# Lock Han Chng Jonathan (Jonathan Luo Hancheng) v Goh Jessiline
# [2007] SGCA 56

**Case Number** : CA 50/2007

**Decision Date** : 31 December 2007

**Tribunal/Court** : Court of Appeal

**Coram** : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA

**Counsel Name(s)** : Joseph Chen Kok Siang and Joseph Tan Chin Aik (K Ravi Associates) for the appellant; Madan Assomull and Vivian Chew Mong Fei (Assomull & Partners) for the respondent

**Parties** : Lock Han Chng Jonathan (Jonathan Luo Hancheng) — Goh Jessiline

*Courts and Jurisdiction – Judges – District judge sitting as settlement judge in mediation meetings as part of court dispute resolution – Recording terms of settlement – Whether court dispute resolution process contemplating that terms of court-mediated settlement would be embodied in court order – Whether settlement judge having power to make orders of court*

*Legal Profession – Professional conduct – Solicitor's exorbitant actions resulting in escalating costs – Referral to Law Society for inquiry – Nature of counsel's duty to evaluate client's case*

31 December 2007

Chan Sek Keong CJ (delivering the grounds of decision of the court):

1 The present appeal arose out of a minor road traffic accident in which the respondent's motor car hit the appellant's motorcycle, causing damage to it. On 15 September 2005, the appellant, through his then solicitor, Mr Andrew J Hanam ("Mr H") of Clifford Law Corporation, filed Magistrate's Case No 21830 of 2005, seeking compensation of $375 from the respondent. As the respondent's insurer ("NTUC Income"), which, incidentally, was also the appellant's insurer, was not prepared to pay the appellant the amount claimed, the respondent entered appearance and her solicitor, Mr Madan Assomull ("Mr A") of M/s Assomull & Partners, filed her defence.

2 On 24 October 2005, Mr H made a request to the Subordinate Courts that the dispute be settled by mediation through the court dispute resolution ("CDR") process. From 11 November 2005, a series of mediation meetings were held at the Primary Dispute Resolution Centre ("PDRC") (see [25] below) before a district judge ("the Settlement Judge"). On 31 March 2006, at the fourth of these meetings, the parties finally agreed to a settlement under which the appellant was to be paid $187.50 as compensation, with costs fixed at $1,000 as prescribed by Pt V of Appendix 2 of O 59 of the Rules of Court (Cap 322, R 5, 2004 Rev Ed) and reasonable disbursements to be taxed or agreed. It was also agreed that a notice of discontinuance would be filed within eight weeks (*ie*, by 26 May 2006). The Settlement Judge recorded the terms of settlement and, in his minute sheet, circled the printed words "Consent Judgement".

3 On the same day (*ie*, 31 March 2006), Mr H wrote to Mr A with reference to "the recorded settlement" and asked for payment of $290.35 for disbursements, the particulars of which were given. The letter concluded:

> As for disbursements, let us hear from you on our proposal by 7 April 2006 failing which we shall extract the Order of Court made on 31 March 2006 and proceed for taxation.

4 On 7 April 2006, Mr H forwarded a draft of the order of court made by the Settlement Judge on 31 March 2006 ("the Court Order") to Mr A for the latter's endorsement and return. On the same day, Mr A replied to query the claim of $290.35 for disbursements on the ground that Mr H had, in his previous letters, stated different amounts for disbursements, the lowest of which was $230. Mr A asked for time to seek his client's instructions and concluded his letter thus:

> As there is a recorded settlement, and the only outstanding issue is disbursements, it is most unnecessary for you to take out the Court Order. Further, your Court Order is in contradiction to the deadline of 7th April 2006 which you set yourself.

5 It can be seen from the facts up to this point in the proceedings that, if NTUC Income (the effective payer of the compensation claimed) had offered the appellant a reasonable sum to compensate him for the damage to his motorcycle at the outset, it would not have become liable to pay $1,000 in court fees and also reasonable disbursements. Notwithstanding this, the parties' solicitors were now reduced to a tussle over a sum of $60.35 (the difference between $290.35 and $230), which NTUC Income was either not prepared to pay or advised not to pay.

6 On 13 April 2006, Mr H sent a draft of the Court Order to the Registrar of the Subordinate Courts ("the Registrar") for approval, stating that the draft had been sent to Mr A and that "2 clear days had lapsed and [Mr A] still had not replied". This statement was incorrect as Mr A had replied on 7 April 2006 (see [4] above). It should also be noted that Mr H extracted the Court Order on 17 April 2006, about six weeks before the expiry of the deadline for filing the notice of discontinuance (which, as stated at [2] above, was 26 May 2006).

