

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

[2022] SGHC 215

Suit No 682 of 2014

Between

HQH Capital Limited

... Plaintiff

And

Chen Liping

... Defendant

FOUNDATIONS OF DECISION

[Civil Procedure — Interim orders]

[Civil Procedure — Judgments and orders — Enforcement]

[Civil Procedure — Stay of proceedings]

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HQH Capital Ltd

v

Chen Liping

[2022] SGHC 215

General Division of the High Court — Suit No 682 of 2014 (Summons No 1314 of 2022)
Lee Seiu Kin J
30 June 2022

12 September 2022

Lee Seiu Kin J:

Introduction

1 Initially a creature born of English law, Tomlin Orders have since found a place in local jurisprudence – and especially in this particular case, which concerned a Tomlin Order recorded on 9 May 2016 as a result of the parties' agreement to settle their dispute in suit no 682 of 2014 ("Suit 682").

2 This case surfaced questions on the nature and effect of Tomlin Orders. I heard the parties on 30 June 2022 and allowed the plaintiff's application under summons no 1314 of 2022 ("SUM 1314").

Facts

3 The plaintiff, HQH Capital Limited (“HQH”), is a company providing corporate advisory services and was incorporated under the laws of the British Virgin Islands.¹ The defendant, Ms Chen Liping (“Ms Chen”), is a director of Pavillon Holdings Ltd (“PHL”), a company incorporated under the laws of Singapore.²

Suit 682

4 The dispute essentially arose over two agreements which Ms Chen had entered into in 2014. According to Ms Chen, she had required a short-term loan of \$2m to pay for placement shares in PHL.³ It was undisputed that on 15 March 2014, a friend had introduced Ms Chen to Mr Ang Kheng Hui (“Mr Ang”),⁴ the chief executive officer of HQH.⁵ Mr Ang in turn introduced Ms Chen to Mr Lee Chia Chee (“Mr Lee”),⁶ a director and the sole shareholder of HQH.⁷ It was also undisputed that the first agreement had been entered into on or about 16⁸ or 17 March 2014⁹ (“the Principal Agreement”), that Mr Lee had given Ms Chen a cheque for \$2 m on 17 March 2014¹⁰ and that the Principal

¹ Statement of Claim (“SOC”) at para 1.

² SOC at para 2; Defence (Amendment No. 1) (“Defence”) at para 3.

³ Defence at paras 6–7.

⁴ Defence at paras 7–8; Reply (Amendment No. 2) (“Reply”) at para 5.

⁵ Ang Kheng Hui’s Affidavit of Evidence-in-Chief (“AEIC”) at para 1.

⁶ Defence at para 9; Reply at para 6.

⁷ Lee Chia Chee’s AEIC at para 1.

⁸ Defence at para 15.

⁹ Reply at para 6(j).

¹⁰ Defence at para 18; Reply at para 6(m).

Agreement had been amended by way of a supplementary agreement on or about 7 April 2014 (“the Supplementary Agreement”).¹¹

5 Where the parties differed was regarding the purpose and intended effect of the Principal and Supplementary Agreements. HQH’s position was that the Principal and Supplementary Agreements were call option agreements whereby Ms Chen would grant HQH a call option (“the Call Option”) to purchase shares (“the Option Shares”) in PHL and receive a prepaid sum of \$2m from HQH as full consideration for the purchase price of the Option Shares.¹² Ms Chen averred, however, that Mr Ang and Mr Lee had agreed to grant her a lump sum loan of \$2m.¹³ Her position was that the Principal and Supplementary Agreements were designed to disguise this unlicensed and illegal moneylending transaction between the parties,¹⁴ and that Mr Lee had orally represented to her that the Principal and Supplementary Agreements would not be enforced against her.¹⁵

6 On 17 June 2014, HQH gave notice of its exercise of the Call Option via email.¹⁶ However, Ms Chen did not deliver the Option Shares to HQH.¹⁷

7 HQH commenced this suit on 25 June 2014.¹⁸ Ms Chen pleaded the defence of illegality as well as the defence of estoppel by convention and/or

¹¹ SOC at para 3; Defence at para 4.

¹² SOC at para 5.

¹³ Defence at para 10.

¹⁴ Defence at para 5.

¹⁵ Defence at paras 11(c) and 21(b).

¹⁶ Defence at paras 26–27; SOC at paras 8–9.

¹⁷ SOC at para 10; Defence at para 28.

