IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHCR 6

Suit No 1174 of 2016 (Summons Nos 1762 and 1763 of 2020)

Between

(1) O'Laughlin Industries Company Limited
(2) O'Laughlin Corporation Limited

… *Plaintiffs*

And

(1) Tan Thiam Hock
(2) Tan Poh Suan Jacqueline
(3) Desiree Ann Derek David
(4) Pegasus Chemical Pte Ltd
(5) Koh Chiao-Jian Felicia
(6) Tan Huat Chye
(7) Tan Thiam Teng

… *Defendants*

JUDGMENT

[Civil Procedure] — [Judgments and Orders] — [Garnishee Order]

O'Laughlin Industries Co Ltd and another
v
Tan Thiam Hock and others

[2020] SGHCR 6

High Court — Suit No 1174 of 2016 (Summonses Nos 1762 and 1763 of 2020)
Scott Tan AR
24, 28 July 2020

30 July 2020 Judgment reserved

Scott Tan AR:

Introduction

1 This judgment concerns two garnishee applications that were granted on a provisional basis which the Plaintiffs now seek to have made absolute. The second of these, Summons No 1763 of 2020 ("SUM 1763"), was issued in respect of monies in a bank account that the First Defendant maintains with Maybank Singapore Limited. There is nothing out of the ordinary about it. It is not disputed that there is $803.84 in this account and that this sum is available for garnishment. The First Defendant asks only that the court show "sympathy to dismiss the application" as he requires the money for his basic living expenses. The difficulty with this submission, however, is that the court only has the discretion to refuse to make a provisional garnishee order absolute where the attachment of the debt would be "inequitable or unfair" (see the decision of

the High Court in *Commercial Bank of Kuwait SAK v Nair (Chase Manhattan Bank NA, garnishee)* [1993] 3 SLR(R) 281 at [18]). From my review of the authorities, it appears that such a finding is usually premised upon proof that to make the garnishee order absolute would affect the interests of third parties, expose the garnishee or judgment debtor to double-liability, or prefer one creditor over another (see, generally, *Singapore Civil Procedure 2020* vol 1 (Chua Lee Ming gen ed) (Sweet & Maxwell, 10th Ed, 2020) ("*Singapore Civil Procedure*") at para 49/1/5). Sympathy for the plight of the judgment debtor does not appear to be a proper ground for the exercise of the court's discretion and, indeed, it might be argued that it would be *in*equitable *and un*fair for the court to favour the interests of a judgment debtor over those of the judgment creditor who has prevailed in the litigation. I therefore order that the provisional garnishee order made in SUM 1763 be made absolute.

2 The other application, Summons No 1762 of 2020 ("SUM 1762"), is directed against the First Defendant's ex-wife, who is also the Fifth Defendant in this action, and it is somewhat unusual. It is premised on a consent order in the interim judgment for divorce ("IJ") that she obtained against the Fifth Defendant after the commencement of the present suit which concerns what is to be done about their matrimonial home ("the Property"):

> By consent,
>
> …
>
> 3c(1) The matrimonial property known as 19 Sennett Terrace, Singapore 466714 ("the [P]roperty") shall be divided in the portion of 70% to the [Fifth Defendant] and 30% to the [First Defendant].
>
> (2) The [First Defendant's] 30% share in the Property shall be sold by the [First Defendant] to the [Fifth Defendant] immediately based on the market value of the Property as at the date thereof which the parties agree is $ 2.8 million.

> (3) The sale price of the [First Defendant's] 30% share is $840,000.00 and the following shall be deducted from the sale price:-
>
> (i) [The First Defendant's] 30% share of the outstanding mortgage loan to the bank;
>
> (ii) all CPF monies withdrawn from the Husband's CPF account and utilised for the purchase of the Property including accrued interest to be refunded to the Husband's CPF account; and
>
> (iii) the costs and expenses of the sale of the Property,
>
> and the [First Defendant] shall receive from the [Fifth Defendant] the balance of the sale price after the above deductions.
>
> (4) The [Fifth Defendant] shall be responsible for the 70% of the outstanding mortgage loan and costs and expenses of the purchase of the Property.

