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

[2023] SGHCR 5

Suit No 703 of 2020
(Summons No 671 of 2023)

Between

Tarun Hotchand Chainani

… *Plaintiff*

And

(1) Avinderpal Singh s/o Ranjit Singh
(2) Avitar Enterprises Pte Ltd
(3) Avitar Holdings Pte Ltd

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure — Pleadings — Striking out]
[Civil Procedure — Pleadings — Amendment]
[Civil Procedure — Pleadings — Admissions]

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Tarun Hotchand Chainani
v
Avinderpal Singh s/o Ranjit Singh and others

[2023] SGHCR 5

General Division of the High Court — Suit No 703 of 2020 (Summons No 671 of 2023)
AR Wong Hee Jinn
17 April 2023

30 May 2023

AR Wong Hee Jinn:

Introduction

1 Our civil procedure rules confer upon litigants the right to make consequential amendments to their respective pleadings, after an opposing party files an amended pleading. This is an expression of procedural justice because consequential amendments may be necessitated to address amendments that may often raise a new question and/or issue that has to be determined by the court. What is the position, however, when the proposed amendment to a party's pleading is not in fact a consequential amendment? And further, does the fact that the proposed amendment seeks to resile from an admission made in that very pleading provide a basis for striking out the impugned amendment? That was the crux of the legal issues in this matter.

2 By the present application, the plaintiff sought to strike out a sentence (the "Impugned Sentence") in the first defendant's Defence (Amendment No 2) dated 20 February 2023 ("DA 2") filed in HC/S 703/2020 (the "Suit"). The Impugned Sentence was inserted, under the auspices of a consequential amendment, following the filing of the plaintiff's Statement of Claim (Amendment No 3) dated 6 February 2023 ("SOCA 3").

3 Having considered the parties' submissions, I allowed the plaintiff's application with brief oral remarks. In my view, the first defendant's amendment was not a consequential amendment and impermissibly sought to re-open an issue that had previously been admitted to. I now furnish my full grounds of decision.

The factual background

The parties

4 The plaintiff, Mr Tarun Hotchand Chainani, and the first defendant, Mr Avinderpal Singh s/o Ranjit Singh, are former business partners. They are equal shareholders and directors in the third defendant company, Avtiar Holdings Pte Ltd. They are also directors in the second defendant, Avitar Enterprises Pte Ltd. The second defendant is a wholly-owned subsidiary of the third defendant and is engaged in, among other things, the business of trading electronic products and mobile phones.

The Suit

5 In the Suit, the plaintiff brings several claims against the defendants, but it would suffice for present purposes to focus on just one aspect. A key plank of the plaintiff's case hinges on a purported understanding (the "Understanding")

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reached between himself and the first defendant in or around 2005, regarding the use of the second defendant as an investment vehicle. The Understanding is defined in paragraph 8 of the plaintiff's Statement of Claim dated 3 August 2020 ("SOC") as follows:[1]

> In or around 2005, the Plaintiff and the 1st Defendant arrived at an understanding to use the 2nd Defendant's funds to invest in stock and/or real estate on behalf of the 2nd Defendant, pursuant to which, they were to account to each other and the 2nd Defendant for the principal sums so invested as well as the profits made from such investments, with such profits to be distributed equally between the Plaintiff and the 1st Defendant as equal shareholders of the 3rd Defendant (the "Understanding"). [original emphasis removed]

Paragraph 9 of the SOC goes on to particularise several properties that the plaintiff avers were purchased and sold, with the plaintiff and the first defendant accounting to the second defendant as well as to each other for the principal sums invested and the profits made from these investments. All this, the plaintiff claims, supports the existence of the Understanding.[2]

6 The plaintiff alleges that the first defendant had contravened this Understanding by purchasing a series of local and overseas properties (as particularised in paragraphs 10 and 13 of the SOC respectively) and shares in two companies either in part and and/or entirely with the second defendant's funds.[3] Some of these properties were subsequently sold, but the first defendant failed to account to the second defendant and to the plaintiff for the sums used to purchase the said properties as well as the profits derived from these sales that were supposed to be shared equally between the plaintiff and the first