¹⁸ See Writ of Summons for S 682/2014 dated 25 June 2014.

conduct.¹⁹ On 27 June 2014, HQH obtained an *ex parte* Mareva injunction against Ms Chen which, *inter alia*, prohibited her from removing from Singapore or dealing with assets up to the value of \$3,999,930 (“the Mareva Injunction”).²⁰

The two Tomlin Orders

8 On 20 August 2015, on the application of the parties, Justice George Wei granted an order by consent that all further proceedings between HQH and Ms Chen be stayed except for the purpose of carrying into effect the terms set forth in the Schedule to the order (“the first Tomlin Order”).²¹ These terms had been agreed to by HQH and Ms Chen. Pursuant to the Schedule of the first Tomlin Order:

- (a) Ms Chen was to pay \$500,000 to HQH by 22 August 2015.
- (b) Ms Chen was to pay \$2,350,000 to HQH by 28 August 2015.
- (c) In the event that Ms Chen failed to make either payment within the stipulated time, HQH was at liberty to enter final judgment against her for the liquidated sum of \$3,250,000 (less any payments already paid to HQH), and Ms Chen was to consent to final judgment being entered against her by HQH for this sum.
- (d) In the event that the total sum paid by 28 August 2015 did not exceed \$2,000,000, HQH was at liberty to apply for an order of committal against Ms Chen.

¹⁹ Defence at para 33.

²⁰ See SUM 3170/2014 filed 27 June 2014; ORC 4214/2014 dated 27 June 2014.

²¹ See ORC 5534/2015 dated 20 August 2015; Affidavit of Lee Chia Chee dated 24 March 2022 at LCC-24 pp 10–13.

(e) After both payments had been received by HQH, HQH was to apply to discharge the Mareva Injunction and to apply to discontinue this suit on terms that there be no order as to costs.

9 Ms Chen defaulted on the terms in the Schedule to the first Tomlin Order.²² HQH began committal proceedings (“the Committal Proceedings”) against Ms Chen²³ with respect to alleged breaches of the Mareva Injunction.²⁴

10 Ms Chen and HQH entered into further negotiations. On 9 May 2016, again on the application of both parties, Justice George Wei granted an order by consent (“the Revised Tomlin Order”) that all further proceedings against Ms Chen be stayed except for the purpose of carrying into effect the terms in the Schedule to the Revised Tomlin Order. The Schedule to the Revised Tomlin Order stipulated that:²⁵

(a) The total amount payable by Ms Chen to HQH was \$3m, of which \$498,000 had already been paid by Ms Chen.

(b) Ms Chen was to pay the remaining sum of \$2,502,000 in three instalments – 30 days, 60 days and 90 days respectively, after the discharge of the Mareva Injunction.

(c) In the event that Ms Chen failed to make any of these three instalment payments, HQH was entitled to enter judgment against

²² Lee Chia Chee’s affidavit dated 24 March 2022 at para 6; Chen Liping’s affidavit dated 11 May 2022 at para 53.

²³ See SUM 4278/2015 filed 31 August 2015.

²⁴ Lee Chia Chee’s affidavit dated 31 August 2015 at paras 8–10, 13.

²⁵ See ORC 2926/2016 dated 9 May 2016.

Ms Chen for \$3.25m (less any sums already paid) and legal costs of \$50,000.

(d) In the event that Ms Chen failed to pay any of the above instalments or breached any other terms of the Revised Tomlin Order, Ms Chen’s property at Tamarind Road was to be put up for sale.

(e) After the Revised Tomlin Order was registered with the Singapore Land Authority against the Tamarind Road property, HQH was to apply to court to withdraw the Committal Proceedings and discharge the Mareva Injunction.

11 The summons for a Committal Order was withdrawn on 26 May 2016. Pursuant to a summons by consent filed by HQH,²⁶ the Mareva Injunction was also discharged on 29 June 2016.²⁷

Deed of Agreement and Addendum to Deed of Agreement

12 Subsequently, Ms Chen requested for an extension of time to make payments to HQH as Innovative Corporation Pte Ltd (“Innovative”), a company in which she was a director, was engaged in another High Court suit (“the Innovative lawsuit”). The parties agreed on an extension of time till 31 May 2019 and crystallised their agreement by way of a Deed of Agreement dated 24 October 2018.²⁸ Clauses 1 and 5 of the Deed of Agreement were especially relevant to this application:²⁹

²⁶ See SUM 2625/2016 filed 30 May 2016.

²⁷ See ORC 4318/2016 dated 29 June 2016.

²⁸ Lee Chia Chee’s affidavit dated 24 March 2022 at paras 12–14; LCC-24 at pp 68–73.

²⁹ Lee Chia Chee’s affidavit dated 24 March 2022, LCC-24 at pp 69–70.

1. HQH will withhold entering judgment on the Tomlin Order and enforcement of payment of the Outstanding Sum against [Ms Chen] upon the completion of the following events:

i. Innovative warranting to pay HQH the Outstanding Sum as provided in this Agreement from the amount that it will recover either pursuant to a final judgment obtained in the Suit against Victor Ow or by way of an out of court settlement in respect thereof; and

ii. [Ms Chen] shall procure 15% of the total share capital of Innovative to be transferred to HQH or HQH's representative at a consideration of S\$1.00, free from any encumbrances and HQH shall be entitled to all the rights and entitlement as a shareholder of such shares.

...