3 The IJ was granted on 21 December 2016 and made absolute on 23 March 2017. Despite the passage of more than three years, however, no sale has taken place. The reasons for this are disputed, but the question for present purposes is this: Given that the IJ appears to contemplate that the Fifth Defendant will only pay the First Defendant the "balance of the sale price" of his 30% share of the Property *after* a sale has taken place, is there an attachable debt arising out of the IJ that can be the subject matter of a garnishee order?

4 Mr Nicholas Narayanan, counsel for the Plaintiffs, submits that there is. He contends that because this paragraph of the IJ was (a) entered into by consent, (b) provides for a severance of the parties' joint tenancy, (c) specifies the sale price of the property, and (d) states that the sale shall take place "immediately", there is no need for any further agreement to be concluded and the Fifth Defendant's liability to pay the First Defendant the "balance sale proceeds" has already accrued. Unsurprisingly, Mr Chandra Mohan K Nair, counsel for the First and Fifth Defendants, submits to the contrary. He maintains

that until and unless the First Defendant's 30% interest in the Property is *actually sold* to the Fifth Defendant, the Fifth Defendant is under no obligation to pay the First Defendant anything and there is no "debt" that can be garnished.

5 For the reasons which follow, I agree with Mr Mohan. In my judgment, the IJ gives rise, at best, to a contingent debt rather than one which is "due or accruing due" within the meaning of O 49 r 1(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC") that may properly be garnished. I therefore discharge the provisional garnishee order which was made in SUM 1762.

Background

6 I begin with a brief recitation of the relevant facts. The Plaintiffs are Hong Kong incorporated companies which are in the business of manufacturing chemicals and ingredients that are used in the food, beverage, and cosmetics industries. The First Defendant is a former employee of the First Plaintiff and the alleged mastermind of an conspiracy to defraud the Plaintiffs that involved inducing them to deliver goods to various sham companies (of which the Fourth Defendant was one) that he and his family members had set up in order to misappropriate the goods and sell them for personal gain. The Plaintiffs plead that the Second, Third, Sixth, and Seventh Defendants who are, respectively, the First Defendant's sister, niece, father, and brother, are co-conspirators who knowingly assisted the First Defendant in defrauding them. The Plaintiffs do not allege any wrongdoing on the Fifth Defendant's part, but they aver that she holds assets belonging to the First Defendant, including the Property, and have named her as a co-defendant in order to obtain appropriate reliefs against her.

7 The First Defendant has substantially admitted to the various acts of wrongdoing alleged against him and sought in his defence only to exonerate the

rest of the defendants from liability by claiming that he had acted alone at all times. Interim judgment was therefore entered against him and the Fourth Defendant on 27 February 2019 for the liquidated sum of approximately US$1.68m, with damages for the unliquidated claims to be assessed. The trial against the rest of the defendants is presently ongoing.

8 The present suit (Suit No 1174 of 2016) was commenced on 3 November 2016. About three weeks after that, on 23 November 2016, the Fifth Defendant initiated divorce proceedings against the First Defendant. As the matter was uncontested, it proceeded briskly and, as noted at [3] above, the IJ was granted on 23 December 2016. Paragraph 3 of the IJ contained a number of consent orders which largely reproduced the terms of a "Matrimonial Settlement Agreement" which the First and Fifth Defendant concluded on 22 November 2016, a day before the divorce proceedings were initiated. One of these orders is para 3(c), which deals with the Property (see [2] above).

9 On 17 January 2017, the Plaintiffs obtained an injunction prohibiting the First to Fourth Defendants from disposing or dealing with any of their assets, including the Property, during the pendency of the suit or until further order ("Injunction"). On 5 December 2018 and 21 May 2019 respectively, the First and Fifth Defendants entered into a sale and purchase agreement ("SPA") and a supplemental matrimonial settlement agreement ("Supplemental MSA") for the sale of the First Defendant's interest in the Property to the Fifth Defendant. The Fifth Defendant then proceeded to lodge two caveats against the Property pursuant to her interests in the Property arising out of these agreements.

