IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 208

Suit No 750 of 2012
(Registrar's Appeal No 290 of 2017)

Between

Chan Gek Yong

… *Plaintiff / Appellant*

And

(1) Violet Netto practising as L F Violet Netto
(2) Ravi s/o Madasamy practising under L F Violet Netto

… *Defendants / Respondents*

Suit No 751 of 2012
(Registrar's Appeal No 291 of 2017)

Between

Chan Gek Yong

… *Plaintiff / Appellant*

And

(1) Violet Netto practising as L F Violet Netto
(2) Ravi s/o Madasamy practising under L F Violet Netto

… *Defendants / Respondents*

GROUNDS OF DECISION

[Contract] — [Formation] — [Capacity of parties] — [Incapacity]
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Tan Siong Thye J
11 July 2018

20 September 2018

Tan Siong Thye J:

Introduction

1 The plaintiff lodged Registrar's Appeal No 290 of 2017 and Registrar's Appeal No 291 of 2017 against the decisions of the learned Assistant Registrar James Elisha Lee Han Leong ("AR") in Summons No 5327 of 2016 ("SUM 5327/2016") and Summons No 5328 of 2016 ("SUM 5328/2016") respectively. These summonses arose from Suit No 750 of 2012 ("Suit 750/2012") and Suit No 751 of 2012 ("Suit 751/2012") (collectively, "the Main Suits"). The defendants instituted SUM 5327/2016 and SUM 5328/2016 under O 18 r 19(1)(*d*) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("Rules of Court") to strike out the Statement of Claims and the Main Suits altogether.

2 The plaintiff in the Main Suits, Mdm Chan Gek Yong, was the appellant

in these Registrar's Appeals ("RAs"). She was unrepresented. The defendants in the Main Suits were the respondents in these RAs. They were Violet Netto, a lawyer practising in M/s L F Violet Netto, and Ravi s/o Madasamy ("Mr Ravi") who was also a practising lawyer. In these RAs, they were represented by two lawyers, namely Mr Christopher Anand Daniel and Mr Asik Sadayan ("Mr Asik") from M/s Advocatus Law LLP.

3 The central thrust of the defendants' striking out applications was that it would be an abuse of the process to allow the Main Suits to continue as the parties had already reached an amicable settlement at the Singapore Mediation Centre ("SMC"). The parties had signed a Settlement Agreement titled "Settlement Deed Suit No 750/2012/G and Suit No 751/2012/L", Mediation No. SMC/MC-225 of 2016, on 29 September 2016 ("the Settlement Agreement") before two SMC-appointed mediators, Dr Joseph H H Sheares ("Dr Sheares"), a medical practitioner from Mount Elizabeth Hospital and Mr Lim Tat, a lawyer from M/s Aequitas Law LLP.

4 On 11 July 2018, after hearing the parties' arguments I dismissed the appeals. The plaintiff filed a notice of appeal on 13 August 2018. I shall now give the reasons for my decision.

Background

Events leading up to the Settlement Agreement

5 On 7 September 2012, the plaintiff commenced Suit 750/2012 against the defendants alleging that the defendants were professionally negligent and had breached their duty of care owed to her regarding her share of the net sales proceeds of a Housing & Development Board property at Block 253 Serangoon Central Drive #01-233 Singapore 550253. Arising from the same dispute in Suit

750/2012, the plaintiff commenced another suit, namely Suit 751/2012, also on 7 September 2012, against the defendants. Suit 751/2012 was for breach of trust and breach of statutory duty in respect of S$207,000, being money which the plaintiff claimed belonged to her that the defendants had transferred from the defendants' client account to their office account without the plaintiff's consent.

6 On 15 September 2016, four years later, the plaintiff and the defendants agreed to attempt to resolve the Main Suits through mediation scheduled for one day.[1] The mediation took place on 29 September 2016 at the SMC and the plaintiff and the defendants signed the Settlement Agreement on the same day.[2] The relevant clauses of the Settlement Agreement are reproduced for ease of reference:[3]

> 1. Ms Violet Netto ("Ms Netto") and Mr Ravi s/o Madasamy ("Mr Ravi") shall pay the sum of S$150,000/- to Mdm Chan Gek Yong ("Mdm Chan") in the following manner:
>
> (1) A sum of S$50,000/- to Mdm Chan, within 1 month from the date of this Settlement Deed;
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> (2) The sum of S$100,000/- to Mdm Chan, in 17 monthly instalments of S$5,550/- commencing from January 2017 payable on the 15th day of every month, with a final instalment of S$5,650/-. Ms Netto and Mr Ravi shall give post-dated cheques for such sums and dated payable on such dates, within 7 days of the date of this Settlement Deed.
>
> (3) If any such instalment is not paid on its due date, then all instalments then remaining unpaid shall immediately become due and payable, and such acceleration shall be Mdm Chan's sole remedy for such non-payment.

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1 Affidavit of Violet Netto dated 1 November 2016 ("Violet Netto's 6th Affidavit") at Exhibit VN-1.

2 Violet Netto's 6th Affidavit at para 6 and at Exhibit VN-1.

3 Violet Netto's 6th Affidavit at Exhibit VN-1.

> 2. Suit No. 750/2012/G ("Suit 750") and Suit No. 751/2012/L ("Suit 751") shall be discontinued on the following terms:
>
> (1) Mdm Chan shall withdraw all outstanding applications in Suit 750 and Suit 751, and file a Notice of Discontinuance, with no Orders as to costs, in each of Suit 750 and Suit 751, within 14 days from the date of the Settlement Deed.
>
> (2) All parties to Suit 750 and Suit 751 shall each bear their own legal costs.
>
> 3. If Mdm Chan fails to comply with paragraph 2 above, Ms Netto and/or Mr Ravi shall be at liberty to make the appropriate application to Court to achieve the same result, and Mdm Chan shall be obliged to consent to any such application.

7 In accordance with cl 2(1) of the Settlement Agreement, the plaintiff was required to file Notices of Discontinuance to discontinue the Main Suits within 14 days of the signing of the Settlement Agreement.

Events after the signing of the Settlement Agreement

8 On 30 September 2016, in a telephone conversation between the plaintiff and the defendants' counsel, Mr Asik, the latter explained to the plaintiff the need to place a seal on the Settlement Agreement. On 5 October 2016, Mr Asik and the plaintiff had another telephone conversation whereby Mr Asik informed her of the formalities necessary to seal the Settlement Agreement and reminded her of her obligation to file the Notices of Discontinuance to discontinue the Main Suits. Mr Asik also informed her that the defendants will give her the 18 post-dated cheques as per the Settlement Agreement by way of a covering letter.[4]

9 There were two pre-trial conferences ("PTCs") ordered by the court

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[4] Violet Netto's Affidavit dated 3 May 2017 ("Violet Netto's 7th Affidavit") at paras 10 to 13.

following the signing of the Settlement Agreement. The PTCs were on 6 and 13 October 2016. At the PTC on 6 October 2016 the plaintiff informed the court that she did not want to proceed with the Settlement Agreement and wanted to continue with the Main Suits. At the end of 14 days after the signing of the Settlement Agreement, the plaintiff did not file the Notices of Discontinuance pursuant to cl 2(1) of the Settlement Agreement.