5. HQH shall within seven days of [Ms Chen] having fulfilled the conditions set out in 1(i) and 1(ii) of this Agreement file a Notice of Discontinuance (NOD) of the said Suit and notwithstanding the filing of the NOD, all of HQH's rights under the said Suit shall be deemed transferred and subsumed under this Agreement and [Ms Chen] shall not dispute the claim by HQH on the Outstanding Sum is the amount due and owing by [Ms Chen] under the said Suit, as provided in this Agreement.

13 On 24 April 2019, the parties entered into an Addendum to the Deed of Agreement (“the Addendum”) to clarify provisions of the Deed of Agreement.³⁰ Essentially, the Addendum stated that Ms Chen agreed to pay a time premium cost of S\$1,600,000 to HQH as consideration for HQH not enforcing the Tomlin Order on Ms Chen so that she could focus on the Innovative lawsuit.³¹

Summons to enter final judgment

14 It is not disputed that Ms Chen had paid a total of S\$1,795,725.54 towards her debt.³²

³⁰ Lee Chia Chee’s affidavit dated 24 March 2022, LCC-24 at p 72.

³¹ Lee Chia Chee’s affidavit dated 24 March 2022, LCC-24 at pp 72–73.

³² Lee Chia Chee’s affidavit dated 24 March 2022 at para 12; Chen Liping’s affidavit dated 11 May 2022 at paras 63–64.

15 On 25 March 2022, HQH filed a summons to enter judgment under summons no 1314 of 2022 (“SUM 1314”). HQH applied for the following orders:

(a) Final judgment to be entered against Ms Chen on the Revised Tomlin Order dated 9 May 2016 for the sum of \$1,454,274.46 (being the sum of \$3.25m less sums paid by Ms Chen to date), along with interest thereon and on all late instalment payments at the aggregate sum of \$496,816.88 (as at 31 March 2022 and continuing).

(b) Ms Chen to pay HQH costs of \$50,000 pursuant to cl c of the Schedule to the Revised Tomlin Order dated 9 May 2016.³³

Parties’ cases in SUM 1314

16 Ms Chen opposed HQH’s application on several grounds. Firstly, she contended that the Revised Tomlin Order was invalid as the court was *functus officio* after it made the first Tomlin Order on 20 August 2015. Therefore the court had no power to make the Revised Tomlin Order on 9 May 2016.³⁴ In agreeing for the Revised Tomlin Order to be granted, the parties (and, presumably, the judge as well) had been labouring under a mistake of law which vitiated the Revised Tomlin Order.³⁵ Ms Chen further submitted that she had consented to the terms in the Schedule to the first Tomlin Order and the Revised Tomlin Order under economic and psychological duress, and that the recorded terms were onerous, extortionate and penal.³⁶

³³ See SUM 1314/2022 filed 25 March 2022.

³⁴ Defendant’s Written Submissions at paras 15(1), 20–21, 34–38, 45–49.

³⁵ Defendant’s Written Submissions at paras 47 and 49.

³⁶ Defendant’s Written Submissions at paras 22–24, 63–75.

17 Next, Ms Chen submitted that she was not legally represented when she signed the Deed of Agreement.³⁷

18 Lastly, Ms Chen submitted that the Principal and Supplementary Agreements were unenforceable agreements which concealed an illegal money-lending transaction.³⁸

19 HQH submitted that there had been no coercion of Ms Chen’s will in procuring her consent to both Tomlin Orders³⁹ and no application of illegitimate commercial pressure,⁴⁰ and that Ms Chen had made a considered decision to consent to the two Tomlin Orders with the benefit of legal advice.⁴¹ HQH also contended that Ms Chen’s allegations and defences in respect of the Principal and Supplementary Agreements were irrelevant to the enforcement of the Revised Tomlin Order, and Ms Chen should not be allowed a second bite of the cherry by relitigating issues on which the parties had agreed to a full and final settlement.⁴²

Issues in this Suit

20 This application boiled down to three main issues:

- (a) Whether the Revised Tomlin Order was validly granted.

³⁷ Defendant’s Written Submissions at paras 93–94.

³⁸ Defendant’s Written Submissions at paras 16, 76–81.

³⁹ Plaintiff’s Written Submissions at para 4.5.

⁴⁰ Plaintiff’s Written Submissions at para 4.6.

⁴¹ Plaintiff’s Written Submissions at paras 4.6.6, 4.7 and 4.8.

⁴² Plaintiff’s Written Submissions at paras 3.1–3.2.

(b) Whether agreements subsequent to the Revised Tomlin Order, *ie*, the Deed of Agreement and the Addendum, would prevent HQH from succeeding in its application.

(c) Whether the Revised Tomlin Order should be set aside.

21 On a preliminary note, I found that the arguments canvassed with respect to the Principal and Supplementary Agreements were not relevant to the court’s consideration as they concerned issues pertaining to the main dispute in this suit instead. HQH relied on the rule in *Henderson v Henderson* (1843) 3 Hare 100 (“the *Henderson* rule”) and its application in *Venkatraman Kalyanaraman v Nithya Kalyani and others* [2016] 4 SLR 1365 (“*Venkatraman*”) to argue that Ms Chen could no longer bring forth contentions pertaining to the circumstances under which the Principal and Supplementary Agreements were entered into.

