KETUA PENGARAH JABATAN PENYIARAN MALAYSIA & ANOR

v.

VERTEX BLUE CONSULTING SDN BHD

Federal Court, Putrajaya
Abu Bakar Jais PCA, Hasnah Mohammed Hashim CJM, Vazeer Alam Mydin Meera FCJ
[Civil Appeal No: 01(f)-4-02-2025(W)]
12 November 2025

Civil Procedure: *Judgment and orders — Unless order — Effect of — Whether trial Judge bound by an unless order contained in order of Court pronounced by interlocutory proceeding Judge when unless order had similar effect as though a summary judgment or judgment in default was entered against defendants wherein it failed to comply with O 73 Rules of Court 2012 and s 42 Government Proceedings Act 1956*

In the present case, judgment was entered for the plaintiff/respondent at the High Court ("HC"); the Court of Appeal ("COA") subsequently dismissed the appellants'/defendants' appeal and affirmed the HC's decision. The Federal Court subsequently granted the defendants leave to appeal on the following question of law: whether the trial Judge was bound by an unless order contained in an order of Court ("Order") pronounced by the interlocutory proceeding Judge when the unless order had the similar effect as though a summary judgment or judgment in default was entered against the defendants wherein it failed to comply with O 73 of the Rules of Court 2012 ("ROC") and s 42 of the Government Proceedings Act 1956. Thus, the crux of the appeal concerned a narrow issue, i.e., whether the non-compliance of the Order by the defendants could mean that a final judgment could be entered against them as Government parties despite the aforementioned legislation.

Held (allowing the appeal by way of majority decision):

Per Vazeer Alam Mydin Meera FCJ (Majority):

(1) A default judgment in the form of a declaration typically could not be made without the Court considering the merits of the case. Unlike claims for a fixed amount of money, where default was an admission of the debt, claims for non-monetary relief, like declarations, were discretionary. Courts generally did not grant declaratory relief in default without an evidential basis and argument to support the claim, as doing so without the Court's sanction and review of the facts might be seen as a denial of procedural fairness. In essence, the Court acted as a safeguard when a claimant sought a declaration via default or summary judgment, requiring a substantive review to ensure the relief was appropriate and just, rather than simply rubber-stamping the request.

Declarations were a form of specific relief, which was subject to the Court's discretion, even if the defendant had not responded to the claim. A standard default judgment was not considered a judgment "on the merits" in the sense of a full trial. Thus, for declaratory relief, the Court would require some level of scrutiny of the merits of the claim before making the order. The claimant must provide evidence of the factual matrix to enable a Judge to exercise his discretion properly. The Court needed to be satisfied that the claimant's case was a fit one for granting the specific relief sought. If a default judgment was entered irregularly (without following proper procedure), it could be set aside as a matter of right. On the facts of the present case, the default judgment containing the declaratory order was made without the benefit of any evidence on which the HC could have properly exercised its discretion. Hence, applying the *dicta* of this Court in *Amalan Tepat Sdn Bhd v. Panflex Sdn Bhd*, the default judgment granted summarily was not a proper judgment on its merits. Therefore, to that extent, the COA and HC had fallen into error. The judgment of the HC was irregular, and the COA's affirmation of that judgment was wrong in law. In the circumstances, in the absence of any supporting evidence, the trial Judge was not bound by the terms of the Order to grant default judgment on the basis of mere non-compliance of the Order. The leave question was, thus, answered in the negative. (paras 17-23)

Per Abu Bakar Jais PCA (Dissenting):

(2) The Order could not, on the facts, be equated to a summary judgment as submitted by the defendants. The Order made had a clear distinction compared to a summary judgment. The Order was made as preliminary direction for the disclosure of certain documents before the full trial, while a summary judgment was granted by evaluating the pleadings to conclude there was no defence to the claim filed. The Order was made even before the need to evaluate the defence. The non-compliance with the terms of the Order by the defendants resulted in judgment being entered against them. It did not require the evaluation of the defence. It could not be correct law to say the defendants were absolved from liability because they were Government entities and, as such, no judgment could be entered against them, as it amounted to summary judgment against the Government in this case. The judgment must be entered against the defendants as they had simply disobeyed the Order, which included the unless order. It had no nexus with a summary judgment. The action of the defendants in not complying with the terms of the Order was quite clear. If the unless order was not given effect, the defendants could not only avoid the obligation to disclose the documents but also ignore the directions of the Courts. This, among others, would directly hamper and frustrate the ability of Courts to issue directions to properly manage the case before the trial as provided by O 34 of the ROC for pre-trial case management. It was common knowledge that the Courts had increasing cases for disposal, and this provision was a fundamental tool for the Courts in managing these cases before trial. This included giving pre-trial directions such as in the present appeal for the production of the documents by the defendants as required by the Order. Further, there could be no doubt that

