IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 126

Originating Summons No 1113 of 2018 (Registrar's Appeal No 79 of 2019)

Between

United Integrated Services Pte Ltd

… *Appellant*

And

Harmonious Coretrades Pte Ltd

… *Respondent*

JUDGMENT

[Civil Procedure] — [Inherent powers] — [Garnishee orders]

TABLE OF CONTENTS

INTRODUCTION **1**

FACTS **2**

FINAL GARNISHEE ORDER 3

DEBT UNDER FINAL GARNISHEE ORDER NO LONGER DUE 4

THE INHERENT POWERS OF THE COURT TO SET ASIDE AN ORDER **5**

THE THREE CIRCUMSTANCES FOR SETTING ASIDE AN ORDER 5

THE COURT RETAINS THE DISCRETION TO SET ASIDE AN ORDER OUTSIDE THE THREE CIRCUMSTANCES 6

WHETHER THE FINAL GARNISHEE ORDER SHOULD BE SET ASIDE TO PREVENT INJUSTICE **11**

UNDERLYING DEBT NO LONGER ACCRUING 11

EXPOSING THE GARNISHEE TO A DEBT WHICH IT MAY NOT EVEN OWE 12

INSOLVENCY OF JUDGMENT DEBTOR 15

THE NEED TO PREVENT INJUSTICE TO THE GARNISHEE **16**

CONCLUSION **16**

United Integrated Services Pte Ltd
v
Harmonious Coretrades Pte Ltd

[2019] SGHC 126

High Court — Originating Summons 1113 of 2018 (Registrar's Appeal No 79 of 2019)
Chan Seng Onn J
15 April 2019

15 May 2019 Judgment reserved.

Chan Seng Onn J:

Introduction

1 A garnishee owed a sum to the judgment debtor pursuant to an adjudication determination obtained by the judgment debtor under the Building and Construction Industry Security of Payment Act (Cap 30B, 2006 Rev Ed) ("SOPA"). Separately, the judgment debtor owed a debt to the judgment creditor, which remained unsatisfied. The judgment creditor applied to garnish the debt due from the garnishee in satisfaction of the debt owed to it by the judgment debtor.

2 At the garnishee to show cause hearing, given its indebtedness, the garnishee had no objections to the garnishee order being made final. After the garnishee order was made final, the garnishee successfully obtained an unconditional stay of enforcement of the adjudication determination, from

which its indebtedness to the judgment debtor arose. As its debt to the judgment debtor was no longer due, the garnishee then sought to set aside the final garnishee order.

3 The query before the court was whether it ought to allow the setting aside application. To set aside the final garnishee order would require the invocation of the inherent powers of the court.

4 As no authorities cited were directly on point in this regard, I reserved judgment. Having considered the matter, I allow the application, and order that the final garnishee order be set aside.

Facts

5 The present case involves three building and construction companies which were involved in a construction project. Their respective capacities in the construction project were as follows:

(a) The main contractor: United Integrated Services Pte Ltd (the "garnishee");

(b) The sub-contractor: Civil Tech Pte Ltd (the "judgment debtor"); and

(c) The sub-contractor's sub-contractor: Harmonious Coretrades Pte Ltd (the "judgment creditor").

6 By an adjudication determination dated 31 August 2018, the judgment debtor was ordered to pay the judgment creditor $1,261,096.71 (inclusive of GST)[1] by 7 September 2018.[2]

Final garnishee order

7 As the adjudication determination remained unsatisfied in full, the judgment creditor commenced garnishee proceedings, seeking to attach any debt due and accruing from the garnishee to answer the debt owed to it by the judgment debtor.[3]

8 On 2 November 2018, at the garnishee to show cause hearing, the garnishee indicated that it had "no objections" to the garnishee application.[4] This was because, on 23 October 2018, shortly before the garnishee to show cause hearing, the judgment debtor had obtained a separate adjudication determination against the garnishee, in which it was determined that the garnishee was to pay the judgment debtor $1,369,987.02 plus interest and costs ("1AD").[5] This amount owed by the garnishee to the judgment debtor exceeded the amount owed by the judgment debtor to the judgment creditor.

