IN THE APPELLATE DIVISION OF THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC(A) 41

Civil Appeal No 31 of 2022

Between

Chen Aun-Li Andrew

… *Appellant*

And

Ha Chi Kut (suing as the sole executrix of the estate of Khoo Ee Liam, deceased)

… *Respondent*

In the matter of Originating Summons No 618 of 2021 (Registrar's Appeal No 337 of 2021)

Between

Ha Chi Kut (suing as the sole executrix of the estate of Khoo Ee Liam, deceased)

… *Plaintiff*

And

Chen Aun-Li Andrew

… *Defendant*

EX TEMPORE JUDGMENT

[Conflict of Laws — Foreign judgments — Enforcement]

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Chen Aun-Li Andrew
v
Ha Chi Kut (suing as the sole executrix of the estate of Khoo Ee Liam, deceased)

[2022] SGHC(A) 41

Appellate Division of the High Court — Civil Appeal No 31 of 2022
Kannan Ramesh JAD, Debbie Ong Siew Ling JAD and Aedit Abdullah J
1 December 2022

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Debbie Ong Siew Ling JAD (delivering the judgment of the court *ex tempore*):

1 This is an appeal against the decision of the Judge of the General Division of the High Court (the "Judge") in *Ha Chi Kut (suing as the sole executrix of the estate of Khoo Ee Liam, deceased) v Chen Aun-Li Andrew* [2022] SGHC 149 (the "GD"), which upheld the registration of a foreign judgment, referred to as the "Collective Judgment" as it comprised two components:[1]

(a) An order dated 30 April 2013 of the Court of First Instance of the Hong Kong Special Administrative Region (the "HKCFI") – this is an order that the costs of the main action, *ie*, Action No 4354 of 2003 ("Action 4354"), and the counterclaim are to be paid to (the late) Mr

[1] Record of Proceedings ("ROP"), Vol 3(a) at pp 27 to 31.

Khoo Ee Liam ("Mr Khoo"), to be taxed if not agreed. This order is referred to as the "Cost Order".

(b) A cost certificate dated 13 May 2020 which is the taxing master's cost certificate – the costs were taxed at the sum of HK$15,280,877.12. This is referred to as the "Cost Certificate".

Background

2 The appellant, Mr Chen Aun-Li Andrew, was the director and sole shareholder of Aachen (Asia Pacific) Consultants Limited (the "ACL"), a company incorporated in Hong Kong.[2] ACL commenced legal proceedings in Hong Kong against Mr Khoo in Action 4354; Mr Khoo filed a counterclaim against ACL. The HKCFI dismissed ACL's claims and found in favour of Mr Khoo's counterclaim.[3] Mr Khoo then successfully applied to join the appellant as a party to Action 4354 for the purpose of costs. This was granted as part of the Cost Order.[4] As the parties were unable to agree on costs, the matter was set down for taxation. Thereafter, Mr Khoo passed away and the respondent, Mdm Ha Chi Kut, obtained an order to be made a party to Action 4354 in her capacity as the sole executrix of Mr Khoo's estate.[5] The costs of Action 4354 and the counterclaim were then taxed, and the Cost Certificate was issued.[6]

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2 ROP, Vol 3(b) at p 179 (Tab 12, Affidavit of Chen Aun-Li Andrew dated 26 October 2021 ("1CAL") at para 8).

3 ROP, Vol 3(a) at p 5 (Affidavit of Ha Chi Kut dated 21 June 2021 ("1HCK") at para 6); ROP, Vol 3(b) at p 179 (1CAL at para 9).

4 ROP, Vol 3(a) at p 7 and pp 27 and 28 (1HCK at para 11; Exhibit HCK-2); ROP, Vol 3(b) at pp 27 to 28 (1CAL at para 13).

5 ROP, Vol 3(a) at p 11 (1HCK at paras 18 to 20 and para 22).

6 ROP, Vol 3(a) at pp 16 and 17, and pp 27 to 31 (1HCK at paras 32 and 33, and Exhibit HCK-2). ROP, Vol 3(b) at p 182 (1CAL at para 19).