7 On 2 May 2006, Mr H issued Writ of Seizure and Sale No 2057 of 2006 ("the WSS") in respect of the amount awarded under the Court Order ("the Settlement Sum"). On 5 May 2006, the parties' solicitors attended taxation proceedings before a deputy registrar, who taxed the bill of costs filed by Mr H pursuant to the Court Order at $551.75, with goods and services tax ("GST") of $12.50 for disbursements and allocatur fees of $110, amounting to $674.25 in total.

8 On 16 May 2006, Mr H wrote to Mr A enclosing the draft registrar's certificate for the sum of $674.25. He demanded payment by 19 May 2006 and stated that, in the event of non-payment, he would proceed with enforcement.

9 On 16 May 2006, Mr A wrote to Mr H and enclosed a cheque for $1,187.50, which was expressed to be "full payment for damages and costs in the above matter". It should be noted that this was an unconditional payment. On the same day, Mr H replied, noting that the payment did not cover the costs of the execution proceedings and threatening to proceed with execution to recover those costs if they were not paid by 18 May 2006.

10 On 17 May 2006, Mr A wrote to Mr H as follows:

> We received both your letters only this morning and will write to our clients to make payment for the sums you have mentioned. Reasonable time must be given for our clients' [*sic*] to effect payment. Since your letter was only received this morning the 19th [of] May 2006 is not a reasonable deadline.
>
> No figure has been given for the costs of execution. Therefore, it will not be possible for our clients' [*sic*] to make payment in that regard. Any payment made for the execution proceeding is made under protest and pending any other action our clients' [*sic*] may instruct us to take in this case.

> As we informed you earlier, there can be no Order of Court for a recorded settlement for this purpose. This is NOT a Consent Judgment.
>
> [underlining in original]

11 Mr H responded on 18 May 2006, enclosing a breakdown of the costs of the execution proceedings, which amounted to $800.80. He gave the respondent until 22 May 2006 to make "full payment [of] the taxed costs and the costs of execution", and stated that he would proceed as he saw fit if payment was not forthcoming by that date.

12 On 23 May 2006, Mr A sent Mr H a further cheque for $1,475.05, being "the costs for taxed disbursements and costs of execution proceedings", and stated that "[his] clients reserve[d] all their rights in this matter despite making payment". After receiving this payment, Mr H forwarded a copy of the notice of discontinuance to Mr A.

13 As can be seen from the above facts, a tussle between the parties' solicitors over $60.35 had, by that stage, increased the respondent's expenses by an additional $1,475.05 without taking into account the fees which the parties would have to pay to their respective solicitors in the absence of an agreement to the contrary.

14 On 23 June 2006, the respondent filed Summons No 8949 of 2006 ("SUM 8949/06") to set aside the WSS. At a hearing before a deputy registrar ("the Deputy Registrar") on 8 August 2006, Mr A argued that the Court Order was not a consent order but a "recorded settlement", and that the WSS had thus been improperly issued as writs of seizure and sale had to be based on a judgment or an order of the court. The Deputy Registrar adjourned the matter with these remarks:

> It might be useful to have the point clarified with CDR [meaning, in this context, the PDRC], ie whether a settlement reached at CDR properly forms an Order of Court. That CDR Judges have the power to make orders is clear. Whether [the Settlement Judge] did so in this case is being disputed by the Defence.

15 On 28 August 2006, the respondent made an *ex parte* application in Summons No 12389 of 2006 ("SUM 12389/06") to amend the prayers in SUM 8949/06 by including a prayer for the Court Order to be set aside. This was followed by an *inter partes* application by the respondent on 31 August 2006, via Summons No 12650 of 2006 ("SUM 12650/06"), to amend SUM 8949/06 in the same manner.

16 The parties appeared before District Judge Rahim Jalil, sitting in the PDRC, on 1 September 2006 for a determination of the issue of whether an order of court had been made on 31 March 2006. The district judge adjourned the matter until 11 September 2006, when he confirmed that an order of court had been issued. The parties next appeared before the Deputy Registrar on 12 September 2006 and updated him on the PDRC's clarification. The Deputy Registrar thereupon heard all three summonses (*viz*, SUM 8949/06, SUM 12389/06 and SUM 12650/06) and dismissed all of them. The respondent appealed against the Deputy Registrar's decision to a district judge in chambers; that appeal was dismissed on 20 October 2006. On 27 October 2006, the respondent applied (in the Subordinate Courts) for leave to appeal to the High Court in respect of the district judge's decision of 20 October 2006 ("the District Judge's decision"). Leave was refused on 8 November 2006.

17 On 16 November 2006, the respondent filed Originating Summons No 2141 of 2006 ("OS 2141/06") in the High Court for leave to appeal to the High Court against the District Judge's

decision. In the supporting affidavit for that application, it was argued that there was a serious and important issue to be decided, *viz*, the question of whether a district judge acting as a mediator under the CDR process (hereinafter referred to as a "CDR settlement judge") had the jurisdiction or power to make a court order binding the parties following a settlement reached via CDR ("court-mediated settlement"). Leave to appeal was granted.

