

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

[2023] SGHC 228

Originating Summons 102 of 2021

Between

Santoso Winoto

... Plaintiff

And

(1) Suseno Winoto

(2) Linda Santosa

... Defendants

FOUNDATIONS OF DECISION

[Civil Procedure — Inherent powers — Stay of implementation and distribution in respect of an order for sale]

TABLE OF CONTENTS

BACKGROUND	2
THE PARTIES' ARGUMENTS	3
THE ISSUES	5
MY DECISION: A STAY OF IMPLEMENTATION AND DISTRIBUTION WAS NOT GRANTED	5
IT WAS INAPPROPRIATE TO DETERMINE THE PLAINTIFF'S ORAL APPLICATION IN OS 102	6
IN ANY EVENT, A STAY OF IMPLEMENTATION AND DISTRIBUTION WOULD NOT HAVE BEEN GRANTED	7
<i>The applicable law</i>	7
<i>I would have declined to exercise my discretion to order a stay</i>	10
CONCLUSION	12

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Santoso Winoto
v
Suseno Winoto and another

[2023] SGHC 228

General Division of the High Court — Originating Summons 102 of 2021
Aedit Abdullah J
24 April 2023

18 August 2023

Aedit Abdullah J:

1 This was an oral application by the plaintiff, Mr Santoso Winoto, for a stay of implementation and distribution in respect of the sale proceeds of a property at 2 Martin Place [address redacted], Singapore 237988 (the “Property”). The plaintiff made this oral application at the hearing of further arguments on 24 April 2023 in respect of my earlier decision on 16 February 2023 for HC/OS 102/2021 (“OS 102”) where I, among other orders made, partially allowed the reimbursement claim of the first defendant, Mr Suseno Winoto, in respect of certain loan repayments, tax, and management corporation (“MCST”) payments that he claimed to have incurred in relation to the sale of the Property. The first defendant’s reimbursement claim was in turn based on my final order on 18 March 2022, where I directed, among others, that the expenses of sale of the Property should be borne by parties according to the

shares they owned of the respective property pursuant to the relevant manner of holding.

2 However, in further arguments, the plaintiff argued that the first defendant, who is his brother, was not entitled to the reimbursement claimed. After considering the parties' arguments, I declined to order a stay of implementation and distribution. The plaintiff has appealed, and I now provide the full grounds of my decision.

Background

3 By way of background, this was a case with a long tail. It first came up before me on 24 September 2021, on an application for an order for sale, which was made by the plaintiff in respect of three properties in the name of himself, the first defendant, and the second defendant, Mdm Linda Santosa, who is the plaintiff's ex-wife. Mediation was suggested but not pursued. Various case conferences were held to try to narrow issues.

4 On 18 March 2022, I made various orders, but not in the form sought by the plaintiff. I gave conduct of the sale to the first defendant, with the three properties being sold in sequence, rather than all together at once. The reason for ordering the properties to be sold in sequence was to balance the interests of the parties by allowing the first defendant to have the right of first refusal in respect of the third property to be sold, and to be in funds from the sales of the other properties. In my order, the Property, which formed the subject of this oral application, was to be sold first. A mechanism was stipulated for the ascertainment of the market value, and specifications given for the marketing and other administrative and logistical measures.

5 At the time of hearing of further arguments, *ie*, 24 April 2023, the Property was the only property sold, out of the three properties which were the subject of the proceedings in OS 102.

The parties' arguments

6 The plaintiff argued that the money used for first defendant's expenses in relation to the Property came from their late father's estate and, unless the first defendant could prove that he was the administrator of their late father's estate, it was not "legitimate money" that could be reimbursed.¹ The plaintiff also alleged that the money for such expenses came from a bank account in the joint names of the plaintiff and the first defendant (the "Joint Account"), which contained moneys that came from the sale of another property located at 2 Martin Place, which was registered in the plaintiff's sole name and which did not form the subject of the proceedings in OS 102 (the "Non-related Property").² To support his allegations, the plaintiff relied on:³ (a) the copies of the completion account for the sale of Non-related Property; (b) the bank statements of the Joint Account for the months of December 2013 and January 2014; as well as (c) a statement of a bank account jointly owned by the first and second defendants dated January 2018 which showed a balance of \$3,411,307.45. Thus, the plaintiff argued that the first defendant should explain the source of funds used to pay the loan repayments, tax, and MCST payments that he claimed to have incurred in relation to the sale of the Property.⁴

¹ Plaintiff's Written Submissions dated 24 March 2023 ("PWS") at para 6.