9 Given the lack of objection by the garnishee, the garnishee order was made final, and the garnishee was ordered to pay the judgment creditor "$1,277,000 … of the debt due from the [g]arnishee to the [j]udgment [d]ebtor".[6] The sum of $1,277,000 formed the bulk of the $1,369,987.02 which was owed by the garnishee to the judgment debtor under 1AD.

---

1 Wang Jianheng Affidavit ("WJH Affidavit") at p 67, para 108.

2 WJH Affidavit at p 69, para 113.

3 Applicant's Written Submissions at pp 3–4, para 7; WJH Affidavit at p 73.

4 WJH Affidavit at p 124, para 4.

5 *United Integrated Services Pte Ltd v Civil Tech Pte Ltd and another* [2019] SGHC 32 at [5].

6 WJH Affidavit at p 127.

Debt under final garnishee order no longer due

10 On 23 November 2018, after the garnishee order was made final, a second adjudication determination ("2AD") which related to the same works considered in 1AD determined that no amount was in fact payable by the garnishee to the judgment debtor. This was because the value of works done by the judgment debtor was offset by liquidated damages and back-charges which it owed to the garnishee.[7]

11 In a separate hearing before me, the garnishee thus sought to stay the enforcement of 1AD. Having considered that 2AD had in effect superseded 1AD, and to prevent an unintended windfall that could accrue to the judgment debtor if 1AD were to be enforced, I ordered the stay of enforcement of 1AD by the judgment debtor unless it obtained an order setting aside 2AD (*United Integrated Services Pte Ltd v Civil Tech Pte Ltd and another* [2019] SGHC 32 ("*UIS v CTPL*") at [24]). However, upon further arguments, I was satisfied that there was clear and objective evidence that the judgment debtor was insolvent. On that basis, I lifted the condition for the stay, and granted an unconditional stay of enforcement of 1AD (*UIS v CTPL* at [30]).

12 As a result of my decision in *UIS v CTPL*, no debt remained due and payable by the garnishee to the judgment debtor. On that basis, the garnishee sought to set aside the final garnishee order.

13 The Assistant Registrar dismissed the garnishee's application as she was "persuaded … that there are only limited circumstances that this Court can set aside an order that is regular".[8] The garnishee appealed.

---

7 *United Integrated Services Pte Ltd v Civil Tech Pte Ltd and another* [2019] SGHC 32 at [7].

The inherent powers of the Court to set aside an order

14 Before me, the garnishee sought to set aside the final garnishee order by relying on the inherent powers of the Court to prevent injustice,[9] as found in O 92 r 4 of the Rules of Court (Cap 322, R5, 2014 Ed) ("Rules of Court"):

> For the avoidance of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to *prevent injustice* or to prevent an abuse of the process of the Court. [emphasis added]

The three circumstances for setting aside an order

15 It is undisputed that the Court may set aside an order. As Judith Prakash J (as she then was) observed in *Ong Cher Keong v Goh Chin Soon Ricky* [2001] 1 SLR(R) 213 ("*Ong Cher Keong*") at [44]–[46] and *Sunny Daisy Ltd v WBG Network (Singapore) Pte Ltd* ("*Sunny Daisy*") at [21], the three circumstances in which an order may be set aside are:

> (a) First, where the order has been obtained irregularly (*ie,* the person obtaining the order has not complied with the requirements of the Rules of Court in some aspect);
>
> (b) Secondly, where the judgment has been obtained by fraud. This fraud must relate to matters which *prima facie* would be a reason for setting the judgment aside if they were established by proof and the fraud must have been discovered after the judgment was passed; and
>
> (c) Thirdly, where an order or judgment has been obtained in default of the appearance of one of the parties to the suit.

