IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 72

Civil Appeal No 60 of 2019

Between

Michael Vaz Lorrain

… *Appellant*

And

Singapore Rifle Association

… *Respondent*

In the matter of Suit No 109 of 2017

Between

Singapore Rifle Association

… *Plaintiff*

And

Michael Vaz Lorrain

… *Defendant*

JUDGMENT

[Civil Procedure] — [Offer to settle]

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v
Singapore Rifle Association

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Court of Appeal — Civil Appeal No 60 of 2019
Andrew Phang Boon Leong JA and Belinda Ang Saw Ean J
6 July 2020

20 July 2020 Judgment reserved.

Belinda Ang Saw Ean J (delivering the judgment of the court):

Introduction and background facts

1 The sole issue in this judgment is whether an offer to settle that contains a term requiring the *discontinuance* of an action can be validly accepted *after* a judgment on the merits. At the outset, we note that this appears to be the first time that this issue is squarely before us.

2 The facts can be stated briefly. The respondent, the Singapore Rifle Association ("SRA"), is a member of the Singapore Shooting Association ("SSA"). The appellant, Mr Michael Vaz Lorrain ("Mr Vaz"), is the president of SSA's council. On 8 February 2017, SRA commenced HC/S 109/2017 ("Suit 109") against Mr Vaz, alleging that he had breached a mediation agreement and/or a duty of confidence. Mr Vaz did not dispute liability. Accordingly,

interlocutory judgment for damages to be assessed was entered against Mr Vaz on 23 May 2017.

3 In due course, damages were assessed and on 25 February 2019, the High Court judge ("the Judge") awarded damages in favour of SRA in the sum of $8,100 along with interest and costs. Subsequently, he also held that O 22A r 9(3) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) did not apply to an offer to settle made by Mr Vaz on 3 April 2017 ("the OTS") as it was not more favourable than the judgment sum obtained by SRA and the costs it had incurred up to the date of the OTS. The terms of the OTS are as follows:[1]

> [Mr Vaz] offers to settle this proceeding on the following terms:
>
> 1. [Mr Vaz] be restrained whether acting by himself, his servants, agents or any of them or otherwise howsoever from disclosing and/or using any Confidential Information or any part thereof including but not limited to the Published Statement (as defined in the Statement of Claim);
>
> 2. [Mr Vaz] pays [SRA] the sum of S$25,000 within 14 days of acceptance of this Offer to Settle; and
>
> 3. Within three (3) working days of the receipt of the sum of S$25,000, [SRA] will file its Notice of Discontinuance of Claim.

4 In CA/CA 60/2019 ("CA 60"), Mr Vaz appealed against the damages and costs assessed by the Judge. On 5 May 2020, prior to the hearing of the appeal before us, SRA purportedly accepted the OTS.[2] The parties accepted that CA 60 should be withdrawn but consent to a withdrawal was not forthcoming because of costs. Pursuant to O 57 r 11(3)(*a*) of the Rules of Court, this court

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1 SRA's Bundle of Documents dated 5 June 2020 at pages 3 and 4.

2 SRA's Bundle of Documents dated 5 June 2020 at pages 41 and 42.

was asked to determine whether the OTS provided for costs. The dispute was on whether O 22A r 9(2) of the Rules of Court applied to the OTS. Order 22A r 9(2) provides for certain costs consequences where "an accepted offer to settle does not provide for costs". Mr Vaz contended that the OTS did not provide for costs, while SRA took the contrary position. The parties were thus directed to file submissions in respect of that issue.

