

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

[2023] SGHC 49

Originating Claim No 49 of 2022 (Summons No 2031 of 2022)

Between

Lakshmi Anil Salgaocar (suing
as the administratrix of the
estate of Anil Vassudeva
Salgaocar, deceased)

... Claimant

And

Purnima Anil Salgaocar

... Defendant

GROUND OF DECISION

[Contract — Contractual terms — Rules of construction]

[Civil Procedure — Injunctions — Enforcement of negative covenant]

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Lakshmi Anil Salgaocar (suing as the administratrix of the estate of Anil Vassudeva Salgaocar, deceased)

v

Purnima Anil Salgaocar

[2023] SGHC 49

General Division of the High Court — Originating Claim No 49 of 2022
(Summons No 2031 of 2022)

Lai Siu Chui SJ
28 June 2022

28 February 2023

Lai Siu Chiu SJ:

1 This case arose out of a long-running dispute between the claimant mother and the defendant daughter, over the former's administration of the estate of Anil Vassudeva Salgaocar ("the Deceased"). At some point, the two parties entered into a settlement agreement, which *inter alia* restricted either party from bringing proceedings against the other until a separate action between the estate and a third party had been resolved.

2 When the defendant initiated separate probate proceedings against the claimant, the claimant sought to hold the defendant to the negative covenant by way of an interim injunction.

3 The question which arose was whether the claimant's alleged but unproven breaches of the settlement agreement meant that the negative

covenant contained therein was not binding on the defendant, and so could not serve as the basis for an interim injunction against her.

4 After hearing the parties, this court found that even if the claimant had breached the terms of the settlement agreement, the appropriate course of action would have been to sue on the agreement. The defendant’s commencement of separate probate proceedings was thus a breach of the negative covenant, which justified the grant of the interim injunction sought by the claimant. As the defendant has appealed against my decision (in Civil Appeal No 81 of 2022 after first obtaining leave of court to appeal in OA 10 of 2022), I now give my reasons.

The facts

The parties

5 The claimant is Lakshmi Anil Salgaocar, who was the wife of the Deceased and the sole administratrix of his estate.

6 The defendant is Purnima Anil Salgaocar, who is the claimant’s daughter and a beneficiary of the Deceased’s estate.

Background facts

7 The Deceased passed away in Singapore on 1 January 2016, leaving behind assets located both inside and outside of India. The latter shall be referred to as the “non-India assets”, in accordance with the terminology adopted by parties in their written submissions. Prior to his passing, the Deceased had commenced HC/S 821/2015 against a third party, which was a dispute over the ownership of assets which his estate now alleges to comprise a

large portion of the non-India assets.¹ His estate continued the action after his passing.

8 After the Deceased passed away, the claimant became the sole administratrix of his estate. Over the next few years, the defendant became increasingly dissatisfied with the way in which the claimant had been administering the estate, and alleged that the claimant had refused to provide a proper account of the estate’s assets, reneged on a promised interim distribution of S\$1 million, and treated the defendant inequitably as compared to her fellow siblings and beneficiaries.²

9 The dispute arising from these allegations was temporarily resolved when the parties entered into a settlement agreement on 13 April 2020 (“first settlement agreement”), according to which the claimant was to appoint an independent accountant to draw up and provide an account of the estate’s assets, make an interim payment of S\$1 million to the defendant, and make arrangements for the defendant to be paid S\$15,000 per month.

10 Subsequently however, the defendant alleged that the claimant had failed to fulfil the terms of the first settlement agreement, and so commenced a claim for specific performance thereof by way of HC/OS 928/2020. This was eventually resolved, albeit again only for a time, when parties entered into another settlement agreement (“second settlement agreement”) on 27 May 2021.³ Pursuant to the second settlement agreement, the claimant was to provide the defendant with an account of the estate’s assets drawn up by an independent

¹ Affidavit of Purnima Anil Salgaocar (15 June 2022) at [12].

