IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 70

Originating Summons No 907 of 2017 (Summons No 50 of 2018 & Summons No 281 of 2018)

Between

SUMBER INDAH PTE LTD

… Plaintiff

And

KAMALA JEWELLERS PTE LTD

… Defendant

GROUNDS OF DECISION

[Civil Procedure] — [Judgments and Orders] — [Jurisdiction] — [Inherent Powers] — [Extension of Time]

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Sumber Indah Pte Ltd
v
Kamala Jewellers Pte Ltd

[2018] SGHC 70

High Court — Originating Summons No 907 of 2017 (Summons No 50 of 2018 & Summons No 281 of 2018)
Tan Siong Thye J
23 January 2018

22 March 2018

Tan Siong Thye J:

Introduction

1 On 2 January 2018, the defendant in Originating Summons No 907 of 2017 ("OS 907/2017"), Kamala Jewellers Pte Ltd ("the Defendant"), filed Summons No 50 of 2018 ("Summons 50/2018"), to seek an order of the court for an extension of time to comply with its payment obligations under a settlement agreement recorded as a consent order of the court. The Defendant failed to pay the fourth instalment payment of $100,000 which was due on 15 December 2017 and it wanted the court to allow this payment to be made forthwith. The Defendant also sought an extension of time for the payment of the fifth and final instalment of $100,000 which would be due on 15 January 2018.

2 On 16 January 2018, the plaintiff, Sumber Indah Pte Ltd ("the Plaintiff") filed Summons No 281 of 2018 ("Summons 281/2018"), for an order that the Defendant, and/or some other person appointed by the court, take all necessary steps to complete the sale of the shop-house at 101/101A Serangoon Road, Singapore 218006 ("the Property") to the Plaintiff. This property lies at the very heart of this dispute which will be elaborated below.

3 At the conclusion of the consolidated hearing for both Summons 50/2018 and Summons 281/2018, I dismissed the Defendant's application for an extension of time, primarily on the ground that the court does not have the power to vary the terms of a consent order, as it is essentially a settlement agreement entered into by the parties. Furthermore, this case did not warrant the court to invoke its inherent powers under O 92 r 4 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules of Court") to prevent an injustice or an abuse of the court process. Consequently, I granted the application for the sale of the property to be completed.

4 The Defendant is dissatisfied with my decisions in Summons 50/2018 and Summons 281/2018. I now furnish the grounds for my decisions.

Facts

The parties

5 The Plaintiff is a Singapore incorporated company in the business of electronics wholesale and trade.[1] The Defendant is a Singapore incorporated company in the business of jewellery retail.[2]

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1 Jaikishin B Kirpalani's 1st Affidavit dated 11 August 2017 ("Jaikishin's 1st Affidavit"), para 3.

2 Jaikishin's 1st Affidavit, para 4.

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Background to this dispute

The genesis of the loan

6 On 7 March 2016 the Defendant entered into a contract to purchase the Property from Nalli Chinnasami Chetty Pte Ltd ("NC Chetty"). The Defendant's counsel, in his submissions, stated that the Property was purchased by the Defendant for $5,700,000. The completion of the sale was scheduled on 29 July 2016. However, the Defendant faced financial difficulty in completing the sale, as it was short of $1,000,000 cash.

7 Sometime in August 2016, Senthil Kumaran Narayanasamy ("Senthil"), a director of the Defendant, approached Jaikishin B Kirpalani ("Jaikishin"), a director of the Plaintiff, through a real estate agent Dilip Mahtani ("Dilip"), with an urgent request for a cash loan of $1,000,000. As at August 2016, the Defendant claimed to have paid close to $1,500,000 towards the purchase of the Property. However, the Defendant would stand to lose this money if it failed to complete the purchase of the Property within 21 days of 29 July 2016, pursuant to a Notice to Complete under The Law Society of Singapore's Conditions of Sale 2012.

8 Following the negotiations between Senthil and Jaikishin, the parties reached an agreement on 17 August 2016. The terms of the agreement are:[3]

(a) the Defendant would grant the Plaintiff an option to purchase the Property at $4,800,000 ("the Option"), exercisable between 18 February 2017 and 17 May 2017;

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[3] Jaikishin's 1st Affidavit, para 12.

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(b) upon the granting of the option, the Plaintiff would make a one-time payment of $1,000,000 to the Defendant;

(c) the Defendant would transfer $500,000 of the $1,000,000 back to the Plaintiff as soon as it was able to secure a mortgage over the Property;

(d) the other $500,000 would be regarded as payment by the Plaintiff towards the purchase price of the Property ("the Loan");

(e) however, in the event that the Defendant made full repayment of the Loan to the Plaintiff by 30 November 2016, the option to purchase would be rendered null and void;

(f) in addition, each of the directors of the Defendant would provide the Plaintiff with a personal guarantee to repay the Loan upon demand ("the Guarantee").

9 Thus, the Loan was secured by two collaterals, namely:

(a) the Option;[4]

(b) and the Guarantee, which was a personal guarantee by each of the three directors of the Defendant, namely Narayanasamy s/o Muthu, Kamala d/o Pariasamy and Senthil, to pay the Plaintiff the sum of $500,000 upon demand.[5]

10 The Option granted to the Plaintiff was for the sum of $4,800,000 as agreed by the parties. The Defendant had agreed on this purchase price, which

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4 Jaikishin's 1st Affidavit, pp 32–35.

5 Jaikishin's 1st Affidavit, pp 37–42.

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was lower than what it had paid for the Property, probably because it had taken into consideration the initial $1,000,000 cash loan advanced by the Plaintiff at such short notice.

11 Even though the parties had come to an agreement and signed the Option and the Guarantee on 17 August 2016, the Plaintiff was advised by its then solicitors, M/s KSCGP Juris LLP, that the Option and the Guarantee should be post-dated because the Defendant could not have validly given the Plaintiff an option to purchase the Property before the Defendant's purchase of the Property was completed. The Defendant completed its purchase of the Property from NC Chetty on 22 August 2016.[6] With the consent of both the Plaintiff and the Defendant, the Option and the Guarantee were post-dated to 23 August 2016.[7]

12 On 17 August 2016, the same day that the Option and the Guarantee were signed, the Plaintiff transferred $1,000,000 to the Defendant by a cashier's order.[8] On 18 August 2016, Dilip informed Jaikishin that the Defendant had secured a mortgage on the Property from IFS Capital Limited, and would thus be able to return $500,000 as agreed (see [8(c)] above). On 22 August 2016, $500,000 was duly transferred by the Defendant to the Plaintiff via a cashier's order.[9]

13 On 6 September 2016, the Plaintiff lodged Caveat No IE/602349Q ("the First Caveat") on the Property, to reflect its interest in the Property pursuant to the Option.[10]

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6 Jaikishin's 1st Affidavit, para 14; Senthil Kumaran Narayanasamy's 1st Affidavit dated 23 August 2017 ("Senthil's 1st Affidavit"), para 7.