---

8 Applicant's Written Submissions, Annex B, p 4 at lines 3–5.

9 Appellant's Skeletal Arguments at p 5, para 11(a).

16 It is clear that the final garnishee order in this case did not fall under any of the three circumstances.

The court retains the discretion to set aside an order outside the three circumstances

17 The garnishee therefore sought to rely on the inherent powers of the Court to prevent injustice to set aside the final garnishee order. In *Airtrust (Singapore) Pte Ltd v Kao Chai-Chau Linda* [2014] 2 SLR 693 ("*Airtrust*"), George Wei JC (as he then was) observed at [22] that "the court retains the residual discretion to vary its terms where this is necessary to prevent injustice." Such views were echoed in *Sentosa Building Construction Pte Ltd v DJ Builders & Contractors Pte Ltd* [2015] SGHCR 18 ("*Sentosa Building*") at [46]:

> I find no reason to depart from the holding in *Airtrust* that the court retains a residual discretion – even in the case of a contractual consent order – to vary the terms of the order where this is necessary to prevent injustice. This stated principle of law is eminently justified by O 92 r 4 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC") which provides that "nothing in [the ROC] shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court" (see also *Airtrust* at [23]). In my view, the same position should in principle *a fortiori* hold true vis-à-vis uncontested consent orders.

18 Hence, the Court retains a residual discretion flowing from its inherent powers to prevent injustice under O 92 r 4 of the Rules of Court to set aside any order that falls outside the three circumstances identified in *Ong Cher Keong* and *Sunny Daisy* (at [15] above).

19 Indeed, contrary to the judgment creditor's assertion,[10] it is clear that the three circumstances were not intended to be exhaustive of the circumstances in

which an order may be set aside. As the court observed in *Ong Cher Keong* at [47], since the order therein did not fall within any of the three circumstances, "the defendant from the beginning faced an uphill task in his application to set it aside." Similarly, in *Sunny Daisy* at [23], as the order also did not fall within any of the three circumstances, the applicant "had an onerous task to establish that that judgment should be set aside."

20 The words "uphill task" and "onerous task" do not connote impossibility; they merely evince that the threshold for invoking the Court's inherent powers is high. On the facts of *Ong Cher Keong* and *Sunny Daisy,* the high threshold was not met, and the orders were accordingly not set aside.

21 That the threshold for invoking the court's residual discretion to utilise its inherent powers is high is not new. As the Court of Appeal observed in *Roberto Building Material Pte Ltd & others v Overseas-Chinese Banking Corp Ltd and another* [2003] 2 SLR(R) 353 ("*Roberto Building*") at [16]:

> By its very nature, the inherent jurisdiction of the court should only be exercised in special circumstances where the justice of the case so demands. The court had, in *Wee Soon Kim Anthony v Law Society of Singapore* [2001] 2 SLR(R) 821 cited a passage from Sir Jack Jacob published in (1970) 23 Current Legal Problems 23, indicating how this jurisdiction should be exercised:
>
> > This [inherent] jurisdiction may be invoked when it is just and equitable to do so and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression and to do justice between the parties. Without intending to be exhaustive, we think an essential touchstone is really that of 'need'.

22 It is hereby noted that while the court in *Roberto Building* had utilised the term "inherent jurisdiction" as opposed to "inherent powers", it was likely

[10] Applicant's Written Submissions at pp 9–10, para 26.

delimiting the scope of its inherent powers. As the Court of Appeal clarified in Re *Nalpon Zero Geraldo Mario* [2013] 3 SLR 258 at [33]:

> the terms "inherent jurisdiction" and "inherent powers" should mean different things, the former being the court's inherent authority to hear a matter, while the latter being its inherent capacity to give effect to its determination by making or granting the orders or reliefs sought by the successful party to the dispute.

23 Notwithstanding the inappropriate use of "inherent jurisdiction" in *Roberto Building*, the point remains that the threshold for invoking the court's inherent powers is high.

24 It must also be correct that the Court's powers of setting aside orders are not to be limited to the three circumstances. As the Court of Appeal recognised in *Wee Soon Kim Anthony v Law Society of Singapore* [2001] 2 SLR(R) 821 ("*Anthony Wee*") at [27], the inherent powers of the court "should not be circumscribed by rigid criteria or tests." Hence, the circumstances in which a court may set aside an order or judgment must remain sufficiently open-ended to account for previously unforeseen situations which would warrant the court stepping in to "prevent injustice or to prevent an abuse of the process of the Court" (O 92 r 4 of the Rules of Court). To deem the three circumstances as exhaustive of the grounds for setting aside would be to subsume the inherent powers of the court in the context of setting aside to those three grounds, directly contradicting the pronouncements in *Anthony Wee*.

