Relfo Ltd (in liquidation) v Bhimji Velji Jadva Varsani
[2009] SGHC 174

Case Number : Suit 612/2006, SUM 1527/2009, RA 111/2009, 112/2009

Decision Date : 31 July 2009

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Manoj Sandrasegara, Tan Mingfen and Sheryl Wei Kejia (Drew & Napier LLC) for the plaintiff; Leo Cheng Suan and Teh Ee-Von (Infinitus Law Corporation) for the defendant

Parties : Relfo Ltd (in liquidation) — Bhimji Velji Jadva Varsani

Civil Procedure – Stay of proceedings – Stay of proceedings pending payment of taxed costs of action

Conflict of Laws – Restraint of foreign proceedings – Whether action commenced in foreign jurisdiction vexatious or oppressive

Revenue Law – International taxation – Whether disclosure of documents to foreign court amounted to indirect enforcement of foreign revenue laws

31 July 2009

Andrew Ang J:

Introduction

1 The application and two registrar's appeals before me are the sequel to *Relfo Ltd v Bhimji Velji Jadva Varsani* [2008] 4 SLR 657 ("the Singapore Action"). The plaintiff company, Relfo Ltd (in liquidation), was incorporated in the United Kingdom in January 1996. From the inception, the defendant, Bhimji Velji Jadva Varsani, and his brother each held 25% of the plaintiff's share capital while another 25% was held by Devji Ramji Gorecia ("Gorecia") and his wife. Two other shareholders, Geoffrey David Roberts ("Roberts") and Simon Patrick Wainwright ("Wainwright") held the remaining 25% between them. From the time of its incorporation until June 2001, the plaintiff's directors were Gorecia, Roberts, Wainwright and the defendant's father. In June 2001, the plaintiff sold a property for more than £4m. The plaintiff's tax liability was estimated to be about £1.26m. At a board meeting held in June 2001, it was agreed that a sum of £3,546,518 net of tax would be distributed to the shareholders of the plaintiff as dividends. The sum was duly paid out. Concurrently, all the directors (except Gorecia) resigned and Gorecia's wife was appointed a director of the plaintiff. On the same day, the shareholders (other than Gorecia) transferred their shares in the plaintiff to Gorecia and his wife at nominal values. Thereafter, Gorecia and his wife were the plaintiff's only directors and shareholders.

2 On 26 April 2004, the UK Inland Revenue ("UKIR") issued a "Notice Warning of Legal Proceedings" to the plaintiff in relation to the tax liability incurred in 2001 (see above at [1]). However, no payment by the plaintiff was made to the UKIR.

3 Instead, on 4 May 2004, Gorecia gave instructions for a sum of £500,000 to be transferred from the plaintiff's HSBC account into the account of one Mirren Ltd ("Mirren"), a company registered in the British Virgin Islands. On 5 May 2004, a sum of US$878,479.35 was remitted to the defendant's

account with Citibank, Singapore branch ("Citibank account") by Intertrade Group LLC ("Intertrade"). On 10 May 2004, the sum of US$878,469.35 (after deducting US$10 for bank charges) was credited into the defendant's Citibank account. On 3 May 2004, the defendant transferred a sum of US$100,000 from his Citibank account to Gorecia and his wife.

4 On 23 July 2004, it was resolved at a meeting of the plaintiff's members that the plaintiff be wound up voluntarily as it could not, by reason of its liabilities, continue its business. The only two creditors of the plaintiff at that time were Gorecia and the UKIR, which was the majority creditor. At the creditors' meeting, Timothy James Bramston ("Bramston") was appointed the liquidator. Gorecia informed Bramston that the sum of £500,000 (referred to above at [3]) was for an investment involving the purchase of a container of computer goods, but the investment had failed and there were no prospects of recovery of the payment. However, Bramston's investigations eventually led to the discovery of the sum of US$878,469.35 in the defendant's Citibank account. The plaintiff subsequently commenced the Singapore Action in the High Court against the defendant for knowing receipt of trust property.