7 Jaikishin's 1st Affidavit, para 14.

8 Jaikishin's 1st Affidavit, p 44.

9 Jaikishin's 1st Affidavit, p 46.

10 Jaikishin's 1st Affidavit, pp 49–50.

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The first failure to repay

14 It was undisputed between the parties that the Defendant failed to make repayment of the Loan to the Plaintiff by 30 November 2016.[11] On 17 February 2017, the Plaintiff's then solicitors, M/s Central Chambers Law Corporation, informed the Defendant of the Plaintiff's intention to exercise the Option.[12] This letter also stated that despite several reminders, the Defendant had failed to provide the Plaintiff with the name of the solicitors who were acting for them in the sale of the Property, and that if it remained unfurnished the Plaintiff would exercise the Option by leaving the completed acceptance portion of the Option at the Defendant's registered address.

15 On 17 February 2017 the solicitors for the Defendant, M/s S K Kumar Law Practice LLP ("S K Kumar"), responded to the Plaintiff by way of a letter. They opposed the intended exercise of the Option on the ground that the Loan was already secured by the Guarantee, which thus rendered the Option invalid.[13] The letter also contained allegations that there was an interest of 36% per annum on the Loan, which rendered it illegal and unenforceable.[14]

16 On 24 February 2017 the Plaintiff, who by then was represented by M/s Dentons Rodyk & Davidson LLP ("Dentons Rodyk"), sent a reply to S K Kumar denying the contention that the Guarantee invalidated the Option, as well as the allegation that there was a 36% per annum interest being charged on the Loan.[15] On the same day, Dentons Rodyk sent a letter to the Defendant's

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11 Jaikishin's 1st Affidavit, para 21.

12 Jaikishin B Kirpalani's 3rd Affidavit dated 28 August 2017 ("Jaikishin's 3rd Affidavit"), p 10.

13 Senthil's 1st Affidavit, SKN-2, p 15.

14 Senthil's 1st Affidavit, SKN-2, p 4.

15 Senthil's 1st Affidavit, SKN-2, p 15.

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directors demanding repayment of the Loan pursuant to the Guarantee.[16]

17 Despite this letter of demand, neither the Defendant nor its directors in their personal capacity made repayment of the Loan to the Plaintiff. Dentons Rodyk, therefore, wrote to S K Kumar again on 6 March 2017 indicating that they would be taking steps to recover the sum from the Defendant.[17] Statutory demands dated 6 March 2017 were subsequently served on each of the Defendant's directors.[18] However, still no repayment was made.

The Plaintiff exercised the Option on 16 May 2017

18 On 16 May 2017 the Plaintiff's new solicitors, M/s Drew & Napier LLC ("Drew & Napier"), exercised the Option by leaving the completed acceptance portion of the Option at the Defendant's registered address.[19] On the same day, following the exercise of the Option, the Plaintiff lodged Caveat No IE/839566H on the Property ("the Second Caveat").[20] Thereafter, Drew & Napier wrote to the Defendant to confirm that the Option had been validly exercised, as well as to request documents necessary for the completion of the sale.[21]

19 Pursuant to Clause 6 of the Option, the sale of the Property had to be completed within 14 weeks of the exercise of the Option (*ie*, 22 August 2017).[22] However, instead of any progress being made towards the completion of the

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16 Senthil's 1st Affidavit, SKN-2, p 6.

17 Senthil's 1st Affidavit, SKN-2, p 3.

18 Senthil's 1st Affidavit, SKN-2, pp 17–85.

19 Jaikishin's 1st Affidavit, para 22.

20 Jaikishin's 1st Affidavit, p 65.

21 Jaikishin's 1st Affidavit, pp 52–53.

22 Jaikishin's 1st Affidavit, p 33.

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sale of the Property, the Plaintiff received a letter dated 2 August 2017 from the Singapore Land Authority ("SLA"). SLA informed the Plaintiff that the Defendant had applied to cancel the First Caveat, and that the said caveat would be removed if an order of court to the contrary was not served on the Registrar of Titles by 4 September 2017.[23] This prompted the Plaintiff to file OS 907/2017 on 11 August 2017 to seek a declaration that the First Caveat should not be cancelled. The Plaintiff subsequently received another letter from SLA on 17 August 2017 giving notice that the Defendant had also applied to remove the Second Caveat.[24] OS 907/2017 was accordingly amended to include a prayer that the Second Caveat also not be cancelled.[25]

The settlement agreement leading to the consent order

20 At the hearing of OS 907/2017 on 29 August 2017, the parties informed the court that they had come to a settlement on the matter and applied for the terms of this settlement agreement to be recorded as a consent order of court. This was recorded as Order of Court No 5928 of 2017 (HC/ORC 5928/2017) dated 29 August 2017 ("the Consent Order"). The material terms of the Consent Order are as follows:[26]

> … IT IS HEREBY DECLARED *BY CONSENT*
>
> It is ordered that:
>
> …
>
> 2. Without prejudice to the foregoing, Caveat No. IE/602349Q and Caveat No. IE/839566H shall be maintained on the title of the property at 101/101A Serangoon Road, Singapore 218006.

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23 Jaikishin's 1st Affidavit, para 5, p 22.

24 Jaikishin B Kirpalani's 2nd Affidavit dated 18 August 2017 ("Jaikishin's 2nd Affidavit"), para 8, JBK-2.

25 Originating Summons No 907 of 2017 (Amendment No 1).

26 Order of Court No 5928 of 2017.

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…

Annex A

1. *The Defendant shall pay the Plaintiff the sum of S$100,000* out of the option fee of S$500,000 under Option to Purchase dated 23 August 2016, *and the sum of S$5,000 for legal fees and disbursements by 15 September 2017*.

2. *The Defendant shall pay the Plaintiff the remaining option fee of S$400,000 in equal monthly instalments of S$100,000 each, payable on the 15th day of each month commencing on 15th October 2017*.

…

4. *In the event of any default by the Defendant of any payment stated in Orders 1 and 2 above*, the *Defendant shall complete the sale of the property* at 101/101A Serangoon Road, Singapore 218006 ("**Property**") to the Plaintiff *within 21 days of such default*.

5. The Defendant hereby unconditionally waives and withdraws all allegations stated in the 1st affidavit of Senthil Kumaran Narayanasamy dated 23 August 2017.

…

8. Following the Defendant's repayment of the option fee of S$500,000 and legal fees and disbursements of S$5,000, the parties agree that the Plaintiff's option to purchase the Property dated 23 August 2016 is rescinded and aborted by mutual consent…

9. Following the fulfilment of the above orders, the Plaintiff and the Defendant shall have no further claims against each other arising out of or in connection with the Property and would have reached full and final settlement.

[emphasis added in italics]

21 Pursuant to the terms of the Consent Order, the Defendant duly made payment of the $5,000 in legal fees and disbursements as well as the first two instalments of $100,000 each by the stipulated dates (15 September 2017 and 15 October 2017).[27]

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27 Senthil Kumaran Narayanasamy's 2nd Affidavit dated 2 January 2018 ("Senthil's 2nd Affidavit"), para 4.

