Add (b) COE	$ -
TOTAL	$140,000.00
DEDUCT	
(c) Downpayment	$ -
(d) Total of (a) & (b)	$140,000.00
Less (c)	
Add (e) Term Charges	$58,800
BALANCE OF HIRE	$198,800.00
PURCHASE PRICE	

Mode of Payment

1st instalment of $2,422.00

(From August 2003)

2nd to 84th Instalment of $2,366.00

(From Sept 2003 until full payment)

The Appellant's representative and the 1st Respondent appended their signatures on the schedule beneath these payment sums and dates. The main features to note about this schedule are that (i) the Appellant and the 1st Respondent had agreed to the amounts that were owed and the instalment payments to be made by the 1st Respondent; (ii) the instalment payments by the 1st Respondent were for a longer period of 84 months starting from August 2003; and (iii) there had been an increase in the interest rate from 5.25% per

annum as stipulated in the HP Agreement to now 6% per annum, as shown by the term charges of $58,8000, which is derived by applying 6% per annum to the amount of $140,000 for a period of seven years.

10 At the same time that the Memorandum was signed, the 1st Respondent requested for a longer period of repayment for another bus, PZ1100L. The Appellant agreed and another memorandum was entered into in relation to the hire purchase agreement for bus number PZ1100L on the same date, 1 August 2003, on similar terms.[3] The 1st Respondent fully paid the instalments due under that agreement for bus PZ1100L without any complaint.

11 As for the Memorandum, the 1st Respondent made the instalment payments to the Appellant for a number of years. According to the Appellant, the last payment that it received from the 1st Respondent was on 17 November 2011. A dispute then arose between the parties because parties could not agree whether there were any further amounts owed to the Appellant in terms of the principal amount owed and late interest charges.

The proceedings below

12 On 26 September 2014, the Appellant commenced MC Suit No. 18287/2014 claiming the amount of $41,400.07, or alternatively, damages, against the Respondents for amounts due under the Memorandum.

13 The 1st Respondent filed a Defence and Counterclaim. In gist, he pleaded that the HP Agreement was illegal and void as it was prepared and executed in a manner that was contrary to the Hire-Purchase Act (Cap 125, 2014 Rev Ed)("Hire-Purchase Act). He also claimed that he had made a number of

[3] See AEIC of Ng Tong Liang dated 16 Nov 2015, para 8.

payments to the Appellant from 2002 to 2010 that had not been accounted for. He denied that there were any sums due to the Appellant. He counterclaimed for an account of all payments received by the Appellant and for a refund of any sums paid to the Appellant in excess of what he contractually owed.

14 Though represented by the same solicitors as the 1st Respondent, the 2nd and 3rd Respondent filed a separate Defence and Counterclaim. Amongst other things, they alleged that they were discharged from any liability to the Appellant because the Memorandum had been entered into without their knowledge and consent. They counterclaimed for declaration that their guarantees had been "lawfully rescinded" as a consequence thereof.

15 When the action came up for trial on 23 February 2017, counsel for the Appellant and the Respondents first saw the District Judge in chambers to try to settle the issues for determination by the court. In the course of this, the District Judge granted leave to the 1st Respondent to withdraw certain prayers for declarations he was seeking in his counterclaim, and also for the 2nd and 3rd Respondents to withdraw the whole of their counterclaim. Counsel for the Respondents then asked for the matter to be stood down for 20 minutes. After discussions, both counsel returned to see the District Judge in chambers to inform her that they had come to an agreement that the Respondents were admitting liability to the Appellant's claim, without any order as to costs, and that the Appellant's damages would be assessed. The District Judge then granted judgment by consent in the following terms ("the Consent Judgment"):

> 1. By CONSENT, interlocutory judgment to be entered against the Defendants with damages to be assessed.
>
> 2. There shall be no order as to costs with regard to the issue of liability.
>
> 3. Costs for the assessment of damages to be reserved.

> 4. On the issue of quantum, the Plaintiff is to file an affidavit by 16 March 2017 with supporting documents to give an account of the quantum of arrears and interest owing by the Defendant as of today, 23 February 2017.
>
> 5. The Defendants are to file affidavits in reply by 6 April 2017.
>
> 6. The assessment of damages to be heard before Deputy Registrar … on a date after 6 April 2017."

