IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 135

Suit No 436 of 2010 (Registrar's Appeal No 290 of 2018)

Between

Sunny Metal & Engineering Pte Ltd

… *Plaintiff*

And

Jimmy Lee Xin Ben, formerly trading as Plafometal Panel System

… *Defendant*

And

Serangoon Gardens Country Club

… *Garnishee*

GROUNDS OF DECISION

[Credit and Security] — [Remedies] — [Garnishee orders] — [Garnishee issued cheque to judgment debtor to discharge debt before garnishee order served] — [Whether garnishee under obligation to stop payment on cheque]

Version No 1: 27 Oct 2020 (22:41 hrs)

CONTENTS

INTRODUCTION **1**

THE PARTIES' CASES **2**

FIRST GARNISHEE ORDER 2

SECOND GARNISHEE ORDER 4

MY DECISION **6**

FIRST GARNISHEE ORDER 7

Existence of the 2016 Agreement *7*

Reimbursement and performance or production fees *8*

Whether a garnishee is obliged to stop a cheque *11*

SECOND GARNISHEE ORDER 14

CONCLUSION **18**

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Sunny Metal & Engineering Pte Ltd
v
Lee Xin Ben Jimmy (Serangoon Gardens Country Club, garnishee)

[2019] SGHC 135

High Court — Suit No 436 of 2010 (Registrar's Appeal No 290 of 2018)
Audrey Lim JC
13 December 2018; 25 March 2019

27 May 2019

Audrey Lim JC:

Introduction

1 These proceedings arose out of attempts by Sunny Metal & Engineering Pte Ltd ("the Plaintiff") to attach various sums which it alleged were due from Serangoon Gardens Country Club ("SGCC") to Jimmy Lee ("the Defendant"), in satisfaction of a judgment granted to the Plaintiff against the Defendant. The Plaintiff obtained two provisional garnishee orders to show cause. The first garnishee order ("First GO") was issued on 23 July 2018 and served on SGCC on 30 July 2018. The second garnishee order ("Second GO") was issued on 16 August 2018 and served on SGCC on 17 August 2018. Both provisional garnishee orders were subsequently discharged by the registrar. The Plaintiff appealed and I dismissed the appeal.

2 An issue that arose is whether a garnishee who has handed a cheque to the judgment debtor to discharge a debt that is due to the latter, and who is subsequently served with a garnishee order, is obliged to stop payment on the cheque upon receiving notice of the garnishee order.

The parties' cases

First garnishee order

3 In relation to the First GO, the Plaintiff claimed that the attachable debt was that due from SGCC to the Defendant to pay for the latter's performance on 27 July 2018 ("the July Performance") as well as expenditure already incurred by him for upcoming performances on 16 and 17 August 2018 ("the August Performances").[1] The Defendant worked freelance as an Elvis Presley impersonator.

4 SGCC claimed that there was no debt due or owing from it to the Defendant relating to the July Performance. It had engaged the Defendant via a quotation dated 12 October 2017 for him to perform at its premises on 27 July 2018 for $9,200 ("First Quotation").[2] Based on the First Quotation, half of the sum was payable on confirmation by the Defendant and the balance on performance night.

5 Adrian Chew ("Chew"), SGCC's acting general manager, stated that $4,600 was paid to the Defendant in February 2018 and the remaining $4,600 was handed over to the Defendant on 27 July 2018 after the July performance, by way of a cheque dated 10 July 2018 ("the DBS Cheque") and made out to

---

1 Plaintiff's Skeletal Submissions (11 Dec 2018) ("PSS"), paras 2 and 12(3).

2 Adrian Chew's ("Chew's") affidavit (10 Aug 2018), para 8 and exhibit CKL-1.

Version No 1: 27 Oct 2020 (22:41 hrs)

Judy Chong ("Judy"), the Defendant's wife.[3] On 30 July 2018 (Monday) at about 12 noon, SGCC was served with the First GO which was delivered to its front reception. This matter was immediately escalated to the senior management who sought legal advice that evening. The next day, SGCC tried to stop payment of the cheque but before any instructions were issued to the bank, SGCC discovered by checking its electronic records with the bank that the cheque had been cleared on 30 July 2018. SGCC produced its DBS bank statement reflecting the debit of $4,600 on its account on 30 July 2018.[4]

