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

[2023] SGHCR 14

Originating Claim No 331 of 2022 (Summons 1409 of 2023)

Between

Art Ask Agency SL

… *Claimant*

And

Person(s) Unknown ("LXS-WL STORE") and others

… *Defendant*

GROUNDS OF DECISION

[Civil Procedure — Judgments and Orders — Enforcement]

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Art Ask Agency SL
v
Person(s) Unknown ("LXS-WL STORE") and others

[2023] SGHCR 14

General Division of the High Court — Originating Claim No 331 of 2022
(Summons 1409 of 2023)
AR Gan Kam Yuin
15, 26, 30 June 2023

28 August 2023

AR Gan Kam Yuin:

Introduction

1 The application before me arose out of an enforcement order made pursuant to the provisions of Order 22 of the Rules of Court 2021, under which the claimant sought to attach debts from a non-party in relation to more than 200 defendants. The disputes between the claimant and the non-party related to the non-party's entitlement to withhold parts of attached debts, the non-party's entitlement to costs, and the duration for which the enforcement order could continue to attach debts.

Parties and background

2 The claimant in this action is a Spanish company in the business of developing, marketing, selling, and distributing products for different brand

owners around the world. The defendants are unknown entities who operate or operated e-commerce stores on the AliExpress online or e-commerce platform ("**E-Market**").

3 The claimant obtained default judgment against the defendants in the US courts on 20 July 2020 ("**US Judgment**"). Pursuant to the US Judgment, each of the defendants was to pay statutory damages of US$50,000 to the claimant for wilful use of counterfeit trademarks on products sold through the E-Market.

4 On 14 October 2022 the claimant commenced this action against the defendants in Singapore, the cause of action being the unsatisfied US Judgment. The claimant obtained default judgments in HC/JUD 512/2022 ("**JUD 512**") and HC/JUD 28/2023 ("**JUD 28**") in Singapore against the defendants. Pursuant to JUD 512, each of the 204 defendants named therein was ordered to pay the claimant US$50,000 and interest, as well as to be jointly and severally liable for S$116,467.70 as costs for the action. Pursuant to JUD 28, each of the 10 defendants named therein was ordered to pay the claimant US$50,000 and interest, as well as to be jointly and severally liable for S$8,136.40 as costs for the action.

5 I shall now refer to these defendants as the enforcement respondents and to the claimant as the enforcement applicant. Payment was not made by any of the enforcement respondents. On 9 February 2023, the enforcement applicant took out enforcement proceedings to attach monies in 214 enforcement respondents' accounts with the non-party, Alipay Merchant Services Pte Ltd ("**AMS**"). According to the enforcement applicant, the identities and locations of the enforcement respondents were unknown and their only known assets were their accounts with AMS in Singapore.

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6 HC/EO 14/2023 ("**EO 14**") was issued on 10 February 2023, by which the Sheriff was authorized to attach debts which were due to each of the 214 enforcement respondents from AMS, whether immediately or at some future date or at certain intervals in the future, with a value corresponding to and limited by the terms of JUD 512 and JUD 28 respectively. Note 1 to EO 14 stated that "This enforcement order is valid in the first instance for 12 months beginning with the date of issue." Pursuant to EO 14, the Sheriff served a Notice of Attachment ("**NOA**") on AMS on 15 March 2023.

7 AMS objected to the attachment of certain parts of the debts which were the subject of the NOA and accordingly filed a Notice of Objection ("**NOO**"). The enforcement applicant in turn disputed those objections and filed a Notice of Dispute to Objection ("**NODO**"). AMS also took the position that it was entitled to deduct costs of S$100 from each debt it owed to each enforcement respondent before paying over any sums, a position which the enforcement applicant disagreed with.

8 Pursuant to directions from the Sheriff given in accordance with Order 22 r 10(4) of the Rules of Court 2021, AMS applied to Court by way of HC/SUM 1409/2023 ("**SUM 1409**") for, in essence, orders that:

(a) specific parts of the debts which had been attached under EO 14 be released;

(b) any and all debts due to each of the enforcement respondents from AMS at some future date or at certain intervals in the future be released from attachment after payment has been made by AMS to the Sheriff and the enforcement applicant pursuant to EO 14;

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(c) AMS be permitted to deduct S$100 from each debt owed by AMS to the respective enforcement respondents before paying the Sheriff and the enforcement applicant pursuant to EO 14.

