

Orchard Capital I Ltd v Ravindra Kumar Jhunjhunwala
[2011] SGHC 185

Case Number : Suit No 8 of 2011 (Registrar's Appeal No 140 of 2011)
Decision Date : 04 August 2011
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Lai Yew Fei and Khelvin Xu Cunhan (Rajah & Tann LLP) for the plaintiff/respondent; Patrick Chin Meng Liong and Wong Chai Kin (briefed) (R S Wijaya & Co) for the defendant/appellant.
Parties : Orchard Capital I Ltd — Ravindra Kumar Jhunjhunwala

Conflict of Laws – choice of jurisdiction – non-exclusive

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 106 of 2011 was allowed by the Court of Appeal on 24 February 2012. See [\[2012\] SGCA 16.](#)]

4 August 2011

Choo Han Teck J:

1 The respondent is a company registered in the Cayman Islands. The appellant is an Indian national residing in Singapore. He entered into several contracts with the respondent. The appellant failed to discharge his obligations under those contracts. Consequently, the parties entered into a settlement agreement on 28 May 2010 with a view of resolving his breach of the earlier agreements. The appellant contracted thus to pay US\$2,500,000 by 28 November 2010. The appellant failed to pay as agreed and by reason of which, the respondent now claims in this suit the full sum of US\$6,500,000 (owing under earlier agreement) plus interests amounting to US\$261,780.82.

2 The appellant applied to stay the respondent's suit on the ground that Singapore is not the proper forum. He relied on the non-exclusive jurisdiction clause in the settlement agreement which provided that —

the agreement is governed by and in accordance with the laws of Hong Kong SAR. The parties submit to the non-exclusive jurisdiction of the courts of Hong Kong SAR. The parties hereby knowingly, voluntarily, and intentionally waive to the fullest extent permitted by law any rights they may have to trial by jury in respect of any litigation based hereon, or arising out of, under or in connection with this Agreement.

His application was dismissed and he appealed before me.

3 Both parties cited *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 ("*Spiliada*") in support. It seems clear that the *Spiliada* requires a court, in an application for a stay of proceedings application on the ground of *forum non conveniens*, to determine on the balance of all competing factors, which forum would be the more clearly appropriate one. Given that the action to be stayed was commenced here, the allegation that this was not the appropriate forum meant that the burden lies with the applicant to show which was the more appropriate forum.

4 In this case, the only material factors facing off were the fact that the parties had chosen Hong Kong as the appropriate forum, and the fact that the appellant and his family are resident here, and he appears to have business in Singapore although the respondent had acknowledged that the original contracts were made to further the appellant's business in "India, China and USA". The respondent's counsel conceded that witness testimony in this case was not material as the claim would be essentially a construction of the contract. The original contracts specified Hong Kong to be the exclusive jurisdiction whereas the settlement agreement specified Hong Kong as the non-exclusive jurisdiction. Performance under the settlement agreement was to be made by payment into a Citibank account in America.

5 Generally, when the court is of the view that the factors are evenly balanced, it would conclude that the defendant had failed to discharge its burden of proving that there was another more appropriate forum. However, in the simple and straightforward contest between the two factors here, I am of the view that the selection of Hong Kong as the jurisdiction of choice was sufficient discharge of the appellant's burden, there being no evidence of any unforeseen circumstances outside the parties' contemplation at the time the settlement agreement was concluded, that renders that choice inappropriate or unjust. It was clear to the parties that the appellant's business could have taken him to China, India, USA or here. Further, there is no reason to believe that the respondent would have any difficulty enforcing a Hong Kong judgment against the appellant in Singapore. Thus, for the reasons above, the appeal is allowed and the action herein be stayed *sine die* with liberty to restore.

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