IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 77

Civil Appeal No 126 of 2019

Between

Harmonious Coretrades Pte Ltd

… *Appellant*

And

United Integrated Services Pte Ltd

… *Respondent*

In the matter of Originating Summons No 1113 of 2018
(Registrar's Appeal No 79 of 2019)

Between

United Integrated Services Pte Ltd

… *Appellant*

And

Harmonious Coretrades Pte Ltd

… *Respondent*

GROUNDS OF DECISION

[Civil Procedure] — [Inherent powers] — [Garnishee orders]

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

TABLE OF CONTENTS

INTRODUCTION **1**

BACKGROUND FACTS **2**

PARTIES TO THE DISPUTE 2

PROCEDURAL HISTORY 2

HCPL obtaining the Final Garnishee Order *2*

Response to the Final Garnishee Order *5*

Application to set aside the Final Garnishee Order *10*

DECISION OF THE HIGH COURT **11**

THE PARTIES' CASES ON APPEAL **12**

OUR DECISION **14**

PRELIMINARY ISSUE: THE FURTHER ARGUMENTS HEARING IN SUM 5522 ..... **14**

POWER TO SET ASIDE **16**

NO GROUNDS TO SET ASIDE **19**

AD1 NOT EXTINGUISHED OR SUPERSEDED 20

Legislative purpose of the SOPA *21*

The nature of AD2 ..... *24*

NO INJUSTICE BY REASON OF CTPL'S INSOLVENCY 26

CONCLUSION **27**

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

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

Harmonious Coretrades Pte Ltd
v
United Integrated Services Pte Ltd

[2019] SGCA 77

Court of Appeal — Civil Appeal No 126 of 2019
Tay Yong Kwang JA, Belinda Ang Saw Ean J and Quentin Loh J
19 September 2019

26 November 2019

Tay Yong Kwang JA (delivering the grounds of decision of the court):

Introduction

1 This appeal concerns the circumstances in which a court will exercise its power to set aside a garnishee order that has been made final. The appellant, Harmonious Coretrades Pte Ltd ("HCPL"), obtained a final garnishee order ("the Final Garnishee Order") against the respondent, United Integrated Services Pte Ltd ("UIS"). UIS subsequently applied to set aside the Final Garnishee Order on the ground that the debt which it owed to a third party, Civil Tech Pte Ltd ("CTPL"), which was the debt underlying the Final Garnishee Order, was extinguished. Specifically, UIS contended that while it initially owed a debt to CTPL pursuant to a first adjudication determination ("AD1") under the Building and Construction Industry Security of Payment Act (Cap 30B, 2006 Rev Ed) ("the SOPA"), a second adjudication determination ("AD2") superseded AD1 and thus extinguished the debt arising from AD1. In

the High Court, the Judge granted UIS' application and set aside the Final Garnishee Order. HCPL appealed.

2 After hearing the parties' submissions, we were of the view that it could not be said that the debt underlying the Final Garnishee Order was extinguished. We therefore allowed the appeal and restored the Final Garnishee Order. We now give the reasons for our decision.

Background facts

Parties to the dispute

3 UIS was engaged as the main contractor for a construction project. It engaged CTPL to carry out construction works for the project. CTPL in turn engaged HCPL as its sub-contractor for the project to carry out reinforced concrete works.[1]

Procedural history

HCPL obtaining the Final Garnishee Order

4 On 31 August 2018, HCPL obtained against CTPL an adjudication determination in Adjudication Application No 288 of 2018 under the SOPA. Pursuant to the adjudication determination, CTPL was to pay HCPL $1,261,096.71, as well as adjudication fees and interest.[2]

---

1 Wang Jianheng's affidavit in SUM 4781 at paras 13 and 15: ABD pp 40-41.

2 Wang Jianheng's affidavit in SUM 4781 at paras 5-6: ABD pp 38-39.

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

5 CTPL failed to make payment.[3] On 10 September 2018, HCPL commenced Originating Summons No 1113 of 2018 ("OS 1113")[4] seeking the following reliefs:

> 1. Leave be granted to the Applicant to enforce the adjudication determination made by Mr Chow Kok Fong on 31 August 2018 and served on parties on the same day, in respect of Adjudication Application No. SOP/AA 288 of 2018, in the same manner as a judgment or an order pursuant to section 27(1) of the Building and Construction Industry Security of Payment Act (Cap. 30B) ("Act"), and to enter a judgment in terms of the said adjudication determination pursuant to section 27(2) of the Act.
>
> 2. Judgment be entered for the Applicant against [CTPL] ("Debtor") as follows:
>
> That the Debtor do pay the Applicant:
>
> a. The sum of S$1,261,096.71 (including GST) ("Adjudicated Amount");
>
> b. Interest on the Adjudicated Amount or such unpaid part thereof at the rate of 5.33% per annum for the period between 8 September 2018 and the date of full payment of the Adjudicated Amount;
>
> c. The sum of S$449.40 (including GST) being 70% of the Adjudication Fee of S$642.00 (including GST); and
>
> d. The sum of S$13,369.65 (including GST) being 70% of the Adjudicator Fee of S$19,099.50 (including GST).
>
> 3. Fixed costs at $2,000.00 and reasonable disbursements to be paid by the Debtor to the Applicant; and
>
> 4. Such further or other relief that this Honourable Court deems fit.