22 As explained in *Venkatraman* (at [25]), the *Henderson* rule, also known as the extended doctrine of *res judicata*, “operates to preclude litigants in later proceedings from raising points not previously decided because they were not raised in the earlier proceedings, even though they *could and should* have been raised in those proceedings”. Hoo Sheau Peng JC (as she then was) went on to explain (at [33]) that:

... it is evident that the *Henderson* rule may be engaged when the earlier proceedings concluded amicably, be it by way of a consent judgment or order issued by the court ... or where the settlement agreement was entered into privately, without being embodied in a court judgment or order ...

23 Applying the *Henderson* rule and *Venkatraman*, Ms Chen’s concerns about the enforceability and validity of the Principal and Supplementary Agreements were matters which should have been litigated at trial. Since the effect of the two Tomlin Orders was that proceedings had since been stayed, if

Ms Chen truly intended to pursue her complaints vis-à-vis the Principal and Supplementary Agreements, she should have made an application for the stay to be lifted so that these matters could be heard at trial. Given that she had opted to settle the dispute, it was not for her to now reopen these matters before this court in relation to an application for final judgment on the Revised Tomlin Order.

Issue 1: Validity of the Revised Tomlin Order

Nature and effect of Tomlin Orders

24 A Tomlin Order is a consent order where a court action is stayed, on agreed-upon terms which are included in a schedule to the order. This order takes its name from the order made by Justice Tomlin in *Dashwood v Dashwood* [1927] WN 276. In that case, Justice Tomlin held that when an order was made by consent staying an action on terms set out in a schedule to the order, the terms in the schedule were not an order of the court which ought directly to be enforced via proceedings for contempt. The proper course where one of the parties had failed to comply with the terms was instead to apply for specific performance or an injunction: at 277.

25 In essence, there are three key elements which characterise Tomlin orders: the furnishing of agreed-upon terms in a schedule to the order, the imposition of a stay of proceedings so that parties may carry out the settlement, and the preservation of the power of the court to make orders for the purpose of compliance with the terms in the schedule. This appears to have been reflected in local practice: *Singapore Court Practice 2017* vol 2 (Jeffrey Pinsler SC ed) (LexisNexis, 2017) at para 42/1/6:

The standard ‘Tomlin’ order is in the following form: ‘And the plaintiff and the defendant having agreed to the terms set forth

in the schedule hereto, it is ordered that all further proceedings be stayed except for the purpose of carrying such terms into effect.' ... The 'Tomlin' order is not a consent judgment because it does not actually order the parties to carry out the terms of the settlement. In fact, the judge is not really concerned about approving or disapproving the terms of the settlement in these circumstances ... It has been held that the terms agreed upon may extend beyond the ambit of the original action so that a term which could not have been enforced in respect of the original cause of action may be given legal effect as part of the settlement ... What the order does is to impose a stay of further proceedings which is operative as long as the terms in the schedule are observed. If any breach is committed, the other party may apply to the court pursuant to the qualification in the order: 'except for the purpose of carrying such terms into effect'. The court may then make the appropriate order requiring the party in breach to comply with the terms of the agreement. (For instance, by way of injunction or mandatory order ...) If this order is not complied with, the aggrieved party may then initiate the procedures for enforcement (for example, by way of committal proceedings).

26 It appears that little has been said about the nature and effect of Tomlin Orders in local jurisprudence, save for the Court of Appeal ("CA")'s consideration of this species of consent order in *Woo Koon Chee v Scandinavian Boiler Service (Asia) Pte Ltd and others* [2010] 4 SLR 1213 ("*Woo Koon Chee*"). In *Woo Koon Chee*, the High Court had ordered by consent that the second, third and/or fourth respondents purchase the appellant's shares in the first respondent. Following delays on the appellant's part in complying with this consent order, the relevant respondents applied by way of summons for a direction that any assistant registrar and/or the Registrar of the Supreme Court be authorised to sign the share transfer forms on the appellant's behalf, so as to effect completion of the sale and purchase of the shares (at [4]). The High Court allowed the application (at [8]). On appeal, the appellants contended that the consent order in question was *not* a Tomlin Order and the original cause of action had been compromised and superseded by the parties' agreement (at [19]). The CA noted that it was unclear what the appellant's counsel's point was in stating that the consent order was not a Tomlin Order,

and that the respondents had not suggested that it was one (at [20]). Against this backdrop, the CA then provided clarification on the distinct nature and effect of Tomlin Orders (at [20]):

... A Tomlin Order is a court order in the English civil justice system under which a court action is stayed, on terms which have been agreed in advance between the parties and which are included in a schedule to the order. It is a form of consent order, and permits either party to apply to court to enforce the terms of the order, avoiding the need to start fresh proceedings. ...