6 The Plaintiff claimed that the First Quotation was only in respect of reimbursement by SGCC to the Defendant for his costs and expenditure for the July Performance, rather than for his performance fees, commission or share of profits (which the Plaintiff alleged the Defendant was entitled to separately under a purported overarching master agreement ("the 2016 Agreement")). Any terms regarding the Defendant's provision of services to SGCC would have been set out in the 2016 Agreement.[5] The existence of the 2016 Agreement was supported by a statement by Judy for an interpleader summons ("Judy's Statement") that the Defendant has been engaged by SGCC since 2016 to perform and would get fees and reimbursement for doing so, and that she would get a fee from SGCC for managing the Defendant's performances.[6] The Plaintiff claimed that SGCC was due to pay the Defendant $20,000 for producing the July Performance, and that the DBS Cheque issued

---

3 Chew's affidavit (11 Jan 2019), paras 21–22, 26–27 and exhibits CKL-8 and CKL-9.

4 Chew's affidavit (23 Aug 2018), paras 11–13 and exhibit CKL-3; Chew's affidavit (11 Jan 2019), exhibit CLK-9.

5 Koh Hwee Keng's ("Koh's") affidavit (17 Oct 2018), paras 4 and 8; 25/3/19 Minute Sheet.

6 Koh's affidavit (13 Aug 2018), para 5(4) and p 22 at para 17; Koh's affidavit (17 Oct 2018), para 4.

Version No 1: 27 Oct 2020 (22:41 hrs)

to Judy's name was not for payment for the Defendant's work.[7] In any event, SGCC was obliged to stop the cheque from being cleared (and encashed) and failed to do so.[8]

Second garnishee order

7 In relation to the Second GO, the Plaintiff claimed that the attachable debt was that due from SGCC to the Defendant for the August Performances.

8 SGCC again claimed that there was no debt due or owing from it to the Defendant relating to the August Performances.[9] It had engaged the Defendant via a quotation dated 25 January 2018 to perform on the nights of 16 and 17 August 2018 for $18,000 ("Second Quotation"). Based on the Second Quotation, half of the sum was to be paid upon confirmation of the quotation and the balance on performance night. SGCC paid the Defendant the first $9,000 sometime in May 2018.[10]

9 However, on 1 August 2018, the Defendant informed SGCC that he would not be able to deliver the August Performances. Due to the Defendant's breach, SGCC terminated the agreement[11] and was thus not obliged to make the balance $9,000 payment to the Defendant.[12] Thus, when SGCC was served the Second GO on 17 August 2018, there was no debt due or accruing from SGCC to the Defendant anymore in respect of the August Performances.

---

7 Koh's affidavit (17 Oct 2018), paras 6 and 8.

8 Koh's affidavit (17 Oct 2018), paras 9–10.

9 Chew's affidavit (10 Aug 2018), paras 14–18 and CKL-2.

10 Chew's affidavit (10 Aug 2018), para 16.

11 Chew's affidavit (11 Jan 2019), CKL-11, pp 46–47.

12 Chew's affidavit (10 Aug 2018), para 17.

Version No 1: 27 Oct 2020 (22:41 hrs)

10 Chew explained that nevertheless the show had to go on because SGCC's members had already bought tickets, and it thus engaged one Abdul Ghani (at the Defendant's recommendation) to carry out the works to ensure the August Performances would proceed.[13] SGCC engaged Abdul Ghani for $9,000 and paid him on 17 August 2018 (the second night of the August Performances).[14] Even though the contract with the Defendant had been terminated, he performed as a "curtain raiser". He had helped SGCC sell tickets to overseas Elvis Presley fans and believed there was an expectation that he would perform. He did this out of passion. SGCC did not pay the Defendant for this performance, and was unaware of any agreement between the Defendant and Abdul Ghani in relation to the Defendant's performance.[15]