5 In the judgment in the Singapore Action ([1] *supra*), Judith Prakash J found that the money received in the defendant's Citibank account was traceable to the £500,000 sent out of the plaintiff's HSBC account on 4 May 2004. Prakash J held at [39]:

> The evidence adduced is sufficient for me to infer that the money received in the defendant's account is traceable to the money sent out of the plaintiff's HSBC account on 4 May 2004. Although the quantum of each sum is different, the amounts are very similar to each other, the difference being only 1.3%. The timing is also significant: the defendant received the money very shortly after the plaintiff's bank account was emptied. Although as the defendant submitted, it is not possible that the funds went straight from Mirren to Intertrade to the defendant, in view of the different banks and countries involved, it is possible to infer that Intertrade sent the money to the defendant knowing, or being assured, that it would shortly receive an equivalent amount from Mirren.

On the issue of knowing receipt, Prakash J at [51] held that:

> … there is sufficient evidence for me to infer that the defendant knew that this payment was unusual and that there was no good reason for that amount to be transferred to his Citibank account. … *I infer that he knew that the money emanated from a breach of duty. It would therefore be unconscionable for him to retain it*. [emphasis added]

6 However, at the time of the suit, the only creditor of the plaintiff was the UKIR. Gorecia had withdrawn his claim on 3 November 2007, which was prior to the trial. In the light of this, the court found that the purpose of the claim was to recover funds to pay the outstanding taxes. Therefore, Prakash J held at [71]:

> I am, accordingly, satisfied that this claim is an attempt to indirectly enforce the revenue laws of the UK. Therefore, I cannot assist the plaintiff.

7 The plaintiff's subsequent appeal was dismissed. However, the Court of Appeal did not vary or interfere with the express findings made by Prakash J that the defendant had knowingly received the traceable proceeds of the £500,000 sent out of the plaintiff's HSBC account. Following this, the plaintiff commenced proceedings in the UK on 26 January 2009 to recover the sum of US$878,469.35 from the defendant ("the UK Proceedings").

8 The applications and appeals made by the defendant in Summons No 1527 of 2009, Registrar's Appeals Nos 112 and 111 of 2009 are the following respectively:

(a) An order that the plaintiff and its liquidator be restrained from commencing or pursuing any legal action against the defendant in the United Kingdom or any other jurisdiction (also known as an anti-suit injunction) for matters or issues related to Suit No 612 of 2006.

(b) An appeal against the decision of the assistant registrar ("AR") allowing the plaintiff's application in Summons No 663 of 2009 to adduce documents obtained for Suit No 612 of 2006 in foreign proceedings.

(c) An appeal against the decision of the AR dismissing the defendant's application in Summons No 1158 of 2009 to stay proceedings in Summons No 663 of 2009 pending payment by the plaintiff to the defendant of the balance of the cost awarded by the Court of Appeal.

Summons No 1527 of 2009

9 This was an application by the defendant for an anti-suit injunction to restrain the plaintiff and its liquidator from pursuing any legal action against the defendant in other jurisdictions for matters relating to Suit No 612 of 2006. In particular, the defendant sought to restrain the plaintiff from continuing with the UK Proceedings.

The law governing anti-suit injunctions

10 The law relating to the granting of anti-suit injunctions is well settled. In *Bank of America National Trust & Savings Association v Djoni Widjaja* [1994] 2 SLR 816 ("*Bank of America*"), the Court of Appeal adopted the principles enunciated by the Privy Council in Société Nationale Industrielle Aerospatiale v Lee Kui Jak *[1987] 1 AC 871 ("Aerospatiale"). Those principles were summarised succinctly by Lord Goff of Chieveley at 892*:

> **First, the jurisdiction is to be exercised when the "ends of justice" require it**: see *Bushby v. Munday* (1821) 5 Madd. 297, 307, per Sir John Leach V.-C.); *Carron Iron Co. v. Maclaren* (1855) 5 H.L. Cas. 416, 453, per Lord St. Leonards (in a dissenting speech, the force of which was however recognised by Lord Brougham, at p. 459). This fundamental principle has been reasserted in recent years, notably by Lord Scarman in *Castanho v. Brown & Root (U.K.) Ltd*. [1981] A.C. 557 and by Lord Diplock in *British Airways Board v. Laker Airways Ltd*. [1985] A.C. 58, 81 . Second, where the court decides to grant an injunction restraining proceedings in a foreign court, its order is directed not against the foreign court but against the parties so proceeding or threatening to proceed.
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> … Third, it follows that an injunction will only be issued restraining a party who is amenable to the jurisdiction of the court, against whom an injunction will be an effective remedy: see, e.g. *In re North Carolina Estate Co. Ltd*. (1889) 5 T.L.R. 328, per Chitty J. **Fourth, it has been emphasised on many occasions that, since such an order indirectly affects the foreign court, the jurisdiction is one which must be exercised with caution**: see e.g., *Cohen v. Rothfield* [1919] 1 K.B. 410, 413 , per Scrutton L.J., and, in more recent times, *Castanho v. Brown & Root (U.K.) Ltd*. [1981] A.C. 557, 573 , per Lord Scarman.
>
> [emphasis in bold]

11 In *Bank of America* ([10] *supra*), LP Thean JA at 822 held that:

> … if in this case the court of Singapore is the natural forum for the determination of the dispute, an injunction should only be granted if the pursuit of the proceedings by the respondent in Indonesia would be vexatious or oppressive and, in this connection, account must be taken of any injustice to the appellants if the respondent was allowed to pursue those proceedings and also of any injustice to the respondent if he was not allowed to do so. …

12 The Court of Appeal again applied those principles in *Koh Kay Yew v Inno-Pacific Holdings Ltd* [1997] 3 SLR 121 ("*Koh Kay Yew*"). Most recently, the Court of Appeal in *John Reginald Stott Kirkham v Trane US Inc* [2009] SGCA 32 affirmed the same principles. Therefore, the issue whether an anti-suit injunction ought to be ordered cannot be determined solely on grounds that the plaintiff had commenced proceedings in more than one jurisdiction. Instead the court is entitled to look at all the relevant factors.

The decision

13 The defendant's application for an anti-suit injunction against the plaintiff was clearly unmeritorious. The UK proceedings are neither vexatious nor oppressive, and injustice would be suffered by the plaintiff if it was not allowed to pursue proceedings in the UK.

14 Crucially, the plaintiff's claim in the Singapore Action was dismissed on the basis that it was an indirect enforcement of a foreign revenue law, and not on the grounds that the defendant was not liable for knowing receipt. The issue of enforcing foreign revenue law would not arise in the UK proceedings. It would be absurd for a Singapore Court, having declined to grant judgment (in a case of proven knowing receipt) on the ground that so to do would be an indirect enforcement of UK revenue law, to then step beyond that to restrain proceedings in the UK for recovery of the same money knowingly received. It cannot be said that this was a "case of vexation and oppression" (*per* Lawrence Collins J in *Masri v Consolidated Contractors International Company SAL* [2008] 2 Lloyd's Rep 301 [95]). There was no real prejudice to the defendant given that the court has already found that the defendant knew that the money emanated from a breach of duty and that it would be unconscionable for him to retain it (see above at [5]). In *Koh Kay Yew*, the Court of Appeal at [23] stated:

> A defendant, if he had truly done some wrong to a plaintiff, should bear the consequence of having to defend the action, wherever that place of litigation might be.

15 In contrast, potential injustice to the plaintiff was obvious. An anti-suit injunction would be directed towards preventing the plaintiff from pursuing its claim over the property, despite the court's finding in its favour with respect to the knowing receipt.

