

DISPUTE RESOLUTION

CONSEQUENTIAL ORDER BY THE COURT: NOT SO FUNCTUS OFFICIO?

This article discusses the facts, issues and judgment of the case.

INTRODUCTION In August 2020, the Federal Court was presented with series of question of law regarding the principle of *functus officio* which is a well-recognized principle in our legal system in the case of *Stone World Sdn Bhd v Engareh (M) Sdn Bhd [2020] 2 MLJ 208* (“Stone World”).

THE QUESTIONS The questions that were posed and answered by the Federal Court were *inter alia* as follows:-

Question 1.1 - Whether, in an action for detinue, the form of remedies as adopted by the Federal Court in *Perbadanan Kemajuan Negeri Selangor v Teo Kai Huat Building Contractor [1982] 2 MLJ 165* being:

- a. for the value of the chattel as assessed and damages for its detention; or
- b. for the return of the chattel or recovery of its value as assessed and damages for its detention; or
- c. for the return of the chattel and damages for its detention;

are mutually exclusive?

Question 1.2 - If the answer to Question 1.1 above is in the affirmative, whether a change and/or replacement of one form of remedy which was earlier pronounced after trial with that of another form of remedy via a subsequent application for consequential orders amounts to a variation?

Question 1.2 - If the answer to Question 1.2 above is in the affirmative, whether such a consequential order made thereto is in want of jurisdiction?

Question 1.3 - Whether, in impeachment proceedings via a fresh action where want of jurisdiction is contended, it is necessary for the plaintiff in the said impeachment proceedings to show that there has been a breach of a substantive statutory provision and/or prohibition premised upon the principles set out by the Federal Court in *Badiaddin bin Mohd Maidin v Arab Malaysian Finance Bhd [1998] 1 MLJ 393* and *Serac Asia Sdn Bhd v Sepakat Insurance Brokers Sdn Bhd [2013] 5 MLJ 1?*

BRIEF BACKGROUND FACTS The Respondent, Engareh filed an action against the Appellant, Stone World for detinue and successfully established its case against Stone World. After a full trial, the trial court ordered that the subject matter of the claim, the marble stones (“marble”), be delivered up or that Engareh collect the same. In addition, it was also ordered that damages were to be assessed in favour of Engareh and Stone World in respect of its counterclaim. Stone World subsequently sought an amendment or consequential order to alter the relief granted for that Stone World was bound to deliver the marble to Engareh to a specific location within an allocated time. Stone World however did not comply with this consequential order.

Four years later, Engareh sought another consequential order from the trial court for damages to be assessed rather than for the delivery of the marble due to Stone World’s non-compliance with the order to deliver the marble, as the marble had been damaged due to the effluxion of time. The trial court granted the consequential order sought by Engareh on 16 October 2015 (“**Consequential Order**”). Stone World appealed against the Consequential Order in the Court of Appeal. The Court of Appeal upheld the decision of the High Court. Stone World did not appeal against this decision to the Federal Court. (“**1st Suit**”)

Subsequently, Stone World initiated a fresh suit against Engareh for impeachment of the Consequential Order on the grounds that the High Court had no jurisdiction to grant such an order as it was at the time, *functus officio* (“**2nd Suit**”). The 2nd Suit was dismissed both at the High Court and the Court of Appeal. Stone World then appealed to the Federal Court (“**Appeal**”).

FINDINGS OF THE FEDERAL

COURT In dismissing the Appeal, the Federal Court elaborated at length on the doctrine of *functus officio*. In a nutshell the Federal Court reiterated that the principle of *functus officio* dictates that a court having pronounced a final order, does not possess the authority to “re-open, alter, amend and supplement the final order and judgment relating to the dispute it has adjudicated upon.” The Federal Court also held that the principle of *functus officio* is a part of the broader doctrine of *res judicata*. As such, it is imperative that this principle is adhered to strictly. However, there are of course exceptions to this principle which are as follows:-

- (i) An amendment of a previous order to reflect the original intention of the court which is evident from the previous and original order, or the body of the judgment of the original order;
- (ii) Under the slip rule Order 20 Rule 11 of the Rules of Court 2012 (“the **Rules**”) to correct a clerical error or a similar form of slip;
- (iii) The clarification, supplementing of or amendment of a previous order so as to give effect to the original order under the ‘liberty to apply’ provisions; and
- (iv) If there is provision in the Rules to amend an original order so as to enlarge time specified.