² PWS at paras 7–8, 11.

³ Plaintiff's letters requesting for further arguments dated 28 February 2023 and 1 March 2023 ("Request for Further Arguments").

⁴ PWS at para 11.

7 Against the plaintiff’s arguments, the first defendant’s overarching case was that the plaintiff had the ulterior motive of discovering the source of moneys of the first defendant through his oral application.⁵ Specifically, the first defendant argued that the matters raised in this oral application were wholly outside the purview of OS 102, and that the gist of the matters raised in this oral application had already been traversed in detail at a previous hearing on 1 November 2022.⁶ Next, as regards the plaintiff’s allegations above, the first respondent made three points. First, the first defendant argued the plaintiff’s allegations were baseless and made without any document or substantiation.⁷ Second, the first defendant submitted that the plaintiff had essentially cherry-picked certain documents that were previously exhibited by the first defendant to falsely allege that the reimbursement claims of the first defendant for the Property were paid for from the sale of the Non-related Property on the basis that the sale proceeds were deposited into the Joint Account.⁸ Third, the first defendant contended that just because another joint account between the first and second defendants showed a balance of \$3,411,307.45 in January 2018, it did not mean that the first defendant had unlawfully taken the over their late father’s moneys or the sale proceeds of the Non-related Property that were deposited in the Joint Account.⁹

8 The second defendant, *ie*, the ex-wife of the plaintiff, aligned herself with the first defendant’s position. To this end, she submitted that the scope of further arguments should be limited to the appropriate reimbursements to be

⁵ 1st Defendant’s Written Submissions dated 24 March 2023 (“1DWS”) at para 5.

⁶ 1DWS at paras 6 and 9.

⁷ 1DWS at para 13.

⁸ 1DWS at para 14.

⁹ 1DWS at para 15.

made to parties from the sale of the Property, and thus it was inappropriate for the plaintiff to raise new allegations of fact without making the appropriate application.¹⁰ Furthermore, the second defendant also submitted that it was inappropriate for the plaintiff to raise these allegations in further arguments, as the mechanism of further arguments was intended to account for the fact that full arguments may not have been presented to a judge in chambers due to the limited time available, but here the plaintiff was merely repeating the same arguments made in his submissions on the reimbursement claims.¹¹

The issues

9 In my view, the parties' submissions raised the following issues for my determination:

- (a) first, whether it was appropriate to consider the plaintiff's oral application; and
- (b) second, if it was proper to consider the oral application, whether I should order a stay of implementation and distribution of the sale proceeds of the Property.

My decision: a stay of implementation and distribution was not granted

10 Having considered the parties' arguments, I declined to order a stay of implementation and distribution as sought for two broad reasons. First, it was not appropriate to consider the matters raised by the plaintiff in his oral application. Second, and in any event, the circumstances pointed against the

¹⁰ 2nd Defendant's Written Submissions dated 24 March 2023 ("2DWS") at paras 9–11.

¹¹ 2DWS at paras 13–14.

ordering of a stay of implementation and distribution. I now elaborate on these reasons.

It was inappropriate to consider the plaintiff's oral application in OS 102

11 To start with, I did not consider it appropriate to determine the plaintiff's oral application, as the allegations which were raised by the plaintiff were not germane in OS 102. The plaintiff did not even contest the fact that the first defendant did actually expend the sums which were the subject of his reimbursement claims, and that these sums went towards the expenses of sale of the Property. What the plaintiff did take issue with in his oral application was the source of the sums spent by the first defendant, arguing that these were not "legitimate money[s]" because it had supposedly come from funds which the first defendant allegedly obtained wrongfully.