11 The Plaintiff however claimed that the Second Quotation was not an agreement between the Defendant and SGCC for the Defendant's provision of show production services to SGCC, but was merely for costs and disbursements for the August Performances.[16] Even the first $9,000 payment paid in May was for that purpose alone. The Defendant was entitled (under the 2016 Agreement) to a commission or profits from SGCC for the August Performances and these were not reflected in the Second Quotation. Hence, SGCC was in fact due to pay the Defendant another $40,000 for producing and performing at the August Performances.[17]

---

13 Chew's affidavit (11 Jan 2019), paras 35–36 and CKL-11, p 46.

14 Chew's affidavit (11 Jan 2019), para 41 and CKL-11, p 48.

15 Chew's affidavit (11 Jan 2019), paras 45–46.

16 Koh's affidavit (17 Oct 2018), paras 11–12.

17 Koh's affidavit (17 Oct 2018), paras 13–14.

Version No 1: 27 Oct 2020 (22:41 hrs)

12 The Plaintiff also claimed that SGCC had helped the Defendant to evade payment of monies due to the Plaintiff pursuant to the First and Second GOs.[18] SGCC had made it seem as if it had cancelled the August Performances even though it had paid the Defendant the first $9,000 in May 2018. The Defendant in fact performed on 16 and 17 August 2018. This was evident from his Facebook page advertising the performances; the Facebook posts of his friend containing photographs showing the Defendant performing at SGCC; and information from the Plaintiff's solicitor (Ms Lee) that she had seen the Defendant performing onstage with the star performer on 17 August when she was there to serve the Second GO.[19] Hence, SGCC's termination of its contract with the Defendant and appointment of Abdul Ghani in lieu was a sham to evade payment to the Plaintiff pursuant to the Second GO. The Plaintiff claimed that Abdul Ghani was the Defendant's agent appointed to receive the remaining $9,000 on the Defendant's behalf.[20]

My decision

13 The legal burden is on the judgment creditor to prove that there is a debt due and accruing from the garnishee to the judgment debtor, even if a provisional garnishee order has been obtained: *The State-Owned Company Yugoimport SDPR (also known as Jugoimport-SDPR) v Westacre Investments Inc and other appeals* [2016] 5 SLR 372 at [81]–[82]. I found that the Plaintiff had not been able to prove this in relation to both the First and Second GOs.

---

18 Koh's affidavit (17 Oct 2018), paras 15–17.

19 Koh's affidavit (17 Oct 2018), para 13(6).

20 PSS, paras 25 and 26.

Version No 1: 27 Oct 2020 (22:41 hrs)

First garnishee order

Existence of the 2016 Agreement

14 The Plaintiff asserted that there was a 2016 Agreement and an on-going contractual relationship between SGCC and the Defendant. The Plaintiff relied on paragraph 17 of Judy's Statement where she had stated that "[s]ince 2016, [the Defendant] had been engaged by [SGCC] to 'produce' two shows a year".[21] I rejected the Plaintiff's assertion. Judy's Statement did not assist the Plaintiff. It did not expressly state that SGCC and the Defendant had entered into a master (or any) agreement whereby the Defendant had agreed to provide two shows a year to SGCC, for a number of years.

15 On the contrary, the evidence showed on balance that no such 2016 Agreement existed. The manner in which the Defendant was engaged militated against the existence of the 2016 Agreement. Chew deposed that the Defendant was engaged by way of simple quotations rendered for each engagement or performance. This is supported by the First Quotation which was for the July Performance and a Second Quotation for the August Performances. I also rejected the Plaintiff's assertion that the supporting documents pertaining to the July and August Performances – issued and signed long before the garnishee orders were served on SGCC – were fabricated by SGCC to evade its obligations to the Plaintiff in these proceedings. I accepted SGCC's explanation that if there was a master agreement or 2016 Agreement (of which there was none) [22], SGCC would not need to issue a quotation each time it wished to engage the Defendant. Chang Yee Ling (SGCC's Office Manager) also deposed that she had never informed

---

21 Koh's affidavit (13 Aug 2018), p 22, para 17.

22 Chew's affidavit (11 Jan 2019), para 12.

Version No 1: 27 Oct 2020 (22:41 hrs)

the Plaintiff's lawyer that there was any master agreement between SGCC and the Defendant, contrary to the Plaintiff's allegations.[23]

16 Accordingly, the Plaintiff's claim that the 2016 Agreement or a master agreement existed is but a bare assertion. In any case its claim that SGCC was due to pay the Defendant at least $20,000 is pure conjecture as it did not provide any basis to support this figure.

