IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1995] SGHC 29

OS 811/1993

Between

Bernard Rada & Lee

… Plaintiff

And

Concrete Innovators Co Pte Ltd
Another

… Defendant

GROUNDS OF DECISION

Civil Procedure — Judgments and orders

Version No 1: 29 Oct 2026 (23:45 hrs)

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Bernard Rada & Lee v Concrete Innovators Co Pte Ltd and Another

[1995] SGHC 29

OS 811/1993
Lai Kew Chai J
03 February 1995

1 By this originating summons the applicants, a firm of solicitors who had acted as stakeholders, sought an order that the sum of $376,269.67, which they were holding as stakeholders, be disposed of in such manner as the court shall think fit. The applicants also asked for costs and for an order granting interpleaders` relief. There were two competing claimants: the first claimant was a company (`the company`) and the second claimant was a sole proprietor who was a director of the company and who traded with the company. He was ordered to be the defendant. The company was earlier ordered to be the plaintiffs in these interpleader proceedings. The originating summons came up for hearing before me on 3 February 1994.

2 According to the affidavits filed up to the date of hearing, it was indisputably clear that in truth and in fact the sum of $230,573 was never due and payable by the company to the defendant at the time when both parties in the course of the O 14 proceedings in Suit No 2816/85 agreed on 5 July 1985 to a consent judgment that the company pay the defendant the sum of $1,343,000.84 together with interest thereon at the rate of 8%pa from the date

of the debit notes until payment. The company had paid various sums since the consent judgment. It was also established on a balance of probabilities before me that the difference between $376,269.67 and $230,573 was the total of the sums of interest which were calculated as due and payable under the debit notes which made up the total of $230,573. The difference had to be excluded because if no principal sum was due, it must follow that interest thereon would not have been payable under the consent judgment of court.

3 In delivering the reasons for the orders which I was about to make, I stated the grounds and made the orders substantially as follows.

> *In exercise of my equitable jurisdiction, the defendant is ordered not to enforce the consent judgment he obtained on 5 July 1985 in respect of the sum of $230,573 as these sums indisputably were never due; there was ample evidence to prove and I am satisfied that the defendant had been paid various sums totalling $230,573. To order the plaintiff/judgment debtors to pay this sum would be to order them to pay it twice over. The sum of $376,269.67 includes the interest on $230,573 which would have accrued on it. In consequence, I order the applicants to pay it (less their taxed costs) to the plaintiffs. The defendant is to pay the taxed costs of the plaintiffs and to indemnify the taxed costs of the applicants. The applicants are granted interpleader reliefs.*

4 On 3 November 1994 the defendant, having obtained leave to file the notice of appeal out of time, filed his notice of appeal to the Court of Appeal against the orders recited in the preceding paragraph. Although I had given reasons for my decisions, admittedly very briefly, I would take the opportunity to set out in greater detail the evidence, the findings and the principle governing the court`s powers to enforce an executory order of court in circumstances when there has been a mistake made by the party against whom the order was yet to be enforced.

5 The defendant was a director and shareholder of the company. The other shareholder and a director was a Mr Alec Chew. The defendant had dealings with the company. The running account allegedly showed that he was in credit. In Suit 2816/85 he claimed a liquidated sum. On 5 September 1985 the defendant obtained a consent judgment against the company in the sum of $1,343,000.84 with interest thereon at 8%pa. Interest accruing on the judgment from 1 September 1985 to 30 April 1993 amounted to $823,707.18. The total sum owing was therefore $2,166,708.02. By the end of April 1993, a sum of $1.1m had been paid by the company to the defendant. On those figures, the amount owing to the defendant was $1,066,708.02. However, it was the company`s case that the company`s books as at June 1985 showed that the sum owing was only $1,109,775.84. Interest computed on the said sum was $680,662.50. The total owing, as the company alleged, was therefore $1,790,438.34. If the payment of $1.1m was deducted from this sum, the amount owing was $680,438.35. The difference thrown up by the two sets of accounts as recited above was $386,269.67.