12 Such allegations were not relevant to the disposal of OS 102 or, more specifically, my determination of whether the first defendant was entitled to a reimbursement of the expenses of the sale of the Property. The main application in OS 102, and the ancillary proceedings in respect of OS 102, were about the order for sale and its implementation. Within the confines of these proceedings, it was sufficient that the first defendant did expend the sums which were the subject of his reimbursement claims. Whether the sums which the first defendant used for the expenses of the Property were obtained wrongfully was a separate matter between the plaintiff and the first defendant in respect of which separate proceedings should have been commenced.

13 More importantly, the plaintiff's oral application came late in the day, and much time has passed since the date of my final order on 18 March 2022.

While the plaintiff indicated some unhappiness with my final order,¹² no appeal was filed previously. Moreover, during the interim period between then and the making of this present oral application, the plaintiff would have had the opportunity to commence separate proceedings against the first defendant. However, the plaintiff did not do so, and it was only in the context of the distribution of proceeds from the sale of the Property that the plaintiff raised concerns about the provenance of funds used by the first defendant. This unexplained delay put into doubt the *bona fides* of the plaintiff's oral application.

In any event, a stay of implementation and distribution would not have been granted

14 Having concluded that it was inappropriate to consider the plaintiff's oral application in OS 102, it was unnecessary for me to consider the merits of that oral application. Nevertheless, even if I were to do so, I would have concluded that a stay of implementation and distribution should not be granted. As there are no known reported local cases where a stay of implementation and distribution was granted in respect of an order for sale, I take this opportunity to set out the applicable principles in this regard.

The applicable law

15 As a starting point, the court has the inherent power to give consequential directions in respect of its orders and to make non-substantive amendments to its orders (see the Court of Appeal decision of *Retrospect Investment (S) Pte Ltd v Lateral Solutions Pte Ltd and another* [2020] 1 SLR 763 at [12]–[15], citing the High Court decision of *Godfrey Gerald QC v UBS*

¹² Plaintiff's letter to court dated 25 March 2022.

AG and others [2004] 4 SLR(R) 411 at [18] and Goh Yihan, “The Inherent Jurisdiction and Inherent Powers of the Singapore Courts: Rethinking the Limits of their Exercise” [2011] Sing JLS 178 at 186). This statement of law is also expressed in O 92 r 5 of the Rules of Court (2014 Rev Ed) (“ROC 2014”), which applied to this present oral application made under OS 102. By way of context, O 92 r 5 provides:

5. Without prejudice to Rule 4, the Court may make or give such further orders or directions incidental or consequential to any judgment or order as may be necessary in any case.

16 The inherent power of the court includes its power to stay the execution of its own order. This is because a stay of execution, is in effect, a non-substantive amendment as to the time from which the effect of the original order is stipulated to run. Such power is expressly recognised in O 45 r 11 of the ROC 2014, which provides:

11. Without prejudice to Order 47, Rule 1, a party against whom a judgment has been given or an order made *may apply* to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks fit.

[emphasis added]

As can be seen above, by stating that a party against whom a judgment has been given or an order “may apply” for a stay of execution of the judgment or order, O 45 r 11 already presupposes that the court has the inherent power to stay the execution of its own judgments and orders.

17 Transposed to this present context, a stay of implementation and distribution of an order for sale is, in effect, akin to a stay of execution of a judgment or order. It follows that since the court’s ability to grant a stay of

implementation and distribution stems from its inherent power, this exercise of this power is entirely in the discretion of the court, though such discretion should be exercised on principled grounds.

18 A number of non-exhaustive factors come readily to mind as being material:

- (a) whether the unsuccessful party has had, or there is credible evidence that he intends to have, recourse via an appeal or separate proceedings;
- (b) the chances of success of the would-be appeal or separate proceedings;
- (c) the reasons put forward for the stay, including, among others, the difficulty of enforcing a successful appeal overseas; and
- (d) the prejudice that may be suffered by the successful party, taking into account, among others, any delay and the length of the stay sought.