16 I was mindful of the caution by the Court of Appeal in *Koh Kay Yew* at [25]:

> … it must be only in the clearest of circumstances that the foreign proceedings are vexatious or oppressive before an injunction can be granted and justified. Otherwise, any injunction so granted would not only be against Lord Goff's principles [in *Aerospatiale*] but also a deprivation of the rights of a party to sue in the jurisdiction which is most convenient for him and which he is clearly entitled to.

17 For the foregoing reasons, I dismissed the defendant's application with costs.

Registrar's Appeal No 112 of 2009

18 This was an appeal by the defendant against the decision of AR Lim Jian Yi on 2 April 2009 in Summons No 663 of 2009. The AR allowed the plaintiff's application for leave to adduce, in the UK Proceedings, certain documents and affidavits that were disclosed in the Singapore Action.

19 The documents sought to be adduced were:

(a) The consolidated statements and screen shots of the defendant's Citibank account that were disclosed by Citibank Singapore Limited to the plaintiff pursuant to an order of court dated 3 November 2006 ("the Citibank documents").

(b) The defendant's 1st, 2nd, 8th, and 10th affidavits, and the defendant's affidavit of evidence-in-chief (collectively "the affidavits").

20 The Citibank documents showed that a sum of US$878.479.35 was remitted to the defendant's Citibank account on 5 May 2004. The defendant submitted that the Citibank documents were tainted because they were obtained with the assistance of inadmissible documents. However, the Citibank documents did not form part of the inadmissible documents and had been allowed at trial in the Singapore Action.

21 The defendant's affidavits contained the defendant's statements on financial information relating to the plaintiff. The affidavits also included the defendant's assertions regarding his domicile. In support of his argument that the Singapore courts had no jurisdiction to hear the plaintiff's claim in the Singapore Action, the defendant had claimed that he was domiciled in UK. Quite understandably, the plaintiff sought leave to adduce the affidavits because, in seeking to challenge the jurisdiction of the UK courts, the defendant maintained in the UK Proceedings that he was domiciled in Kenya.

The law governing the adduction of documents obtained under compulsion of court process in other proceedings

22 It is settled law that where a party to litigation has been ordered to give discovery, the discovering party may not use the discovered documents and the information obtained therefrom for a purpose other than pursuing the action in respect of which discovery is obtained. This rule is commonly termed the "*Riddick* principle" after the English Court of Appeal decision in *Riddick v Thames Board Mills Ltd* [1977] QB 881 ("*Riddick*"). The *Riddick* principle has been applied in Singapore on numerous occasions, *eg*, in *Beckkett Pte Ltd v Deutsche Bank AG* [2005] 3 SLR 555 ("*Beckkett*").

23 Technically, an affidavit, being a document voluntarily disclosed in legal proceedings, does not fall within the *Riddick* principle. In *Hong Lam Marine Pte Ltd v Koh Chye Heng* [1998] 3 SLR 833, the Court of Appeal held that where documents were voluntarily disclosed in legal proceedings, the privacy of the documents was destroyed by the party which chose to produce those documents, and such documents were not subject to the *Riddick* principle. However, in the present case, an application was made by the plaintiff because there were references to the Citibank documents elsewhere in the affidavits. As noted above in [22], the *Riddick* principle applies likewise to information derived from the discovered documents.

24 However, the *Riddick* principle is not absolute. The Court of Appeal in *Beckkett* at [16] and [19] held that:

> 16 … Where there are exceptional circumstances, and no injustice will be caused to the party giving discovery, the court will release the party obtaining discovery from the implied undertaking. …

> 19 … It seems to us that, generally, before leave to be released from the implied undertaking is given, two conditions must be satisfied. First, cogent and persuasive reasons must be furnished for the request. Second, it must not give rise to any injustice or prejudice to the party who had given discovery.

Whether there are cogent reasons for departing from the Riddick principle

25 The Citibank documents and affidavits were relevant given the commonality of parties and causes of action in the UK Proceedings and the Singapore Action. In particular, the Citibank documents were relevant to the UK Proceedings to show that a sum of US$878.479.35 was paid into the defendant's Citibank account. The defendant's affidavits were relevant for the financial information contained therein and to show inconsistencies between the affidavits and the defendant's statements in the UK Proceedings regarding his domicile.