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1 Statement of Claim dated 3 August 2020, paragraph 8

2 Statement of Claim dated 3 August 2020, paragraph 9

3 Statement of Claim dated 3 August 2020, paragraph 11

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defendant, in accordance with the Understanding.[4] Disputes subsequently arose between the parties and the plaintiff claims that there was a breakdown of trust and confidence between him and the first defendant. The result, the plaintiff says, is that he has been subjected to oppressive conduct within the meaning of s 216 of the Companies Act (Cap 50, 2006 Rev Ed) (the "Act"). He therefore seeks, among other things, for the first defendant to render a complete account of all investments and profits that he has made or alternatively for damages to be assessed arising from the breach. The plaintiff also seeks an order that the second and third defendants be wound up pursuant to s 216(2) of the Act, upon payment of the sums found to be due and owing to the second defendant and himself.

7 The second and third defendants are notional defendants to the Suit, joined solely for the purpose of ensuring that they are bound by any findings and/or orders. As such, only the first defendant filed a Defence in the Suit.

Procedural history

8 I now highlight in some detail the procedural history leading up to the filing of the present application. Of particular salience are two events: (a) first, a specific discovery application filed by the plaintiff *vide* HC/SUM 3313/2021 (the "Discovery Application") and (b) second, a settlement agreement entered into between the plaintiff and the first defendant (the "Settlement Agreement"). I shall elaborate on the significance of these events in my analysis below.

9 On 3 August 2020, the plaintiff commenced the Suit against the defendants and filed his SOC.

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4 Statement of Claim dated 3 August 2020, paragraphs 12 and 14

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10 On 6 September 2020, the first defendant filed his Defence. Paragraph 10 of the Defence expressly denied paragraph 8 of the SOC (see [5] above). Therein, the first defendant denied that there was the mutual Understanding to use the second defendant's funds "to invest in stock and/or real estate" on behalf of the second defendant. Moreover, the first defendant denied any duty to account to the plaintiff or to the second defendant.[5]

11 On 12 May 2021, by the parties' mutual consent, the plaintiff filed his Statement of Claim (Amendment No 1). Minor amendments were made to paragraph 24(m) of the SOC, but paragraph 8 of the SOC remained unamended.

12 On 14 July 2021, the plaintiff filed the Discovery Application. This was a day before the plaintiff filed his Statement of Claim (Amendment No 2) ("SOCA 2"). The plaintiff sought in the Discovery Application documents related to, among other things (a) properties referred to in paragraph 9 of the SOC (see [5] above) and (b) the local properties referred to in paragraph 10 of the SOC (see [6] above). These documents were sought on the basis that they were relevant and necessary to show the existence of the Understanding, which the first defendant had denied in unequivocal terms in his Defence (see [10] above) and to demonstrate a breach of the Understanding.

13 On 15 July 2021, by the parties' mutual consent, the plaintiff filed his SOCA 2. The amendments related to the inclusion of new paragraphs 22A, 31A and 31(f), averring in essence that the first defendant had breached his fiduciary duty owed to the second defendant *qua* director for procuring a dividend of

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5 Defence dated 6 September 2020, paragraph 10

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$1.5m to be declared on 19 November 2022. Again, and critically, paragraph 8 of the SOC remained unamended.[6]

14 On 26 July 2011, the plaintiff and the first defendant entered into a Settlement Agreement. This was some two weeks after the Discovery Application was filed. By the terms of the Settlement Agreement, the plaintiff and the first defendant agreed to jointly appoint an auditor to ascertain profits and/or losses from the sale of the properties referred to in the Schedule to the Settlement Agreement. The Schedule to the Settlement Agreement included the local properties specified at paragraph 10 of the SOC that the plaintiff alleges the first defendant failed to properly account for (see [6] above). Clause 17(e) of the Settlement Agreement entitled the terms contained therein to be disclosed to any court of competent jurisdiction acting in pursuance of its powers.[7]