10 Despite the plaintiff's refusal to discontinue the Main Suits pursuant to the Settlement Agreement, the defendants on 27 October 2016 proceeded to issue four cheques totalling a sum of S$50,000 to the plaintiff pursuant to cl 1(1) of the Settlement Agreement and 18 post-dated cheques totalling a sum of S$100,000 to her pursuant to cl 1(2) of the Settlement Agreement.[5]

11 The plaintiff refused to accept the cheques issued by the defendants.[6] As a result, the defendants filed SUM 5327/2016 and SUM 5328/2016 to strike out the Main Suits in their entirety on the basis that to allow the Main Suits to continue would be an abuse of the process as the Main Suits were already resolved through the Settlement Agreement willingly executed by the parties at the SMC.

The AR's decisions

12 After hearing the parties' arguments, the AR granted the defendants' applications to strike out the Main Suits. The AR found that the Settlement Agreement had been validly entered into.[7] He dismissed the plaintiff's arguments on the following grounds:

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5 Violet Netto's 7th Affidavit at para 14.

6 Notes of Evidence dated 11 July 2018 ("NE") at page 26 lines 24 to 28.

7 Oral Grounds of Decision of the AR on 28 September 2017 ("GD") at [13].

(a) The plaintiff had not specifically stated and had not adduced any evidence that she had experienced giddiness or was labouring under the effects of her medication at the time of the mediation. Furthermore, she did not inform the defendants, their lawyers nor the mediators that she was feeling unwell;

(b) The plaintiff had not adduced any evidence that she was under any form of duress or illegitimate pressure during the mediation and the signing of the Settlement Agreement;

(c) The plaintiff had not raised any issue about the inconsistency or discrepancy between the agreement she signed and the version which the defendants' lawyer had tried to seal the day after the mediation. Furthermore, her concerns about the sealing of the Settlement Agreement were not valid;

(d) The plaintiff's disapproval of the defendants' insurance company paying for the first S$50,000 was irrelevant to the validity of the Settlement Agreement;

(e) The plaintiff's allegation that the first defendant's firm had ceased operations was unfounded as the first defendant had filed an affidavit to confirm that she is still the sole proprietor of the firm; and

(f) The AR did not accept the plaintiff's arguments that the Settlement Agreement should cover only the Main Suits and not the other matters in which the defendants had acted for her.[8]

13 The AR, therefore, granted the defendants' striking out applications. The

[8] GD at [7] to [12].

plaintiff appealed against the decisions and the RAs were heard before me on 11 July 2018.

The parties' cases

The plaintiff's case

14 The plaintiff's arguments before me were a repetition of her arguments before the AR. In brief, she argued that the AR should not have struck out the Main Suits for two main reasons: (1) the Settlement Agreement was invalid; and (2) the Settlement Agreement was not binding because the defendants in the first place did not and had no intention to abide by the terms of the Settlement Agreement.

15 On the invalidity of the Settlement Agreement the plaintiff made several assertions. First, the plaintiff argued that on the day of the mediation she was unwell and was under medication which made her drowsy. Thus she was not mentally and fully alert when she signed the Settlement Agreement. The plaintiff averred that she did not understand what she was signing on 29 September 2016. She also claimed that one of the mediators, Dr Sheares, had noticed that she was anxious.[9]

16 Second, the plaintiff contended that she signed the Settlement Agreement under duress. She claimed that she was not represented by lawyers during the mediation whilst the defendants who were lawyers were further represented by their lawyers.[10] The plaintiff also claimed that the two mediators pressurised her into signing the Settlement Agreement by emphasising to her

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9 Supplementary Affidavit in Reply by Chan Gek Yong dated 21 April 2017 ("Plaintiff's 5th Affidavit") at para 10. See also NE at page 4 lines 10 to 23.

10 Plaintiff's 5th Affidavit at para 10.

that it was already at the end of the full day mediation session. The mediators also told her that if the parties could not settle the Main Suits at the mediation, the case would have to go back to the court for further directions for the Main Suits to proceed to trial. This would result in the plaintiff incurring further costs to litigate the Main Suits.[11] The plaintiff also averred that there was no time for her to read and consider the Settlement Agreement before signing it.[12] Finally, she claimed that she was under added pressure to sign the Settlement Agreement as one of the defendants, Mr Ravi, had already paid her share of the mediation fee. Hence, she felt obliged to make the mediation a success so as not to waste Mr Ravi's money.[13]

17 Third, the plaintiff claimed that she was informed orally before the signing of the Settlement Agreement that she would be paid S$150,000 to settle the Main Suits only. She agreed to this. However, the plaintiff alleged that she would not have agreed for the Settlement Agreement to include any other matters in which the defendants had acted for her.[14] She also submitted that she was not informed that the Settlement Agreement must be in the form of a deed.[15] She further argued that she was not given a draft of the Settlement Agreement to review before signing the Settlement Agreement.[16] She submitted that the terms of the Settlement Agreement were unfair and she would not have willingly signed it.[17] Finally, she did not agree for the first payment of S$50,000

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11 Plaintiff's 5th Affidavit at para 10. See also NE at page 7 lines 6 to 28.

12 NE at page 19 lines 22 to 23 and page 51 lines 15 to 18.

13 NE at page 23 lines 21 to 28.

14 Plaintiff's 5th Affidavit at para 13. See also NE at page 5 line 6 to page 6 line 24, page 8 lines 13 to 22 and page 22 lines 1 to 14.