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3 Pursuant to s 4(1) of the Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) (the "REFJA" or "Act"), the respondent applied to register the Collective Judgment in Singapore on 21 June 2021.[7] The Collective Judgment was registered on 22 June 2021.[8] The appellant subsequently applied to set aside the registration of the Collective Judgment pursuant to s 5(1) of the REFJA.[9] The assistant registrar dismissed the application and the appellant appealed against this decision.[10] In the General Division of the High Court, the Judge dismissed the appeal. A judgment creditor may apply to have the judgment to which the REFJA applies registered at any time "within 6 years after the date of the judgment": s 4(1)(*a*) of the REFJA. The registration of a judgment may be set aside if the registering court is satisfied that the judgment "was registered in contravention of sections 3 or 4" of the REFJA: s 5(1)(*a*)(i) of the REJFA. The Judge determined the date of the Collective Judgment to be 13 May 2020, *ie*, the date of the Cost Certificate: [74] of the GD. Thus, the application for the judgment to be registered was made within the time required in s 4(1)(*a*) of the REFJA, and there was no basis to set aside its registration.

Parties' submissions

4 The appellant submits that the "sole issue on appeal is whether the date of the "*judgment*" for the purposes of section 4(1) read with section 5(1)(a)(i) of the REFJA is the date of the 2013 Order (i.e. 30 April 2013), or the date of the 2020 Certificate (i.e. 13 May 2020)." [emphasis in original][11] From his

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7 Appellant's core bundle, vol 2, at p 3.

8 Appellant's core bundle, vol 2, at p 6.

9 ROP, Vol 2 at pp 15 to 16 (HC/SUM 4919/2021 dated 26 October 2021).

10 ROP, Vol 1 at pp 55 to 56 (HC/ORC 6989/2021 dated 13 December 2021).

11 Appellant's case ("AC") at pp 7 to 8 (para 14).

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appellant's case, however, his core argument is essentially that the relevant date of the judgment for purposes of s 4(1)(*a*) is that of the Cost Order (*ie*, 30 April 2013) because it was a "money judgment" which could be registered under the REFJA.

5 In this appeal, the appellant submits that the Judge erred in relying on the legislative history of the REFJA prior to the 2019 amendments to the Act. The REFJA was amended by the Reciprocal Enforcement of Foreign Judgments (Amendment) Act 2019 (Act 25 of 2019) (the "2019 Amendment"), which took effect on 3 October 2019. He argues that "Parliament clearly intended to depart from the common law position in relation to the enforcement of foreign judgments when enacting the [2019 Amendment]", which amended the REFJA.[12] He contends that the purpose and legislative object of the REFJA had changed because of the 2019 Amendment, and the REFJA should be construed on its own terms without reference to the meaning borne by the words prior to 2019.[13] He further submits that the Cost Order was a "money judgment" as it obliged him to pay a sum of money although the quantum was not defined.[14] His submission is therefore that the relevant judgment for the purposes of s 4(1) is the Cost Order which application for registration must be made within six years of the date of its issue, *ie*, 30 April 2013. Further, even if the Cost Order and Cost Certificate could be said to have merged, the relevant date for the application of registration was 30 April 2013.[15]

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12 AC at p 16 (para 23(a)).

13 AC at p 16 (para 23(a)).

14 AC at p 16 (para 23(c)).

15 AC at pp 19 to 21 (paras 27 to 29).

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6 The respondent contends that the judgment which may be registered under the REFJA is a "final money judgment" and the Cost Order was not such a judgment.[16] She submits that the Collective Judgment only became final and conclusive as to the amount payable at the point when the Cost Certificate was issued.[17] Since the relevant judgment is the Collective Judgment and not the Cost Order, the date of the judgment must be 13 May 2020, as it was only at this point that the Collective Judgment came into being.[18]

Decision

7 The appellant gives hardly any reasons or evidence to support his argument that the 2019 Amendment changed the legislative object and purpose of the REFJA. There is no explanation or evidence, such as material from the Parliamentary debates, supporting his contention that Parliament intended to depart from the common law position in relation to the enforcement of foreign judgments.

8 Contrary to the appellant's argument, we observe that the Parliamentary debates show that the 2019 Amendment to the REFJA in fact sought to "supplement the existing regime, to further strengthen Singapore's value proposition for litigants considering where to resolve their disputes": Singapore Parliamentary Debates, Official Report (2 September 2019) vol 94, (Mr Edwin Tong Chun Fai, Senior Minister of State for Law (for the Minister of Law)).[19] A reading of the Parliamentary debates affirms that it was not the aim of

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16 Respondent's case ("RC") at p 11 (paras 21 and 23).