² Defendant’s Skeletals at [39].

³ Affidavit of Purnima Anil Salgaocar (15 June 2022) at pg. 138–140

accountant, and make to the defendant two lump sum payments as well as regular monthly payments of S\$15,000 until the final distribution of the estate. HC/OS 928/2020 would be discontinued, and the first settlement agreement would have no further force or effect. Finally, the second settlement agreement contained two clauses which were aimed at restricting further litigation between the claimant and defendant until HC/S 821/2015 was resolved.

11 A dispute subsequently arose between the parties as to whether the claimant had fulfilled the terms of the second settlement agreement, in respect of the provision of accounts.⁴ The defendant thus filed HCF/OSP 6/2022, seeking to compel the claimant to provide her an account of the non-India assets, and the appointment of an independent auditor to ensure that the information provided was complete and accurate.⁵

12 Being of the view that the defendant's bringing of HCF/OSP 6/2022 was a breach of the second settlement agreement, the claimant ceased making the monthly payments of S\$15,000.⁶ Additionally, the claimant filed the present application on 31 May 2022, seeking an injunction against the defendant from proceeding with HCF/OSP 6/2022 on the basis of the negative covenant.

Parties' arguments

13 The claimant's case was that Clauses 11 and 18 of the second settlement agreement constituted a negative covenant whose effect was to absolutely restrict either party from bringing any proceedings against the other, save for

⁴ Affidavit of Purnima Anil Salgaocar (15 June 2022) at [84]–[95]; Affidavit of Lakshmi Anil Salgaocar (31 May 2022) at [65].

⁵ Defendant's Skeletals at [82].

⁶ Affidavit of Lakshmi Anil Salgaocar (31 May 2022) at [84].

breach of the second settlement agreement, until the final disposition of HC/S 821/2015. This being the case, as the defendant had breached the negative covenant by bringing HCF/OSP 6/2022, an interim injunction should be granted as a matter of course (*RGA Holdings International Inc v Loh Choon Phing Robin and another* [2017] 2 SLR 997 (“*RGA Holdings*”) at [32]).

14 The defendant’s case was that the operation of the negative covenant was conditional on the claimant fully complying with the terms of the second settlement agreement. As the claimant had not done so, Clause 11 was not effective to restrain the defendant from bringing any kind of proceedings and could not be the basis for an interim injunction to that effect. In any event, as the claimant had withheld the S\$15,000 monthly payment on the basis that the defendant had allegedly repudiated the second settlement agreement, the claimant was no longer entitled to rely on it. Accordingly, the appropriate test for the grant of an interim injunction was the balance of convenience test in *American Cyanamid Company v Ethicon Limited* [1975] AC 396, which in the present case weighed against the grant of the injunction.

Issues to be determined

15 The issues which arose for my determination were therefore as follows:

- (a) Was the operation of the negative covenant contained in Clauses 11 and 18 conditional on the claimant’s fulfilment of the terms of the second settlement agreement?
- (b) If the answer to the above question is “yes”, had the claimant breached the terms of the second settlement agreement?

(c) In any case, in refusing to make payment to the defendant, had the claimant forgone her right to rely on the second settlement agreement?

(d) Based on the answers to the previous questions, what were the appropriate principles which governed the present application for an interim injunction?

Issue 1: whether the negative covenant was conditional

16 The first issue was whether the operation of the negative covenant was conditional upon the claimant’s fulfilment of the terms of the settlement agreement, which was ultimately a question of contractual interpretation. For convenience, Clause 11 of the second settlement agreement is reproduced below:⁷

Clause 11

Provided that the terms of this Agreement are fully complied with by the [claimant], the [defendant] also agrees not to commence any further litigation against the Estate or any of the other beneficiaries of the Estate, in relation to the Non-India Assets and/or matters connected with HC/Suit 821/2015 and/or by using any information, correspondence and/or documents arising in relation to and pursuant to this Agreement, until after the trial in HC/Suit 821/2015 has been concluded and any appeal(s) thereafter has been finally determined and/or when HC/Suit 821/2015 is withdrawn and/or settled. [emphasis added]