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The Defendant further mortgaged the Property for another loan

22 It was discovered that on or about 20 September 2017, a month after the Consent Order was made, an additional caveat in the name of "Lee Wen, Jervis" was lodged against the Property, pursuant to a loan of $1,300,000 granted in favour of the Defendant.[28] It should be noted that the Certificate of Correctness for the lodgement of this caveat was signed by Dhanwant Singh, a solicitor from S K Kumar.[29]

The second failure to repay

23 For the third instalment that was due on 15 November 2017, the Defendant only managed to make payment of $67,500 by the stipulated due date. The remaining $32,500 was only repaid on 20 November 2017.[30] The Plaintiff expressed its displeasure, but ultimately accepted this late payment.

The third failure to repay

24 On 13 December 2017, S K Kumar wrote to Drew & Napier, requesting an extension of time to make payment of the fourth instalment on 18 December 2017 instead of 15 December 2017, which was the original payment deadline.[31] Drew & Napier wrote back, agreeing to the request for the extension of time. However, Drew & Napier emphasised that if payment was not made on 18 December 2017, the Plaintiff would exercise its right to demand completion of the sale of the Property within 21 days.[32]

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28 Jaikishin's 4th Affidavit, pp 40–42.

29 Jaikishin's 4th Affidavit, p 41.

30 Jaikishin B Kirpalani's 4th Affidavit dated 16 January 2018 ("Jaikishin's 4th Affidavit"), para 31, p 63.

31 Jaikishin's 4th Affidavit, p 21.

32 Jaikishin's 4th Affidavit, p 23.

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25 The Defendant failed to make payment by the extended deadline of 18 December 2017. It sought a further extension of time but was firmly rejected by the Plaintiff. On 19 December 2017, Drew & Napier informed S K Kumar that pursuant to the Consent Order, the Plaintiff would be exercising the Option, and the sale of the Property would have to be completed by 9 January 2018.

26 On 27 December 2017, Drew & Napier once more wrote to S K Kumar, requesting certain documents necessary for the completion of the sale. However, these documents were not furnished. Unsurprisingly, the sale of the Property could not be completed by 9 January 2018.[33]

27 On 29 December 2017, S K Kumar sent a cheque for $100,000 to Drew & Napier seeking to make payment of the fourth instalment.[34] This cheque was rejected by the Plaintiff.

28 The Defendant filed Summons 50/2018 on 2 January 2018 for leave of the court to make payment of the fourth instalment forthwith and an extension of time for the payment of the final instalment, as well as a stay of the conveyance of the Property to the Plaintiff.

29 In the meantime, on 15 January 2018, S K Kumar sent a cheque for $100,000 to Drew & Napier as payment for the final instalment, but this was also rejected.

30 On 16 January 2018, the Plaintiff filed Summons 281/2018 seeking an order that the Defendant and/or some other person appointed by the court take all steps necessary to complete the sale of the Property to the Plaintiff within

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33 Jaikishin's 4th Affidavit, para 19.

34 Senthil's 2nd Affidavit, pp 10–12.

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seven days of the order being made.

31 I heard both Summons 50/2018 and Summons 281/2018 on 23 January 2018.

The parties' cases

Arguments on Summons 50/2018

32 The Plaintiff's counsel submitted that Summons 50/2018 should be dismissed because the application for an extension of time to comply with the Consent Order is essentially an application by the Defendant to unilaterally vary the terms of a consent order, which finds no support at law. He submitted that the court could only interfere where the Consent Order had been tainted by some recognised vitiating factors, none of which were alleged or pleaded by the Defendant. For these propositions, the Plaintiff's counsel relied primarily on the Court of Appeal's decision in *Turf Club Auto Emporium Pte Ltd v Yeo Boong Hua* [2017] 2 SLR 12 ("*Turf Club*").

33 The Defendant's counsel argued that *Turf Club* should be distinguished from the present case because that case involved *substantive breaches* of a consent order, while the present case involved mere *procedural breaches*. He also repeatedly stated that his client had demonstrated both its ability and willingness to make the fourth and fifth instalment payments. Therefore, the court should not be so harsh as to allow such a draconian consequence to follow, simply because of a mere delay of payment of 11 days.

34 In response, the Plaintiff's counsel clarified the Defendant's counsel's interpretation of *Turf Club*. The Plaintiff's counsel drew this court's attention to the distinction between *procedural consent orders* (or "unless orders" entered

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into by consent) and *substantive consent orders*. The Court in *Turf Club* held that it would have an inherent discretion to vary *procedural* consent orders, given that it should retain ultimate control over its own procedure. However, where it involved a *substantive* consent order, which the Plaintiff argued was the case here, the Court did not have a similar power.

35 On 2 February 2018, the Defendant sent in its further written submissions and filed a request for further arguments to be made for Summons 50/2018, which I had already dismissed on 23 January 2017. Subsequently, the Defendant changed its mind and filed a Notice of Appeal to the Court of Appeal on 6 February 2018 instead. As a consequence, I did not hear the Defendant's further arguments. However, for completeness, I shall address the Defendant's further arguments later in this judgment.

Arguments on Summons 281/2018

36 For Summons 281/2018, the Plaintiff relied on O 45 r 8 of the Rules of Court which states that, where an order for specific performance is not complied with, the court may direct that the act required to be done may, as far as practicable, be done by the party by whom the order was obtained, or by some other person appointed by the court, at the expense of the disobedient party. He cited *Woo Koon Chee v Scandinavian Boiler Service (Asia) Pte Ltd and others* [2010] 4 SLR 1213 ("*Woo Koon Chee*") as authority that O 45 r 8 is equally applicable to a consent order if the consent order is an order requiring the specific performance of a contract within a specified time frame, as in the present case.

37 In response, the Defendant sought to distinguish *Woo Koon Chee* on the basis that it involved the specific performance of the sale of shares, whereas the

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present case involved the specific performance of the sale of immovable property.

My decision

38 I shall first address Summons 50/2018 as this was the core issue. Summons 281/2018, on the other hand, was a consequential order arising from the dismissal of Summons 50/2018.

Summons 50/2018

39 This Summons required the court to examine the limits of its inherent powers under O 92 r 4 of the Rules of Court to make an order as may be necessary to prevent injustice or to prevent an abuse of the process of the court. This court also had to consider O 3 r 4 and O 45 r 6 of the Rules of Court which grant the court the power to extend time for the compliance of a court order or to do an act.

40 The issues were as follows:

(a) could the court allow a unilateral variation of the terms of the Consent Order by granting an extension of time for a party to comply with the terms of the Consent Order that had been agreed upon by the parties?

(b) should the court exercise its inherent powers under O 92 r 4 of the Rules of Court to unilaterally alter the Consent Order and allow the Defendant an extension of time?