15 Plaintiff's 5th Affidavit at para 11.

16 NE at page 6 lines 18 to 20.

17 NE at page 8, lines 3 to 5 and page 22 lines 1 to 14.

pursuant to cl 1(1) of the Settlement Agreement to be paid by the defendants' insurers.[18]

18 The second ground of the plaintiff's case was that the defendants did not have the intention to be bound by the Settlement Agreement as the first defendant had ceased her firm's operations soon after the mediation. This suggested that the defendants had no intention to fulfil their obligations under the Settlement Agreement.[19]

The defendants' case

The defendants' objection to the plaintiff's admission of the three further affidavits

19 As a preliminary issue, the defendants objected to the AR's decision to grant leave to the plaintiff to file three further affidavits to explain her medical conditions during the mediation after the AR had given his decisions in SUM 5327/2016 and SUM 5328/2016 on 28 September 2017.[20] The plaintiff, nonetheless, filed the following three affidavits pursuant to the AR's direction:[21]

(a) affidavit of Tan Bee Bee ("Mdm Tan") dated 15 January 2018 ("Mdm Tan's Affidavit");

(b) affidavit of Chia Kok Kee ("Mr Chia") dated 16 January 2018 ("Mr Chia's Affidavit"); and

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18 Plaintiff's 5th Affidavit at para 12. See also NE at page 20 line 21 to page 21 line 8.

19 Plaintiff's 5th Affidavit at para 12. See also NE at page 21 lines 13 to 29.

20 Respondents' Supplementary Skeletal Submissions at paras 8 to 16.

21 Respondents' Supplementary Skeletal Submissions at para 7.

(c) affidavit of Chan Gek Yong dated 16 March 2018 ("plaintiff's 6th Affidavit").

20 On 4 April 2018, the defendants filed a Notice of Objection in respect of para 12 of the plaintiff's 6th Affidavit.

21 The reason for the defendants' objection was that the plaintiff failed to satisfy the test set out in *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*") as the three further affidavits were irrelevant.[22]

22 The defendants also submitted that para 12 of the plaintiff's 6th Affidavit should be expunged because it was scandalous, vexatious, frivolous, irrelevant and outside the scope of the leave granted by the AR for her to file further affidavits.[23]

The substantive arguments of the defendants

23 The defendants argued that the AR was correct in finding that the Settlement Agreement was valid. First, the defendants submitted that the Settlement Agreement was valid despite it not being affixed with a physical seal.[24] Second, the defendants argued that there was no duress or undue influence on the plaintiff when she signed the Settlement Agreement.[25] Third, the defendants averred that the Settlement Agreement was not unconscionable and that even if the terms were deemed unfair by the plaintiff, it was not a vitiating factor which would render the Settlement Agreement invalid.[26] This is

22 Respondents' Supplementary Skeletal Submissions at paras 9 to 16.

23 Respondents' Supplementary Skeletal Submissions at paras 17 to 23.

24 Respondents' Skeletal Submissions at paras 41 to 52.

25 Respondents' Skeletal Submissions at paras 25 to 34.

26 Respondents' Skeletal Submissions at paras 35 to 36.

because the plaintiff and the defendants had willingly executed the Settlement Agreement after a day's mediation. The defendants contended that the Settlement Agreement superseded the underlying disputes between the parties in the Main Suits. Hence, the Main Suits should be struck out. The plaintiff's intention to continue the Main Suits amounted to an abuse of the process of the Court.[27]

My decision

Issues to be determined

24 The issues that arose for my determination in these RAs were:

(a) whether the AR was correct in granting the plaintiff leave to file further affidavits to explain her medical conditions during the mediation;

(b) whether the Settlement Agreement was valid;

(c) whether the Settlement Agreement should be set aside as the parties did not intend to be bound by the terms of the Settlement Agreement; and

(d) whether the Main Suits should be struck out because it is an abuse of the process.

25 As these RAs are appeals against the decisions of the AR striking out the Main Suits I shall first discuss the law on striking out under O 18, r 19(1)(*d*) of the Rules of Court.

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[27] Respondents' Skeletal Submissions at paras 8 to 15.

The law

26 The defendants sought to strike out the Main Suits pursuant to O 18, r 19(1)(*d*) of the Rules of Court which reads:

> **19** – (1) **The Court may** at any stage of the proceedings **order to be struck out** or amended **any pleading** or the endorsement of any writ in the action, or anything in any pleading or in the endorsement, **on the ground that** –
>
> (*a*) it discloses no reasonable cause of action or defence, as the case may be;
>
> (*b*) it is scandalous, frivolous or vexatious;
>
> (*c*) it may prejudice, embarrass or delay the fair trial of the action; or
>
> (*d*) **it is otherwise an abuse of the process of the Court**,
>
> and **may order the action to be stayed or dismissed** or judgment to be entered accordingly, as the case may be.
>
> [Emphasis added in bold]

27 It is trite law that it can be an abuse of the process in litigating issues which have already been determined in prior litigation or concluded by way of a settlement agreement. In the case of a settlement agreement, the court will have to consider the nature and scope of that agreement having regard to all the circumstances of the case. Thereafter, it will apply a broad-based approach to see if, despite the settlement agreement, the later action on the same issues is, in all the circumstances, an abuse of the process: *Ng Kong Choon v Tang Wee Goh* [2016] 3 SLR 935 at [31] and *Venkatraman Kalyanaraman v Nithya Kalyani and others* [2016] 4 SLR 1365 at [37].

28 In coming to my decision to uphold the AR's decision and to strike out the Main Suits, I shall first explain why the Settlement Agreement was valid and binding between the parties. Thereafter, I shall explain why to allow the plaintiff to continue the Main Suits would have been an abuse of the process.

Issue (a): Whether the AR was right to grant the plaintiff leave to file further affidavits

29 Before I address the issue of the validity of the Settlement Agreement, I shall deal with the preliminary objections raised by the defendants, namely that the AR was wrong to allow the plaintiff to file further affidavits to explain her medical conditions on the day of the mediation. As mentioned at [19] to [22] above, the defendants argued that the AR was mistaken because the reasons for the plaintiff to file the three further affidavits did not satisfy the test set out in *Ladd v Marshall*, namely:

> (a) it should be shown that the evidence could not have been obtained with reasonable diligence;
>
> (b) that the further evidence is such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; and
>
> (c) that the evidence is such as is presumably to be believed.

The defendants argued that the *Ladd v Marshall* test should be applied in the determination of whether to allow the plaintiff to file further affidavits for the RAs. The defendants cited the High Court decision of *Lassiter Ann Masters v To Keng Lam (alias Toh Jeanette)* [2003] 3 SLR(R) 666 ("*Lassiter Ann Masters*") at [25] to [32].[28] The defendants further submitted that the three further affidavits were irrelevant.

30 I disagreed with the defendants. It is well-established that an appeal from a Registrar to a Judge in Chambers is dealt with by way of a rehearing. The

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[28] Respondents' Supplementary Skeletal Submissions at paras 10 to 11.

evidence at the Registrar's Appeal should be the same as it was before the Registrar. However, the Judge hearing the appeal is nonetheless entitled to treat the matter afresh as though it was before him for the first time. The Court of Appeal in *Lian Soon Construction Pte Ltd v Guan Qian Realty Pte Ltd* [1999] 1 SLR(R) 1053 ("*Lian Soon Construction*") at [37] to [38] held that the Judge has a discretion to admit fresh evidence and he frequently does so in the absence of special reasons.

