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

[2023] SGHC 294

Originating Claim No 139 of 2022 (Registrar's Appeal No 84 of 2023)

Between

Spamhaus Technology Ltd
(United Kingdom Registration
No. 05078652)

… *Claimant / Appellant*

And

Reputation Administration
Service Pte Ltd
(Singapore UEN No.
200823284G)

… *Defendant / Respondent*

GROUNDS OF DECISION

[Civil Procedure — Delay]
[Civil Procedure – Judgment entered in default of defence – Setting aside default judgment]
[Contract — Formation]

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v
Reputation Administration Service Pte Ltd

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Chan Seng Onn SJ
14 August 2023

17 October 2023

Chan Seng Onn SJ:

Introduction

1 This was an appeal against the decision of the Assistant Registrar (the "AR") in HC/SUM 752/2023 ("SUM 752") setting aside the Judgment in Default (the "Default Judgment").

2 I allowed the appeal and ordered that the Default Judgment be upheld. As the respondent appealed against my decision, I set out my reasons below.

Background Facts

The parties

3 The appellant, Spamhaus Technology Ltd, is a company incorporated in the United Kingdom and provides services relating to the filtering and control of spam and/or unsolicited emails.

4 The respondent, Reputation Administration Service Pte Ltd, is a company incorporated in Singapore and is in the business of providing information technology and email services to various parties in Singapore. Mr Goel Adesh Kumar ("Mr Goel") is the representative and sole director of the respondent.

Suit 814 of 2019

5 On 1 March 2009, the respondent and Spamhaus Research Corporation ("SRC"), a company incorporated in the British Virgin Islands, entered into a Reseller Agreement (the "Reseller Agreement"). SRC terminated this agreement on 12 February 2019. On 16 August 2019, the appellant commenced HC/S 814/2019 ("Suit 814") against the respondent (the "defendant" in Suit 814), alleging that the defendant owed the appellant the sum of US$242,285.20 pursuant to the defendant's alleged breach of the Reseller Agreement, to which the appellant was not a party.

6 On 17 December 2019, the appellant filed an application to obtain summary judgment against the defendant in Suit 814 *vide* HC/SUM 6306/2019 (the "Summary Judgment Application"). The Summary Judgment Application was dismissed at the first instance. An appeal of this application in HC/RA 62/2022 was also later dismissed on 19 March 2020.

7 At a pre-trial conference held on 25 April 2022, parties agreed to vacate the trial in Suit 814 pending settlement talks between them.

The Settlement Agreement

8 From 26 April 2022 to 29 June 2022, negotiations on a settlement continued, with a draft settlement agreement being produced (the "Settlement Agreement"). In the course of negotiations, amendments were made to the terms of the Settlement Agreement. The payment clause provided that the respondent was to pay the settlement sum of US$75,000.00 to the appellant within 14 days of receipt of a duly executed agreement from the appellant. An acceleration clause further stipulated that the failure to pay this sum by the stipulated time would render the full amount of US$251,359.75 immediately due and payable ("acceleration clause").

9 The respondent never signed the Settlement Agreement.

The appellant's claim for a breach of the Settlement Agreement and the winding up application in CWU 22 of 2023

10 On 7 July 2022, the appellant issued a letter of demand to the respondent at its registered address, claiming the payment of the full outstanding amount of US$251,359.75, and alleging the respondent's failure to make payment of the settlement sum of US$75,000.00 in accordance with the Settlement Agreement.

11 On 19 July 2022, the appellant filed HC/OC 139/OC ("OC 139") against the respondent for the sum of US$251,359.75, which it claimed was due under the Settlement Agreement.

12 On 12 August 2022, the Default Judgment was entered against the respondent for failing to file its Notice of Intention to Contest or Not Contest. The Default Judgment was entered for the sum of US$251,359.75, with interest at 5.3% per annum from the date of the Originating Claim to Judgment and costs of the action at $2,300.00.

13 Having obtained the Default Judgment, the appellant successfully sought leave on 2 September 2022 to withdraw Suit 814 and filed a Notice of Discontinuance in respect of the same.