the Order was a binding Court order issued in the ordinary course of Court proceedings. The Order must thus be obeyed and any judgment or ruling to the contrary would not only invite disrespect to directions issued by the Courts by such orders, but also give the damaging impression that there were instances that Court orders need not be complied with. (paras 53-56)

(3) Hence, the question of law would be answered as follows: the trial Judge was bound by the unless order pronounced by the interlocutory proceeding Judge, but the unless order did not have a similar effect as though a summary judgment or judgment in default was entered against the defendants. (para 61)

Case(s) referred to:

Amalan Tepat Sdn Bhd v. Panflex Sdn Bhd [2012] 1 MLRA 475 (folld)

Ann Joo Steel Berhad v. Pengarah Tanah Dan Galian Negeri Pulau Pinang & Anor And Another Appeal [2019] 5 MLRA 553 (refd)

Gan Boon Kyee v. Yap Hong Sin & Anor [1997] 1 MLRA 388 (refd)

Hup Soon Omnibus Co Sdn Bhd & Anor v. Lim Chee @ Lam Kum Chee [2017] MLRAU 515 (refd)

Patten v. Burke Publishing Co [1991] 2 All ER 821 (refd)

Syed Omar Syed Mohamed v. Perbadanan Nasional Berhad [2013] 1 MLRA 181 (refd)

Wallersteiner v. Moir [1974] 3 All ER 217; [1974] 1 WLR 991 (refd)

Legislation referred to:

Government Proceedings Act 1956, s 42

Rules of Court 2012, O 14 r 1, O 24, O 34, O 73 r 5(1), O 81 r 1

Counsel:

For the appellants: Nur Irmawatie Daud (Saravanan Kuppusamy with her); AG's Chambers

For the respondent: Ariff Rozhan (Christopher Arun Francis, Sylvie Tan & Nurul Farhani Kamarudin with him); M/s Ariff Rozhan & Co

[For the Court of Appeal judgment, please refer to *Ketua Pengarah Jabatan Penyiaran Malaysia & Anor v. Vertex Blue Consulting Sdn Bhd* [2025] 5 MLRA 20]

JUDGMENT

Vazeer Alam Mydin Meera FCJ (Majority):

Introduction

[1] The Plaintiff/Respondent, Vertex Blue Consulting Sdn Bhd, is in the business of providing advertising and media services. The Plaintiff was the successful bidder in a tender exercise conducted by RTM to appoint an independent sales agent to carry out the sales of the Advertising Time Slots for its TV2, TVOkey and 33 radio stations ("Tender Exercise"). RTM comes under the purview of the Defendants/Appellants.

[2] The parties then entered into a Concession Agreement dated 4 July 2017 for a period of 5 years ("Concession Agreement").

[3] The Plaintiff claimed that the Defendants, in breach of contract, had wrongly terminated the Concession Agreement. Thus, the Plaintiff filed a suit in the High Court seeking, *inter alia*, a declaration that the Concession Agreement was wrongly terminated, and claiming damages based on losses it had allegedly suffered.

[4] The Defendants denied breach of contract and alleged that it was the Plaintiff who had in fact breached the Concession Agreement by failing to pay the contractually guaranteed minimum sum. Thus, the Defendants contended that the termination of the agreement was lawful, and counterclaimed the sum of RM43,482,881.27 as damages.

The High Court Discovery Orders

[5] At the High Court, the Plaintiff filed two applications under the Rules of Court 2012 for discovery of documents, which may be categorised as:

(a) a General Discovery Application; and

(b) a Specific Discovery Application for six categories of documents.

[6] A Consent Order for general discovery was recorded on 15 October 2019, and the specific discovery application was granted on 4 February 2020.