Facts and Issues to be Determined

9 AMS is a separate and distinct legal entity from the entities who operate the E-Market and is not involved in operating the E-Market. The E-Market provides transaction services to the e-commerce store operators, including the enforcement respondents, whereas AMS provides account services to enable registered users of AMS' services to receive funds for goods and services sold on the E-Market and to withdraw funds from these registered users' AMS accounts.

10 AMS is licensed by the Monetary Authority of Singapore under the Payment Services Act 2019 as a major payment institution. Funds may be received into the AMS account of an e-commerce store operator who is a registered user of AMS' services but these accounts are not bank accounts. Rather, AMS holds these funds in an underlying bank account designated by AMS in the name of AMS. The funds in the underlying bank account are co-mingled funds from the various registered users of AMS' services, do not earn interest, and are held by AMS for the purpose of providing the AMS services.

11 AMS explained that in respect of the 214 enforcement respondents who are the subject of the NOA, each had its own AMS account save for 3 pairs of enforcement respondents who held 3 *shared* accounts. AMS furnished an Excel spreadsheet which presented the following information pertaining to each AMS account:

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(a) The total balance in the AMS account as at 28 March 2023, which AMS accepted was a debt owed to the corresponding enforcement respondent. I flag here that the NOA was served on AMS on 15 March 2023. However, the date 28 March 2023 was apparently chosen by AMS as being the date of the most recent information available to AMS as at the time of its response to the Sheriff upon being served the NOA.[1] More is said below about this difference in dates.

(b) Sums restrained as a security deposit in the AMS account for the benefit of the E-Market ("**Security Deposits**"), sums restrained upon AMS' receipt of complaints and supporting materials from third parties who had alleged intellectual property infringement against the enforcement respondent ("**IP Amounts**"), and sums restrained upon AMS' receipt of complaints and supporting materials from the enforcement applicant who had previously alleged intellectual property infringement against the Enforcement Respondent ("**EA IP Amounts**").

12 In respect of AMS' position in this application, that may be summarised as follows:

(a) AMS objected to paying over to the enforcement applicant the Security Deposits and the IP Amounts;

(b) AMS did not object to paying over to the enforcement applicant the EA IP Amounts;

(c) AMS did not object to paying over to the enforcement applicant the rest of the total balance in the AMS account as at 28 March 2023,

[1] AMS' written submissions at para 20(c).

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subject to being allowed to deduct S$100 for each of the debts owed to the 214 enforcement respondents before making the payment.

13 I clarify here that not all of the information above applied to all of the AMS accounts. For instance, there were AMS accounts in which no sums were restrained as Security Deposits, IP Amounts or EA IP Amounts. However, for the purposes of this application and in view of my decision on the amounts restrained, I need not go into the differing details of the respective accounts.

14 The enforcement applicant took the view that AMS had no right to hold back the Security Deposits or the IP Amounts, and that AMS was only entitled to a single deduction of costs of S$100 in respect of all the sums attached under the NOA. The enforcement applicant further argued that EO 14 had the effect of continuing to attach all amounts which may accrue in the enforcement respondents' AMS accounts from the service of the NOA, beyond 28 March 2023 and until 10 February 2024 (this being the date falling 12 months after the date on which EO 14 was issued). After 10 February 2024, the enforcement applicant could apply for the validity period of EO 14 to be extended if the amounts due to the enforcement applicant had not been fully satisfied.

15 In view of the foregoing, these are the issues before me which require determination:

(a) Issue (1): whether AMS must pay the Security Deposits to the enforcement applicant;

(b) Issue (2): whether AMS must pay the IP Amounts to the enforcement applicant;

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(c) Issue (3): whether AMS is entitled to costs of S$100 from each attached debt before making payment to the enforcement applicant, or whether AMS is only entitled to a single deduction of S$100 in costs in respect of all the sums attached;

(d) Issue (4): whether EO 14 attaches only to debts as at the date of service of the NOA, or whether it continues to attach all debts that may accrue in the AMS accounts until 10 February 2024 (or such time as its validity may be extended).

Issue (1): whether AMS must pay the Security Deposits to the enforcement applicant

16 Where any person objects to any attachment of a debt by the Sheriff, Order 22 r 10(1) read with Order 22 r 10(2) of the Rules of Court 2021 expressly requires the objector to file and serve a notice of objection which must "specify the property or debt in dispute, state the grounds of objection and *include any evidence supporting the grounds of objection*" [emphasis added]. Then, if the enforcement applicant does not accept the grounds of objection and if the Sheriff so directs, Order 22 r 10(4) read with Order 22 r 10(5)(*a*) of the Rules of Court 2021 requires the objector to apply to Court by summons "*supported by affidavit*" [emphasis added] seeking "an order to release the specified property or debt".

