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

[2024] SGHC 208

District Court Appeal No 40 of 2023

Between

VMax Marine Pte Ltd

… *Appellant*

And

Singapore Salvage Engineers Pte Ltd

… *Respondent*

In the matter of District Court Suit No 779 of 2021

Between

VMax Marine Pte Ltd

… *Plaintiff*

And

Singapore Salvage Engineers Pte Ltd

… *Defendant*

JUDGMENT

[Civil Procedure] — [Appeals] — [Notice] — [Appeals against costs order] — [Inherent jurisdiction]

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v
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9 July, 14 August 2024

15 August 2024 Judgment reserved.

Kwek Mean Luck J:

Introduction

1 After oral judgment was delivered on the merits and costs in HC/DCA 40/2023 ("DCA 40"), the appellant, VMax Marine Pte Ltd ("VMax"), wrote to Court to ask that the costs order for the trial below be varied. This raises three issues. First, whether this Court is *functus officio.* Second, even if it is not, whether VMax is disentitled from raising an appeal against the costs order below, because it did not file a notice of appeal for this and did not raise this in its submissions, before the Court ruled on the merits and costs of DCA 40. Third, if VMax is not disentitled, whether the Court should exercise its discretion to vary the costs order below.

Background

2 In DC/DC 779/2021 ("DC 779"), VMax brought claims against Singapore Salvage Engineers Pte Ltd ("SSE"), arising out of a contract for salvage master and consultancy services. SSE counterclaimed, alleging that VMax had breached the same contract. The learned District Judge ("DJ") dismissed all of VMax's claims and allowed SSE's counterclaim in part. VMax and SSE appealed against the DJ's decision, in HC/DCA 40/2023 ("DCA 40")[1] and HC/DCA 41/2023 ("DCA 41")[2] respectively.

3 At the end of the hearing on 9 July 2024, I dismissed DCA 41 but allowed DCA 40 in part. Parties were ordered to bear their own costs for the appeals, on an overall basis.

4 Two days after the 9 July hearing, on 11 July 2024, VMax wrote to the Court, to say that the costs in DC 779 should be considered afresh given its partial success in DCA 40 ("VMax 11 July"). This was the first time that VMax indicated its intention to appeal against the DJ's costs order ("DJ's Costs Order"). VMax did not indicate in its Notice of Appeal for DCA 40 that it intended to appeal against the DJ's Costs Order. Neither did it indicate, in its written or oral submissions for DCA 40, that it intended to do so. The order of court for DCA 40 had yet to be extracted at this point.

VMax's case

5 VMax submits that this Court has the power to receive and consider its costs appeal, even though this was not reflected in the DCA 40 Notice of

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1 Notice of Appeal for HC/DCA 40/2023.

2 Notice of Appeal for HC/DCA 41/2023.

Appeal[3]. First, the Notice of Appeal was filed *before* the DJ's Costs Order was issued. Second, VMax's intention to appeal against costs was contingent on the success of DCA 40. Any costs appeal thus could not have been made before the decision in DCA 40 was rendered. Where a costs decision is rendered after a notice of appeal is filed, and the costs appeal rests on the outcome of the substantive appeal, a party need not file an additional notice of appeal in respect of the costs decision or amend the original notice of appeal to reflect the costs appeal; *The "Luna" and another appeal* [2021] 2 SLR 1054 (CA) ("*The "Luna"*") at [104(a)], *Qilin World Capital Ltd v CPIT Investments Ltd and another appeal* [2019] 1 SLR 1 (CA(I)) ("*Qilin (Costs)*") at [9], *Beyonics Asia Pacific Ltd and others v Goh Chan Peng and another* [2020] 5 SLR 235 (HC(I)) ("*Beyonics*") at [28]–[30].

6 VMax further submits that it was not obligated to inform the Court, or SSE, of its potential costs appeal[4]. Instead, this right of appeal would arise automatically upon the appellate court deciding differently from the trial judge below. VMax did not submit on the appeal against the DJ's Costs Order at the 9 July hearing, but this was merely an oversight, "not so egregious that it should lead to VMax being denied an opportunity to be heard". VMax's late-stage costs appeal would neither prejudice SSE nor result in an unnecessary waste of judicial resources.