16 Thereafter, matters did not progress directly to an assessment of damages hearing because of an unexpected turn of events. The Respondents alleged that they never instructed their counsel to consent to judgment. An application was taken out by the Respondents in the proceedings to set aside the Consent Judgment. This was successful in the first instance, but on appeal, the High Court decided that the Respondents should have commenced a separate action to set aside the Consent Judgement. The appeal against the decision to set aside the Consent Judgment was thus allowed.

17 The Respondents attempted again to set aside the Consent Judgment by commencing separate proceedings in DC/OSS 174/2017 against the Appellant and their former counsel. This was dismissed by the District Court on 8 January 2018. The Respondents did not appeal that decision.

The assessment of damages

18 With the issue of the validity of the Consent Judgment settled, the matter proceeded to a hearing for the assessment of damages. This took place on 5 April 2018 before a Deputy Registrar ("the DR"). At the start of the hearing, the DR stated that the proceedings before her was for the "taking of accounts". This was repeated by the DR several times in the course of the hearing. The Appellant's witness, Ms Cindy Sng Ee Lyn, its finance manager, who had filed two affidavits for the purpose of the assessment of damages hearing, was called

to the stand. She was questioned extensively by the DR and then cross-examined by the Respondents' counsel. Ms Sng was then directed by the court to file a further affidavit to account for certain sums that the 1st Respondent claimed he had paid. No other witnesses were called to be cross-examined.

19 Ms Sng filed her affidavit on 19 April 2018. At the adjourned hearing on 27 April 2018, she was further questioned by the DR and counsel for the Respondents. Thereafter, the DR gave her decision as follows:

> Having gone into this rather tedious enquiry this is what the court has arrived at:
>
> As at 26 September 2014:
>
> - the principle (sic) sum was $129,355.58 under the hire purchase agreement of 2 January 2001 and memorandum of 1 August 2003.
> - Interest at 6% p.a. payable was $54,329.34.
> - late charges payable under the hire purchase agreement of 2 January 2001 was $5,247.62
> - late charges payable under the memorandum of 1 August 2003 was $10,545.56.
>
> Total: $199,478.10
>
> The Plaintiff has not been able to account for these 2 sums:
>
> 1) $5,400 (payment voucher signed by Plaintiff's director and dated 4 July 2002). 2) $5,000 (as exhibited via official receipt 1362 issued by the Plaintiff dated 9 November 2010). It is not disputed that the Defendant has to date paid a total sum of $197,004.35. Therefore taking into account the sum that is considered to be owing to the Plaintiff as at 26 September 2014 and the sum paid by the Defendant as well as the 2 sums that have not been accounted for by the Plaintiff, it is hereby ordered that the Plaintiff shall pay to the 1st Defendant the sum of $7,926.25, this sum being the sum equivalent to the overpayment by the 1st Defendant as established.

20 The DR also ordered costs of $3,500 and reasonable disbursements in relation to the assessment hearing to be paid by the Appellant to the 1st

Respondent.

21 The Appellant appealed against this decision to a District Judge, who dismissed the appeal on 30 July 2018. The Appellant then filed this appeal to the High Court.

The parties' cases in the appeal

The Appellant's case

22 Before me, the Appellant raised several grounds of appeal, but some were not seriously pursued at the hearing. The Appellant's case on appeal can be distilled into four main points.

23 First, the Appellant argued that the DR had erred because she did not have regard to the fact that the Consent Judgment dealt with both the Appellant's claims, as well as the defences and counterclaim raised by the Respondents. The effect of the Consent Judgment was that the Appellant was entitled to damages for the claim it had brought, and that such damages would be assessed. It also had the effect of extinguishing the 1st Respondent's counterclaim for the repayment of monies that he had allegedly overpaid the Appellant. Thus, it was argued, the DR erred in ordering the repayment of sums which she had computed were paid by the 1st Respondent in excess of what he owed to the Appellant.