---

3 Wang Jianheng's affidavit in SUM 4781 at para 7: ABD p 39.

4 OS 1113: ABD 24-25.

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

6 On 13 September 2018, by Order of Court No 6013 of 2018 ("ORC 6013"), the court granted HCPL leave to enforce the adjudication determination and ordered that judgment be entered against CTPL in the sum of $1,261,096.71 with costs and interest.[5]

7 On 12 October 2018, HCPL commenced garnishee proceedings against UIS by way of Summons No 4781 of 2018 ("SUM 4781").[6] HCPL sought an order that all debts due from UIS to CTPL be attached to answer ORC 6013. The application was premised on HCPL's belief that UIS, being CTPL's main contractor, would be indebted to CTPL for works carried out on the project.[7] On 15 October 2018, a provisional garnishee order was made against UIS for the sum of $1.277m ("the Garnished Sum").[8] On 25 October 2018, the provisional garnishee order was served on UIS and CTPL.[9]

8 On 2 November 2018, HCPL and UIS attended before assistant registrar Bryan Fang ("AR Fang") for UIS as the garnishee to show cause. At the hearing, counsel for UIS informed AR Fang that UIS had no objections to the application.[10] Accordingly, by an order of court of the same date, the provisional garnishee order was made final in respect of the Garnished Sum. This was the Final Garnishee Order referred to above (at [1]).[11]

---

5 Order of Court dated 13 September 2018: ABD pp 27-28.

6 SUM 4781: ABD pp 29-30.

7 Wang Jianheng's affidavit in SUM 4781 at para 17: ABD p 41.

8 Order of Court dated 15 October 2018: ABD pp 167-168.

9 ABD pp 169-170.

10 Notes of Evidence, 2 November 2018: ABD, pp 212-214.

11 Order of Court dated 2 November 2018: ABD p 33.

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

Response to the Final Garnishee Order

9 After the garnishee order was made final, HCPL had discussions with UIS' assistant general manager, Mr Wang Haw-Li, regarding payment of the Garnished Sum. Mr Wang Haw-Li informed HCPL that UIS was in the midst of preparing the payment pursuant to the Final Garnishee Order.[12]

10 Although UIS initially had no objections to the making of the Final Garnishee Order, it changed its position subsequently because it formed the view that CTPL was insolvent and owed money to UIS (instead of UIS owing money to CTPL).[13] Ultimately, UIS did not make payment on the Final Garnishee Order.

11 On 22 November 2018, UIS filed Original Summons No 1433 of 2018 ("OS 1433") as well as Summons No 5522 of 2018 ("SUM 5522") against CTPL and HCPL. UIS sought substantially the same reliefs in OS 1433 and SUM 5522, namely:

> 1. Pending the outcome of an arbitration between [UIS] and [CTPL] (the "Parties") relating to the contract between the Parties for the execution of "Reinforcement Concrete, Structure, Structure Steel, Architectural and external works" (the "Works") for the "proposed additions & alterations to existing semi-conductor factory development involving new erection of A 4-storey production building (FAB), single-storey central utility building (CUB) and high level link bridge at 3RD storey of existing production building & new production building on Lot 02281K & 02283X (PT) MK 29 at 70, Pasir Ris Industrial Drive" (the "Project"):

---

12 Wang Jianheng's 2nd affidavit for SUM 5522 at paras 14-17: ABD pp 96-97.

13 Wang Haw-Li's affidavit for OS 1433 and SUM 5522 at paras 63-64: ABD p 91.

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

a. Any and all enforcement proceedings against [UIS] by [CTPL] arising from any Judgment or Order of Court obtained as a result of any determination under the Building and Construction Industry Security of Payment Act (Cap.30B) (the "Act") be stayed; and

b. Any and all applications by [CTPL] to have [UIS] wound up, arising from any determination under the Act be stayed; and/or

c. The further enforcement of the Final Garnishee Order obtained by [HCPL] in HC/OS 1113/2018 (HC/SUM 4781/2018), by any means of enforcement whatsoever, including any application by [HCPL] to have [UIS] wound up, be stayed.

2. In the alternative, pending the outcome of all current applications to the High Court of the Republic of Singapore to have [CTPL] wound up:

a. Any and all enforcement proceedings against [UIS] by [CTPL] arising from any Judgment or Order of Court obtained as a result of any determination under the Act be stayed; and

b. Any and all applications by [CTPL] to have [UIS] wound up, arising from any determination under the Act be stayed; and/or

c. The further enforcement of the Final Garnishee Order obtained by [HCPL] in HC/OS 1113/2018 (HC/SUM 4781/2018), by any means of enforcement whatsoever, including any application by [HCPL] to have [UIS] wound up, be stayed.

12 In Mr Wang Haw-Li's affidavit filed on 22 November 2018 in support of OS 1433 and SUM 5522, he stated that UIS had grounds to believe that CTPL was in financial difficulties, noting that UIS had taken over CTPL's sub-contractors, that CTPL failed to pay foreign worker levies and that there were

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

winding up applications against CTPL.[14] He also stated that UIS had terminated CTPL's sub-contract on 4 October 2018, on account of various breaches by CTPL. He estimated that CTPL owed UIS about $7m due to CTPL's incomplete works on site.[15] This sum was based on a payment response issued by UIS on 23 October 2018 ("the Payment Response"),[16] in response to CTPL's payment claim issued on 10 October 2018 for approximately $6.8m ("the Payment Claim").[17] In the Payment Response, UIS indicated that CTPL in fact owed it approximately $7.1m as a result of amounts previously paid, back charges and liquidated damages, among other things.