7 In arriving at the costs order, the DJ took the sum of $44,800 as the starting point. Given that SSE had prevailed substantially in DC 779, 65% of this amount was awarded to SSE for a total of $29,120. A further $2,000 was

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3 Letter filed by VMax on 22 July 2024 ("**VMax 22 July**") at [19].

4 Letter filed by VMax on 5 August 2024 ("**VMax 5 August**") at [8]–[13].

awarded to SSE for the four interlocutory applications in DC 779. In total, VMax was to pay SSE costs of $31,120 plus GST[5].

8 VMax argues that it is now "more successful in its claims than SSE by a factor of 10%", after its appeal in DCA 40 was partially allowed. VMax is now awarded 38% of the total quantum sought in DC 779, while SSE has only recovered 28% of the value of its counterclaim. VMax thus seeks to vary the DJ's Costs Order, in the following manner[6]: (a) VMax seeks repayment of the $32,434.60 originally paid to SSE for DC 779; (b) VMax seeks fixed costs awarded in its favour, in the sum of $16,000 (calculated by taking $44,800 divided by 28%, multiplied by 10%); and (c) VMax seeks payment of $666.67 for the four interlocutory applications (calculated by dividing the lump sum of $2,000 by a factor of three).

SSE's case

9 SSE submits that VMax was not entitled to raise the costs appeal. VMax failed to identify the ground or provision that it was relying on in making its costs appeal. This was especially since the appellate court had already rendered judgment on both the merits and costs[7]. As the costs appeal was not in the nature of further arguments, VMax cannot rely on O. 56, r. 2 of the Rules Of Court 2014 (2014 Rev Ed) ("ROC 2014"). VMax also cannot rely on O. 20, r. 11 ROC 2014, which allows the court to correct clerical mistakes or errors arising from accidental slips or omissions[8].

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5 DJ's Costs Order at [4]-[6], [8] and [9].

6 VMax 11 July at [14], [15] and [17].

7 Letter filed by SSE on 5 August 2024 ("**SSE 5 August**") at [17]–[18].

8 SSE 5 August at [8]–[14].

10 The cases raised by VMax, to say that an appellate court will vary the original costs order in the event of a successful appeal, can be distinguished. Both the appellate court and the responding party in those cases were made aware of a potential costs appeal before a ruling was made on the merits and on costs. At the 9 July hearing, VMax confirmed that it had no further arguments to make before the Court rose for the day. VMax 11 July was the first instance at which the costs appeal was raised. The DJ's Costs Order was issued seven months before this hearing. VMax had sufficient time to consider an appeal. It should have addressed this at the 9 July hearing but did not[9].

Decision

11 There are three issues to be determined.

(a) First, whether this Court has the jurisdiction to receive and consider VMax's costs appeal. This raises the question of when a Court is considered *functus officio*.

(b) Second, even if this Court is not *functus officio*, whether VMax is disentitled from raising an appeal against the costs order below, because it did not file a notice of appeal for this and did not raise this in its written or oral submissions before this Court ruled on the merits and costs of DCA 40.

(c) Third, if VMax is not disentitled, whether this Court should exercise its discretion to vary the costs order below.

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9 Letter filed by SSE on 26 July 2024 ("**SSE 26 July**") at [14].

Whether this Court is *functus officio*

12 It is established law that a court rendered *functus officio* has limited jurisdiction to make substantive amendments to its decision. It possesses the inherent jurisdiction to clarify the terms of its order and to give consequential directions, but this does not extend to correcting substantive errors or effecting substantive amendments or variations to orders that have been perfected; *Godfrey Gerald QC v UBS AG and others* [2004] 4 SLR(R) 411 (HC) ("*Godfrey Gerald*") at [18]–[19], *Retrospect Investment (S) Pte Ltd v Lateral Solutions Pte Ltd and another* [2020] 1 SLR 763 (CA) ("*Retrospect Investment*") at [12], *Thu Aung Zaw v Ku Swee Boon (trading as Norb Creative Studio)* [2018] 4 SLR 1260 (HC) ("*Thu Aung Zaw*") at [23].