[7] The Defendants cooperated and gave discovery of the documents sought. The Defendants in fact arranged for the Plaintiff to be present at the RTM premises for the purpose of inspection and production of the documents sought. However, the Plaintiff complained that the Defendants' compliance with both orders was incomplete and unsatisfactory. Consequently, the Plaintiff filed a Further Discovery Application on 8 July 2021, seeking additional documents from the six categories specified earlier. This application was granted on 12 October 2021 ('Order').

[8] In the Order, para 6 was an unless order ('the Unless Order') which stated as follows:

> "(6) that unless the Defendants comply with the Orders made herein, the Defendants' Defence and Counterclaim in this Suit dated 28 February 2019 and filed herein, shall stand struck out without further Order of Court and the action herein shall be adjudged in the Plaintiff's favour with the requisite Orders and/or Judgment entered as prayed for by the Plaintiff."

[9] Subsequently, although further documents were provided on 19 November 2021, the Plaintiff contended that the Defendants were still in breach of the Order by failing to fully comply with its terms. Thus, on the first day of trial, the Plaintiff sought an adjournment, and when it was not allowed by the Court,

counsel then raised the issue of the Defendants' non-compliance of the Order and sought default judgment as per the terms of para (6) of the Order.

[10] Having heard oral submissions of parties on 17 November 2022, the learned High Court Judge (HCJ) ordered as follows:

(i) A declaration that the termination of the Concession Agreement dated 4 July 2017 via the Termination Notice dated 10 December 2018 is unlawful;

(ii) General and/or special damages to be assessed by the court;

(iii) Defendants' Amended Defence and Defendants' Counterclaim dated 27 October 2022 be struck out; and

(iv) Costs of RM15,000.00 to be paid by the Defendants to the Plaintiff.

[11] The learned HCJ, made the following findings:

(i) The Plaintiff requested the Court to adjourn the trial to allow parties to further discuss and identify the documents that remain to be furnished. However, the HCJ denied this request, noting that the case was filed in 2019 and more than three years have passed without a resolution. The Plaintiff was directed to call its first witness. However, counsel for the Plaintiff submitted that the Defendants had failed to fully comply with the Order, and as such their defence and counterclaim must be struck out.

(ii) As specified in para 6 of the Order, non-compliance by the Defendants will result in their defence and counterclaim being struck out without further order of the Court. In such an event, judgment will be entered in favour of the Plaintiff in accordance with the Plaintiff's Statement of Claim.

(iii) The Plaintiff also asserted that it had sent three letters to the Defendants, informing them of their failure to comply with parts of the Order. Despite these communications, the Defendants had not responded. The Defendants have acknowledged their non-compliance and the resulting delay. Their failure to comply with the Order leads to the automatic striking out of their defence and counterclaim.

(iv) The HCJ, guided by the Federal Court's decision in *Syed Omar Syed Mohamed v. Perbadanan Nasional Berhad* [2013] 1 MLRA 181, reaffirmed that a peremptory order must be strictly adhered to, and non-compliance will result in the striking out of the action.

At The Court of Appeal

[12] Dissatisfied with the decision of the High Court, the Defendants appealed to the Court of Appeal ("COA").

[13] On 20 June 2024, the COA dismissed the appeal and affirmed the decision of the learned HCJ dated 17 November 2022.

[14] In dismissing the Defendants/Appellants' appeal, the COA made the following findings:

(i) The Defendants' grounds of appeal focused wrongly on the discovery process rather than the core issue, that their defence and counterclaim had been struck out due to non-compliance with the Order;

(ii) The High Court's judgment was correctly based on para 6 of the Order, which was a "self-executing" order, meaning that upon non-compliance, the defendants' defence and counterclaim would be struck out automatically and judgment would be entered for the plaintiff;

(iii) The learned HCJ acted within his discretion in refusing to adjourn the trial, and this could not be a ground for setting aside the judgment;

(iv) The COA emphasized that all court orders even if irregular or inconvenient must be complied with unless set aside or varied. Ignoring them undermines the authority of the judiciary;

(v) The Defendants failed to legally challenge the validity or effect of the "self-executing" Unless Order, and thus, the appeal was found to be without merit; and

(vi) The High Court Judge correctly applied the law in striking out the defence and entering judgment for the plaintiff, and the appeal was accordingly dismissed.