14 On 3 February 2023, the appellant applied in HC/CWU 22/2023 ("CWU 22") to wind up the respondent.

The decision below

15 SUM 752 was heard on 19 April 2023 and the AR ordered that the Default Judgment be set aside with costs of $2,500 (all in) to be paid by the respondent to the appellant.[1]

16 The AR found that the principles set out in *Mercurine Pte Ltd v Canberra Development Pte Ltd* [2008] 4 SLR(R) 907 ("*Mercurine*") applied in such an application to set aside a default judgment. The applicable test to determine whether to set aside a default judgment hinged on the preliminary consideration of whether the judgment was a regular or irregular default judgment. The AR found that the Default Judgment was a regular default judgment, notwithstanding a minor clerical error in the memorandum of service whereby it was indicated that the originating claim was served on the

[1] Certified Transcript dated 19 April 2023 at pp 9–11.

"Claimant" by the "Defendant". This was a minor issue which did not prejudice the respondent.[2]

17 Accordingly, on the basis that the default judgment sought to be set aside was a regular default judgment, the core issue was whether the respondent could establish a *prima facie* defence in the sense of showing that there were triable or arguable issues (*Mercurine* at [60]). The burden was on the respondent to establish the merits of its defence. In the AR's view, the "only issue" was whether there was a valid and enforceable agreement between the parties despite the respondent having not executed the Settlement Agreement.[3] The AR found that the respondent had successfully raised a triable issue in this regard because it was arguable that the Settlement Agreement was not enforceable given that it had not been executed by the respondent.[4] Furthermore, the lack of a binding agreement was arguable in the face of an email dated 29 June 2022 by the respondent's representative, Mr Goel, who referred to the settlement as merely a "proposed settlement" which the appellant could reject.[5] In any event, if the appellant was arguing that a contract arose from the email correspondence, this had to be pleaded specifically, which they failed to do.[6]

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2 Certified Transcript dated 19 April 2023 at paras 1–2.

3 Certified Transcript dated 19 April 2023 at para 3.

4 Certified Transcript dated 19 April 2023 at para 5.

5 Certified Transcript dated 19 April 2023 at para 5.

6 Certified Transcript dated 19 April 2023 at para 5.

The parties' cases

Appellant's case

18 The appellant submitted that the AR erred in setting aside the Default Judgment. The AR wrongly concluded that there was a triable issue as to whether the Settlement Agreement was binding between the parties.[7] According to the appellant, the fact that the agreement had not been signed was no bar to the formation of an agreement[8] because the chain of correspondence between the parties showed that the parties had nonetheless reached a binding agreement on 13 May 2022 when the respondent replied to accept the appellant's proposed changes to the draft Settlement Agreement and to request the respondent to send over an execution ready agreement for the respondent's action.[9] Alternatively, and at the very latest, an agreement would have been formed by 30 May 2022 when the respondent wrote back to the appellant, acknowledging the respondent's obligation to pay the sum under the Settlement Agreement. This was evident when he stated that "[t]he intention and commitment of the parties to ending this matter is unequivocal ... Funds are likely to be sent by the end of this week or early next week."[10]

19 The appellant also submitted that the AR erred in finding that no binding agreement had been reached because in a later email of 29 June 2022, the respondent had referred to the settlement as merely a "proposed settlement" which the appellant was entitled to reject. According to the appellant, this email

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7 Plaintiff's Written Submissions for HC/RA 84/2023 dated 23 May 2023 ("PWS") at para 9.

8 PWS at para 27.

9 PWS at paras 10–11.

10 PWS at paras 10–11.

was irrelevant as it came after the conclusion of the agreement on the earlier dates of either 13 May 2022 or 30 May 2022.[11]

20 Further, the appellant argued that there was no triable issue in relation to the respondent's argument that there was uncertainty over the exact quantum claimed by the appellant.[12] The appellant submitted that there was no such uncertainty. The Default Judgment for the sum of US$251,359.75 was consistent with the Settlement Agreement which provided that the respondent was to pay the amount of US$75,000, failing which the amount of US$251,359.75 would become payable.

21 Finally, the appellant contended that there was an inordinate delay by the respondent in filing its application to set aside the Default Judgment.[13] There was a long span of more than six months between the date when the appellant obtained the Default Judgment on 12 August 2022[14] and the date when the respondent applied to set aside the Default Judgment on 20 March 2023.[15] There was no reasonable explanation for this delay given that OC 139 had been served on the respondent at its registered office, which was a co-working space.[16] The receptionist stationed at the office would have brought the documents to the attention of either the respondent or its representative, Mr Goel. This was all the more likely in light of the fact that the receptionist at the co-working space had

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11 PWS at para 17.