15 The Settlement Agreement precipitated several developments.

16 At the first hearing of the Discovery Application on 12 April 2022, counsel for the first defendant indicated to the learned Assistant Registrar ("AR") that the first defendant accepted the existence of the Understanding. The Notes of Evidence from the hearing recorded the first defendant's counsel stating as follows:[8]

> DC: The parties entered into the [Settlement Agreement]. **We take the view that the 1st Defendant is bound to account for the properties listed in the [Settlement Agreement] described as the "Transactions".** The [Discovery Application]

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6 Tarun Hotchand Chainani's Affidavit dated 13 March 2023, paragraph 24

7 Tarun Hotchand Chainani's Affidavit dated 13 March 2023, page 15

8 Tarun Hotchand Chainani's Affidavit dated 13 March 2023, pages 21 to 22

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> was filed before the mediation and the eventual [Settlement Agreement].
>
> **We confirm that the 1st Defendant accepts the understanding as pleaded in para 8 of the SOC.** That is the effect of the [Settlement Agreement].
>
> [emphasis added in bold]

17 The AR directed the first defendant's counsel to write to the plaintiff's counsel to provide confirmation of the same. The first defendant's counsel informed the plaintiff's counsel by way of a letter dated 18 April 2022 that the plaintiff "does not (to that extent only) dispute the Statement of Claim Amendment No. 1, insofar as the Understanding (as defined paragraph 8.) Accordingly, the items referred to in the Schedule of the Settlement Agreement are the matters remaining for accounting purposes and/or determination".[9]

18 At the second hearing of the Discovery Application on 21 April 2022, the AR recorded that the first defendant had since confirmed that he "does not dispute the 'Understanding' as pleaded in paragraph 8 of the [SOCA 1]".[10] The plaintiff then withdrew his request in the Discovery Application *vis-à-vis* the properties referred to in paragraph 9 of the SOC.

19 On 27 July 2022, the first defendant filed his Defence (Amendment No 1) ("DA 1"). Consistent with the confirmations given at the Discovery Application, when the first defendant filed his DA 1, amendments were made to make reference to the terms of the Settlement Agreement. In particular, paragraphs 10(e) and 11 of DA 1 admitted to paragraphs 8 and 10 of the SOC insofar the properties listed in the Schedule of Settlement Agreement were

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9 Tarun Hotchand Chainani's Affidavit dated 13 March 2023, pages 26 to 27

10 Tarun Hotchand Chainani's Affidavit dated 13 March 2023, page 29

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concerned:[11]

> 10(e). In relation to paragraph 10 of the SOC, the same is denied save that the 1st Defendant was to account for the properties pursuant to the [Settlement Agreement] set out in paragraphs 10(a) to 10(i) as these are reflected in the schedule of the Settlement Agreement in S/No 1-9. …
>
> 11. **Paragraph 8 of the SOC is admitted to the extent that there was an understanding between the parties but limited to the Transactions listed our [*sic*] in the Schedule of the [Settlement Agreement].**
>
> [emphasis added in bold]

By the time the first defendant filed his DA 2 on 20 February 2023, paragraph 11 of DA 1 remained unchanged, save for a typographical change of the word "our" to "out".[12]

20 On 10 October 2022, pursuant to leave granted by the court in HC/SUM 3250/2022 ("SUM 3250"), the plaintiff filed his Reply (Amendment No 1).

21 On 6 February 2023, by the parties' mutual consent, the plaintiff filed his SOCA 3. Both clarificatory and substantive amendments were made, which included the addition of an overseas property at paragraph 13 (see [6] above) but the definition of the word "Understanding" in paragraph 8 of the SOC once again remained unamended.

