A

Mann Holdings Pte Ltd & Anor v Ung Yoke Hong

B

HIGH COURT (JOHOR BAHRU) — ORIGINATING SUMMONS NO JA-24–06–12 OF 2017
SEE MEE CHUN J
13 AUGUST 2018

C

Civil Procedure — Foreign judgments — Registration of foreign judgment — Application to set aside ex parte order of registration of foreign judgments — Grounds to challenge application for registration of foreign judgment — Whether res judicata and/or issue estoppel applied — Reciprocal Enforcement of Judgments Act 1958 ss 3 & 5

D

Enclosure 10 was the judgment debtor's ('the JD') application to set aside the ex parte registration of a foreign judgment granted ('registration order') of a Singapore High Court judgment ('Singapore judgment') in Singapore High Court Suit No HC/S 605 of 2015 ('Singapore suit'). The judgment creditors ('the JC') were the plaintiffs in the Singapore suit. The JCs had initiated the Singapore suit for the recovery of a RM4m loan said to have been given to the JD. The JD together with five other plaintiffs filed in the Johor Bahru High Court ('JBHC') Suit No JA-22NcVc-91–04 of 2016 ('JB suit') against the JCs and four other defendants. In JB suit the issue of the RM4m loan was disputed and said to be a sham. The defendants in JB suit (including the JDs) had filed a notice of application ('first stay application') and was dismissed by the JBHC. A second stay application was filed but due to an objection that the second stay application was a hybrid of a stay and striking out, a third stay application was filed. The second and third stay applications were dismissed by JBHC and the Court of Appeal dismissed the appeal of the defendants. The JD had submitted several grounds that the registration order be set aside ie non-disclosure of material facts, abuse of process, Singapore judgment was not final and conclusive and contrary to public policy by virtue of res judicata and/or estoppel.

E

F

G

H

Held, allowing the JD's application and setting aside the registration order:

(1) The grounds for setting aside were limited to that as spelt out in s 5(1)(a) of the Reciprocal Enforcement of Judgments Act 1958 ('the REJA'). The primary ground accepted by the court in allowing the application to set aside was on res judicta and/or issue estoppel. This was premised on the outcome of the two stay applications which were dismissed by JBHC which meant that the Singapore suit could not prevail over the JB suit (see paras 9–11).

I

(2) There was no difference between JBHC and the Court of Appeal disallowing the Singapore suit from prevailing over the JB suit before and after the Singapore judgment was given as the Singapore suit and Singapore judgment could not prevail over the JB suit and any ensuing judgment (see para 12).

(3) The fact that JBHC recognised that the Singapore suit could not prevail over the JB suit meant the Singapore judgment was not final and conclusive as required under s 3(3)(a) of the REJA. The registration order granted was contrary to public policy and it was therefore a ground which REJA recognised for the purpose of setting aside (see paras 20–21).

[Bahasa Malaysia summary

Lampiran 10 adalah permohonan penghutang penghakiman ('JD') untuk mengetepikan pendaftaran ex parte penghakiman asing yang diberikan ('perintah pendaftaran') penghakiman Mahkamah Tinggi Singapura ('penghakiman Singapura') di Mahkamah Tinggi Singapura guaman No HC/S 605 Tahun 2015 ('guaman Singapura'). Pemiutang penghakiman ('JC') adalah plaintif dalam guaman Singapura. JC telah memulakan guaman Singapura untuk pemulihan pinjaman RM4 juta yang dikatakan telah diberikan kepada JD. JD bersama lima plaintif lain memfailkan guaman di Mahkamah Tinggi Johor Bahru ('JBHC') Guaman No JA-22NcVc-91–04 Tahun 2016 ('guaman JB') terhadap JC dan empat defendan lain. Dalam guaman JB isu pinjaman RM4 juta itu dipertikaikan dan dikatakan adalah palsu. Defendan-defendan dalam guaman JB (termasuk JD) telah memfailkan notis permohonan ('permohonan penangguhan pertama') dan telah ditolak oleh JBHC. Permohonan penangguhan kedua telah difailkan tetapi disebabkan bantahan bahawa permohonan penangguhan kedua adalah hibrid penangguhan dan pembatalan, permohonan penangguhan ketiga telah difailkan. Permohonan penangguhan kedua dan ketiga ditolak oleh JBHC dan Mahkamah Rayuan menolak rayuan defendan-defendan. JD telah mengemukakan beberapa alasan bahawa perintah pendaftaran diketepikan iaitu tidak mendedahkan fakta material, penyalahgunaan proses, penghakiman Singapura tidak muktamad dan konklusif dan bertentangan dengan dasar awam berdasarkan res judicata dan/atau estoppel.