12 PWS at para 35.

13 PWS at para 4.

14 Judgment in Default of a Notice of Intention to Contest or Not Contest dated 12 August 2022.

15 Summons for Setting Aside Judgment / Order dated 20 March 2023.

16 PWS at para 4.

earlier informed the respondent and/or Mr Goel of the documents served in respect of CWU 22 on the very day that they had been served at the co-working space on 13 February 2023. In any event, the respondent could not reasonably explain its delay since Mr Goel had been alerted of the imminent suit in OC 139 in an email from the appellant's solicitors sometime on 15 July 2022 just before the commencement of OC 139. This email contained a letter of demand and an offer to settle in accordance with the Rules of Court 2021, as well as a statutory demand which should have alerted him to the fact that a lawsuit was imminent.[17]

Respondent's case

22 The respondent urged this Court to uphold the AR's decision to set aside the Default Judgment. The respondent submitted that it had a *prima facie* defence to the appellant's claim arising from the following triable or arguable issues:[18]

(a) Whether the Settlement Agreement was enforceable as it was left unsigned and whether there was any binding contract concluded between the parties.[19]

(b) Whether Suit 814 ought to be reinstated given that the appellant ought to be estopped from commencing OC 139 on 19 July 2022 when, at the material time, the underlying suit in Suit 814 was still pending. The appellant could not simultaneously proceed on the Settlement

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17 PWS at para 4.

18 Defendant's Written Submissions for HC/RA 84/2023 dated 23 May 2023 ("DWS") at para 11.

19 DWS at paras 13–16.

Agreement in OC 139 alongside Suit 814 as the Settlement Agreement was meant to resolve and supersede the appellant's claims in Suit 814.[20]

(c) Whether there was uncertainty over the exact quantum of the appellant's claim because the Default Judgment provided for the sum of US$251,359.75, and yet the appellant had prayed for the alternative sums of US$75,000.00 and US$251.359.75 in its own Statement of Claim.[21]

Issues to be determined

23 The sole issue for my determination was whether the Default Judgment should be set aside because the defence disclosed triable or arguable issues.

Whether the Default Judgment should be set aside

The applicable legal principles

24 The applicable legal principles were not in dispute and had been set out in *Mercurine*. As noted by the AR, the preliminary issue for the Court to consider was whether this was a regular or irregular default judgment. As the AR rightly found, while there was a clerical error in the memorandum of service, as it indicated that the originating claim was served on the "Claimant" by the "Defendant", this was a minor issue which did not cause any prejudice to the respondent. In this appeal, the respondent did not dispute the AR's finding that the Default Judgment had been regularly obtained.[22]

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20 DWS at paras 17–22.

21 DWS at paras 23–27.

22 DWS at paras 4.4 and 5.

25 Accordingly, in assessing whether a regular judgment should be set aside, the appropriate test was whether the defendant could establish a *prima facie* defence in the sense of showing that there were triable or arguable issues (*Mercurine* at [60]). The burden of showing that its defence raised triable issues clearly rested on the respondent.

26 The defendant's delay in applying to set aside the default judgment was also a relevant consideration and could be determinative where there had been undue delay. Generally, the longer the delay, the more cogent the merits of the setting aside application would have to be (*Mercurine* at [30]–[36] and [97]).

Whether there were triable issues raised

27 In my view, none of the arguments raised by the respondent showed that there was a triable issue with respect to the appellant's claim in OC 139. First, a review of the correspondence showed that a binding contract had been formed between the parties, notwithstanding that the Settlement Agreement had not been executed by the respondent. Earlier at a hearing on 5 June 2023, I had directed the appellant to show that the acceleration clause was agreed to by the respondent's representative, Mr Goel, and that this acceleration clause had been contained in earlier versions of the Settlement Agreement exchanged between the parties. Pursuant to this direction, the appellant's representative filed an affidavit setting out the relevant correspondence and explaining that this was indeed the case.[23] I now set out in detail the series of correspondence exchanged between the parties.

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[23] Affidavit of Jonathan Leigh dated 14 June 2023 at para 3.

