Wu Shun Foods Co Ltd v Ken Ken Food Manufacturing Pte Ltd
[2002] SGHC 176

Case Number : D C Suit 4047/2001/A, RAS /172002/N

Decision Date : 12 August 2002

Tribunal/Court : High Court

Coram : Woo Bih Li JC

Counsel Name(s) : Hee Theng Fong and Tay Wee Chong (Hee Theng Fong & Co) for the plaintiff; Margaret Wan and Andrew Ho (Braddell Bros) for the defendant

Parties : Wu Shun Foods Co Ltd — Ken Ken Food Manufacturing Pte Ltd

Conflict of Laws – Foreign judgments – Enforcement – Plaintiffs obtaining judgment against defendants in Republic of China – Plaintiffs applying to enforce judgment in Singapore – Defendants alleging foreign judgment based on illegal agreement – Defendants not raising illegality issue before ROC court – Whether defendants can raise issue before Singapore court – Application by defendants to strike out on basis of illegality – Whether to allow application

Contract – Illegality and public policy – Whether contract in breach of regulation or law necessarily void or unenforceable

judgment—Enforcement—Allegation that foreign judgment based on illegal agreement — Issue of illegality not raised before foreign court — Whether issue of illegality can be raised before local courts

Conflict of Laws—

Foreign judgment—Enforcement—Allegation that foreign judgment based on illegal agreement — Issue of illegality not raised before foreign court — Whether the judgment can be enforced locally

Facts

The plaintiffs were a company incorporated in Taiwan. The defendants were a company incorporated in Singapore. The plaintiffs entered into a contract for the purchase of shredded and sudare cuttlefish from the defendants on 12 September 1994.

The defendants failed to deliver the goods and the plaintiffs then sued for recovery of an advance payment made to them in the Taiwan courts. The plaintiffs obtained a judgment for New Taiwan Dollars (NT$) 1,482,010 against the defendants in the Taipei District Court in 1995 in relation to a failure by the defendants.

The plaintiff then commenced an action in Singapore to sue on the Taiwan judgment on 15 October 2001, as it could not be registered under the Singapore Reciprocal Enforcement of Foreign Judgments Act (Cap. 265). The defendants applied to strike out the plaintiffs' claim in the Singaporean action on the grounds that the contract with the plaintiffs was illegal for breach of Taiwan's import regulations; thus the judgment, which had been obtained in reliance on that agreement should not be enforced in the Singaporean courts.

The defendants also argued that it was open to them to raise the issue of illegality in the Singaporean courts even though it had not been raised by them before the Taiwanese courts. The plaintiffs argued that there was no evidence that the contract was illegal and, even if so, that it was thus void *ab initio*. They also contended that it was not open to the defendants to raise this issue of illegality since it was not raised by them during proceedings in Taiwan. They relied on the decision of the Court of Appeal in *Hong Pian Tee v Les Placements Germain Gauthier Inc* [2002] 2 SLR 81 where it had been stressed that the enforcement forum should not act as an appellate tribunal with respect

to the final decision of a foreign court

Held

, dismissing the defendants' application:

(1) Although there was evidence of the illegality of the contract, what was essential here was whether the contract was void or unenforceable by reason of that illegality. This was a point that could not be resolved based simply on the affidavit evidence which had been provided. (see 41-43)

(2) Even though the issue of illegality had not been raised in proceedings before the courts in Taiwan, it is not open to the defendants to raise it before our courts, for the reasons given in *Hong.* The fact that the appellant in *Hong* had sought to raise an issue of fraud, and not illegality as in the present case does not put the plaintiff here in a better position. *Hong Pian Tee v Les Placements Germain Gauthier Inc* [2002] 2 SLR 81 followed (see 44-46)

Cases(s) referred to

Batra v Ebrahim

[1982] 2 Lloyds Rep 11 (refd)

Keng Soon Finance Bhd v MK Retnam Holdings Sdn Bhd & Anor

[1989] 1 MLJ 457 (refd)

Soleimany v Soleimany

[1999] QB 785 (refd)

Hong Pian Tee v Les Placements Germain Gauthier Inc

[2002] 2 SLR 81 (folld)

Legislation referred to

JUDGMENT

GROUNDS OF DECISION

Introduction

1. The Plaintiff Wu Shun Foods Co Ltd ('Wu Shun') is a company incorporated under the laws of Taiwan. The Defendant Ken Ken Food Manufacturing Pte Ltd ('Ken Ken') is a company incorporated in Singapore.