Reimbursement and performance or production fees

17 As I found that no 2016 Agreement or master agreement existed, the Plaintiff's attempt to distinguish between reimbursement for costs and expenditure incurred by the Defendant (supposedly provided for in the First Quotation) and payment for performing or producing the show (supposedly governed by the 2016 Agreement) could not succeed. Regardless, I dealt with the Plaintiff's claims for completeness.

18 The Plaintiff asserted that the $4,600 paid via the DBS Cheque was for reimbursement of costs and expenditure incurred by the Defendant for the July Performance, and not payment for performing or producing the show. It relied on paragraph 17 of Judy's Statement, whereby she had stated that "[the Defendant] would get reimbursement for all the costs and expenditure plus a $1,000 fee for performing on stage and [Judy] would get a $1,000 fee for [her] work in managing it".[24] The Plaintiff also pointed to how the DBS Cheque was issued in Judy's name, and dated 10 July 2018 when the July Performance only took place on 27 July 2018.

---

23 Chang Yee Ling's affidavit (11 Jan 2019), paras 4–5.

24 Koh's affidavit (13 Aug 2018), p 22, para 17.

Version No 1: 27 Oct 2020 (22:41 hrs)

19 Again, I rejected the Plaintiff's assertion which was unsupported by evidence. Its reliance on Judy's Statement was misplaced. The Plaintiff's point that Judy would get a fee *from SGCC*[25] for managing the Defendant's performances was not borne out by Judy's Statement, as she did not mention from whom she would obtain a fee. If at all, whatever she obtained was more likely through some internal arrangement between her and the Defendant. It is not anyone's case that Judy and SGCC had a direct contract with each other. In any case, even based on Judy's Statement, the $9,200 paid for the July Performance would have exceeded the $2,000 mentioned in Judy's Statement (*ie*, $1,000 each for the Defendant's July Performance and for Judy's work in managing it) with excess for other expenditure or purpose (which Judy's Statement did not, in any event, elaborate on its amount).

20 Next, that the DBS Cheque was pre-dated did not support the Plaintiff's case. I accepted SGCC's explanation regarding the pre-dating of the cheque. A payment voucher dated 27 June 2018 had been submitted to SGCC's finance department on 28 June 2018, and it then issued a cheque dated 10 July 2018 that was signed on 23 July 2018.[26] Avelyn Tam (SGCC's finance manager) stated that it was common practice for SGCC to issue cheques that are dated and signed sometime before the scheduled date of payment, because its cheques had to be signed by two signatories, who were members of SGCC's General Committee, and who only went to its premises about once a week.[27] I also accepted Chew's evidence that the DBS Cheque was handed to the Defendant on performance night, *ie*, 27 July 2018. This would accord with the terms of the First Quotation, and is more likely than not

---

25 Koh's affidavit (17 Oct 2018), para 4.

26 Avelyn Tam's affidavit (11 Jan 2019), para 21.

27 Avelyn Tam's affidavit (11 Jan 2019), para 18.

Version No 1: 27 Oct 2020 (22:41 hrs)

to have been the case given that the cheque was banked into Judy's account shortly afterwards on 30 July 2018.

21 Moreover, that the DBS Cheque was issued in Judy's name did not add anything. Chew deposed that the Defendant had previously emailed him on 29 January 2018 (long before the DBS Cheque was prepared) to state that his DBS account had been compromised and to ask Chew to address the cheque payment to Judy. Chew attached a copy of that email in support, and I accepted his explanation that there was no reason for him to disbelieve the Defendant.[28] After all, it was not anyone's case that there was a contractual relationship between SGCC and Judy in relation to the Defendant's performances.