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Issue 1: Whether the court has the power to allow a unilateral variation of the terms of the Consent Order

41 The Consent Order fundamentally represents a *contract* or *settlement agreement*, entered into willingly by the Plaintiff and the Defendant when they appeared before me on 29 August 2017. This settlement agreement was recorded as an order of the court at the request and agreement of the parties.

42 The contractual nature of consent orders has also been acknowledged and accepted by M P H Rubin J in *CSR South East Asia Pte Ltd (formerly known as CSR Bradford Insulation (S) Pte Ltd) v Sunrise Insulation Pte Ltd* [2002] 1 SLR(R) 1079 ("*CSR South East Asia*"). He held at [12]:

> In my view, the consent order does indeed evidence a contract between the parties and given the factual background thus far, there was no justification to vary or modify the said order, without the consent of both the parties.

43 I shall revisit *CSR South East Asia* in greater detail later in this judgment as the facts in that case were very similar to the present case, except that the conduct of the Defendant in the present case was hugely egregious.

44 Given the contractual nature of a consent order, the court can only intervene where some recognised vitiating factors are present. In this case, it was not disputed that there were no vitiating factors. Therefore, it is the court's function to uphold the sanctity of a contract, a principle which is axiomatic.

45 The Defendant argued that under O 92 r 4, the court has the inherent powers "to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court", including making an order to allow for the variation of a consent order. This argument was also raised in *Turf Club*. After a review of the authorities, the Court of Appeal held at [163] that the court

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did not have such power:

> In so far as *unless order*s that are made by consent are concerned, we agree with the analysis in *Wellmix Organic*s that the court retains a residual discretion *not to enforce* the order because an unless order is primarily concerned with its procedure and yet it may bring with it draconian consequences affecting the substantive rights of the parties. ***There is, however, no conceptual basis for extending such a discretion to a contractual consent order that encapsulates a settlement agreement covering the substantive causes of action between the parties***, much less to *set aside* such orders (in this regard, we would also add that even in the context of consent unless orders, case authority indicates that the discretion does not extend to *setting them aside*. [emphasis in original in italics; emphasis added in bold italics]

46 The Court of Appeal, in reaching its conclusion, refined the existing legal principles relating to the court's powers vis-à-vis consent orders, by emphasising the distinction between *procedural* consent orders and *substantive* consent orders. By way of definition, *procedural* or *"unless"* orders are orders that deal with the procedural rights of the parties in the litigation process. For example, an order for a certain document to be filed by a specific date, failing which the claim will be struck out. *Substantive* consent orders, on the other hand, represent a compromise of the parties' substantive rights in the underlying suit.

47 It was held at [159] that:

> … the court has a residual discretion *not to enforce* ***contractual or consensual "unless" orders*** or other ***consensual procedural orders*** … [but] such a discretion does not … extend to ***contractual consent orders*** that relate to the … ***substantive rights*** of the parties … [emphasis in original in italics; emphasis added in bold italics]

48 On the point of the court having a discretion to enforce or set aside *procedural consent orders*, the Court of Appeal agreed with *Wellmix Organics*

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(International) Pte Ltd v Lau Yu Man [2006] 2 SLR(R) 117 that such a discretion is "essentially an aspect of the court's power to retain ultimate control over its *own procedure*" and that "an unless order is … part of the court's procedural armoury and is not concerned with the substantive merits of the case" (*Turf Club* at [162]). Therefore, the court did have the discretion when dealing with procedural consent orders.

49 The Court then went on to explain why there is no conceptual basis for extending such a discretion to a *contractual consent order* that encapsulates a *settlement agreement* covering the *substantive causes of action* between the parties (at [163]):

> (a) The competing policy of *finality in settlement agreements* would militate against the court having a residual supervisory power over such agreements because even if the court might well not exercise such a power save in exceptional cases, its mere existence might open the floodgates by encouraging parties to bring an action to *reopen matters resolved by agreement*.
>
> (b) Parties incorporate a contractual agreement within a consent order of court because they wish to be able to enforce the judgement in the event of non-compliance without having to institute a fresh action. It is not the case that they do so to enable the court to exercise some form of supervisory jurisdiction in relation to the consent order.
>
> (c) Any factor that undermines the consent of one party to a contractual consent order should be rationalised within the existing common law vitiating factors. *There is no justification for applying a different rule just because the agreement has been encapsulated within a consent order.*
>
> (d) ***Where parties have consented to a consent order*** and their consent remains untainted by a recognised vitiating factor, ***fairness lie*** [*sic*] ***in favour of holding the parties to what they have agreed***.
>
> [emphasis added in italics and bold italics]

50 With this distinction in mind, the natural question that has to be addressed is whether the Consent Order in the present case is a *procedural*

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consent order or a *substantive* consent order. On this issue, I accepted the Plaintiff's submissions that the Consent Order is a *substantive consent order*. Indeed, the Consent Order was recorded pursuant to a settlement agreement between the parties, which was intended to determine with finality the substantive rights and obligations of the parties. This intention is clearly evidenced by condition 9 in Annex A of the Consent Order (see [20] above), which states that "[f]ollowing the fulfilment of the above orders… [the parties] … would have reached *full and final settlement.*" [emphasis added]. Therefore, the reasons cited by the Court of Appeal in *Turf Club* (see [49] above) apply with equal force in the present case, and the court should not have a residual discretion in varying such substantive consent orders.

51 In *CSR South East Asia*, Rubin J was confronted with a consent order similar to the one in the present case. The consent order in *CSR South East Asia* also provided for payments to be made by one party to another, albeit in four equal instalments, to be paid on the 30th day of each month. In the event of a default in any of the instalment payments, the innocent party would be at liberty to enter judgment against the defaulting party. The payor eventually defaulted on an instalment because the cheque for payment was only received by the payee on 3 October 2001, although payment was stipulated to be made by 30 September 2001.

52 Rubin J held at [11] :

> The consent order recorded with the sanction of the court on 18 June 2001 in the present case expressly provides for a *strict time frame* for the instalment payments and a default clause spelling out the consequences of non-compliance with the said instalment arrangements. [emphasis added]

Rubin J further held at [12] that the timeline for payment was within the contemplation of the parties when they entered into the consent judgment, and

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the consent order did evidence a contract between the parties. Thus, Rubin J held that there was no justification to vary or modify the said order without the consent of both the parties. Since the instalment payment was late, there was a breach of the consent order, and the innocent party was therefore entitled to enter judgment against the defaulting party.

53 Given his conclusion, Rubin J must therefore also have considered the consent order in *CSR South East Asia* to be a substantive consent order. I see no reason to hold otherwise in the present case, given the striking similarity between the two consent orders. Additionally, the holding in *CSR South East Asia* demonstrates the rigidity with which the court will uphold the terms of a consent order.