2. In April 1995, Wu Shun commenced action against Ken Ken in the Taipei District Court seeking recovery of New Taiwan Dollars (NT$) 1,482,010 being the balance of an advance payment made by Wu Shun to Ken Ken for goods under a Sale and Purchase Contract dated 12 September 1994 between the parties, which Ken Ken failed to deliver.

3. Wu Shun succeeded and obtained a judgment from the Taipei District Court ordering Ken Ken to pay the sum claimed, interest and costs. Ken Ken's appeals to the Taiwan High Court and the Supreme Court of Taiwan were unsuccessful. I will say more on the proceedings in Taiwan later.

4. Wu Shun said that as it could not register the Taiwan judgment it had obtained under the Singapore Reciprocal Enforcement of Foreign Judgments Act (Cap 265), it commenced an action in Singapore on 15 October 2001 to sue on the Taiwan judgment.

5. On 22 October 2001, Ken Ken entered an appearance to the Singapore action and applied for security for costs on the ground that Wu Shun was ordinarily resident out of Singapore and for a stay of further steps in the meantime.

6. On 5 December 2001, Wu Shun applied for summary judgment.

7. On 11 December 2001, both the application for security for costs and for summary judgment were adjourned to 22 January 2002.

8. On 22 January 2002, the applications were adjourned to 29 January 2002 pending the decision of the Singapore Court of Appeal in Civil Appeal No 600101 of 2001 *Hong Pian Tee v Les Placements Germain Gauthier Inc ('Hong's* case). The judgment of the Court of Appeal is reported in [2002] 1 SLR 81.

9. On 28 January 2002, Ken Ken applied to strike out Wu Shun's claim in the Singapore action. Ken Ken relied on two grounds:

(a) the amount stated in the Taiwan judgment was wrong.

(b) Wu Shun's claim in Taiwan was based on an illegal contract because the contract in question related to the importing of squid which was prohibited under Taiwan law.

10. On 29 January 2002, the Deputy Registrar Ms Ong Chin Rhu directed that the striking out application be heard first. After hearing arguments, she dismissed the application for striking out. She then gave directions in respect of Wu Shun's application for summary judgment and Ken Ken's application for security for costs.

11. On 21 February 2002, Ken Ken filed a Notice of Appeal to the District Judge on the sole ground of illegality.

12. On 25 May 2002, District Judge Ng Peng Hong dismissed Ken Ken's appeal after hearing arguments and gave directions with respect to the application for security for costs. The application for summary judgment had still not been heard by then.

13. On 8 April 2002, Ken Ken served its Notice of Appeal to the High Court against the District Judge's decision. This appeal was heard by me. The only issue before me was the one based on illegality. After hearing arguments, I dismissed the appeal. Ken Ken is appealing to the Court of Appeal.

Arguments for Ken Ken

14. Ken Ken relied primarily on two affidavits. The first is the second affidavit from Ken H C Chiu, an Attorney-At-Law in Taipei, Taiwan.

15. Mr Chiu's affidavit was to the effect that at all material times, the import of squid (except prepared or preserved squid which is canned) into Taiwan was illegal under the Lists of Goods the Import of Which is Restricted published by the Board of Foreign Trade of the Ministry of Economic Affairs of Taiwan, unless a prior import permit was obtained from the relevant authority. I will refer to the Lists as 'the import regulation' for convenience. An importer who did so, without the permit, was liable to be fined and could be suspended from importing goods for a certain duration. Also the goods could be considered smuggled goods and confiscated.

16. The other affidavit which Ken Ken relied on primarily was the third affidavit from its director Tay Kian Guan. He said that although the contract was for shredded and sudare cuttlefish, this was in fact composed of dried or salted squid. Squid is a kind of cuttlefish. He also alleged that representatives of Wu Shun had attended at Ken Ken's factory premises in Singapore and saw that Ken Ken processed only squid.

17. In response, Wu Shun obtained an affidavit from Yuhsin Peng, another Attorney-At-Law from Taipei, Taiwan. She said that the sale

and purchase contract in question was enforceable under Taiwan law despite the import regulation. The contract was not illegal and the Taiwan judgment dated 8 June 2000 of the Taiwan Supreme Court is valid.

18. Mr Andrew Ho, for Ken Ken, stressed that there was no denial by Wu Shun or Yuhsin Peng that there was a breach of the import regulation.