18 The substantive appeal against the District Judge's decision, which was Registrar's Appeal from the Subordinate Courts No 17 of 2007 ("RAS 17/07"), was heard on 4 April 2007, and written grounds were issued on 27 April 2007: see *Lock Han Chng Jonathan v Goh Jessiline* [2007] 3 SLR 51. The judge ("the Judge") allowed the respondent's appeal and reversed the District Judge's decision on the ground that, when a court-mediated settlement had been reached, a CDR settlement judge had no power to direct the entry of a consent order or judgment, or to make other consequential orders ordinarily within his judicial powers under the Subordinate Courts Act (Cap 321, 1999 Rev Ed).

19 The present appeal was filed on 7 May 2007. On 7 June 2007, Mr A lodged Bill of Costs No 120 of 2007 ("BC 120/07") in respect of OS 2141/06 and RAS 17/07, claiming party and party costs against the appellant of $80,000.00 (with GST of $4,000.00) for work done other than for taxation ("the Section 1 costs"), $2,000.00 (with GST of $100.00) for work done for taxation ("the Section 2 costs") and, in respect of disbursements, $1,827.60 for disbursements not subject to GST and $1,013.35 for disbursements subject to GST, with GST of $50.67 ("the Section 3 disbursements"). On 25 June 2007, Mr H filed a notice of dispute on the ground that the amounts claimed for the Section 1 costs and the Section 2 costs, respectively, were excessive. At the hearing on 3 July 2007, the assistant registrar reduced the Section 1 costs to $55,000.00 and the Section 2 costs to $1,200.00. The Section 3 disbursements were allowed to stand, and the GST on all costs and disbursements allowed was revised to 7%.

20 The tussle continued. Mr A filed Summons No 2841 of 2007 and Mr H filed Summons No 3023 of 2007, respectively, for a review of the assistant registrar's taxation. At the hearing on 20 July 2007, the Judge dismissed Mr A's application but allowed Mr H's, further reducing the Section 1 costs to $35,000.00. On 3 August 2007, a registrar's certificate was issued, certifying the amount allowed under BC 120/07 as $39,040.95, with GST of $2,604.93 and taxing and allocatur fees of $2,549.00.

21 Meanwhile, the appellant decided to change solicitors. On 12 July 2007, he wrote to Mr H to discharge the latter from acting further in the matter. Mr H's reply on 13 July 2007 is quoted below at [44]. On 16 July 2007, the appellant's new solicitors, M/s K Ravi Associates, filed a notice of change of solicitors in the Subordinate Courts. On 17 July 2007, for reasons unknown, Mr H was re-appointed as the appellant's solicitor on record, but, on 27 July 2007, the appellant re-appointed M/s K Ravi Associates to act for him and a fresh notice of change of solicitors was filed on the same day. (Similar notices were filed in the Supreme Court on 17 July 2007 and 31 July 2007.) On 28 July 2007, Mr H sent the appellant an e-mail stating that he intended to bill the latter $84,000.00 for his services, and that, if he did not hear from the appellant by 30 July 2007, he would apply to court to have his costs taxed. On 1 August 2007, Mr H issued the appellant an invoice for the sum of $83,660.35 in respect of work done. As the appellant did not pay the bill, on 3 September 2007, Mr H made an application to tax his solicitor and client costs against the appellant. Hence, even before the present appeal was heard, the appellant was already liable for $44,194.88 in costs to Mr A, and was facing a potential liability of $83,660.35 in costs to Mr H.

22 We heard the appeal on 2 October 2007. After considering the submissions of counsel for the appellant, Mr Joseph Chen Kok Siang ("Mr Joseph Chen"), and counsel for the respondent, Mr A, we allowed the appeal and made the following orders on 3 October 2007:

1 The appeal is allowed and the District Judge's decision of 20 October 2006 dismissing the respondent's application to set aside the order of court dated 31 March 2006 is restored.

2 The Respondent shall pay the Appellant's costs of this appeal fixed at $5,000 with the usual consequential orders for the return of the security deposit for costs.

3 Each party is to bear his/her own costs in relation to the setting aside proceedings in the High Court and Subordinate Courts ("setting aside proceedings").

4 The Appellant's former solicitor, Mr Andrew Hanam, may not tax or recover any costs from the Appellant on a solicitor-and-own-client basis in the setting aside proceedings, except with leave of this court. Any pending proceedings to recover such costs are stayed forthwith.