13 This is a good juncture to introduce and explain the relevance of AD1 and AD2. In an affidavit filed on 10 December 2018, Mr Wang Haw-Li explained that the Final Garnishee Order, granted on 2 November 2018, was premised on money owed by UIS to CTPL due to an adjudication determination that was rendered on 23 October 2018. This was AD1, which was for a sum of $1,369,987.02. However, by virtue of an adjudication determination rendered on 23 November 2018 (*ie*, AD2), it was claimed that UIS no longer owed CTPL any debt.[18] AD2 was the result of an adjudication application made by CTPL against UIS, based on the Payment Claim. UIS counterclaimed against CTPL, taking the same position as it had adopted in the Payment Response, *ie*, contending that CTPL instead owed UIS approximately $7.1m.[19] Specifically,

---

14 Wang Haw-Li's affidavit for OS 1433 and SUM 5522 at paras 40-47: ABD pp 86-88.

15 Wang Haw-Li's affidavit for OS 1433 and SUM 5522 at paras 59-61: ABD p 90.

16 Wang Haw-Li's affidavit for OS 1433 and SUM 5522 at p 725.

17 Wang Haw-Li's affidavit for OS 1433 and SUM 5522 at pp 697-698.

18 Wang Haw-Li's affidavit for SUM 5798 at paras 19-21: ABD p 181.

19 AD2 at [31]: RBD at p 15.

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

the adjudicator in AD2 took into consideration the values determined in AD1 and nonetheless arrived at a finding that CTPL owed UIS $1,176,050.67.[20]

14 Coming back to SUM 5522, although the reliefs prayed for were framed generally in terms of a stay of any or all enforcement proceedings against UIS arising from any judgment obtained as a result of any determination under the SOPA, for all intents and purposes, UIS was seeking a stay of enforcement of AD1 by CTPL against it.

15 On 15 January 2019, HCPL, UIS and CTPL attended before the Judge in relation to SUM 5522. The Judge made the following orders:[21]

(a) A stay of enforcement of AD1 by CTPL against UIS, unless CTPL obtains an order setting aside AD2.

(b) No stay of enforcement in relation to the Final Garnishee Order that had been obtained by HCPL.

16 On 29 January 2019, CTPL wrote to the court, requesting further arguments in relation to SUM 5522. There was no response to this request. The next day, the parties (*ie*, UIS, CTPL and HCPL) attended a pre-trial conference before senior assistant registrar Christopher Tan ("SAR Tan"). Counsel for CTPL informed SAR Tan that it had filed a request for further arguments before the Judge in relation to SUM 5522.

---

20 Wang Haw-Li's affidavit for SUM 5798 at para 21: ABD p 181.

21 Minute Sheet for SUM 5522, 15 January 2019.

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

17 On 31 January 2019, UIS and CTPL attended before the Judge again in relation to SUM 5522. After hearing the parties' further submissions, the Judge varied his order in relation to the stay of enforcement of AD1. Instead of the initial conditional order of stay of enforcement of AD1 (as set out in [15(a)] above), the Judge varied his order to an unconditional stay of enforcement of AD1 by CTPL against UIS.[22] No orders concerning HCPL were made or varied at this hearing of further arguments.

18 Subsequently, all the parties to OS 1433 consented to the withdrawal of OS 1433 with no order as to costs. On 13 February 2019, counsel for HCPL attended before SAR Tan and informed him that she was mentioning the matter on behalf of counsel for UIS and CTPL and that all parties had consented to the withdrawal of OS 1433. Leave was therefore granted, with no order as to costs.[23]

19 The next day, on 14 February 2019, the Judge released his grounds of decision in SUM 5522 (which was filed in OS 1433), reported in *United Integrated Services Pte Ltd v Civil Tech Pte Ltd and another* [2019] 3 SLR 1426 ("the Stay GD"). The Judge gave the following reasons, which were of significance to the appeal before us:

> (a) CTPL did not have the right to choose which adjudication determination – whether AD1 or AD2 – it wished to enforce. It followed from the cumulative nature of adjudication determinations that only the final adjudication determination between the parties, "which has accumulated the findings of all prior [adjudication determinations]",

---

22 Minute Sheet for SUM 5522, 31 January 2019.

23 Minute Sheet for OS 1433, 13 February 2019.

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

would be enforceable. Consequently, as between UIS and CTPL, AD2, which determined that no amount was payable to CTPL, superseded AD1 (Stay GD at [12], [20] and [23]).

(b) There was also clear and objective evidence that CTPL was insolvent and such insolvency was not caused by UIS' failure to pay the adjudicated amount in AD1 (Stay GD at [26]).

Application to set aside the Final Garnishee Order

20 Shortly after AD2 was rendered, on 11 December 2018, UIS applied by Summons No 5838 of 2018 ("SUM 5838") to set aside the Final Garnishee Order.