31 It is not mandatory for a Judge in Chambers hearing a Registrar's Appeal to apply the *Ladd v Marshall* test to determine whether to grant leave to file further affidavits or adduce fresh evidence. However, the *Ladd v Marshall* test would apply in cases where the hearing before the Registrar at first instance has the characteristics of a full trial or where oral evidence has been recorded (for example, in proceedings of inquiries, taking of accounts or as in *Lassiter Ann Masters*, in a hearing for assessment of damages). This was the position arrived at by the Court of Appeal in *Lassiter Ann Masters v To Keng Lam (alias Toh Jeanette)* [2004] 2 SLR(R) 392 at [20] to [26] ("*Lassiter (CA decision*)"). The Court of Appeal in *Lassiter (CA decision)* stated at [24] that in such situations, the discretion rests with the judge as to whether to allow fresh evidence to be adduced, subject to certain conditions. First, the applicant must provide sufficiently strong reasons for why the new evidence was not adduced at the assessment before the Registrar, although this condition is not to be as stringent as the first condition under *Ladd v Marshall*. Second, the applicant must satisfy the second and third conditions in the *Ladd v Marshall* test.

32 In *WBG Network (S) Pte Ltd v Sunny Daisy Ltd* [2007] 1 SLR(R) 1133 ("*WBG Network*") the Court of Appeal further explained the above distinction. Choo Han Teck J, who delivered the decision of the Court of Appeal in that case stated at [7] that the Court of Appeal's decision in *Lassiter (CA decision)*

recognised a distinction between the standard to be applied in appeals where the hearing before the Registrar had the characteristics of a full trial or where oral evidence had been recorded and hearings before the Registrar that were interlocutory in nature.

33 It was unfortunate that the defendants' counsel had overlooked the Court of Appeal's decision in *Lassiter (CA decision)* when they cited only the first instance decision of *Lassiter Ann Masters*. Hence they failed to appreciate the distinction between the admission of fresh evidence for Registrar's Appeals arising from hearings before a Registrar of interlocutory matters and Registrar's Appeals arising from hearings before a Registrar which had the characteristics of a full trial or where oral evidence was recorded. On the above principles, I found that the AR had correctly exercised his discretion to grant the plaintiff leave to file further affidavits to explain her medical conditions at the mediation. The AR's decision also did not prejudice the defendants. The plaintiff's further affidavits were not totally irrelevant to the determination of the validity of the Settlement Agreement. She had stated in her affidavit dated 21 April 2017 that she was suffering from a number of medical problems and was on medication prior to the mediation that caused her to suffer giddiness and drowsiness during the mediation.[29] The plaintiff's 6th Affidavit elaborated on this.[30]

34 Furthermore, it was not disputed that the plaintiff was accompanied by Mdm Tan in the morning and Mr Chia in the afternoon during the mediation session which took the whole day. They stated that the plaintiff had told them to accompany her as she was unwell.[31] Thus their affidavits were relevant.

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29 Plaintiff's 5th Affidavit at para 10.

30 Affidavit of Chan Gek Yong dated 12 March 2018 ("Plaintiff's 6th Affidavit") at paras 2 to 11.

31 Affidavit of Tan Bee Bee dated 15 January 2018 ("Mdm Tan's Affidavit") at para 4;

35 The defendants argued that the plaintiff's 6th affidavit was irrelevant. I could partially agree with the defendants as most of the plaintiff's medical conditions as stated in the plaintiff's 6th affidavit happened long after the mediation on 29 September 2016. However, there was one aspect that appeared to be relevant to these proceedings as she alleged that she suffered from giddiness in July 2016 and the doctor prescribed her medication which caused drowsiness.[32]

36 Therefore, the defendants' objections against the AR's decision to grant the plaintiff leave to file further affidavits to explain her medical conditions were misconceived.

Issue (b): Validity of the Settlement Agreement

37 The plaintiff argued that the Settlement Agreement was invalid as she was medically unwell during the mediation. First, she alleged that when she signed the Settlement Agreement she was suffering from the effect of the medication which she took and this caused her giddiness. Second, she alleged that she signed the Settlement Agreement under duress. Finally, she argued that the terms of the Settlement Agreement did not correctly reflect what she had agreed to. In essence, she relied on the arguments of incapacity, duress and *non est factum* to urge the court to find that the Settlement Agreement was invalid.

38 I shall now address each of these allegations *seriatim*.

Affidavit of Chia Kok Kee dated 15 January 2018 ("Mr Chia's Affidavit") at para 3.

32 Plaintiff's 6th Affidavit at para 11.

Incapacity

39 On the issue of invalidity of a contract due to incapacity I shall refer to *Resorts World at Sentosa Pte Ltd v Lee Fook Kheun* [2018] SGHC 173 ("*Lee Fook Kheun*") at [21]:

> Intoxication results in impairment of mental capacity, and for that reason has been likened in the law to mental incapacity: see *Molton v Camroux* (1849) 4 Exch 17,19; 154 ER 1107,1108. **A person seeking rescission must show that, first, when he entered into the transaction he was so drunk that he was unable to understand the general nature and effect of the transaction.** This level of understanding was explained by Hallett J in *Manches v Trimborn* (1946) 115 LJKB 305, 307 as **"such a degree of incapacity as would interfere with the capacity of the defendant to understand substantially the nature and effect of the transaction into which she was entering**." **Second, the counterparty to the transaction must have known of his infirmity**. In *York Glass Co Ltd v Jubb* (1925) 42 TLR 1 (CA) 2, the claim failed as the counterparty "did not know and had no reasons to know that [the complainant] was out of his mind at the time."
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> [Emphasis added in bold]

Although *Lee Fook Kheun* dealt with incapacity due to alcohol intoxication, I see no reason why the same standard should not apply to the plaintiff who submitted that she was under the influence of medication which affected her mental faculties during the mediation up till the signing of the Settlement Agreement. Therefore, she must prove on a balance of probability that:

(a) when she signed the Settlement Agreement she was so mentally incapacitated that she was unable to understand the general nature and effect of the Settlement Agreement; and

(b) the defendants and the mediators knew of her infirmity.