28 Based on an email from the appellant's solicitors dated 26 April 2022 at 7.33pm, the draft Settlement Agreement at that time provided as follows in clause 1:[24]

> **1. SETTLEMENT**
>
> 1.1. The parties agree that [Reputation Administration Services Pte Ltd] shall pay forthwith to STL the amount US$75,000.00 (all in) by 25th April 2022, 12pm (GMT +8) i.e. Singapore Time.
>
> 1.2. If the amount of US$75,000.00 is not paid by the deadline, the full amount of US$242,285.20 will become immediately due and payable forthwith to [Spamhaus Technology Ltd].
>
> 1.3. Each Party is to bear its own legal costs.

29 The next day, on 27 April 2022 at 6.05pm, Mr Goel replied with the following tracked changes to clause 1 (bolded and underlined for ease of reference):[25]

> **1. SETTLEMENT**
>
> 1.1. The parties agreement that [Reputation Administration Services Pte Ltd] shall pay forthwith to [Spamhaus Technology Ltd] the amount US$75,000.00 **within 21 days of receipt of a duly executed agreement from [Spamhaus Technology Ltd].**
>
> 1.2. **Upon receipt of payment by [Spamhaus Technology Ltd], any and all previous unsatisfied cost orders owed to each party will be nullified and these cost orders will have no further effects.**
>
> **1.3.** If the amount of US$75.000.00 is not paid by the abovementioned deadline, the full amount of US$251,359.75 will become immediately due and payable forthwith to [Spamhaus Technology Ltd].
>
> 1.4. **If payment as contemplated by clause 1.2 above is not provided, [Reputation Administration**

[24] Affidavit of Jonathan Leigh dated 14 June 2023 at p 9.

[25] Affidavit of Jonathan Leigh dated 14 June 2023 at p 17.

> **Services Pte Ltd] will consent to judgement being entered against it for the amount of US$251,359.75 in a Singapore Court.**
>
> **1.5.** Each Party is to bear its own legal costs **with respect this settlement agreement and any costs incurred as a result of the litigation.**
>
> **1.6. Settlement is made without admission of liability on either side.**
>
> **1.7. Within five (5) days of evidence of payment by [Reputation Administration Services Pte Ltd], [Spamhaus Technology Ltd] will provide evidence of application for discontinuance of proceeding and follow up with formal notification when received from the Court evidencing discontinuance.**
>
> **1.8. Parties are to bear their own bank fees with respect the settlement payment.**
>
> **1.9. Payment is to be made to [redacted].**
>
> [Emphasis in bold and underline]

30 Following the amendments above, the appellant's solicitors followed up with an amended Settlement Agreement stating that "[t]here are *only* two changes at clauses 1.2 and 1.7 which we trust should be acceptable to you." (emphasis added).[26] I digress at this juncture to note that the appellant's reference to a change having been made to "clause 1.2" ought instead to have been "clause 1.1" where a change had been made to reduce the time period for the respondent to make payment from 21 days to 14 days. In response to the appellant's email, the respondent replied on 13 May 2022 at 11.54am that the "[t]he changes proposed to clause 1.2 and 1.7 are accepted. Please forward an execution ready agreement for my action and exchange with your client."[27]

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26 Affidavit of Jonathan Leigh for HC/CWU 22/2023 dated 3 February 2023 at p 19.

27 Affidavit of Jonathan Leigh for HC/CWU 22/2023 dated 3 February 2023 at p 19.

31 Following Mr Goel's acceptance on 13 May 2022 at 11.54am, the appellant's solicitors followed up via email on 17 May 2022 at 11.19am with a "final version of the Settlement Agreement".[28] The respondent was instructed to "[k]indly sign the document and send it back to [the appellant]".[29] Thereafter on 20 May 2022 at 3.53pm, the appellant's solicitors followed up with a copy of the Settlement Agreement duly signed by the appellant.[30] This version of the Settlement Agreement dated 18 May 2022 set out clause 1 in the following form (with the changes since the version dated 27 April 2022 bolded and underlined for convenience):[31]

> **1. SETTLEMENT**
>
> 1.1. The parties agreement that [respondent] shall pay forthwith to [the appellant] the amount US$75,000.00 within **14** days of receipt of a duly executed agreement from [the appellant].
>
> 1.2. Upon receipt of payment by [the appellant], any and all previous unsatisfied cost orders owed to each party will be nullified and these cost orders will have no further effect.
>
> 1.3. If the amount of US$75.000.00 is not paid by the abovementioned deadline, the full amount of US$251,359.75 will become immediately due and payable forthwith to [the appellant].
>
> 1.4. If payment as contemplated by clause 1.2 above is not provided, [the appellant] will consent to judgement being entered against it for the amount of US$251,359.75 in a Singapore Court.
>
> 1.5. Each Party is to bear its own legal costs with respect this settlement agreement and any costs incurred as a result of the litigation.