Diputuskan, membenarkan permohonan JD dan mengetepikan perintah pendaftaran:

(1) Alasan untuk mengetepikan adalah terhad kepada yang dinyatakan dalam s 5(1)(a) Akta Penguatkuasa Salingan Hukuman 1958 ('Akta'). Dasar utama yang diterima oleh mahkamah dalam membenarkan permohonan untuk diketepikan adalah res judicata dan/atau isu estopel. Ini adalah berdasarkan hasil dua permohonan penangguhan yang ditolak oleh JBHC yang bermaksud bahawa guaman Singapura tidak dapat mengatasi guaman JB (lihat perenggan 9–11).

(2) Tiada perbezaan antara JBHC dan Mahkamah Rayuan yang tidak membenarkan guaman Singapura daripada mengatasi guaman JB sebelum dan selepas penghakiman Singapura diberikan kerana guaman Singapura dan penghakiman Singapura tidak dapat mengatasi guaman JB dan apa-apa penghakiman yang berikutnya (lihat perenggan 12).

(3) Hakikat bahawa JBHC mengiktiraf bahawa guaman Singapura tidak dapat mengatasi guaman JB bermakna penghakiman Singapura tidak muktamad dan konklusif seperti yang dikehendaki di bawah s 3(3)(a) Akta. Perintah pendaftaran yang diberikan adalah bertentangan dengan dasar awam dan oleh itu adalah alasan yang diakui oleh Akta untuk tujuan mengetepikan (lihat perenggan 20–21).]

Notes

For cases on foreign judgment in general, see 2(2) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 3868–3873.

Cases referred to

Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd [1995] 3 MLJ 189, SC (refd)

Banque Nasionale de Paris v Wuan Swee May & Anor [2000] 3 MLJ 587, HC (refd)

Hartecon JV Sdn Bhd & Anor v Hartela Contractors Ltd [1996] 2 MLJ 57, CA (refd)

Malayan Banking Berhad v Ng Man Heng [2005] 1 MLJ 470, HC (refd)

The Aspinall Curzon Ltd v Khoo Teng Hock [1991] 2 MLJ 484, HC (refd)

Legislation referred to

Reciprocal Enforcement of Judgments Act 1958 ss 3(3)(a), 5(1), (1)(a), 8

Justin Voon (Amy Law with him) (Law & Assoc) for the applicant.
Wong Guo Bin (Izral Partnership) for the respondent.

See Mee Chun J:

INTRODUCTION

[1] Enclosure 10 is judgment debtor's ('JD') application to set aside the ex parte registration of a foreign judgment granted on 29 January 2018 ('registration order') of a Singapore High Court judgment ('Singapore judgment') dated 15 December 2017 in Singapore High Court Suit No HC/S 605/2015 ('Singapore suit'). The JCs were the plaintiffs in the Singapore suit.

A BACKGROUND FACTS

Singapore suit and JB suit

B **[2]** The JCs had initiated the Singapore suit on 19 June 2016 for the recovery of a RM4m loan said to have been given to JD. On 27 April 2016 JD together with five other plaintiffs filed in the Johor Bahru High Court Suit No JA-22NcVc-91–04 of 2016 ('JB suit') against JCs and four other defendants. In JB suit the issue of the RM4m loan was disputed and said to be a sham. This was because the RM4m was part of a deposit sum paid to plaintiffs C by defendants for the purchase of shares of Metahub Industries Sdn Bhd ('Metahub'). According to JD, the contents of JB suit contained issues which are larger and/or extensive then the Singapore suit and other than the loan involve fraud; conspiracy to defraud; conspiracy to injure; wrongful taking and/or retention of trade secrets and/or confidential information of Metahub D by defendants; and an injunction to preserve the trade secrets and/or confidential information of Metahub in Malaysia.

