

DHL Global Forwarding (Malaysia) Sdn Bhd v Mactus (Malaysia) Sdn Bhd and others
[2013] SGHC 170

Case Number : Originating Summons No 351 of 2013 (Registrar's Appeal No 276 of 2013)
Decision Date : 09 September 2013
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Ian Lim Wei Loong, Freddie Lim ShaoChun and Joanna Goh (TSMP Law Corporation) for the plaintiff/judgment creditor; Timothy Tan Thye Hoe and Thoulase Venga (Asialegal LLC) for the third defendant/judgment debtor.
Parties : DHL Global Forwarding (Malaysia) Sdn Bhd — Mactus (Malaysia) Sdn Bhd and others

9 September 2013

Judgment reserved.

Choo Han Teck J:

1 This is an application by the judgment creditor to enforce a Malaysian judgment in Singapore under the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, Rev Ed 1985) ("RECJA"). The third defendant/ judgment debtor (the appellant in this registrar's appeal) in the Malaysian suit applied to have the registration order set aside. The parties were heard before the Assistant Registrar ("the AR"), who subsequently dismissed the application for setting aside. The third defendant is now appealing the AR's decision.

2 The third defendant is the main shareholder and director of both the first and second defendants. Under the Malaysian judgment ("the judgment"), a settlement sum of RM750,000.00 (or S\$304,383.12) was to be paid by the first defendant. The second and third defendants gave personal guarantees to pay the settlement sum. The terms were recorded in a consent judgment dated 26 February 2013.

3 Mr Timothy Tan ("Mr Tan"), counsel for the third defendant offered a plethora of reasons why the registration should be set aside: First, the English version of the judgment sought to be enforced is unenforceable in Malaysia; second, the judgment was procured by fraud; third, registration under the RECJA is not permitted where there is no admission of liability; fourth, the judgment creditor is not a judgment creditor as he is not the payee; fifth, the third defendant judgment debtor is not a judgment debtor as he is only a guarantor of the first defendant; sixth, the Malaysian Court had no jurisdiction over the matter as it required non-parties to the suit to make payment of and guarantee the judgment sum; seventh, the judgment was not a money judgment as it contained a penal notice; eighth, there was material non-disclosure during the *ex parte* application for enforcement of the judgment.

4 None of these reasons are sufficient to set aside the registration of the judgment. The process of registration under s 3(1) of the RECJA and O 67 of the Rules of Court is a formal one; whether it is "just and equitable" for a judgment to be registered does not depend on the correctness of the judgment. Thus, s 3(2) of the RECJA provides for a judgment *not* to be registered in situations where certain formal elements of the judgment are lacking. The court's approach toward registration is a light touch approach. In practice, the default is to permit registration of foreign judgments unless certain formal features are missing. As observed by the Court of Appeal in *Yong Tet Miaw v MBF*

Finance Bhd [1992] 2 SLR(R) 549 (AT [31]) and *Woo Bih Li J in Global Distressed Alpha Fund I Ltd Partnership v PT Bakrie Investindo* [2013] 2 SLR 228 (at [20]), the court will set aside the registration of a foreign judgment "only where it is practicable and required by the interests of justice".

5 I now refer to the grounds for setting aside raised by the third defendant. First, whether the judgment is a judgment for the purposes of s 2(1) of the RECJA. If the judgment is indeed unenforceable, then it does not fall within the definition of a judgment in s 2(1) of the RECJA. Both the English and Malay version were sealed by the Malaysian Court and registered in Singapore. At the invitation of the AR, the judgment creditor's Malaysian solicitors deposed an affidavit on 31 July 2013 verifying that both versions were equally binding on the judgment debtors under Malaysian law. The third defendant obtained his own expert. The third defendant's expert deposed that an enforceable judgment is one which bears the court seal and an English version "by itself" will not be enforceable as it is a translation which does not bear the court seal. Upon closer examination, it was apparent to me that *both* judgments bore the Malaysian court seal and both were registered together. There is nothing in either expert opinion that indicates that this was an unenforceable judgment. Accordingly, the enforceability of the English version is not a ground for setting aside the registration order.

6 It was also clear to me that both the Malay and English versions refer to the same payee. The word "DHL" was omitted from the Malay version, which named the payee as "Global Forwarding (Singapore) Pte Ltd" instead of "DHL Global Forwarding (Singapore) Pte Ltd". There is no company known as "Global Forwarding (Singapore) Pte Ltd". The judgment creditor's Malaysian solicitors had also deposed that this was a typographical error and this was not disputed in the hearing before me. This is the only purported discrepancy between the versions. It is not a material discrepancy as described by Mr Tan. This error does not make the English version unenforceable.

7 Second, whether the judgment was procured by fraud. This would disqualify it from being registered under s 2(3)(d) of the RECJA. There was no evidence before me that the judgment was procured by fraud. Counsel for the third defendant, Mr Tan argued that the original settlement agreement reached between the parties ("the terms document") was different from the judgment eventually extracted and this, he claimed, meant that the judgment creditors had tampered with terms of settlement and extracted a materially different order. Both documents were in evidence before me. The only differences between the judgment and the terms document were:

1. the exact SGD equivalent of the RM money sum is included in the judgment but is only stated in the terms document as an SGD sum equivalent to the RM sum; and
2. the payee name is stated in the judgment but not in the terms document.

Neither of these is a material discrepancy, nor are they sufficient evidence of fraud on the judgment debtors. The payment of a sum of RM750,000 would be required under both the terms document and the judgment. This was the core of what was agreed between the parties. Moreover, the third defendant's Malaysian solicitors were present when the judgment was extracted from the Malaysian court and would have been able to object to anything which differed from the parties' agreement. Their failure to object indicates to me that there was no fraud. Fraud is a serious allegation that requires a high standard of proof in the average case. This is no different; the third defendant bears a heavy burden of proof in an allegation of fraud and he has not discharged this burden.