17 The defendant’s position was that the phrase “Provided that the terms of this Agreement are fully complied with” rendered the operation of Clause 11 conditional upon the claimant’s compliance with all the terms of the second

⁷ Affidavit of Purnima Anil Salgaocar (15 June 2022) at pg. 138–140

settlement agreement. However, while this may have been a sensible interpretation of Clause 11 if it was read in isolation, the “whole contract” approach to contractual interpretation directs the court to adopt a holistic approach that is based on the whole contract, and not to fixate upon a particular word, phrase, sentence, or clause (*Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [131]). Clause 11 therefore had to be read together with Clause 18, which reads as follows:

Clause 18

In the event of any breach of this Agreement, the Parties shall only be entitled to sue on this Agreement and shall not be entitled to revive or pursue OS 928.

18 Thus read together, the effect of Clauses 11 and 18 was that parties were prohibited from bringing any claim against each other in relation to the non-India assets, except for a breach of the second settlement agreement. The restriction in Clause 18 was expressed as applying to “parties”, which could only have meant both the claimant and the defendant. It therefore applied to situations in which the *claimant* might have been in breach of the second settlement agreement, and stipulated that in such cases, the defendant would only have been entitled to sue on the second settlement agreement. This would have made little sense if a breach by the claimant would have meant that the defendant was free to bring fresh proceedings to enforce the same claims and underlying causes of action with which the second settlement agreement had been concerned – in this case the defendant’s rights *qua* beneficiary to an account of the estate, as would have been the logical consequence of the defendant’s conditional interpretation of Clause 11.

19 On the contrary, the effect of a settlement agreement is to put an end to prior proceedings, preclude the taking of further steps not provided for in the settlement agreement, and supersede the original cause of action altogether (*Rakna Arakshaka Lanka Ltd v Avant Garde Maritime Services (Pte) Ltd* [2019] 2 SLR 131 at [95]), and this applies equally to both the first and second settlement agreements. In other words, the defendant’s right to an account under the law would have been superseded by her contractual rights under the first settlement agreement, which would have in turn been superseded by her rights under the second settlement agreement. It therefore mattered not that the category of claims articulated in Clause 11 was wider than simply for breaches of the second settlement agreement, nor that the second settlement agreement did not expressly purport to curtail the defendant’s “general rights at law”, as the defendant had observed.⁸

20 Any action conceived of as being directed towards enforcement of rights dealt with by the second settlement agreement, or justified with reference to a breach thereof as the defendant has attempted to do, could only be brought on the basis of that agreement. This did not change simply because the defendant had in HCF/OSP 6/2022 cleverly sought a remedy not expressly provided for under the second settlement agreement.

21 The defendant also argued that “Clause 11 is not stated to be defined by or subject to Clause 18.”⁹ However, the force of this argument, and the observation that Clause 18 neither cross-referenced, addressed, nor appeared in the same section as Clause 11, was somewhat undermined by the fact that the

⁸ Defendant’s Skeletals at [165].

⁹ Defendant’s Skeletals at [170], [172].

section in which Clause 18 resides was titled “General”. Indeed, several of the other clauses appearing in that section had also necessarily to be read as applying to the second settlement agreement as a whole, and all the other provisions therein. For example, Clause 20 provided that time shall be of the essence in the performance of the second settlement agreement. This could not sensibly have been read as imposing any standalone obligation, but rather as applying to and governing the performance of the obligations contained in all the other clauses. The same may also have been said of Clause 19, which prohibited the variation of the second settlement agreement save by in writing and by agreement and signature of all parties, and Clause 21, which directed parties to act in good faith and so as to give full effect to the intent, spirit, and provisions of the second settlement agreement. Indeed, the location of Clause 18 supported the *claimant’s* interpretation, that it applied to all other clauses such that the *only* permissible remedy for *any* breach of the second settlement agreement would have been to sue for breach thereof.