26 The defendant sought to rely on *Halcon International Inc v The Shell Transport and Trading Co* [1979] RPC 97 ("*Halcon*") and *Bayer AG v Winter & Ors (No 2)* [1986] ECC 465 ("*Bayer*") for the proposition that the court would not allow the use of documents obtained under compulsion for the purposes of litigation in separate foreign proceedings. In *Halcon*, the plaintiff applied for an injunction against the defendant to restrain it from infringing UK letters patent. Contemporaneously, the defendant brought proceedings against the plaintiff in the Netherlands Patent Office opposing applications made by the plaintiff for patents in the Netherlands. The subject matter was the same in both proceedings. The plaintiff applied for documents discovered in the English action to be made available in the Dutch proceedings. The English Court of Appeal dismissed the plaintiff's application and appeal. However, it must be observed that in *Halcon* the court's decision was influenced by the unique provisions of Dutch procedural law. In particular, the court was concerned that under Dutch proceedings, highly confidential research documents relating to patents, which were disclosed in the English action, would be made available to the public without restriction. At 119, Lord Justice Megaw held:

> I now come to the provisions of Dutch procedural law, which to my mind are of great relevance in this case and which produce a factual situation (for foreign law in this court is a question of fact) which makes it a case that falls to be decided upon its own facts rather than by virtue of any development of some special principle of law such as we were invited by the parties to undertake.

27 The *Halcon* case therefore was decided on its own special facts. As acknowledged in *Bayer* by Justice Hoffmann in the English High Court at [7]:

> [The unique situation in *Halcon*] seems to me very different from [the case in *Bayer*] in which the only prejudice which the defendants say they will suffer from the disclosure of the information to the foreign court is that the proceedings against them may be successful. The fact that this court may lose exclusive control, over the documents once they come into the hands of the foreign court is therefore less significant than it would be if the documents contained sensitive information.

The defendant contended that *Bayer* could be distinguished from the case before me because there, the English High Court, in granting leave, dealt with the narrower question whether information discovered in the English courts should be made available in ancillary foreign proceedings. The defendant contended that the English High Court did not rule on the question whether information discovered should be disclosed in separate foreign proceedings, as in the present case. I was not persuaded.

28 I preferred the reasoning of Lord Justice Waller in *Halcon* at 124:

> Where the parties are the same and the issues are the same as in the action where discovery took place, I would not myself regard the absence of discovery procedures in the foreign country as a sufficient reason in itself for preventing the use of the documents. If that were all, it would be difficult to characterise such a use as improper. But it is essential to be satisfied that such use would be fair.

In my view, Waller LJ implicitly accepted that the fact that the parties and issues are the same may constitute cogent and persuasive reason for the release of the implied undertaking. I noted that a similar view was expressed by AR Teo Guan Siew in *Ser Kim Koi v William Merrell Fulton* [2009] SGHC 5 at [26] where he opined:

> In my view, *where an application is made for leave of court to use documents disclosed in one suit for the purposes of another pending suit, if the applicant is able to show that the disclosed documents are relevant and necessary to the second suit such that they ought to be disclosed in the proceedings therein, that can constitute cogent and persuasive reasons for the release of the implied undertaking*. If in addition the party who had given discovery in the first suit is also a party to the second suit, and on whom the obligation to disclose those same documents in the second suit falls, he cannot be said to suffer any prejudice or injustice if the implied undertaking is released. Such a situation would, in my opinion, constitute exceptional circumstances for the *Riddick* principle to be relaxed or modified. [emphasis added]

I agree.

Whether leave to adduce documents would amount to an indirect enforcement of foreign revenue law

29 The main contention by the defendant was that the plaintiff's application was an indirect enforcement of UK revenue law. In Dicey, Morris and Collins on *The Conflict of Laws*, vol 1 (Sweet & Maxwell, 14th Ed, 2006) ("Dicey"), the rule against enforcing foreign revenue law ("Revenue rule") is stated at para 5R-019 as follows:

> **Rule 3 – English courts have no jurisdiction to entertain an action**:
>
> (1) for the enforcement, either directly or indirectly, of a penal, revenue or other public law of a foreign State; or
>
> (2) founded upon an act of state.