19. He then relied on a number of cases on illegality but it is not necessary for me to deal with those cases.

20. He also sought to persuade me that it was open to Ken Ken to raise the issue of illegality even though it was not raised before any of the courts in Taiwan. On this point, he relied on other cases of which I need only refer to a few.

21. In *Batra v Ebrahim* [1982] 2 Lloyds Rep 11, Lawton LJ said at p 13:

> '…. On this basis it seems to me that if it appears to the Court that a party is suing on a contract which is made unenforceable by art. VIII, (2)(b), then the Court must itself take the point and decline to enforce the contract. …. But for present purposes the important point is that if the contract appears to be one which is contrary to the exchange control regulations of India, then it is unenforceable in England and it is the duty of this Court to take the point, even though not pleaded nor taken below.
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> ….
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> Mr. Summerfield urged before us - this is a new point which was not taken in the Court below - that there might be an adjournment for him to consider it further or there might be a new trial, and things of that kind. But I must say, when this matter is looked at broadly in the light of the Bretton Woods Agreements and the policy thereunder, it seems to me that we do not need a further adjournment or a new trial or anything of that kind. To my mind these transactions are plainly unenforceable in these Courts, and I would allow the appeal accordingly and give judgment for the defendant.'

22. In *Keng Soon Finance Bhd v MK Retnam Holdings Sdn Bhd & Anor* [1989] 1 MLJ 457, Lord Oliver of Aylmerton said at p 461F:

> '…. It is well established as a general principle that the illegality of an agreement sued upon is a matter of which the court is obliged, once it is apprised of facts tending to support the suggestion, to take notice ex proprio motu and even though not pleaded (see eg *Edler v* Auerbach) for clearly, no court could knowingly be party to the enforcement of an unlawful agreement. ….'

23. However, these cases did not involve the enforcement of a foreign judgment in another jurisdiction. Hence Mr Ho turned to and relied primarily on *Soleimany v Soleimany* [1999] QB 785. The headnote of that report states:

> 'The plaintiff purchased quantities of carpets and exported them, illegally, out of Iran to be sold by the defendant in the United Kingdom or elsewhere. Disputes arose between the parties over the division of the proceeds of sale. The parties made an agreement to arbitrate their disputes before the Beth Din which applied Jewish law. The award, in favour of the plaintiff, referred to the illegality and assessed his share of the profits at 576,574. The plaintiff applied to the High Court under section 26 of the Arbitration Act 1950 to register the award as a judgment. The master made an order granting leave to enter judgment for the sum of 576,574, and gave leave to enforce the award. The defendant applied to set aside the order on the grounds that illegality rendered the plaintiff's claim void or unenforceable in an English court, and that it would be contrary to public policy for an award founded on an illegal agreement or transaction to be enforced as a judgment of the High Court pursuant to section 26 of the Act of 1950. The judge refused the defendant's application holding, inter alia, that a contract, otherwise unenforceable for illegality, became enforceable if the procedural law of the arbitration attached no significance to the illegality.

On appeal by the defendant:-

> Held, allowing the appeal, that it was apparent from the face of the award that the arbitrator was dealing with an illicit enterprise under which it was the joint intention that carpets would be smuggled out of Iran illegally, but that he considered the illegality to be of no relevance since he was applying Jewish law under which any purported illegality would have no effect on the rights of the parties; …. That an award, whether domestic or foreign, would not be enforced by an English court if enforcement would be contrary to public policy and the interposition of an arbitration award did not isolate the successful party's claim from the illegality which gave rise to it: and that, in the circumstances, the award should not be enforced by the English courts ….'

24. Waller LJ, delivering the judgment of the Court of Appeal, said, at p 803 and 804:

> 'Finally, under this head, we should state explicitly what may already have been apparent: when considering illegality of the underlying contract, we do not confine ourselves to English law. An English court will not enforce a contract governed by English law, or to be performed in England, which is illegal by English domestic law. Nor will it enforce a contract governed by the law of a foreign and friendly state, or which requires performance in such a country, if performance is illegal by the law of that country. That is well established as appears from the citations earlier in this judgment. This rule applies as much to the enforcement of an arbitration award as to the direct enforcement of a contract in legal proceedings.'

25. Mr Ho submitted that as there was no denial of the breach of the import regulation, Ken Ken's application to strike out must succeed.

Arguments for Wu Shun

26. Mr Hee Theng Fong, Counsel for Wu Shun, submitted that there was no evidence of illegality. He did not accept that there was a breach of the import regulation.