54 In the Defendant's application under Summons No 716 of 2018 for a stay of execution for both Summons 50/2018 and Summons 281/2018, which was dismissed, its counsel argued that the Court in *CSR South East Asia* did not fully canvass and ventilate O 3 r 4 of the Rules of Court which relates to the extension of time. Although the judgment made no reference to this provision, there were references to O 3 r 3, as the Court had to examine the scope of a "working day" in order to ascertain whether the defendants in that case had complied with the deadline for instalment payment. As O 3 r 4 is adjacent to O 3 r 3, it is inconceivable that the parties and the Court did not discuss and ventilate the issue relating to this provision, which was at the heart of the case. Accordingly, the Defendant cannot rely on this point to argue against the application of *CSR South East Asia* to the present case.

55 The Defendant also argued that the timeline for the instalment payments was a procedural matter and not a substantive content of the Consent Order. Thus, the court could exercise its inherent powers under O 92 r 4 to allow the

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Defendant more time to fulfil its payment obligations. Whether the timeline for the instalment payments is a procedural or substantive aspect of the Consent Order must be determined in the context of what was in the contemplation of the parties when they entered into the settlement agreement on 29 August 2017.

56 Before the parties agreed on the Consent Order, they were well aware that the Defendant had been tardy in the repayment of the Loan. According to the terms of the Loan, the Defendant was to repay the Plaintiff $500,000 by 30 November 2016. When this did not materialise, the Plaintiff reminded the Defendant on several occasions and even approached the Defendant's directors who were guarantors for the repayment of the Loan. These actions to recover the Loan by the Plaintiff were futile, and the Plaintiff therefore called on the Option on 16 May 2017. This culminated in the court hearing on 29 August 2017. It was at this hearing that the parties reached a settlement agreement. The Defendant agreed to repay the Plaintiff the $500,000 in five instalments of $100,000 each on the 15th day of each month starting from September 2017.

57 The Defendant must have known that the Plaintiff was serious about timely repayment of the instalment sums, given that the Plaintiff had called on the Option once before on 16 May 2017. Furthermore, the Defendant must have been aware of the dire consequences of non-compliance with the Consent Order, given that the Option was priced at much lower than the market value of the Property. The Plaintiff, on the other hand, wanted the Defendant to repay the Loan as soon as possible as it was aware of the Defendant's precarious financial situation. Hence, it was within the contemplation of both the parties that the timeline for the instalment payments of the Loan in the Consent Order had to be strictly and rigidly adhered to. Conditions 1 and 2 in Annex A of the Consent Order state very clearly the terms and timeline for repayment. The timeline for

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repayment was, therefore, an important part of the parties' settlement agreement.

58 The Defendant argued that the timeline was procedural and therefore the court could unilaterally vary the timeline. In other words, the Defendant tried to trivialise the importance of the timeline for the repayment of the instalments after entering into the settlement agreement. I would have agreed with the Defendant had there been no rigid structure for the various instalment payments in the Consent Order, or if the deadline for the instalment payments was vague and ambiguous. However, this was not the case here. The timeline for repayment was clearly specified in the Consent Order.

59 If the Defendant's arguments were correct, then this would mean that the court could also allow the Defendant an indefinite extension for the repayment of the monthly instalments. This would change the structure and substance of the Consent Order, which the Plaintiff would certainly not have agreed to.

Further arguments of the Defendant

60 In its further written arguments, the Defendant argued that *Turf Club* should not be applicable to the present case for two reasons. First, the Court of Appeal's holding in *Turf Club* was confined to the specific consent order considered in that case, which differed materially from that in the present case.[35] Second, the variation sought in *Turf Club* was to a substantive portion of the consent order, as opposed to the present case where the parties were merely seeking an extension of time.[36]

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35 Defendant's further arguments dated 2 February 2018 ("Defendant's Further Arguments"), para 9.

36 Defendant's Further Arguments, para 10.

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61 I agreed that the facts in *Turf Club* were materially different from the present case. However, the Court of Appeal did not qualify its judgment in *Turf Club* by restricting its pronouncement to the specific type of consent order in that case. Indeed, the manner in which the Court laid out its reasons for holding that there should not be discretion to interfere with substantive consent orders (*Turf Club* at [163]) indicated in no uncertain terms that it was meant to be of general application. As for the second reason, the Defendant's argument presupposed that a "substantive portion" of the Consent Order and an "extension of time" must be mutually exclusive. There is no reason why the stipulated timeline for payment cannot, unless a contrary intention is shown, be regarded as a substantive portion of the Consent Order. I have explained above that in this case the parties had contemplated a structured timeline for the repayment of the Loan, which formed an important and substantive part of their agreement and was the basis of the Consent Order. This was also exactly the case in *CSR South East Asia*.

62 The Defendant also argued that a court may have the power to vary a contractual consent order, even in the absence of vitiating factors, *where such powers have been statutorily provided for*. The Defendant referred to ss 119 and 129 of the Women's Charter (Cap 353, 2009 Rev Ed), which give the court the power to vary the terms of maintenance and custody agreements in matrimonial matters, as examples of such statutorily provided powers.[37] Therefore, the Defendant argued that O 3 r 4 of the Rules of Court should also be interpreted as a statutory provision which gives the court the power to vary agreements between parties, specifically by granting extensions of time. To further support its proposition, the Defendant cited *Rosemawati bte Rafdi v Buang bin Ani and others* [2017] 3 SLR 89 ("*Rosemawati*") at [22], where Audrey Lim JC opined

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37 Defendant's Further Arguments, paras 11–13.

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that "it would have been more appropriate for the extension of time application to be brought under the general provision, O 3 r 4, rather than under O 45 r 6(1)."[38]

63 This argument is misconceived for three reasons. First, while it is true that some statutes may provide the court with an express power to vary the terms of agreements between parties, these statutory powers are confined to the specific provisions in which they are found. Therefore, although ss 119 and 129 of the Women's Charter provide such a power to the court, that cannot be relied on to argue that the court has similar powers outside of those provisions.

64 Second, O 3 r 4 does not apply to consent orders such as those in the present case. The provision states:

> **Extension, etc., of time (O. 3, r. 4)**
>
> **4**.—(1) The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorised by these Rules or by any judgment, order or direction, to do any act in any proceedings.

Order 3 r 4 empowers the court to extend the period within which a person is *required by the Rules of Court or "by any judgment, order or direction*, to do any act in any proceedings." A consent order is an order of the court. This cannot be disputed. But this order of the court is the fruit of the parties' agreement which binds them. Thus, the court has to respect the wishes of the parties and it cannot extend the time to allow one party to comply with the terms of the agreement without the consent of the other party. Therefore, this provision does not give the court the power to vary consent orders which are essentially contractual in nature, as in the present case.

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38 Defendant's Further Arguments, para 14.

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65 For the same reason, O 45 r 6 is not applicable here. The provision states:

> **Judgment, etc., requiring act to be done: Order fixing time for doing it (O. 45, r. 6)**
>
> **6.**—(1) Notwithstanding that a judgment or order requiring a person to do an act specifies a time within which the act is to be done, the Court shall, without prejudice to Order 3, Rule 4, have power to make an order requiring the act to be done within another time, being such time after service of that order, or such other time as may be specified therein.

Order 45 r 6 refers to a "judgment or order" made by the court. It is not applicable to settlement agreements embodied in a consent order for the same reasons explained above.