Dicey goes on to explain at para 5-025 that:

> Indirect enforcement occurs where the foreign State (or its nominee) in form seeks a remedy, not based on the foreign rule in question, but which in substance is designed to give it extra-territorial effect; or where a private party raises a defence based on the foreign law in order to vindicate or assert the right of the foreign State.

30 The Revenue rule was recognised and applied in the Singapore Action by Prakash J at [71].

31 The defendant submitted that the court would be indirectly enforcing UK revenue law if it permitted the plaintiff to adduce documents discovered in the Singapore Action in the UK

proceedings. However, a distinction should be made between *enforcing* foreign revenue law and *assisting* the foreign court. In the latter case, any enforcement of revenue law would only be in the foreign country itself. In *In re State of Norway's Application* [1990] 1 AC 723 ("*In re State of Norway*") Lord Goff *of Chieveley* held at 809:

> It is of importance to observe that that rule is limited to cases of direct or indirect enforcement in this country of the revenue laws of a foreign state. It is plain that the present case is not concerned with the direct enforcement of the revenue laws of the State of Norway. Is it concerned with their indirect enforcement? I do not think so. It is stated in *Dicey & Morris*, at p. 103, that indirect enforcement occurs (1) where the foreign state (or its nominee) in form seeks a remedy which in substance is designed to give the foreign law extraterritorial effect, or (2) where a private party raises a defence based on the foreign law in order to vindicate or assert the right of the foreign state. I have been unable to discover any case of indirect enforcement which goes beyond these two propositions. Even so, since there is no authority directly in point to guide me, I have to consider whether a case such as the present should nevertheless be held to fall foul of the rule. *For my part, I cannot see that it should. I cannot see any extraterritorial exercise of sovereign authority in seeking the assistance of the courts of this country in obtaining evidence which will be used for the enforcement of the revenue laws of Norway in Norway itself*. [emphasis added]

32 In that case, the House of Lords held that the State of Norway's application requesting the oral examination of two witnesses residing in England did not fall foul of the Revenue rule. As observed in *Wahr-Hansen v Compass Trust Co Ltd*, 10 ITELR 580 at [69]:

> Clearly, the controlling factor in [*In re State of Norway*] was the fact that the evidence would be used in Norway itself; its purpose was to assist in the enforcement of the revenue laws of Norway, *but only in that country*. [emphasis added]

33 The circumstances in the appeal before me were distinguishable from those of the earlier Singapore Action. In the Singapore Action, the court was asked to enforce a claim to recover funds which would be used to repay the UKIR. Such circumstances fell within the ambit of "indirect enforcement". In the present case, however, the court was asked to permit the plaintiff to adduce documents in its UK proceedings. While that would assist the plaintiff in the UK proceedings, there was no enforcement in Singapore of UK revenue law. The decision of the High Court in the Singapore Action should not be read as precluding "assistance" as distinct from "enforcement". In her judgment, Prakash J referred to in *In Re Tucker (Jersey)* [2000] BPIR 876. In that case, a trustee in bankruptcy applied to the Jersey court for assistance in holding private examination of a Jersey resident. The Royal Court of Jersey declined, holding that that amounted to an indirect enforcement of foreign revenue laws. In referring to *In Re Tucker (Jersey)*, Prakash J, in my view, merely sought support for her holding that the Singapore court would not indirectly enforce foreign revenue law. The learned judge was not endorsing the decision in *In Re Tucker (Jersey)* on the particular facts of that case which were quite distinct from those before her. If she was, I would respectfully differ as I am satisfied that on the weight of the authorities, a distinction ought to be made between assisting a foreign court and enforcing a foreign revenue claim.