27 The CA held that the specific consent order in that case was not, in fact, a Tomlin Order (at [22]–[23]):

22 It was obvious that the Consent Order was not a Tomlin Order. It did not contain the essential characteristic of that order. The position here was that the terms of the settlement between the Appellant and the Relevant Respondents were in fact *incorporated* into the Consent Order, unlike what is usually countenanced under a Tomlin Order ... – a separate schedule to the order, furnishing the precise terms that parties have agreed to. As stated at [15] above, the present Consent Order did not countenance **any external “terms” listed in a schedule annexed to it to be enforced by applying to the judge who recorded the order.**

23 Here, the Relevant Respondents were not only in agreement with the Appellant that the Consent Order was not a Tomlin Order, they also agreed that the original cause which they had against the Appellant in Suit No 56 of 2008 had been extinguished and merged into the compromise agreement and, consequently, the Consent Order. **While a Tomlin Order “does not actually order the parties to carry out the terms of the settlement”, the present Consent Order, by its very terms, set out what needed to be done by the parties – the sale of the shares by the Appellant and the purchase by the Relevant Respondent.** There was no necessity for the Relevant Respondents, in the face of the Appellant’s persistent non-compliance with the Consent Order, to initiate any fresh proceedings to compel the Appellant to comply with the Consent Order. **The Consent Order was automatically enforceable in the same way as any other judgment or order of the court may be enforced. In this regard, the Relevant Respondents appeared correct to say that “the Consent Order is better than a Tomlin Order as it specifically orders the parties to carry out the terms of the settlement contained therein”.**

[emphasis in original in italics; emphasis added in bold italics]

28 The unique duality of a Tomlin Order – part-order and part-contract – and the implications that this duality holds for parties seeking to enforce the order have been similarly elucidated in English case law. In *Zenith Logistics Services (UK) Ltd and others v Keates and others; UUU v BBB* [2020] 1 WLR 2982 (“*Zenith Logistics*”), the court noted that the Tomlin Order had “long been recognised as a useful form of order” (at [48]):

... It allows the parties to incorporate terms which the court could not order; and it cuts out the need for separate proceedings on the compromise agreement, if either party alleges that the terms have been broken.

29 The court held that to ask whether the schedule is part of the court order at hand “is to set up a false dichotomy, and risks semantic confusion” (at [59]). On one hand, the schedule is part of a court order in that it is an integral part of a document approved, sealed and issued by the court in the exercise of the state’s judicial power. However, when one departs from the question of material form and instead considers the abstract question of what the court is doing, *ie*, whether the schedule contains or records a direction or imperative issued by the court in the exercise of its judicial function, then the terms of settlement cannot be said to be part of the *immediately enforceable* court order (at [59]–[60]). Rather, the terms recorded in the schedule to a Tomlin Order amount to a contract between the parties which can only be enforced by means of a subsequent application (at [61]).

30 In *Zenith Logistics*, the court considered the question of whether a *confidential* schedule to a Tomlin Order is permissible. The court noted that when parties submit an order in the classic form of a Tomlin Order, they are not seeking to engage the court’s coercive powers, but merely seeking the exercise of case management powers following a compromise of the claim (at [65]). The

principle of open justice does not require parties to make their settlement agreements public, and as a rule, the court should not demand to see a settlement agreement which the parties have designated as confidential. The court hence held that a Tomlin Order does not represent endorsement or approval of the terms in the schedule or a conclusion that they are enforceable. The court normally has no business inspecting these terms unless and until an issue is raised on an application to enforce (at [66]–[67]).

31 In *Community Care North East (a partnership) v Durham County Council* [2012] 1 WLR 338 (“*Community Care North East*”), the court refused the defendant’s application to vary the terms of the schedule to a Tomlin Order. The court explained that unlike terms incorporated as part of a consent order, the schedule to a Tomlin order sets out an agreement between the parties. The terms of the schedule are not ordered by the court. Frequently, the terms of the agreement in the schedule are detailed and contain matters going beyond the scope of the original dispute in the proceedings. The court held that once parties have entered into an agreement, the ability to set aside or vary that agreement depends on there being a remedy in relation to that contract. Otherwise, the court is only concerned with the meaning of the agreement in that schedule (at [24]–[26]).

32 From the authorities cited, it can be seen that the operative order in a Tomlin Order is a stay of proceedings, with the court reserving the power, despite such stay, to make such orders as are necessary to enforce the terms of the schedule. The Tomlin Order does not mandate the performance of any term in the schedule, which operates merely as a *record* of the terms of the parties’ *contractual* agreement. It is only when the parties are deadlocked in relation to the performance of the terms in the schedule that the court may, upon

application of any party and in exercise of the powers reserved to the court, make orders to enforce compliance of those terms.

Sub-issue 1: Whether the first Tomlin Order curtailed the court's power to lift the stay

33 Counsel for Ms Chen took the position that Justice Wei, after issuing the first Tomlin Order, was *functus officio* when he granted the Revised Tomlin Order, save as to the power to enforce the terms of the Schedule or to clarify or correct the terms of its orders.⁴³ At the hearing, counsel for Ms Chen further posited that the issuance of the first Tomlin Order curtailed the court's powers to lift the stay for the purposes of granting the Revised Tomlin Order. The crux of counsel's submission was that insofar as the first Tomlin Order had allowed for proceedings to be stayed, this meant that the original proceedings had come to an end. The only way parties could have moved forward was either to apply to court for enforcement of the first Tomlin Order or to apply for the first Tomlin Order to be expressly set aside.