Federal Court Appeal

[15] The Federal Court granted leave to the Appellants/Defendants to appeal on one question of law, namely:

> Whether the trial judge was bound by the unless order pronounced by the Interlocutory Proceeding Judge when the unless order has the similar effect as though a Summary Judgment or Judgment in Default was entered against the Appellants wherein it fails to comply with the provision of O 73 of the Rules of Court 2012 and s 42 of the Government Proceedings Act 1956.

[16] The Court of Appeal had, in its judgment, stated that the High Court had correctly applied the law in entering default judgment for the Plaintiff, which was primarily a declaration to the effect that the termination of the Concession Agreement was unlawful. I am, with the greatest of respect, unable to accept that finding of the Court of Appeal as being correct in law.

[17] A default judgment in the form of a declaration typically cannot be made without the court considering the merits of the case. Unlike claims for a fixed amount of money, where default is an admission of the debt, claims for non-monetary relief like declarations are discretionary. Courts generally do not grant declaratory relief in default without an evidential basis and argument to support the claim, as doing so without the court's sanction and review of the facts may be seen as a denial of procedural fairness. In essence, the court acts as a safeguard when a claimant seeks a declaration via default or summary judgment, requiring a substantive review to ensure the relief is appropriate and just, rather than simply rubber-stamping the request.

[18] Declarations are a form of specific relief, which is subject to the court's discretion, even if the defendant has not responded to the claim. A standard default judgment is not considered a judgment "on the merits" in the sense of a full trial. Thus, for declaratory relief, the court will require some level of scrutiny of the merits of the claim before making the order. The claimant must provide evidence of the factual matrix to enable a judge to exercise his discretion properly. The court needs to be satisfied that the claimant's case is a fit one for granting the specific relief sought. If a default judgment is entered irregularly (without following proper procedure), it can be set aside as a matter of right.

[19] This principle was reiterated by the Federal Court in *Amalan Tepat Sdn Bhd v. Panflex Sdn Bhd* [2012] 1 MLRA 475. In that case, the Federal Court was posed the following question of law:

> 'Whether an application for a declaratory judgment in default of defence pursuant to O 19 r 7(1) of the Rules of the High Court 1980 must be supported by evidence of the factual matrix to enable a judge to exercise his discretion in granting or refusing the declaratory relief prayed for?'

[20] In answering that question, Richard Malanjum CJSS (as he then was), in speaking for the Court, held as follows:

> As a declaration was the main prayer of the Respondent it is a rule of practice that before such relief is granted there must be evidential basis to do so. Courts are very slow in granting declaratory prayer without any evidence and argument advanced.
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> In *Gan Boon Kyee v. Yap Hong Sin & Anor* [1997] 1 MLRA 388, the Court of Appeal said this at p 389:

> "I have read the judgment of the learned judicial commissioner with great care, bearing in mind that **this is not the case of an ordinary judgment in default but one of declaratory relief**. As observed by Zamir & Woolf on *The Declaratory Judgment* (2nd Edn) at p 264:
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> > "... Courts will generally be reluctant to grant a declaration as part of a default judgment in the absence of any evidence and argument. Before the court grants a declaration, it wants to be sure, as in the case of an injunction, that it is appropriate to grant that relief."' per Gopal Sri Ram JCA (as he then was).

We are inclined to agree with the *dicta* in the above mentioned case.

In fact it is a rule of practice that 'the court does not make declarations of right either on admissions or in default of pleading' and the rule is quite entrenched as observed in the case of *Patten v. Burke Publishing Co* [1991] 2 All ER 821. This is what Millet J. said:

> "It is not the normal practice of this division to make a declaration when giving judgment by consent or without a trial as in the case of a judgment in default of defence or of notice of intention to defend the proceedings. That is a practice of very long standing. It was confirmed in *Wallersteiner v. Moir* [1974] 3 All ER 217; [1974] 1 WLR 991. In that case the claim, which was contained in a counterclaim, sought a declaration that the plaintiff had been guilty of fraud, misfeasance and breach of trust. The judge granted the declaration in default of the defence and the Court of Appeal struck it out. Buckley LJ said ([1974] 3 All ER 217 at p 251, [1974] 1 WLR 991 at p 1029):
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> > 'It has always been my experience, and I believe it to be a practice of very long standing, that the court does not make declarations of right either on admissions or in default of pleading. A statement on this subject of respectable antiquity is to be found in *Williams v. Powell* [1894] WN 141, where Kekewich J, whose views on the practice of the Chancery Division have always been regarded with much respect, said that a declaration by the court was a judicial act, and ought not to be made on admissions of the parties or on consent, but only if the court was satisfied by evidence. If declarations ought not to be made on admissions or by consent, *a fortiori* they should not be made in default of defence, and a *fortissimo*, if I may be allowed the expression, not where the declaration is that the defendant in default of defence has acted fraudulently. Where relief is to be granted without trial, whether on admissions or by agreement or in default of pleading, and it is necessary to make clear on what footing the relief is to be granted, the right course, in my opinion, is not to make a declaration but to state that the relief shall be on such and such a footing without any declaration to the effect that that footing in fact reflects the legal situation.'"

