Lock Han Chng Jonathan (Jonathan Luo Hancheng) v Goh Jessiline
[2007] SGHC 58

Case Number : MC 21830/2005, RAS 17/2007

Decision Date : 27 April 2007

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Andrew Hanam (Andrew & Co) for the plaintiff; Madan Assomull, Andrew Goh and Vivian Chew (Assomull & Partners) for the defendant

Parties : Lock Han Chng Jonathan (Jonathan Luo Hancheng) — Goh Jessiline

Courts and Jurisdiction – Judges – Power – Whether settlement judge at court dispute resolution conference having jurisdiction and power to issue order of court

27 April 2007 Judgment reserved.

Lai Siu Chiu J

The background

1 The plaintiff, Jonathan Lock, made a claim for damages against the defendant, Jessiline Goh, arising out of a collision between the plaintiff's motorcycle and the defendant's motorcar. The parties attended a Court Dispute Resolution ("CDR") session at the Subordinate Courts and reached a settlement at the close of the session. The terms of the settlement were that the defendant would pay the plaintiff damages of $187.50 with costs fixed at $1,000 plus reasonable disbursements with a Notice of Discontinuance to be filed in 8 weeks. The terms of the settlement were recorded by the district judge who was presiding as the mediator in the CDR conference ("the Settlement Judge"). That district judge has since retired.

2 Later that same day (31 March 2006), the plaintiff's solicitor faxed to the defendant's solicitors a list of disbursements totalling $290.35 with a proviso that unless the latter reverted by 7 April 2006, the plaintiff's solicitor would proceed to extract the order made by the Settlement Judge. The plaintiff's solicitor followed up by forwarding a draft order of court to the defendant's solicitors on 7 April 2006.

3 The defendant's solicitors did not approve the plaintiff's solicitors draft order of court. In their letter to the plaintiff's solicitor dated 7 April 2006, the defendant's solicitors pointed out that they were unable to approve the draft order of court as the plaintiff's figures for the amount of disbursements kept changing (at least three times). Consequently, the defendant's solicitors stated, that they needed to take their client's instructions. As there was a recorded settlement, the defendant's solicitors also felt that an order of court was unnecessary given that the only outstanding issue related to costs.

4 Notwithstanding the letter from the defendant's solicitors of 7 April 2006, the plaintiff's solicitor wrote to the Registrar of the Subordinate Courts on 13 April 2006 stating two clear days had lapsed since he forwarded the draft order of court to the defendant's solicitors on 7 April 2006 and the defendant's solicitors had not replied. Accordingly he was allowed to extract the order of court which he did on 17 April 2006 ("the Order of Court"). Questioned by the court on his misleading letter to the Registrar of the Subordinate Courts, counsel for the plaintiff sought to explain with the excuse (which

I did not accept) that he meant the defendant's solicitors did not reply in terms of accepting his draft order of court.

5 After extracting the Order of Court (which stated the terms recorded by the Settlement Judge as a judgment), the plaintiff's solicitor issued a writ of seizure and sale against the defendant on 2 May 2006. Faced with the execution proceedings, the defendant's solicitors paid first on 16 May 2006 the sum of $1,187.50 under the Order of Court followed by the costs of execution of another $800.80 on 22 May 2006.

6 The defendant's solicitors then filed application no 8949 of 2006 ("the Application") applying for the writ of seizure and sale to be set aside or declared null and void. They filed another application no. 12650 of 2006 to amend the Application by adding a prayer to set aside the Order of Court itself. Both applications were dismissed by the Deputy Registrar ("the DR") of the Subordinate Courts. The defendant's appeal against the DR's decision to a district judge in chambers was similarly dismissed.

7 After obtaining leave from the High Court to appeal against the decision of the district judge, the defendant filed Registrar's Appeal No 17 of 2007 ("the Appeal") against the dismissal of the two applications, which Appeal I heard.

8 Before me, the defendant submitted *inter alia*, that the Settlement Judge had no jurisdiction and power to issue an order of court, since the CDR conference was not a court proceeding and the e@dr Centre, under which CDR conferences take place, was not a court vested with judicial authority.

The jurisdiction of a court

9 It would be appropriate at this juncture to outline the jurisdiction of the Subordinate Courts and ascertain where CDR mediation fits in that framework.