34 With the greatest respect to counsel for Ms Chen, I did not agree with this submission. The power of the court to stay proceedings is made under O 3 r 2(2) of the Rules of Court 2021, which provides that the court may do whatever it considers necessary on the facts of the case before it to ensure that justice is done or to prevent an abuse of process. A stay order means that further proceedings in the action are not allowed unless and until the stay is lifted. It follows that that the court has the power to lift the stay. The first Tomlin Order does not state, nor is it a necessary implication from its terms, that the court has no power to lift the stay.

⁴³ Defendant's Written Submissions at paras 34–36.

35 There is simply no basis to suggest that the stay imposed under a Tomlin Order should carry with it a finality that is not found in a conventional stay of proceedings. Such a suggestion would have the absurd effect of nullifying the meaning of a stay by making it no different from the discontinuance or dismissal of proceedings. In *Vanden Recycling Ltd v Kras Recycling BV* [2017] EWCA Civ 354,⁴⁴ the English Court of Appeal held that the consent order in that case was not a Tomlin Order (at [47]). While the consent order in that case was expressed in similar terms to a Tomlin Order and purported to stay the proceedings, there were in fact no continuing proceedings as Vanden already had a court order which it could enforce for the payment of its claim. If one had regard to “what the [consent order] does rather than what it says”, the consent order in fact amounted to a final order in respect of Vanden’s claims (at [48]–[49]). In other words, the very nature of a stay is that it puts proceedings on temporary hold with the possibility of resumption. A Tomlin Order, being an order characterised by the stay it places on proceedings, simply cannot be painted as an order which puts proceedings to their final rest.

36 I hence found that the court’s power to lift the stay of proceedings imposed by the first Tomlin Order was not curtailed. The next question was whether this stay had been lifted such that the Revised Tomlin Order could be granted.

Sub-issue 2: Whether the stay had been lifted when parties appeared before Justice Wei to seek the Revised Tomlin Order

37 Counsel for Ms Chen submitted that an express application to lift the stay imposed by the first Tomlin Order was required. In response, counsel for HQH forwarded two alternative lines of argument. Firstly, counsel for HQH

⁴⁴ Plaintiff’s Further Authority on Tomlin Orders.

submitted that there was no need for the court to lift this stay before the Revised Tomlin Order could be imposed as it merely entailed a *revision* of the Schedule to the first Tomlin Order and not any change to the *substance of the order*. I was of the view that this was one possible interpretation of the effect of the Revised Tomlin Order. The first Tomlin Order was purely consensual and the result of an agreement of the parties to resolve their dispute in that manner. There was no reason in law or policy why the parties could not have arrived at a subsequent agreement to substitute a new arrangement in place of the old one to settle the matter. In *Community Care North East* (at [31] above), the English High Court stated at [24] that generally, “once the parties have entered into an agreement the ability to set aside or vary that agreement depends on there being a remedy in relation to that contract”. I understood this to refer to the situation in which one party wishes to set aside or vary the agreement against the wishes of the other side. It cannot refer to the situation where all parties consent to the variation. Indeed, judicial policy would be to encourage this rather than to force the parties to abide by the old agreement which, for a variety of reasons, may have become impractical or impossible of performance.

38 Secondly and in the alternative, counsel for HQH submitted that the first Tomlin Order need not be *expressly* lifted before the Revised Tomlin Order could be granted. In fact, if parties had expressly applied to Justice Wei to lift the stay imposed by the first Tomlin Order in order to make the Revised Tomlin Order, he would have done so.

39 I agreed with this alternative submission and found that Justice Wei would have lifted the stay imposed by the first Tomlin Order if this had been necessary in order to make the Revised Tomlin Order. I saw no reason for the proposition that it was necessary for Justice Wei to make an express order lifting the stay imposed under the first Tomlin Order, in circumstances where the

parties had come before him to request, in full agreement, to make the Revised Tomlin Order. To prevent the issuance of the Revised Tomlin Order on such technical grounds would run counter to the usefulness of a Tomlin Order, *ie*, to cut out the need for separate proceedings on the compromise agreement (see above at [28]). It would also undermine the efficient exercise of the court's case management powers following a compromise of the claim (see above at [30]).