8 Third, whether registration under the RECJA is not permitted where the judgment is a consent judgment. This argument is a clear non-starter. Section 2(1) of the RECJA permits registration of "any judgment or order... enforceable in the same manner as a judgment given by a court in that place." It does not distinguish between a consent judgment without admission of liability and any other type of

judgment. Section 2(1) was clearly intended to adopt a broad interpretation of the word "judgment". It may be that the judgment creditor is not permitted to rely on the judgment to argue that the issue of liability is *res judicata* between the parties. However, this does not affect registration which is a purely formal process. Registration may be refused under s 3(2)(b) of the RECJA if a party has not agreed to submit to the jurisdiction of that court. In this case, the third defendant has not only agreed to submit to the Malaysian court's jurisdiction but has in fact consented specifically to the terms of the judgment extracted. The fact that the judgment was obtained by consent only strengthens the case for registration. The third defendant cannot be permitted to agree to terms before a Malaysian court only to resist its enforcement in the place where his assets are found.

9 Fourth, whether the judgment creditor was really a judgment creditor. The definition of judgment creditor in s 2(1) of the RECJA is also clear. It means "the person by whom the judgment was obtained" and his successors. The judgment creditor was the plaintiff in the Malaysian suit. It is not disputed that the judgment was obtained by him with the consent and agreement of the defendant in the Malaysian suit. Who was to be paid the settlement sum was a term of the judgment rather than an attempt to change the parties in the suit – it does not change the nature of the judgment creditor's claim for enforcement.

10 Fifth, whether the judgment debtor was really a judgment debtor. A judgment debtor, as defined in s 2(1) of the RECJA, is any person "against whom the judgment was given". The third defendant personally guaranteed the settlement sum and took notice that he would "be liable to the process of execution for the purpose of compelling you to obey the same". The judgment was clearly directed at the third defendant. Whether or not his liability under the judgment was conditional or unconditional does not change the fact that judgment was given against him. In my view, there is no doubt that the third defendant was a judgment debtor.

11 Sixth, whether the Malaysian court acted without jurisdiction. Mactus Pte Ltd and Mactus International Pte Ltd are liable under the judgment to pay the settlement sum, along with the third defendant. The third defendant claims that these two companies are non-parties to the Malaysian suit and that the Malaysian court had no jurisdiction over them. The third defendant is the sole shareholder and director of Mactus Pte Ltd and Mactus International Pte Ltd (directly and through another of his Mactus companies). It is clear on the face of the judgment that the third defendant was being made liable in the judgment and there is no dispute that the Malaysian court had jurisdiction over the third defendant. The payment through Mactus Pte Ltd and Mactus International Pte Ltd can more properly be described as the vehicle through which the third defendant must make payment and not an example of the Malaysian court acting outside of its jurisdiction. Even if this were not so, the judgment is presently sought to be enforced against the third defendant, in relation to whom there is no question of jurisdiction.

12 Seventh, whether the penal notice attached to the judgment changes its nature from a money judgment to a penal judgment. I do not think the inclusion of the penal notice changes anything. In fact, I do not think that the description "penal notice" is even an accurate one. This notice reads as follows:

INDORSEMENT PURSUANT TO ORDER 45 RULE 7 OF THE RULES OF COURT 2012

If you, Tan Swee Leon (Singapore Passport No. [xxx]), the abovenamed 3rd defendant, disobey this Judgment, you will be liable to the process of execution for the purpose of compelling you to obey the same.

13 Order 45 rule 7 of the Malaysian Rules of Court 2012 is *in pari materia* with O 45 r 7 of our Rules

of Court. It governs the service of copy of judgment or order prerequisite to enforcement under O 45 r 5. In other words, it governs the formal requirements of an order which, if disobeyed, may lead to committal for contempt of court. Every person who does not obey a court order opens himself up to committal proceedings for disobeying a court order regardless of whether such a notice is indicated in the judgment. The inclusion of this notice does not provide any additional penalties. The judgment still remains a money judgment and is thus enforceable under the RECJA.

14 Eighth, whether there was material non-disclosure. The alleged non-disclosure related to the fact that the terms document was not disclosed before the AR. I find that the non-disclosure of the terms document was not material; it is the judgment that is material and not the discussions or negotiations leading up to it. Moreover, as I have already observed, there were no material discrepancies between the judgment and the terms document. Both versions of the judgment were before the AR and that was what was important.

15 It seems to me that the judgment debtor was attempting to use the court process to avoid his obligation to pay. Counsel for the judgment creditor pointed out that the third defendant evaded Malaysian court process until he was threatened with committal proceedings. He then signed this consent judgment and now seeks to renege on it. I think it would be unjust and inequitable to permit the judgment debtor to rely on technical arguments which do not affect the validity of the judgment in order to set aside the registration of that judgment. It is beyond doubt that permitting registration is the "just and equitable" thing to do. Mr Tan submitted an affidavit after the last hearing deposing to an application being made in Malaysia to set aside the Malaysian judgment. In response, Mr Ian Lim ("Mr Lim"), counsel for the judgment creditor filed an affidavit to support his submission that the application in Malaysia is doomed to fail because it was out of time. Further, Mr Lim submitted that an application to set aside is not a relevant ground unlike a stay pending appeal. I agree with Mr Lim that the proposed application is irrelevant. The third defendant can similarly apply to set aside the order in Singapore if he is successful in Malaysia. For the above reasons, I dismiss the application and will hear parties on cost.