10 Article 93 of the Constitution of the Republic of Singapore (1999 Rev Ed) ("the Constitution") states:

> The judicial power of Singapore shall be vested in a Supreme Court and in such Subordinate Courts as may be provided by any written law for the time being in force.

11 The jurisdiction of the Subordinate Courts is encapsulated in the Subordinate Courts Act (Cap 321, 1999 Rev Ed) ("the SCA"). The Subordinate Courts which are vested with jurisdiction by the SCA are specifically listed in s 3 of the SCA as follows:

> 3. – (1) There shall be within Singapore the following Subordinate Courts with such jurisdiction as is conferred by this Act or any other written law:
>
> (a) District Courts ;
>
> (b) Magistrates' Courts ;
>
> (c) Juvenile Courts ;
>
> (d) Coroners' Courts ;
>
> (e) Small Claims Tribunals.

12 Since the list of Subordinate Courts that are conferred jurisdiction is exhaustive and there is no

other written law conferring jurisdiction on any other Subordinate Courts, by virtue of Article 93 of the Constitution, only the Supreme Court and the Subordinate Courts as listed in s 3 of the SCA have judicial powers.

13 In the course of the Appeal, counsel for the defendant had submitted that the jurisdiction conferred upon a district judge is only with respect to that person *sitting* in the district court. Counsel referred to s 2 of the Interpretation Act (Cap 1, 2002 Rev Ed), which defines "District Judge" as "a District Judge appointed as such under any written law for the time being in force *relating to the Courts*" (emphasis added). Counsel also pointed out that in Part IV of the SCA, jurisdiction is conferred upon c*ourts* (both District and Magistrates') and not the *judges*, with the exception of s 32 of SCA which provides for the jurisdiction of a district judge sitting in chambers over any civil proceeding in a district court.

14 I should point out at this stage that in both Article 93 of the Constitution and s 3 of the SCA (see [10] and [11]), judicial power is vested in *Courts* and jurisdiction is conferred on *Courts*, as opposed to judges. The case of *Public Prosecutor v Nyu Tiong Lam and Others* [1996] 1 SLR 273 provides an illustration of when a district judge does not possess any specific jurisdiction by virtue of his appointment as a district judge *per se*. In that case, Yong Pung How CJ ("CJ Yong") held that a district judge presiding over a 'Magistrate Arrest Case' (MAC) was sitting in a magistrate's court and the sentence imposed should not exceed a magistrate court's ordinary sentencing jurisdiction. He stated at 277:

> … in hearing an 'MAC', the district judge was sitting in a magistrate's court, not a district court, and was thereby exercising the powers of a magistrate's court. Accordingly, he could only pass sentences within the ceiling imposed by s 11(5) CPC.

15 Consequently, it is clear that the powers of a district judge are in connection with the court he purports to sit in. For a district judge sitting as a Settlement Judge in a CDR conference to have judicial powers, it must first be established that CDR conferences are held as court proceedings in 'Courts' endowed with such powers.

The history of court dispute resolution

16 Mediation was formally introduced in the Subordinate Courts in 1994. It revolves around the Court Mediation Centre of the Subordinate Courts. The Centre covers a wide spectrum of different processes and provides mediation in a number of different cases. It oversees the mediation of civil, family, small claims, juvenile and criminal matters and provides training for staff and volunteer mediators. CDR refers to the mediation for civil cases. The main aim of the Court Mediation Centre was to provide a forum for disputants to explore various options to resolving their disputes without resorting to litigation. The resolution of disputes at the Court Mediation Centre saved the disputants considerable legal fees and costs. The Court Mediation Centre was subsequently renamed as the Primary Dispute Resolution Centre ("PDRC") in May 1998. In September 2000, the PDRC was further renamed to the e@dr Centre to reflect the inclusion of online mediation and virtual dispute resolution in its portfolio: (see Subordinate Courts Annual Report 2000 at 38).