Scarman LJ gave judgment to the same effect but in somewhat different terms. He said ([1974] 3 All ER 217 at p 253, [1974] 1 WLR 991 at 1030):

> There was of course a strong objection to the inclusion of the declaration sought in that case. Even after trial it is not the normal practice of the court to make a declaration that the defendant had been guilty of fraud or negligence. Justice can be done to the plaintiff by awarding him damages. If he wishes to parade the basis upon which damages have been awarded to him, he has a judgment which he can produce. The judgment will contain the findings of fraud or negligence upon the basis of which the damages have been awarded, and that should be sufficient for the plaintiff's purpose. But in the absence of a judgment reached after hearing evidence a declaration can be based only on unproved allegations. The court ought not to declare as fact that which might not have proved to be such had the facts been investigated. Quite apart from this, however, it is clear from *Wallersteiner v. Moir* that the rule is a rule of practice only. It is not a rule of law. It is a salutary rule and should normally be followed, but it should be followed only where the claimant can obtain the fullest justice to which he is entitled without such a declaration.
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> [Emphasis Added]

[21] Now, it is very clear that in the present case, the default judgment containing the declaratory order was made without the benefit of any evidence on which the High Court could have properly exercised its discretion. Hence, applying the *dicta* of this Court in *Amalan Tepat Sdn Bhd v. Panflex Sdn Bhd*, I am of the considered view that the default judgment granted summarily is not a proper judgment on its merits, as was noted by Scarman LJ in *Wallersteiner v. Moir* [1974] 3 All ER 217; [1974] 1 WLR 991:

> But in the absence of a judgment reached after hearing evidence a declaration can be based only on unproved allegations. The court ought not to declare as fact that which might not have proved to be such had the facts been investigated.

[22] Hence, to that extent, I find that the Court of Appeal and the High Court have fallen into error. The judgment of the High Court is irregular, and the Court of Appeal's affirmation of that judgment is wrong in law. In the circumstances, in the absence of any supporting evidence, the trial judge was not bound by the terms of the Order to grant default judgment on the basis of mere non-compliance of the Order.

[23] In the circumstances of the facts of this case, the leave question is answered in the negative.

[24] My learned sister, Hasnah Binti Mohammed Hashim, CJM, has read this judgment in draft and has agreed with the same.

[25] Wherefore, we would allow the appeal and set aside the judgment and order of both the High Court and the Court of Appeal. The matter is remitted to the High Court for trial.

Abu Bakar Jais PCA (Dissenting):

Introduction

[26] The appellants before us were the defendants at the High Court ("HC") and the respondent was the plaintiff at the same court. I shall hereafter refer to the said parties as they were at the HC. Judgment was entered for the plaintiff at the HC and the Court of Appeal ("COA") subsequently dismissed the defendants' appeal and affirmed the HC's decision. The Federal Court later gave leave to appeal for the defendants based on a single question of law that reads:

> Whether the trial judge was bound by the unless order pronounced by the Interlocutory Proceeding Judge when the unless order has the similar effect as though a Summary Judgment or Judgment in Default was entered against the Appellants wherein it fails to comply with the provision of O 73 of the Rules of Court 2012 and s 42 of the Government Proceedings Act 1956.

[27] Thus, the crux of the appeal before this court concerns a narrow issue, i.e., can the non-compliance of a court order by the defendants mean that a final judgment can be entered against them as Government parties despite certain legislation as seen above.

Brief Facts

[28] The facts pertaining to matters arising as the basis for the claim itself are far less important compared to what transpired in court between the parties in preparation for the trial at the HC. Nonetheless, for context, the minimum relevant facts arising before the statement of claim was filed by the plaintiff can be stated as follows.