The Federal Court elaborated on the scope of the phrase ‘*liberty to apply*’ in deciding on the questions posed. The Federal Court held that from the facts of the case, liberty to apply for consequential orders in order to work out or give effect to the final judgment or order of the court is well within the inherent jurisdiction of the Court and therefore, the rule of *functus officio* is not transgressed. The Federal Court agreed with the decision of the High Court in *Kanawagi a/l Sepuramaniam v Penang Port Commission [2002] 8 CLJ 503* and stated that an application that was not made to re-open so as to ‘*vary, alter or amend the final order*’, would not transgress the principle of *functus officio*. In fact, the application for the Consequential Order made in this instance was necessary so as to give effect to

the original judgment of the trial court failing which the judgment will be rendered nugatory. On this ground, the Federal Court held that the Consequential Order sought by Engareh in the High Court was not a transgression of the principle of *functus officio*.

The Federal Court agreed with the principle adopted in the Singapore case of *Tan Yeow Khoon & Anor v Tan Yeow Tat & Anor (No 2) [1997] 2 SLR 209* and held that “*it is the legal position that even if a consequential order or direction was to be regarded as a ‘variation’, it would still fall within the liberty to apply rule and not flout the functus officio rule, where it is given to provide ‘succor’ to the original order.*” The Federal Court further agreed that whilst what amounts to variation of an order is to be decided on case to case basis, a consequential order that was given on the basis to supplement the main orders in “*form and convenience only so that the main orders may be carried out*” is not a breach of the principle of *functus officio*.

The Federal Court also held that the High Court’s order to substitute the original relief in the 1st Suit, which is the delivery of the marble with the Consequential Order for the relief of damages to be assessed, is not an infraction of the principle of *functus officio* for two reasons:

- (i) the original relief has become useless and ineffective due to Stone World’s own conduct in refusing to comply with the original order granted; and
- (ii) the substitution of the original relief cannot be considered as a re-opening of the 1st Suit as the substantive finding of the court in the 1st Suit remains intact. Stone World was still found to be liable for detinue, regardless of the substituted relief.

The Federal Court drawing reference from the case of *Mahanth Ramdas v Gangadas AIR 1961 SC 882* decided by the Supreme Court of India, adopted the finding that the principle of *functus officio* “*has no applicability when the modification of the judgment or order sought relates to the procedural portion of the judgment.*” The Federal Court was of the further view that in the instant case, the Consequential Order dealt with the procedural portion of the judgment as the finding of liability on Stone World for detinue in the 1st Suit remains.

THE ANSWERS TO THE QUESTIONS POSED

Based on the above, the Federal Court's answer to the questions raised are as follows:-

Question 1.1 was answered in the affirmative **only** to the extent that the reliefs in detainee are not to be granted cumulatively. However, there is no authority to stop the Court in substituting one relief for another.

Question 1.2 was answered in the negative. The substitute for one relief to another does not amount to variation of order.

Question 1.2.1 was answered in the negative as the High Court has indeed the jurisdiction when making the Consequential Order.

Question 1.3 was answered in the negative in light of the answer to Question 1.2.1. In addition, the Federal Court was of the view that it would require exceptional circumstances to justify the invoking of a Court's power to set aside a judgment or a final order under the principles of *Badiaddin bin Mohd Maidin v Arab Malaysian Finance Bhd [1998] 1 MLJ 393* none of which were shown of fulfilled in the instant case.

CONCLUSION The Federal Court has illuminated and clarified the doctrine of *functus officio*, its scope, exceptions and applicability vis-à-vis judgments and/or orders.

It is interesting to note that the Federal Court has taken the view that the doctrine of *functus officio* has no application to procedural portions of judgments or orders it views would have no bearing on the substantive finding of the court in a particular matter or case. The Federal Court however was quick to caution that whether or not a particular relief forms a substantive or procedural portion of a judgment or order would depend on the facts and circumstances of each case.

Successful parties in litigation often times will face opposition from the unsuccessful party of the fruits of litigation. The Stone World decision is far reaching, as it seemingly allows a successful party to seek modification (by way of consequential order or

even a substitution of original reliefs obtained) provided that the same is sought so as to give effect to the original judgment or order of court, and failing which the judgment or order will be rendered nugatory.

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