6 According to Mr Bernard Doray of the solicitors for both parties, on 14 May 1993 a meeting at his office was held. Mr Alec Chew attended it on behalf of the company and met the defendant. Mr Alan Tan of Messrs HS Kong & Co; accountants and auditors of the company, was also present. A mutual friend of both Mr Alec Chew and the defendant, one Mr Tan Khia Fatt, also attended the meeting. At the meeting, a settlement was reached between the company and the defendant. This agreement was evidenced in a letter dated 14 May 1993 written by the solicitors to both the company and the defendant. It stated:

> *Dear Sirs,*
>
> *Re: Stakeholders` money of $386,269.67*

> *We refer to the meeting at our office with our Mr Doray. We note that Mr Alan Tan of HS Kong and Tan Khia Fatt were also in attendance.*

7 We now write to record the following settlement having been reached by both of you in our office today:

> *(a) The books of Concrete Innovators show that as of June 1985, a sum of $1,109,775.84 was owing to Peter Wong Tak On t/a Pacnik International Associates. Interest at 8%pa from 1.9.85 to 30.4.93 amounts to $680,662.50. A sum of $1,110,000.00 has been paid to date to Pacnik. The balance owing to Pacnik is $680,438.35.*
>
> b) Pacnik has obtained a consent judgment dated 5.9.85 for the sum of $1,343,000.84 against Concrete Innovators. Interest at 8% from 1.9.85 to 30.4.93 amounts to $823,707.18. A sum of $1,110,000 has been paid to Pacnik. The balance owing to Pacnik is $1,066,708.02.
>
> *We note that the difference between the figures in (a) and (b) relating to the balance owing to Pacnik is $386,269.67.*

8 The company and Mr Peter Wong Tak On have agreed that the said difference of $386,269.67 shall be held by us as stakeholders pending the clarification of the figures by both Mr Chew and Mr Wong with the assistance of M/s HS Kong & Co by 31.5.93.

9 We also note that Mr Wong has agreed to sell all his shares in Concrete Innovators to Mr Chew in terms of the agreement signed in our office today.

10 We trust the differences between Mr Wong and Mr Chew have now been amicably resolved.

> *Yours faithfully*

11 On 14 May 1993 the company paid to the defendant the sum of $680,438.35. On 17 May 1993 the solicitors wrote to the company enclosing the receipt for the sum of $386,269.67 received by the solicitors as stakeholders.

They asked the company to arrange for the company`s accountants, Messrs HS Kong & Co, to verify the accounts and determine the amount owing by the company to the defendant.

12 According to Mr Bernard Doray, of the solicitors of the company and the defendant, there was another meeting on 31 May 1993 between the parties in the presence of Mr HS Kong and one Winnie Siew Mei Kuen, both from the accountants and Mr Bernard Doray. At that meeting the accountants pointed out that the stake money should be $376,269.67 and not $386,269.67. The defendant accepted this. The accountants prepared a summary sheet of the payments made by the company to the defendant; copies of the supporting documents as set out were handed to the defendant. The defendant said that he would revert by 4 June 1993.

13 There was evidence that the defendant would sell to Alec Chew his shares in the company. The relative transfer forms, the directors` resolutions and other related documents were sent to the defendant. But it was noted in his solicitors` letter of 11 June 1993 that the defendant did not wish to sign the documents pending his `meeting with the Inland Revenue Authority on 2 June 1993.`

14 On 16 June 1993 the defendant spoke to Mr Bernard Doray and stated that he would respond by 30 June 1993 after he had studied the papers submitted to him.

15 Another firm of solicitors, Messrs Lim Kiap Khee & Co, took over from Messrs Bernard, Rada & Lee and acted for the defendant. By their letter of 21 June 1993, they pointed that the company`s cheque, which included the sum of $200,000 for the sale of the defendant`s shares, was allegedly not proper but

illegal under the Companies Act as a company generally, subject to exceptions which are irrelevant for present purposes, is prohibited from financing the purchase of its own shares. The defendant then purported to treat the payment of $200,000 as payment towards the judgment debt under the consent judgment. Such a stand was a surprising turn of events, having regard to the fact that both parties had earlier in their meeting of 14 May 1993 agreed to verify if the total sum of $376,269.67 would have been in fact an overpayment. If there had been no differences over this amount, the sale and purchase of the defendant`s shares in the company to Mr Alec Chew and the company`s settlement of its true indebtedness would have taken place without having to involve solicitors acting as stakeholders.