[29] The plaintiff entered into a concession agreement titled "Perjanjian Perkhidmatan Penjualan Masa Siaran Iklan Radio Televisyen Malaysia (RTM) bagi tempoh Lima (5) Tahun" dated 4 July 2017 ("Concession Agreement"). The plaintiff claimed that the defendants breached this Concession Agreement and had wrongly terminated the same. The plaintiff therefore claimed damages against the defendants.

[30] On the other hand, the defendants claimed that it was the plaintiff that had breached the terms of the Concession Agreement and therefore the same was rightly terminated. Hence, the defendants counterclaimed against the plaintiff.

[31] The case was then fixed for full trial before the HC.

At The HC

[32] In view of the application of the plaintiff before full trial in an interlocutory proceeding, the HC through the learned judge hearing the same, had ordered and directed the defendants to disclose and provide the plaintiff with some documents that were or had been in the defendants' possession ("Order") but were not previously provided by the defendants in an earlier discovery order. The Order stipulates these documents must be provided within 14 days of the same.

[33] This Order also stated that if the defendants do not comply with the same, their amended defence and counterclaim will be struck out without further order of the court and the action herein will be adjudicated in favour of the plaintiff with the requisite orders and judgment entered in accordance with the plaintiff's statement of claim. In short, this is commonly referred to also as an 'unless order'.

[34] There is no evidence suggesting that the defendants had complied with this Order.

[35] Instead, the defendants maintained this Order could no longer be relied upon by the plaintiff as the same had waived its right to enforce the unless order. This is because the plaintiff had asked for the trial to be postponed. The plaintiff also had amended its statement of claim, which gives the impression that the defence is still valid. In addition, the plaintiff had also filed its reply in response to the amended defence.

[36] The plaintiff, in response, submitted that none of the above reasons given by the defendants could mean that the former had waived its right to rely on the Order for its benefit. In fact, it had reserved its right to proceed with the Order when necessary.

[37] The HC on the date of trial, decided through the learned judicial commissioner who acted as the trial judge, that the Order is still good for the plaintiff and that the non-compliance of the same by the defendants would only mean that the amended statement of defence and counterclaim could not stand as the Order stated the amended defence and counterclaim will be struck out without further order of the court and the action herein will be adjudicated in favour of the plaintiff with the requisite orders and judgment entered in accordance with the plaintiff's statement of claim if the documents were not disclosed. There is also no appeal lodged by the defendants against the Order made.

[38] Essentially, the learned judicial commissioner gave effect to the Order made by the learned judge.

[39] As a consequence, the HC granted the plaintiff, as requested, a declaration that the termination of the Concession Agreement by the defendants is

unlawful, damages and costs. That effectively means that the final judgment was entered for the plaintiff against the defendants.

At The COA

[40] The defendants went before the COA for the appeal against the decision of the HC but essentially the COA found that the Order was clear, unequivocal and unambiguous requiring the defendants to obey the same. Failure by the defendants to comply with the terms of the Order according to the COA, meant that the HC was correct to enter judgment against the defendants.

[41] Further, the COA found that non-compliance of the Order resulted in the amended defence and counterclaim by the defendants being rightly struck out. The COA was of the view that all court orders must be obeyed and those who ignored them, do so at their own peril.

Question Of Law

[42] Having noted the question of law posed for the present appeal as narrated earlier, several features stand out in the same and they are as follows:

(a) the question is posed whether the trial judge (the judicial commissioner) must follow the Order made by the learned judge (the interlocutory proceeding judge) before the date of the trial;

(b) the defendants equate the Order similarly as a summary judgment or judgment in default; and

(c) such judgment could not be entered against the defendants as it contravenes O 73 of the Rules of Court 2012 and s 42 of the Government Proceedings Act 1956.

Order 73 Of The Rules Of Court 2012 And Section 42 Of The Government Proceedings Act 1956

[43] In its written submission for the appeal before this court, the defendants cited and focused on O 73 of the Rules of Court 2012 ("ROC"). This provision is about proceedings by and against the Government. Specifically, the defendants referred to O 73 r 5(1) of ROC that states as follows:

> An application against the Government shall not be made under O 14 r 1 or O 81 r 1 in any proceedings against the Government nor under O 14 r 5 in any proceedings by the Government.
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> [Emphasis Added]

[44] In turn, the above O 14 r 1 states as follows:

> (1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has entered an appearance in the action, the plaintiff may, on the ground that the defendant has no defence

to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part thereof except as to the amount of any damages claimed, apply to the court for judgment against that defendant.