22 Accordingly, the proper interpretation of Clauses 11 and 18 was that they imposed an absolute prohibition on either party from bringing proceedings against the other until HC/S 821/2015 is resolved, except for breaches of the second settlement agreement. In view of this conclusion, there was no need to consider whether the claimant had in fact failed to comply with her obligation to render accounts of the estate under the second settlement agreement.

Issue 2: whether the claimant had forgone her right to rely on the second settlement agreement

23 The defendant further argued that the claimant was no longer entitled to rely on the second settlement agreement. This was because the claimant had ceased making the monthly payments of S\$15,000, claiming that she was no

longer bound to do so owing to the defendant’s “repudiatory breach” in commencing HCF/OSP 6/2022.¹⁰ Additionally, the claimant had in HC/OS 49/2022 also included a claim against the defendant for all sums *already* paid to and received by the latter under the second settlement agreement, on the basis of the same “repudiatory breach”. In doing so, the claimant had effectively taken the position that the second settlement agreement was no longer binding on her.

24 This court found that neither the claimant’s cessation of monthly payments nor her claim for sums paid prevented her from relying on the second settlement agreement. Insofar as the cessation of monthly payments was concerned, this was as much a breach of the second settlement agreement as was the defendant’s bringing of HCF/OSP 6/2022.

25 Pursuant to the above analysis at [16]–[22], the only available remedy to the innocent party is to sue on the second settlement agreement. This was in fact precisely what the defendant had done in respect of the claimant’s failure to make the monthly payments,¹¹ although curiously not for the claimant’s alleged failure to provide the accounts. It did not relieve her of her own obligations under the second settlement agreement, nor preclude the claimant from seeking enforcement thereof.

26 The claimant’s attempt to reclaim sums already paid to the defendant was not also inconsistent with the present application for an injunction. By parity of reasoning, insofar as a plea for specific performance does not necessarily constitute an affirmation of a contract or waiver of prior repudiatory

¹⁰ Defendant’s Skeletals at [156]–[157].

¹¹ Defendant’s Defense and Counterclaim in HC/OC 49/2022.

breaches (*CSDS Aircraft Sales & Leasing Inc v Singapore Airlines Ltd* [2022] 1 SLR 284 at [48]), the institution of an action for damages should likewise not constitute acceptance of repudiation. It is also not inconsistent to seek damages for past breaches, while also seeking to hold the breaching party to their obligations going forward. The claimant thus remained entitled to seek performance of the second settlement agreement, as did the defendant.

Issue 3: what were the appropriate principles governing the grant of an injunction?

27 Having found that the restriction in Clauses 11 and 18 was not conditional and that the claimant remained entitled to rely upon the second settlement agreement, the relevant principles were therefore those articulated in *RGA Holdings* at [32], that where a breach of a negative covenant has occurred or is imminent, an injunction to restrain a prospective or further breach would normally be granted as a matter of course. The balance of convenience test would not apply in such cases, and the injunction would only be refused if granting it would cause the defendant particular hardship(s) over and above simply having to observe the contract.

28 In this case, in view of the defendant's commencement of HCF/OSP 6/2022, there was no real question as to whether she had breached the negative covenant. It was also difficult to see what particular hardship(s) would have been caused by granting the injunction sought by the claimant, given that the defendant remained entitled to seek an account of the estate's assets from the claimant by suing for specific performance of the second settlement agreement.

29 This court therefore granted the injunction restraining the defendant from bringing any proceedings other than for breach of the second settlement agreement, until such time as HC/S 821/2015 is disposed of.

Lai Siu Chiu
Senior Judge

Niru Pillai, Liew Teck Huat and Phang Cun Kuang (Niru & Co LLC)
for the claimant;

Lim Gerui, Estad Amber Joy and Melinna Teo (Drew & Napier LLC)
for the defendant.