10 Clause 1(b) of the SPA provided that the sale price of the property was $840,000, as specified at para 3(c)(3) of the IJ, and it also went to set out the

value of the deductions that would need to be made to account for the First Defendant's 30% share of the mortgage, the refund to his Central Provident Fund ("CPF") account, and the costs and expenses of the sale (see paras 3(c)(3)(i)-(iii) of the IJ). However, the figures given in respect of the CPF refund and the costs and expenses of the sale were marked out with asterisks because they could not be fixed at that time. Clause 1(c) of the SPA provided that the sum that needed to be refunded to the First Defendant's CPF account would only be determined *at the date of completion* of the sale. This was notionally ten weeks from the date of the SPA, but it could be extended by the parties by agreement (see cl 11 of the SPA). The costs and expenses of the sale was not fixed, presumably, because it was not clear what the final figure would be.

11 The Plaintiffs took the view that the conclusion of these agreements and the lodging of the caveats breached the terms of the Injunction so they commenced committal proceedings against the First and Fifth Defendants, arguing that the net effect of these agreements was a diminution of the amount due to the First Defendant from the Fifth Defendant (and, consequently, a reduction in the amount available for garnishment). Their position was that the sum payable to the First Defendant should instead be calculated on the basis that the sale was to have taken place on 23 March 2017, when the IJ was made final, instead of the date of the completion specified in the SPA (which would result in a decrease in the refund due to the First Defendant's CPF account). The Plaintiffs eventually withdrew their application for committal on terms that the First and Fifth Defendants would rescind the two agreements and the Fifth Defendant would withdraw the caveats she had filed. All of this was done by 5 March 2020, and the Plaintiffs filed the present applications on 20 April 2020.

The Law: "Debt Due or Accruing Due"

12 I turn to the law. Order 49 r 1(1) of the ROC provides as follows:

> Where a person (referred to in these Rules as the judgment creditor) has obtained a judgment or order for the payment by some other person (referred to in these Rules as the judgment debtor) of money, not being a judgment or order for the payment of money into Court, and any other person within the jurisdiction (referred to in this Order as the garnishee) is indebted to the judgment debtor, *the Court may, subject to the provisions of this Order and of any written law, order the garnishee to pay the judgment creditor the amount of* ***any debt due or accruing due*** *to the judgment debtor from the garnishee,* or so much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.
>
> [emphasis added in italics and bold italics]

13 The critical words in this passage are "any debt due or accruing due", as they define what can be the subject matter of a garnishee order. The *locus classicus* on the proper interpretation of this expression is the old decision of the English Court of Appeal in *Webb v Stenton* [1883] 11 QBD 518. The judgment debtor in that case was the beneficiary under a will that entitled him to a one-sixteenth share of the income of a property that was payable in half-yearly intervals into a trust fund. The judgment creditor applied to garnish the judgment debtor's share of the income of the property, before payment had been made into the trust fund but the court held that this could not be done.

14 The result of that case turned on the proper interpretation of Order XLV, rule 2 of the Rules of the Supreme Court 1883 (UK) – the legislative precursor to O 49 r 1 of our own ROC – which provided that debts" owing or accruing" from the garnishee to the judgment debtor could be taken in attachment. After reviewing the authorities, Lindley LJ defined a "debt" as follows (at 527):

> … a debt legal or equitable can be attached whether it be a debt owing or accruing; but it must be a debt, and ***a debt is a sum***

> ***of money which is now payable or will become payable in the future by reason of a present obligation,*** *debitum in presenti, solvendum in futuro.* An accruing debt, therefore, is a debt not yet actually payable, but a debt which is represented by an existing obligation. … [emphasis added in bold italics]

15 Brett MR explained that a debt could be *payable* now (in which case it would be a "debt owing"), or it might be payable only on some future date (making it a "debt accruing"), but there must be a crystallised obligation of payment (at 524). Without that, there is nothing to attach. He therefore dismissed the application, reasoning that because the trustees had yet to receive the income from the property, there was no obligation of disbursement and so there was no "debt" to speak of. At 525-526, he put the point as follows:

> … the only question is whether that which is attempted to be attached here is an accruing debt according to such interpretation. It is obvious it is not. *There is a sum of money which is to be payable out of the proceeds of property* ***when it comes to the hands of the trustees****.* Nobody can say that until then it is in any legal or equitable sense a debt which is debitum in presenti. *The money may never come to these trustees without any fault of their own, for they may die or cease to be trustees before anything can become due. Therefore* ***there are contingencies upon which no debt may ever arise****, and all that can be said of it is, that it is probable that at the end of half-a-year money will come into the hands of the trustees, but* ***until it does come into their hands, there is no debt existing*** *between them and their cestui que trust. …* [emphasis added in italics and bold italics]

16 Lindley LJ's definition of a debt as a "sum of money which is now payable or will become payable in the future by reason of a present obligation" has been widely applied around the Commonwealth (see, *eg*, the decision of the English Court of Appeal in *Regina v Chief Registrar of Friendly Societies, ex parte New Cross Building Society* [1984] 2 WLR 370 at 399A *per* Sir John Donaldson MR, the decision of the Supreme Court of India in *Shanti Prasad Jain v Director of Enforcement Foreign Exchange Regulation Act* AIR 1962 SC

1764 ("*Shanti Prasad Jain*"), and the decision of the Malaysian Court of Appeal in *Cheong Heng Loong Goldsmiths (KL) Sdn Bhd & Anor v Capital Insurance Bhd and another appeal* [2004] 1 MLJ 353 at [34] *per* Gopal Sri Ram JCA). This definition is the reason why contingent debts, which do not exist until and unless the contingency that triggers their creation occurs, cannot be garnished. The line between a contingent debt, which has no present existence, and a "debt accruing", which is a subsisting obligation to pay a sum in respect of a liquidated money demand, albeit sometime in the future, which can be garnished can sometimes be fine (see, *eg*, the decision of the High Court in *Lim Boon Kwee (trading as B K Lim & Co) v Impexital SRL (Sembawang Multiplex Joint Venture, garnishee)* [1998] 1 SLR(R) 757 ("*Lim Boon Kwee*") at [15]-[18]), but it is conceptually intelligible and has long been upheld by the courts.

17 The rule that contingent debts cannot be the subject of a garnishee order is not just a product of judicial stipulation, but a consequence of the very structure of the garnishee process. A garnishee order is a *proprietary remedy* for the recovery of a judgment debt that operates by way of the attachment of the property of the judgment debtor, this property being the chose in action constituted by the debt of a third party (the garnishee) to the judgment debtor (see *Société Eram Shipping Co Ltd v Cie Internationale de Navigation and others* [2004] 1 AC 260 ("*Société Eram*") at [24] *per* Lord Bingham of Cornhill). The whole purpose of this process is to allow the judgment creditor to get at the assets of the *judgment debtor* (at [28] *per* Lord Bingham and [85] and [88] *per* Lord Millett). It follows, therefore, that if there is no property of the judgment debtor "in the hands of the garnishee" (see O 49 r 3 of the ROC) – because the contingency that precedes the creation of the debt has not yet occurred or otherwise – then there is nothing that can be attached.

18 At [62] of *Société Eram*, Lord Hoffmann put the point as follows:

> … The *essence of such an order [ie, a garnishee order] is that it is* ***execution in rem against the property of the judgment debtor, against a res or chose in action which belongs to him*** *and which is within the jurisdiction of the court making the order.* As the Royal Commissioners [whose report preceded the passage of ss 61-70 of the Common Law Procedure Act 1854 (UK), which is the legislature precursor to O 49 of the ROC) said in 1853, it is an attachment of "monies of [the] debtor in the hands of third persons". It is true that once the judgment debtor's chose in action has been captured or attached, the court will realise it or turn it to account by ordering the third party to pay the debt to the judgment creditor. But that is a process of realisation in the same way as the sale of a chattel belonging to the debtor which has been taken in execution. *It is not a personal claim against the third party. The third party pays with his own money only in the same sense as a bank upon which a cheque has been drawn by a customer in credit pays with its own money. But* ***the substance of the matter is that the judgment creditor is paid with the debtor's money, as the drawee of the cheque is paid with the customer's money.*** [emphasis added in italics and bold italics]