17 CDR commenced with a pilot project spanning the period from 7 June 1994 to 9 July 1994. A total of 43 cases covering the entire spectrum of civil matters were fixed for that pilot project. All 43 cases had trial dates allocated. Since then, CDR has been extended to cover civil cases at an earlier stage (*viz* the Summons for Direction stage). CDR is therefore conducted at or before the close of pleadings for civil cases. According to counsel for the defendant, the CDR process is automatically activated in the case of non-injury motor accident claims (which was what we have here) soon after a

memorandum of appearance is filed for the defendant.

Nature of the e@dr centre and the mediation process it conducts

18 It appears that the e@dr Centre is *not* a Subordinate Court which is vested with judicial power; instead, it merely forms *part* of the Subordinate Courts *organisation*. This rather ambiguous distinction seemed to be suggested in the Subordinate Courts Annual Report 2006 at 14 which states:

> Constituted by the Subordinate Courts Act (Cap 321), the Subordinate Courts consist of the District Courts, the Magistrates' Courts, the Juvenile Court, the Coroner's Court and the Small Claims Tribunals… The Primary Dispute Resolution Centre (also known as the e@dr Centre) and the Multi-Door Courthouse also *form part of the Subordinate Courts*.
>
> [emphasis added]

19 The position of the e@dr Centre within the Subordinate Courts was stated more clearly in the 2002 and 2003 Subordinate Courts Annual Reports, where the e@dr Centre was discussed within the category of "Specialised *Centres*" (emphasis added). In fact, in the 2003 Report, the e@dr Centre was listed under the heading "Specialised Centre" *instead of* under the headings "The Jurisdiction of the Courts" and "Specialised Courts". It can be concluded therefore, that the e@dr Centre, despite being an entity under the umbrella of the Subordinate Courts, is not a 'court' for the purposes of the vesting of judicial powers under the SCA. Instead, it is simply a *centre* administered by the Subordinate Courts. Construed as such, it appears that the e@dr Centre does *not* possess the necessary jurisdiction for the mediation sessions that are conducted under its purview to be deemed 'court proceedings' and for the district judges who sit as Settlement Judges in those mediation sessions to be endowed with judicial powers to make orders of court.

20 The introduction of CDR was discussed in CJ Yong's speech at the 1995 Opening of the Legal Year. He stated:

> After a successful trial run on a pilot basis, I gave approval in the second half of 1994 for the Subordinate Courts to formally introduce a Court Dispute Resolution (or CDR) scheme. CDR is a form of alternative dispute resolution except that it is based within the court system and conducted by a district judge. It is subject to the rules and practices of the Subordinate Courts. To ensure clarity and consistency of approach, a practice direction to govern the conduct of CDR was issued… The CDR process begins with a settlement conference which is initiated by the court. The conference itself is conducted in chambers so as to encourage litigants and their solicitors to negotiate freely and openly… If the dispute cannot be resolved, the case is then assigned to another judge for trial.

21 The above passage may be interpreted in the following ways to mean that CDR conferences are valid Subordinate Court proceedings:

> a. CDR is 'based within the court system and conducted by a district judge' and therefore, CDR constitutes a part of formal court proceedings;
>
> b. CDR is 'subject to the rules and practices of the Subordinate Courts ' and as such, are subject to, *inter alia*, the Rules of Court (Cap 322, R5, 2006 Rev Ed) ("the Rules") and therefore, are valid court proceedings; and
>
> c. The CDR conference is 'conducted in chambers' and the district judge who acts as mediator in

fact sits as a judge in chambers and is endowed with judicial powers under s 32 of the SCA.

22 However, the interpretation suggested in [21] paints a misleading picture and I would say is erroneous. An interpretation that better accords with objective facts is that CDR is a type of *court-based* mediation which merely means that the cases which go through the CDR process are only the ones where the disputants have filed a Writ of Summons with the Courts (see the article *Alternative Dispute Resolution in Singapore* ["*ADR in Singapore*"] by the then Director of the PDRC, district judge Liew Thiam Leng at 8). Further, a district judge presides over the mediation mainly because of the fact that he commands public confidence and respect which in turn makes him an effective mediator (see *ADR in Singapore* at 8) and the fact that a district judge conducts the mediation should not *ipso facto* convert the CDR mediation process into a court proceeding. Moreover, Direction 25(11) of the Subordinate Courts Practice Directions (2006 Ed) ("PD") allows the Registrar to appoint *non-judicial* officers such as legal assistants to conduct the Settlement Conference in certain actions (even though in practice no such appointments were made). Non-judicial officers necessarily lack judicial powers and cannot issue orders of court. As such, it is wholly inconsistent for *some* CDR conferences to be able to result in court orders and not others, especially since it is established that within the Subordinate Courts, it is the *court* and not the *judge* that is endowed with judicial powers (see [10] to [15] *supra*).