[45] Essentially, O 14 r 1 stated above allows for summary judgment to be entered. This would mean the normal trial would be dispensed with and judgment can be entered before trial proper.

[46] While O 81 r 1 also stated above, it speaks about judgment could be entered if there is no defence for specific performance of an agreement (whether in writing or not) for the sale, purchase or exchange of any property, or for the grant or assignment of a lease of any property, with or without an alternative claim for damages. O 81 r 1 states as follows:

(1) In an action begun by writ endorsed with a claim:

(a) for specific performance of an agreement (whether in writing or not) for the sale, purchase or exchange of any property, or for the grant or assignment of a lease of any property, with or without an alternative claim for damages;

(b) for rescission of such an agreement; or

(c) for the forfeiture or return of any deposit made under such an agreement, the plaintiff may, on the ground that the defendant has no defence to the action, apply to the court for judgment.

[47] While in respect of s 42 of the Government Proceedings Act 1956 ("GPA"), this provision essentially is about proceedings by and against the Government, including cases pertaining to summary judgment.

The Defendants' Submission

[48] In gist, the defendants argued that both the above provisions are subjected to O 73 r 5(1) of ROC as narrated earlier which disallows summary judgment against the Government.

[49] In this regard, the defendants equate the Order given by the learned judge for the disclosure of the documents and the unless order given to enter judgment against the defendants in the event that the documents are not disclosed, as a summary judgment against the defendants. Therefore, according to the defendants, when judgment was entered against them by the learned judicial commissioner, in view of the Order, the HC went wrong as O 73 r 5(1) of ROC, as stated above, prohibits summary judgment against the Government, including the defendants.

The Plaintiff's Submission

[50] In summary, the plaintiff contended that the Order is legal and binding, including on the learned judicial commissioner as the trial judge. The judicial commissioner had used his discretion correctly to give effect to the Order. It

is a court order that must be followed unless set aside. There is also no appeal by the defendants when the Order was made. This indicates they accepted the same.

[51] The Order is clear that if it is not obeyed, the defence and counterclaim will be struck out without further order of the court and judgment will be entered in accordance with the plaintiff's statement of claim. Compliance of the Order was therefore crucial for the defendants, with serious consequences if it was not obeyed.

[52] The plaintiff did not waive its rights to the Order. In fact, the plaintiff wrote letters to the defendants reminding them to disclose the documents as required by the Order.

Decision

[53] The Order could not be equated as summary judgment as submitted by the defendants. The Order made has a clear distinction compared to a summary judgment. The Order was made as preliminary direction given for the disclosure of the documents before full trial. While a summary judgment is granted by evaluating the pleadings to conclude that there is no defence to the claim filed. The Order was made even before the need to evaluate the defence. The non-compliance with the terms of the Order by the defendants resulted in judgment being entered against them. It does not require the evaluation of the defence. That is precisely with respect why the defendants are in error to consider the Order as similarly as a summary judgment.

[54] It could not be correct law to say the defendants are absolved from liability because they are Government entities and as such, no judgment could be entered against them, as it amounts to summary judgment against the Government in this case. The judgment must be entered against the defendants as they had simply disobeyed the Order which includes the unless order. It has no nexus with a summary judgment.

[55] The action of the defendants in not complying with the terms of the Order is quite clear. If the unless order is not given effect, the defendants not only could avoid obligation to disclose the documents but would also have the effect of allowing the defendants to ignore the directions of the courts. This, among others, would directly hamper and frustrate the ability for courts to issue directions to properly manage the case before the trial as provided by O 34 of the ROC for pre-trial case management. It is common knowledge that the courts now have increasing cases for disposal and this provision is a fundamental tool for the courts in managing these cases before trial. This includes giving pre-trial directions such as in the present appeal for the production of the documents by the defendants as required by the Order.