40 The plaintiff had failed to satisfy the above conditions. I shall elaborate.

41 On the first condition, the plaintiff claimed that sometime in July 2016, she saw the doctor for her giddiness and was prescribed medication which made her drowsy. On the day of the mediation, she claimed that she took the medication that made her unwell and drowsy.[33] She further added that one of the mediators, Dr Sheares, noticed that she was anxious.[34]

42 On the first condition, I found that she had failed to show that she was so mentally incapacitated that she was unable to understand the general nature and effect of the Settlement Agreement. First, she did not produce any documentary proof that she was suffering from giddiness on the day of the mediation. Although she did attach to her 6th affidavit medical records for her other ailments, these were not germane to these proceedings as they were her general medical records that showed that she consulted the doctor in 2017 *ie*, months after the date of the mediation. However, she did state at para 11 of her 6th Affidavit that "[c]ommencing from July 2016, [she] started to experience giddy spells and had to seek medical help at the Polyclinics." She then stated that she was prescribed medicine for her "intermittent vertiginous giddiness".[35] She did not, however, produce any documentary proof of this and did not provide any doctor's letter stating which of the medicine she took for her "intermittent vertiginous giddiness" caused drowsiness or may affect her mental faculties.

43 Second, if what the plaintiff claimed was true in that the medication prescribed for her "intermittent vertiginous giddiness" in July 2016 caused drowsiness and affected her mental faculties, then she must have been in such a

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33 NE at page 4 lines 10 to 23. See also Plaintiff's 5th Affidavit at para 10 and Plaintiff's 6th Affidavit at para 11.

34 Plaintiff's 5th Affidavit at para 10.

35 Plaintiff's 6th Affidavit at para 11.

debilitated state for a long time. However, she raised no complaints of her infirmity during the PTCs on 25 July 2016 and 4 August 2016 which are prior to the mediation date. Furthermore, she had the presence of mind to sign an agreement to mediate on 15 September 2016 and agreed to be bound by any settlement reached.

44 Third, despite feeling drowsy/giddy on the day of the mediation she continued with it. The evidence indicated that the plaintiff was able to conduct herself during the mediation. The first defendant in her affidavit at para 7(9)(b) stated that the plaintiff was an active participant in the discussions that took place during the mediation session.[36] It was undisputed that the defendants initially offered the plaintiff S$100,000. She refused. Later in the day the defendants increased the offer to S$150,000 and the plaintiff eventually accepted this offer. In addition, the plaintiff could recall that the mediation was conducted on 29 September 2016 and that the two defendants were represented by their lawyers. She also had the presence of mind to call her friend, Mdm Tan, who herself had acted in person against her ex-lawyer in her own suit, to accompany her in the morning. In the afternoon, the plaintiff asked Mr Chia to accompany her as Mdm Tan could not accompany the plaintiff in the afternoon. Lastly, one would expect her to see the doctor if it was true that taking the medication had caused her to be drowsy such that it adversely affected her mental faculties. The plaintiff admitted that she did not consult the doctor before or after the mediation about her giddiness and drowsiness.[37]

45 Finally, although Mdm Tan and Mr Chia filed affidavits stating that the plaintiff was feeling unwell during the mediation there was no evidence that she

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36 Affidavit of Violet Netto dated 3 May 2017 ("Violet Netto's 7th Affidavit").

37 NE at page 70 lines 9 to 16.

was so unwell that she was unable to argue her case during the mediation.[38]

46 Therefore, the plaintiff was not so mentally incapacitated that she could not understand the general nature of the mediation and the Settlement Agreement which she signed.

47 As for the second condition, the plaintiff had not proved that the defendants and/or the mediators were aware of her infirmity. Having already found that she was not mentally incapacitated when she signed the Settlement Agreement, the second condition was no longer relevant for me to determine. Be that as it may, I shall now examine whether the plaintiff informed anyone of her medical conditions on the day of the mediation other than Mdm Tan and Mr Chia who accompanied her. On this, she admitted that she did not inform the defendants and their lawyers that she was suffering from giddiness and drowsiness. Neither did she inform the two mediators of her infirmity.[39] Although she gave evidence that Dr Sheares noted that she was "in a state of anxiety" during the mediation, this was not sufficient to show that the defendants and the mediators were aware that she was *mentally incapacitated*. It is natural that parties feel anxious during court proceedings and mediation as each party will try to get the best deal for himself. Furthermore, the plaintiff did not file any affidavit from Dr Sheares to confirm his observation as to her anxiety. Finally, although the affidavits of Mdm Tan and Mr Chia stated that the plaintiff was feeling unwell, they did not give evidence that anyone apart from them were informed of the plaintiff's illness.

48 For the above reasons, I found that even if the plaintiff was belabouring under an infirmity which so impaired her mental capacity during the mediation

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[38] Mdm Tan's Affidavit at para 4 and Mr Chia's Affidavit at para 3.

[39] NE at page 63 lines 2 to 15.

such that she was not capable of understanding the general nature and effect of the Settlement Agreement, neither the defendants, their lawyers nor the mediators had knowledge of her infirmity. Therefore, I did not find that the plaintiff had made out her case of incapacity.

Duress

49 An agreement that is procured under duress by illegitimate threat or pressure of a party is voidable and can be liable to be set aside. Two conditions must be proved for the Settlement Agreement to be void on the ground of duress: (a) there must be pressure amounting to compulsion of the will of the victim; and (b) the pressure exerted must be illegitimate: *E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd and another (Orion Oil Ltd and another, interveners)* [2011] 2 SLR 232 at [42], [48] and [51]. See also Andrew Phang Boon Leong, *The Law of Contract in Singapore* (Academy Publishing, 2012) at para 12.006.

50 The plaintiff's case that she had signed the Settlement Agreement under duress must fail because the evidence did not reveal that the plaintiff was acting under any pressure amounting to the compulsion of her will when she signed the Settlement Agreement.

51 The plaintiff argued that during the mediation, the defendants were in a much better position and had stronger bargaining positions because they are lawyers and were further represented by their lawyers. On the other hand, the plaintiff submitted that she was alone and did not have anyone to assist her.[40] She alleged that the presence of her friends was merely to assist her with her documents and lend her some support because she was not medically well.[41]

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40 Plaintiff's 5th Affidavit at para 10.

52 The plaintiff subsequently contradicted herself when she admitted that the defendants and their lawyers did not pressurise her. She claimed that the pressure actually came from the mediators who persuaded and urged her to accept the amount offered by the defendants as it was almost the end of the one-day mediation session. The mediators further said that if the mediation failed, then parties would have to go back to Court for trial. The plaintiff understood this to mean that she would have to incur further costs to continue the Main Suits.[42] She also stated that there was no time for her to consider the Settlement Agreement before signing it.[43] Finally, the plaintiff claimed that she was under added pressure to sign the Settlement Agreement because Mr Ravi had paid her share of the mediation fee so she felt that she should make the mediation a success and not waste Mr Ravi's money.[44]

Uneven bargaining position in the mediation.