17 It is evident from Order 22 r 10 of the Rules of Court 2021 that the onus was on AMS, as the objector, to provide sufficient basis for the grounds of its objection, if it objected to the attachment of any part of the debts in the enforcement respondents' accounts with AMS and wanted the Court to order that those parts of the debts be released. This would be consistent with s 105 of the Evidence Act 1893 (2020 Rev Ed) ("The burden of proof as to any particular

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fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact is to lie on any particular person*"*) and s 108 of the same Act ("When any fact is especially within the knowledge of any person, the burden of proving that fact is upon that person").

18 AMS wished this Court to accept that AMS had *actually* (which was a point of fact) and *legitimately* (which was a point of law) restrained certain amounts in the AMS accounts as Security Deposits.

19 According to AMS, the Security Deposits were held by AMS for the benefit of the E-Market and in accordance with the Terms and Conditions ("**T&Cs**") governing the AMS accounts. The Court was referred to various clauses of the T&Cs.

20 I started with the T&Cs which appeared to govern the provision of payment services by AMS generally, as referenced in section 3 of the extract below.[2]

[2] AMS' supporting affidavit at p 15.

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3. The Alipay MS Services

1. The Alipay MS Services comprise of basic services ("**Basic Services**") and advanced services ("**Advanced Services**"). Once you have set up your Alipay MS Account, you will be able to receive the Basic Services. The Alipay MS Services that constitute Basic Services are as follows:

Basic Services	Settlement Service This service ("**Settlement Service**") enables you to: (a) receive into your Alipay MS Account settlement funds for goods and services which you have sold on the Alibaba Platforms or Approved Platforms, or for which payment is processed by Alipay MS' affiliates ("**Settlement Service (Receipt)**"); and (b) withdraw, at any time, all or part of the funds in your Alipay MS Account to your same name account ("**Settlement Service (Withdraw)**"). Transaction Records Inquiry You may view and manage your online activity through the Merchant Portal. Others Alipay MS may make available such other Basic Services from time to time.

2. Any or all of the Advanced Services are available only to selected registered users chosen by Alipay MS at its discretion ("**Selected User**"). The type of Advanced Service offered to a Selected User depends on the profile of the Selected User. Selected Users who choose to receive any or all of Advanced Services are required to accept additional or supplementary terms and conditions as notified to the Selected User. The additional or supplementary terms and conditions shall be deemed to form part of these Terms and Conditions.

21 It appeared from clause 3.2 of the extract above that Advanced Services (a) were not the same as Basic Services, (b) were available only to registered users selected by AMS at its discretion, and (c) could differ amongst selected users depending on their profile. Further, the selected users had to accept supplementary T&Cs ("**Supplementary T&Cs**") in order to receive the Advanced Services.

22 Neither the NOO filed by AMS nor AMS' affidavit filed in support of SUM 1409 stated or evidenced that all or any of the enforcement respondents whose accounts with AMS were the subject of the NOA, were *selected* users who had *accepted* the Supplementary T&Cs so as to receive Advanced Services. More specifically, in neither the NOO nor the supporting affidavit did AMS assert or furnish evidence that the particular enforcement respondents in whose

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accounts amounts had been restrained by AMS as Security Deposits, were selected users who had accepted the Supplementary T&Cs.

23 Even if the enforcement respondents in whose accounts amounts had been restrained as Security Deposits were indeed selected users who had accepted the Supplementary T&Cs so as to receive Advanced Services, AMS did not say or provide evidence that the *types* of Advanced Services which all these enforcement respondents were receiving *included* payment for the Security Deposits service.

24 AMS' supporting affidavit for SUM 1409 merely stated that the T&Cs and the Supplementary T&Cs were publicly available,[3] which was clearly inadequate.

25 Nonetheless, I went on to consider the Supplementary T&Cs.[4] In this regard, it should be noted from the subsection headed "Alibaba Platform Security Deposit" in the extract below that even if the Supplementary T&Cs applied, the enforcement respondents must also (a) be registered members of the Alibaba Platforms; and (b) have authorised the Alibaba Platforms to freeze a certain amount in their AMS accounts as the Security Deposit. Further, the Alibaba Platforms must have given instructions to AMS to freeze the Security Deposits in the account-holders' accounts.