19 In other words, a garnishee order is "in substance, not an order to pay a debt, but an order on the [third party] to hand over something in their hands belonging to the [judgment debtor] to [the judgment creditor]" (see the decision of the English Court of Appeal in *Pritchett v English and Colonial Syndicate* [1899] 2 QB 428 at 433 *per* Lindley MR). This explains why garnishee orders over contingent debts are so objectionable. The effect of such an order would be to compel the garnishee to discharge the judgment debtor's liability *out of the garnishee's own funds*. It does not matter how probable or soon it is that the garnishee will become indebted to the judgment debtor, or how likely it is that the garnishee would later be indemnified by the judgment debtor, the point is that as a matter of principle, garnishees are *never* supposed to reach into their own pocket, and any order bringing about such a result would be "wholly inimical to the structure of the garnishee jurisdiction" (see *Société Eram*

Shipping Co Ltd v Cie Internationale de Navigation and others [2001] CLC 685 at 692 *per* Tomlinson J and *Webb v Stenton* at 524 *per* Brett MR).

20 A useful rule of thumb is this: in order for a debt to be the subject of a garnishee order, it must be actionable – that is to say, it must be something which the judgment debtor could "immediately and effectually sue" the garnishee for (see UK Supreme Court in *Taurus Petroleum Ltd v State Oil Marketing Co of the Ministry of Oil, Republic of Iraq* [2018] AC 690 ("*Taurus*") at [88] and [90] *per* Lord Mance DPSC, dissenting, although not on this ground, and the decision of the Federal Court of Malaysia in *Saw Swan Kee v Sim Lim Finance (M.) Sdn Bhd* [1988] 1 MLJ 221). Thus, where the judgment debtor is precluded – for whatever reason – from suing the garnishee for the return of the money, there is no debt available for attachment by the judgment creditor (see *Taurus* at [91]). This is also consonant with the long-standing rule that a judgment creditor cannot stand in a better position as regards the garnishee than the judgment debtor himself (see *Re General Horticultural Company, ex parte Whitehouse* (1886) 32 Ch D 512 at 516 *per* Chitty J).

Analysis: Is There an Attachable Debt?

21 When SUM 1762 is considered in light of the foregoing authorities, I think that the result should be clear. Paragraph 3(c)(2) of the IJ provides that the First Defendant's interest in the Property "shall be sold" to the Fifth Defendant. The expression "sale" is one of common everyday use and it refers to "a transfer of the absolute title in the property for a certain agreed price … a contract between two parties, one of whom acquires thereby a property in the thing sold, and the other parts with it for a valuable consideration" (see *Black's Law Dictionary* (Bryan A Garner, Editor in Chief) (Thomson Reuters, 11th Ed, 2019). This understanding is reflected at para 3(c)(2)(iii) of the IJ, which

provides that the "[First Defendant] shall receive from the [Fifth Defendant] the balance of the sale price after the deductions". The expression "sale price" makes it clear that what we are concerned with is the payment of a sum of money *in consideration for* the transfer of property, and not an outright payment, without more. If there is no sale, then there is, *ipso facto*, no obligation of payment. We are dealing, in other words, with a contingent debt.

22 However, Mr Narayanan advances an alternative construction of para 3(c) of the IJ. He contends that upon the conclusion of the IJ, "[Fifth] Defendant's *obligation to pay the [First] Defendant in return for his 30% share in the Property accrued* ***immediately*** … [and] there was ***no further agreement required*** *for the disposition of the [First] Defendant's share in the Property*" [emphasis in original removed; emphasis added in italics and bold italics]. The fundamental objection to this submission is that it has the effect of converting the relationship between the First and Fifth Defendants from that of vendor and purchaser into one of creditor and debtor when that is not only (a) against the plain and ordinary meaning of the words of the IJ, but also (b) contrary to the intentions of the parties, as disclosed by the fact that they had always contemplated that there would be a sale and purchase agreement for the First Defendant's 30% interest in the Property (see [8]-[11] above). It is true that once a marital agreement is embodied in a consent judgment, its legal force derives from the order of court and not the antecedent agreement (see the decision of the High Court in *Lee Hong Choon v Ng Cheo Hwee* [1995] 1 SLR(R) 92 at [32]), but in this case, the parties' agreement is perfectly reflected in the IJ, which likewise provides that there shall be a sale.