We also gave our brief grounds of decision ("the Brief Grounds"), which are set out in the appendix hereto, and indicated that we would elaborate on those grounds in due course. To this, we now turn our attention.

23 Of the main issues that were determinative of this appeal, the first was whether the CDR process contemplated that the terms of a court-mediated settlement would be embodied in an order of court. The second was whether a CDR settlement judge had the power to make orders of court in connection with and following the successful resolution of a dispute via CDR. We answered both questions in the positive and allowed the appeal for the following reasons.

**The nature of CDR**

24 Formal mediation was introduced for civil cases in the Subordinate Courts in June 1994. In 1995, the Court Mediation Centre was created to merge, refine and develop the various mediation services offered by the Subordinate Courts. As stated in *The Judiciary, Singapore: Annual Report 1996* at p 53:

> The objectives of the Court Mediation Centre are *inter alia* to provide a forum for parties to explore settlement options with a view to the resolution of their disputes without trial adjudication. The resolution of conflicts through mediation results in the saving of time and costs.

25 Mediation is a form of consensual dispute resolution. In the Subordinate Courts, mediation is conducted in the PDRC under the auspices or with the assistance of the court, hence, the nomenclature "CDR" for short. The PDRC has provided, and continues to provide, mediation services in a wide spectrum of matters, including civil, family, small claims, juvenile and criminal matters. In September 2000, the PDRC introduced electronic mediation by establishing an additional facility called the "e@dr Centre" to reflect the inclusion of online mediation and virtual dispute resolution in its portfolio. The PDRC is a centre; therefore, by definition, it is neither a court of law nor intended to be one. It is, instead, a collective name or description for the various venues where CDR settlement conferences are held.

26 CDR settlement conferences are conducted by CDR settlement judges, who are also district judges. Although para 25(11) of the *Subordinate Courts Practice Directions* (2006 Ed) gives the Registrar the power to appoint "non-judicial officers such as legal assistants" to conduct CDR settlement conferences in "actions arising out of collision on land where there are no claims for personal injuries and where the issues in dispute are factual and not issues of law", this power has hitherto not been exercised.

2 7 The CDR settlement judge is a key feature of Singapore's CDR model, the salient features of which are described in Liew Thiam Leng, *Alternative Dispute Resolution in Singapore* <http://www.e-adr.gov.sg/archives/PAPER%20FOR %20SPIDR.pdf> (accessed 20 December 2007) at pp 7–8 as follows:

(a) Mediation under the CDR process is court-based, *ie*, it occurs only in cases where the parties in dispute have filed an action in court.

(b) CDR settlement judges act as mediators as, being judicial officers of the State, "[t]hey command public confidence and respect[,] which in turn makes them more effective mediators" (*ibid*).

(c) CDR is a directive form of court-assisted mediation, with the CDR settlement judge playing a "pro-active role by suggesting and guiding the parties with possible options but not to the extent of giving a definite opinion on the matter" (*ibid*).

28 There are several ways in which a case filed in the Subordinate Courts may be referred for CDR, namely:

(a) at the request of the parties or their counsel;

(b) by the Registrar at the point of a summons for directions;

(c) by the district judge overseeing the pre-trial management of cases that have been set down for trial; or

(d) by a general court direction, such as that applicable in what are termed "non-injury motor accident" ("NIMA") cases.

Feedback from litigants shows an overwhelming preference for district judges to act as mediators because of the public confidence and respect that they command (see also [27] above), as well as the convenience to the parties of being able to directly enforce a court-mediated settlement by means of a court order.

29 This judge-driven nature of our CDR model makes it considerably different in nature from other facilitative alternative dispute resolution processes where the mediator facilitates settlement by helping the parties to appreciate how their interests will be advanced by settling the matter. The parties obtain the best legal advice that litigants in an adversarial system of dispute resolution can get, *viz*, that of a judge who has experience in assessing evidence and determining liability. In this regard, our CDR model is *sui generis*, and is particularly suited to a jurisdiction where litigants respect the impartiality of judges in giving objective views on the merits of the claim and the defence respectively.

30 If the parties cannot resolve their dispute via CDR, the case simply proceeds to trial before another judge who is not the CDR settlement judge involved in the matter. However, if the case is settled, the practice hitherto has been for the terms of that settlement to be recorded by the CDR settlement judge in the form of either a settlement agreement or a consent order. The problem in this case was that the Court Order stipulated that a notice of discontinuance was to be filed within eight weeks. There was some ambiguity as to what those words meant, which in turn gave rise to the mess that subsequently developed as a result of the actions of Mr H.