[3] AMS' supporting affidavit at para 16(b).

[4] AMS' supporting affidavit at pp 26-27.

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Supplementary Terms and Conditions for Alibaba Payment Service (Advanced Service)

These Supplementary Terms and Conditions for Alibaba Payment Service (Advanced Service) (the "**Supplementary Terms and Conditions (Alibaba Payment Service)**") supplement the Alipay MS Terms and Conditions relating to the availability and use of the Alipay MS Services ("**Terms and Conditions**") between you and Alipay Merchant Services Pte. Ltd. (company registration number: 201735998W). Please read them carefully.

You agree that the Terms and Conditions you entered into with Alipay MS will be supplemented as set out in these Supplementary Terms and Conditions (Alibaba Payment Service) with immediate effect.

1. SCOPE OF THESE SUPPLEMENTARY TERMS AND CONDITIONS

1. These Supplementary Terms and Conditions (Alibaba Payment Service) relate to the service ("**Alibaba Payment Service**") which Alipay MS will provide to enable you to pay for the Alibaba Platform Security Deposit and Alibaba Platform fees using the funds in your Alipay MS Account.

2. These Supplementary Terms and Conditions (Alibaba Payment Service) supplement the Alipay MS Terms and Conditions between you and Alipay MS. These Supplementary Terms and Conditions (Alibaba Payment Service) shall be deemed to form part of the Terms and Conditions. Accordingly, all references in the Terms and Conditions to the "Terms and Conditions" shall be construed as references to the Terms and Conditions as supplemented by these Supplementary Terms and Conditions (Alibaba Payment Service). Subject to the provisions of these Supplementary Terms and Conditions (Alibaba Payment Service), the Terms and Conditions shall remain in full force and effect.

3. Capitalised words and phrases used in these Supplementary Terms and Conditions (Alibaba Payment Service) shall have the meaning given to them in the Terms and Conditions, unless otherwise defined in these Supplementary Terms and Conditions (Alibaba Payment Service).

4. The Alibaba Payment Service is subject to all provisions under the Terms and Conditions, as well as the additional terms set out below.

2. ALIBABA PAYMENT SERVICE

1. If you are eligible for and have elected to receive the Alibaba Payment Service, you will be able to pay for the Alibaba

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Platform Security Deposit and Alibaba Platform fees using the funds in your Alipay MS Account.

2. **Alibaba Platform Security Deposit.**

A. If you are a registered member of the Alibaba Platforms, the transaction services in connection with the sales of products and services between you and buyers on the Alibaba Platforms are set out in separate terms and conditions with the respective Alibaba Platforms ("**Alibaba Platform Terms**"). Upon entering into the Alibaba Platforms Terms, you may have authorized the Alibaba Platforms to freeze a certain amount in your Alipay MS Account as the security deposit to secure your due performance of obligations under the Alibaba Platforms Terms ("**Alibaba Platform Security Deposit**").

B. If so, you hereby authorize Alipay MS to receive instructions from the Alibaba Platforms regarding the Alibaba Platform Security Deposit on your behalf and to act in accordance with the instructions received. You confirm that Alipay MS may deem such instructions received from the Alibaba Platforms as equivalent to a specific instruction provided by yourself, and Alipay MS will not be required to verify with you the authenticity, accuracy and validity of such instructions received from the Alibaba Platforms, or whether the instructions are in compliance with the Alibaba Platform Terms.

C. Alipay MS will act in accordance with the instructions received from the Alibaba Platforms, including deducting from your Alipay MS Account balance such amount as stated in the instructions such that your total available Alipay MS Account balance is reduced, and reflecting such Alibaba Platform Security Deposit in your transaction records (which will not be part of your available Alipay MS Account balance). Alipay MS will also administer the Alibaba Platform Security Deposit on an ongoing basis in accordance with any instructions received from the Alibaba Platforms from time to time, including to deduct any sums from the Alibaba Platform Security Deposit and to transfer such amounts to the Alibaba Platform, or to increase the Alibaba Platform Security Deposit amount (by deducting funds from your Alipay MS Account balance) from time to time. We may also receive instructions from the Alibaba Platforms to freeze your Alipay MS Account balance in the event the Alibaba Platform Security Deposit is insufficient to cover your liability under Alibaba Platform Terms, or any increase of the Alibaba Platform Security Deposit is unsuccessful. You hereby authorize us to act in accordance with the instructions received from the Alibaba Platforms.