40 For the foregoing reasons, I found that Justice Wei was not *functus officio* when granting the Revised Tomlin Order.

Issue 2: Whether subsequent agreements had modified the Revised Tomlin Order

41 Counsel for Ms Chen submitted that the Deed of Agreement and the Addendum were signed by Ms Chen when she was not legally represented, that the contents had not been interpreted or explained to her in her mother tongue and that Ms Chen did not fully understand the legal consequences and the impossibility of securing Innovative to pay HQH proceeds from its ongoing suit.⁴⁵ HQH's position was that Ms Chen had received assistance from her legal advisor, had the opportunity to seek legal advice and had been comfortable negotiating in English.⁴⁶

42 Notwithstanding Ms Chen's position on the circumstances under which she had entered into the Deed of Agreement and the Addendum, the critical question for the purposes of SUM 1314 was how these subsequent agreements interacted with and impinged on her obligations under the Schedule to the Revised Tomlin Order. If there was no connection between the Schedule to the

⁴⁵ Defendant's Written Submissions at paras 93–94.

⁴⁶ Lee Chia Chee's further affidavit dated 16 June 2022 at paras 13–14.

Revised Tomlin Order and these subsequent agreements in the first place, then it would not have been necessary for this court to examine whether she had given valid consent to the subsequent agreements or not.

43 As such, it was important to consider the contents of the Deed of Agreement and the Addendum. As mentioned above (at [12]), cl 1 of the Deed of Agreement stated that HQH would withhold entering judgment on the Tomlin Order and the enforcement of outstanding payment against Ms Chen if Innovative would warrant to pay HQH the outstanding sum and if Ms Chen would procure 15% of Innovative's share capital to be transferred to HQH for the consideration of \$1. Clause 5 stated that if the two conditions in cl 1 were fulfilled, HQH would apply to discontinue this suit.⁴⁷

44 As for the Addendum:⁴⁸

1.1 In consideration of HQH for not enforcing the Tomlin Order on [Ms Chen], so as to allow her time to focus on the lawsuit against Victor Ow, [Ms Chen] agreed to pay a time premium cost of S\$1,600,000 to HQH.

45 Ms Chen's point regarding the impact of the Deed of Agreement and the Addendum on the terms recorded in the Schedule of the Revised Tomlin Order was at times confused. Counsel for Ms Chen appeared to suggest that the Deed of Agreement and Addendum were intertwined with the Revised Tomlin Order as they had made reference to the Revised Tomlin Order, such that one could not enforce the Revised Tomlin Order without reference to the Deed of Agreement and the Addendum. However, even though the Deed of Agreement and Addendum had *made reference* to the Revised Tomlin Order, the real question was whether the Revised Tomlin Order and/or the Schedule to it had

⁴⁷ Lee Chia Chee's affidavit dated 24 March 2022, LCC-24 at pp 68–71.

⁴⁸ Lee Chia Chee's affidavit dated 24 March 2022, LCC-24 at pp 72–73.

been *modified* in any binding way by such subsequent agreements entered into between HQH and Ms Chen.

46 Insofar as cl 5 made provisions for the discontinuance of this suit, it was the most probable clause that Ms Chen could rely on to suggest that the Deed of Agreement had modified the terms recorded in the Schedule to the Revised Tomlin Order. However, cl 5 required HQH to file a Notice of Discontinuance for this suit “within seven days of [Ms Chen] having fulfilled the conditions set out in 1(i) and 1(ii) of this Agreement”. It was not disputed by Ms Chen that these conditions in cl 1 of the Deed of Agreement had not been fulfilled. As such, cl 5 did not come into play and was not relevant to this court’s consideration.

47 With respect to the Addendum, it did appear that cl 1.1 obliged HQH to refrain from enforcing the Revised Tomlin Order in return for a time premium cost. However, Ms Chen did not take the position in her affidavit that the Addendum was a binding agreement. Rather, she stated that it was signed by Mr Ang for and on behalf of HQH and that his designation in HQH was not specified.⁴⁹ In oral submissions, counsel for Ms Chen also made the point that Ms Chen did not know the capacity in which Mr Ang had signed the Addendum. I then queried counsel on whether Ms Chen was seeking to disclaim liability under this agreement by saying that Mr Ang had not been authorised to sign the agreement on HQH’s behalf. Counsel for Ms Chen, however, declined to take a firm position on whether the Addendum was a valid agreement, despite having

⁴⁹ Chen Liping’s affidavit dated 11 May 2022 at para 69; Defendant’s Written Submissions at para 98.

stated in the written submissions that the Deed of Agreement and the Addendum were “unenforceable, void or voidable”.⁵⁰

48 As counsel for HQH rightly highlighted, Ms Chen had adopted a shifting position on the validity of the agreements subsequent to the Revised Tomlin Order. The lack of a firm position by Ms Chen as to the status of the Addendum meant that it was unnecessary – and in fact impossible – for the court to arrive at a conclusion as to the effect of cl 1.1 of the Addendum on the Revised Tomlin Order. If it was Ms Chen’s case that the Addendum was an invalid agreement, then it could not lie in her mouth to suggest that the Revised Tomlin Order had been modified by the Addendum. If it was Ms Chen’s case, however, that the Addendum was a valid agreement, then the argument that the Revised Tomlin Order had been modified by the Addendum would have remained open to her – but she would then also be bound by the obligation under cl 1.1 to pay a time premium cost of \$1,600,000 to HQH. It was unsurprising that Ms Chen did not take the position that she was bound to make this payment. In light of her refusal to take a position on the validity of the Addendum (and to bite the bullet with respect to the trade-offs that either position would entail), there was no basis for the court to proceed on the basis that the Addendum was a valid agreement.