**Our decision**

31 In RAS 17/07, the substantive issue that was put to the Judge by Mr A was whether a CDR settlement judge had the jurisdiction or power to issue an order of court. Mr A submitted that a CDR settlement judge was not so empowered since a CDR settlement conference was not a court proceeding and since the PDRC, where such settlement conferences take place (see [25] above), was not a court of law vested with judicial authority. In his oral arguments, Mr A referred to, *inter alia*, the Subordinate Courts' directions on the CDR process, including the protocol applicable in NIMA cases, to show that CDR had 13 features which made it distinct from court proceedings. In contrast, Mr H argued that CDR was part of the judicial process, and that, in any case, the respondent should have taken out an application for judicial review in respect of the District Judge's decision instead of appealing to the High Court. Mr H also pointed out that the version of the Court Order which he had extracted (see [6] above) had been settled by the court. But, he also appeared to have conceded before the Judge that he should not have extracted the Court Order. The Judge further observed that, in his letter dated 13 April 2006 seeking the Registrar's approval of the draft of the Court Order (see [6] above), Mr H had stated that "defendant's counsel didn't reply", which was "*not true*" [emphasis added] (see p 6 of the certified transcript of the notes of argument of the hearing before the Judge on 4 April 2007).

32 Regrettably, neither counsel appeared to have made any arguments based on the facts of the case; in particular, they did not address the question of whether the actions which they had taken before and after the extraction of the Court Order were evidence of what they had contemplated or agreed upon as the object of the CDR effected in the present case. Additionally, neither counsel was concerned about the economics of bringing a dispute over a sum of about $60 (initially) to the High Court, especially when both the appellant and the respondent were insured by the same insurer.

33 In the circumstances, given the way in which the questions of law were framed before the Judge, it was inevitable that she would hold that: (a) the PDRC was not a court of law; (b) CDR was not part of the court process whilst a CDR settlement judge was acting as a mediator; and (c) therefore, a CDR settlement judge acting in that capacity (*ie*, as a mediator under the CDR process) could not exercise any judicial power. It followed that the Judge concluded that the Court Order was not an order of court that could be enforced through the normal court processes.

34 In our view, Mr A posed the wrong questions, resulting in both counsel addressing the wrong arguments to the Judge. The correct question was whether the CDR process contemplated that the terms of a court-mediated settlement would be embodied in an order of court. If this question had been asked and considered, the answer would, surely, have been "Yes", as there would be little point in having a dispute resolved by CDR if the settlement reached thereby could not be enforced as a court order. If a court-mediated settlement is binding, there would be no point in requiring the successful party to bring a separate contractual action against the other party on the basis of the settlement in order to enforce that very settlement. Such a result would be unnecessary and repugnant to the very purpose of CDR. In this respect, both parties' counsel agreed that a court-mediated settlement was meant to bind the parties and had to be complied with as if it was a contract. This must be correct; otherwise, it would be an utter waste of time and resources for litigants to even resort to CDR to resolve their disputes in the first place.

35 When we asked Mr A whether, in principle, CDR also contemplated the enforcement of a court-mediated settlement by the court if one party failed to discharge his obligations under the settlement, Mr A readily agreed, except that he contended that the parties must then go back to the CDR settlement judge who presided over the settlement process for further directions. Furthermore,

Mr A's view was that the CDR settlement judge could not make a court order to enforce the terms of the court-mediated settlement as he was sitting in the PDRC, but that another district judge not sitting in the PDRC could do so if the matter was brought before him.

36 This gave rise to the question of whether a CDR settlement judge had the power to make orders of court in connection with and following the successful resolution of a dispute via CDR. We could not accept Mr A's submission (as set out in the preceding paragraph) as it would result in the triumph of form over substance. It would mean that CDR entails not only a two-*stage* process, but a two-*judge* process as well. In our view, this is not how the CDR process works or is intended to work. Unless the two-stage, two-judge process propounded by Mr A is specifically prescribed by statute or subsidiary legislation such as the Rules of Court (in which case there would be some policy reason for such prescription), the courts are – or should be – more concerned with the substance of the matter rather than its form. In our view, there is no reason why, in the situation just postulated, the CDR settlement judge, having successfully conducted CDR, cannot immediately don his judicial hat, so to speak, and enter judgment in accordance with the terms of the court-mediated settlement for the purpose of enforcing that settlement.

37 In our view, the CDR scheme envisages that the CDR settlement judge will first carry out his mediatory function by giving the parties an indication of how he would view their respective rights or liabilities if he were to try the case (see [29] above). This function does not entail the exercise of any judicial power. If and when the parties reach a court-mediated settlement on liability and/or damages and the CDR settlement judge records the terms of the settlement, his mediatory function comes to an end. Thereafter, he resumes the ordinary judicial role of a district judge such that he may exercise any judicial power in relation to the settlement and enter judgment against the losing party in accordance with the terms of the settlement for enforcement purposes.