19 I conclude by observing, for future guidance, that while the Rules of Court 2021 (“ROC 2021”) (which did not apply here) do not contain an express rule in terms similar to O 92 r 5 of the ROC 2014 (which recognises the inherent power of the court), I am of the view that the absence of such reference does not detract from the undoubted inherent power of the court to stay the implementation and distribution of an order for sale, and that similar principles would apply to an application for a stay of implementation and distribution under the ROC 2021.

I would have declined to exercise my discretion to order a stay

20 Applying these principles, I would have declined to exercise my discretion to order a stay of implementation and distribution as various factors pointed against making such an order.

21 First, at the time of my decision, I regarded the plaintiff's failure to commence separate proceedings against the first defendant as being a factor which pointed against the granting of a stay. At the time of the application before me, there was no separate proceeding instituted to deal with the question of the plaintiff's claims in respect of the funds used to purchase the Property. There was also no evidence or even any indication from the plaintiff that he intended to commence separate proceedings against the first defendant in respect of the first defendant's alleged wrongful use of funds. Accordingly, the consideration that the first defendant's other means of legal recourse was not rendered nugatory was not engaged to begin with.

22 Second, even if separate proceedings had been commenced by the plaintiff in respect of the first defendant's alleged wrongful misappropriation of funds, it suffices to say that, based on the limited evidence before me, I was not convinced of the prospects of success that any claim by the plaintiff against the first defendant. Before me, the plaintiff only relied on three documents,¹³ which were namely: (a) the copies of the completion account for the sale of Non-related Property; (b) the bank statements of the plaintiff and first defendant's Joint Account for the months of December 2013 and January 2014; as well as (c) a statement of a bank account jointly owned by the first and second defendants dated January 2018 which showed a balance of \$3,411,307.45.

¹³ Request for Further Arguments.

These documents were a scant basis for me to halt the implementation of the sale.

23 Third, even leaving aside the merits of any potential claim that the plaintiff might have against the first defendant, should the plaintiff eventually prevail in his claim, I did not think that there would be any real risk of any clawback action by the plaintiff being unsuccessful. The first defendant had substantial assets in Singapore – indeed, apart from the three properties which formed the subject of OS 102, the first defendant had substantial sums in his joint bank account with the second defendant from as recently as February 2021, and there was no indication that his means have changed since.¹⁴ I therefore found that the ease of enforcing any successful claim against the first defendant pointed against the granting of a stay.

24 Fourth, the first defendant would suffer substantial prejudice if a stay were granted. In the plaintiff's application for a stay, he gave no definition as to the duration of the stay and no indication as to when the stay might be lifted in the absence of any pending separate proceedings. There were no definite timelines or conditions on which to ground any potential decision to grant a stay. The implementation and distribution of the order for sale could not be stayed indefinitely. Moreover, the allegations raised by the plaintiff would appear to require the adducing of evidence and its testing by cross-examination; this will take a substantial amount of time which would further prejudice the first defendant by depriving him of the fruits of the litigation. Additionally, this assertion was made fairly late in the day on 28 February 2023, after close to a year since the final order on 18 March 2022 which kickstarted the process of implementation by requiring parties to sell the three properties. As such, even

¹⁴ First defendant's affidavit dated 19 March 2021 at p 1393.

if the present oral application was made good faith (which I had substantial doubts about), the long delay and lack of definite timelines or conditions on which to ground any potential decision to grant a stay pointed against my discretion being exercised in favour of the plaintiff.

25 Taking these factors into account, I would have declined to order a stay of implementation and distribution even if I had considered the plaintiff's oral application.

Conclusion

26 For the foregoing reasons, I was thus of the view that it was inappropriate to consider the plaintiff's oral application, and that even if I were to do so, I would have declined to exercise my discretion to grant a stay of implementation and distribution.

Aedit Abdullah
Judge of the High Court

Tan Cheng Kiong (CK Tan Law Corporation) for the plaintiff;
Teoh Seok Pin Audrey and Chia Kia Boon (Robert Wang & Woo
LLP) for the first defendant;
Tai Kai Xuan Marcus (Asia Law Corporation) for the second
defendant.