5 In the course of reviewing the parties' costs submissions, we noted that the OTS contained a term requiring SRA to file a "Notice of Discontinuance of Claim" within three working days of the receipt of the sum of $25,000 (see [3] above). We also noted that SRA had prepared its Notice of Discontinuance in readiness for filing after accepting the OTS. In context, the term requiring SRA to file its "Notice of Discontinuance of Claim" in the OTS meant that the action had to be discontinued, apparently despite the fact that judgment had already been given in the High Court. We therefore directed the parties to file further submissions on the following preliminary issue:

> The court would like the parties to address it on the preliminary point as to whether the [OTS] could be validly accepted in law in the first instance after a judgment on the merits. In considering this question, the parties are to have regard to the terms of the OTS which have to be complied with upon acceptance of the OTS. In this case, the Acceptance of Offer is dated 5 May 2020 and the OTS requires discontinuance of the claim. Can the OTS be validly accepted if the term requiring discontinuance of the claim is not capable of compliance after judgment on the merits?

6 For convenience, we refer to a term that requires the action to be discontinued as a "Discontinuance Term". In addition, unless otherwise stated, a "judgment" refers to a first instance judgment that completely disposes of the cause of action or matter (both with regard to liability and damages).

The parties' further submissions

7 We summarise the parties' further submissions before turning to our analysis of the preliminary issue. The outcome of our decision on the preliminary issue could well dispose of the initial issue that the parties had sought directions on, namely, whether the OTS provided for costs.

8 Mr Vaz advances the following submissions:

(a) Mr Vaz acknowledges that he had previously taken the position that the OTS was capable of acceptance by SRA. He considered that the Discontinuance Term did not prevent SRA from accepting the OTS, relying on the decision of this court in *NTUC Foodfare Co-operative Ltd v SIA Engineering Co Ltd and another* [2018] 2 SLR 1043 ("*NTUC Foodfare*"). There, the offer to settle likewise contained a Discontinuance Term.

(b) Notwithstanding his previous position, Mr Vaz now submits that the OTS could not be validly accepted by SRA. Distinguishing *NTUC Foodfare*, he argues that once the High Court had delivered judgment, the Discontinuance Term could not be complied with. Hence, the OTS lapsed and ceased to be open for acceptance.

9 We turn to SRA's submissions:

(a) SRA notes that the OTS did not state a time for acceptance. Order 22A r 3(5) of the Rules of Court provides that "[w]here an offer to settle does not specify a time for acceptance, it may be accepted at any time before the Court disposes of the matter in respect of which it is

made". It was held in *NTUC Foodfare* that the matter is disposed of only when the appellate court renders its decision on the merits (at [17]).

(b) SRA argues that the fact that the OTS contained a Discontinuance Term did not mean it was incapable of being accepted. In this connection, SRA refers to *NTUC Foodfare* and another previous decision of this court, *Ong & Ong Pte Ltd v Fairview Developments Pte Ltd* [2015] 2 SLR 470 ("*Ong & Ong*"). The offers to settle in both cases contained a Discontinuance Term. Nonetheless, SRA accepts that a "Notice of Discontinuance … is typically filed before a first instance judgment is rendered".[3]

Whether the OTS which contained a Discontinuance Term could be accepted after judgment

10 We turn to our analysis of the preliminary issue.

11 In construing an offer to settle, the law should focus on the intentions of the offeror as determined objectively. This is no different from a normal contractual offer (see, for example, *Norwest Holdings Pte Ltd (in liquidation) v Newport Mining Ltd* [2010] 3 SLR 956 at [34]). The Discontinuance Term in the OTS is unambiguous and an offer to settle with such a term clearly suggests that, objectively construed, the offeror only intended for the offer to settle to be capable of acceptance before judgment was obtained. In our view, the Discontinuance Term contemplates the existence of an outstanding cause or matter not disposed of which is within the scope of the offer to settle, and it is in such an unchanged circumstance that the offer to settle remains open for

[3] SRA's submissions at para 17.

acceptance. Accordingly, if the Discontinuance Term is not capable of compliance because there is already a judgment on the merits, it would follow that an offer to settle that *requires* discontinuance is an impotent offer under O 22A that is incapable of acceptance once judgment has been obtained.