27. Mr Hee also submitted that the contract in question was for the sale of cuttlefish, not squid, and the former did not fall into the category of the latter. However, I noted that there was no affidavit from Wu Shun asserting this.

28. Mr Hee further submitted that even if there was a breach, this in itself did not make the contract void ab initio. He relied on para 8 of the District Judge's grounds of decision which said that the making of such a contract was not prohibited so long as there was a permit or approval.

29. He further submitted that even if the contract was illegal, an action to recover money paid could still succeed in Taiwan.

30. As regards the question whether it was open to Ken Ken to now raise the point about illegality, Mr Hee stressed that there were in fact five hearings in Taiwan which he elaborated on as follows:

> (a) On 4 December 1995, the Taipei District Court gave judgment in favour of Wu Shun and ordered Ken Ken to pay to Wu Shun the sum of NT$1,482,010,

interest and costs of the action.

(b) In 1997, Ken Ken appealed to the Taiwan High Court against the judgment of 4 December 1995. On 14 April 1997, the High Court dismissed Ken Ken's appeal.

(c) On 14 April 1997, Ken Ken appealed to the Supreme Court of Taiwan against the judgment of 14 April 1997. On 28 May 1998, the Supreme Court of Taiwan allowed Ken Ken's appeal and directed a rehearing of its appeal at the Taiwan High Court.

(d) On 16 December 1998, there was a rehearing at the Taiwan High Court. Ken Ken's appeal was again dismissed.

(e) Ken Ken then appealed again to the Supreme Court of Taiwan against the judgment of 16 December 1998. On 8 June 2000, the Supreme Court of Taiwan dismissed its appeal.

31. Mr Hee also submitted that Ken Ken was represented by lawyers throughout the legal proceedings. Indeed, Ken Chiu was the very lawyer representing Ken Ken in the later part of the legal proceedings in Taiwan and yet he too did not raise the point about illegality. On the other hand, Wu Shun was not represented by any lawyer. Its case was conducted through its representative Huang Ho Yun.

32. Mr Hee relied on the decision of our Court of Appeal in Hong's case. The headnote of the report states:

'**Facts**

The respondent ('Les Placements') was a Canadian company which entered into a loan agreement ('the loan agreement') with a Singapore company, Wiraco Trading Pte Ltd ('Wiraco'), in 1995. At the time of the loan agreement, the President of Les Placements was one Mr Germain Gauthier ('Germain'). Under the terms of the agreement, Les Placements was to lend Wiraco C$350,000 and the appellant ('Hong') gave Les Placements a guarantee to ensure the repayment of the loan. [I would add that the guarantee from Hong was addressed to Germain.] Wiraco subsequently defaulted in repaying the loan and Les Placements commenced proceedings against it and Hong in the Superior Court of the District of Montreal, Quebec, Canada. At the trial, Hong alleged that he had never guaranteed a loan from Les Placements to Wiraco. Instead, he claimed that either the guarantee he executed related to a personal loan from Germain to Wiraco which was never effected, or that the arrangement was that Germain was to extend a personal loan to him. The thrust of his defences was therefore that there was no privity of contract between Hong and Les Placements. The Canadian court rejected Hong's defences and held that in relation to the loan transaction, Germain was not acting for himself but on behalf of Les Placements, and that the guarantee was addressed to him as the head of Les Placements. It then held that both Hong and Wiraco were jointly and severally liable to Les Placements for C$360,645 plus interest and costs. Dissatisfied with this decision, Hong and Wiraco appealed to the Court of Appeal in Quebec but their appeal was disallowed.

> Upon obtaining the judgment in Canada, Les Placements commenced a writ action in Singapore to enforce the Canadian judgment against Hong under common law. It then applied for, and received, summary judgment in its favour. Hong appealed, arguing that the Canadian judgment had been obtained by fraud because Les Placements had fraudulently failed to disclose to the Canadian court that the guarantee was addressed to Germain and not Les Placements. As such, the Canadian judgment was not conclusive and that this was so, even if the defence of fraud had been investigated into by the Canadian court and rejected. Furthermore, Hong argued that he was entitled to have the issue of fraud re-litigated in Singapore even if there was no new material before the court supporting his allegation of fraud. Finally, Hong asserted that there were, in any case, fresh material to support his allegation: the sworn statements of two witnesses which were prepared by Les Placements in the Canadian proceedings but were never produced before the Canadian court.'