49 As such, I did not find that the subsequent agreements to the Revised Tomlin Order had modified the Revised Tomlin Order. Clause 5 of the Deed of Agreement was not activated as Ms Chen had not met her obligations under cl 1 of the same Deed of Agreement. Further, Ms Chen had not taken the position that the Addendum was valid.

⁵⁰ Defendant’s Written Submissions at para 102.

50 In light of the foregoing reasons, it was not necessary for me to make a determination on whether Ms Chen had entered the Addendum and Deed of Agreement without proper legal representation and without mother-tongue interpretation. However, I briefly noted that in any event, there did not appear to be sufficient evidence to establish on a balance of probabilities that she had been unrepresented or had not understood the Deed of Agreement and the Addendum. Clause 8 of the Deed of Agreement in fact stated that the respective parties had been advised to seek independent legal advice on the agreement.⁵¹

Issue 3: Whether the terms recorded in the Revised Tomlin Order should be set aside

51 Counsel for Ms Chen submitted that terms recorded under a Tomlin Order may be subsequently examined by the court.⁵² Indeed, since the schedule to a Tomlin Order is not an order of the court and amounts to a contract between the parties, the schedule can be set aside on the basis upon which any ordinary contract can be set aside (*Watson v Sadiq and another* [2013] EWCA Civ 822⁵³ (“*Watson*”) at [49]–[50]).

52 In written submissions, counsel for Ms Chen submitted that the terms of the Schedule to the Revised Tomlin Order were extortionate and oppressive.⁵⁴ I noted that at times, counsel’s written submissions on this point conflated arguments about the Schedule to the Revised Tomlin Order and arguments about the Principal and Supplementary Agreements; as mentioned above at [21]–[23], arguments on the latter are not relevant to the present application. I

⁵¹ Lee Chia Chee’s affidavit dated 24 March 2022, LCC-24 at p 71.

⁵² Defendant’s Written Submissions at para 55.

⁵³ Defendant’s Bundle of Authorities (Volume II) at Tab 27.

⁵⁴ Defendant’s Written Submissions at paras 63–66.

also noted that barring the irrelevant portions of the submissions, little had been done by counsel to establish how the Schedules to either the first Tomlin Order or the Revised Tomlin Order were void or voidable in the law of contract.

53 Nonetheless, I proceeded to consider the terms recorded in the Schedule to the Revised Tomlin Order. On the evidence available, I did not see any reason to suggest that Ms Chen had entered into the settlement agreement under illegitimate pressure. In her affidavit, Ms Chen’s evidence was that she had been “financially crippled by the Mareva Injunction and under tremendous economic and psychological pressure with the threat of imprisonment if [she] breached the [i]njunction orders” and hence consented to the two Tomlin Orders.⁵⁵ The economic and psychological pressure to which she alluded appeared to be the ordinary pressures of a lawsuit faced by litigants when compelled to comply with interlocutory orders in the lead-up to trial. Further, Ms Chen did not deny that she had been legally represented when agreeing to the two Tomlin Orders. I hence saw no basis on which she could say that the contractual agreement recorded in the Schedule to the Revised Tomlin Order was void for duress.

Conclusion

54 For the above reasons, I found that the Revised Tomlin Order had been validly granted.

55 Therefore, in exercise of the powers reserved under the Revised Tomlin Order to make orders for the purpose of carrying out the terms of the Schedule, I ordered that:

⁵⁵ Chen Liping’s affidavit dated 11 May 2022 at paras 44 and 59.

(a) Final Judgment be entered against Ms Chen on the Revised Tomlin Order dated 9 May 2016 for the sum of \$1,454,274.46 (being the sum of \$3.25m less sums paid by Ms Chen to date), along with interest thereon and on all late instalment payments at the aggregate sum of \$496,816.88 (as at 31 March 2022 and continuing).

(b) Ms Chen to pay HQH costs of \$50,000 pursuant to clause (c) of the Schedule to the Revised Tomlin Order dated 9 May 2016.

56 Counsel for Ms Chen requested for a stay of my order pending appeal as he wished to take instructions from his client on whether to appeal. Counsel for HQH objected as much time had lapsed since the Tomlin Order had been made. I agreed with counsel for HQH that this much prolonged matter should not be delayed further without adequate justification. As counsel for Ms Chen was unable to confirm that he had instructions to appeal, there was no basis for a stay. Hence I dismissed the application for a stay pending appeal.

Lee Seiu Kin
Judge of the High Court

Gabriel Choo Wei Liang, Tan Wee Tim Cheryl and Trent Ng Yong
En (Kalco Law LLC) for the plaintiff;
Michael Khoo Kah Lip SC and Josephine Low (Michael Khoo &
Partners) and Andy Chiok (AM Legal LLC) for the defendant.