24 Second, the Appellant also argued that the DR erred by disregarding the terms of its agreement with the 1st Respondent as encapsulated in the Memorandum. It was pointed out that the Memorandum had come about because the 1st Respondent had defaulted on his instalment payments under the

HP Agreement and the Appellant had commenced legal proceedings against the Respondents to recover the amounts that were contractually due. In consideration of the Appellant withdrawing its claim, the 1st Respondent had entered into the Memorandum where he agreed that the outstanding amount he owed the Appellant was $140,000, and he was entering into a new hire purchase arrangement with the Appellant where the total amount to be repaid over a period of seven years starting from August 2003 was $198,800, a figure obtained by adding the agreed term interest of $58,800 to the outstanding amount of $140,000. The DR thus erred in not proceeding on the basis of these agreed figures in the Memorandum. Instead, she determined the amount that was owed by the 1st Respondent under the HP Agreement in a manner that was in disregard of the terms of the HP Agreement and what the parties had agreed as owing as set out in the Memorandum.

25 Third, the Appellant submitted that the DR fell into error because she determined the date of assessment of damages to be date of the writ instead of the date when she actually assessed the amount that was owing to the Appellant. This was not in accordance with Order 37 Rule 6 of the Rules of Court (Cap 322, R5, 2014 Rev Ed)("Rules of Court") which required that damages be assessed at the date of the assessment in a case of a continuing cause of action. As the arrears and late interest payments were still outstanding up to the date of the assessment of damages, the Appellant argued that its claim was based on a continuing cause of action. As a consequence of this error, the Appellant argued that it was deprived of late interest payments at the contractually agreed rate of 18% p.a. (in the HP Agreement) for a period of 1310 days, which is the duration between the date of the writ to the date of the assessment.

26 Fourth, and finally, the Appellant argued that a proper analysis of the

evidence would show that it did not make the overpayments of $5,400 in July 2002 and $5,000 in November 2010 as found by the DR. According to the Appellant, it had properly accounted for these payments.

The Respondents' case

27 The Respondents appeared in person at the appeal before me.

28 The 1st Respondent argued that he had signed the Memorandum only to record the actual amount he borrowed from the Appellant, which was $140,000, and not an earlier figure of $150,000 which had been erroneously recorded in the HP Agreement. In exchange, the Appellant's Managing Director, Mr Jimmy Ng, had agreed to refund him an amount of $20,000 to $30,000 towards the end of the loan period. The 1st Respondent also argued that the Memorandum was not a "legal document" because it was not stamped. The DR was right in "waiving" the Memorandum and focusing on the amounts actually owed under the HP Agreement. In any event, all the figures determined by the DR were based on the calculations of the Appellant's Cindy Sng when she was on the witness stand. As for the overpayments, there was fraud and there were mistakes in the Appellant's account of the payments it received from the 1st Respondent. The evidence fully supported the DR's finding that there were two overpayments in the sums of $5,400 and $5,000 that had been made.

29 As for the 2nd and 3rd Respondents, their arguments were substantially similar to each other's. They both argued that they were not aware of the Memorandum at the time it was entered into between the Appellant and the 1st Respondent. Neither had they ever consented to the Memorandum after they became aware of it subsequently. As such, the 2nd and 3rd Respondents argued that they should not be liable for any sums under the guarantee they had signed.

As for the Consent Judgement, the 2nd and 3rd Respondents argued that they should not be bound by it because they had not given instructions to their counsel to consent to the judgment on their behalf. This was a point that the 1st Respondent also made in his arguments before me.

Issues to be determined

30 The issues in the appeal were therefore as follows:

(a) Whether the Consent Judgment precluded the Respondents from raising the claims that had been made in their defences and counterclaims in the assessment of damages proceedings.

(b) Whether the DR should have disregarded the figures in the Memorandum which set out how much the 1st Respondent owed the Appellant as at 1 August 2003.

(c) Whether the DR had rightly come to the conclusion on the evidence that had been overpayments in the amounts of $5,400 and $5,000 made by the 1st Respondent in July 2002 and November 2010 respectively.

(d) If the 1st Respondent had paid the Appellant more than what was contractually owed, whether the DR was right in making an order for the amount of overpayment to be repaid by the Appellant to the 1st Respondent.

(e) Whether the DR was right in determining that the correct date of assessing damages was the date of the writ.