22 On 20 February 2023, the first defendant filed his DA 2. This came after counsel for the first defendant indicated at a Pre-Trial Conference on 15

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11 Defence (Amendment No 1) dated 27 July 2022, paragraphs 10(e) and 11

12 Defence (Amendment No 2) dated 20 February 2023, paragraph 11

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February 2023 that the amendments made would be limited to consequential amendments.[13] The following sentences were added in paragraph 10 of DA 2:

> Insofar as the matters pleaded in paragraph 9 of the SOC, more particularly the properties set out in paragraphs 9a to 9j, as the Plaintiff's case is that the 1st Defendant has accounted for the sums used from the 2nd Defendant, and that the profits were shared with the Plaintiff, there is no further dispute thereto. Where such Understanding arose as defined in paragraph 8 of the SOC, the Plaintiff and the 1st Defendant would have discussed these transactions and dealt with their respective interest accordingly. **Insofar as paragraph 10 of the SOC is concerned, the transactions listed therein did not form part of the Understanding as defined in paragraph 8 of the SOC**. [emphasis added in bold]

23 On 13 March 2023, the plaintiff filed the present application *vide* HC/SUM 671/2023 to strike out the third sentence of paragraph 10 of DA 2, as highlighted in bold in the extract above. This is the Impugned Sentence. The application was made pursuant to O 18 rr 19(1)(*b*) and 19(1)(*d*) of the revoked Rules of Court (Cap 322, R 5, 2014 Rev Ed) (the "Rules") and/or the inherent jurisdiction of the court.

The applicable legal principles

24 The legal principles governing striking out and amendment of pleadings are well-established.

25 The power to strike out ought only to be invoked in a plain and obvious case (*Gabriel Peter Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 ("*Gabriel Peter*") at [18]). The specific grounds under O 18 rr 19(1)(*b*) and 19(1)(*d*) of the Rules are as follows:

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13 Tarun Hotchand Chainani's Affidavit dated 13 March 2023, paragraph 33

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(a) The ground under O 18 r 19(1)(*b*) of the Rules refers to cases that are obviously frivolous or vexatious or obviously unsustainable. As summarised in *Chee Siok Chin and other v Minister for Home Affairs and another* [2006] 1 SLR(R) 582 ("*Chee Siok Chin*"), proceedings are "frivolous when they are deemed to waste the court's time and are determined to be incapable of legally sustainable and reasoned argument" while proceedings are "vexatious when they are shown to be without foundation and/or where they cannot possibly succeed and/or where an action is brought only for annoyance or to gain some fanciful advantage" (at [33]). In considering this ground, the court may have regard to the history of the matter and relevant correspondence exchanged between the parties, in addition to the pleadings (*Active Timber Agencies Pte Ltd v Allen & Gledhill* [1995] 3 SLR(R) 334 at [21]–[22]).

(b) The ground under O 18 r 19(1)(*d*) refers to instances where the court's machinery is used improperly or not *bona fides* (*Gabriel Peter* at [22]).

There is a significant degree of overlap between these two grounds, which largely mirror and share a consistent juridical basis with the court's residual and inherent jurisdiction, as contained within O 92 r 4 of the Rules (*Chee Siok Chin* at [29] and [35]).

26 As for amendment of pleadings, under O 20 r 5(1) of the Rules, the court has a broad discretion to allow such amendment at any stage of proceedings on such terms as may be just. This discretion is, however, not unfettered, and must be exercised judicially. The court must be satisfied, first, that the amendment

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will enable the real questions and/or issues in controversy between the parties to be determined, and second, that procedural fairness to the opposing party be maintained (*Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd* [2014] 3 SLR 524 at [116] and [117]). The court is to have regard to the "justice of the case" and in doing so, ought to bear in mind two key factors, namely, whether any prejudice would be caused to the other party which cannot be compensated for in costs and whether the applicant is effectively asking for a second bite at the cherry (*Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal* [2010] 1 SLR 52 at [113]).

27 What then of an amendment that seeks specifically to retract an admission? The general rule is that an admission, made inadvertently and in a case of a *bona fide* mistake, may be withdrawn, and the pleading amended accordingly (*Singapore Civil Procedure 2020* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) at paras 18/13/2 and 20/8/20, citing the English Court of Appeal's decision in *Hollis v Burton* [1892] 3 Ch 226 at 236 ("*Hollis*")). This coheres with both precedent, as well as principle.