22 The Plaintiff also claimed that the Defendant would have been entitled to a commission and a share of the net profits from the ticket sales for the July Performance. It relied on the fact that the Defendant had actively advertised the performance on Facebook and stated that it was sold out. Again, I found this claim to be without basis, and to have involved a leap of logic by the Plaintiff. The Defendant's motive for posting on Facebook was unclear. It could equally be said that he wanted to publicise himself to gain more work for future events. The Plaintiff did not obtain any explanation from him.

23 All things considered, I accepted SGCC's position that the Defendant was engaged for the July Performance for a total sum of $9,200, which SGCC had paid in full in two instalments, the second via the DBS Cheque. Hence, when the First GO was served on SGCC, there was no debt attachable under the GO in relation to the July Performance, nor in relation to any expenditure

---

[28] Chew's affidavit (11 Jan 2019), para 15(c), CKL-7.

Version No 1: 27 Oct 2020 (22:41 hrs)

which the Plaintiff claimed that the Defendant had incurred for the August Performances (of which the Plaintiff had shown no evidence in support). I will return to the August Performances again.

Whether a garnishee is obliged to stop a cheque

24 The Plaintiff also asserted, in relation to the First GO, that if SGCC could have stopped payment of the DBS Cheque, it should have done so.[29] The Plaintiff relied on *Cohen v Hale* (1878) 3 QBD 371 ("*Cohen*"). In *Cohen*, a garnishee stopped payment of a cheque upon being served with a garnishee order, and before the cheque was presented by the judgment debtor. The court held that the garnishee order could be enforced against the garnishee. The effect of a cheque was only to suspend the judgment debtor's ability to call on the debt against the garnishee; if the cheque was stopped or dishonoured, the judgment debtor's ability to call on the debt revived, and it was at that point that there was an attachable debt. Pertinently, Cockburn CJ stated *obiter* (at 373) that:

> *It may be that the garnishee order could not have been made effectual against [the garnishee] if they had declined to stop the cheque,* on the ground that having given it they had so far pledged themselves that it would not be proper for them to stop payment of it, but they did not take this course, and by their direction the cheque was stopped. The suspension of the remedy then ceased, and the debt remained just as if the cheque had never been given … [emphasis added]

25 As evident from the above, *Cohen* did not assist the Plaintiff. The holding in *Cohen* did not deal with whether the drawer of a cheque has an obligation to stop payment after receiving notice of a garnishee order

---

[29] Koh's affidavit (17 Oct 2018), para 10.

Version No 1: 27 Oct 2020 (22:41 hrs)

pertaining to the drawee of the cheque. Further, *Cohen* suggests that there was no such obligation.

26 The case of *Re Palmer, ex parte Richdale* (1882) 19 Ch D 409 ("*Richdale*") is instructive. R had left a cheque (post-dated 28 April) for P on 25 April. P was adjudicated a bankrupt on 27 April. Notice of the adjudication was sent to R on the same day, but R took no steps to stop payment of the cheque. The trustee in bankruptcy applied to the County Court for an order that R should pay that sum to him. The County Court judge refused the application. On appeal, Bacon CJ held that when R was given notice (which was before the date of the cheque), it should have stopped payment on the cheque. The decision was reversed on further appeal. The Court of Appeal agreed that there was no obligation on R to stop the cheque (which had been given before R received notice of the adjudication) for the benefit of a third party. Further, if R had stopped the cheque, he would run the risk of becoming liable to the *bona fide* holder of the cheque for value (at 416–417 and 418–419). Brett LJ held that the cheque was payment of the original debt and stated as follows (at 417):

> The giving of a promissory note, which is a negotiable instrument for a debt, has the effect of altering the legal position of the debtor with the creditor. Instead of the creditor being able to sue the debtor for the debt at the moment, his right to sue is suspended during the currency of the note. The creditor must wait until the note becomes due, and he must then present it for payment, and receive payment on the note and not on the original debt, unless the note is dishonoured while it is in his hands. If the note is dishonoured he can then sue for the original debt …

27 Subsequently, the Court of Appeal in *Elwell v Jackson* (1885) 1 TLR 454 (in affirming the decision of the court below) held that a debt in respect of which a cheque has been given, but not presented, is not a debt attachable

Version No 1: 27 Oct 2020 (22:41 hrs)

under a garnishee order. Where a cheque is given by the drawer to the drawee, there is payment of the debt subject to the debt reviving if the cheque is subsequently dishonoured.