25 Indeed, in *Marshall v James* [1905] 1 Ch 432 ("*Marshall*"), the English High Court invoked its inherent powers to set aside a final garnishee order when none of the three circumstances were present.

26 In *Marshall,* the applicant, Witham, carried on business in partnership with Marshall, the plaintiff, under the firm Marshall & Co. By an order in an action, the plaintiff was ordered to pay James, the defendant, 33*l.* 11*s.* 9*d* and costs. The order being unsatisfied, the defendant applied for a provisional garnishee order, ordering that all debts owing or accruing from one W.H. Cullen ("Cullen") and another Teetgen & Co Limited ("Teetgen") to the plaintiff be attached to answer the sum which the plaintiff had been ordered to pay the defendant. At the garnishee to show cause hearing, with Cullen's solicitors appearing and Teetgen's solicitors not appearing, the garnishee order was made final, and Cullen and Teetgen were ordered to pay the defendant 13*l.* 9*s.* and 21*l.* 8*s.* 4*d.* respectively.

27 Teetgen subsequently paid the sum to the defendant. However, before Cullen had complied with the order, it was discovered that the debts alleged to be due from him and Teetgen to the plaintiff had in fact been contracted with and were due to the firm of Marshall & Co, rather than to the plaintiff in his personal capacity.

28 As debts due and owing to Marshall & Co had been wrongfully paid out under the final garnishee order to satisfy a debt owed by the plaintiff personally, the applicant, being a partner of the firm Marshall & Co, applied to have the garnishee order discharged. He also applied to have any moneys paid under the garnishee order to be repaid to the garnishee (Teetgen) or to the applicant himself on behalf of Marshall & Co.

29 Joyce J decided, on the authority of *Moore v Peachey* (1892) 66 L.T. 198 and on general principles, that on the proof of the mistake the court had to "remedy the injustice done by the garnishee order" (*Marshall* at 433). Hence,

although the garnishee order had "been made final and [was] so termed", the order as to Cullen, which remained unpaid, had to be set aside (*Marshall* at 433).

30 As for the order against Teetgen, the evidence was unclear as to whether they had paid out the sum to the defendant under a mistake as to who the debt was owed to (whether Marshall & Co or the plaintiff personally). If Teetgen had not operated under such a mistake, Joyce J observed that he could not reverse the payment. As a result of the lack of evidence, Joyce J suggested a compromise between the parties. The parties eventually agreed to a compromise, whereby the applicant would receive half of the sum of 21*l.* 8*s.* 4*d.* which had allegedly been paid out by Teetgen to the defendant under a mistake (*Marshall* at 434).

31 Reviewing the decision in *Marshall*, it appears that mistake on the garnishee's part is an additional basis which would justify the invocation of the court's inherent powers to set aside an order to prevent injustice. This demonstrates the flexibility of the court's inherent power to set aside, and proves that the grounds for setting aside are not limited to the three circumstances expressed in *Ong Cher Keong* and *Sunny Daisy* (see [15] above).

Whether the final garnishee order should be set aside to prevent injustice

32 Nonetheless, as explained in *Roberto Building* at [16], the threshold for invoking the court's inherent powers is high, and the "essential touchstone is really that of 'need'."

33 "[I]n looking at the question of necessity in the context of the court's inherent jurisdiction, one must take a sensible approach that has regard to all the

circumstances of the case" (*UMCI Ltd v Tokio Marine & Fire Insurance Co (Singapore) Pte Ltd* [2006] 4 SLR(R) 95 at [92]).

34 In the context of setting aside orders, the considerations to be had in ensuring the judicious exercise of the court's inherent powers "include having finality in litigation, the undesirability of a judge setting aside or reviewing the order made by another judge of equal standing, and the need to prevent back-door appeals and re-litigation of matters" (*Powercore Pte Ltd v D+B Projects Pte Ltd (United Overseas Bank Limited, garnishee)* [2017] SGDC 157 at [50]).