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28 Affidavit of Jonathan Leigh for HC/CWU 22/2023 dated 3 February 2023 at p 18.

29 Affidavit of Jonathan Leigh for HC/CWU 22/2023 dated 3 February 2023 at p 18.

30 Reply Affidavit of Jonathan Leigh dated 31 March 2023 at p 27 – 28.

31 Reply Affidavit of Jonathan Leigh dated 31 March 2023 at p 27 – 28; Affidavit of Goel Adesh Kumar dated 17 March 2023 at pp 22–23.

> 1.6. Settlement is made without admission of liability on either side.
>
> 1.7. Within five (5) days **following receipt of payment by [the Reputation Administration Services Pte Ltd] into [Spamhaus Technology Ltd's] nominated bank account as stated at clause 1.9 below**, [Spamhaus Technology Ltd] will provide evidence of application for discontinuance of proceeding and follow up with formal notification when received from the Court evidencing discontinuance.
>
> 1.8. Parties are to bear their own bank fees with respect the settlement payment.
>
> 1.9. Payment is to be made to [redacted].
>
> [Emphasis in bold and underline]

32 From the exchange of correspondence above, it was clear to me that the parties had agreed to all the terms in the draft Settlement Agreement on 13 May 2022. In the email from the appellant's solicitors dated 6 May 2022 at 2.45pm, the appellant had forwarded an amended settlement agreement stating that "[t]here are *only* two changes at clauses 1.2 and 1.7 which we trust should be acceptable to you" [emphasis added].[32] The respondent's reply on 13 May 2022 at 11.54am that the "[t]he changes proposed to clause 1.2 and 1.7 are accepted"[33] constituted an acceptance by the respondent of the Settlement Agreement. Having agreed to the "*only* two changes" in the draft settlement agreement, it necessarily meant that the respondent had also implicitly accepted the other terms within the Settlement Agreement. In other words, the respondent had clearly and unequivocally agreed to *all* the terms of the Settlement Agreement. An agreement was accordingly formed as of 13 May 2022 at 11.54am.

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32 Affidavit of Jonathan Leigh for HC/CWU 22/2023 dated 3 February 2023 at p 19.

33 Affidavit of Jonathan Leigh for HC/CWU 22/2023 dated 3 February 2023 at p 19.

33 While I was alive to the force of the respondent's argument that the Settlement Agreement had yet to be signed, this did not preclude the formation of a binding contract between the parties. It was not invariably the case that a binding contract could only arise upon the signing of a written agreement by all parties. Unsigned agreements could be found to be binding notwithstanding that the written offer expressly provided that it was not binding until signed and that one party had yet to sign the agreement: *CUG v CUH* [2022] 5 SLR 55 at [87], citing *Reveille Independent LLC v Anotech International (UK) Ltd* [2016] EWCA Civ 443 ("*Reveille*") at [41]. This necessarily followed from the elementary principle of contract law that a contract would arise where the necessary ingredients for the formation of contact were present. In any case, I was not persuaded that anything in the correspondence or draft agreements precluded the conclusion of a binding agreement in the absence of a signature by both parties.

34 With my finding that there was a concluded Settlement Agreement, I turn now to examine its terms. Clause 1.1 of the agreement as amended had expressly provided that the "[Reputation Administration Service Pte Ltd] shall pay forthwith to [Spamhaus Technology Ltd] the amount US$75,000.00 within [14] days of receipt of a duly executed agreement from [Spamhaus Technology Ltd]". This clause apparently contemplated the respondent being bound by the aforementioned payment obligation notwithstanding that the Settlement Agreement had not been signed or executed by the respondent. The respondent was obliged to make payment of US$75,000 within 14 days from the time of receipt of the duly executed agreement from the appellant. I would emphasise that this clause with a payment time frame of 21 days was added by the respondent itself, but it was subsequently amended by the appellant to a payment time frame of 14 days, and respondent later agreed to this amendment.