28 In *Hollis*, the beneficiary under a settlement sued the defendant solicitor, to recover a sum of trust money alleged to have been received by the firm and not duly invested. The defendant had in his defence and in his answer to interrogatories, admitted that his partner had paid the money into the bank account of the firm but without his knowledge. The defendant then sought to retract this admission, on the basis that it had been made by mistake, and adduced evidence that showed that the moneys had not been paid into the bank account of the firm. The court allowed the defendant to withdraw his admission and to amend his defence on the condition that the defendant pay into court a sum representing the quantum of the plaintiff's claim, given that on the

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materials, there remained a strong case for contending that the firm had received the moneys. The principle that may be surmised from *Hollis* is that a party is generally entitled to correct a *bona fide* error in his pleading, especially where an incorrect admission of fact is made by mistake. That being said, evidence ordinarily has to be adduced to demonstrate that there was in fact such a mistake.

29 A more recent illustration of this principle may be found in the Supreme Court of New South Wales case of *Bank of Western Australia Ltd v Coppola* [2011] NSWSC 1326 ("*Coppola*"). In *Coppola*, the defendant had filed a notice admitting that he had signed a document but claimed that he was misled as to its nature and effect. The court refused the defendant's application to amend his defence and to withdraw his previous admission in the notice as well as in other proceedings, even though there had been no evidence put forward by the plaintiff of having changed its position and it was undisputed that the solicitors' admissions were made without instructions. Walmsley AJ summarised the relevant legal principles in determining whether a party may withdraw its admissions (*Coppola* at [22]):

> **There must be proper grounds for the exercise of the discretion. The circumstances in which an admission was made must be examined. There is usually a need for the applicant to explain the circumstances in which the admission was made and satisfy the Court a grant of leave will not prejudice an opponent's right to a fair trial**: *Maile v Rafiq* [2005] NSWCA 410 at [42] (per Tobias JA with whose reasons Brownie AJA agreed**). It has also been said that where leave to withdraw an admission is sought, a court will require an explanation for the making of the admission. The explanation must be a sensible one, based on evidence of a solid and substantial character**: *Langdale v Danby* [1982] 3 All ER 129; *Hollis v Burton*[1892] 3 Ch 226 and *Crumper v Pothecary*[1941] 2 KB 58 at 70; *Celestino v Celestino* [1990] FCA 299 at [12]; *Jeans v Commonwealth Bank of Australia Ltd* [2003] FCAFC 309; (2003) 204 ALR 327 at [17]-[19]. In *For The Good Times Pty Ltd v Coltern Pty Ltd* [2007] NSWSC 108 at [4] Young J (as he then was) said:

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> "[3] … Essentially, the court is after the truth. The pleadings are the principal method of defining the issues to enable the court more easily to get to the truth. Thus, in principle, an erroneous admission should be able to be withdrawn unless other factors outweigh. The principal factor that might outweigh is that there is such great prejudice to the other party, because of the way in which that party has prepared his or her case on the basis of the admission, that the leave should not be given.
>
> [4] What I have just said is a gross over simplification and the cases show there has to be a distinction between an admission deliberately made, an admission which is key to the way in which the parties have prepared their case, and more peripheral facts. There must be some evidence as to how the admission was made and there must be some material to show that it was erroneous."

[emphasis added in bold]

30 I note that *Coppola* was decided in the context of the Uniform Civil Procedure Rules (Reg No 418 of 2005) (NSW), of which Rule 17.3(3) permits an admitting party to withdraw an admission with the leave of court. I nevertheless consider that the case provides useful guidance in determining when a court should exercise its discretion to permit an amendment that seeks to resile from an admission. In short, it is incumbent on the party seeking to withdraw an admission to provide a logical explanation, supported by substantial evidence, to demonstrate that the admission made was erroneous.