53 I shall now deal with the plaintiff's argument on the "uneven" bargaining position between the parties. The plaintiff did not show *how* the defendants who are lawyers and represented by their lawyers had exerted pressure on her such that it amounted to compulsion of her will. The mere fact that the plaintiff was not represented by a lawyer during the mediation while the other party had lawyers was insufficient to show that there was pressure exerted on her. The plaintiff could have been represented by a lawyer if she so wished. But she chose not to be represented at the mediation and these RAs. This surely could not be the basis of duress.

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41 NE at page 4 lines 30 to 31 and page 18 lines 21 to 28. See also Mdm Tan's Affidavit and Mr Chia's Affidavit.

42 Plaintiff's 5th Affidavit at para 10.

43 NE at page 19 lines 22 to 23 and page 51 lines 15 to 18.

44 NE at page 23 lines 21 to 28.

54 Furthermore, I noticed that the plaintiff had asked her friends to accompany her throughout the mediation session. In the morning, she was accompanied by Mdm Tan and in the afternoon, she was accompanied by Mr Chia.[45] Neither Mdm Tan nor Mr Chia stated on affidavit that the plaintiff was pressurised by either the defendants, their lawyers or the mediators. There must also be a purpose for the plaintiff to ask her friends to accompany her. If it was not to render informal advice, it must be for support and confidence.

55 I also observed that the plaintiff is not someone who is weak-willed and timid. She was also unrepresented when she argued the RAs against the two lawyers of the defendants. However, at the appeals before me, she pugnaciously argued her case and persistently averred that the Settlement Agreement was invalid. I therefore found that the plaintiff was capable of looking after her own interests.

56 I have observed above at [44] that the plaintiff was able to negotiate adamantly with the opposing party who are lawyers to raise the offer significantly from S$100,000 to S$150,000 before she finally accepted the offer. This showed that the defendants had not exerted any pressure on the plaintiff who was unrepresented and even if there was pressure, the plaintiff was not affected by it.

Allegations that the mediators pressurised her to sign the Settlement Agreement

57 As mentioned, the plaintiff did not allege that the defendants and their lawyers pressurised her. She directed this allegation against the mediators who are professionals and had no personal interest in this case. The plaintiff

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45 Mdm Tan's Affidavit at para 5 and Mr Chia's Affidavit at para 5.

contended that she was persuaded and urged by the mediators to sign the Settlement Agreement. I agreed with the AR that the mediators were well entitled to inform the plaintiff that if she refused to sign the Settlement Agreement, parties would have to go back to Court for the Main Suits to continue. This is actually how it will normally pan out should mediation fail. There is no reason for anyone to feel pressurised by this, much less the party who commenced the suits in the first place. In fact, it is right for mediators to inform and educate parties before them that mediation is a lower cost alternative as a dispute resolution mechanism as compared to court litigation.

58 The plaintiff alleged that the mediators pressed her to sign the Settlement Agreement as it was already late in the day. Hence she had no time to consider the Settlement Agreement. I was not persuaded by this allegation. If she truly needed more time to read the Settlement Agreement she could have asked for it. In this case she did not. During the hearing of the RAs before me, the plaintiff admitted that the mediators had not forced her to sign the Settlement Agreement because there was no time.[46] When I further asked the plaintiff if she took the initiative to ask for more time, she was evasive in her reply.[47] Thus I did not accept her argument that she was pressurised to sign the Settlement Agreement because there was no time and that the mediators were unduly pressing this point upon her.

Mr Ravi paid for her share of the mediation fee

59 I did not place any weight on the plaintiff's arguments that she was pressurised to proceed with the mediation despite her ill health and was pressurised to sign the Settlement Agreement because Mr Ravi had paid her

46 NE at page 51 lines 15 to 18.

47 NE at page 53 lines 5 to 13.

share of the mediation fee. I found this ground completely unmeritorious and any effect it would have had on the plaintiff must have been self-induced.

60 For the above reasons, I found that there was no pressure exerted on the plaintiff to the extent that there was compulsion of her will. The plaintiff therefore, was not acting under duress when she signed the Settlement Agreement.

***The doctrine of* non est factum**

61 From the plaintiff's arguments I surmised that *non est factum* could be another of her possible arguments that the Settlement Agreement was not valid.

62 At the outset, it is not disputed that the plaintiff signed the Settlement Agreement. This is an important point because it is trite law that a person of full age and understanding is normally bound by his signature on a document, whether he or she reads or understands the document or not: *Chitty on Contracts* (Sweet & Maxwell, 32nd Ed, 2015) at para 3-049. The sanctity of contract must be observed and respected. The defence of *non est factum* should only be allowed in exceptional situations to rectify injustice and unfairness. If the doctrine of *non est factum* is allowed to be invoked liberally, then anyone who is not satisfied with the contract that he has entered into will easily renege on his contractual obligations by invoking the doctrine of *non est factum*. This will lead to chaos and uncertainty to the business community.

63 It is therefore proper that the doctrine of *non est factum* is a narrow one and is applicable only in very exceptional cases. In the case of *Lee Siew Chun v Sourgrapes Packaging Products Trading Pte Ltd and others* [1992] 3 SLR(R) 855, this court noted, and I agree, at [63] that:

> I have to bear in mind that non est factum is a dangerous doctrine for commercial, industrial, financial and even government institutions who routinely receive documents signed by parties outside the presence of the institutions receiving them. **If *non est factum* were to become an easy doctrine to invoke, no institution could feel secure that such parties would not one day disclaim their signatures and invoke the doctrine by saying they had been tricked into signing the document, and had relied on someone close to them, a defence relatively easy to raise and difficult to rebut** (even though the onus of proof would be on the signer.) The attitude of the courts in modern times has been to restrict this plea as much as possible. …
>
> [Emphasis added in bold]

64 Thus to invoke the doctrine of *non est factum*, the facts must disclose that the Settlement Agreement that was signed was fundamentally different from the document that the plaintiff believed it to be. The plaintiff also must have taken reasonable care before she signed. This was explained in the case of *Kuek Siew Chew v Kuek Siang Wei and another* [2015] 1 SLR 396 at [57]:

> In this regard, the defence of *non est factum* in the context of deeds has been explained succinctly in *Halsbury's Laws of England* vol 32 (LexisNexis, 5th Ed, 2012) at para 235, reproduced as follows:
>
> > Before a party executes a deed, it should be read by him, or correctly read over or fully and accurately explained to him, and he cannot be required to execute it until this has been done. If he is content to execute it without informing himself of its contents, it will in general be binding on him, even though its contents are materially different from what he supposed, and even though he is himself illiterate or blind. However, if the party executing the deed acts with reasonable care and yet is mistaken or misled (in particular, if he is illiterate or blind and it is falsely read over or falsely explained to him), and in consequence there is a *radical or fundamental distinction between what it is and what he believed it to be,* not attributable to a mistake of law as to its effect, the plea of non est factum will be available and the deed will be void. Even though all the requirements for avoiding the deed on this ground may not be fulfilled, a misled executing party may be able to treat the deed as voidable under the law relating to