D. You will be able to see on your transaction history when you log into the Merchant Portal all transactions related to your Alibaba Platform Security Deposit.

E. For the avoidance of doubt, the Alibaba Platform Security Deposit is not allowed to be used for making any payments by you without prior consent from the Alibaba Platforms.

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26 Only AMS would know the full facts and details, and have the necessary supporting documents, to prove that the Supplementary T&Cs applied to the enforcement respondents in whose accounts AMS had restrained Security Deposits, and that the amounts so restrained were authorized by these enforcement respondents, before the NOA was served on AMS. However, AMS proffered absolutely no evidence whatsoever to prove any of these factual matters.

27 I will now turn to Issue (2), which is whether AMS must pay the IP Amounts to the enforcement applicant, before coming back and making some points that apply equally to Issues (1) and (2).

Issue (2): whether AMS must pay the IP Amounts to the enforcement applicant

28 The contractual provisions relied on by AMS were set out in clause 7 of a document titled "Schedule C General Terms and Conditions" as extracted below, which were described as being applicable to all services provided by AMS.[5]

> 7. If we receive a complaint and supporting materials (such as purchase records or a Temporary Restraining Order issued by a court) from a third party right holder alleging intellectual property infringement against you, we may, in our sole discretion, terminate, suspend or limit your use of the Alipay MS Services or access to funds in your Alipay MS Account. The restraints we may put on your Alipay MS Account include but are not limited to freezing all or part of the funds in your Alipay MS Account. These restraints may remain in place until you fully resolve the disputes with the third party complainant. In the event that you and the third party complainant reach a settlement agreement, we may transfer funds from your Alipay MS Account to the third party complainant or its representative, in accordance with and for the purpose of fulfilling the settlement agreement.

[5] AMS' supporting affidavit at pp 20-21.

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29 The first thing to note was that AMS had to have received a complaint and supporting materials (such as purchase records or a Temporary Restraining Order issued by a court) from a third party right holder alleging intellectual property infringement against an enforcement respondent. If that happened, AMS then had the right to exercise its sole discretion to do various things including freezing all or part of the funds in the enforcement respondent's AMS account. This was expressed not as an obligation but as an entitlement that accrued to AMS ("may", not "must"). AMS also had the right (but, again, not the obligation) to keep the restraints in place until the enforcement respondent's dispute with the third party complainant was fully resolved.

30 Only AMS would know the full facts and details, and have the necessary supporting documents, to prove that AMS had in fact received complaints and supporting materials from a third party right holder alleging intellectual property infringement against the enforcement respondents in whose accounts AMS had restrained the IP Amounts, and to prove that thereupon, AMS had indeed exercised its discretion to freeze the IP Amounts in favour of the third parties before the NOA was served on AMS.

31 The points I will now make apply both to Issues (1) and (2).

32 What was required of AMS under SUM 1409 was no more than what would have been required at the show cause stage of a garnishee proceeding under Order 49 of the revoked Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("**ROC 2014**"). AMS did not show cause to my satisfaction. In its supporting affidavit, apart from explaining its position about the Security Deposits and the IP Amounts, AMS did not dispute that the sums in the enforcement respondents' AMS accounts were attachable for the benefit of the enforcement applicant except for the Security Deposits and the IP Amounts. This put paid to AMS'

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argument at the oral hearing of SUM 1409 that the enforcement applicant had not crossed the threshold of proving the existence of debts available for attachment.

33 It was also no answer for AMS to argue that the Security Deposits and the IP Amounts could not be accessed by the enforcement respondents and to urge upon me that because the enforcement applicant cannot be in a better position than the enforcement respondents, the Security Deposits and the IP Amounts could not be attached for the benefit of the enforcement applicant. Such arguments presupposed that AMS had satisfied me that the Security Deposits and the IP Amounts had, as a matter of fact, been actually set aside and had, as a matter of law, been legitimately set aside. For reasons I have explained, this presupposition is invalid at present.

34 Accordingly, on Issue (1), I found that pursuant to EO 14, AMS must pay the Security Deposits to the enforcement applicant and on Issue (2), I found that AMS must pay the IP Amounts to the enforcement applicant.

Issue (3): whether AMS is entitled to costs of S$100 from each attached debt before making payment to the enforcement applicant, or whether AMS is only entitled to a single deduction of S$100 in costs in respect of all the sums attached

35 The enforcement applicant relied on the wording of several provisions and documents in support of its argument that AMS' entitlement to costs of S$100 is a single entitlement in respect of the entire NOA, and not in respect of each attached debt under that NOA.