23 The case of *Toh Ah Poh v Tao Li* [2020] 1 SLR 837 ("*Toh Ah Poh*"), which Mr Narayanan relied heavily on, is readily distinguishable. That case

concerned an apartment which used to be owned by the appellant and her ex-husband (the "Deceased") as joint tenants. When they divorced, the appellant and the Deceased reached an agreement on what was to be done about the apartment and recorded this by way of a consent order that eventually found its way to para 3(b) of their interim judgment of divorce. The order read as follows:

> … the [apartment], which is in the joint names of the [appellant] and [Husband], *shall be* ***transferred*** to the [Husband], *upon the [Husband]* ***refunding*** *to the [appellant], a cash sum of S$60,000.00.* The Defendant shall be responsible for the costs and expenses of the said transfer; …

24 The Deceased subsequently remarried, but he passed away intestate without ever paying the appellant the sum of $60,000 he was ordered to. The question before the court was whether, despite the non-payment of this sum of $60,000, the interim judgment had severed the joint tenancy. This was a matter of some significance because if the joint tenancy had not been severed, then it would mean that the appellant and Deceased continued to hold the apartment as joint tenants until the point of the Deceased's death upon which time title to the apartment devolved to the appellant under the right of survivorship. By contrast, if the joint tenancy had been severed, then the transfer of title provided for in the interim judgment was effective, and the Deceased's interest in the apartment would then fall to be distributed according to the laws of intestacy. The High Court held that the joint tenancy *had* been severed, and its decision was upheld by the Court of Appeal, which explained its decision as follows (at [25]-[26]):

> 25 Clause 3(b) of the order did not confer on the Deceased an "option to elect" to take over ownership of the apartment. It was part of an order of court and was couched in mandatory terms ("shall be transferred to" the Deceased), even though it embodied the former spouses' consent instead of coming into existence by way of contention through the adversarial system. Toh's argument might have been more persuasive if clause 3(b) had been worded in permissive terms (such as "if the defendant so chooses") or had been limited in time (such as being

> expressed to cease automatically to have effect if the necessary action to sever the joint tenancy was not taken by a specified date). Clearly, those were not the situation here.
>
> 26 Toh's submissions that clause 3(b) was only "an option to elect" ignored the context of the entire clause 3 in the interim judgment, in particular clause 3(a). As Tao correctly pointed out, the interim judgment contemplated that each party would have one property after the divorce, with Toh becoming the sole owner of the matrimonial flat and the Deceased becoming sole owner of the apartment. The condition of payment of $60,000 served a similar function as an order for CPF refund or payment of a party's financial and/or non-financial contributions made towards the property in question in order to arrive at a just and equitable division of matrimonial assets.

25 The point to be taken from *Toh Ah Poh* is that everything turns on the precise wording of the order of court in question. The operative paragraph of the interim judgment there did not refer to any sale but provided, simply, that the apartment "shall be transferred" to the Deceased to be held in his sole name (at [26]). The intention of the parties, which was embodied in the IJ, as the Court of Appeal observed, was for a clean break between the parties with the appellant becoming the sole owner of their matrimonial flat and the Deceased the sole owner of the apartment. The payment of the $60,000 was *not* intended as consideration for the transfer, nor was it the "price" of the appellant's interest. Rather, it was an adjustment (a "refund", to use the nomenclature employed in the interim judgment) to achieve a globally just and equitable division of the parties' matrimonial assets. Thus, the proper construction of para 3(b) of the interim judgment was that it gave rise to two distinct and separate obligations (the transfer of the apartment and the payment of $60,000), both of which were mandatory and neither of which was contingent upon the other.