21 On 18 January 2019, UIS and HCPL attended before assistant registrar Li Yuen Ting ("AR Li") for the hearing of SUM 5838. After hearing the parties, AR Li dismissed the application, giving the following reasons:[24]

(a) There was no basis for her, sitting as a court of coordinate jurisdiction, to set aside the Final Garnishee Order. The case did not fall within the limited circumstances that allowed a court to set aside an order.

(b) Further, UIS was seeking to re-litigate the issue of whether any debt was owed to it based on events that occurred after the date of the original hearing. There was "nothing wrong with the order that was made on 2 November 2018 in law or in fact as at that time".

---

[24] Notes of Evidence, 18 January 2019: ABD p 218.

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

(c) In any event, UIS was not prejudiced in that it could take the necessary steps to recover the sums owed to it.

22 UIS appealed against AR Li's decision by filing Registrar's Appeal No 79 of 2019 ("RA 79"). The Judge heard RA 79 on 15 April 2019 and reserved judgment. On 15 May 2019, the Judge issued his written judgment allowing UIS' appeal in RA 79 and setting aside the Final Garnishee Order: see *United Integrated Services Pte Ltd v Harmonious Coretrades Pte Ltd* [2019] SGHC 126 ("the Judgment").

23 On 10 June 2019, HCPL filed a notice of appeal against the Judge's decision to set aside the Final Garnishee Order. This was the appeal before us.

Decision of the High Court

24 The Judge first considered whether he had the power to set aside the Final Garnishee Order. He noted that the case did not fall within the three circumstances for setting aside a court order as set out in *Ong Cher Keong v Goh Chin Soon Ricky* [2001] 1 SLR(R) 213 ("*Ong Cher Keong*") at [44]–[46] and *Sunny Daisy Ltd v WBG Network (Singapore) Pte Ltd* [2008] 4 SLR(R) 769 ("*Sunny Daisy*") at [21] (Judgment at [15]-[16]). However, the court retained the "residual discretion flowing from its inherent powers to prevent injustice" under O 92 r 4 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules of Court") to set aside any order that falls outside the three circumstances identified in *Ong Cher Keong* and *Sunny Daisy* (Judgment at [18]).

25 Having established that the court had the power to set aside the Final Garnishee Order, the Judge proceeded to consider whether the threshold for invoking the court's inherent powers had been crossed. In his view, the essential

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

touchstone was that of "need" (Judgment at [32]). The Judge held that there was a need to invoke the court's inherent powers for three reasons:

(a) First, a garnishee order is a parasitic order and is thus suspended if the right to call on the debt on which it is based is suspended. On the facts, the substratum on which the Final Garnishee Order was obtained was held in abeyance, as UIS had obtained a stay of enforcement of AD1 (pursuant to the Judge's decision in SUM 5522). As that was the debt which had been attached under the Final Garnishee Order, the result was that there was no debt due and owing by UIS to CTPL so long as the stay remained (Judgment at [36] and [38]).

(b) Second, upholding the Final Garnishee Order could expose UIS to a debt it may not even owe. Consequently, apart from the conceptual difficulty that would arise from having a garnishee order without an underlying debt, it was "plainly unjust" to order UIS to pay for a debt which was no longer enforceable and which it may not even owe (Judgment at [39] and [45]).

(c) Third, the injustice was exacerbated given that he had found (in the Stay GD) that CTPL was insolvent. Consequently, allowing the enforcement of the Final Garnishee Order would have the effect of unduly favouring HCPL at the expense of UIS should CTPL be subject to a winding up order subsequently. In particular, UIS would be left to prove its claim in CTPL's winding up while HCPL would have its claim satisfied in full (Judgment at [46] and [48]).

The parties' cases on appeal

26 HCPL advanced two broad submissions:

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

(a) First, the court did not have the jurisdiction or power to set aside the Final Garnishee Order. The Judge erred in holding that the court retained the inherent power, outside of the recognised circumstances, to set aside an order of court.[25]

(b) Second, even if the court had the inherent power to set aside the Final Garnishee Order, the facts did not justify invoking the power. In particular, the Judge failed to recognise and give effect to the temporary finality of AD1 and erred in holding that AD1 was a debt which UIS no longer owed to CTPL.[26] Further, there was no injustice in allowing HCPL to garnish the sum from UIS, even though that may result in UIS being left to claim in CTPL's winding up. HCPL, having acted early and taken steps to enforce AD1, ought to be entitled to its "lawfully determined rights".[27]

27 UIS responded with the following submissions:

(a) The court had the jurisdiction to set aside the Final Garnishee Order. Specifically, O 92 r 4 of the Rules of Court preserved the court's inherent powers to prevent injustice.[28]

(b) The court should invoke its inherent powers to set aside the Final Garnishee Order. The negative amount determined in AD2 meant that no debt was owing by UIS to CTPL as of 23 November 2018. It would

---

25 HCPL's Written Submissions at paras 45-47 and 55.

26 HCPL's Written Submissions at paras 63-64.

27 HCPL's Written Submissions at paras 64-66.

28 UIS' Written Submissions at para 48.

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

be contrary to justice to allow the Final Garnishee Order to stand as UIS would be required to pay a debt that it did not owe.[29]

Our decision

28 Having heard the parties' arguments, we allowed the appeal and restored the Final Garnishee Order. Although we accepted that the court has the inherent power to set aside a garnishee order that has been made final in order to prevent injustice, we did not accept that the circumstances of the present case warranted the exercise of such a power. Specifically, we did not agree with the Judge's views in the second and the third grounds stated by him.