The effect of the Consent Judgment

31 The Appellant's argument was that, having consented to judgment on 23 February 2017 for damages to be assessed in the form of the Consent Judgment, it was no longer open to the Respondents to raise many of the allegations that they continued to raise in the hearing for the assessment of damages. Hence, for example, the 2nd and 3rd Respondents could not deny that they were liable to the Appellant under the guarantees that they had signed. Neither could the 1st Respondent continue to insist that there were wrong figures in the HP Agreement, that the Memorandum had no legal effect or that it was simply to correct the errors in the HP Agreement, or that the HP Agreement was in contravention of the Hire-Purchase Act. The Respondents, on the other hand, argued that they should not be bound by the Consent Judgment because it had been agreed to by their counsel who had not been authorised by them to so act.

32 The Respondents' arguments can be dealt with shortly. It was not open for the Respondents to argue that they were not bound by the Consent Judgment. As I recounted above at [17], the Respondents had attempted to set aside the Consent Judgment in separate proceedings brought in the State Courts. The Appellant and their previous counsel were made respondents in those proceedings. The Respondents were not successful. They did not appeal. As such, the Consent Judgement binds both the Appellant and the Respondents.

33 The effect of the Consent Judgment is the parties' respective claims and counterclaims were merged with that judgment (see *Woo Koon Chee v Scandinavian Boiler Service (Asia) Pte Ltd* [2010] 4 SLR 1213 at [14] and [18], *Low Heng Leong Andy v Low Kian Beng Lawrence (administrator of the estate*

of Tan Ah Kng, deceased) [2013] 3 SLR 710 at [54] and *Cost Engineers (SEA) Pte Ltd and another v Chan Siew Lun* [2016] 1 SLR 137 at [55]). In short, the end result of the claim that had been brought by the Appellant against the Respondents and their defences and counterclaims was that the Appellant was granted interlocutory judgment on its claims against *all* the Respondents, with damages to be assessed. The only outstanding matter was thus the assessment of damages *in the Appellant's favour*. Insofar as the Respondents' counterclaims were concerned, they were deemed dismissed since the terms of the Consent Judgment only provided for judgment to be entered *against the Respondents*.

34 As such, it was no longer open for the 2nd and 3rd Respondents to continue to assert that they were not liable to the Appellant in respect of the guarantees they had given in respect of the 1st Respondent's obligations to the Appellant. As for the 1st Respondent, I find that he should not be permitted to continue to raise his various allegations concerning the breach of the Hire-Purchase Act insofar as the HP Agreement is concerned or that there were errors in the HP Agreement, or that the Memorandum had no legal effect.

35 The Consent Judgment also has an impact on the position that the 1st Respondent had taken in the assessment of damages hearing before the DR. In his Defence and Counterclaim, the 1st Respondent pleaded that he made certain payments to the Appellant prior to 1 August 2003 that had not been properly accounted for by the Appellant.[4] He then prayed for a counterclaim that the Appellant account for all the payments that it had received from the 1st Respondent and for any excess sums to be repaid to the 1st Respondent. However, given the terms of the Consent Judgment, the 1st Respondent was no

[4] See para 11 of the 1st Respondent's Defence and Counterclaim (Amendment no. 1).

longer entitled to seek either an account of the payments received by the Appellant or for any order for the repayment of any sum paid in excess of what was contractually due to the Appellant.

36 This was a point that did not seem to be appreciated by the DR when she conducted the assessment of damages hearing. As I recounted earlier, the DR started by the hearing by stating that it was for the "taking of accounts". In a sense, she was right. It was for the Appellant to prove its damages against the Respondent. In the course of doing so, the Appellant would have to satisfy the court as to the payments it received in total and how this fell short of the amount that was due to the Appellant under the Memorandum. If there was any evidence put forward by the 1st Respondent that a particular payment had been made by him and for which had not been credited to his account in respect of what was owed, the Appellant would have to rebut such evidence by showing that such payment was either not in fact received on account of what was due, or that it had properly accounted for the payment. In that sense, there would be a "taking of accounts".

37 The consequence of such "taking of accounts" is as follows. If the evidence showed that the Appellant had indeed not been paid what was due to it, the Appellant would be entitled to damages in the amount of the shortfall. On the other hand, if the evidence showed that the 1st Respondent had paid more than what it owed the Appellant, then it would follow that the Appellant would not be entitled to any damages. However, the 1st Respondent would *not* be entitled to an order for the repayment of the excess sum paid. This is because the 1st Respondent's counterclaim for an account and for an order for repayment of any excess sums was deemed dismissed by the Consent Judgment. This is where the DR fell into error because she did not fully appreciate the effect of

the Consent Judgment and wrongly made an order for the Appellant to refund the amount of $7,926.25 which she found had been overpaid by the 1st Respondent.