Application to stay proceedings in JB suit pending the disposal of Singapore suit

E **[3]** Defendants in JB suit (including JDs) had filed a notice of application dated 10 May 2016 ('first stay application'). This was dismissed by the Johor Bahru High Court ('JBHC') on 14 February 2017 and the oral grounds were as follows:

F

(a) the forum conveniens in relation to the plaintiffs' claim is in Malaysia;

(b) there is no issue of res judicata;

(c) there is no duplicity/multiplicity of proceedings;

G (d) the decision of the Singapore suit will not bind Malaysia; and

(e) grave injustice will be caused if the matter is heard in Singapore as part of the prayers sought by the plaintiffs are injunctive in nature and can only be effective in Malaysia.

H **[4]** The sealed court order is in exh '7' of affidavit in support. There was no appeal against this order.

[5] A second stay application was filed on 14 June 2017. Due to an objection I that the second stay application was a hybrid of a stay and striking out, a third stay application was filed on 17 August 2017. The second and third stay applications were dismissed by JBHC on 6 September 2017. The grounds are in exh '13' of affidavit in support and the sealed order in exh '12'.

[6] On 30 November 2017 the Court of Appeal dismissed the appeal of defendants. A

GROUNDS FOR SETTING ASIDE

[7] JD has put forth several grounds that the registration order be set aside. These grounds were non disclosure of material facts, abuse of process, Singapore judgment was not final and conclusive and contrary to public policy by virtue of res judicata and/or estoppel. B

LAW ON SETTING SIDE REGISTRATION ORDER C

[8] Section 5(1) of the Reciprocal Enforcement of Judgments Act 1958 ('the REJA') provides as follows:

> 5(1) On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment — D
>
> (a) shall be set aside if the registration court is satisfied —
>
> (ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case;
>
> E
>
> ...
>
> (v) that the enforcement of the judgment would be contrary to public in Malaysia; or
>
> ...
>
> F

Thus in *Malayan Banking Berhad v Ng Man Heng* [2005] 1 MLJ 470 it was stated at pp 491–492 as follows:

> [60] The grounds on which the registration of a foreign judgment is disallowed are clearly spelt out in s 5(1) of the Reciprocal Enforcement of Judgments Act 1958; ... G
>
> ...
>
> [64] In application for registration of foreign judgment the court must be slow to refuse registration on tenuous grounds as it will lead to our judgments not being accorded reciprocity by the courts of reciprocating countries. This is the relationale H behind s 5(1) of the REJA, which limits and specifies the grounds on which registration can be challenged. If we begin to widen the scope set out by Parliament in s 5(1) of the REJA, which is the very same scope in the legislation of reciprocating countries such as Singapore, then we can expect refusal to register our judgments in foreign courts on tenuous grounds. Even the public policy limb (must be interpreted restrictively because it is 'a very unruly horse, and once you get astride it I you never know where it will carry you. It may lead you from the sound law' [per Burrough J in *Richardson v Melish* [1824] 2 Bing 229, quoted with approval by Eusoff Chin J (as His Lordship then was) in *The Aspinall Curzon Ltd v Khoo Teng Hock* [1991] 2 MLJ 484. In the interest of comity of nations, the registration of a

A foreign judgment should not be refused on grounds not provided in s 5(1) of the REJA.

[9] This essentially means that the grounds for setting aside are limited to that as spelt out in s 5(1)(a). What JD has to do in this particular instance is to show the grounds as circumscribed exist.

[10] The primary ground accepted by this court in allowing the application to set aside was on res judicta and/or issue estoppel. This was premised on the outcome of the two stay applicants which were dismissed by JBHC. In the first stay it was held, inter alia, that the decision of the Singapore suit will not bind Malaysia. In the subsequent stay application it was noted by the judge in para 34 of his grounds of decision that:

> ... I am truly not able to appreciate the arguments why it must be the decision of the Singapore Court which should bind the parties to this suit.

(exh '13', p 1466).

[11] This thus meant the JBHC had decided on two occasions the Singapore suit cannot prevail over the JB suit. Otherwise the JBHC and the Court of Appeal which confirmed the second stay and striking out decision would have allowed the stay and/or striking out of the JB suit and allowed the Singapore suit to continue to its conclusion and determination.