12 In the present case, the OTS was served on 3 April 2017, approximately one month after Mr Vaz filed and served his defence admitting liability but not damages. At the hearing of SRA's application for summary judgment on 23 May 2017, Mr Vaz consented to interlocutory judgment on liability and damages were to be assessed. On the issue of costs after assessment of damages, on 14 March 2019, the Judge, who was apprised of the OTS, fixed costs. He also ruled that O 22A r 9(3) did not apply to Mr Vaz's OTS as the offered settlement sum was not more favourable than the damages obtained by SRA and the costs it had incurred up to the date of the OTS. It is clear that Suit 109 had concluded by 14 March 2019.

13 In the circumstances, the anterior question in relation to whether the OTS could be accepted after judgment is whether an action can be discontinued after judgment. For the reasons that follow, we are satisfied that the question must be answered in the negative as a matter of principle and coherence. We then explain why the cases cited by SRA, namely, *NTUC Foodfare* and *Ong & Ong*, can be distinguished for present purposes.

An action can only be discontinued before judgment

14 We begin by considering the well-established doctrine of merger. Pursuant to this doctrine, once a judgment has been given on a cause of action, the cause of action *merges* with the judgment of the court and ceases to exist as an independent entity. There is no doubt that the doctrine is part of Singapore

law (see the decision of this court in *Chiam Heng Hsien (on his own behalf and as partner of Mitre Hotel Proprietors) v Chiam Heng Chow (executor of the estate of Chiam Toh Say, deceased) and others* [2015] 4 SLR 180 at [155]).

15 In *Salijah bte Ab Latef v Mohd Irwan bin Abdullah Teo* [1995] 3 SLR(R) 233 at [23], the High Court, citing George Spencer Bower and Alexander Kingcome Turner, *The Doctrine of Res Judicata* (Butterworths, 2nd Ed, 1969) at para 427, referred to the doctrine of merger as follows:

> … the merger doctrine, is 'that any cause of action which results in a judgment of [a] … judicial tribunal, whereby relief is granted to the plaintiff, or other "actor" in the proceedings, is in contemplation of law merged in the judgment, as soon as it is pronounced, and thereby loses its individual vitality and disappears as an independent entity, any … judgment even of the lowest degree being regarded as of a higher nature than any, even the most important, cause of action' …

The High Court's application of the doctrine of merger was endorsed by this court on appeal (see *Salijah bte Ab Latef v Mohd Irwan bin Abdullah Teo* [1996] 2 SLR(R) 80 at [76]).

16 Clearly, as a matter of principle, there is simply nothing for the parties to "discontinue" once a judgment has been obtained. Upon judgment, the cause of action merges with the judgment and the doctrine of *res judicata* applies. Accordingly, *as a matter of law*, an action can only be discontinued before judgment.

17 Indeed, we note that there are Canadian authorities which have similarly taken the position that an action cannot be discontinued after judgment (see, for instance, *Karaha Bodas Co LLC v Negara* [2011] AJ No 1064 at [3], where the

Court of Appeal of Alberta observed that "a discontinuance after judgment is inappropriate").

18 The conclusion we have reached is also consistent with O 21 r 4 of the Rules of Court, which sets out the effect of a discontinuance before judgment on the merits:

> Subject to any terms imposed by the Court in granting leave under Rule 3, the fact that a party has discontinued or is deemed to have discontinued an action or counterclaim or withdrawn a particular claim made by him therein *shall not be a defence to a subsequent action for the same, or substantially the same, cause of action.* [emphasis added]

19 In our view, O 21 r 4 contemplates a scenario where the cause of action has yet to merge with the judgment of the court and is therefore not extinguished or superseded. This explains why O 21 r 4 refers to a "subsequent action for the same, or substantially the same *cause of action*" [emphasis added], and provides that a discontinuance shall not operate as a defence to that cause of action being litigated in the future. This supports the principle that an action can only be discontinued before judgment, since the "cause of action" referred to in O 21 r 4 would have merged with the judgment of the court if one had been obtained. In that scenario, the doctrine of *res judicata* would apply to bar that cause of action from being re-litigated.