33. I would add that Hong's appeal to the Singapore High Court was dismissed and his appeal to the Court of Appeal was also dismissed.

34. I continue with the headnote, which states:

'**Held**, dismissing the appeal:

(1) ….

(2) There were two distinct views as to how a domestic court should treat a foreign judgment where fraud was raised in relation to that foreign judgment, the English position as enunciated in *Abouloff v Oppenheimer & Co* (1882) 10 QBD 295 and the Canadian-Australian approach laid down in *Jacobs v Beaver Silver Cobalt Mining Co* (1908) 17 OLR 496 and *Keele v Findley* (1990) 21 NSWLR 444. Under the former approach, so long as fraud was alleged, the defendant was entitled to reopen the issue of fraud even though no new evidence was produced and even though the fraud might have been, and was, alleged in the foreign proceedings. The latter approach allowed the examination of the merits of the foreign judgment only if extrinsic fraud was alleged or if the defendant had discovered evidence of intrinsic fraud after the foreign judgment was passed. The latter approach is consistent with the approach taken by courts when facing an allegation of fraud vis--vis domestic judgments (see 15-26).

(3) ….

(4) ….

(5) Hong had objected to the admission of the two sworn statements in the Canadian proceedings and now sought to rely on them to show that the Canadian judgment was obtained by fraud. He knew of the existence of the statements and of what the two persons stated therein. There was therefore no new evidence of fraud (see 32). ….'

35. I now cite from the judgment of Chao Hick Tin JA in *Hong's* case:

> *'Our approach*
>
> 27 There were, therefore, before us, two distinct views as to how a

domestic court should treat a foreign judgment where fraud is raised in relation to that foreign judgment. One is that enunciated in *Abouloff* (supra) and the other advocated by the Canadian-Australian cases which sought to limit the circumstances under which a domestic court may re-open an issue already determined by a foreign judgment including an allegation of fraud. In our judgment the approach adopted in *Abouloff* has less to commend itself as it would only encourage endless litigation. It is of paramount importance that there should be finality. Every losing party understandably would like to litigate the issue over again with the hope that a different tribunal would look at the fact situation differently. But that can never be a good reason for allowing a losing party to re-open issues. To liberally allow a party to do so would be to permit that party to have a second bite at the cherry, an eventuality which is generally abhorred by all civilised systems of law. Of course, we are conscious that the rule against re-opening issues is not absolute. There are exceptions but they are subject to safeguards. In England, an issue already adjudicated upon by the domestic courts would not, as a rule, be allowed to be re-litigated. There is no logical reason why a different rule should apply in relation to a foreign judgment.

28 It is also vitally important that no court of one jurisdiction should pass judgment on an issue already decided upon by a competent court of another jurisdiction. This is the doctrine of comity. After all, two tribunals, both acting conscientiously and diligently, could very well come to a different conclusion on the same facts. There is no question of which is being more correct. To seek to make such an evaluation would be an invidious exercise and could lead to the undesirable consequence which we have mentioned before of encouraging judicial chauvanism. It must be borne in mind that the enforcement forum is not an appellate tribunal vis--vis the foreign judgment.

29 We note here that in *Owens Bank v Etoile Commerciale SA* [1995] 1 WLR 44, Lord Templemen, in delivering the judgment of the Privy Council observed that it did not 'regard the decision in *Abouloff* … with enthusiasm'. In *Etoile Commerciale* the Privy Council adopted the approach taken by the Court of Appeal in *Waite* (supra) rather than that in *Abouloff.*

30 In our judgment, the approach taken by the Canadian-Australian cases and *Ralli v Angullia* (supra) is more in line with principles of conflict of laws and treats foreign judgments in the same way as domestic judgments. It is consonant with the doctrine of comity of nations. It avoids any appearance that this court is sitting in an appellate capacity over a final decision of a foreign court. We, therefore, ruled that where an allegation of fraud had been considered and adjudicated upon by a competent foreign court, the foreign judgment may be challenged on the ground of fraud only where fresh evidence has come to light which reasonable diligence on the part of the defendant would not have uncovered and the fresh evidence would have been likely to make a difference in the eventual result of the case. There is no necessity for us to offer any views on the jurisprudential question whether a foreign judgment created a new and independent obligation distinct from that of the underlying or original cause of action, raised by Woodward J in *Ralli v Angullia.*

> 31 This common law principle of according finality to a foreign judgment was at one time thought to be based on the doctrine of comity. …. However, this theory seems to have given way to what is known as the doctrine of obligations, ... Whatever may be the correct legal foundation, or for that matter it could be a combination of both, the cardinal principle is that no one court should sit in judgment over the final decision of a competent court of another jurisdiction. A party, litigating in a foreign court, must diligently muster all the evidence and raise all pertinent issues in that forum. He should not have any expectation that any carelessness or omission on his part could nevertheless be made good in the forum of enforcement.'
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> [Emphasis added.]