36 First, Order 22 r 6(8) of the Rules of Court 2021 provides:

How enforcement order is carried out (O. 22, r. 6)

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> (8) *A non-party who is served with a notice of attachment is entitled to claim costs of $100 from the Sheriff but only if the claim is made within 14 days after service*, and the non-party may deduct that amount from the debt owing from the non-party to the enforcement respondent which is attached under the notice of attachment prior to handing or paying over the sums mentioned in paragraph (10).
>
> [emphasis added]

37 Secondly, paragraph 6 of the Notice to Non-Party which was issued with the NOA states as follows:

> Pursuant to Order 22, Rule 6(8) of the Rules of Court 2021, *a Non-Party who is served with a Notice of Attachment is entitled to claim costs of $100 from the Bailiff* provided the claim is made within 14 days after service, and *the Non-Party may deduct that amount from the debt owing from the Non-Party to the Enforcement Respondent(s) which is attached under the Notice of Attachment* prior to handing or paying over the sums mentioned in paragraph (4) above."
>
> [emphasis added]

38 Thirdly, Note 1 to the NOA states as follows:

> A Non-Party *(who is anyone who is not the Enforcement Respondent or his employee) who is served with this Notice of Seizure is entitled to claim costs of $100 from the Sheriff* (to be deducted from the debt owing from the Non-Party to the Enforcement Respondent which is attached under this Notice of Seizure or Attachment) provided the claim is made within 14 days of service of this Notice of Seizure.
>
> [emphasis added]

39 I did not accept these arguments. First, the reference in Order 22 r 6(8) of the Rules of Court 2021 to service of "a" NOA on the non-party speaks to how the non-party becomes drawn into the proceedings and becomes entitled in principle to costs. It does not deal with whether the non-party's entitlement of S$100 is pegged to the NOA as a whole or to the attached debt or debts. In fact, Order 22 r 6(8) of the Rules of Court 2021 goes on to state that "the non-party may deduct *that* amount *from the debt owing* from the non-party to the

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enforcement respondent *which is attached under the notice of attachment* prior to handing or paying over the sums mentioned in paragraph (10)" [emphasis added]. In my view, the latter part of Order 22 r 6(8) of the Rules of Court 2021 speaks to the point that the non-party's costs of S$100 are pegged to the attached debt rather than to the NOA.

40 Secondly, paragraph 6 of the Notice to Non-Party essentially repeats Order 22 r 6(8) of the Rules of Court 2021, with minor variations in language which do not affect the issue under consideration, and my view is therefore the same.

41 Thirdly, Note 1 to the NOA also links the non-party's entitlement to costs to its having been served with the NOA, but – similar to Order 22 r 6(8) of the Rules of Court 2021 and paragraph 6 of the Notice to Non-Party – goes on to make it clear that that S$100 amount is "to be deducted *from the debt owing* from the Non-Party to the Enforcement Respondent *which is attached under this Notice of Seizure or Attachment*" [emphasis added].

42 The enforcement applicant further argued that the costs for the non-party should be a token sum to ameliorate the minor inconvenience occasioned to the non-party by having to administratively pay the Sheriff rather than the enforcement respondent. The enforcement applicant also submitted that the work undertaken by a non-party responding to an enforcement order is not onerous and the non-party need not even look behind the judgment as payment made pursuant to an enforcement order discharges the non-party's liability to the enforcement respondent (see Order 22 r 4 of the Rules of Court 2021).

43 In response, AMS argued that allowing costs of S$100 in respect of each NOA regardless of how many debts were attached under that NOA was unfair

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to the non-party, and pointed out that a significant amount of work had been undertaken to ascertain the individual accounts of each enforcement respondent, implement restraints on each account so as to prevent dealings with the amounts attached and to comply with the enforcement order, work out how much was due to each enforcement respondent and available for attachment, and so on. According to AMS, the task was made more difficult by the fact that the names and addresses of the enforcement respondents were unknown although Order 22 r 2(4)(*b*) of the Rules of Court 2021 required their names and addresses to be stated in the affidavit supporting the application for the enforcement order.

44 I did not think it was necessary or instructive to ask how much work the non-party had to do or should have done in response to the NOA. The S$100 amount set out in Order 22 r 6(8) of the Rules of Court 2021 would apply equally to a situation where, by way of example, an enforcement applicant managed to attach a single debt of S$100,000; in that situation, the non-party would still be entitled to deduct S$100. The S$100 was stipulated in Order 22 r 6(8) of the Rules of Court 2021 as a flat amount that did not require the Court to assess whether the non-party 'deserved' that sum or not.