The effect of the Memorandum

38 The Appellant argued that the DR erred because she did not proceed on the basis of the figures that the parties had agreed to in the Memorandum. Instead, the DR re-computed the amount that was owing by the 1st Respondent as at the date that the parties entered into the Memorandum in the sum of $129,355.58. She then "transferred" this sum into the Memorandum as the amount that was owed by the 1st Respondent, and added interest at the rate of 6% p.a. to this sum because she accepted that this rate was what was agreed between the Appellant and the 1st Respondent in the Memorandum. Adding the late interest charges on overdue payments under the HP Agreement and the Memorandum, the DR came up with a figure of $199,478.10 as the amount that was contractually due from the 1st Respondent at the date of the writ. Given that it was common ground that the 1st Respondent had paid the amount of $197,004.35, and the DR further found that there were 2 payments from the 1st Respondent totalling $10,400 which had not been accounted for by the Appellant, the DR determined that the 1st Respondent had overpaid the amount of $7,926.25. The Appellant submitted that one could tell from this analysis that the DR's conclusion that there had been an overpayment mainly stemmed from her re-computation of what was owed under the HP Agreement. It was argued that this re-computation should not have been carried out.

39 I agreed with the Appellant's submissions in this regard. The DR failed to appreciate that the Memorandum was a product of a compromise between the

Appellant and the 1st Respondent after the latter had defaulted on his payment obligations under the HP Agreement, and was facing legal proceedings for amounts due under that agreement. The parties then agreed to the Memorandum to record their resolution of the dispute and their contractual arrangements going forward. The terms of the Memorandum clearly recorded the amounts that parties had agreed were due from the 1st Respondent to the Appellant. The starting amount stated in the Memorandum was that $140,000 was due from the 1st Respondent. If there is any doubt at all that this was what the parties had agreed, reference can be made to the 1st Respondent's Defence and Counterclaim (Amendment No. 1) where he refers without complaint to the fact that parties had agreed to $140,000 as the amount that was due to the Appellant under the Memorandum, before the adding of the term interest. The relevant portion of the pleading states as follows:

> 8. The principal sum of $197,250.00 at paragraph 6 of the Statement of Claim is erroneous. This contradicts the actual cash price of $140,000 as stated in the Memorandum. There is no breakdown nor basis for the amount to be inflated to be $197,250.00.
>
> 9. The Plaintiffs Statement of Account dated 1st August 2003 states as follows:-
>
> **Particulars of Statement dated 1st August 2003**
>
> | | |
> |---|---|
> | Loan | : $140,000.00 |
> | Interest | : $58,800.00 |
> | Hire Purchase Total | : $198,800.00 |
>
> 10. Thus the opening statement balance on 1st August 2003 as stated by the Plaintiffs is $198,000.00.
>
> …
>
> 24. On or about 1st August 2003 without the knowledge nor consent of the 2nd and 3rd Defendants the Plaintiffs agreed with the 1st Defendant for a revised and longer payment plan and

> thus the contract between the Plaintiffs and 1st Defendant was substantially varied as follows:-
>
> **Particulars of Variation**
>
> a) The principal cash sum was refixed at $140,000.00:
>
> b) The term charges were recalculated and increased to $58,800.00;
>
> c) Balance of Purchase Price increased to $198,800.00;
>
> d) Interest rate was increased from 5.25% to 6% per annum as alleged by the Plaintiffs and denied by the 1st Defendant.

40 As can be seen, the 1st Respondent's case was that there had been agreement by the parties on 1 August 2003 in the Memorandum to the "principal cash sum" of $140,000.00 that was due from him to the Appellant. What he disagreed with was that the amount due as at 1 August 2003 was $197,250.00, and that parties had agreed in the Memorandum to a 6% p.a. interest rate. While it is also true that the 1st Respondent did plead that he had made some payments prior to 1 August 2003 that had not been taken into account by the Appellant[5], this could hardly change the fact that his clear unqualified averment was that the parties had agreed to this figure of $140,000 as the amount owed as at 1 August 2003.