13 A court is usually made *functus officio*, by the perfection of the relevant court order; *Management Corporation Strata Title Plan No 3563 v Wintree Investment Pte Ltd and others (Greatearth Corp Pte Ltd, third party)* [2018] 5 SLR 412 (HC) ("*Wintree*") at [29].

14 In the United Kingdom ("UK"), an order of court is perfected when it is sealed by the court; *In re L and another (Children) (Preliminary Finding: Power to Reverse)* [2013] UKSC 8 ("*In re L*") at [19]. This is pursuant to Rule 40.2(2)(b) of the Civil Procedure Rules 1998 (SI 1998/3132) ("UK CPR"). Prior to the passage of the UK CPR, the case of *Re Harrison's Share under a Settlement* [1955] 1 All ER 185 ("*Re Harrison*") was considered instructive. There, it was held at 188:

> We think that an order pronounced by the judge can always be withdrawn, or altered or modified, by him until it is drawn up, passed and entered. In the meantime it is provisionally effective, and can be treated as a subsisting order in cases where the justice of the case requires it, and the right of withdrawal would not be thereby prevented or prejudiced.

15 O. 42, r. 10 of our ROC 2014, draws on similar concepts as that in *Re Harrison* and Rule 40.2(2)(b) of the UK CPR. It states:

> **Drawing up and entry of judgments and orders (O. 42, r. 10)**
>
> (2) Every order required to be drawn up must be drawn up by the party in whose favour the order has been made…
>
> (3) The order referred to in paragraph (2) **must, when drawn up, be produced at the Registry, together with a copy thereof, and when passed by the proper officer the order, sealed with the seal of the Supreme Court or the State Courts,** as the case may be, shall be returned to the party producing it and the copy shall be filed in the Registry.
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> (emphasis added in bold).

16 The learned authors of *Singapore Civil Procedure 2020* vol 1 (Cavinder Bull gen. ed.) (Sweet & Maxwell, 2020) ("*White Book*"), state at paras 42/5/8 and 57/1/33:

> 42/5/8 After a judgment or order is **passed and entered or extracted,** it cannot be corrected without an application under O. 20 r. 11, or otherwise (*Blake v Harvey* (1885) 29 Ch.D. 827, CA (Eng) … **So long as an order has not been extracted a judge or registrar on the application of a party or on his own initiative has the power to reviewing it** (sic) (*Re Harrison's Settlement, Harrison v Harrison* [1955] Ch. 260; [1955] 1 All E.R 185, CA (Eng))
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> 57/1/33 … **The Court of Appeal has power to alter its decision before its order has been perfected**, but it has no power to rehear an appeal after its order has been **passed and entered**.
>
> (emphasis added in bold).

17 Following from the above, this Court would be rendered *functus officio* with respect to the merits and costs of DCA 40, at the point where the court order on DCA 40 is passed and sealed. This has not been done. Hence, this Court is not *functus officio* as to the merits and costs of DCA 40. In addition, what VMax seeks is not an amendment of the orders made at the 9 July hearing, but

an order that is consequential to such orders. This Court is also in this respect, not *functus officio*.

Whether VMax is disentitled from raising an appeal against the costs order below

18 I turn to the second issue, which is whether VMax is disentitled from raising an appeal against the costs order below, because it did not file a notice of appeal for this and did not raise this in its written or oral submissions before the Court ruled on the costs of DCA 40.

19 Parties accept that where a costs decision is rendered after a notice of appeal is filed, and where the costs appeal rests on the outcome of the substantive appeal, a party need not file an additional notice of appeal in respect of the costs decision or amend the original notice of appeal to reflect the costs appeal. This is established by *The "Luna"* at [104(a)], *Qilin (Costs)* at [9], and *Beyonics* at [28]–[30].