> > *misrepresentation*, or it may be void as executed under a *mutual mistake of fact*.
>
> In the High Court decision of *Lee Siew Chun v Sourgrapes Packaging Products Trading Pte Ltd* [1992] 3 SLR(R) 855 at [35], Michael Hwang JC cited the following passage of Lord Pearson's judgment in *Saunders v Anglia Building Society* [1971] AC 1004 at 1034:
>
> > In my opinion, the plea of non est factum ought to be available in a proper case for the relief of a person who for permanent or temporary reasons (not limited to blindness or illiteracy) is not capable of both reading and sufficiently understanding the deed or other document to be signed. By 'sufficiently understanding' I mean understanding at least to the point of *detecting a fundamental difference between the actual document and the document as the signer had believed it to be*. There must be a proper case for such relief. There would not be a proper case if (a) the signature of the document was brought about by negligence of the signer in failing to take precautions which he ought to have taken, or (b) *the actual document was not fundamentally different from the document as the signer believed it to be*.
>
> [Emphasis in original]

65 On the evidence, I found that the plea of *non est factum* had not been established. I shall now explain.

66 First, the plaintiff argued that the Settlement Agreement was different from what she had agreed to. In the mediation, the plaintiff eventually accepted the increased offer of S$150,000 to settle the Main Suits. However, she alleged that the terms of the Settlement Agreement were different from what she had earlier agreed to. The defendants' lawyers explained to her that the sum offered was for the settlement of the Main Suits and any other matters in which the defendants had acted for her and cl 5 of the Settlement Agreement stated the same.[48] This she did not agree to.

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[48] NE at page 16, lines 6 to 10. See also Plaintiff's 5th Affidavit at para 10. See also NE at page 6 lines 1 to 5 and page 6 line 29 to page 7 line 4. See also NE page 8 lines 13

67 The plaintiff did not argue that the Settlement Agreement was different from the document she signed on the day of the mediation (see above at [64]). On the contrary, the crux of her case was that she was dissatisfied with certain terms of the Settlement Agreement which she had signed. Hence the first condition of *non est factum* was not made out as despite the plaintiff's disagreement, she signed the Settlement Agreement.

68 This then brings me to the question of whether she had taken reasonable care before signing the Settlement Agreement. First, when I asked the plaintiff whether she had the opportunity to read the Settlement Agreement, she was evasive in her reply and did not provide any evidence to show that she was *deprived* of the opportunity to read and understand the terms of the Settlement Agreement before signing it.[49]

69 The plaintiff then claimed that she was not capable of understanding the terms of the Settlement Agreement because she is not a lawyer.[50] However, the terms of the Settlement Agreement were explained to her by the mediators before she signed.[51] Furthermore, her conduct in the Main Suits, the affidavits she had filed in preparation of these applications as well as her arguments before me, showed that, although unrepresented, she is intelligent and capable of understanding the documents before her. For instance, she was able to keep up and hold her own in the hearing of these RAs which went on for more than two hours during which she made substantial arguments. Her two affidavits filed in SUM 5327/2016 and SUM 5328/2016 and her 6th Affidavit were substantial

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to 22.

49 See NE at page 8 line 23 to page 9 line 3, page 50 lines 8 to 28, page 51 line 30 to page 52 line 10, page 52 lines 24 to 30 and page 53 lines 5 to 7.

50 NE at page 8 line 23 to page 9 line 3.

51 NE at page 16, lines 6 to 10.

with numerous supporting documents ranging from court documents to medical memos. This only showed that she is more than capable of understanding the nature and effect of the Settlement Agreement which was only about three pages long with only seven clauses and written in simple English.

70 The plaintiff had also failed to show that she had exercised reasonable care before she signed the Settlement Agreement. The plaintiff *had* every opportunity to read and understand the Settlement Agreement before signing it. Furthermore, the terms of the Settlement Agreement were explained to her. However, for reasons only known to her, she did not use that opportunity to read the Settlement Agreement and object to it or even refuse to sign it if she so disagreed with it. Therefore, she could not invoke the defence of *non est factum* to invalidate the Settlement Agreement. Thus she had no one else to blame but herself.

71 On another point, the plaintiff submitted that she was not given any draft agreement to review before signing the Settlement Agreement.[52] In my view, this was not a material fact. The pertinent facts were that the terms of the Settlement Agreement were explained to her by the mediators, she understood them and she was not denied an opportunity to read the Settlement Agreement before signing it. Therefore, it did not matter whether she was given a draft agreement prior to the signing of the Settlement Agreement. What was undisputed was that she did not sign the Settlement Agreement blindly. She had the document before her and she signed it. In any case she held on to the original Settlement Agreement after she signed.[53]

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52 NE at page 6 lines 18 to 20.

53 Violet Netto's 7th Affidavit at para 10(2).

72 Finally, the plaintiff also argued that she had never agreed for the Settlement Agreement to be in the form of a deed.[54] In my view it did not matter whether the Settlement Agreement was in the form of a deed or a normal contract. There are no statutory requirements that settlement agreements after mediation must be in the form of a deed. This ground is irrelevant. The key inquiry must be whether the Settlement Agreement was a valid contract. I found that the Settlement Agreement was a binding contract between the plaintiff and the defendants.

73 For the above reasons, I found that there was no mental incapacity on her part, duress or *non est factum*. Hence I was satisfied that the plaintiff had voluntarily signed the Settlement Agreement.

74 I also placed little weight on her complaint that the terms of the Settlement Agreement were unfair. This was an afterthought. She agreed with the terms of the Settlement Agreement when the offer was raised from S$100,000 to S$150,000. Having voluntarily entered into the Settlement Agreement, she cannot now renege on the valid agreement.

Summary of findings

75 In summary, I found that the Settlement Agreement was a valid agreement entered into voluntarily by the plaintiff and the defendants in the presence of the mediators. The plaintiff was not mentally incapacitated and she could understand the terms of the Settlement Agreement when she signed it. I also found that she did not sign the Settlement Agreement under duress and that the argument of *non est factum* was not made out on the facts.

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[54] Plaintiff's 5th Affidavit at para 11. See also NE at page 6 line 29 to page 7 line 4.