20 We note that in *Singapore Civil Procedure 2020* vol 1 (Chua Lee Ming gen ed) (Sweet & Maxwell, 10th Ed, 2020), it is suggested at para 21/5/28 that it may be possible (albeit rare) for an action to be discontinued after judgment:

> … *After judgment* — Generally, discontinuance is not permitted after judgment, especially where the plaintiff is not wholly dominus litis; and similarly, after verdict (*Stahlschmidt v. Walford* (1879) 4 Q.B.D. 217).

21 However, in our view, the authority cited, *Stahlschmidt v Walford* (1879) 4 QBD 217, does not suggest that an action can be discontinued after judgment. In short, there was *no judgment* in that case. There, an action was referred to an arbitrator, and the arbitrator made findings of fact in favour of the defendant. The plaintiff then applied for leave to discontinue the action and Field J granted leave. The defendant appealed against Field J's decision to allow the discontinuance, precisely because he sought to have a *judgment* that will have the effect of an estoppel (at 218). On appeal, Cockburn CJ and Mellor J held that the discontinuance ought not to be allowed, and Cockburn CJ reasoned as follows (at 219):

> It appears to me that the hearing before the arbitrator, and his finding, were substantially equivalent to a trial at Nisi Prius and the verdict of a jury. The defendant, as it seems to me, is in justice entitled to the fruits of these proceedings, and we ought not to interfere to deprive him of them. Admitting that it is a matter of discretion under Order XXIII., rule 1, whether the plaintiff shall be allowed to discontinue, under the circumstances of this case I think, as a matter of discretion, that the plaintiff ought not to be allowed to discontinue.

Coherence with the law on automatic discontinuance

22 In reaching the conclusion that an action cannot be discontinued after judgment, we also have regard to our procedural law on automatic discontinuance, whereby it is established that an action is not subject to automatic discontinuance after final judgment is obtained.

23 Order 21 r 2(6) of the Rules of Court states:

> (6) Subject to paragraph (6A), if no party to an action or a cause or matter has, for more than one year (or such extended period as the Court may allow under paragraph (6B)), taken any step or proceeding in the action, cause or matter that appears from records maintained by the Court, the action, cause or matter is deemed to have been discontinued.

> (6A) Paragraph (6) shall not apply where the action, cause or matter has been stayed pursuant to an order of court.

24 In *Tan Kim Seng v Ibrahim Victor Adam* [2004] 1 SLR(R) 181 ("*Tan Kim Seng*"), this court considered whether O 21 r 2(6) applied to *interlocutory judgments*. The question was answered in the affirmative and it was held that "O 21 r 2(6) would apply to any case where steps are still required to be taken to obtain a judgment which is enforceable" (at [26]).

25 The corollary that follows from *Tan Kim Seng* is that O 21 r 2(6) does not apply once a final judgment has been obtained. After all, O 21 r 2(6) is a case management rule to ensure that a litigant pursues a case throughout the course of proceedings in a timely manner. A dilatory litigant faces the prospect of proceedings being automatically discontinued for want of prosecution of a case for more than a year after the last step in the proceedings.

26 Accordingly, our holding that an action cannot be discontinued after judgment, which we have defined to exclude interlocutory judgments (see [6] above), would promote coherence in the law.

The cases cited by SRA can be distinguished

27 In contending that the OTS was validly accepted, SRA relies on two decisions of this court, *NTUC Foodfare* ([8(a)] *supra*) and *Ong & Ong* ([9(b)] *supra*). The offers to settle in both cases contained a Discontinuance Term. In our judgment, these two decisions do not affect the analysis we have set out above. In both cases, this court did not squarely address the preliminary issue – whether an offer to settle which contains a Discontinuance Term can be validly accepted after judgment.

28 Further, both decisions can also be distinguished on other bases. In *Ong & Ong*, the matter was bifurcated and the facts may be summarised as follows:

(a) The plaintiff commenced an action against the defendant, and the defendant responded with a counterclaim (at [3] and [4]).

(b) Thereafter, the plaintiff served on the defendant an offer to settle which contained a Discontinuance Term (at [5]).