Preliminary issue: the further arguments hearing in SUM 5522

29 We first address a preliminary issue that initially gave us some cause for some concern. As we noted above, SUM 5522 was an application by UIS against CTPL and HCPL. It was heard on 15 January 2019. Subsequently, further arguments were made at a hearing on 31 January 2019. However, at this second hearing, HCPL was not present. HCPL in its written submissions stated that it was not given notice of this hearing.[30] Before us, counsel for HCPL reiterated that they only learnt that there was a hearing on 31 January 2019 when they received a copy of the Stay GD and saw the reference to a hearing on that date.

30 We therefore sought clarification from counsel as to how it came to pass that HCPL was not informed of and consequently was not present at the 31

---

29 Respondent's submissions at paras 69 and 75.

30 HCPL's written submissions at para 22.

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

January 2019 hearing for SUM 5522, although it was a party in SUM 5522. Counsel for UIS, Ms Debbie Lee, explained that on 31 January 2019, UIS and CTPL had originally attended before the Judge for a separate matter – Summons No 6048 of 2018 ("SUM 6048"). SUM 6048 was an application by UIS against CTPL to set aside an order of court that granted leave to CTPL to enforce AD1 in the same manner as a judgment or order of court. Ms Lee explained that at the hearing for SUM 6048, counsel for CTPL submitted that AD1 and AD2 were separately enforceable, *ie*, AD2 did not supersede AD1. As counsel for CTPL mentioned that he was intending to raise the same arguments in the further arguments to SUM 5522, the Judge indicated that he was willing to hear those arguments together. Subsequently, the Judge made no orders on SUM 6048 and varied his previous order in SUM 5522 by making the stay of enforcement of AD1 unconditional (see above at [17]).

31 Before us, there was some dispute between counsel for UIS and HCPL as to whether counsel for HCPL was informed after the hearing on 31 January 2019 of the variation of the order made in SUM 5522. No correspondence, attendance note or any other form of documentary evidence on the matter was produced. We did not however press the issue any further because, in our view, it was not necessary to determine whether counsel for HCPL was informed after the hearing on 31 January 2019.

32 Having heard from counsel on the matters that culminated in the hearing of SUM 5522 without HCPL in attendance, we were satisfied that this peculiar incident did not pose an issue to the proper disposal of this appeal. Given that the Judge merely varied his order in SUM 5522 from a conditional stay of enforcement of AD1 to an unconditional stay of enforcement, the variation in the order had no bearing whatsoever on HCPL. The order affected only CTPL

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

as judgment creditor on AD1 and UIS as judgment debtor on AD1. Consequently, there was no prejudice occasioned to HCPL by reason of its absence at the hearing on 31 January 2019. The variation made in the order had no bearing on HCPL's position in relation to UIS or to CTPL. In any event, it was clear that by the time RA 79 came to be heard by the Judge on 15 April 2019, HCPL already knew about the hearing on 31 January 2019 from the Stay GD which was released on 14 February 2019.

Power to set aside

33 Having disposed of the preliminary issue, we turn to consider the issue of the court's power to set aside the Final Garnishee Order.

34 It is settled law that there are at least three circumstances in which a court may set aside a judgment or order of court. These were first set out in the decision of Judith Prakash J (as she then was) in *Ong Cher Keong* (at [44]-[46]):

> 44 The basic principles which govern applications to set aside orders of court or judgments are concisely set out in paras 558, 559 and 560 of *Halsbury's Laws of England* vol 36 (4th Ed). There are three situations in which an order may be set aside. The first situation is when the order has been obtained irregularly, that is, the person obtaining the order has not complied with the requirements of the Rules of Court in some aspect. In this situation, the person against whom the order is made is entitled to have it set aside…
>
> 45 The second situation is when a judgment has been obtained by fraud. Such a judgment may be impeached by means of an action which may be brought without leave. The fraud must relate to matters which *prima facie* would be a reason for setting the judgment aside if they were established by proof and the fraud must have been discovered after the judgment was passed…
>
> 46 The third situation is where an order or judgment has been obtained in default of the appearance of one of the parties to the suit. In such a case, the person against whom the order has been made may apply for it to be set aside but the court

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

> has a discretion as to whether to allow the application. As a rule, the applicant must show by affidavit that he has a defence to the action on the merits…

35 Prakash J reiterated these three grounds in her subsequent decision in *Sunny Daisy* (at [21]).

36 The Judge was cognisant of these authorities and held that the Final Garnishee Order was not made under any of the three circumstances. However, he held that the three circumstances were not exhaustive and the court retained a residual discretion to set aside a judgment or court order. This residual discretion flowed from the court's inherent powers to prevent injustice.

37 On this point, we agree with the Judge. The court's inherent powers are preserved by O 92 r 4 of the Rules of Court which reads as follows:

> **Inherent powers of Court (O. 92, r. 4)**
>
> **4.** 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.