Issue (c) : Whether the Settlement Agreement should be set aside as the parties did not intend to be bound by the terms of the Settlement Agreement

76 Despite the Settlement Agreement being valid, the plaintiff argued that it was nonetheless not binding because the defendants did not and had no intention to abide by the terms of the Settlement Agreement in the first place. Since the plaintiff also had no intention to be bound by the Settlement Agreement, it should not be binding on the parties and the Main Suits should be allowed to proceed.

77 The plaintiff also submitted that it was not agreed under the Settlement Agreement that the first payment of S$50,000 pursuant to cl 1(1) of the said agreement was to be paid by the defendants' insurers. She expected this sum to be paid by the defendants.[55]

78 The plaintiff also pointed out that the 18 post-dated cheques issued by the defendants were not in accordance with the Settlement Agreement. The first 17 post-dated cheques were for the sum of S$5,560 each and the last post-dated cheque was for the sum of S$5,480.[56] This was not in strict compliance with cl 1(2) of the Settlement Agreement, which required the first 17 post-dated cheques to be for a sum of S$5,550 each and for the last post-dated cheque to be for a sum of S$5,650.

79 Finally, the plaintiff also argued that about a month after the Settlement Agreement, she alleged that the first defendant's firm had ceased operations because she discovered that the firm's logo was no longer at units 05-13 and

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55 Plaintiff's 5th Affidavit at para 12.

56 Violet Netto's 7th Affidavit at paras 14 and 15. See also Violet Netto's 6th Affidavit at Exhibit VN-1.

05-45, People's Park Centre, Singapore 058357. This indicated that the defendants never had the intention of fulfilling their obligations under the Settlement Agreement.[57]

80 I found the plaintiff's arguments unmeritorious. First, it is irrelevant how the defendants intended to source for the funds to pay the S$150,000 to the plaintiff under the Settlement Agreement. Therefore, it was inconsequential that the first payment of S$50,000 was made by the defendants' insurers and not by the defendants themselves.

81 Second, in my view the difference between the amount stated on the defendants' post-dated cheques and in cl 1(2) of the Settlement Agreement was a very minor discrepancy and was unimportant because the plaintiff would still receive the total sum promised to her under the Settlement Agreement, *ie*, S$100,000. In fact, the total sums payable from the 17 post-dated cheques were higher than the amount stated in the Settlement Agreement. Thus there was no breach of the Settlement Agreement. In any event, her rights under the Settlement Agreement were secured by the acceleration clause under cl 1(3) of the Settlement Agreement whereby it was agreed that should any instalment payment not be paid on time, all the remaining unpaid instalment payments become immediately due and payable.

82 Third, the first defendant had sworn on affidavit that her firm, M/s L F Violet Netto, is still a fully functioning law practice and that she is still a registered Advocate and Solicitor of the Supreme Court of Singapore.[58] This, in my opinion, should have assured the plaintiff that M/s L F Violet Netto is still a going concern and that the defendants intended to be bound by the Settlement

[57] Plaintiff's 5th Affidavit at para 12.

[58] Affidavit of Violet Netto dated 14 September 2017 at paras 5 and 6.

Agreement.

83 The fact that the defendants had issued the cheques amounting to S$50,000 to the plaintiff pursuant to cl 1(1) as well as the 17 post-dated cheques amounting to S$100,000 pursuant to cl 1(2) and that the defendants' law firm is still a going concern, only showed that the defendants had every intention of abiding by the Settlement Agreement.[59]

84 In any event, I found that there is no *consensus ad idem* between the parties to do away with the Settlement Agreement. There is a total absence of evidence that the parties had orally or in writing indicated that they had no intention to be bound by the Settlement Agreement.

85 Finally, it is worth mentioning that if the plaintiff's claims that the defendants had no intention to and did not comply with the Settlement Agreement are true, it is open to her to commence legal action to enforce the Settlement Agreement. This is highly unlikely as she is attempting to renege on the Settlement Agreement.

Issue (d): Whether the Main Suits should be struck out because it is an abuse of the process

86 On the totality of the evidence, I found that the plaintiff's actions are an abuse of the process. I also found her reasons to invalidate the Settlement Agreement to be mere afterthoughts.

87 First, I noticed that Mr Asik had spoken to the plaintiff the following day after the signing of the Settlement Agreement, *ie*, 30 September 2016, about placing the seal on the Settlement Agreement.[60] The plaintiff did not inform

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59 Violet Netto's 6th Affidavit at Exhibit VN-3.f.

Mr Asik that the Settlement Agreement was invalid and she made no complaint about its validity. Mr Asik spoke to her again on 5 October 2016 about the payment and the delivery of the post-dated cheques to her pursuant to the Settlement Agreement.[61] Similarly, she did not raise the issue of the validity of the Settlement Agreement.

88 It was only after 5 October 2016 that the plaintiff began to express regret at having executed the Settlement Agreement. This was evidenced at the PTC on 6 October 2016, when she informed the AR that she "cannot sleep after signing the agreement" because she "ha[s] to wait for nearly 2 years to get [her] money back". As such, she said she "might as well go for trial".[62] At the following PTC on 13 October 2016, she again informed the AR that she "don't think [she] can proceed with the settlement agreement" because "payment take[s] more than 2 years". She then informed the AR that she "would like to proceed to trial".[63]

89 Therefore, her conduct before the AR during these two PTCs showed that she was very much aware of what she had signed on 29 September 2016, *ie,* the Settlement Agreement, but later had a change of heart. On her own admission before the AR during these two PTCs, her reason for wanting to invalidate and set aside the Settlement Agreement was that she had to wait close to two years before getting paid the amount promised under the Settlement Agreement. She realised she was not comfortable with that when she thought about it again after she had signed the Settlement Agreement.

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60 Violet Netto's 7th Affidavit at para 10.

61 Violet Netto's 7th Affidavit at para 11.

62 Minute Sheet of Pre-Trial Conference dated 6 October 2016.

63 Minute Sheet of Pre-Trial Conference dated 13 October 2016.

90 Hence, I found her conduct of seeking to proceed with the Main Suits despite voluntarily entering into the Settlement Agreement to be an abuse of the Court's process. Again, I must reiterate that it is trite law that a validly formed settlement agreement must be honoured and that it is an abuse of the process to litigate issues which have already been concluded by way of a Settlement Agreement.

Conclusion

91 In the light of the foregoing, I agreed with the AR and ordered that the Main Suits be struck out under O 18 r 19(1)(*d*) of the Rules of Court and ordered the plaintiff to pay costs fixed at S$4,000 inclusive of disbursements.

Tan Siong Thye
Judge

Appellant in person;
Christopher Anand Daniel and Harjean Kaur (Advocatus Law LLP)
for the first and second respondents.