(c) The trial was bifurcated. The High Court granted interlocutory judgment for the plaintiff in respect of one claim, but dismissed the other. The High Court dismissed the defendant's counterclaim. Damages were ordered to be assessed (at [6]).

(d) Both parties appealed against the High Court's interlocutory judgment. The defendant did not appeal against the dismissal of the counterclaim (at [8]).

(e) On appeal, the plaintiff's appeal was allowed and the defendant's appeal was dismissed. On the same day, the defendant accepted the plaintiff's offer to settle (at [10]). The plaintiff replied that the counterclaim had been determined when the defendant did not appeal against the High Court's dismissal of the counterclaim. Accordingly, the court had disposed of the matter in respect of which the offer to settle was made, and it was no longer capable of acceptance (at [11]).

29 The issue in *Ong & Ong* was thus whether an offer to settle can be accepted if the court has disposed of *part* of the matter (*ie*, the counterclaim in *Ong & Ong*). This court held that "so long as there is an outstanding matter not disposed of which is within the scope of the offer to settle, the offer to settle

remains open for acceptance" (at [54] and [55]). Since damages had to be assessed for the plaintiff's claims, there were outstanding matters which had not been disposed of. Consequently, the offer to settle remained open for acceptance.

30 The scenario is materially different in the present case. Here, the Judge had decided *both* the issue of liability and damages and there was simply nothing left in the concluded action for SRA to "discontinue". As explained at [11] above, the Discontinuance Term is an indication that the offer to settle was not intended to survive beyond the conclusion of the action. Indeed, the emphasis placed by this court in *Ong & Ong* on the fact that there had been an outstanding matter not yet disposed of fortifies the conclusion we have reached.

31 We turn to *NTUC Foodfare* ([8(a)] *supra*). There, the plaintiff commenced an action against the defendants. Eleven days before the trial, the defendants served an offer to settle that was *never accepted* by the plaintiff. The offer to settle contained a Discontinuance Term (at [3], [4] and [7]).

32 The High Court dismissed the plaintiff's claims. However, this court allowed the plaintiff's appeal. On the issue of costs, an issue which arose was whether O 22A r 9(3) applied. Order 22A r 9(3) reads:

> **Costs (O. 22A, r. 9)**
>
> …
>
> (3) Where an offer to settle made by a defendant —
>
> > (*a*) *is not withdrawn and has not expired before the disposal of the claim in respect of which the offer to settle is made*; and
> >
> > (*b*) is not accepted by the plaintiff, and the plaintiff obtains judgment not more favourable than the terms of the offer to settle,

> the plaintiff is entitled to costs on the standard basis to the date the offer was served and the defendant is entitled to costs on the indemnity basis from that date, unless the Court orders otherwise.
>
> [emphasis added]

33 The plaintiff argued that the offer to settle was *not* open for acceptance after the trial ended. To the contrary, the defendants submitted that the offer to settle was open for acceptance until the disposal of the appeal (at [9] and [10]).

34 This court agreed with the defendants and reasoned as follows at [16] and [17]:

> 16 It is not in dispute that the respondents did not withdraw the OTS at any time. However, NTUC Foodfare claims that the OTS expired upon the conclusion of the trial. We disagree. Here, the OTS did not specify a time for acceptance. Order 22A r 3(5), which provides for this scenario, states:
>
> > (5) Where an offer to settle *does not specify a time for acceptance*, it may be accepted *at any time before the Court disposes of the matter* in respect of which it is made. …
>
> 17 Under O 22A r 3(5), the OTS remained open for acceptance 'at any time before the Court *dispose[d] of the matter* in respect of which it [was] made' … It is settled law that for the purposes of O 22A r 9(3)(*a*), 'the disposal of the claim' refers to the final disposal of the claim on appeal if an appeal is filed: see *Man B&W Diesel S E Asia Pte Ltd v PT Bumi International Tankers* [2004] 3 SLR(R) 267 at [20] and *Ram Das V N P v SIA Engineering Co Ltd* [2015] 3 SLR 267 at [73]. In our judgment, the phrase 'dispos[al] of the matter' in O 22A r 3(5) must be interpreted consistently with O 22A r 9(3)(*a*) to refer to the final disposal of the claim on appeal where there is an appeal. We therefore conclude that under O 22A r 3(5), the OTS remained open for acceptance until 19 July 2018, when we issued the Judgment … which finally disposed of the claim. Hence, the Validity Requirement is satisfied.
>
> [Court of Appeal's emphasis in *NTUC Foodfare* in italics]