38 In sum, in order to give efficacy to CDR, a court-mediated settlement must be binding on the parties and carried out according to its terms. Any failure to comply with those terms by any party entitles the other party to enforce the settlement as a court order without the necessity of another hearing before the same CDR settlement judge or another judge.

**What went wrong in the present case**

39 The problem in this case was not the infirmity of the CDR process, but the conduct of Mr H in taking unnecessary and unwarranted steps with undue haste to enforce the Court Order, as well as the conduct of Mr A in taking full advantage of the eight-week period for filing the notice of discontinuance by not paying up the Settlement Sum in the interim. It may be recalled that the Settlement Judge had recorded the terms of the settlement as follows (see [2] above):

(a) the respondent was to pay the appellant $187.50 and costs of $1,000 plus reasonable disbursements to be taxed or agreed; and

(b) "Notice of Discontinuance [was] to be filed in 8 weeks" ("the NOD notation").

Before us, there was disagreement between Mr Joseph Chen and Mr A as to the meaning of the NOD notation. Mr Joseph Chen argued that it simply meant that the appellant had eight weeks from 31 March 2006 to discontinue the action, and not that the appellant had to wait for eight weeks to be paid the Settlement Sum, which should be paid within a reasonable time from the date of the Court Order. Mr Joseph Chen further contended that, if the respondent failed to pay the sum concerned within a reasonable time, the appellant was entitled to obtain an order of court so that he could enforce the settlement reached on 31 March 2006. The further question, therefore, was whether a

reasonable time had elapsed in this case. It should be noted that Mr A, who was in a better position than Mr Chen to know what the NOD notation meant since he was present when it was made, did not make submissions on this particular point to the Judge as he preferred to stick to his argument that the respondent had agreed to a settlement and not a consent judgment.

40 In our view, it is possible to criticise the Settlement Judge for not making clear what he intended the NOD notation to mean. However, a reasonable interpretation of that notation would be that the parties had eight weeks from 31 March 2006 to fully implement the settlement reached. That settlement could not be implemented in full immediately in so far as the parties had yet to agree to the amount of disbursements incurred by the appellant. At this juncture, it is necessary for us to state that, since the amount of disbursements involved was trivial, the Settlement Judge should not have given such a long period of time for filing the notice of discontinuance. In our view, the CDR procedure should be revised so that, once a court-mediated settlement is reached, a reasonable time for paying the sum agreed on by the parties should be stipulated by the CDR settlement judge so that the losing party cannot delay payment and, thus, defeat the very purpose of CDR as a means of expediting the resolution of disputes.

41 Most unfortunately, both parties' counsel appeared to have subsequently disregarded what the NOD notation actually meant. Mr H went his own way, against the protests of Mr A, in extracting the Court Order and in issuing the WSS so as to enforce that court order. Mr A was then forced to respond by applying to set aside not only the WSS, but the Court Order as well. The result was that what would otherwise have been a routine court-mediated settlement escalated into a titanic struggle for vindication by each party's counsel without regard for the costs involved. Indeed, in their ensuing contest of wills, counsel completely subverted the *raison d'être* of the CDR process, with no regard at all for the interests of their respective clients and the public interest in not wasting public resources for private gain.

42 In our view, Mr H acted precipitately and unnecessarily in: (a) extracting the Court Order without giving the correct information to the Registrar (*viz*, that Mr A had objected to the extraction of the Court Order); and (b) issuing the WSS to attach the respondent's assets without giving Mr A reasonable time to obtain the requisite funds from the parties' common insurer in order to pay the amount claimed. The unreasonable conduct of Mr H was matched equally by the conduct of Mr A in: (a) quibbling over a sum of $60.35 (see [5] above); and (b) taking out – unnecessarily – an application to strike out the WSS (which no longer had any bite by the time the application was made as both the Settlement Sum and the disbursements claimed by Mr H had been paid by then) as well as the Court Order (which Mr A had tacitly endorsed by participating *without protest* in the taxation of the bill of costs filed pursuant to the Court Order (see [7] above)).

**Why we referred Mr H's conduct for inquiry**

43 We will now explain why we ordered this matter to be referred to the Law Society of Singapore ("the Law Society") for inquiry into Mr H's conduct on the matters set out in the Brief Grounds at [8]. At the hearing of the appeal, when we asked Mr Joseph Chen how this mess had come about, Mr Joseph Chen's associate counsel, Mr Joseph Tan Chin Aik, consulted the appellant in court and thereafter informed us that the appellant had: (a) been kept in the dark about the forensic tussle between Mr H and Mr A, and (b) not been informed about or consented to all the actions done by Mr H in his name. If these assertions were indeed true, Mr H would have much to answer for, given that the appellant had been exposed to litigation costs exceeding $100,000 (see [21] above) just to recover a mere sum of $187.50 for damage to his motorcycle. However, since Mr Tan was only making a statement from the Bar and since Mr H was not present in court then, we considered that the best way to deal with the appellant's assertions was to refer the matter to the Law Society. In coming to

this decision, we took into account the following exorbitant actions of Mr H:

(a) He extracted the Court Order in spite of the ambiguity of the NOD notation and without seeking clarification from the Settlement Judge as to the meaning of that notation.

