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

[2023] SGHC(A) 21

Civil Appeal No 81 of 2022

Between

Purnima Anil Salgaocar

… *Appellant*

And

Lakshmi Anil Salgaocar (suing as the administratrix of the estate of Anil Vassudeva Salgaocar, deceased)

… *Respondent*

In the matter of Originating Claim No 49 of 2022 (Summons No 2031 of 2022)

Between

Lakshmi Anil Salgaocar (suing as the administratrix of the estate of Anil Vassudeva Salgaocar, deceased)

… *Claimant*

And

Purnima Anil Salgaocar

… *Defendant*

Version No 1: 06 Jun 2023 (12:30 hrs)

JUDGMENT

[Contract — Contractual Terms — Rules of construction]
[Civil Procedure — Injunctions — Enforcement of negative covenant]

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Purnima Anil Salgaocar
v
Lakshmi Anil Salgaocar (suing as the administratrix of the estate of Anil Vassudeva Salgaocar, deceased)

[2023] SGHC(A) 21

Appellate Division of the High Court — Civil Appeal No 81 of 2022
Woo Bih Li JAD and Aedit Abdullah J
15 March 2023

5 June 2023

Woo Bih Li JAD (delivering the judgment of the court):

Introduction

1 This is an appeal against the judge's (the "Judge") decision to grant an injunction: *Lakshmi Anil Salgaocar (suing as the administratrix of the estate of Anil Vassudeva Salgaocar, deceased) v Purnima Anil Salgaocar* [2023] SGHC 49 (the "GD").

2 Having considered the parties' respective cases, we allow the appeal and set aside the injunction. These are our reasons.

Facts and Procedural History

3 This case concerns a dispute between a mother ("L") and a daughter ("P") in respect of the estate of the patriarch of the family ("AVS").

4 On 11 August 2015, a suit was filed, *ie*, HC/S 821/2015 ("S 821") by AVS against one Darsan Jitendra Jhaveri ("DJJ") claiming that a trust was created with DJJ as trustee. AVS passed away intestate on 1 January 2016 and L has continued the action as sole administratrix of his estate ("the Estate").

5 The beneficiaries of the Estate are L, as his widow, and four children which include P. Disputes arose between P and L.

6 On 13 April 2020, L and P entered into a settlement agreement. P subsequently alleged that L had breached their settlement agreement and filed HC/OS 928/2020 ("OS 928").

7 On 27 May 2021, L and P entered into a second settlement agreement ("2SA") to settle OS 928.

8 Under cl 7 of 2SA, L was obliged to provide an account ("the Accounts") of certain assets referred to as "the Estate's Non-India Assets" (the "Non-India Assets") for the period from 1 January 2016 to 31 December 2020 to be drawn up by an independent and qualified accountant. The Accounts were to be procured and placed at the office of Mr Gurbachan Singh of GSM Law LLP by 1 December 2021. P was entitled to inspect the Accounts with advance notice given but not to take photos, video or audio recordings of any material or information during the inspection.

9 P alleges that L breached this provision for two reasons. First, the Accounts were not provided on 1 December 2021, even though cl 20 of 2SA stipulates that time shall be of the "essence in the performance of this Agreement".

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10 Second, even when a document was eventually provided late (for inspection on 28 January 2022), it was not an account of the Non-India Assets. Instead, it was a thin report by an accountant which purported to set out valuations of the Non-India Assets, excluding the assets which are the subject of S 821, on two dates, *ie*, 31 December 2015 and 31 December 2020. P's grievance was not that the report should include the assets which are the subject of S 821 but rather that, even for the other Non-India Assets, the report did not contain any information on L's dealings with the other Non-India Assets between 31 December 2015 and 31 December 2020. We will say more about this contention later.

11 Accordingly on 27 April 2022, P filed an action, *ie*, HCF/OSP 6/2022 ("OSP 6") in the Family Justice Court under r 786 of the Family Justice Rules 2014 for an order:

(a) to direct L to provide the Accounts and make a copy available to P within one month from the date of the court's order;

(b) that an independent auditor be appointed from certain named accounting practices to audit the Accounts;

(c) that P be at liberty to apply for an inquiry into any unauthorised disbursements shown in the Accounts;

(d) that P be given liberty to falsify or surcharge the Accounts; and

(e) costs.