38 We could see no basis to hold that the court has no inherent power to set aside a judgment or court order in circumstances where such an order to set aside is needed to prevent injustice. To circumscribe the scope of the court's powers to the three circumstances as espoused in *Ong Cher Keong* may lead to some injustice in less usual cases.

39 In our opinion, such a view about the High Court's inherent power accords with this court's decision in *Management Corporation Strata Title Plan No 301 v Lee Tat Development Pte Ltd* [2011] 1 SLR 998 where it was held that the Court of Appeal has the inherent jurisdiction to reopen and rehear an issue

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

which it decided in breach of natural justice, as well as to set aside the whole or part of its earlier decision founded on that issue (at [55]). A breach of natural justice does not fall within the three circumstances as identified in *Ong Cher Keong*. In holding that the Court of Appeal has the inherent jurisdiction to set aside a decision reached in breach of natural justice, this court reasoned as follows (at [55]):

> Nothing in the [Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed)] prescribes for this situation, and we see no justification to circumscribe the inherent jurisdiction of this court (which would be the effect if we were to rule that the [Court of Appeal] has no inherent jurisdiction to reopen an issue which it decided in breach of natural justice) as that could potentially result in this court turning a blind eye to an injustice caused by its own error in failing to observe the rules of natural justice.

40 We therefore agree with the Judge that the court retains the residual discretion to set aside a judgment or court order so as to prevent injustice. However, we emphasise that this is not a licence to litigants to make frivolous applications to set aside judgments or court orders. The court's inherent power to set aside a judgment or court order should never become a back-door appeal or an opportunistic attempt to re-litigate the merits of the case. One such situation where the court's inherent power could be justifiably invoked might be where the substratum or the very foundation of a court order has been destroyed, such that the continued existence or future performance of the court order would lead to injustice. Indeed, this was how the Judge viewed the case before him. However, as we explain below, we do not accept that the facts of the present appeal were such that the foundation of the order was destroyed or that the Final Garnishee Order would have resulted in injustice.

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

No grounds to set aside

41 The Judge, in reaching his decision to set aside the Final Garnishee Order, relied essentially on two grounds. The first was that the debt underlying the Final Garnishee Order (*ie*, AD1) was extinguished by AD2 and consequently, it would be unjust to require UIS to pay a sum that it no longer owed. The second was that the Final Garnishee Order would have the effect of unduly favouring HCPL at the expense of UIS in CTPL's insolvency where UIS would be deprived of the opportunity of setting off its claims against CTPL with any debts that it owed to CTPL, while HCPL would have its claim against CTPL satisfied in full.

42 It is worthwhile at this point to refer to this court's explanation in *Wee Soon Kim Anthony v Law Society of Singapore* [2001] 2 SLR(R) 821 ("*Anthony Wee*") about how the court's inherent power should be exercised (at [27]):

> It seems to us clear that by its very nature, how an inherent jurisdiction, whether as set out in O 92 r 4 or under common law, should be exercised should not be circumscribed by rigid criteria or tests. In each instance the court must exercise it judiciously. In his lecture on "The Inherent Jurisdiction of the Court" published in *Current Legal Problems 1970*, Sir Jack Jacob (until lately the general editor of the *Supreme Court Practice*) opined that this jurisdiction may be invoked when it is just and equitable to do so and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression and to do justice between the parties. Without intending to be exhaustive, we think an essential touchstone is really that of "need". Bearing that in mind, one can easily understand why in *The Mardina Merchant* ([23] *supra*) the court invoked its inherent jurisdiction.

43 We affirm this approach in the exercise of the court's inherent power. Bearing in mind that the "essential touchstone" for the invocation of the court's inherent power is that of "need", we do not agree that the two grounds relied

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

upon by the Judge constituted sufficient reason or caused such injustice that the court had to invoke its inherent power to set aside the Final Garnishee Order.

AD1 not extinguished or superseded

44 The Judge considered the debt underlying the Final Garnishee Order to have been "held in abeyance" because UIS had obtained an unconditional stay of enforcement of AD1. The Judge therefore took the view that until the stay was lifted, there was no debt due and owing by UIS to CTPL. Accordingly, there was no debt that could be attached by the Final Garnishee Order (Judgment at [36]). It was evident that the Judge had taken into consideration his decision in SUM 5522 to order an unconditional stay of enforcement of AD1, as set out in the Stay GD (Judgment at [11]). The Judge's decision in the Stay GD was in turn largely premised upon the reasoning that AD2 had superseded AD1, so that AD1 was no longer enforceable by CTPL against UIS.

45 We disagree with the Judge on the last-mentioned point. Adjudication determinations do not supersede one another but are each enforceable independently in their own right unless or until impugned on the grounds as provided in the SOPA. Section 21(1) of the SOPA provides as follows:

> **Effect of adjudication determinations and adjudication review determinations**
>
> **21.**—(1) An adjudication determination made under this Act shall be binding on the parties to the adjudication and on any person claiming through or under them, unless or until —
>
> (a) leave of the court to enforce the adjudication determination is refused under section 27;
>
> (b) the dispute is finally determined by a court or tribunal or at any other dispute resolution proceeding; or

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

(c) the dispute is settled by agreement of the parties.