41 In addition to the pleadings, in the 1st Respondent's Affidavit of Evidence-in-Chief filed for the purposes of the assessment of damages, he stated as follows: "[i]n accordance with parties' agreement, the Memorandum amended the following terms in the HPA … [t]he inaccurate cash price of $190,000.00 was replaced with the accurate loan sum of $140,000.00".

42 Given the clear position that had been taken by the 1st Respondent as

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[5] See para 11 of the Defence and Counterclaim (Amendment No. 1) filed on 21 Apr 2015.

set out above, I cannot accept his arguments made at the appeal that the DR was right to ignore the agreed figures in the Memorandum. I find that the DR erred when she did not proceed on the basis of the agreed principal of $140,000 and term interest of $58,800 as expressly set out in the Memorandum. For completeness, I should also add that I also reject the 1st Respondent's arguments at the appeal that the Memorandum had no legal effect because it was not stamped. There is simply no legal basis for this argument.

43 I note parenthetically that, from my review of the transcript of proceedings, the DR appeared to be concerned by the fact that the Appellant, in coming up with the figure $140,000, had included interest on the principal sum over the entire loan period under the HP Agreement that the Appellant had not yet "earned" as at 1 August 2003. Let me explain.

44 In a typical hire purchase agreement for the purchase of a motor vehicle, the hirer obtains financing from the hire purchase company for the portion of the price of the vehicle which he does not pay the seller in cash. Interest on the financed amount is typically imposed at a fixed rate per annum. The interest over the entire loan period is then computed upfront as a lump sum and the entire interest amount is commonly referred to as the "term charges". The sum of the financed amount and the term charges is the contractually owed amount due from the hirer to the hire purchase company. In the usual case, this sum is then divided over the total number of months for the loan period, and a monthly instalment which must be paid by the hirer over the duration of the loan period is thus calculated and stated in the hire-purchase agreement. The HP Agreement between the Appellant and the Respondent was a typical one and followed the structure I have described.

45 If there is a premature termination of a hire purchase agreement, for example, because there is a default and the vehicle is repossessed or the vehicle is sold, the hire purchase company would require full payment of the unpaid instalments, but it will usually give a contractually provided discount because of the accelerated payment. This discount is computed according to the "rule of 78" method, which is a formula widely used in the hire purchase industry for calculating a rebate to the hirer of the interest charges attributable to the period of agreement remaining unexpired at the date of termination of the agreement. This was in fact what was provided for in the HP Agreement between the Appellant and the 1st Respondent.[6] When the 1st Respondent defaulted in his payments in 2003, the Appellant had repossessed the vehicle (which it could only do if the contract was determined) and sued the Respondents for damages. As such, when the Memorandum was prepared, the Appellant had apparently computed the amount due to it by reference to the unpaid instalments and gave an interest rebate in accordance with "rule of 78" formula.

46 In any event, what is material in our case was not whether the Appellant was entitled to have claimed as an amount owed to it the interest over the unexpired portion of the loan period under the HP Agreement, or whether the interest rebate had been computed correctly. This is because the Appellant and the 1st Respondent had *agreed* to the amount owing by the 1st Respondent as at 1 August 2003 and set out the figure in the Memorandum. The DR should have thus proceeded on the basis of that agreement and not concerned herself with a re-computation of what in her view was the amount owing by the 1st Respondent as at 1 August 2003. This is especially in light of the position taken by the 1st Respondent in his evidence and pleadings that the figures of $140,000

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[6] See AEIC of Cindy Sng Ee Lyn dated 16 Nov 2015, at pg 17, clauses 10(d) and 13 of the Terms and Conditions of the HP Agreement.

as principal and $58,800 as interest (term charges) were indeed correctly stated.

47 For the above reasons, I find that the DR had erred in not adopting the figures in the Memorandum and proceeding from there to determine if there were any amounts due under that agreement.

The two unaccounted payments made by the 1st Respondent

48 The Appellant argued that the DR erred in finding that the sums of $5,400 and $5,000 had been paid by the 1st Respondent in July 2002 and November 2010 respectively, and had not been accounted for by the Appellant in its claim against the Respondents.