12 Instead of filing an affidavit in reply to OSP 6, L filed another action which was an originating claim in HC/OC 49/2022 ("OC 49") on 18 May 2022. In this action, L alleged primarily that by filing OSP 6 itself, P herself was in

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breach of 2SA because under the terms thereof, *viz*, cll 11 and 18, P was precluded from commencing any action, even if L were in breach of 2SA, except an action for breach of 2SA, until S 821 was finally determined. Under 2SA, the final determination of S 821 included the trial and any appeal thereafter. In other words, L perceived OSP 6 as an action which was *not* for breach of 2SA as such.

13 L also claimed damages for P's alleged breach including repayment of certain money which L had paid P under cl 4 of 2SA. L sought the following reliefs in OC 49:

(a) an injunction to restrain P from commencing or maintaining any action other than for breach of 2SA until the final disposal of S 821;

(b) a declaration that P is not entitled to commence or maintain any action other than for breach of 2SA until the final disposal of S 821;

(c) damages for breach of 2SA including the repayment of certain money paid by L to P under 2SA; and

(d) costs and interest.

14 On 31 May 2022, L filed HC/SUM 2031/2022 ("SUM 2031") in OC 49 to seek an injunction to restrain P along the lines as alleged in the main relief sought in OC 49.

15 On 1 June 2022, L filed HCF/SUM 145/2022 ("SUM 145") in OSP 6 for OSP 6 to be struck out or stayed pending the hearing of OC 49. SUM 145 was supposed to have been filed on 31 May 2022, *ie*, at the same time when SUM 2031 was filed but due to some error it had to be re-filed on 1 June 2022.

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16 On 10 June 2022, P filed a defence and counterclaim in OC 49. In her counterclaim, P sought payment of money which L was obliged to make under cl 4(b) of 2SA (see below at [22]).

17 On 28 June 2022, SUM 2031 was heard and decided by the Judge who granted an injunction as sought in SUM 2031.

18 On 12 July 2022, P filed AD/OA 10/2022 ("OA 10") in the Appellate Division of the High Court ("AD") for permission to appeal against the decision of the Judge.

19 On 13 September 2022, the AD granted P permission to appeal. On 15 September 2022, P filed AD/CA 81/2022 ("AD 81") as her appeal against the Judge's decision. This formed the subject matter of the present appeal.

20 On 13 October 2022, P filed HC/SUM 3781/2022 ("HC SUM 3781") in OC 49 for:

(a) an order that L to produce certain documents in discovery;

(b) a declaration that 2SA remained binding on L;

(c) an order that L pay damages being equivalent to the amounts payable by L under 2SA and an order that L continue to make such payments; and

(d) interest and costs.

21 Apparently, SUM 3781 was split into two hearings, one before a judge and one before an assistant registrar ("AR"). The application for discovery of certain documents was first heard by an AR on 22 November 2022 who

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dismissed it. P's appeal against that decision was heard by Justice Philip Jeyaretnam on 27 January 2023 and he dismissed P's appeal.

22 In the meantime, on 25 November 2022, Jeyaretnam J heard the other aspect of SUM 3781, *ie*, that L be ordered to make payment of certain money under 2SA. Under cl 4(a) of 2SA, L was to pay P $135,000 in two instalments. Under cl 4(b), L was also to pay P $15,000 on the 15th day of each calendar month from 15 June 2021 until the final distribution of the Non-India Assets. L had paid the $135,000. She had also paid the $15,000 monthly payments until P's allegation that L had breached her obligation to provide the Accounts whereupon L stopped making the $15,000 monthly payments (from June 2022) and in fact claimed the return of the money which she had already paid to P. Jeyaretnam J noted that L was alleging that 2SA still subsists, *ie*, L was not saying that 2SA had been terminated. Accordingly, he ordered L to make payment of the $15,000 per month to P as damages (in so far as this pertained to overdue payments) and to continue to pay that sum in accordance with 2SA.

23 On 28 February 2023, Kannan Ramesh JAD rendered his decision in S 821: *Lakshmi Anil Salgaocar (suing as the administratrix of the estate of Anil Vassudeva Salgaocar) and another v Darsan Jitendra Jhaveri and others (Kwan Ka Yu Terence, third party)* [2023] SGHC 47. This was said by L to be in favour of the Estate. However, as DJJ may file an appeal, that decision is not the final determination of S 821 for the purpose of 2SA.