16 Alan Tan Kim Chye, a senior accounts executive with Messrs HS Kong & Co, the accountants and auditors of the company, and who attended the meeting on 14 May 1993, affirmed an affidavit. He said that the defendant and the company agreed that the sum of $376,269.67 was held by the solicitors as stakeholders and that it was further agreed that the defendant would abide by the verification of the accountants. When the accountants handed the summary sheet of payments to the defendant by the company with supporting documentary evidence, it was contemplated by the parties that the defendant would be bound by it.

17 In the second affidavit of Mr Alec Chew, which was filed on behalf of the company, the deponent reiterated that before the consent judgment, it had since been established that the total of overpayment was $232,823.00 and that the stakeholders` sum of $376,269.67 in fact represented the amount plus the interest element from September 1985 till 30 April 1993. The documentary evidence were set out in exh CKH-1 pp 3-20. Mr Alec Chew went on to explain in detail each item in the summary sheet. Paragraphs 2 to 18 of the affidavit set

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out in detail the documents showing that payments had been made by the company to the defendant in respect of each constituent item.

18 In his affidavit of 5 October 1993 the defendant merely made the bald statement that all prior payments had been taken into account on the date of the consent judgment and asserted that having agreed that it owed him $1,343,000.84 as stated in the consent judgment, the company was `estopped from claiming that they (then) owed less than the said sum ... plus interest ...`. However, in two later affidavits, the defendant asserted that it was not open to the company after eight years to re-open the matters of account. He also claimed that it was around that time that he realized that the company could not finance the purchase of its own shares, he had treated the payment of the sum of $200,000 by the company`s cheque, which also included the sum of $680,438.35 in `part payment` of the judgment debt due to him. The company, of course, asserted that the sum of $680,438.35 was in payment of the entire judgment debt, subject to the resolution of the stakeholders` sum by the accountants in the manner as it had alleged.

19 The defendant then went on to assert, in my view unilaterally and without warrant, that since he had treated the sum of $200,000 as part payment of the company`s debt, the company`s debt as represented by the stakeholders` sum should be reduced pro tanto and that therefore he was `entitled to the balance of $176,269.67.`

20 Regarding the sale of the defendant`s shares in the company, it was established by Mr Alec Chew that in OS 728/93, Chao Hick Tin J ordered the defendant to perform the share sale agreement. In the circumstances, the defendant was not permitted to apply the sum of $200,000 in any way other than

as payment for the price of the sale of his shares in the company to Mr Alec Chew.

21 In view of the preponderance of documentary evidence which established that there would have been an over payment of the stakeholders` sum, I ordered the defendant not to enforce their consent judgment. What I had to consider was a consent judgment which was entered in July 1985 and which was still executory in part when its enforcement was considered by me in February 1994. On 14 May 1993 it was clearly established that parties had agreed that the question whether there would be overpayment of the principal sum and the interest which would have accrued (ie the sum paid to the stakeholders) would be determined by the accountants. I was further satisfied that it was obviously agreed, by necessary implication, that if the accountants had found that the company would have overpaid this amount, the stakeholders would be obliged to pay it over to the company and vice versa.

22 In deciding the way I did, I invoked the equitable principle that where the consent order or judgment is still executory, the court may refuse to enforce it if it would be inequitable to do so: , applying , per Jessel MR, and . Ormrod LJ in at p 102 put the position very clearly in the following terms:

> *Where the order is still executory, ... and one of the parties applies to the court to enforce the order, the court may refuse if, in the circumstances prevailing at the time of the application, it would be inequitable to do so: (supra) and (supra). Where the consent order derives its legal effect from the contract, this is equivalent to refusing a decree of specific performance; where the legal effect derives from the order itself the court has jurisdiction over its own orders: per Sir George Jessel MR in (supra) ... 766.*

23 .

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Lai Kew Chai J

Nazim Khan (Martin & Partners) for the first claimant/plaintiffs
Thevanathan Pillay (Lim Kiap Khee & Co) for the second claimant/defendant

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