49 According to the 1st Respondent, he made a cash payment of $5,400 to the Appellant's Cindy Sng on 4 July 2002. This was to replace a cheque dated 7 April 2002 that he had issued to the Appellant that had been returned dishonoured. The Appellant did not deny that it had received two separate cash payments of $4,700 and $700, and it had issued computer-generated receipts to the 1st Respondent for these cash payments. They were also reflected in the statement of account as cash payments received on 12 April 2002 and 25 April 2002, after the cheque dated 7 April 2002 failed to clear.[7] The confusion came from the fact that the 1st Respondent issued his own payment voucher, which he dated "4.07.02" and which he got the Appellant's Jimmy Ng to sign on.[8] If this was read "mm-dd-yy", then it matched the date of the dishonoured cheque. There was in fact no other cash payment made on 4 July 2002 in the Appellant's records.

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7 Cindy Sng's affidavit of 19 Apr 2018, para 10 and p 38-40.

8 Cindy Sng's affidavit of 19 Apr 2018, para 10 and p 22.

50 The DR found that the Appellant had not accounted for the cash payments in its statement of account. In my judgment, the DR erred because the Appellant had provided a coherent explanation of how the cash payments were accounted for which the 1st Respondent had not rebutted. It was also more likely that the cash payments made on 12 and 25 April 2002 were in lieu of the dishonoured cheque of 7 April 2002 given that they came closer in time to when the cheque was dishonoured. If it was the 1st Respondent's case that the cash payments in April 2002 in the statement of account were separate payments made by him on account of some other vehicle, then the evidential burden fell on him to produce receipts to show that. I found that the 1st Respondent had not discharged that burden.

51 In any event, more fundamentally, whatever the state of accounts between the parties was in April or July 2002, the fact remains that the Appellant and the 1st Respondent agreed on 1 August 2003 by way of the Memorandum that the amount of $140,000 was due from the 1st Respondent as of the time before the Memorandum was executed. As such, any claim by the 1st Respondent that there had been unaccounted payments made by him to the Appellant prior to 1 August 2003 should not have been brought up in the assessment of damages hearing below. Even if one was to leave aside the effect of the Consent Judgment, it is pertinent that the 1st Respondent had not brought any claim to set aside the Memorandum because of any mistake, misrepresentation or fraud. He is thus bound by its terms.

52 The other sum in issue was the amount of $5,000 in cash paid by the 1st Respondent in November 2010. The 1st Respondent relied on a "receipt" that was dated 9 November 2010. But, this was a document that was generated by "UBTS Private Limited".[9] There was no clear evidence as to how this

company was related to the Appellant. On the other hand, the Appellant's evidence was that the cash amount of $5,000 was received and a computer-generated receipt issued to the 1st Respondent on 22 November 2010.[10] This $5,000 was also reflected in the statement of accounts as cash paid partly for instalment payments and late charges.[11] Thus, it had been accounted for.

53 The DR did not provide any explanation as to why she found that the amount of $5,000 had not been accounted for. She did find that the receipt issued by UBTS Private Limited was an "official receipt" issued by the Appellant. But, even if that was the case, the Appellant had provided its explanation in evidence that the entries shown in the statement of accounts as cash payments received on 22 November 2010, amounting to $5,000, corresponded with the 1st Respondent's claim that $5,000 cash was paid in November 2010. It was not the 1st Respondent's evidence that there were two separate cash payments of $5,000 made in November 2010. Thus, the inference to be drawn from the totality of the evidence must be that, while there were 2 separate receipts issued, one handwritten and one computer-generated bearing different dates in November 2010, they were in respect of the same cash payment of $5,000 made by the 1st Respondent in November 2010. As such, I could not agree with the DR's finding that the cash payment of $5,000 made in November 2010 had not been accounted for.

The order against the Appellant for repayment

54 Given my findings above that the sums of $5,400 and $5,000 had in fact

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9 1st Respondent's AEIC of 14 February 2018, p 32.

10 Cindy Sng's affidavit of 19 April 2018, p 43.

11 Ibid, p 44.

been accounted for by the Appellant in the evidence before the DR, it follows that there is no basis for the finding below that there had been an overpayment by the 1st Respondent of the sums that he owed the Appellant.

55 In any event, as I explained earlier, the Consent Judgment had the effect of dismissing the 1st Respondent's counterclaim for an account and an order for repayment of excess sums paid. As such, even if there was any overpayment, the 1st Respondent would not be entitled to seek an order for repayment in the proceedings for assessment of damages.

Date of assessment of damages

56 The remaining issue that I had to decide was whether the DR was correct in assessing the damages as at the date of the writ instead of at the date of assessment.