35 As stated at [27] above, *NTUC Foodfare* may be distinguished on the basis that the preliminary issue considered in this case was not an issue there, and was therefore not addressed. The defendants' offer to settle was in any event never accepted by the plaintiff. Furthermore, the question of whether there could be compliance with the requirement of discontinuance after judgment was not an issue before the court. With regard to the general proposition that an offer to settle may be accepted after judgment, we provide some preliminary observations below.

Decision on preliminary issue

36 In sum, an action can only be discontinued *before* judgment and we reach this conclusion for reasons of principle and coherence. Since the OTS in question required discontinuance of a concluded action that is no longer legally possible, the OTS is impotent and incapable of valid acceptance. It should be construed as being capable of acceptance only before judgment was obtained. Thus, SRA's purported acceptance of the OTS on 5 May 2020 was *not* valid. In the circumstances, it is no longer necessary for us to consider the initial issue that the parties had sought directions on, namely, whether the OTS provided for costs (see [4] above).

Preliminary observations on whether an offer to settle can be accepted after judgment regardless of whether it contains a discontinuance term

37 We turn to make some preliminary observations on whether an offer to settle can be accepted after judgment, *regardless of whether it contains a Discontinuance Term*. To be clear, because of the analysis set out above, it is unnecessary for us to reach a conclusive view on this broader issue.

38 We begin with statutory interpretation. The relevant provision in this regard is O 22A r 3(5) of the Rules of Court:

> 5) Where an offer to settle does not specify a time for acceptance, it may be accepted at any time before the *Court* disposes of the matter in respect of which it is made. [emphasis added]

39 It should be noted that the Rules of Court contains a specific definition of "Court", as defined in O 1 r 4(2):

> (2) In these Rules, unless the context otherwise requires, *'Court' means the High Court or a District Court*, or a judge of the High Court or District Judge, whether sitting in Court or in Chambers, and includes, in cases where he is empowered to act, a Magistrate or the Registrar; but the foregoing provision shall not be taken as affecting any provision of these Rules and, in particular, Order 32, Rule 9, by virtue of which the authority and jurisdiction of the Registrar is defined and regulated. [emphasis added]

40 Order 22A r 3(5) can be contrasted with other provisions in the Rules of Court which make explicit reference to the Court of Appeal:

> **Extension, etc., of time (O. 3, r. 4)**
>
> …
>
> (4) In this Rule, references to the Court shall be construed as including references to the Court of Appeal.
>
> …
>
> **Notice of change of solicitor (O. 64, r. 1)**
>
> 1.—(1) A party to any cause or matter who sues or defends by a solicitor may change his solicitor without an order for that purpose but, until notice of the change is filed and served in accordance with this Rule, the former solicitor shall, subject to Rules 4 and 5, be considered the solicitor of the party until the final conclusion of the cause or matter, whether in the Court or the Court of Appeal.
>
> …
>
> **Leave to appeal to Court of Appeal (O. 69, r. 8)**

> 8. An application under the Act for leave to appeal against a decision of the Court to the Court of Appeal must be made to the Court within 7 days of the decision of the Court.

41 As a matter of statutory interpretation, it therefore seems arguable to us that the reference to "Court" in O 22A r 3(5) refers exclusively to a first instance court.

