

**IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE**

[2024] SGHC(I) 22

Originating Application No 9 of 2023 (Summons No 18 of 2024)

Between

Renault SAS

...Claimant

And

Liberty Engineering Group Pte
Ltd

... Defendant

Originating Application No 7 of 2024

Between

Liberty Engineering Group Pte
Ltd

...Claimant

And

Renault SAS

... Defendant

GROUNDS OF DECISION

[Civil Procedure — Judgments and orders — Enforcement]

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Renault SAS
v
Liberty Engineering Group Pte Ltd and another matter

[2024] SGHC(I) 22

General Division of the High Court — Originating Application No 9 of 2023
(Summons No 18 of 2024) and Originating Application No 7 of 2024

Roger Giles JJ

19 June 2024

15 July 2024

Roger Giles JJ:

Introduction

1 In a claim under a guarantee, Renault SAS (“Renault”) obtained judgment against Liberty Engineering Group Pte Ltd (“LEG”) for €5,250,025.61 and interest. LEG appealed against the decision, and applied in separate applications for (a) a stay of enforcement of the judgment; and (b) an injunction restraining Renault from presenting a winding-up application against it founded on the judgment: both until the disposal of the appeal.

2 The applications were heard together. Decisions were announced at the conclusion of the hearing, with full reasons to be given later, being (a) that a stay order on condition of payment into court of the judgment sum and interest to 31 July 2024 would be made; and (b) that if it remained a live issue, a restraining order would be made.

3 The decision as to the restraining order was announced with the indication that despite the judgment, Renault’s claim remained a *bona fide* disputed debt and a winding-up application founded on it would be an abuse of process (see *LKM Investment Holdings Pte Ltd v Cathay Theatres Ltd* [2000] 1 SLR(R) 135 at [20]–[21]). In circumstances described below (see below at [9]–[10]), the occasion for the restraining order fell away. It was agreed that in that event, the reasons for the restraining order would not be required. These are the reasons for the stay order.

Background

4 The judgment was issued on 14 February 2024: *Renault SAS v Liberty Engineering Group Pte Ltd and another matter* [2024] SGHC(I) 6. The facts and the reasons for the decision are there set out, and will not be repeated here.

5 Thereafter,

(a) On 19 February 2024, Renault’s solicitors served on LEG a statutory demand pursuant to the provisions of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) for payment of the judgment debt and interest. The effect of the demand was that if the judgment sum was not paid or secured to Renault’s reasonable satisfaction within 21 days, LEG would be deemed unable to pay its debts and Renault could apply for it to be wound up.

(b) On 5 March 2024, LEG’s solicitors advised that they had instructions to file an appeal in respect of the judgment, and asked that Renault “hold all timelines in respect of the Statutory Demand in abeyance” and “hold its hand in the enforcement of the Judgment” pending the outcome of the appeal.

(c) On 12 March 2024, Renault’s solicitors advised that Renault was “prepared to agree not to execute on the Judgment” on condition that LEG provide satisfactory security, being either a bank guarantee for the judgment sum on terms satisfactory to Renault or payment of the judgment sum into court.

(d) On 13 March 2024, LEG filed an appeal against the judgment. A notice from the Registry advised that the appeal was fixed in the sitting of the Court of Appeal between 29 July and 8 August 2024.

(e) On 12 April 2024, LEG’s solicitors advised that LEG did not agree to the proposal for security, and that it would be filing applications for an injunction to restrain Renault from filing a winding-up application against it and for a stay of enforcement of the judgment.

(f) On 17 April 2024, LEG filed the applications, being:

(i) HC/OA 365/2024 in the High Court (“OA 365”), seeking an injunction to restrain the presentation of a winding-up application on the basis of the statutory demand pending the final determination of the appeal; and

(ii) SIC/SUM 18/2024 in the substantive proceedings in the Singapore International Commercial Court (“the SICC”) (“SUM 18”), seeking a stay of enforcement of the judgment pending the disposal of the appeal.