66 Third, the Defendant had cited *Rosemawati* entirely out of context. The holding in that case is actually not helpful to the Defendant's case.

67 *Rosemawati* involved a consent order which provided for the transfer of a Housing and Development Board ("HDB") property from the defendants to the plaintiff within six months of the consent order being made, failing which the HDB property was to be sold and the proceeds given to the plaintiff. Thereafter, the plaintiff applied for a transfer of the HDB property. However, this was disallowed because the HDB policy at that time only allowed HDB properties to be transferred between family members. The plaintiff then submitted an application for the purchase of the HDB property, but this too was rejected because the defendants had not fulfilled the minimum occupation period of five years. The plaintiff then filed an application that essentially sought a variation of the consent order, to provide that, subject to HDB's consent, the HDB property would be sold within six months *of October 2019* or within six months *of the completion of the minimum occupation period*. Lim JC dismissed the application, stating at [28]:

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> [T]o have allowed the plaintiff's application would have resulted in varying the Consent Judgment substantively such that it would no longer accurately reflect the intention of the parties at the time the Consent Judgment was entered into ...

Therefore, *Rosemawati* does not by any means stand for the proposition that O 3 r 4 Rules of Court provides the court with a statutory power to vary the terms of a consent order by granting an extension of time.

68 However, I note that Lim JC's judgment in *Rosemawati* appears to have left some room for the court to have residual discretion to grant extensions of time, even when dealing with contractual consent orders. In particular, Lim JC states at [23]:

> Where the parties had agreed in clear terms on a certain course, the court should, when considering an application to extend time, place great weight on the agreement and should be slow, *except in unusual or exceptional circumstances*, to depart from it. … The *principles for extension of time* in respect of a consent judgment were, to my mind, *largely aligned with the principles that guide the exercise of the court's inherent power to vary or amend a consent judgment under O 92 r 4*. Ultimately, the power had to be exercised judiciously *where it was necessary to do justice between the parties* … [emphasis added]

This *obiter* is in contrast to the strict position taken by the Court of Appeal in *Turf Club* that, save where there are vitiating factors, the court cannot vary the terms of a contractual consent order. This was also the position taken in *CSR South East Asia.* Given that *Rosemawati* is a decision of the High Court, the Court of Appeal's judgment in *Turf Club* must prevail. Be that as it may, for completeness, I shall consider whether it is necessary in the present case "to prevent injustice" assuming that the court does have a residual discretion to extend the time for compliance with a consent order. This issue will be dealt with below.

69 The Defendant also cited *Lee Hsien Loong v Singapore Democratic*

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Party and others and another suit [2008] 1 SLR(R) 757 at [18], in which the Court of Appeal had provided guidelines on how or when the Court may exercise its discretion and allow for extension of time when there is a failure to observe timelines.[39] However, the issue of extension of time in that case referred to the extension of time for filing and/or serving a Notice of Appeal. There was no reference to the extension of time in a consent order. Therefore, it is clear that the case is not relevant to the present one.

70 Finally, the Defendant referred to the English Court of Appeal case of *Safin (Fursecroft) Limited v The Estate of Dr Said Ahmed Said Badrig (Deceased)* [2015] EWCA Civ 739 ("*Safin*") which upheld the decision of the lower court and granted an extension of time to the defendant so as to relieve him of the terms of forfeiture pursuant to a consent order.

71 The Court noted at [44] that after the legislative changes in the United Kingdom, the court now had the discretion to extend time limits for both types of consent orders, *ie*, consent orders which were really a contract and consent orders where parties had simply not objected. The Court noted that the defendant had not only paid the rent but he had carried out various works to the premises and had incurred substantial sums. It was quite clear that the claimant had got what it wanted, albeit after somewhat of a struggle, and not to extend time would give the claimant an unjustified windfall. Therefore, the Defendant argued that like *Safin*, it had complied with most if not all of the terms of the Consent Order save for the timelines, and therefore it also should be granted the extension.[40]

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39 Defendant's Further Arguments, paras 23–24.

40 Defendant's Further Arguments, para 22.

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72 I disagreed with the application of *Safin* to the present case for two reasons. First, the decision there hinged heavily on the English court's expanded discretion after the legislative shift from the former Rules of the Supreme Court 2009 (SI 2009 No 1603) (UK) to the Civil Procedure Rules 1998 (SI 1998 No 3132) (UK). This justification is notably absent in the Singapore context.

73 Second, and more importantly, the court in *Safin* stated at [73] that:

> … the *context was one in which a tenant sought relief from forfeiture* … . It is well established that *the court regards a condition of re-entry under a lease as merely being security for the rent.* That is why, where the court has granted relief from forfeiture on condition of payment of arrears of rent or other action by the tenant by a specified date, *the court will grant further time if it would be just and equitable to do so.* [emphasis added]

The present case does not involve a tenant seeking relief from forfeiture. Rather, it involves the Defendant, which has repeatedly breached the terms of the two agreements that it had entered into with the Plaintiff. Further, as explained above, it is not "just and equitable" in this case for the court to exercise its discretion to grant an extension of time to the Defendant. As I have held, the justice of the present case lies in favour of the Plaintiff as opposed to the Defendant.

74 In the circumstances, I found that the Consent Order was a substantive consent order. Accordingly, this court did not have the power to allow a unilateral variation of its terms. Therefore, the Defendant's application for an extension of time was dismissed.

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Issue 2: Should the court exercise its inherent powers under O 92 r 4 of the Rules of Court to prevent injustice or to prevent an abuse of the process of the Court?

75 Given that my determination on the first issue was that the court did not have the discretion to vary the terms of a contractual consent order, there is strictly speaking no need for me to consider this issue. However, I acknowledge that the Defendant had repeatedly sought to evoke the sympathy of this court, by pleading that a mere delay of 11 days in making payment should not result in the harsh consequence of ordering specific performance of the sale of the Property, as it was a *de minimis* breach. Assuming for a moment that Lim JC's pronouncement in *Rosemawati* provides a legal basis for the court to have some residual discretion to grant extensions of time for compliance with contractual consent orders, I shall now turn to consider whether it is *just* in the circumstances to grant the extension of time.

76 The exercise of the inherent powers of the court is found in O 92 r 4 of the Rules of Court, which states:

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

The inherent jurisdiction of the court has been defined in "The Inherent Jurisdiction of the Court" in *The Reform of Civil Procedural Law and other essays in civil procedure* (Jack Jacob ed) (Sweet & Maxwell, 1982) at p 242 as being:

> … the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary *whenever it is just or equitable to do so*, and in particular *to ensure the observance of the due process of law*, to *prevent improper vexation or oppression*, ***to do justice between the parties*** … [emphasis added in italics and bold italics]

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This definition has received judicial endorsement from the Court of Appeal in *Wee Soon Kim Anthony v Law Society of Singapore* [2001] 2 SLR(R) 821 at [27], where the Court added that "[i]n each instance the court must exercise [its inherent jurisdiction] judiciously" and that the "essential touchstone" is one of "need". The Court also made it clear that where O 92 r 4 is concerned, there are no rigid criteria or tests to be fulfilled in determining whether the court can exercise this discretion.