24 On 4 May 2023, the trial of OC 49 was heard by Jeyaretnam J. We understand that closing submissions are due to be submitted by 5 June 2023.

25 In the meantime, AD 81 is pending a decision from this court and OSP 6 remains outstanding pending our decision in AD 81.

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Observations

26 We note that in SUM 2031, the Judge did not merely grant an interlocutory injunction pending the outcome of OC 49. She did not merely reach a tentative conclusion on the interpretation of two important provisions in 2SA, *ie*, cll 11 and 18, pending a decision thereon in OC 49. It appears that she reached a final decision as seen in her grounds of decision dated 28 February 2023: GD at [29]. Hence, the terms of the injunction she granted restrained P from commencing or maintaining any action for the Non-India Assets pending the final determination of S 821 instead of pending the outcome in OC 49 (*cf RGA Holdings International Inc v Loh Choon Phing Robin and another* [2017] 2 SLR 997 where the appellant had sought an interim prohibitory injunction in Suit 226 of 2016 to restrain the respondents from selling a property until the determination of that suit itself).

27 If that is the case, it would mean that the Judge had effectively granted L one of the main reliefs L had sought in OC 49, *ie*, the injunction. In so far as L had also sought a declaration, this was an overlap with the injunction.

28 On the other hand, it also appears that the parties have proceeded on the premise that the decision of the Judge granting the injunction is interlocutory in that it is still pending a final decision from the court hearing OC 49. For example, P had sought and obtained permission to appeal against the decision of the Judge. This suggests that that decision was an interlocutory one. In the circumstances, we are prepared to act on the premise that the Judge's decision was an interlocutory one and that the injunction she granted was pending a decision in OC 49, unless our decision in AD 81 renders the decision on this point in OC 49 academic.

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29 While both sides must have been aware that parties were proceeding with OC 49 in tandem with AD 81, neither side has informed us that in view of the hearing for OC 49, our decision in AD 81 is unnecessary. For example, P filed her submissions for AD 81 on 15 March 2023. At para 122, she simply says that the trial for OC 49 has been fixed for 4 May 2023, but it is uncertain how long it will be until the final determination of OC 49. There is no suggestion that our decision in AD 81 would be subject to the decision in OC 49. Neither is there a suggestion that OC 49 should await our decision in AD 81. If our decision in AD 81 is not final and binding on the parties and is still subject to a decision in OC 49, then we question whether there is any useful purpose in rendering a decision in AD 81 because OC 49 has been heard. Even if it is unclear when the decision in OC 49 will be rendered and there may be a further appeal from a decision in OC 49, a decision in AD 81 will not help P unless the decision in AD 81 is final and binding on the parties. If it does not so bind, a decision in AD 81 favourable to P will only mean that P can proceed with OSP 6 subject to the final determination in OC 49 on the question of an injunction and any further appeal from that decision.

30 Aside from P's claim for payments under cl 4(b) of 2SA and L's claim for damages for P's alleged breach in commencing OSP 6, the main dispute between the parties is whether: (a) P is precluded from commencing OSP 6 even if L is in breach of cl 7; and (b) if P is not precluded from doing so, whether L has in fact breached cl 7 and P is entitled to the reliefs sought in OSP 6. The main difference between OSP 6 and OC 49 appears to be that in OSP 6, P is seeking an order that L provide the Accounts and other consequential relief whereas this is not part of her counterclaim in OC 49. Nevertheless, there is an overlap between OSP 6 and OC 49 on the facts and the issues between P and L. It seems to us that the parties should not have proceeded with OC 49 in the meantime pending a decision in AD 81. This is because if the court in AD 81

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makes a decision that P is entitled to commence OSP 6 (assuming that L is in breach of cl 7), that may well reduce the scope of the litigation in OC 49 or even negate the need to carry on with OC 49 (leaving aside the question of P's claim for L's breach of cl 4(b) or L's claim for damages against P which could easily be resolved by the court).