46 As this court held in *W Y Steel Construction Pte Ltd v Osko Pte Ltd* [2013] 3 SLR 380 ("*W Y Steel*"), s 21 of the SOPA provides for the temporary finality of adjudication determinations. Indeed, the scheme of the SOPA is "an intervening, provisional process of adjudication which, although provisional in nature, is final and binding on the parties to the adjudication until their differences are ultimately and conclusively determined or resolved" (at [18]).

47 It was not disputed that AD1 was not impugned under any of the three grounds as provided in s 21 of the SOPA. Accordingly, AD1 was imbued with temporary finality and was binding as between UIS and CTPL. The narrow question that remained, therefore, was whether AD2 could nonetheless impugn or supersede AD1. In our view, AD2 could have no such effect for two reasons.

Legislative purpose of the SOPA

48 The first reason is that it would run counter to the legislative purpose behind the SOPA to hold that parties could seek to rely on subsequent adjudication determinations to impugn, set-off, or otherwise diminish the enforceability of an earlier adjudication determination. This court in *W Y Steel* explained that the legislative purpose of the SOPA was to facilitate cash flow in the building and construction industry, given that "cash flow is the life blood of those in the building and construction industry" (at [18]). It was further observed that the adjudication process established under the SOPA was modelled after systems already established in other jurisdictions, albeit with some adaptations, but which shared the common idea that parties to a construction contract should "pay now, argue later" (at [20]).

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

49 More recently in *Civil Tech Pte Ltd v Hua Rong Engineering Pte Ltd* [2018] 1 SLR 584 ("*Hua Rong*"), this court had the opportunity to consider which of two competing conceptions of cash flow the SOPA aimed to promote. It was argued by the respondent there that cash flow would be promoted if a respondent to payment claims could not rely on reasons for withholding payment that did not arise out of the payment claim contract, as to allow such arguments to be raised would prolong adjudications (at [14]). The appellant in *Hua Rong*, while not denying that the purpose of the SOPA was to promote cash flow, argued that "true" cash flow reflected and gave effect to the net financial position between the parties. On this conception, facilitating cash flow would require accounting for parties' mutual rights and liabilities across all contracts (at [23]).

50 In *Hua Rong*, this court rejected the latter conception of cash flow as reflecting the "net financial position between the parties". This court held that such a notion of cash flow was foreign to the purpose of the SOPA (at [24]). Such a conception would also revert the law to its position prior to the enactment of the SOPA. Previously, an upstream party could withhold payment by asserting a set-off or cross-claim. As the ultimate validity of such a set-off or cross-claim could turn on complex issues that could only be resolved after lengthy and expensive proceedings, downstream parties may only receive payment long after payment became due. The SOPA was introduced to tackle this precise problem, by ensuring that downstream parties are paid timeously for work done or materials supplied (at [23]-[32]). This court thus concluded as follows (at [32]):

> … The Act promotes cash flow by facilitating prompt payments down the chain of contractors involved in any given construction project. In our judgment, it is this conception of cash flow – the flow of monies from upstream parties to

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

> downstream parties, that is, cash flow in a literal sense – which is reflected in the Act, not the notion of giving effect to the net financial position between the parties which Mr Tan suggested (see [23] above).

51 This court in *Hua Rong* proceeded to make the following observations on the adjudication process and its role in facilitating cash flow in the SOPA scheme (at [36]):

> Further, the entire adjudication process is geared towards a swift resolution of the payment dispute albeit on a provisional basis. First, the adjudicator is required to decide the dispute within very short timelines as prescribed under s 17(1) of the Act. Second, once the adjudicator determines the dispute, the upstream party will then only have a short time to pay the adjudicated amount, as provided for under s 22 of the Act. The Act therefore facilitates cash flow by requiring swift payment to the downstream party in accordance with the adjudication determination, which is itself rendered very quickly after the commencement of adjudication.

52 In the light of the above, we could not accept UIS' submission that AD1 was impugned or superseded by AD2. For the same reasons, we disagree with the Judge's reasoning in the Stay GD that "when faced with two or more [adjudication determinations] which have not been enforced … only the *final* [adjudication determination] … is enforceable" [emphasis in original] (Stay GD at [23]). In our opinion, such reasoning would run counter to the philosophy underpinning the SOPA of "pay now, argue later" and change it to "pay only at the end". The scheme of the SOPA is that even if the upstream party has valid counter-claims against a downstream party, its obligation is to pay up on an adjudication determination and pursue those counter-claims later. In this way, the temporary finality of every adjudication determination will be respected and the life-sustaining cash flow of the downstream party will be preserved.

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

The nature of AD2

53 The second reason we could not accept that AD2 had the effect of impugning AD1 was that AD2 did not, in itself, create a debt owing from CTPL to UIS. Although the adjudicator in AD2 found, taking into account the sums owed by CTPL to UIS under AD1, that it was UIS that had a net claim against CTPL for $1,176,050.67, that did not have the effect in law of giving UIS a claim against CTPL for $1,176,050.67. Instead, all that was decided under AD2 was that UIS did not have to pay CTPL on that Payment Claim.