The decision

34 In the light of the relevance of the Citibank documents and affidavits to the UK Proceedings which could be given without injustice or prejudice to the defendant, and the distinction drawn between enforcement and mere assistance, I dismissed the defendant's appeal with costs.

Registrar's Appeal No 111 of 2009

35 This was an appeal by the defendant against the decision of the AR on 2 April 2009 in Summons No 1158 of 2009. The AR had dismissed the defendant's application to stay proceedings in Summons No 663 of 2009 pending payment of the balance of the agreed costs of appeal amounting to $24,110.80 or, in the alternative, for the liquidator to be personally liable for legal costs.

The law on the inherent jurisdiction of the court to grant a stay of proceedings

36 The law relating to the inherent jurisdiction of the court to grant a stay of proceedings is set out in *Roberto Building Material Pte Ltd v Oversea-Chinese Banking Corp Ltd* [2003] 2 SLR 353 ("*Roberto*"). At [17] the Court of Appeal held that:

> Accordingly, **this inherent jurisdiction should only be invoked in exceptional circumstances where there is a clear need for it and the justice of the case so demands**. The circumstances must be special. The costs due to the successful party in the court below, unless there is an order for a stay of execution, are a debt which is recoverable under the normal enforcement process. Ordinarily, this would have nothing to do with the appeal which is pending. It may well be true that if the successful party were to seek execution by bankruptcy proceedings, he could encounter some problems in view of the fact that the case is under appeal. But that is not the only manner of execution. In any event, a right of appeal should not be curtailed by considerations which are extraneous to the appeal. The appellate court should not be used as a means to enable the respondent to obtain payment of his taxed costs. The appeal, if it proceeds, would only cause prejudice to the respondent as to the costs of the appeal, as he would have to incur the expenses of defending the judgment. To that extent, he is entitled to be secured. [emphasis in bold]

37 In *Roberto*, the court held that although the appellants had not paid the taxed costs of the trial to the respondents, those circumstances were not special enough to warrant a stay of proceedings. In *Societe Eram Shipping Co Ltd v Compagnie Internationale de Navigation* [2001] EWCA Civ 568, the English Court of Appeal held that the inability to pay costs is not a proper ground on which to grant a stay of proceedings.

Whether there are exceptional circumstances for the invoking of inherent jurisdiction

38 The defendant contended that because of the insolvent status of the plaintiff, the costs owed to the defendant were not recoverable under the normal enforcement process. Therefore the circumstances were exceptional.

39 I did not think so. Moreover, the defendant was still holding on to money which properly belonged to the plaintiff. I therefore agreed with the AR's decision not to stay proceedings.

Whether the liquidator should be personally liable for costs

40 In his written submissions, the defendant contended that, in the alternative, the liquidator should be made personally liable for the defendant's legal costs. This point was not pursued with much conviction at trial.

41 In any event, I found that there was no justification for such an order. I could not see how the defendant was assisted by *Ho Wing On Christopher v ECRC Land Pte Ltd (in liquidation)* [2006] 4 SLR 817 ("*Ho Wing On*"). In that case, the liquidators commenced a suit against the

appellants in the respondent company's name. The claim was eventually dismissed and the respondent was ordered to pay costs. The appellants then commenced proceedings to recover their unpaid legal costs from the liquidators. The Court of Appeal held that the liquidators had breached the estate costs rule by making the relevant payments to the respondent company's solicitors in priority to the appellants. The court took the view that because the liquidators were responsible for the respondent company's inability to pay the appellant's costs, they were personally liable for the appellant's costs.

42 In the case before me, I was mindful of the fact that the plaintiff was pursuing legal action to recover the plaintiff's moneys knowingly received by the defendant, and that there was a real possibility of satisfying the defendant's costs. This was in contrast with *Ho Wing On* where the court was influenced by a "real and tangible justification for deterring insolvent companies from commencing litigation without any real possibility of satisfying a successful defendant's costs": see [75].

43 I therefore dismissed the appeal with costs.