31 As for L, her submissions for AD 81 were filed on 15 March 2023. There is no elaboration in L's submissions as to the interaction between the hearing in AD 81 and in OC 49. Like P, L's submissions do not say whether one should await the outcome of the other or why both should proceed in tandem.

The court's decision in respect of the appeal

32 Be that as it may, we will proceed to give our ruling on AD 81 which is the appeal before us. Whether the appeal should be allowed, and the injunction discharged, turns on the interpretation of cll 11 and 18 which state as follows:

> 11. Provided that the terms of this Agreement are fully complied with by [L], [P] also agrees not to commence any further litigation against the Estate or any of the other beneficiaries of the Estate, in relation to the Non-India Assets and/or matters connected with [S 821] and/or by using any information, correspondence and/or documents arising in relation to and pursuant to this Agreement, until after the trial in [S 821] has been concluded and any appeal(s) thereafter has been finally determined and/or when [S 821] is withdrawn and/or settled.
>
> …
>
> 18. In the event of any breach of this Agreement, the Parties shall only be entitled to sue on this Agreement and shall not be entitled to revive or pursue OS 928.

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33 P argues that because L has failed to provide the Accounts, P is entitled to commence a fresh action for the Accounts and other reliefs and is not confined to commencing a fresh action solely for a breach of 2SA.

34 On the other hand, L argues that even if she had failed to provide the Accounts, P is entitled only to commence action for breach of 2SA. It is implicit in L's arguments that she considers OSP 6 to be more than an action for breach of 2SA. Presumably, this is because OSP 6 was filed in the Family Justice Courts as opposed to being filed in the General Division of the High Court of Singapore. On the other hand, P does not make it clear whether she considers OSP 6 to be consistent with an action for breach of 2SA although it is clear that OSP 6 seeks reliefs other than as specifically provided in 2SA. For example, 2SA does not specifically provide for the appointment of an independent accountant to audit the Accounts if and when the Accounts are provided.

35 We are of the view that OSP 6 may be considered an action for breach of 2SA and may come within cl 18. However, if cl 18 prevails over cl 11, it is arguable whether P is entitled to the appointment of an independent accountant or the third and fourth reliefs claimed by P (see [11] above) until after the final determination of S 821.

36 In any event, we are of the view that cl 11 prevails over cl 18 in the circumstances and will elaborate below.

37 However, first, we observe that these clauses were not well drafted although it seems that they were drafted with input from the lawyers of the parties. There is an apparent inconsistency between the two.

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38 P argues that cl 18 was only meant to resolve disputes in OS 928 whereas cl 11 was meant to address the wider issue about the Non-India Assets. Hence, cl 11 prevails if L fails to provide the Accounts. However, in our view, this is not clearly stated in 2SA even with knowledge of the background of their dispute over the alleged past failure of L to provide any accounts. For example, 2SA does not clearly state that cl 18 is subject to cl 11 or that cl 11 will apply regardless of any other clause in 2SA.

39 On the other hand, while L argues that cl 18 is a general clause and covers a situation where even cl 7 is not complied with, this also is not clearly stated because it then seems to render the qualification in the opening words of cl 11 otiose. According to L, even if she fails to provide the Accounts, P can only sue for her to provide the Accounts (because of a breach of cl 7) but nothing else until S 821 is finally determined. Hence, regardless of whether L breaches cl 7, P is still bound to await the final determination of S 821 before P can file any other action or seek any other relief beyond the Accounts.

40 In granting P permission to appeal, the AD was of the tentative view that cl 18 is narrower in scope than cl 11. Under cl 18, P cannot revive OS 928 but under cl 11, P can commence litigation in relation to the Non-India Assets if L defaults in complying with cl 7.

41 We are of the view that if P is entitled only to sue on 2SA, this would render otiose the qualifying words in cl 11, "Provided that the terms of this Agreement are fully complied with …". That clause is meant to stress to L that if she does not want P to file any action for the Non-India Assets until the final determination of S 821, L has to comply with the terms of 2SA and especially the provision of the Accounts.

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42 Second, if L is correct in her argument, it would mean that regardless of whether she is in breach of 2SA, P cannot commence any action in respect of the Non-India Assets until after the final determination of S 821. But yet P may do so, even if L has complied with 2SA, so long as S 821 has been finally determined. In our view, if P's position were to be so constrained and remain the same whether L is in breach of 2SA or not, clear words to that effect are necessary. Clause 18 is not enough.