42 We note that it also appears to be the legal position in Ontario that an offer to settle cannot be accepted after judgment. It should be noted that the offer to settle regimes in a number of Canadian and Australian states formed the background against which O 22A was included in Singapore's civil procedure rules (see *Ram Das V N P v SIA Engineering Co Ltd* [2015] 3 SLR 267 at [36] and *Ong & Ong* at [15]).

43 The relevant case from Ontario is *Grass (Litigation guardian of) v Women's College Hospital* [2004] OJ No 1519. There, the first trial was held in 1998 and judgment was rendered in 1999. A new trial was then ordered by the Court of Appeal in 2001 and the second trial was held in 2003. The plaintiff had made an offer to settle before the first trial, and argued that the offer to settle was "resurrected" when the Court of Appeal overturned the first trial disposition. The Ontario Superior Court of Justice dismissed this argument, but in so doing, also observed that both parties had agreed that the offer to settle was not open for acceptance after the first trial judge rendered judgment (at [21]):

> *Both sides agree that the offer to settle was not open for acceptance once the first trial judge rendered judgment. Rule 49.04(4) [of Ontario's Rules of Civil Procedure O Reg 575/07, s 6(1)] provides: 'An offer may not be accepted after the court disposes of the claim in respect of which the offer is made.'* It is the plaintiffs' position, however, that the rule only prevents acceptance of the offer after disposition, but does not cause the

> offer to expire. Hence, they argue, their offer to settle was resurrected and continued in force after the Court of Appeal overturned the first trial disposition. I disagree. Such an interpretation is inconsistent with the plain reading and purpose of Rule 49.04(4). Further, such an interpretation has the potential to cause mischief, particularly when further proceedings have added to the cost of the litigation. In addition, parties may have changed counsel for the purpose of the appeal or for a second trial. In this case, the parties apparently conducted the ongoing litigation as though the offer had expired. Five years elapsed between the offer and the commencement of the second trial. None of the parties had a reasonable expectation that the offer continued to be open for acceptance. The plaintiffs' costs of the first and second trial will be consequently awarded on a partial-indemnity basis. [emphasis in original omitted; emphasis added in italics]

44 Finally, in our view, there are also sound policy reasons why an offer to settle should not be open for acceptance after judgment. In *Singapore Airlines Ltd v Tan Shwu Leng* [2001] 3 SLR(R) 439 at [37], this court noted that "the whole object of O 22A is to spur the parties to bring litigation to an expeditious end *without judgment*, and thus to save costs and judicial time" [emphasis added]. The purpose of O 22A is thus promoted by holding that an offer to settle can only be accepted before judgment. Conversely, if an offer to settle can be accepted after judgment, this may encourage offerees to adopt a "wait and see" approach. Offerees may be incentivised to wait for the judgment and to then accept the offer to settle only if it is more favourable than the judgment. Taken to its logical conclusion, if an offer to settle can be accepted at any time before the appellate court disposes of the matter, it also means that it can even be accepted after the hearing of the appeal, let alone after the first instance judgment. This, in our preliminary view, does not further the purpose of the O 22A regime.

45 We acknowledge that our preliminary observations may appear to contradict *NTUC Foodfare* ([8(a)] *supra*) at [17]. Nonetheless, as we have

explained, it is not necessary for us to reach a conclusive view on whether an offer to settle can be accepted after judgment. We therefore leave this issue for detailed consideration on a future occasion, where the parties may make their submissions with the benefit of our foregoing observations.

Conclusion

46 For the above reasons, we answer the preliminary issue in the negative. SRA's acceptance of the OTS on 5 May 2020 was not valid. The Registry will convey to the parties the relevant directions concerning the reinstatement of the hearing date of the appeal. The issue of costs is reserved to the main appeal.

Andrew Phang Boon Leong
Judge of Appeal

Belinda Ang Saw Ean
Judge

Lee Hwee Khiam Anthony and Huineng Clement Chen (Bih Li & Lee LLP) for the appellant;
Wong Hin Pkin Wendell, Chen Jie'an Jared, Wong Zi Qiang, Bryan and Andrew Chua Ruiming (Drew & Napier LLC) for the respondent.