35 If the US$75,000 was not paid within the stipulated 14 days, the acceleration clause found within clause 1 would be immediately triggered. This acceleration clause, which formed the core of the appellant's claim in OC 139 was specifically agreed to by the respondent. Any argument by the respondent that the acceleration clause had only been sprung on the respondent at a late stage such that the respondent could not have or did not agree to the acceleration clause would have failed. I was satisfied that the clause had always been included in the drafts from the very beginning; it had not been added at a late stage. The changes made by the respondent to the draft clauses showed that the acceleration clause was expressly affirmed by the respondent. In fact, it was the respondent itself which first proposed the addition of clause 1.4 in the draft dated 27 April 2022 that it would consent to judgment being entered against it for the amount of US$251,359.75 if it failed to make payment pursuant to clause 1.2.

36 My view that an agreement had been formed on 13 May 2022 by the unequivocal acceptance of the respondent was *reinforced* by its subsequent conduct. In this regard, I was cognisant that the issue of whether subsequent conduct was admissible in determining the formation of a contract remained unsettled in our courts. According to the Court of Appeal in *Simpson Marine (SEA) Pte Ltd v Jiacipto Jiaravanon* [2019] 1 SLR 696 ("*Simpson Marine*") at [78]–[79], the court observed that while "[t]he admissibility and relevance of subsequent conduct in the formation and interpretation of contracts has yet to receive detailed scrutiny this court" and the court had declined to express any firm views on this issue, it stated that "evidence of subsequent conduct has traditionally been regarded as admissible and relevant.": see also *Chitty on Contracts* (Hugh Beale gen ed) (Sweet & Maxwell, 33rd Ed, 2019) at paras 13-136. However, in the recent decision of the Court of Appeal in *The "Luna"*

[2021] 2 SLR 1054 ("*Luna*") at [34], the court appeared to have aligned itself in favour of the admissibility of subsequent conduct. The court observed in *Luna* at [34] that the distinction in approach to the consideration of subsequent conduct between cases involving the interpretation of contracts and cases involving the formation of contracts was "justified on the basis of principle and authority". In making this observation, it specifically cited its earlier observations in *Simpson Marine* at [78] that evidence of subsequent conduct had traditionally been regarded as admissible and relevant where the court was ascertaining whether a contract had been formed.

37 Assuming then that subsequent conduct would be admissible to assess the formation of a contract, I was satisfied that my conclusion that an agreement had been formed on 13 May 2022 by the acceptance of the respondent was *reinforced* by its subsequent conduct. Subsequent emails from Mr Goel dated 23 May 2022 and 30 May 2022 expressly acknowledged the respondent's obligation to pay the sums due under the Settlement Agreement. In the email dated 23 May 2022 at 9.59pm, Mr Goel acknowledged that "the return of the [executed document] will not impact my sending the settlement funds agreed to your client – likely before the end of May". Later, on 30 May 2022 at 4.39pm, Mr Goel once again confirmed that "the intention and commitment of the parties to ending this matter is unequivocal" and that the appellant "will be receiving the funds shortly". Mr Goel added that the appellant "need to be patient for this short delay from what was expected on both side when we agreed [sic] the settlement terms". From these emails, the respondent had operated on the basis that there was already a binding Settlement Agreement. Specifically, Mr Goel had expressly confirmed that funds would likely reach the appellant "before the end of May". This would have been premised on the recognition on Mr Goel's part that clause 1.1 required payment to be made within 14 days of receipt of

the executed copy of the Settlement Agreement from the appellant, a copy of which was in fact received by the respondent on 17 May 2022 at 11.19am.

38 A draft agreement could have contractual force if essentially all the terms had been agreed and their subsequent conduct indicated this. This was so even if the parties did not comply with a requirement that to be binding the agreement would have to be signed: *Reveille* at [41], citing the UK Supreme Court decision of *RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH & Co KG (UK Production)* [2010] 1 WLR 753 at [54]–[56]. As I observed above at [33], neither the draft Settlement Agreement nor the parties' correspondence disclosed that parties stipulated that a binding agreement could only arise upon the signature of both parties. Even if there had been such a stipulation, I was nonetheless satisfied that parties had reached an agreement on the terms set out in the Settlement Agreement *before* 23 May 2022, with the precise date being 13 May 2022.

39 The respondent relied further on a subsequent email it had sent to the appellant on 29 June 2022 at 10.24am which suggested that the settlement reached was merely a "proposed settlement" to which the appellant was still, at that point, entitled to reject. I was unable to accept that this unilateral reference to the tentative nature of the settlement could negative the Settlement Agreement already concluded on 13 May 2022. If anything, it could even amount to a repudiatory breach by the respondent that it would not comply with its obligations under the Settlement Agreement. However, as the appellant did not plead a repudiatory breach by the respondent, I would say no more on this issue.