20 However, there is a material factual distinction between this case and these authorities, as well as *Ser Kim Koi v GTMS Construction Pte Ltd and others* [2021] 1 SLR 1319 (HC) ("*Ser Kim Koi"*), which VMax also cited. In all of these authorities, the appellant had indicated that it would be appealing against the costs order below, prior to the disposition of the appeal as a whole. More specifically, in all of them, the appellant had informed the court that the costs order below would be challenged, prior to the appellate court ruling on the costs of the appeal.

(a) In *Beyonics*, the plaintiffs "stated that, if the Substantive Appeal is dismissed, they will not challenge the existing order for costs of the

trial but would wish to do so in the event that the appeal succeeds wholly or in part" (at [5]). This was conveyed to the trial judge.

(b) In *Ser Kim Koi*, the plaintiff asked to be allowed to file a single notice of appeal in respect of both the main judgment and the costs judgment (at [6]). The court agreed. The plaintiff eventually filed two separate notices of appeal, in relation to the main judgment and the costs judgment.

(c) In *The "Luna"*, the appellant had applied for leave to amend the notice of appeal they previously filed in respect of the merits, to include an appeal against costs (at [92]).

(d) In *Qilin (Costs)*, the submissions against the costs order below, were made before the court ruled on the costs of the appeal.

21 SSE submits that since VMax could not identify any provision which specifically enabled it to raise arguments against the costs order below in these circumstances, VMax is disentitled to put forward an appeal against the DJ's Costs Order.

22 However, I am cognisant that it is well established that a court has "inherent jurisdiction to recall [its] decision and to hear further arguments" so long as the order of court has not been perfected; *Thomson Plaza (Pte) Ltd v Liquidators of Yaohan Department Store Singapore Pte Ltd (in liquidation)* [2001] 2 SLR(R) 246 (CA) ("*Thomson Plaza*") (at [6]), *Naseer Ahmad Akhtar v Suresh Agarwal and another* [2015] 5 SLR 1032 (HC) ("*Naseer*") (at [101]). Given that such inherent jurisdiction extends to a recall of a court's decision, it should follow that the Court also retains the inherent jurisdiction to hear a matter consequential to its decision in the main appeal, which it had previously not

heard. This includes the inherent jurisdiction to hear VMax's appeal against the DJ's Costs Order.

Whether this Court should exercise its direction to vary the costs order

23 Even though this Court retains the inherent jurisdiction to hear and vary VMax's appeal against the DJ's Costs Order, the question still arises as to whether this Court *should* exercise its discretion to do so. This is the third issue.

24 It has been held that the inherent jurisdiction of the court to recall and review its decision before the order of court is perfected, must be "exercised judicially and not capriciously"; the overriding objective "must be to deal with the case justly"; *Naseer* at [101] citing with approval *In Re L* at [38].

25 In *Naseer*, the court exercised its discretion to hear the defendants' application for a stay of execution. This application was first made orally at the end of a hearing. The court dismissed the oral application on the ground that the application was premature and unsubstantiated. A formal application was filed with a supporting affidavit, shortly after the hearing. The court exercised its jurisdiction to hear the defendant's application. Given the short time between the oral and formal application, the court found that there was no prejudice to the plaintiff that could not be remedied through a grant of costs (at [95]–[101]).

26 In the UK case of *In re L*, the court exercised its jurisdiction to reverse its prior decision, in a set of child care proceedings. The court had delivered oral grounds for its decision, finding that the father had inflicted injuries on a child. Before the order was perfected, the court delivered a second judgment. It found, on reconsideration of the evidence, that it could not conclude which parent had injured the child. This decision, to recall a prior oral judgment, was affirmed by the UK Supreme Court. The Supreme Court also pronounced the following

principles in relation to a court's jurisdiction to reconsider its prior decision (at [27], [30]):

> 27 This court is **not bound** by the *Barrell* case or by any of the previous cases to hold that there is **any such limitation upon the acknowledged jurisdiction of the judge to revisit his own decision at any time up until his resulting order is perfected**. I would agree with Clarke LJ in *Stewart v Engel* [2000] 1 WLR 2268, 2282 that [the] **overriding objective must be to deal with the case justly.** A relevant factor must be whether any party has acted upon the decision to his detriment, especially in a case where it is expected that they may do so before the order is formally drawn up.
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> …
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> 30 As the court pointed out in *In re Harrison's Share under a Settlement* [1955] Ch 260, 284, the discretion must be exercised "**judicially and not capriciously**". This may entail offering the parties the opportunity of addressing the judge on whether she should or should not change her decision. The **longer the interval between the two decisions the more likely it is that it would not be fair to do otherwise**.
>
> (emphasis added in bold).