54 It is well established that the SOPA only provides for downstream parties to apply for adjudication (*Hua Rong* at [43]). In a related vein, an adjudication determination cannot result in a downstream party paying an upstream party. This follows from the language of s 17(2) of the SOPA which refers to "the adjudicated amount (if any) to be paid by the respondent to the claimant". This remains the case even if the respondent has raised counter-claims in excess of the claimant's claim. Chow Kok Fong, *Security of Payments and Construction Adjudication* (LexisNexis, 2nd Ed, 2013) puts this point across in the following way (at para 16.63):

> Thus, while an adjudicator may determine the entitlement of the respondent to counterclaims and set-offs – such as deductions for liquidated damages, back charges and sums expended for rectifying defects – and set these off against the amount to which the claimant is otherwise entitled, he has no mandate to order any amount to be paid to a respondent by the claimant. It follows that, under the Singapore SOP Act, even if the adjudicator determines that the aggregate of a respondent's set-offs and counterclaims exceeds the sum determined in favour of the claimant, the best result for a respondent in an adjudication is a determination by the adjudicator that the claimant is not entitled to be paid any part of the subject payment claim.

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

55 The net effect of both adjudication determinations in AD1 and AD2 is that the sums owing under AD1 still stand. AD1 was not impugned by the reasoning or findings of the adjudicator in AD2.

56 We therefore did not accept that the debt created by AD1 was extinguished by virtue of AD2. It was thus inaccurate to say that UIS would be required to pay a debt that it did not owe if the Final Garnishee Order were enforced. UIS did and continued to owe a debt to CTPL under AD1.

57 To conclude the analysis, the debt that was owing under AD1 had been attached by the Final Garnishee Order to the extent of the Garnished Sum. When the parties appeared before AR Fang for the show cause hearing on 2 November 2018, no objections were raised as to the existence of this debt owed by UIS to CTPL. Accordingly, the provisional garnishee order was made final. Therefore, as of 2 November 2018, the entire process of execution by HCPL on its claim against CTPL, with UIS as garnishee, was complete and all that remained was for UIS to pay HCPL according to the terms of the Final Garnishee Order. Instead of doing that and in spite of its assurance, UIS delayed payment and AD2 was subsequently rendered on 23 November 2018. However, as we have reasoned above, AD2 did not have the effect of impugning or superseding AD1 or of otherwise negating the debt owed under AD1. UIS had no basis at the time that the Final Garnishee Order was made to refuse payment and it similarly did not have any reason to refuse in the High Court proceedings. We therefore do not accept that there would be injustice in maintaining the Final Garnishee Order.

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

No injustice by reason of CTPL's insolvency

58 In respect of the second ground that the Judge relied upon, we do not agree that injustice that would be occasioned by reason of CTPL's insolvency.

59 We start with the Judge's findings in the Stay GD, which he relied on in the Judgment, that CTPL appeared to be insolvent. At the hearing before us, in response to our queries, Ms Lee for UIS informed us that CTPL was ordered to be wound up on 8 February 2019 by Ang Cheng Hock JC (as he then was) in Companies Winding Up No 270 of 2018, for the reasons set out in *Industrial Floor & Systems Pte Ltd v Civil Tech Pte Ltd* [2019] SGHC 50. The appeal against that decision was withdrawn subsequently. We were also informed that a private liquidator has been appointed to carry out the liquidation of CTPL.

60 We accept that the consequence of upholding the Final Garnishee Order would be that HCPL would have its claim against CTPL satisfied in full (by receiving payment from UIS) whereas UIS would not be able to set-off its debt to CTPL against claims that it might have against CTPL. In the present situation where CTPL is insolvent, this means that UIS has to prove its claim in CTPL's liquidation and possibly receive less than the full value of its claim.

61 However, we do not agree that this warranted the setting aside of the Final Garnishee Order. The critical point was that the provisional garnishee order had been made final already on 2 November 2018 at the show cause hearing without objection. There was no error in law or any mistake of fact on the part of UIS when it raised no objection at the show cause hearing in the garnishee proceedings. None could have been raised in law anyway if the only objection in respect of AD1 was that UIS had prospective counter-claims and set-offs against CTPL. Accordingly, as on that date, UIS was obligated to pay

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

the Garnished Sum to HCPL which had acted diligently in enforcing its claim against CTPL. Seen in this light, we do not think that there would be injustice if UIS is made to pay HCPL under the Final Garnishee Order.

62 Insofar as it might be contended that the Final Garnishee Order would constitute a preferential discharge of HCPL's claim against CTPL, we express no view at this stage. Whether there is any merit in such a contention is for the liquidator of CTPL to consider.

Conclusion

63 In the circumstances, although we agree with the Judge that the court has the inherent power to set aside a judgment or court order to prevent injustice, we do not agree that the circumstances gave rise to such injustice that warranted the setting aside of the Final Garnishee Order. For these reasons, we allowed the appeal and restored the Final Garnishee Order. We fixed costs at $28,800 for the appeal before us and $5,000 for RA 79 before the Judge, both amounts to be inclusive of disbursements, and ordered that these amounts be paid by UIS to HCPL, with the usual consequential orders to apply.

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

Tay Yong Kwang	Belinda Ang Saw Ean	Quentin Loh
Judge of Appeal	Judge	Judge

Lynette Chew and Grace Lu (Holborn Law LLC) for the appellant;
Lee Mei Yong Debbie and Wong Qiao Ling Sharon (Millennium Law LLC) for the respondent.

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