(g) On 22 April 2024, Renault’s solicitors advised that Renault was prepared to agree not to execute the judgment or apply to wind up LEG pending the resolution of the appeal, if LEG provided to Renault

satisfactory proof that it had assets of the value of the judgment debt with interest and undertook not to dispose of assets up to that value.

(h) On 2 May 2024, OA 365 was transferred to the SICC, where it was renumbered SIC/OA 7/2024 (“OA 7”), and was fixed for hearing together with SUM 18.

(i) There was no evidence of LEG’s response to Renault’s proposal of 22 April 2024, but it was evident that LEG did not accede to it.

6 The two applications were supported by affidavits of Mr Benjamin Howard. With the transfer of OA 365 to the SICC, the parties agreed that Renault would file a reply affidavit by 16 May 2024, and it filed an affidavit of Mr Bruno Moustacchi (“Mr Moustacchi”). The evidence was completed by a further affidavit of Mr Howard, provided in draft on 30 May 2024.

7 The hearing of the application was fixed for 19 June 2024, with prior written submissions. In the result, the applications were heard only a little over a month before the anticipated hearing of the appeal.

8 Mr Chew Kei-Jin appeared as lead counsel for LEG. Mr Liu Zhao Xiang Daniel appeared as lead counsel for Renault.

There was no occasion for the restraining order

9 Renault’s written submissions had included, as part of its opposition to the applications, that it “is not presently pursuing any winding up of LEG”. This was said as a submission distinguishing this case from *Cathay Theatres Pte Ltd v LKM Investment. Holdings Pte Ltd* [2000] 1 SLR(R) 15 (“*Cathay Theatres*”), which referred (at [15]) to a winding up being “actively pursued” as a reason

for a stay of enforcement. But it brought enquiry into what the argument about winding up was: did Renault wish to remain free to apply to wind LEG up? Mr Liu's response was that if a stay or a conditional stay was ordered, he did not think that Renault would want to pursue a winding up.

10 The application for a restraining order was nonetheless fully heard, but when the decisions were announced it remained unclear whether a restraining order was a live issue. Orders were deferred so that Mr Liu could obtain instructions confirmatory of his earlier response. He subsequently advised that Renault was "agreeable to undertake not to file a winding up application against LEG on the basis of the Judgment Debt until LEG's appeal ... is disposed of". Although a restraining order had been foreshadowed, therefore, there was no occasion to make it.

The power to stay enforcement pending an appeal

11 Order 22 r 13(1) of the Rules of Court 2021 ("the ROC") gives a general power to stay enforcement of a judgment "if there is a special case making it inappropriate to enforce the Court order immediately". The proceedings in which the judgment was given were commenced in the SICC and subject to the Singapore International Commercial Court Rules 2021 ("the SICC Rules"), which in O 24 r 2(1) confer the general power in the different and unqualified terms that a party "may apply to the Court for a stay of enforcement". Mr Chew submitted that the stay of enforcement should be ordered pursuant to O 24 r 2(1) of the SICC Rules, and that by comparison with O 22 r 13(1) of the ROC it was not necessary to show a special case: he submitted that the "threshold" for the court exercising its discretion to grant a stay of enforcement was lower than that of a special case, although it was left rather unclear what the threshold then was.

12 However, LEG’s application was on the ground, and only on the ground, of the pending appeal. As is evident from *Lee Sian Hee (trading as Lee Sian Hee Pork Trader) v Oh Kheng Soon (trading as Ban Hon Trading Enterprise)* [1991] 2 SLR(R) 869 (“*Lee Sian Hee*”) at [3], in such a case the power to grant a stay properly stems from s 45 of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) (“the SCJA”) and (in this case) O 21 r 6(1) of the SICC Rules. Reflecting s 45 of the SCJA, O 21 r 6(1) of the SICC Rules provides:

Stay of enforcement, etc.

6.—(1) Except so far as the lower Court or the appellate Court may otherwise direct, an appeal does not operate as a stay of enforcement or of proceedings under the decision of the lower Court.

...