57 The Appellant referred me to O 37 r 6 of the Rules of Court, which states:

> Where damages are to be assessed (whether under this Order or otherwise) in respect of *any continuing cause of action*, they shall be assessed *down to the time of assessment*. [Emphasis in italics added]

The Appellant argued that the DR erred because she did not appreciate that the Appellant had a contractual claim for late interest charges that continued even after the writ was issued on 26 September 2014. Hence, according to the Appellant, the cause of action was a continuing one, and the DR should have assessed the damages as at 27 April 2018, the date of assessment. As a result of not doing so, the Appellant was deprived of late interest charges that it could claim as a matter of contract from the Respondents for a period of 1310 days.

58 The Appellant was entitled to late interest charges at the rate of 18% per annum under the HP Agreement. This term continued to apply to the instalment payments due under the Memorandum because of the provision in that document which stated: "[s]ave as herein expressly amended, all other terms and conditions of the Hire Purchase Agreement shall remain unchanged and shall continue to apply and to have full force and effect". The Respondents never disputed this, and the DR found that the late interest charges would be calculated up to the date of the writ. She appeared to reject the suggestion that the Appellant had a continuing cause of action because the Memorandum had a fixed term for the repayment of the loan amount.

59 I was unable to agree with the DR's reasoning. A contractual right to late interest charges means that there is a fresh cause of action arising each day for the outstanding amount of principal and the late interest which continues to accrue with each passing day. Lindsey LJ held, more than a century ago, that a "continuing cause of action" is one which arises from "the repetition of acts or omissions of the same kind as that for which the action was brought" (*Hole v Chard* [1894] 1 Ch 293 at 295 – 296). A L Smith LJ described, in the same decision, a "continuing cause of action" as one where "the acts complained of are continuously repeated" and thus, the cause of action continues and goes on "*de die in diem*", or from day to day (at 296). In my view, the same understanding would apply when determining if there had been a continuing cause of action for the purposes of O 37 r 6. In such cases, the court must assess the damages up to the date of assessment. Otherwise, if the damages are assessed at the date of the writ, a plaintiff will have to commence another set of proceedings to claim his damages that have been suffered after the date of the writ in the first set of proceedings. This would have to be repeated every day until there is full payment, despite the fact that the court in the first set of

proceedings would have determined the plaintiff's entitlement to payment for the same acts or omissions of the defendant.

60 In this case, the Appellant suffered loss in the form of the outstanding principal sum owed under the Memorandum and late interest charges at 18% per annum that will continue to accrue until it is paid. The Appellant is entitled to have its damages assessed at the date of assessment, and not at the date of the writ. As such, I find that the DR erred in picking the wrong date on which to assess the damages due to the Appellant.

Conclusion and orders made

61 For all the above reasons, I find the DR erred in a number of respects when she assessed the damages that were payable by the Respondents to the Appellant. This resulted in an assessment of damages that was wrong as a matter of law, that was not in accordance with the contractual arrangements between the parties and that was contrary to the Consent Judgment.

62 As a consequence, I allow the Appellant's appeal and set aside the orders made by the DR on 27 April 2018 in their entirety. I also set aside the order of costs made by the District Judge on 30 July 2018, who heard and dismissed the appeal from the DR.

63 I direct that a re-hearing for the assessment of the Appellant's damages is to take place. The court which carries out the assessment, as directed, should take into account the rulings and findings made in this judgment.

64 The re-hearing shall be based on the affidavits of evidence-in-chief that the Appellant and the Respondents have already filed for the assessment of

damages. In addition, I direct the Appellant is to file an affidavit within one month of this judgment, to set out the outstanding amount owed by the Respondents, including the up-to-date late interest charges. At the assessment of damages hearing, the court should determine the amount of late interest charges payable up to the date of assessment.

65 As for the costs of this appeal and the one before the District Judge, I fix it at $10,000, inclusive of disbursements, to be paid by the Respondents to the Appellant. As for the costs of assessment of damages proceedings that have already taken place, including the hearings on 5 and 27 April 2018, they are to be reserved to the court conducting the re-hearing.

Ang Cheng Hock
Judicial Commissioner

Mr Willie Yeo and Mr Ronald Yeo (Yeo Marini & Partners) for the appellant;
The first, second and third respondents in person.