28 *Cohen* was also cited in the Canadian case of *Bobell Trucking Ltd v Trin-Can Enterprises Inc* [1983] 2 WWR 232, The court held that where a garnishee gives to a debtor a post-dated cheque which is accepted as payment subject to the cheque being dishonoured, the debt is no longer accruing due. If the garnishee is served with a garnishee order after the debtor accepts the cheque, the garnishee, having been relieved of its liability, need not cancel payment on the cheque.

29 Hence, where a cheque is handed over by the garnishee to the judgment debtor for a debt that is due (as in the present case), the debt is not attachable under a garnishee order even if the cheque is not yet presented for payment. Where the judgment debtor has accepted the cheque, there is no debt due or accruing due to him from the drawer of the cheque (the garnishee) that can be garnished. Furthermore, where a cheque has been issued and handed over by the garnishee to the judgment debtor to discharge the garnishee's debt, and the garnishee is subsequently served with a garnishee order after the debt has become due (as in the present case), the garnishee is not obliged to stop the cheque. Should the position be otherwise, the garnishee would be in an unenviable position of having to decide between, on the one hand, stopping payment on the cheque and running the risk of being sued on it by the debtor or the *bona fide* holder of the cheque for value (as the case may be) and, on the other hand, doing nothing and running the risk of a claim against it by the judgment creditor. Either way, the garnishee risks having to pay twice.

Version No 1: 27 Oct 2020 (22:41 hrs)

30 Hence, applying the above to the facts of the case, SGCC had no obligation to stop payment on the DBS Cheque, which was given to the Defendant before it received notice of the First GO. It did not matter that in modern banking, cheques can be easily stopped (as the Plaintiff argued) as stopping a cheque would still subject the drawer of the cheque to potential claims from the drawee on a dishonoured or stopped cheque. Further, because the DBS Cheque was given by SGCC and accepted by the Defendant, there was no debt due or accruing due from SGCC to him pertaining to the July Performance that could be attached. I add that Chew had explained that before SGCC could give instructions to the bank, it had discovered from checking its electronic records with the bank that the DBS Cheque had been cleared.

Second garnishee order

31 Following from my finding that the 2016 Agreement did not exist, I rejected the Plaintiff's assertion that the sum of $18,000 based on the Second Quotation was merely for reimbursement of the Defendant's costs and disbursements and that SGCC was due to pay him another $40,000 for the August Performances under the purported 2016 Agreement. In any event, the sum of $40,000 allegedly owed by SGCC to the Defendant was again wholly speculative and unsupported by evidence.

32 I found that there was no debt due or accruing due from SGCC to the Defendant that could be garnished under the Second GO, because the agreement between them in relation to the August Performances had been terminated and there was no further amount due from SGCC to the Defendant when the Second GO was served on SGCC. I rejected the Plaintiff's assertion that the agreement between SGCC and the Defendant had never been terminated and that SGCC was attempting to mislead the Plaintiff into

Version No 1: 27 Oct 2020 (22:41 hrs)

believing that the August Performances were cancelled to help the Defendant evade payments due under the Second GO.

33 SGCC's account of how it terminated the Defendant's engagement and engaged Abdul Ghani to carry on with the August Performances was supported by contemporaneous documentary evidence. On 1 August 2018, the Defendant emailed SGCC to inform SGCC that in view of the garnishee matters, he was not able to complete his contract as he would not be able to finance the performers' fees, accommodation and other costs. He also suggested that SGCC may wish to engage another person to see this through.[30] On 3 August 2018, the Defendant emailed SGCC to confirm that he agreed to the termination of his engagement, and recommended Abdul Ghani to replace him and continue with the preparation and completion of the August Performances.[31] On 6 August 2018, SGCC wrote to the Defendant to formally inform him of the termination of his contract with SGCC with immediate effect.[32] SGCC also wrote to Abdul Ghani to confirm his appointment to manage the August Performances for a total fee of $9,000.[33] SGCC produced a cheque dated 14 August 2018 for $9,000, made in favour of Abdul Ghani, and Abdul Ghani confirmed by email on 20 September 2018 that he had received the $9,000 as payment for managing the August Performances.[34]