35 While such guidelines are useful, preventing injustice is ultimately an amorphous concept, and the facts of each case are of primary importance in determining whether it is warranted for the court to exercise its inherent powers.

Underlying debt no longer accruing

36 In the present case, the substratum on which the garnishee order had been obtained is now held in abeyance, as the garnishee obtained an unconditional stay of enforcement of 1AD, which consists of the debt which was attached under the present final garnishee order. The result is that, until the stay is removed, there is no debt due and owing by the garnishee to the judgment debtor, and accordingly the final garnishee order is attached to a debt that is no longer accruing.

37 Had the garnishee order not been made final, there is no doubt that it would not have been granted in light of the series of events that have occurred. As Chitty J observed in *In re General Horticultural Co, ex p. Whitehouse* (1886) 32 Ch.D. 512 at 516, a judgment creditor "can only obtain what the judgment

debtor could honestly give him". Here, since the judgment debtor has been stayed from enforcing the debt which it is owed under 1AD, allowing the judgment creditor to enforce the final garnishee order which is premised on the same debt would be to allow the judgment creditor to take what the judgment debtor cannot honestly give him. This would allow the judgment creditor to stand in a better position than the judgment debtor *vis-à-vis* the garnishee.

38 Indeed, as observed in *Singapore Civil Procedure* vol 1 (Chua Lee Ming ed) (Sweet & Maxwell, 9th Ed, 2019) at para 49/1/27, while "[t]he question [as to] whether a judgment upon which there is a stay of execution can be attached has never been decided", "[i]t should follow however, that until the stay is removed there can be no attachment" by way of a garnishee order. This is because a garnishee order is a parasitic order: it is suspended if the right to call on the debt on which it is based is suspended (see *Glegg v Bromley* [1912] 3 KB 474 at 484).

Exposing the garnishee to a debt which it may not even owe

39 Furthermore, upholding the garnishee order could expose the garnishee to a debt which it may not even owe.

40 Similar circumstances were before the English Court of Appeal in *Hale v Victoria Plumbing Co Ltd and another* [1966] 2 QB 746 ("*Hale*"). There, the judgment creditor obtained judgment against the judgment debtor for £256 13*s.* 10*d.* The judgment debt being unsatisfied, the judgment creditor sought to attach a debt which it alleged to be owing from the garnishee to the judgment debtor in satisfaction of the judgment debt which it was owed.

41 At the garnishee to show cause hearing, the garnishee contended that it had claims against the judgment debtor in excess of the amount which it owed the judgment debtor under the sub-contracts. The transactions between the garnishee and the judgment debtor arose out of building contracts in which the judgment debtor had been appointed as a sub-contractor. Owing to works alleged to have been badly done by the judgment debtor, the garnishee disputed its indebtedness to the judgment debtor in respect of the works. Notwithstanding its potential counterclaim against the judgment debtor, the District Registrar ordered that the garnishee order be made final.

42 On appeal, even though it was unclear that the garnishee's counterclaim against the judgment debtor was valid, the court unanimously deemed it appropriate to set aside the final garnishee order. As Danckwerts LJ observed in plain terms (*Hale* at 751):

> It seems to me to be ***contrary to justice*** *and sense to order that a garnishee should* ***pay out money which it appears probably will not be due from him at all*** - because no proceedings have been taken by the judgment debtor against the garnishee, any more than any proceedings have been taken by the garnishee against the judgment debtor. It seems to me contrary to justice that an order should be made for payment of moneys which on the face of it appear not likely to be due and which might perhaps be paid away irretrievably to a man or company who is in trouble. [emphasis added]

43 In the present case, while 1AD, being a SOPA adjudication determination, has temporary finality in that it "finally and conclusively determin[es] the parties' rights", it is liable to being reversed by final adjudication in accordance with the provisions of SOPA (*W Y Steel Construction Pte Ltd v Osko Pte Ltd* [2013] 3 SLR 380 at [71]). If, upon final adjudication, it is determined that no debt is in fact due from the garnishee to

the judgment debtor, the garnishee would have paid to the judgment creditor a debt which it did not even owe.