40 The respondent claimed further that it could not have and did not agree to the terms set out in the Settlement Agreement because Mr Goel was, up to that point, still attempting to confirm the availability of funds to make payment.[34] This argument could not hold water. Whatever the respondent's subjective chain of thought might have been, this was irrelevant where, as explained above, an agreement had been formed as seen from the objective indicators, namely the parties' correspondence. In any case, the respondent's claim that it could not confirm the availability of funds conflated the *performance* of its contractual obligations under the contract with the *formation* of the contract itself.

41 For completeness, I was unable to agree with the AR's reasoning that the appellant could not rely on the purported formation of the Settlement Agreement by correspondence in the absence of execution by the respondent because the appellant had not specifically pleaded a contract arising from the correspondence. The appellant's pleadings in its Statement of Claim referred to the formation of the agreement by correspondence, as at paragraph 8, it stated that "the terms of a settlement agreement ("Settlement Agreement") ... were finalised and agreed by Defendant on 13 May 2013".

42 It leaves me at this point to address the two other potentially triable issues raised by the respondent, namely:

(a) Whether Suit 814 ought to be reinstated given that the appellant ought to be estopped from commencing OC 139 on 19 July 2022 when, at the material time, the underlying suit in Suit 814 was still pending.

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[34] Defence at p 7.

(b) Whether there was uncertainty over the exact quantum of the appellant's because the Default Judgment provided for the sum of US$251,359.75, and yet the appellant had prayed for the alternative sums of US$75,000.00 and US$251.359.75 in its own Statement of Claim.

43 To my mind, none of these raised a triable issue. Regarding the first issue, this was moot given that the appellant had since successfully obtained leave to withdraw Suit 814, and a notice of discontinuance had been filed since. As for the second issue, there was no uncertainty as to the quantum claimed by the appellant as its claim was premised on the express terms of the Settlement Agreement, which provided essentially that the amount of US$75,000 was the amount to be paid as agreed by the parties in the Settlement Agreement, failing which the amount of US$251,359.75 would become immediately due and payable forthwith. The Default Judgment correctly provided for the judgment sum of US$251,359.75 in light of the respondent's failure to make payment of the sum of US$75,000.

Whether there was an inordinate delay by the respondent in filing the present application to set aside the Default Judgment

44 Lastly, the appellant submitted that there was an inordinate delay on the respondent's part in filing the application to set aside the Default Judgment, such that this ought to be an additional reason weighing against the respondent. While this would not be dispositive of the present appeal, I would nonetheless record my view that there was a reasonable explanation on the respondent's part for its delay. The appellant stressed that it was "impossible"[35] that Mr Goel had

[35] PWS at para 4.

not once caught wind of the Default Judgment in the seven months between the time when the Default Judgment was entered on 12 August 2022[36] and the time when the respondent applied to set aside the Default Judgment on 20 March 2023.[37] However, this was, to my mind, speculative. I accepted Mr Goel's explanation that the respondent was only made aware of the Default Judgment when the appellant served the affidavit of Jonathan Leigh filed in support of its application to wind up the respondent in CWU 22 on 13 February 2023 at the respondent's registered office, a co-working space. In particular, Mr Goel first caught wind of the Default Judgment via an email from the receptionist of the co-working space regarding certain documents addressed to him.[38] According to this email dated 13 February 2023, the documents were stated to "have *just* arrived" for Mr Goel. This supported Mr Goel's explanation for his belated notice of the Default Judgment. Accordingly, there was a reasonable explanation for the delay on the respondent's part in filing the application to set aside the Default Judgment.

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36 Judgment in Default of a Notice of Intention to Contest or Not Contest dated 12 August 2022.

37 Summons for Setting Aside Judgment / Order dated 20 March 2023.

38 Affidavit of Goel Adesh Kumar dated 17 March 2023 at p 41.

Conclusion

45 For the reasons above, I allowed this appeal and ordered the Default Judgment to be restored. The costs of this appeal were fixed at $4,000 all-in to be paid by the respondent to the appellant.

Chan Seng Onn
Senior Judge

Han Wah Teng (CTLC Law Corporation) for the appellant;
Glenda Lim (Aequitas Law LLP) for the respondent.