26 By contrast, para 3(c) of the IJ here *does* contemplate a sale and the payment of a "sale price" as consideration for that sale. It is true, as Mr Narayanan pointed out, that the IJ *mandates* that a sale be carried out

"immediately". However, all this means is that the First Defendant is *obliged* to sell his interest in the Property to the Fifth Defendant and that he must do so *forthwith*, but it does *not* mean that a sale is unnecessary or that the obligation to pay the "balance sale price" is independent of the obligation to sell. Indeed, if anything, only goes to show that there *must* be a sale, and one can readily appreciate why. The Property is currently mortgaged to a bank, which holds the legal title to the asset and whose consent, as well as that of the CPF Board's, must first be obtained before a sale can take place. While it may be true that their consent will most likely be forthcoming so long as the mortgage will be repaid and the requisite refund is made to the First Defendant's CPF account, there is no guarantee of this. The Fifth Defendant will have to make substantial lump-sum payments to the mortgagee-bank and CPF Board, refinance the property (given that the mortgage loan had previously been taken out on terms that there would be two joint-owners), and pay the associated legal, conveyancing, and registration fees associated with the sale. These – as well as the amounts to be refunded to the First Defendant's CPF account and the costs and expenses of the sale, which are currently at large (see [10] above) – are all matters that will have to be considered carefully. These are not just "practical matters for the parties and their lawyers to carry out," as Mr Narayanan argued, but key aspects of sale to be worked out and there may yet be many a slip between cup and lip before a successful sale can take place.

27 In this connection, it must also be remembered that the Injunction is still in force and until and unless it is lifted, neither the First nor the Fifth Defendant can deal with the Property in any way, for fear of being found in contempt of court, as they very nearly were when they last tried (see [11] above). While the Plaintiffs have averred that they will apply to vary the Injunction to lift the encumbrance on the Property and withdraw their caveat *after* receiving the

"balance sale proceeds" from the Fifth Defendant, this is not good enough. The problem is that until and unless the Injunction is lifted and the sale takes place, any order making the provisional garnishee order absolute would be one compelling the Fifth Defendant (a third party) to discharge part of the First Defendant's liability to the Plaintiffs using *her own funds* without any certainty over whether (or when) she will receive the First Defendant's 30% interest in the Property. This would not only be an outcome that is prejudicial to her interests, but also contrary to established principle (see [19] above).

28 I can well understand why the Plaintiffs wish to proceed in this sequence (*ie*, by garnishing the sale proceeds before applying to lift the Injunction), as it minimises the risk of asset dissipation and seems to be the safest path forward. However, the difficulty is that there are the interests of a third party to consider. In this case, the Fifth Defendant is a stranger to the judgment debt and, so far as it appears from the Plaintiffs' statement of claim, also innocent of any wrongdoing in this matter. If the choice is between: (a) requiring an early lifting of the Injunction, which might expose the Plaintiffs to the risk that they will lose a future means of recovering the judgment debt and (b) making the provisional garnishee order absolute *before* the sale takes place, which would compel the Fifth Defendant to reach into her own pocket then the answer, it seems to me, is obvious: the interests of the third party must be protected. Thus, even if I had the jurisdiction to do so, I would entertain serious doubts about whether it would be equitable and fair to make the provisional garnishee order absolute.

Conclusion

29 For the foregoing reasons, I discharge the provisional garnishee order made in SUM 1762 with costs to be taxed if not agreed. I order that the provisional garnishee order in SUM 1763 be made absolute with costs to the

judgment creditor fixed at $750 plus all reasonable disbursements, the quantum of which shall likewise be taxed if not agreed, and costs to the garnishee fixed at $150 (inclusive of disbursements), as provided for under Part IIA of Appendix 2 to O 59 of the ROC.

30 In closing, I express my gratitude to Mr Narayanan and Mr Mohan for their submissions, which greatly assisted me in the preparation of this judgment.

Scott Tan
Assistant Registrar

Nicholas Jeyaraj s/o Narayanan (Nicholas & Tan Partnership LLP) for the plaintiffs;
Chandra Mohan K Nair (Tan Rajah & Cheah) for the 1st and 5th defendants.