44 In fact, contrary to *Hale* whereby the garnishee's counterclaim was merely alleged through an affidavit, an adjudicator has in fact determined that the liquidated damages and back-charges owed by the judgment debtor to the garnishee would likely outweigh the value of works which remain unpaid by the garnishee to the judgment debtor. Here, the second adjudicator in 2AD had, after considering the valuation of works in 1AD *as well as* liquidated damages and back-charges which were not before the adjudicator in 1AD, arrived at a negative sum of $1,176,050.67.[11] Therefore, the garnishee's counterclaim has been determined to be valid and has temporary finality by virtue of 2AD.

45 In the circumstances, it is plainly unjust to order the garnishee to pay the sum for a debt which is no longer enforceable, and which it may not even owe.

Insolvency of judgment debtor

46 The injustice is exacerbated given that I have separately found on the back of clear and objective evidence that the judgment debtor is insolvent (*UIS v CTPL* at [26]). As a result, allowing the enforcement of the final garnishee order could have the effect of unduly favouring the judgment creditor at the expense of the garnishee should the judgment debtor later be subject to an insolvent winding up.

47 To elaborate, if the final garnishee order is upheld and remains enforceable by the judgment creditor, the garnishee would have to pay out the

---

11 *United Integrated Services Pte Ltd v Civil Tech Pte Ltd and another* [2019] SGHC 32 at [7].

sum stipulated in the garnishee order, which sum represents much of the value of the works done by the judgment debtor for the garnishee. Thereafter, if it is determined by final adjudication that the garnishee has a valid counterclaim against the judgment debtor, the counterclaim amount would not simply offset the value of works done by the judgment debtor which remain unpaid. Instead, as the works done by the judgment debtor would in large have been paid by the garnishee pursuant to the garnishee order, the garnishee would have to make a full claim on its counterclaim for the liquidated damages and back-charges which it is owed by the judgment debtor.

48 Such a counterclaim would be unproblematic if the judgment debtor were solvent. However, given the judgment debtor's insolvency, it may not be able to pay out the counterclaim in full. If the judgment debtor then goes into an insolvent winding up, the garnishee would have to rank among unsecured creditors in the scheme of priorities, and may not have its counterclaim satisfied in full. Meanwhile, as the judgment creditor's claim would have been satisfied in full by the garnishee order, the judgment creditor would not have to compete with other unsecured creditors.

49 Were the garnishee order set aside, the scheme of priorities in the event of an insolvent winding up would remain unchanged: both the judgment creditor and the garnishee (should the value of its counterclaim exceed the value of works done by the judgment debtor) would have to rank equally as unsecured creditors to have their debts satisfied.

50 As a result, allowing the final garnishee order to be upheld and enforced could benefit the judgment creditor to the detriment of the garnishee. As the

garnishee may not even owe a debt to the judgment debtor, such circumstances mandate that the court exercises its residual discretion to prevent injustice.

The need to prevent injustice to the garnishee

51 Garnishee proceedings serve to facilitate the satisfaction of judgment debts. Garnishees, in this regard, often have no objections to garnishee orders being made final, so long as there is a discernible debt due and owing to the judgment debtor; once such indebtedness is established, it is inconsequential to the garnishee who the debt is paid to. However, garnishee orders are premised on indebtedness – without such indebtedness to the judgment debtor, it would be plainly unjust to order a party to pay a sum to the judgment creditor.

52 In the circumstances, given that (a) the enforcement of the underlying debt is stayed, (b) the garnishee may ultimately owe no debt to the judgment debtor, and (c) the judgment debtor's insolvency may work to the detriment of the garnishee, the present case fully necessitates the invocation of the court's inherent powers to prevent injustice befalling the garnishee.

Conclusion

53 As a result, I order that the final garnishee order be set aside.

54 I will hear parties on costs if not agreed.

Chan Seng Onn
Judge

Lee Mei Yong Debbie (ECYT Law LLC) for the appellant;
Lynette Chew and Lu Huiru Grace (Holborn Law LLC) for the respondent.