36. As regards *Soleimany v Soleimany*, Mr Hee pointed out that the illegality aspect was already apparent from the award itself. Furthermore at p 797, Waller LJ said:

> 'We stress that we are dealing with a judgment which *finds as a fact* that it was the common intention to commit an illegal act, but enforces the contract. Different considerations may apply where there is a finding by the foreign court to the contrary or simply no such finding, and one party now seeks such a finding from the enforcing court. Thus our conclusion would be that if the award were a judgment of a foreign court, the English court would not enforce it.'
>
> [Emphasis added.]

Ken Ken's response

37. In response, Mr Ho sought to distinguish *Hong's* case on the argument that the defendant there sought to raise the issue of fraud and not illegality. He submitted that illegality is not cured by a judgment.

38. In response to my query as to whether a judgment by our highest court, the Court of Appeal, could be set aside in Singapore, say, one year later, on the ground of illegality, Mr Ho submitted that such a judgment could be set aside. Ms Wan, who also appeared for Ken Ken, went further to stress that as in *Batra v Ebrahim,* once illegality is raised, the court must itself take up the point and decline to enforce the contract.

39. I have two observations on this submission.

40. First, as I have said, *Batra v Ebrahim* was not a case involving the enforcement of a foreign judgment in England. There the question of illegality was not taken in the English court of first instance but was considered in the Court of Appeal.

41. Secondly, it is also not authority for the proposition that after a judgment is made against a litigant, and assuming no further appeal, that litigant could subsequently succeed in a fresh application to set aside the judgment on the ground that he had omitted to take the point that the underlying contract was illegal. Indeed, I very much doubt that such a litigant could succeed in this endeavour.

My Decision

42. In the face of the evidence from Ken Ken, I was of the view that it could not be said that there was

no evidence of illegality. Also neither Wu Shun nor Yuhsin Peng had denied a breach of the import regulation although Yuhsin Peng had said the contract was not illegal. Ms Peng had also said that the contract was enforceable. On the other hand, Mr Chiu did not go so far as to assert that the contract was not enforceable or that under Taiwan law, the monies advanced could not be repaid.

43. If I were to adopt the technical and narrow approach that Mr Ho was advocating, Ken Ken's application on the affidavits alone must fail since it is not sufficient for Mr Chiu to assert a breach and illegality only. A contract which breaches a law is not necessarily void or unenforceable.

44. It seemed to me that even if there was a breach of the import regulation, it was the effect of the breach which was significant. This point, if still relevant, could not be resolved through affidavit evidence alone. It was therefore obvious to me for this reason alone that Ken Ken's application to strike out must fail.

45. However Ken Ken faced a more significant hurdle i.e whether it can even raise the issue of illegality before the Singapore courts.

46. For the reasons given by our Court of Appeal in *Hong's* case, I was of the view that Ken Ken cannot do so even though the illegality was not raised before any of the courts in Taiwan before.

47. I also did not think that the ground of illegality will put Ken Ken in a stronger position than Mr Hong in *Hong's* case.

48. As for the case of *Soleimany v Soleimany,* the facts there are different from those before me. I reiterate what Waller LJ said at p 797:

> 'We stress that we are dealing with a judgment which *finds as a fact* that it was the common intention to commit an illegal act, but enforces the contract. Different considerations may apply where there is a finding by the foreign court to the contrary or simply no such finding, and one party now seeks such a finding from the enforcing court. Thus our conclusion would be that if the award were a judgment of a foreign court, the English court would not enforce it.'
>
> [Emphasis added.]

49. I would add one more point. Ken Ken had not sought to set aside the Taiwan judgment on the ground of illegality even though the alleged illegality arises from an import regulation of Taiwan. It seemed to me that Ken Ken was trying to achieve its purpose through the backdoor instead of doing so through the front door.

Sgd:

WOO BIH LI

JUDICIAL COMMISSIONER

SINGAPORE