31 This is eminently sensible as a matter of principle. The key purpose of pleadings is to set the parameters of the issues that lie for the court's determination. Admissions fortify this delineation and narrow the issues in dispute because an admission deprives a party from challenging the admitted fact at trial (*Borneo Housing Mortgage Finance Bhd v Personal Representatives of the Estate of Lee Lun Wah Maureen & Anor* [1994] 1 MLJ 209). This goes towards the preservation of judicial resources as no further evidence has to be

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adduced in reference to those facts that have been admitted (*Pioneer Plastic Containers Ltd v Commissioner of Customs and Excise* [1967] Ch 597). It follows that when an attempt is made to resile from an admission, thereby re-opening an issue that was once no longer in dispute, the burden necessarily lies on the admitting party to provide cogent reasons as to why he or she ought to be permitted to do so it, so as to no longer be bound by the admission.

32 Bearing these principles in mind, I turn to the parties' arguments.

The parties' arguments

33 The plaintiff contends that the Impugned Sentence is a non-consequential amendment.[14] In light of the admissions previously made by the plaintiff, the practical effect of the amendment to include the Impugned Sentence is to impermissibly reintroduce the issue of whether the Understanding applies to the local properties as listed in paragraph 10 of the SOC.[15] It follows that the Impugned Sentence cannot be considered an amendment that would raise any real questions and/or issues in controversy. This is vexatious and/or an abuse of the process of court. It should therefore be struck out.

34 The first defendant's riposte to this is that the Impugned Sentence does not seek to resile from any admission previously made. At no point has the first defendant admitted that the Understanding applied to the properties as listed in the Schedule of the Settlement Agreement, and as such, any allegation by the

14 Tarun Hotchand Chainani's Affidavit dated 13 March 2023, paragraph 43

15 Tarun Hotchand Chainani's Affidavit dated 13 March 2023, paragraph 45

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plaintiff that the inclusion of the Impugned Sentence is a *volte-face* from his position in DA 1 is baseless and ought to be rejected.[16]

My decision

Is the Impugned Sentence a consequential amendment?

35 Before me, counsel for the first defendant did not appear to challenge, with any great vigour, that the Impugned Sentence contained in DA 2 was not in fact a consequential amendment. And in my view, reasonably so. Let me explain.

36 The amendments in DA 2 were made in response to the plaintiff's filing of his SOCA 3 on 6 February 2023 (see [21] above). The key amendment made by the plaintiff in his SOCA 3 was the inclusion of an additional overseas property at paragraph 13(j), namely, one "BD Blvd Point 39-3901" located in Dubai.[17] No amendments were made to paragraphs 8, 9 or 10 of the plaintiff's SOCA 2 and the definition of the "Understanding" remained the same. Hence, the Impugned Sentence (see [22] above), which expressly concerns the averments made in paragraphs 8 and 10 of the SOCA 2, simply cannot be said to have been a consequential amendment. Moreover, it is equally clear that the Impugned Sentence makes no reference to paragraph 13 of SOCA 2 at all. It is therefore entirely misconceived for the first defendant to suggest that because an amendment was made to paragraph 13 of SOCA 2, it was therefore necessary for him to clarify in his pleadings his position on the Understanding as defined

16 Avinderpal Singh s/o Ranjit Singh's Affidavit dated 23 March 2023, paragraph 16

17 Statement of Claim (Amendment No 3) dated 6 February 2023, paragraph 13

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in paragraph 8 of the SOCA 2.[18] Indeed, what puts paid to this argument is the fact that the first defendant also included a new line in paragraph 13 of his DA 2 stating that "at no point in time did parties agree to the inclusion of the item at paragraph 13(j) and this did not form part of the [Settlement Agreement]".[19]

37 My finding on this point, however, did not in and of itself lead to the inexorable conclusion that the Impugned Sentence ought to be struck out. This is because a non-consequential amendment may nevertheless raise a new question and/or issue in controversy that lies to be determined by the court. Hence, I proceeded to consider whether the amendment constituted an attempt to resile from an admission previously made by the first defendant. If so, this could not raise any new question and/or issue justifying the amendment, and it followed that the Impugned Sentence was liable to be struck out.