23 I am of the view that when CJ Yong stated that CDR is subject to the rules and practices of the Subordinate Courts, he was simply stating a natural consequence of the e@dr Centre (under which CDR conferences are held) being under the vestiges and administration of the Subordinate Court *organisation*. Therefore, practice directions and other administrative rules as laid down by the Subordinate Courts organisation may guide the *conduct* of the CDR sessions, but that in itself is insufficient to *confer jurisdiction* on the e@dr Centre and the CDR conferences.

24 The CDR conference may well be conducted 'in chambers'. However, those chambers do not refer to a district judge's *hearing* chambers wherein he is vested with judicial power under s 32 of the SCA. Instead, 'chambers' in the context of CDR sessions refer to *settlement* chambers within the e@dr Centre. This distinction was made clear in the 2003 Subordinate Courts Annual Report where it was stated at 9 that as at 31 December 2003, "there are a total of… 29 hearing chambers in the Civil, Crime and Family Registries as well as *five settlement chambers in the e@dr Centre*". Settlement chambers therefore are not chambers within the meaning of s 32 of the SCA and a district judge mediating a dispute within the settlement chambers is not clothed with judicial powers.

25 There is one other point to note about CJ Yong's 1995 speech on the introduction of CDR conferences. He stated that 'the CDR process begins with a settlement conference which is *initiated by the court*' (emphasis added). To my mind, that in no way is indicative that a settlement in a CDR conference is part of court proceedings. Instead, it merely means that the court may direct that parties, in proceedings pending before it, attempt to settle their dispute by mediation before proceeding to trial.

26 At this juncture it would be appropriate to address the contentions of counsel for the plaintiff that CDR conferences are part of the pre-trial conference procedure referred to in Order 34A of the Rules and are therefore court proceedings vested with jurisdiction for the issuance of orders of court.

27 O 34A r 2 of the Rules pertains specifically to pre-trial conferences. It states:

> (1) Without prejudice to Rule 1, at any time before any action or proceedings are tried, the Court may direct parties to attend a pre-trial conference relating to the matters arising in the action or proceedings.

(2) At the pre-trial conference, the Court may consider any matter including the possibility of settlement of all or any of the issues in the action or proceedings and require the parties to furnish the Court with any such information as it thinks fit, and may also give all such directions as appear to be necessary or desirable for securing the just, expeditious and economical disposal of the action or proceedings.

(3) The Court, having made directions under Rule 2(2) or Rule 3 may either on its own motion or upon the application of any party, if any party defaults in complying with any such directions, dismiss such action or proceedings or strike out the defence or counterclaim or enter judgment or make such order as it thinks fit.

…

(6) At any time during the pre-trial conference where the parties are agreeable to a settlement of some or all of the matters in dispute in the action or proceedings, the Court may enter judgment in the action or proceedings or make such order to give effect to the settlement.

28 A CDR conference is indeed initiated by the Subordinate Courts on a direction pursuant to O 34A r 2(2) of the Rules. However, this does not necessarily mean that a CDR conference is part of court proceedings, only that the court has directed the parties to attend the same with a view to achieving a settlement. Where settlement is reached, it is only a *court* that may enter judgment in the action or proceedings or make such other orders as to give effect to the settlement (O 34A r 2(6) of the Rules). Since the e@dr Centre under which the CDR conferences take place is not a court, the CDR settlement conferences cannot be court proceedings and the district judge sitting as a Settlement Judge is not endowed with powers under the SCA. Therefore, a settlement that is reached can only be *recorded* by the Settlement Judge. The parties must still attend before a judicial officer in the Subordinate Courts at another pre-trial conference where they may inform the judge of the settlement and present the recorded agreement for the court to convert into a judgment.