[12] A submitted by JD's solicitor which this court accepted there is no difference between JBHC and the Court of Appeal disallowing the Singapore suit from prevailing over the JB suit before the Singapore judgment is given and after the Singapore suit judgment is given. This is because the Singapore suit and Singapore judgment cannot prevail over the JB suit and any ensuing judgment.

[13] It follows that res judicata and/or issue estoppel applies as the same issue is being canvassed here which is the earlier decision that the Singapore suit cannot prevail over the JB suit.

[14] This has been explained in *Hartecon JV Sdn Bhd & Anor v Hartela Contractors Ltd* [1996] 2 MLJ 57 where at pp 66–67 it was stated:

> One cannot over emphasise the proposition that once a judge makes a ruling, substantive or procedural, final or interlocutory, it must be adhered to and may not be reopened willy-nilly. One may then ask: how is this approach to be reconciled with the decision in *Harrison*? The answer to that question lies in recognising that the principle for which that case is authority applies only where it is demonstrated that the court plainly lacked jurisdiction to make the order complained of:

provided, of course, that the order in question has not been drawn up and perfected. To extend the scope of that principle would be to effectively demolish the requirements of certainty and finality which are the two pillars on which the judicial process rests.

[15] Further in *Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd* [1995] 3 MLJ 189 it was stated in pp 199–200:

On the other hand, the issue estoppel literally means simply an issue which a party is estopped from raising in a subsequent proceeding. However, the issue estoppel, in nutshell, from a consideration of case law, means in law a lot more, ie that neither of the same parties or their privies in a subsequent proceeding is entitled to challenge the correctness of the decision of a previous final judgment in which they, or their privies, were parties.

...

There is one school of thought that issue estoppel applies only to issues actually decided by the court in the previous proceedings and not to issues which might have been and which were not brought forward, either deliberately or due to negligence or inadvertence, while another school of thought holds the contrary view that such issues which might have been and which were not brought forward as described, though not actually decided by the court, are still covered by the doctrine of res judicata, ie doctrine of estoppel *per rem judicatum.*

...

We are of the opinion that the aforesaid contrary view is to be preferred; it represents for one thing, a correct even though broader approach to the scope of issue estoppel ...

[16] *Asia Commercial Finance* went on at p 202 that res judicata is a facet of public policy when it stated that:

... We venture to think that the reason for the ratio is that an estoppel or exclusion of evidence based on a question of public policy, ie in this case, the question of public policy that there should be finality in litigation ...

[17] As to public policy being an unruly horse, the court is mindful of the observation in *The Aspinall Curzon Ltd v Khoo Teng Hock* [1991] 2 MLJ 484 at p 486:

... But what is public policy? In *Richardson v Mellish*, Burrough J protested against arguing too much upon public policy. It is a very unruly horse, and when you get astride it you never know where it will carry yo. It may lead you from the sound law. It is never argued at all but when other points fail.

[18] In *Banque Nasionale de Paris v Wuan Swee May & Anor* [2000] 3 MLJ 587 it was stated at p 597:

A ... However, I wish to stress that the public policy that should be considered is the public policy in Malaysia. That is what s 5(1)(a)(v) of the REJA says.

So, when a Malaysian court is considering the issue of public policy in Malaysia, it should look at Malaysian law, Malaysian government policy, Malaysian moral value and all other relevant factors then prevailing in Malaysia, including what I have mentioned earlier.

B

[19] This court acknowledges that public policy can be an unruly horse but a balance has to be struck between letting it gallop and reining it in. As res judicata is a facet of public policy and it has been shown that JBHC and the Court of Appeal recognised the Singapore suit cannot prevail over the JB suit, then surely the unruly horse has to be reined in.

C

[20] On a further notice, the fact that JBHC recognised that the Singapore suit cannot prevail over the JB suit meant the Singapore judgment is not final and conclusive as required under s 3(3)(a) of the REJA. Section 8 does not apply as that judgment for it to be recognised in Malaysia and to be conclusive presupposes that judgment to be final and conclusive, which in this instance, it is not.

D

E CONCLUSION

[21] For the above reasons the registration order granted was contrary to public policy. It was therefore a ground which REJA recognises for the purpose of setting aside. JD's application was thus allowed and the registration order set aside.

F

JD's application allowed; registration order set aside.

Reported by Nabilah Syahida Abdullah Salleh

G

H

I