Does the Impugned Sentence constitute an attempt to resile from an admission?

38 It was apposite to first consider what admission, if any, had been made by the first defendant.

39 That the existence of the Understanding had been admitted to by the first defendant was unassailable. And the first defendant accepted this as a necessary implication of the Settlement Agreement.[20] This was initially confirmed by counsel for the first defendant at the hearings of the Discovery Application before the AR and in a letter to the counsel for the plaintiff (see [16] to [18]

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18 Avinderpal Singh s/o Ranjit Singh's Affidavit dated 23 March 2023, paragraph 16

19 Defence (Amendment No 2) dated 20 February 2023, paragraph 13

20 Avinderpal Singh s/o Ranjit Singh's Affidavit dated 23 March 2023, paragraph 7

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above) and subsequently made clear by the amendments made by the first defendant in his DA 1 (see [19] above). Indeed, that the existence of the Understanding was no longer an issue in dispute was the very impetus for the plaintiff to withdraw his request in the Discovery Application for documents relating to the local properties listed in paragraph 9 of his SOC.

40 Next, I also accepted the plaintiff's submission that the first defendant had admitted that the Understanding applies to the local properties as set out in paragraph 10 of the SOC. In this respect, paragraph 11 of the first defendant's DA 1 is crucial: it expressly provides that "[p]aragraph 8 of the SOC is admitted to the extent that there was an understanding between the parties but limited to the Transactions listed our [*sic*] in the Schedule of the [Settlement Agreement]" (see [19] above). Save for a typographical edit, this remained unchanged in the first defendant's DA 2. As the first defendant himself acknowledged, the list of local properties contained in paragraph 10 of the SOC were the subject of transactions listed in the Schedule of the Settlement Agreement.[21] This must mean that the first defendant had admitted to the Understanding insofar as it pertained to the local properties listed in the Schedule of the Settlement Agreement, which are reproduced in paragraph 10 of the SOC.

41 As against this, the first defendant argued that in relation to paragraphs 10 and 13 of the SOC, it was made clear in his DA 1 that he only accepted that there was an obligation for him to account for the properties listed in the Schedule to the Settlement Agreement.[22] Before me, counsel for the first defendant elaborated on this argument, contending that there was a distinction

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21 Avinderpal Singh s/o Ranjit Singh's Affidavit dated 23 March 2023, paragraph 6

22 Avinderpal Singh s/o Ranjit Singh's affidavit dated 23 March 2023, paragraph 9

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between the "Understanding" (in upper case) as defined in paragraph 8 of the SOC and the "understanding" (in lower case) as stated in paragraph 11 of DA 2 (see [19] above). In other words, in paragraph 11 of his DA 2, the "understanding" referred to was a limited obligation to account as compared to the "Understanding" as defined in paragraph 8 of the SOC.

42 With respect, I was not persuaded by this argument for three reasons:

(a) First, the alleged distinction is simply not borne out by the express language of paragraph 11 of DA 2, which refers not only to "an understanding between the parties" but also to paragraph 8 of the SOC. In my view, this is plain as a pikestaff: the "understanding" must necessarily refer to the Understanding as defined in paragraph 8 of the SOC. I agree with the plaintiff's submission that this is the only intelligible interpretation of paragraph 11 of DA 2.[23] Not once was this supposed semantical distinction ever communicated to either the plaintiff or the court, until the present application was filed. This suggested that this explanation was a bare assertion and a mere afterthought.

(b) Second, the first defendant's proffered interpretation of the word "understanding" in paragraph 11 of DA 2 as being a more limited duty to account disregards the fact that the very pith and marrow of the "Understanding", as defined in paragraph 8 of the SOC, implicates a duty for the plaintiff and the first defendant to account to one another in respect of the second defendant's funds. In the circumstances, I was

[23] Plaintiff's Skeletal Submissions dated 11 April 2023, paragraph 20

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unable to see how this allegedly narrower duty to account is somehow different from the Understanding at all.