45 It is not dissimilar to the approach which was taken under the ROC 2014 where a garnishee was entitled to costs of either S$300 or S$150 depending solely on whether or not it had filed an affidavit (see Order 59 Appendix 2 Part III para 4(a) of the ROC 2014). No distinction was made, for instance, between garnishees who had filed a voluminous affidavit and garnishees who had filed a one-page affidavit. In my view, and drawing on the example given above, even if the non-party could show that it had done a significant amount of work in response to a NOA which attached a single debt of S$100,000, I did not think the Court would be able to award the non-party more than S$100. Whether this is a blunt instrument is a matter beyond my remit.

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46 The enforcement applicant urged upon me the point that if AMS were awarded costs of S$100 for each debt, AMS could have a potential windfall of S$21,400 (S$100 x 214 accounts). This, measured against the possible total recovery by the enforcement applicant of just over US$200,000 (based on the figures disclosed by AMS), was disproportionate and unfair and could not be allowed.

47 For the same reasons as set out at paragraphs 44 and 45 above, I did not think it was useful to ask how much the non-party might receive or compare it with how little the enforcement applicant might recover.

48 The enforcement applicant also reminded me that the Sheriff charged S$100 and not S$100 x 214 for serving the NOA. In my view, this did not assist the enforcement applicant; the Sheriff's charges were based on the Fourth Schedule Part 3 item 14 of the Rules of Court 2021 whereas the S$100 amount was based on Order 22 r 6(8) of the Rules of Court 2021. It may also be – but again this is beyond my remit and does not affect my decision – that the Sheriff's charges for the provision of services were legislated with reference to different considerations than those relevant to non-parties to an enforcement order.

49 In conclusion, on issue (3), I was of the view that the non-party's entitlement to costs of S$100 may be deducted from each debt that was attached under the NOA and I did not accept that the non-party may only deduct one sum of S$100 because it was served with one NOA.

Issue (4): whether EO 14 continues to attach all debts that may accrue in the AMS accounts until 10 February 2024

50 The enforcement applicant submitted that because Order 22 r 2(2)(*c*) of the Rules of Court 2021 states that an enforcement order authorises the Sheriff

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"to attach a debt which is due to the enforcement respondent from any non-party, whether immediately or *at some future date or at certain intervals in the future*" [emphasis added], taken with the fact that EO 14 is valid in the first instance for 12 months beginning from the date of issue (pursuant to Order 22 r 2(5) of the Rules of Court 2021), EO 14 entitled the enforcement applicant to attach the debts which continued to accrue in the enforcement respondents' AMS accounts beyond 28 March 2023 and until 10 February 2024. If, by that date, JUD 512 and JUD 28 with interest and costs due to the enforcement applicant had not been satisfied, the enforcement applicant could apply to extend the validity of EO 14, pursuant to Order 22 r 2(6) of the Rules of Court 2021; in that event and if the application were granted, the attachment would extend to debts that continue to accrue until the expiry of that extended validity.

51 In support of this argument, the enforcement applicant relied on the wording of Order 22 r 2(2)(*c*) of the Rules of Court 2021, the validity period of EO 14, and AMS' affidavit in support of SUM 1409 where AMS stated that "JWS's email attaches an excel spreadsheet containing a breakdown of the amounts owing that were available to be attached in respect of each Enforcement Respondent (correct as of 28 March 2023). The restraints that AMS has imposed on the respective Alipay MS accounts of the Enforcement Respondents prohibit withdrawals but do not prohibit deposits. Therefore, the sums available to be attached may have increased since 28 March 2023 in light of fresh incoming funds after 28 March 2023."[6]

52 I did not accept the enforcement applicant's position and will deal with each of these points in turn.

[6] AMS' supporting affidavit at para 13.

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53 First, I drew guidance from the commentaries on Order 22 of the Rules of Court 2021 contained in *Singapore Rules of Court A Practice Guide* (Chua Lee Ming editor-in-chief) (Academy Publishing, 2023) as well as in *Singapore Civil Procedure 2022* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2022). Two key aspects impressed themselves on me. One, Order 22 of the Rules of Court 2021 simplified or streamlined the enforcement process to introduce a single application for a single enforcement order rather than the separate applications, each with its own rules and processes, for Writs of Seizure and Sale, garnishee proceedings, charging orders and so on, that existed under the ROC 2014. Two, there is no indication that the intention was to make a significant change in the substantive law governing each mode of enforcement.