29 Further, Direction 25(14) of the PD is pertinent. It states:

It has also been observed that some parties have chosen to absent themselves repeatedly at Settlement Conferences convened upon their request, thereby depriving other parties of such available slots and the expeditious resolution of their disputes. In order to minimise such wastage of judicial time and resources, the *Court* may exercise its powers under Order 34A, Rule 2(3), of the Rules of Court to dismiss the action or proceedings or strike out the defence or counterclaim or enter judgment or make any such order it deems fit upon the repeated absence of any party on a second or subsequent occasion a Settlement Conference is convened.

[emphasis added]

30 I note that the word 'court' is used in Direction 25. Even so, the PD does not confer jurisdiction on the district judge sitting as a Settlement Judge at a CDR conference to make orders and enter judgment, as contended by counsel for the plaintiff. Instead, the PD merely echoes O 34A r 2(3) of the Rules in that where parties absent themselves from Settlement Conferences *in contravention of the pre-trial conference court's direction*, this default may result in the pre-trial conference court making the relevant orders such as dismissing the action or entering judgment. It is also pertinent to note that the only other use of the word 'court' in Direction 25 of the PD is in Direction 25(1) where it states that the court may upon the request in writing by the parties or of its own motion, convene a Settlement Conference. Direction 25(1) is consistent with O 34A r 2(2) of the Rules which allows the court at a pre-trial conference to give any directions necessary or desirable for the just and

expeditious disposal of a case; those directions may include the attendance at a Settlement Conference.

31 The use of the word 'court' in Directions 25(1) and (14) of the PD must be contrasted with the use of the words 'District Judge or Magistrate' in Direction 25(10) of the PD which states:

> If the parties are unable to resolve their dispute at the Settlement Conference, *the District Judge or Magistrate* will give the necessary directions to enable the action to proceed to trial. The action will be tried by another Judge other than the District Judge or Magistrate conducting the Settlement Conference.
>
> [emphasis added]

32 My view is that the use of different words ('court' and 'District Judge or Magistrate') is deliberate. 'Court' refers to the court conducting the p*re-trial conference*, which is endowed with the judicial power and jurisdiction of the particular court under which the pre-trial conference takes place. 'District Judge or Magistrate' on the other hand is used for the purpose of referring to the Settlement Judge at the CDR conference since such a Settlement Judge does not sit in a *court* and as such, is not vested with the power and jurisdiction of a court. I would add that the words 'necessary directions to enable the action to proceed to trial' may be interpreted as nothing more than simply stating on the record that the matter has *not* been settled at the CDR conference. Since the case would still be pending before the Subordinate Courts, a natural consequence of a failure to reach settlement would be for the case to proceed to trial in accordance with the normal court procedure. This interpretation is buttressed by the words of Liew Thiam Leng in *ADR in Singapore* (see [22] *supra*) where he said at 5:

> If the parties cannot resolve the matter [at the CDR conference], they will be informed that the case will *proceed to trial as scheduled* and will be heard before another judge.
>
> [emphasis added]

33 Therefore, the Settlement Judge would not be making a *court direction* for the action to proceed to trial. Instead, the case would *already be scheduled* for trial (or any other pre-trial matters) and the Settlement Judge would simply have to place on record that no settlement was reached at the CDR conference, for the action to proceed.

The analogous case of family court mediation

34 Mediation in Family Court cases is also contained under the umbrella of the e@dr Centre. An examination of Family Court mediation would be useful for present purposes since the jurisdiction and power of a mediator in Family Court mediation under the e@dr Centre should be analogous to that of a mediator in CDR conferences for civil cases. This is especially so since some Family Court mediation cases are also similarly conducted by judicial officers such as Judges.

35 In cases of ancillary matters, a pre-trial conference is conducted by a Deputy Registrar of the Family Court after an interim judgment for divorce has been obtained. He or she may make certain orders to help both parties come to an agreement on the disputed ancillary matters, including orders for the disclosure of financial documents *or for parties to attend counselling or a resolution conference*. A resolution conference is a mediation session conducted by a Judge to help both parties resolve their differences and as such, is in fact the Family Court equivalent of a CDR conference. However, unlike the practice in CDR conferences, the judge mediator in a Family Court resolution

conference does *not* make any orders during the conference. Instead, a consent order is *drafted* and the court will give directions for a consent ancillary matters hearing to be fixed in order for the draft consent order to be crystallised into a consent judgment.