13 That is, a stay of enforcement pending an appeal is granted in the exercise of the power to otherwise direct in O 21 r 6(1). Mr Chew submitted that O 21 r 6(1) simply picked up the general power and a direction otherwise was given through an application under O 24 r 2(1), but I do not think that is correct. The terms of O 21 r 6(1) are against it, with the specific reference to the appellate Court, the language of “otherwise direct” rather than reference to the general power, and the use of the same language in O 21 r 6(2) which does not have a corresponding general power; in *Ellis v Scott* (1964) 1 WLR 976 it was held, in relation to the broadly equivalent English rules, that the power to otherwise direct a stay of enforcement pending an appeal was a separate head of power from the general power to grant a stay; and the submission cannot stand with the explicit reliance in *Lee Sian Hee* on the power to otherwise direct, without reference to the general power.

Special circumstances must be shown for the exercise of the power

14 Order 21 r 6(1) gives a discretion unfettered by the terms of the rule. However, as explained in *Lee Sian Hee* at [5], in relation to the then equivalent rule:

While the court has power to grant a stay, and this is entirely in the discretion of the court, the discretion must be exercised in accordance with well-established principles (*Lee Kuan Yew v Jeyaretnam Joshua Benjamin* [1990] 1 SLR(R) 772). First, as a general proposition, the court does not deprive a successful litigant of the fruits of his litigation, and lock up the funds which he is *prima facie* entitled, pending an appeal (*The Annot Lyle* (1886) 11 PD 114 at 116). However, when a party is exercising his undoubted right of appeal, the court ought to see that the appeal, if successful, is not nugatory (*Wilson v Church (No 2)* (1879) 12 Ch D 454 at 458–459). Thus, a stay will be granted if it can be shown by affidavit that, if the damages and costs are paid, there is no reasonable probability of getting them back, if the appeal succeeds (*Atkins v The Great Western Railway Co* (1886) 2 TLR 400).

15 These principles have been adopted in many subsequent cases, including by Vivian Ramsey J in *CPIT Investments Ltd v Qilin World Capital Ltd and another* [2017] 5 SLR 148 as the principles applicable in a case in the SICC. In *Strandore Invest A/S and others v Soh Kim Wat* [2010] SGHC 174 (“*Strandore*”) at [7], Quentin Loh J summarised the approach to a stay of enforcement pending an appeal:

The principles governing a stay of execution pending appeal are well settled and have been authoritatively set out in a number of decisions, including the decision of the Court of Appeal in *Lian Soon Construction Pte Ltd v Guan Qian Realty Pte Ltd* [1999] 1 SLR(R) 1053. They are as follows:

- (a) While the court has the power to grant a stay, and this is entirely at the discretion of the court, the discretion must be exercised judicially, *ie*, in accordance with well-established principles.
- (b) The first principle is that, as a general proposition, the court does not deprive a successful litigant of the fruits of his litigation, and lock up funds

to which he is *prima facie* entitled, pending an appeal. There is no difference whether the judgment appealed against was made on a summary basis, or after a full trial.

(c) This is balanced by the second principle. When a party is exercising his undoubted right of appeal, the court ought to see that the appeal, if successful, is not nugatory. Thus a stay, will be granted if it can be shown by affidavit that, if the damages and costs are paid, there is no reasonable probability of getting them back if the appeal succeeds.

(d) The third principle follows, and is an elaboration of the second principle, that an appellant must show special circumstances before the court will grant a stay.

All other rules follow and are derived from the application of these three principles to the individual circumstances and facts of each case. For example, the likelihood of success is not by itself sufficient, and a bald assertion of the likelihood of success in an affidavit is inadequate. Otherwise, a stay would be granted in every case because every appellant must expect that his appeal will succeed. Finally, it is not possible, nor desirable, to give a catalogue of all the circumstances that would qualify to be considered as special. The court in every case will have to examine the facts to see if special circumstances justifying the grant of a stay of execution exist based upon the application of the three principles.

16 In terms of a threshold, then, although I would prefer not to use that description, the threshold is that of special circumstances as explained in these cases.