43 This brings us to the third point. In our view, cl 18 allows P to sue for breach of 2SA and precludes P from pursuing OS 928 or reviving the matters stated in OS 928, except for those stated in cl 11 of 2SA. It is not disputed that OSP 6 relates to the matters mentioned in cl 11.

44 In the circumstances, we are of the view that, if L has breached cl 7, P is not precluded from commencing OSP 6.

45 We come to P's argument that it is for L who is seeking to enforce cll 11 and 18, as interpreted by L, to show that L has in fact complied with cl 7. This is not a valid argument. If L's interpretation is correct, P is only entitled to sue for breach of 2SA even if L is in breach of cl 7.

46 Moving to the next point and assuming that P's interpretation of cll 11 and 18 is correct, P argues that L is indeed in breach of cl 7.

47 On the other hand, L has denied that she is in breach of cl 7 but her focus is instead firstly on cll 11 and 18. Secondly, she argues that P's pleadings in OC 49 do not allege a breach of cl 7 as such but only that the Accounts were not provided on time and P has waived the late compliance.

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48 We are of the view that L's second argument is not in respect of an issue before us because in SUM 2031, L had sought an injunction to restrain P from proceeding with OSP 6, not P's counterclaim in OC 49. In OSP 6, there is no pleading and P has clearly contended in her supporting affidavit that the accounts provided were not the Accounts required under cl 7 of 2SA. Indeed, the Judge proceeded on the premise that this was P's position. However, the Judge thought that it would not matter even if L had failed to provide the Accounts because of her decision on cll 11 and 18.

49 For the time being, we need only note that P has some basis to allege that L has breached cl 7. However, we need not decide whether L has breached cl 7 because we are not hearing OSP 6 or OC 49 at present. Neither do we need to rule on whether P's pleadings in OC 49 allege a breach of cl 7.

50 Finally, there was some argument by P as to whether the Judge was correct in granting the injunction in view of the principles in *American Cyanamid Co v Ethicon Ltd* [1975] 1 AC 396, *ie*, whether there is a serious question to be tried and whether the balance of convenience lies in favour of granting the injunction. This argument is misplaced. Once the Judge had interpreted cll 11 and 18 as she did, it was unsurprising that she granted the injunction. She had answered the question to be determined and the injunction was the consequence of her decision.

51 For the avoidance of doubt, we state that our decision that P is not restricted to suing for a breach of 2SA and may commence OSP 6 is a final decision which binds the parties in OC 49 as well as in OSP 6 (including SUM 145). It is a decision on a preliminary point which a court is entitled to make on its own accord (see O 9 r 19 of the Rules of Court 2021). Indeed, neither side suggested that our decision in AD 81 would necessarily be subject to the

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decision of the court hearing OC 49. We add that neither side suggested that oral evidence of the parties' intention is necessary or required in the exercise the court has undertaken for the interpretation of cll 11 and 18. That is also our view.

52 Therefore, we allow this appeal and set aside the injunction granted by the Judge. The consequence of our decision is that P is entitled to proceed with OSP 6 even though OC 49 has been heard but not yet decided.

53 We suggest that OSP 6 be fixed for hearing as soon as possible before Jeyaretnam J, if possible, since he has heard OC 49. It is for the learned judge to decide if he should defer his decision on OC 49 until he hears OSP 6 so as to avoid inconsistent decisions or avoid decisions or appeals being given or heard further apart in time than is desirable in the light of overlapping facts and/or issues between OSP 6 and OC 49. If directions for OSP 6 are required, it would make sense for Jeyaretnam J to give the directions.

54 We order L to pay P the costs of OA 10 and AD 81 fixed at $23,000 all in. We also order L to pay P the costs of SUM 2031 fixed at $10,000 all in.

55 The usual consequential orders are to apply.

Woo Bih Li
Judge of the Appellate Division

Aedit Abdullah
Judge of the High Court

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Lim Gerui and Estad Amber Joy (Drew & Napier LLC) for the appellant.
Kanapathi Pillai Nirumalan, Liew Teck Huat and Phang Cunkuang (Niru & Co LLC) for the respondent.

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