27 While the principles set out in *In re L* were laid down in the context of when a decision can be recalled prior to the court order being perfected, I consider these broad principles to be useful in assessing whether the court should exercise its discretion after a hearing, to hear a matter consequential to its earlier decision and which it had not ruled on. Indeed, given that there is no review of a prior decision, the applicable principles should not be narrower than those in relation to a court's jurisdiction to reconsider and recall its prior decision.

28 In particular, I consider the following principles to be relevant to the exercise of a court's discretion to hear a matter consequential to its earlier decision, after the conclusion of the hearing. The discretion of the court to do so, is not limited by exceptional circumstances, and the overriding objective is

to deal with the case in question justly. To this end, parties should be given the opportunity to address the judge, on whether the court's discretion should be exercised. With these principles in mind, I consider whether the court's discretion should be exercised to vary the DJ's Costs Order.

29 In this case, what could be said in VMax's favour is that it raised this fairly soon after DCA 40 was ruled on, around 2 days later. Neither had SSE acted to its detriment, because of VMax's lateness in this. While SSE submits that it was prejudiced because VMax's conduct by way of VMax 11 July had extended the timelines for appeal against DCA 40, judgment on the merits and costs of DCA 40 had been concluded on 9 July 2024 and the timeline for appeal would have run from that date. VMax confirmed that this was also its understanding and that there would be no prejudice to SSE in this respect.

30 This does not mean, however, that VMax's conduct is to be condoned. VMax could only say that its late-stage costs appeal was an oversight. This is not a satisfactory explanation. Given the limited judicial resources that are available, it behoves counsels as officers of the court, to raise such issues prior to the court's disposal of an appeal as a whole, and not after. There was really no excuse for VMax not to have raised its appeal against the DJ's Costs Order much earlier.

31 Importantly, VMax has not shown that this Court's discretion should be exercised for the overriding objective of justice. VMax seeks to vary the DJ's Costs Order, on the basis that the final quantum awarded to VMax, after its appeal in DCA 40 was partially allowed, is now relatively higher than the quantum awarded to SSE. However, the DJ's Costs Order was based on his assessment of the work done and time spent on the relative claims, and not just on the final quantum awarded to each party. VMAX's claim relating to the

Additional Works and Services ("AWS"), which was allowed on appeal, was dealt with in four paragraphs, out of about 93 paragraphs of the DJ's GD dealing with VMax's claim. I also find from the record of the proceedings for DC 779, that the work done and time spent on the AWS claim is low relative to VMAX's other claims. The amount devoted in the GD to the AWS claim could be said to be a fair reflection of the relative work involved. At the hearing, VMax accepted that work done in relation to the AWS claim was less than that for the rest of its claims. The time spent and work done on the AWS claim is certainly not commensurate with the quantum that VMax now seeks to vary in the DJ's Costs Order. Even in DCA 40, I considered it fair to award costs to SSE even though the appeal by VMax was partially allowed, as SSE had substantially succeeded in DCA 40.

32 In these circumstances, I do not find that there is injustice, from leaving the DJ's Costs Order untouched. I therefore decline to exercise the Court's discretion to vary the DJ's Costs Order.

Kwek Mean Luck
Judge of the High Court

Abirame S, Deborah Koh, Gerard Nicholas, Justin Ng (DennisMathiew) for the Appellant in DCA 40;
Eoon Zizhen, Benedict (Wen Zizhen), Tanjeetpal Singh Khaira (Oon & Bazul LLP) for the Respondent in DCA 40.