(b) He extracted the Court Order notwithstanding Mr A's objection that it was unnecessary to do so, and without informing the Registrar that Mr A had protested against the extraction of that order.

(c) He continued to threaten to levy execution for the costs of taking out the WSS even though he had, as a result of warning Mr A that he would take out execution proceedings, already received payment of $1,187.50 "for damages and costs" (see [8]–[9] above) from Mr A on 16 May 2006. Further, in giving Mr A only a short period of time to pay the costs of the execution proceedings (which costs were based solely on Mr H's own calculation), Mr H himself contributed to Mr A's subsequent decision to take steps to set aside the WSS.

44 In the Brief Grounds at [6], we also mentioned that we had been shown a letter dated 13 July 2007 from Mr H to the appellant stating that his (Mr H's) fees for work done up to the stage of his discharge were in the region of $150,000, and that we were troubled by this. That letter was sent after Mr A filed the party and party bill of costs (*ie*, BC 120/07) on 7 June 2007: see [19] above. We quote below the relevant extracts from the letter:

> Thirdly, throughout the proceedings in the Subordinate Courts, I have billed you at the party and party rate, that is at the same amount as the costs that were ordered against the Defendant and which the Defendant paid. I could not bill you any lower as that would have contravened the rules. You therefore did not have to come out with any money of your own. This was done as you are the brother of David Lock, a longtime friend. Taking into account the circumstances of the case, you should not expect that our legal fees for work done in the High Court, namely Originating Summons No. 2141 of 2006/A and RAS 17/2007, or the work done for the appeal to the Court of Appeal, namely Originating Summons 682 of 2007 and Civil Appeal No. 50 of 2007 would be at party and party level.
>
> Fourthly, if you are changing solicitors, we will be issuing you with our invoice for the work done in the High Court and Court of Appeal which we will require you to pay within seven (7) days. You are free to have our bills taxed, that is determined by the Court. Our bills for work done to date in the High Court and Court of Appeal would be in the region of $150,000.00 excluding disbursements.
>
> The purpose of setting out the information above is to ensure that you have all the facts before you make a hasty decision that you may regret. Ultimately, we will accede to your instructions as you are the client.

These passages are self-explanatory in content, but not necessarily in intent. As we have directed the Law Society to look into this aspect of the case, it would not be appropriate for us to say anything more in this respect.

**The duty of counsel to evaluate a client's case**

45 We would like to conclude these grounds of decision with some observations on the role of counsel in pursuing their clients' interests in a court of law where monetary claims are involved. The present case did not concern potential loss of life or liberty, physical or mental injury, injury to a

person's reputation or even injury to his sense of pride. Instead, this was a case about dollars and "sense". There was no high principle at stake. What was involved here was a paltry sum of about $60. Yet, both counsel, instead of exercising the degree of responsibility expected of an officer of the court and advising their respective clients to settle the dispute with minimum fuss and, therefore, minimum cost, proceeded to broaden the areas of contention between their clients unnecessarily and in a highly wasteful manner. As we pointed out to Mr A, the outcome of the case, even assuming *arguendo* that his submissions (as outlined at [31], [34] and [35] above) were correct, would not benefit his "real" client, NTUC Income. Such an outcome would ultimately only lead to higher operational costs for the insurance industry.

46 Plainly, this case could not have gone this far if both counsel involved had acted reasonably in the interests of their clients. Although an advocate and solicitor has a duty to pursue his client's interest vigorously, he should only do so with the informed consent of the client, especially when pursuing the client's interest is counter-productive or results in an overall loss to the client (as was the case in these proceedings). Rule 40 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev Ed) requires an advocate and solicitor to evaluate with his client, in an appropriate case, "whether the consequence of a matter justifies the expense or the risk involved" in going to court. If ever there was a case where the evaluation delineated in r 40 should have been carried out, the present matter was likely to have been such a case. We could not imagine any prudent party condoning the solicitors' conduct in this case if a proper risk-benefit evaluation pursuant to r 40 had been undertaken.

47 Given all these considerations, we decided that, until the conduct of Mr H had been properly investigated by the Law Society, he should not be allowed to tax his solicitor and client costs against the appellant. Such costs might not be recoverable if it is found that Mr H acted in his own interests, rather than in those of his client, in taking all the steps that he did to enforce payment of the Settlement Sum and the disbursements claimed.