34 Further, I rejected the Plaintiff's allegation that the contract between SGCC and the Defendant was never terminated, as it did not make sense. If

30 Chew's affidavit (11 Jan 2019), p 45.

31 Chew's affidavit (11 Jan 2019), p 46.

32 Chew's affidavit (11 Jan 2019), p 47.

33 Chew's affidavit (11 Jan 2019), p 48.

34 Chew's affidavit (23 Aug 2018), p 16; Chew's affidavit (24 Sept 2018), p 6; Chew's affidavit (11 Jan 2019), p 50.

Version No 1: 27 Oct 2020 (22:41 hrs)

the allegation were true, SGCC would potentially be exposing itself to double liability by entering into an agreement with Abdul Ghani for the same performances whilst the contract between it and the Defendant remained afoot.

35 I also rejected the Plaintiff's allegation that Abdul Ghani was the Defendant's agent to receive the $9,000 from SGCC, as there is no evidence to suggest that this was the case. On the contrary, the documents, including the letter of appointment of Abdul Ghani by SGCC, are cogent evidence of his appointment to replace the Defendant. It would not have assisted the Plaintiff's case even if Abdul Ghani were the Defendant's agent and collected the cheque for the Defendant. The fact remains that before the Second GO was served on SGCC, it had handed the cheque to Abdul Ghani on 17 August 2018 (the second night of the August Performances).[35] As I have held, once a cheque is issued by a garnishee to discharge its debt due to the judgment debtor prior to being served a garnishee order (and this would equally apply to the judgment debtor's agent who receives the cheque on his behalf), it is not obliged to stop payment on the cheque.

36 Finally, that the Defendant performed at the August Performances did not support the Plaintiff's case. I accepted Chew's explanation that the Defendant had informed Chew that he was doing so for free as there was an expectation he would perform at that event.[36] I also accepted Chew's explanation that the August 2018 Performances continued to be advertised on SGCC's website as involving the Defendant as a performer, even though SGCC had terminated its agreement with him, because it failed to change the

---

35 Chew's affidavit (23 Aug 2018), para 20; Chew's affidavit (11 Jan 2019), para 42.

36 Chew's affidavit (11 Jan 2019), para 45.

Version No 1: 27 Oct 2020 (22:41 hrs)

information on the website. In any event, the show was going to go ahead, so the advertisement pertaining to it continued to remain posted on the website.[37]

37 It did not follow from the fact that the Defendant performed that he was obliged to do so, or that SGCC owed him money for his performance. SGCC had already paid half the sum under the Second Quotation to the Defendant in around May 2018 before the agreement with the Defendant pertaining to the August Performances was terminated. As for the remaining amount under the Second Quotation, the obligation to make payment to the Defendant could not have arisen, whether under the agreement pursuant to the Second Quotation (which had been terminated) or under the 2016 Agreement (which I found did not exist).

38 Hence, when the Second GO was served on SGCC, there was no further debt due or accruing due from SGCC to the Defendant and the Plaintiff's claim in respect of the Second GO failed. The Plaintiff's assertion that SGCC was colluding with the Defendant or Abdul Ghani to put up a sham arrangement to avoid paying the Plaintiff was not borne out by the evidence. SGCC would have stood to gain nothing from attempting to evade the GOs because its liabilities pertaining to the performances, had they existed, would have fallen due *anyway*.

Conclusion

39 In conclusion, I found that the Plaintiff had failed to show that there was a debt due or accruing due at the time of the First or Second GO. I therefore dismissed the Plaintiff's appeal, with costs to SGCC.

---

[37] Chew's affidavit (11 Jan 2019), para 39.

Version No 1: 27 Oct 2020 (22:41 hrs)

Audrey Lim
Judicial Commissioner

Lee Nyet Fah Alyssa (Alyssa Lee & Co) for the plaintiff;
Toh Kok Seng and Chua Huimin, Michelle (Lee & Lee) for the garnishee.

Version No 1: 27 Oct 2020 (22:41 hrs)