17 RC at p 18 (para 35).

18 RC at p 21 (para 38).

19 Respondent's bundle of authorities ("RBOA") at Tab 11.

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Parliament by way of the 2019 Amendment to replace or oust the common law regime but to "expand and modernise the framework by adding … four more types of judgments in civil proceedings into the fold recognised by REFJA": Singapore Parliamentary Debates, Official Report (2 September 2019) vol 94, (Mr Edwin Tong Chun Fai, Senior Minister of State for Law (for the Minister of Law)).[20]

9 The enforcement regime under the REFJA was based on and intended to replace the common law action on a foreign judgment. Hence the elements required for a common law action on a foreign judgment were retained in the REFJA. Under the common law, an *in personam* final and conclusive foreign judgment rendered by a court of competent jurisdiction may be enforced by an action for the amount due under it if it is a judgment for a fixed sum of money: *Poh Soon Kiat v Desert Palace Inc (trading as Caesars Palace)* [2010] 1 SLR 1129 (Court of Appeal) at [14]. The condition that a foreign judgment must be final and conclusive between the parties is in the present REFJA as s 3(2)(*b*) and was in the version of the Act prior to the 2019 Amendment (the "pre-2019 REFJA") as s 3(2)(*a*). The requirement that the foreign judgment be rendered by a court of competent jurisdiction is in s 3(1) of both the present and pre-2019 REFJA. The requirement that the judgment provides for a sum of money was in the pre-2019 REFJA as s 3(2)(*b*). Following the 2019 Amendment, the REFJA was expanded to apply to judgments under which a sum of money was not payable (such as freezing orders and injunctions). The requirement that the judgment provides for a sum of money is no longer in the present REFJA as part of s 3 but is now in s 2 which provides the definition of "money judgment". This was the primary change introduced by the 2019 Amendment. The three

20 RBOA at Tab 11.

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substantive requirements for a common law action on a foreign judgment have thus *not* been changed by the 2019 Amendment.

10 The legislative history of the REJFA also affirms that the intent of the Act is to encapsulate the requirements under the common law to bring an action on a foreign judgment. The REFJA may be traced to the draft of the Foreign Judgments (Reciprocal Enforcement) Act 1933 (c 13) (UK) ("FJREA 1933 (UK)"), which was presented as part of a report prepared by the Foreign Judgments (Reciprocal Enforcement) Committee chaired by Lord Justice Greer ("Greer Committee") (United Kingdom, *Report of the Foreign Judgments (Reciprocal Enforcement) Committee* (Cmd 4213, 1932) (Chairman: Sir Arthur Greer)) (the "Greer Report"). In enacting the FJREA 1933 (UK), the Lord Chancellor explained during the second reading that "[t]he Bill before your Lordships is word for word the Bill which the [Greer Committee] recommended", and that "the conditions under which we propose to enforce foreign judgments under the Bill are substantially the same as under the Common Law": (United Kingdom, House of Lords, Parliamentary Debates (14 February 1933), vol 86 at cc 671–675 (Viscount Sankey, Lord Chancellor)). This is reinforced by the commentary accompanying the draft bill of the FJREA 1933 (UK), which sets out the rationale for the clauses drafted.[21] It was explained at various junctures in the commentary that the clauses drafted were in accordance with common law rules or with the intent to preserve the rights at common law of foreign judgment creditors.[22] It is thus clear that the FJREA 1933 (UK) served as a proxy for the common law action for the enforcement of a judgment. These requirements were imported into our local jurisprudence by

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21 RBOA at Tab 9 (Annex V of the Greer Report).

22 RBOA at Tab 9 (Annex V of the Greer Report, see Clause 1 and Clause 2).

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way of the Foreign Judgments (Reciprocal Enforcement) Ordinance 1959 (No 29 of 1959) (the "REFJA 1959"), which was the first iteration of the REFJA in Singapore. In enacting the REFJA 1959, Mr E. P. Shanks, then Attorney-General, stated that the "[The bill of the REFJA 1959] follows very closely the provisions of the [FJREA 1933 (UK)] ...": Colony of Singapore, Legislative Assembly Debates, Official Report (18 March 1959) vol 1 at col 211 (Mr E.P. Shanks, the Attorney-General). As observed earlier, the 2019 Amendment has not repealed these common law requirements.