**Appendix**

**Lock Han Chng Jonathan (Jonathan Luo Hancheng)**

**v**

**Goh Jessiline**

Court of Appeal — Civil Appeal No 50 of 2007
Chan Sek Keong CJ, Andrew Phang Boon Leong JA and V K Rajah JA
3 October 2007 (10.00am)

**Brief grounds of decision**

1 These are our brief grounds of decision which we will elaborate on in greater length in due course.

2 Mediation in the Subordinate Courts is now part of the court process. It was introduced in 1994 in order to provide a court-supervised method of resolving disputes amicably and to save costs. It is held before a District Judge who, when he conducts a mediation, will not be exercising his judicial powers. A mediated settlement is binding on the parties. When such a settlement is reached, the CDR process contemplates that the settlement may be embodied in a court order for the purpose of enforcement. In other words, the CDR process contemplates the District Judge exercising his judicial power to make an order of court to give effect to the terms of the settlement, whenever necessary.

3 In the present case, the parties contemplated, that in the event of a default in the payment of the agreed settlement sum, the appellant could enforce the agreement through an order of court. Thus, when the appellant's solicitor took steps to extract the court order, which he did on 31 March 2006, the respondent's solicitor did not object on jurisdictional grounds, but only complained that a court order was unnecessary. Moreover, the respondent accepted the jurisdictional basis of the court order of 31 March 2006 when her solicitor appeared before the court on 5 May 2006 to tax the plaintiff's bill of costs. Furthermore, the respondent raised her objection to the validity of the court order only after she had paid the settlement sum embodied in the court order without any protest as to its validity. Her challenge to the validity of the court order was made after she had filed an application to set aside the writ of seizure and sale issued by the appellant's solicitor when she realised that she could not set aside the WSS without also setting aside the court order. By that time, there was effectively no dispute or *lis* in relation to the settlement sum.

4 Because the Settlement Judge had also set the condition of 8 weeks for the Notice of Discontinuance to be filed, it might well be that the appellant's solicitor acted precipitately and unnecessarily in extracting the court order and also in issuing the WSS. However, these actions do not affect the validity of the court order.

5 The response of the respondent's solicitor was also disproportionate, having regard to the small amount in dispute. There was no necessity to set aside the WSS as after the respondent had paid up the settlement sum and taxed disbursements, the WSS had nothing to bite on and execution could not have been effected. The District Judge's decision not to set aside the court order was correct in the circumstances. When the appeal was heard by the High Court, the wrong arguments were made before the Judge. We nevertheless acknowledge that the High Court has erred in giving leave to appeal and in holding that a mediation judge has no power to direct the entry of a consent order or judgment or make other consequential orders once a settlement has been reached.

6 For the moment, we wish to make the following observations. This case should never have come this far. It would not, if the solicitors in this case had acted reasonably in the interests of their clients. A dispute involving a puny sum of about $60 escalated into contests of wills between two solicitors, resulting in wastage of judicial time and unnecessary expenditure in terms of court fees and disbursements which exceeded $100,000 even before the date of this hearing. We have, in fact, been shown a letter dated 13 July 2007 from the appellant's former solicitor stating that his fees up to the stage of his discharge from these proceedings are in the region of $150,000. We are troubled by this.

7 This is an incredible case. We have not seen one like it in all our years in the law. It has brought no credit to counsel involved and the legal system as a whole. All that the appellant wanted from the defendant was $375 being $285 for the cost of repairs to his motorcycle and $90 for loss of use, for which he eventually agreed to settle at $187.50. For this, he was put at risk of having to pay a sum in excess of $100,000 in legal fees.

**Direction**

8 In the light of the short account given to us by counsel for the appellant of the conduct of his former counsel, Mr Hanam, it is necessary that his alleged conduct in exposing the appellant to unnecessary monetary risks and adverse legal consequences, apparently without his knowledge or consent, should be investigated for possible breach of his professional duties to the appellant. Accordingly, we will be directing the Registrar of the Supreme Court to refer this matter to the Council of the Law Society for it to determine whether it should refer the matter to the Chairman of the Inquiry Committee under s 85(2) of the Legal Profession Act (Cap 161, 2001 Rev Ed) to inquire into the following matters, i.e. whether Mr Hanam had:

(a) acted with the appellant's knowledge or consent in commencing enforcement proceedings in relation to the settlement;

(b) acted in the best interests of the appellant in seeking to enforce the settlement agreement by way of a writ of seizure and sale;

(c) kept the appellant informed or had explained to him the risks involved in taking all the steps he did in these proceedings;

(d) acted inappropriately in indicating in his letter of 13 July 2007 that he would be sending a bill of costs for $150,000 to the appellant upon his discharge as counsel in the appeal.