77 With these guiding principles in mind, should this court exercise its inherent powers under O 92 r 4 in favour of the Defendant? As I have stated, the Defendant had sought to tug at the heartstrings of the court by arguing that the fourth instalment that was due on 18 December 2017 was ultimately made on 29 December 2017, a mere delay of 11 days. Furthermore, the Defendant was prepared to pay the fifth and final instalment on 15 January 2018, but was rejected by the Plaintiff. Moreover, the Defendant submitted that this delay did not cause any prejudice to the Plaintiff. In my view, this was a *gross* mischaracterisation of the facts.

(1) The Defendant had behaved egregiously

78 The delay of 11 days has to be viewed against the egregious conduct of the Defendant, otherwise the breach of the payment terms in the Consent Order might be regarded as *de minimis*. Therefore, it is relevant to consider the events that led to the late payment in December 2017.

79 The Defendant had taken a nonchalant attitude towards the repayment of the loan, notwithstanding the dire consequences. It seems that the Defendant had scant regard for the two agreements (*ie,* the agreement on 17 August 2016 and the Consent Order on 29 August 2017) with the Plaintiff. When the Plaintiff

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tried to enforce the terms of these agreements, the Defendant used all means to frustrate the Plaintiff.

80 Before the Plaintiff exercised the Option on 16 May 2017, it first sought recourse from the three directors of the Defendant who stood as guarantors. Statutory demands were issued to them but they too refused to repay the Loan. Thus, it appears that the Plaintiff had been reasonable in exercising its right to the repayment of the Loan. Calling on the Option was, in a sense, the Plaintiff's last resort.

81 When the Plaintiff exercised the Option on 16 May 2017, the Defendant placed obstacles in its way and even applied to the SLA to cancel the Plaintiff's caveats. This resulted in OS 907/2017, which ended in a settlement agreement recorded as the Consent Order.

82 After the Consent Order was made on 29 August 2017, the Defendant again defaulted on the November and December 2017 instalment payments.

83 For the November instalment, the Defendant did not pay the full sum on the stipulated date of 15 November 2017. Instead, $67,500 was paid on the 15th and the rest was only paid on the 20th. Despite this, the Plaintiff accepted the late payment.

84 As for the December instalment, the Defendant requested an extension of 3 days for the payment to be made on 18 December 2017 instead of 15 December 2017. This request was also acceded to, although the Plaintiff made it very clear that if payment was still not made, it would exercise its right to call on the Option.

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85 When payment was still not made by 18 December 2017, this represented the proverbial straw that broke the camel's back. The egregious conduct of the Defendant and its cavalier attitude towards agreed timelines had caused the Plaintiff to insist on its right to call on the Option and not to grant any further extension of time for repayment. This would be the second time that the Plaintiff had called on the Option. The first time was on 16 May 2017.

86 Furthermore, apart from the several chances that the Plaintiff had given the Defendant to repay the loan, the Defendant had not been cooperative with the Plaintiff regarding the completion of the sale of the Property. First, the Defendant had refused to hand over the necessary completion documents. This was to stifle the exercise of the Option and the completion of the sale. Second, the Defendant had initially refused to inform the Plaintiff of the name of its solicitors, which would make it difficult for the Plaintiff to exercise the Option. Third, the Defendant had also made various unsubstantiated allegations, for example, that there was a 36% *per annum* interest on the Loan, and that certain interest payments had already been made by the Defendant to Dilip who was purportedly the agent of the Plaintiff. All of these allegations were sworn on an affidavit, plainly against the weight of the evidence. It is telling that as part of the terms of the Consent Order, these allegations were all subsequently retracted.

(2) The Defendant placed an additional mortgage on the Property

87 Barely a month after the Consent Order was entered into, the Defendant, on or around 20 September 2017, secured another loan of $1,300,000 from Lee Wen Jervis which resulted in another caveat being lodged against the Property. This was done without the knowledge of the Plaintiff.

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(3) The Defendant disregarded the orders of the court

88 Furthermore, one day after I dismissed the Defendant's application for an extension of time in Summons 50/2018, and allowed the Plaintiff's application in Summons 281/2018 for the sale of the Property to be completed, the Defendant took positive actions to attempt to sell the Property. The Defendant engaged two real estate agencies to market the Property to the public at large.[41] As a result of the active marketing through advertisements, the Defendant secured a prospective buyer who agreed to pay $5,800,000 for the Property. A cheque for the 1% option fee (*ie*, $58,000 plus Goods and Services Tax of $4,060) was issued to the Defendant. However, the Defendant insisted on 10% of the purchase price upfront with no stakeholder. As a result, the prospective buyer called off the deal and cancelled the cheque for the 1% option fee.

89 This demonstrates the Defendant's reprehensible conduct which was a direct and blatant contravention of the court's orders and is now the subject matter of contempt proceedings. Although this event took place after my orders were made, it revealed the insidious intention of the Defendant who would frustrate the settlement agreement "by hook or by crook". The Defendant's directors, being lay persons, may not have realised that its attempt at a quick disposal of the Property would soon be discovered as there were several caveats on the Property, unless of course its intention was to deliberately deceive potential buyers of the deposit.

(4) The Plaintiff would suffer prejudice

90 The Defendant argued that the Plaintiff had not, and would not, suffer any prejudice even if the extension of time was granted. This is far from the

[41] Jaikishin B Kirpalani's 5th Affidavit dated 5 February 2018, pp 7–8.

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truth. The loan of $1,000,000 was granted on 17 August 2016 and the full repayment date was supposed to be on 30 November 2016. Since November 2016, the Defendant has failed to repay the Loan. Even after the parties had agreed on the terms of the Consent Order, the Defendant still failed to comply with the instalment payments. The Plaintiff forgave the late payments of the third and fourth instalments, yet the Defendant continued to breach the payment timeline as specified in the Consent Order.

91 There was also a real risk that the Plaintiff might not get the Loan repaid if it did not exercise the Option. At the material time, the Defendant was being pursued by several creditors and faced several law suits. There was also a winding-up petition against the Defendant, although this was later withdrawn. The Defendant had also borrowed $1,300,000 from Lee Wen Jervis soon after the Consent Order was made. Furthermore, the Defendant's directors had previously failed to honour their Guarantee. The Defendant was in financial difficulty and therefore could not comply with and honour the repayment terms of the two agreements that it had entered into.

(5) The value of the Property exceeding the Option price is immaterial

92 The Defendant had repeatedly emphasised that the Plaintiff would have made a windfall by exercising the Option, as the Property is currently worth more than $5,700,000, whereas the Option is only priced at $4,800,000. The Option price was first agreed on by both parties on 17 August 2016 when they entered into a loan agreement. A year later, when the parties were in court on 29 August 2017, the parties again entered into a similar agreement with the same Option price which culminated in the Consent Order. In essence, the parties had willingly agreed on two separate occasions to the same Option price. Thus, the Defendant cannot now come before the court and claim that it wishes

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to retain the Property because the windfall that the Plaintiff stands to gain from purchasing the property at below market rate far outweighs the value of the Loan. The Defendant had agreed and was aware of the consequences for non-payment of the Loan.