17 As is implicit in the concluding paragraph of the passage from *Strandore*, “nugatoriness” is not confined to the unlikelihood of the appellant recovering the judgment sum from the respondent if the appeal succeeds. It can be found in some other consequence of enforcement which cannot be readily undone if the appeal succeeds: for example, in *Cathay Theatres* one factor in staying enforcement of an order for specific performance of the purchase of a property was (at [13]) “the difficulties attendant on reversing the purchase should the appeal be successful”, and in *EQ Capital Investments Ltd v The*

Wellness Group Pte Ltd [2019] SGHC 154 (“*EQ Capital*”) at [67] the sale of a holding company’s shares in its subsidiary by liquidators under distress sale conditions was accepted as a matter which would render a successful appeal nugatory. I will return to *EQ Capital* (see at [21] below).

Special circumstances were not shown

18 From the evidence of Mr Howard, LEG is incorporated in Singapore “with assets in Singapore”. The assets are not identified or described beyond it being said that LEG is a holding company with shares in subsidiaries which operate a range of businesses. It is also said, at a separate point in his affidavit, that with LEG’s assets in Singapore, Renault would not have any difficulty recovering the judgment debt should the appeal be dismissed. No more detailed evidence of LEG’s financial position, as to assets or otherwise, is given. The description of LEG as a holding company leaves unclear whether its only assets are its shares in the subsidiaries, although if that were the case I would expect Mr Howard to have said so, and the obscurity is compounded by the reference without explanation to available assets in Singapore.

19 The affidavits debated the merits of the appeal. It is well established, however, that the merits of the appeal are not material unless “it can be easily gleaned, without a minute examination of the merits, that the appeal will be likely to fail or succeed” (*NK Mulsan Co Ltd v INTL Asia Pte Ltd* [2019] 3 SLR 453 (“*NK Mulsan*”) at [11]), and even that materiality has been questioned (*Axis Megalink Sdn Bhd v Far East Mining Pte Ltd* [2024] SGHC 47 at [32]). Mr Liu’s submissions included that it could be easily gleaned that the appeal is likely to fail. LEG’s appeal grounds were the question of a separate contract including the pleading point as described in the judgment, and it is sufficient

that (as is inherent in the decision as to the restraining order) in those respects I am unable to accept Mr Liu’s submission.

20 In his submissions, Mr Chew contended for special circumstances despite his reference to a lowered threshold. Putting aside the question of applying to wind LEG up, as that prospect has fallen away, he did so on two grounds. One was that if there were a sale of LEG’s shares in its subsidiaries by the Sheriff pursuant to an enforcement order, the sales could not be unwound and that shares recovered if the appeal succeeded. The other was that Renault was a foreign company, being incorporated in France, and as well had “evinced a pattern of being unable to and/or refusing to pay costs and deposits without inordinate delay”; so that there was a real risk that it would be inconvenient or expensive for LEG to recover the judgment sum if the appeal were successful.

21 For the first ground, Mr Chew referred to *EQ Capital*. A winding-up order was made against a company whose only substantial asset was its shareholding in a subsidiary. As earlier noted, a stay against sale of the shares in the subsidiary was granted pending appeal: it was said (at [67]), “[o]therwise, the shares might be sold by the liquidators under distress sale conditions and a successful appeal would be rendered nugatory”.

22 In *EQ Capital*, the stay was not of the winding-up order generally, but of the sale by the liquidator of the company’s only substantial asset. The sale would all but inevitably follow from the winding-up order as the liquidator administered the winding up. That is not, or has not been shown to be, this case: the ground suffers from the dearth of evidence of LEG’s financial position. It is left unclear whether LEG’s assets in Singapore are only its shares in its subsidiaries, and it is not known how many or what subsidiaries there are, or explained at all how serious the impact would be if recourse were had to the

shares in enforcement of the judgment. Point is given to this when it is appreciated that Mr Howard does not say that LEG cannot pay the judgment sum, and a holding company may have assets other than the shares in its subsidiaries, often including debts due from its subsidiaries: what is LEG's position? I was not satisfied that there will be enforcement by a Sheriff's sale of LEG's shares in its subsidiaries, or if there were recourse to the shares that there would be a sufficient effect on LEG's shareholdings in its subsidiaries or its asset position generally as to render a successful appeal nugatory.