[56] Further, there can be no doubt that the Order is a binding court order issued in the ordinary course of court proceedings. The Order thus must

be obeyed and any judgment or ruling to the contrary will not only invite disrespect to directions issued by the courts by such orders but also give the damaging impression that there are instances that court orders need not be complied with. In this regard, it is also relevant to note that the Federal Court in the case of *Ann Joo Steel Berhad v. Pengarah Tanah Dan Galian Negeri Pulau Pinang & Anor And Another Appeal* [2019] 5 MLRA 553 said:

> [65] The fundamental principle which is pivotal in all these decisions, is that the sanctity of a Court Order must at all times be observed, and a party bound by that order of a court has no business deciding for himself that a binding Order of a court need not be observed because in his view it is not valid. If court orders are allowed to be ignored with impunity, it will ruin the authority of judicial order, which is the core of all judicial systems. In line with our jurisprudence, court orders must be respected and complied with. There will be no end to litigation if parties are allowed to determine for themselves that any order of the court would be observed or otherwise.
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> [66] It is, therefore, a long established principle of law that one may apply to set aside an order of a superior court but it must be made in a direct and specific proceeding filed for that purpose be it in the same proceedings or a separate one. It cannot be contested merely by raising it as defences in a suit as being undertaken in these appeals. The underlying reason for this legal jurisprudence to be adhered to, is not difficult to appreciate. It is to preserve the sanctity as well as the finality of an order of court. We therefore do not find any reason to depart from all these earlier decisions on this particular point.

[57] In the present case before us, not only was the Order not set aside in any proceedings, but the defendants also did not appeal against the grant of the same. The effect of not appealing meant that the defendants accepted the terms of the Order. A case in point regarding the failure to appeal is this court's decision in *Syed Omar Syed Mohamed v. Perbadanan Nasional Berhad* [2013] 1 MLRA 181, which among others, dealt with the order at the lower court to strike out the suit. Similarly, there was no appeal against this order to strike out. This court hence said:

> [20] We also find that the plaintiff did not appeal against the decision of the learned judge striking out the first suit. The failure to appeal meant that the plaintiff accepted the correctness of the decision to dismiss its suit. Further, the failure to appeal has itself been recognised as an abuse of process because the second suit would be construed as an attempt to circumvent the appeal procedure.

[58] The unless order contained in the Order itself is also unambiguous in stating if the Order is not adhered to, the defendants' amended defence and counterclaim "shall stand struck out without further Order of Court and the action herein shall be adjudged in the Plaintiff's favour." Thus, it is self-executing in nature and the failure to comply with the Order should mean the defendants must face the consequences and penalty that accordingly ensued. In

this regard, Mohd Zawawi Salleh JCA (as he then was) in *Hup Soon Omnibus Co Sdn Bhd & Anor v. Lim Chee @ Lam Kum Chee* [2017] MLRAU 515 said:

> [12] Before parting with this appeal, we would like to emphasise that a court order is a court order. It must be obeyed as ordered unless set aside or varied. It is not a mere technicality that can be ignored. If we allowed court orders to be ignored with impunity, this would destroy the authority of judicial orders which is the heart of all judicial systems. We hold a firm view that a court order is not a mere technical rule of procedure that can be simply ignored. In our jurisprudence, court orders must be respected and complied with. Those who choose to ignore them do so at their own peril.

[59] I am also of the opinion that the Order was made pursuant to an application from the plaintiff by virtue of O 24 ROC for the discovery of the documents and we consider this provision is specific in nature. This is in contrast to O 73 ROC which is more of a general provision relied upon by the defendants on proceedings by and against the Government. Hence, the principle of '*generalia specialibus non derogant'* ("general things do not detract from special things") would thus apply against the defendants. In this sense, the application regarding the disclosure of the documents must take precedence over the issue of whether summary judgment had been entered against the defendants.

[60] I am also of the view that s 42 of GPA, as noted earlier, would not assist the defendants in the present appeal as the Order is a specific order about the requirement to disclose the documents and has no or little connection with a summary judgment. The non-compliance of the Order itself and the court's direction regarding the documents resulted in judgment being entered against the defendants and not because there are no merits to the defence and counterclaim of the defendants.

Conclusion

[61] Based on all the foregoing, I would answer the question of law by saying the trial judge was bound by the unless order pronounced by the interlocutory proceeding judge but I do not agree that the unless order has a similar effect as though a summary judgment or judgment in default was entered against the defendants.

[62] The appeal is hereby dismissed.