

# Consequential order: *functus officio* rule stretched for interest of justice

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**Facts**  
**Federal Court decision**  
**Comment**

This article examines the recent Federal Court decision of *Stone World Sdn Bhd v Engareh (M) Sdn Bhd*.<sup>(1)</sup>

## Facts

The respondent, Engareh (M) Sdn Bhd, filed a suit based on the tort of detinue against the appellant, Stone World Sdn Bhd, in the high court. After a full trial, the court ordered that the subject matter of the claim, marble stones, be delivered up or that Engareh collect the same. In addition, the court ordered damages to be assessed in favour of Engareh in respect of its counterclaim based on *quantum meruit*. Stone World then sought an amendment or consequential order whereby the option to deliver or collect the marble stones was altered such that Stone World was bound to deliver them to a specific site within an allocated time (original order). However, Stone World, did not comply with this original order.

Four years later, Engareh sought a consequential order from the trial court for damages to be assessed on the basis that the marble stones had been effectively damaged through time due to weathering. Stone World objected to the application without challenging the court's jurisdiction to grant the consequential order. The high court granted the consequential order for the assessment of damages for loss of value of the marble stones.

Stone World appealed to the Court of Appeal, but the high court's order was upheld. No appeal was filed at the apex court.

Thereafter, Stone World initiated a fresh action in the high court seeking to impeach the consequential order (impeachment application). The impeachment application was made on the basis that the high court had not had jurisdiction to grant the consequential order as it had been *functus officio*. The high court dismissed the impeachment application. Stone World appealed to the Court of Appeal, but the appeal was dismissed. Dissatisfied, Stone World appealed to the Federal Court, hence the present appeal.

## Federal Court decision

In the Federal Court, leave was granted for the following questions:

- In an action for detinue, are any of the following remedies adopted by the Federal Court in *Perbandanan Kemajuan Negeri Selangor v Teo Kai Huat Building Contractor*<sup>(2)</sup> mutually exclusive:
  - value of the chattel as assessed and damages for its detention;
  - return of the chattel or recovery of its value as assessed and damages for its detention; or
  - return of the chattel and damages for its detention? (Question 1.)
- If Question 1 was answered in the affirmative, would a change in or replacement of one form of remedy previously pronounced after trial with another form of remedy via a subsequent application for a consequential order amount to a variation? (Question 2.)
- If Question 2 was answered in the affirmative, would such a consequential order made thereto be in want of jurisdiction? (Question 3.)
- In impeachment proceedings via a fresh action where want of jurisdiction is contended, must the plaintiff in the impeachment proceedings show that there has been a breach of a substantive statutory provision or prohibition premised upon the principles set out by the Federal Court in *Badiaddin bin Mohd Maidin v Arab Malaysian Finance Bhd* and *Serac Asia Sdn Bhd v Sepakat Insurance Brokers Sdn Bhd*?<sup>(3)</sup> (Question 4.)
- Does Section 44 of the Evidence Act 1950 confer upon a party a separate and distinct cause of action, in

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terms of impeachment proceedings, over and above the principles set out by the Federal Court in *Badiaddin bin Mohd Maidin*? (Question 5.)

### ***Mutually exclusive does not mean no substitution***

The Federal Court found that the remedies in a detinue action as stipulated in *Perbadanan* are mutually exclusive to the extent that these remedies cannot be granted cumulatively after a finding on liability. However, the courts are not precluded from substituting original forms of relief with others in order to give effect to a final judgment in view of the courts' inherent jurisdiction under Order 92, Rule 4 of the Rules of Court 2012. Therefore, Question 1 was answered in the affirmative.

### ***Giving effect to final judgment does not constitute variation***

The Federal Court confirmed that the court is entitled to issue a further order subsequent to its final and perfected judgments or orders only in the following limited circumstances:

- to amend a previous order to reflect the original intention of the court;
- to make clerical or typographical amendments under the slip rule encapsulated in Order 20, Rule 11 of the Rules of Court 2012;
- under the 'liberty to apply' provision, whereby the clarification, supplementation or amendment of a previous order is required to give effect to such order; or
- when the Rules of Court 2012 permit the amendment of an original order to extend specified timeframes.