(c) Third, and consistent with my finding that the alleged distinction was an afterthought, the clarification provided by counsel for the first defendant was not clearly fleshed out in the first defendant's affidavit in reply filed on 23 March 2023.

43 Finally, the first defendant contended that parties have a different understanding of the effect of the Settlement Agreement and that this issue should be left for trial. Whether, as a consequence of the Settlement Agreement, the first defendant had indeed admitted to the Understanding as applying to the local properties as set out in paragraph 10 of the SOC, should not be determined in this application. In support of this, the first defendant referred to a statement made by counsel for the plaintiff at the hearing of SUM 3250, which was the plaintiff's application to amend his Reply (see [20] above):[24]

> PC: … Parties have differing understanding of the Settlement Agreement and what it relates to. Our proposed amendments are not immaterial or useless, they go towards the issued to be tried between parties. The Plaintiff's position is that Clause 9 of the Settlement Agreement does not preclude the Plaintiff from continuing its claims, including the s. 216 claim. 1DC has different understanding of Clause 9. Issue for trial judge to determine.

44 This was a captious objection, which I rejected. Viewing the statement in its context, it was clear that the dispute related to the interpretation of Clause 9 of the Settlement Agreement and in particular, whether this precluded the plaintiff from pursuing its claims under s 216 of the Act (see [6] above). This

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[24] Avinderpal Singh s/o Ranjit Singh's affidavit dated 23 March 2023, paragraph 14; Tarun Hotchand Chainani's Affidavit dated 13 March 2023, page 42

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had no nexus to the admission with respect to the Understanding, and specifically, whether the Understanding applies to the overseas properties listed in paragraph 10 of the SOC. In any event, my finding that the first defendant had made such admissions was not contingent on any disputed interpretation of the Settlement Agreement: it was not in dispute that the properties set out in the Schedule of the Settlement Agreement mirror the overseas properties listed in paragraph 10 of the SOC.

45 Therefore, I agreed with the plaintiff that the existence of the Understanding and the fact that the Understanding applies to the local properties as set out in paragraph 10 of the SOC was no longer a live issue in the Suit. Allowing the Impugned Sentence to stand would in effect allow this issue to be re-opened and re-litigated, which would not preserve judicial resources given the admissions made by the first defendant.

46 Further, I found that these admissions were neither the result of inadvertence nor mistake. This was not suggested by the first defendant to be the case. In my view, the admissions made by the first defendant were clear, considered and concerted. Unlike *Hollis,* the first defendant provided no cogent explanation as to why he should be allowed to resile from the admissions previously made, that have been repeated before the court at hearings, in its correspondence with the plaintiff, as well as in its own set of pleadings. The burden being on the first defendant, his proffered explanation for including the Impugned Sentence in his DA 2 was not sensible and simply did not hold water. The Impugned Sentence therefore constituted an impermissible attempt to resile from these admissions and was therefore liable to be struck out.

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47 For completeness, I emphasise that the only practical effect of the striking out is that the first defendant is precluded from challenging at trial the existence of the Understanding as well as the fact that the Understanding applies to the list of local properties as listed in paragraph 10 of the SOC. Doubtless, whether the Understanding was in fact breached due to the first defendant's purported failure to account is ultimately an issue that will be ventilated and determined at trial, with the full benefit of cross-examination.

Conclusion

48 For the reasons above, I allowed the plaintiff's application to strike out the Impugned Sentence and ordered that the first defendant re-file and serve his DA 2 with the Impugned Sentence expunged. I also granted the plaintiff liberty to file its amended Reply within 14 days of the first defendant re-filing and serving his DA 2. Lastly, I ordered the first defendant to pay to the plaintiff costs of and incidental to the application fixed at $5,500, inclusive of disbursements.

49 It only leaves me to express my gratitude to counsel for their assistance to the court.

Wong Hee Jinn
Assistant Registrar

Chacko Samuel and Anne-Marie John (Legis Point LLC) for the plaintiff;

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Nur Halimatul Syafheqah binte Rosman (Gabriel Law Corporation) for the defendants.

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