54 Nothing in the Hansard or the Civil Justice Commission Report (29 December 2017) ("CJC Report") suggested any such intention either. Paragraph 1 of Chapter 17 of the CJC Report says "This Chapter sets out the provisions for enforcement of judgments and orders. It simplifies and consolidates the existing Order 45 to Order 50" whilst paragraph 3 of Chapter 17 says "Rule 2 provides for a single enforcement application to be taken out so that the enforcement applicant does not need to take out multiple applications for each method of enforcement."

55 It was in this light that I understood the wording of Order 22 r 6(4)(*f*) of the Rules of Court 2021, the material part of which reads: "whether the money is due immediately or *at some future date or at certain intervals in the future*" [emphasis added]. In my view, this was simply a clarification or restatement of the common law principles that had sprung up around garnishee proceedings under the ROC 2014 to explain that debts which were accruing due (ie. debts payable at a future time but arising from an existing obligation) could be garnished whereas debts arising from a contingent obligation could not (see, for

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example, *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) at paragraph 49/1/10).

56 Secondly, as for the validity period of EO 14, I did not agree that this would mean that a NOA served under EO 14 would carry on attaching debts for the same period as EO 14 was valid for. It is clear from the provisions of Order 22 r 6(4) of the Rules of Court 2021, which set out *how* an enforcement order is carried out by the Sheriff, that each mode of enforcement under an enforcement order takes effect when the Sheriff takes the steps *specific* to that mode of enforcement in accordance with Order 22 r 6(4)(*a*) to (*g*) of the Rules of Court 2021.

57 For example, under Order 22 r 6(4)(*a*) of the Rules of Court 2021, an enforcement order for delivery or possession of movable property is carried out by the Sheriff "*by taking* physical possession of the movable property *or affixing* the Sheriff's seal on the movable property" [emphasis added]. Similarly, a debt is attached "*by serving* a notice of attachment" [emphasis added] in accordance with Order 22 r 6(4)(*e*) (for financial institutions) or (*f*) (for other entities) of the Rules of Court 2021.

58 In this case, the attachment of debt under EO 14 had been carried out by the Sheriff *by serving* the NOA on AMS on 15 March 2023. What debts were thereby attached would be determined by the operation of Order 22 r 6(4)(*f*) of the Rules of Court 2021, that is, the meaning of the words "whether immediately or at some future date or at certain intervals in the future", as to which I have already made my finding above, and not be determined by the validity period of EO 14. If I were to hold that debts continued to be attached after 15 March 2023 when the Sheriff had carried out the attachment of debt under EO 14 by serving

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the NOA on 15 March 2023, this would go well beyond the wording of Order 22 r 6(4)(*f*) of the Rules of Court 2021.

59 Thirdly, AMS' affidavit appeared to suggest that AMS itself took the view that the NOA had a continuing effect beyond the point of service on 15 March 2023, up to 28 March 2023 and beyond it.[7] My response to that was that even if this was AMS' view, I was not constrained to agree with it and I did not agree with it.

60 Accordingly, I held that the debts in the enforcement respondents' accounts with AMS that were "due" when the NOA was served on AMS (whether due immediately or at some future date or at certain intervals in the future) were attached by the NOA but the NOA could not attach debts which became due or may become due on the happening of a contingency which had not as yet materialised when the NOA was served on AMS. Further, I held that EO 14 did not continue to attach all debts that may accrue in the AMS accounts until 10 February 2024 unless those debts were "due" as at 15 March 2023 within the meaning of Order 22 r 6(4)(*f*) of the Rules of Court 2021.

Conclusion

61 After hearing submissions from the parties, I awarded costs of the application in SUM 1409 to be paid by AMS to the enforcement applicant, which I fixed at $12,000 with disbursements agreed at $2,020. I gave directions to the parties to deal with the working out of the amounts to be paid over by AMS but there is no need to set these out for the purposes of these grounds.

62 I thank counsel for their assistance.

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[7] AMS' supporting affidavit at para 13.

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Gan Kam Yuin
Assistant Registrar

Lim Gerui and Melinna Teo Jue Luo (Drew & Napier LLC) for the claimant/enforcement applicant;
Mohammed Reza, Nigel Pereira and Darren Low Jun Jie (JWS Asia Law Corporation) for the non-party

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