11 Further, there is alignment between the limitation period for a common law action for the enforcement of a foreign judgment in Singapore and the period available for the registration of a judgment under s 4(1)(*a*) of the REFJA. Both provide for a period of six years. Section 7 of the REFJA extinguishes the option of enforcement at the common law to which the Act applies. This was also present as s 7 of the pre-2019 REFJA. The reason provided in the commentary accompanying the draft bill of the FJREA 1933 (UK) as to why the time period for registration under the FJREA 1933 (UK) (and thus our REFJA) mirrors that of the period available in the common law is to prevent a diminution of the rights at common law of foreign judgment creditors.[23]

12 It is observed that s 4(3A) of the REFJA was introduced by the 2019 Amendment, which provides that the registering court may only register a "*non-money* judgment" [emphasis added] if satisfied that enforcement would be just and convenient. While various consequential amendments were also made to accommodate the newly expanded scope of the REFJA (such as removing the requirement that a judgment be for a sum of money payable from s 3 of the pre-

[23] RBOA, Tab 9 (Annex V of the Greer Report).

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2019 REFJA), nothing in the post-2019 Amendment schema for the enforcement of the "non-money judgment" affects the registration of "*money* judgments" [emphasis added]. In fact, the registration of a "non-money judgment" substantially mirrors the registration of a "money judgment" – similar to the registration of a "money judgment", various threshold requirements in ss 3 and 4 of the REFJA must be satisfied. The material difference is in s 4(3A), which in itself does not affect the registration of a "money judgment". The present case involves a judgment that falls within the scheme that has been long established in the REJFA where enforcement is of "final money judgments".

13 The Collective Judgment is a judgment within the meaning of s 4(1)(*a*) of the REFJA. The Cost Order in itself is not a "money judgment". The appellant's submission that the Cost Order is a "money judgment" as it obliged him to pay a sum of money although the quantum was not defined, must be rejected. It fails to differentiate between a liability to pay money and a liability to pay a *sum of money.* The definition of a "money judgment" is expressly and specifically provided for in s 2 of the REFJA as follows: ""money judgment" means a judgment under which *a sum of money is payable*…" [emphasis added]. For the purpose of s 4(1)(*a*) of the REFJA, the judgment was a "money judgment" within the definition of s 2 of the REFJA only upon the issuance of the Cost Certificate. The Cost Certificate merged with the Cost Order, turning an inchoate obligation to pay money into a choate obligation to pay a sum of money: *Re Khong Yuen Leng*; *ex p Selberan Co Sdn Bhd* [2005] 5 MLJ 22. Prior to that, the Cost Order merely directed the appellant to pay the respondent a sum of money; it did not state a definite or ascertainable sum of money. As the right to enforce only arose on 13 May 2020 when the sum payable was assessed under the Costs Certificate, the judgment was a "money judgment" only from that

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date, thereby entitling the respondent to apply to register it within six years therefrom. This is in line with the position that the judgment was enforceable by a common action only from 13 May 2020.

14 Thus, we agree with the Judge that the relevant date of the judgment for the purposes of s 4(1)(*a*) is 13 May 2020, *ie*, the date of the Cost Certificate.

15 The judgment was hence validly registered under s 4(1) and there has not been shown any reason to set it aside under any of the circumstances in s 5(1). The date of the judgment for the purpose of an application to register the judgment under the REFJA is 13 May 2020; it is also from that date that the six-year period in s 4(1)(*a*) commences – this date is also consistent with the date from which the respondent would have been able to enforce the judgment by way of a common law action but for s 7 of the REFJA.

Conclusion

16 For the foregoing reasons, the appeal is dismissed.

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17 As for costs, the respondent seeks costs of $30,000, plus disbursements of $1,309.40. The appellant submits that costs be fixed at $18,000 excluding disbursements. The appellant does not dispute the disbursements sought by the respondent. We fix costs at the sum of $25,000, inclusive of disbursements.

Kannan Ramesh
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

Aedit Abdullah
Judge of the High Court

Soo Ziyang Daniel (Selvam LLC) for the appellant;
Tan Kai Liang, Mak Sushan Melissa and Jonathan Kenric Trachsel (Allen & Gledhill LLP) for the respondent.

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