23 Going to the second ground, that the judgment creditor is a foreign entity is not of itself a special circumstance warranting a stay, and it is not enough to say that it would be inconvenient or expensive to seek recovery outside Singapore if a stay of execution was not granted (*Viet Hai Petroleum Corp v Ng Jun Quan* [2016] 3 SLR 887 ("*Viet Hai Petroleum*") at [52]; *NK Mulsan* at [12], [27]). In any event, I was not prepared to regard Renault, the well-known vehicle manufacturer, as unlikely to honour the return of the judgment sum, if paid by or extracted from LEG, in the event of a successful appeal. The ground does not gain support from the asserted pattern of conduct. The conduct on which LEG relied was first, that Renault has not paid to LEG the costs of SIC/S 1/2022, Renault's first and unsuccessful claim under the guarantee, in the amount of \$150,000; and secondly, that Renault made delayed payment of the SICC's administration fees between December 2023 and January 2024. There is nothing in this. Mr Moustacchi explained that the \$150,000 was not paid as Renault was entitled to set the costs off against the sum owing by LEG under the guarantee; this anticipation of success in the later claims under the guarantee has been borne out, subject to the appeal, and takes the sting out of the failure to pay the \$150,000. Mr Moustacchi also explained how Renault's internal administrative steps as affected by the holiday period caused the delay in payment of the SICC

fees. I was therefore unable to accept that the appeal would be rendered nugatory through inability to recover the judgment sum or difficulty in its recovery, if the appeal were successful.

24 Mr Chew's submissions included, perhaps faintly, that the hearing of the appeal was not far distant, and that it would not be a hardship on Renault if it were precluded from enforcing the judgment until the disposal of the appeal. It may be that Renault's initial enthusiasm, shown by the prompt service of the statutory demand, has waned with a perhaps leisurely progress of the applications. But I did not think that the fact that the appeal is fixed for hearing at or shortly after the end of July 2024 was or contributed to special circumstances warranting a stay. While unlikely, it is possible that the hearing of the appeal will not take place as anticipated, and it is by no means certain that the outcome will be immediately known. And where LEG has not otherwise shown special circumstances, Renault's *prima facie* entitlement to the fruits of its litigation should not be taken away on the assertion that it would not thereby suffer hardship; that would be an unjustified diminution of its rights.

A conditional stay of enforcement pending the appeal was nonetheless ordered

25 Although I did not think that special circumstances had been shown for a stay of enforcement until the appeal, Renault's submissions included that it was agreeable to a stay on condition that the judgment sum be paid into court pending the disposal of the appeal. LEG had declined that course, but in the circumstances, I considered that (as was done in *Viet Hai Petroleum* at [53]) it was nonetheless appropriate to grant the conditional stay of enforcement as an opportunity for LEG which was not opposed by Renault.

Costs

26 Submissions on costs were made at the conclusion of the hearing. I considered that LEG had in substance succeeded in OA 7 although the occasion for a restraining order had fallen away, while Renault had in substance succeeded in SUM 18 although a conditional stay order had been made, such that no order as to costs should be made with the parties to each bear their own costs of the applications. I did not accept Mr Liu's submission to the effect that Renault should have the costs of OA 7 because it had been prepared to forego applying to wind LEG up if the judgment sum was paid into court. I did not think that Renault had made that sufficiently clear to LEG, and in any event the conditional stay order does not require LEG to pay the judgment sum into court: that may or may not occur.

Conclusion

27 In SUM 18, enforcement of the judgment is stayed on condition of payment into court of the judgment sum and interest calculated to 31 July 2024. In each of SUM 18 and OA 7, no order as to costs is made, with the intent that LEG and Renault bear their own costs of the application.

Roger Giles
International Judge

Daniel Liu Zhao Xiang, Chia Shi Mei and T Abirami (Wong Partnership LLP) for the claimant in SIC/OA 9/2023 and defendant in SIC/OA 7/2024;
Chew Kei-Jin and Lee Chia Ming Clare (Ascendant Legal LLC) for the defendant in SIC/OA 9/2023 and claimant in SIC/OA 7/2024.