36 Similarly, in matters pertaining to children's issues, the Deputy Registrar at a pre-trial conference may refer parties to a resolution conference, where a Family Court judge sits as mediator to help both parties resolve their differences over the legal aspects of the dispute. If an amicable resolution of the dispute is reached after such a conference, there will be a consent originating summons hearing before a district judge in chambers. Otherwise, there will be a further pre-trial conference in chambers and then the hearing of the originating summons. It is apparent, therefore, that the Family Court judge sitting as mediator in a resolution conference does *not* make any orders during the conference. There is an additional step required in order to obtain a court order – the consent originating summons hearing.

37 It follows that CDR conferences outside the Family Court should be conducted in the same manner. The Settlement Judge should not (and I hold does not) have the jurisdiction and power to issue orders of court and consent judgments at the CDR conference. There must be an additional step taken – that of crystallising the recorded terms of settlement into a consent judgment by having a further hearing before a proper court.

Misconceptions about the nature of CDR conferences and the power of the Settlement Judge

38 I should point out that *practice* has in fact resulted in many orders of court and consent judgments being recorded by Settlement Judges in CDR conferences, so much so that Lim Lan Yuan and Liew Thiam Leng stated in *Court Mediation in Singapore* (FT Law & Tax Asia Pacific, 1997) at 219:

> In civil cases, the mediator is a Settlement Judge. As such, any agreement reached in a settlement conference is recorded by the Settlement Judge. *If it is a consent judgment, the claimant can resort to the execution process* and if it is a contractual agreement, the parties can proceed on a separate claim for breach of the terms of settlement.
>
> [emphasis added]

39 With respect, the authors are incorrect in their assertion that a Settlement Judge may record a consent judgment at a settlement conference. The misconception is clear when one looks at the paragraph following the above quote:

> In matters concerning maintenance, spousal violence, custody and access, the mediator need not be a judge. Consequently*, any agreement reached in these cases would require endorsement from a judge upon which the agreement becomes binding.* In the case of matrimonial property, the mediator is a judge and any agreement reached and recorded before the Settlement Judge is binding.
>
> [emphasis added]

40 The authors seem to be of the view that in cases where the mediator may or may not be a judge, consent judgments cannot be issued during the mediation session and requires endorsement from a judge (presumably by way of a hearing before a court with a draft consent order), whereas where the mediator *is invariably* a judge, a consent judgment may be recorded. But in holding that view, the authors appear to have overlooked two important points: first, that the mediator in CDR conferences for civil cases *may be a non-judicial officer* (see [22] *supra* and Direction 25(11) of the PD).

Therefore, by the authors' reasoning, the mediator for civil matters *need not be a judge* as well and should similarly require further endorsement from a court before a binding court order can be obtained. Second, that the jurisdiction and judicial power to make court orders is conferred upon the *court* and not individual *judges* (see [10] to [15] *supra*). Thus, the question of whether a mediator may issue binding court orders should not depend on whether the person is a judge.

Conclusion

41 Jurisdiction and power are conferred upon c*ourts* and not *judges*. The e@dr Centre, under which mediation sessions such as CDR conference are held, is not a court conferred with jurisdiction. As such, there must be further endorsement by a court with such jurisdiction and judicial power, in order to crystallise the recorded terms of the settlement reached at a CDR conference into a consent judgment. Admittedly, there appears to be a current practice whereby Settlement Judges *do in fact* record consent judgments that may be extracted by parties for purposes of execution. However, such practice has no legal basis and should be discontinued. If indeed it was intended that the CDR process should operate in tandem with and parallel to court procedures and the Rules, the necessary legislation and or subsidiary legislation must first be enacted.

42 Consequently, the Appeal is allowed with costs to be taxed unless otherwise agreed. As the plaintiff was not entitled to convert the CDR terms of settlement into an order of court let alone a judgment, the Order of Court is set aside together with the execution proceedings in writ of seizure and sale no. 2057 of 2006. The plaintiff is ordered to reimburse the defendant all costs and disbursements paid by the defendant towards the Order of Court and the writ of seizure and sale, with interest at 6% from the date of the defendant's payment until date of refund.