With regard to the 'liberty to apply' exception, the Federal Court confirmed that in every order of the court, liberty to apply to the court is implied and need not be expressly reserved.

A change or substitution of one form of remedy with another form of remedy ordered in a subsequent application does not amount to variation subject to the facts of each case. The Federal Court found that the high court had been correct in exercising its inherent jurisdiction under Order 92, Rule 4 in granting the consequential order to give effect to the original order which Stone World had refused to comply with. The new claim (damages) would amount to a substitution of the old claim (delivery up); such a substitution did not constitute a variation which would infringe the *functus officio* principle because the essence of the finding of liability for detinue remained intact. As such, Question 2 was answered in the negative.

### ***Not in want of jurisdiction***

In addressing Question 3, the Federal Court opined that the consequential order had not been made in want of jurisdiction, as such order did not transgress the doctrine of *functus officio*. The high court retained jurisdiction, particularly under the liberty to apply exception, to grant the consequential order to ensure that the final judgments and orders are not rendered nugatory.

### ***Impeachment proceedings – revisiting Badiaddin principles***

The Federal Court held that the effect of any impeachment proceedings premised on a lack of jurisdiction or Section 44 of the Evidence Act 1950, if successful, would render the entire order set aside. Stone World's impeachment application sought to set aside only the consequential order. On this basis alone, the impeachment application should fail.

Regardless, the *Badiaddin* principles, as propounded in the Federal Court case of *Badiaddin bin Mohd Mahidin*,<sup>(4)</sup> allow the impeachment of a judgment or order only on the grounds of:

- illegality;
- fraud;
- contravention of statute; or
- breach of the rules of natural justice.

A mere allegation of a lack of jurisdiction does not generally form a basis for impeachment of the consequential order that was binding on the parties. Further, even if the *functus officio* argument was established, it would merely mean that the court had chosen not to exercise its powers to ensure finality and would not constitute a case of lack of jurisdiction.

In responding to Question 4, the Federal Court stated that there was no basis for the impeachment proceeding as the lack of court jurisdiction had not been established in this case. Although the grounds for the court to exercise inherent jurisdiction in *Badiaddin* were not closed, exceptional circumstances are required to justify the invoking of inherent jurisdiction to set aside a judgment or final order.

For Question 5, the Federal Court stated that Section 44 of the Evidence Act 1950 gives effect to a cause of action founded on fraud, collusion or an absence of jurisdiction. The relief for such a cause of action is the impeachment of such judgment.

### ***Res judicata and issue estoppel in relation to impeachment application***

Having considered the above, the Federal Court ruled that Stone World's impeachment application was caught by the rule of *res judicata* and issue estoppel. It had been brought several years after the original order had been concluded. In addition, the original order had been appealed to the Court of Appeal and subsequently dismissed with no further application for leave to appeal to the Federal Court.

Considering the above, the Federal Court dismissed Stone Word's appeal.

### **Comment**

This decision reinforces the inherent jurisdiction of the court to grant consequential orders to ensure that justice is achieved. An order granted by the court may be overtaken by events through no fault of the parties or, as in this case, due to failure by one party to timeously comply. The order cannot be left toothless.

The courts retain the inherent jurisdiction to grant consequential relief to give effect to their orders. In other cases, the courts have also varied their earlier orders in giving effect to such earlier orders. Thus, this inherent jurisdiction covers even the substitution of a completely new and different remedy.

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### **Endnotes**

(1) *Stone World Sdn Bhd v Engareh (M) Sdn Bhd* [2020] 9 CLJ 358.

(2) *Perbandanan Kemajuan Negeri Selangor v Teo Kai Huat Building Contractor* [1982] CLJ Rep 257; [1982] 2 MLJ 165.

(3) *Badiaddin bin Mohd Maidin v Arab Malaysian Finance Bhd* [1998] 2 CLJ 75; [1998] 1 MLJ 393 and *Serac Asia Sdn Bhd v Sepakat Insurance Brokers Sdn Bhd* [2013] 6 CLJ 673; [2013] 5 MLJ 1.

(4) *Badiaddin bin Mohd Mahidin*.

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