93 This case is akin to a borrower who pawns his gold bar to a pawn shop, for a loan that is much lower than the market price of the gold bar. When the borrower fails to repay the loan according to the terms of the agreement, the pawn shop has the right under the contract to forfeit the gold bar. The borrower cannot forbid the pawn shop from forfeiting the gold bar on the basis that the market value of the gold bar is higher than the sum of the loan even when the market value of the gold bar has soared at the time of forfeiture.

(6) The Defendant failed to invoke the inherent powers of the court

94 For the above reasons, it can hardly be said that the balance of justice in this case lay with the Defendant, such that an extension of time should be granted. To grant an extension of time would, in my view, be to condone the continuous egregious conduct of the Defendant who had repeatedly and flagrantly ignored the sanctity of the two agreements that it had willingly entered into with the Plaintiff. The Defendant had made a mockery of the agreements. In the circumstances, to allow an extension of time would be to do an injustice to the Plaintiff. After repeatedly breaching the agreements, the Defendant audaciously came to this court with unclean hands to seek a further extension of time. This, in my view, is an abuse of the process of the court. Thus, this court prohibited the Defendant from invoking the inherent powers of the court under O 92 r 4 to seek judicial recourse. Accordingly, the answer to the second issue is also in the negative. Thus, even if the court had the discretion

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to vary the Consent Order by granting an extension of time, that discretion would not have been exercised on the facts of the present case.

Summons 281/2018

95 Summons 281/2018 was an application by the Plaintiff for an order that the Defendant, or any other person appointed by the court, take all necessary steps for the completion of the sale of the Property, and for the Defendant to bear all expenses related to the execution of such an order. The relevant provision is O 45 r 8, which states:

> **Court may order act to be done at expense of disobedient party (O. 45, r. 8)**
>
> **8**.—If a Mandatory Order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to its powers under section 14 of the Supreme Court of Judicature Act (Cap. 322), where applicable, and its powers to punish the disobedient party for contempt, the Court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment was obtained or some other person appointed by the Court, at the cost of the disobedient party, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and execution may issue against the disobedient party for the amount so ascertained and for costs.

96 As I had dismissed the Defendant's application in Summons 50/2018, Summons 281/2018 therefore became relevant. I agreed with the Court of Appeal's decision in *Woo Koon Chee* that O 45 r 8 is applicable to a consent order, such as the one in the present case.

97 In *Woo Koon Chee*, the Court considered a consent order which effectively encapsulated a settlement agreement between the parties. The Court held at [32] that this consent order was an order requiring the specific performance of the settlement agreement between the parties. Specifically, the

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consent order required one party to purchase and the other party to sell a certain lot of shares. With this in mind, the Court had to decide if the consent order could be regarded as a "Mandatory Order", "injunction" or a "judgment or order for the specific performance of a contract" within the meaning of O 45 r 8. The Court opined at [34] that the consent order was in the nature of "a judgment or order for the specific performance of a contract". At [37] the Court held that "[t]he Consent Order, as we have seen, could be viewed as either a mandatory injunction or (more likely) as an order requiring the specific performance of a contract, thereby bringing it squarely within the purview of O 45 r 8." Therefore, the court below was entitled to make the order authorising the Registrar or an assistant registrar to execute the share transfer form on behalf of the appellant.

98 In the present case, the Consent Order is also an order requiring the specific performance of the settlement agreement between the parties *ie*, for the Defendant to complete the sale of the Property to the Plaintiff. Thus, this court is empowered to order the Defendant and/or the Registrar of the Supreme Court to take all necessary steps to complete the sale of the Property to the Plaintiff within 21 days of the order being made.

99 I note that it might appear as though there is some inconsistency between the applicability of O 45 r 8 to consent orders, as decided by *Woo Koon Chee*, and my holding above at [64] and [65] with regard to the inapplicability of O 3 r 4 and O 45 r 6 to consent orders. To clarify, the reason for this difference is that O 3 r 4 and O 45 r 6 pertain to extensions of time, which invariably require variations of consent orders, and are thus beyond the powers of the court. On the other hand, O 45 r 8 pertains to the enforcement of consent orders, which upholds rather than violates the sanctity of contract.

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100 The Defendant had shown to be very uncooperative when the Plaintiff tried to exercise the option on 16 May 2017. If I did not grant the Plaintiff's application in Summons 281/2018, it would be unlikely that the Plaintiff could realise the sale of the property, especially given that the Defendant attempted to dispose of the Property immediately after the unfavourable court orders were made against it. Accordingly, I granted the Plaintiff's application in Summons 281/2018.

Summary

101 In summary, this court must respect the sanctity of the agreements that were willingly entered into by the Plaintiff and the Defendant. This is especially so, given that it was undisputed that there were no vitiating factors in this case. The inherent powers of the court under O 92 r 4 should only be invoked "to prevent injustice or to prevent an abuse of the process of the court".

102 In this case the Consent Order arose from a settlement agreement entered into between the Plaintiff and the Defendant. The events leading to the recording of the Consent Order evinced the importance of the timeline for the repayment of the Loan, especially to the Plaintiff. In this context, the parties must have contemplated that the timeline in the Consent Order was a substantive part of their agreement. Otherwise, the Plaintiff would not have entered into the Consent Order, as past events had shown that the Defendant had been dilatory in the repayment of the Loan. Therefore, the court should not unilaterally alter the Consent Order in favour of the Defendant without the consent of both parties.

103 The undisputed evidence showed that the Defendant failed to honour the terms of the Consent Order, as it had repeatedly ignored the deadline for the instalment payments. There was no legitimate basis for the court to exercise its

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inherent powers under O 92 r 4 in favour of the Defendant, as this would lead to an injustice to the Plaintiff, and allowed the Defendant to abuse the court process to unilaterally amend the Consent Order. Finally, O 3 r 4 and O 45 r 6 of the Rules of Court are not applicable here, as this case concerned a Consent Order which is contractual in nature.

Conclusion

104 For the aforesaid reasons, I found that there was no basis to allow the Defendant's application for an extension of time to comply with the Consent Order. Accordingly, I dismissed Summons 50/2018 and ordered the Defendant to pay costs fixed at $4,000 (inclusive of disbursements). I allowed the Plaintiff's application in Summons 281/2018 and ordered the Defendant to pay costs fixed at $2,000 (inclusive of disbursements).

Tan Siong Thye
Judge

Mahesh Rai s/o Vedprakash Rai and Dierdre Grace Morgan (Drew & Napier LLC) for the plaintiff;
K V Sudeep Kumar and Dhanwant Singh (S K Kumar Law Practice LLP) for the defendant.

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