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

[2022] SGHC 149

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*

GROUNDS OF DECISION

[Conflict of laws — Foreign judgments — Enforcement — Whether registration was out of time]
[Statutory Interpretation — Statutes — Amending]
[Statutory Interpretation — Construction of statute — Purposive approach]
[Time — Computation — Prescribed period of time]

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v
Chen Aun-Li Andrew

[2022] SGHC 149

General Division of the High Court — Originating Summons No 618 of 2021 (Registrar's Appeal No 337 of 2021)
Pang Khang Chau J
24 January, 23 February 2022

27 June 2022

Pang Khang Chau J:

Introduction

1 High Court Originating Summons No 618 of 2021 ("OS 618") is an application, pursuant to the Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) (the "REFJA"), to register a purported collective judgment of the Court of First Instance of the High Court of the Hong Kong Special Administrative Region (the "HKCFI") comprising an order for costs to be taxed dated 30 April 2013 and a taxing master's costs certificate dated 13 May 2020.

2 The issue in this case is whether, in a situation where a foreign costs order provides for costs to be taxed, and the taxation proceedings take several years thereafter to complete, the six-year period allowed under the REFJA for

registration of a foreign judgment should be calculated from the date of the initial costs order or the date of the costs certificate issued at the conclusion of the taxation proceedings.

3 I accepted the plaintiff's submission that, in the present case, the said six-year period should commence from the issuance of the taxing master's costs certificate, and allowed the registration of the said collective judgment to stand. The defendant has appealed against my decision.

Background

4 The plaintiff, Mdm Ha Chi Kut ("Mdm Ha") is the sole executrix of the estate of the late Mr Khoo Ee Liam ("Mr Khoo"), and she appeared in these proceedings in that capacity.[1]

5 The defendant, Mr Chen Aun-Li Andrew ("Mr Chen") was at the material time the director and sole shareholder of Aachen (Asia Pacific) Consultants Limited ("ACL"), a company incorporated in Hong Kong.[2]

6 In 2003, ACL commenced Action No 4353 of 2003 ("Action 4353") in Hong Kong against Mr Khoo for certain arrears in consultancy fees. In response, Mr Khoo counterclaimed against ACL for certain sums of moneys. On 25 September 2012, the HKCFI dismissed ACL's claim and allowed Mr Khoo's counterclaim, with costs of the claim and the counterclaim to be paid by ACL to Mr Khoo "to be taxed if not agreed".[3]

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1 1st Affidavit of Mdm Ha Chi Kut filed on 21 June 2021 ("**HCK1**") at para 1.

2 1st Affidavit of Mr Chen Aun-Li Andrew filed on 26 October 2021 ("**AC1**") at para 8.

3 HCK1 at pp 58 to 59.

7 On 20 March 2013, Mr Khoo applied for Mr Chen to be made jointly and severally liable with ACL for the said costs.[4] This application was allowed on 30 April 2013 by Mimmie Chan J of the HKCFI, who issued an order (the "2013 Order") that:[5]

> … the costs of the main action herein and the counterclaim herein be paid by Chen Aun-Li Andrew (jointly and severally with the Plaintiff [*ie, ACL*]) to the Defendant [*ie, Mr Khoo*], to be taxed if not agreed …

8 Taxation proceedings were commenced by Mr Khoo in September 2014,[6] and were adjourned several times, initially for Mr Khoo to prove good service, and later because of Mr Khoo's poor health.[7] Mr Khoo passed away on 26 May 2015,[8] and an adjournment of taxation proceedings "*sine die* with liberty to restore" was granted on 25 August 2015.[9]

9 Mdm Ha obtained probate of Mr Khoo's estate on 14 March 2016, and joined herself as a party to Action 4353 on 30 November 2018.[10] Taxation proceedings were then restored by Mdm Ha filing a notice of intention to proceed on 15 February 2019.[11] After service of the notice by post at Mr Chen's Hong Kong address on 20 February 2019 was returned undelivered, Mdm Ha applied on 6 November 2019 for leave to effect substituted service by pre-paid

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4 HCK1 at paras 7 to 9.

5 HCK1 at paras 10 to 11, and pp 25 to 26.

6 HCK1 at para 13, and pp 158 to 159.

7 HCK1 at paras 15 to 19, and pp 243 to 252.

8 HCK1 at para 20 and p 253.

9 HCK1 at pp 253 to 255.

10 HCK1 at para 22, and pp 20 and 257 to 259.

11 HCK1 at para 23, and pp 261 to 263.

airmail to Mr Chen's Singapore address.[12] Leave was granted on 13 November 2019 and substituted service was effected on 29 November 2019.[13]

10 Mr Khoo's bill of costs was taxed by Master Hui of the HKCFI on 14 January 2020,[14] and the taxing master's costs certificate, entitled "Allocatur (Bill No 3)", was issued on 13 May 2020 (the "2020 Certificate"). The 2020 Certificate reads:[15]

> I HEREBY CERTIFY that the Defendant's Bill of Costs filed on 19th September 2014 against the Plaintiff and Chen Aun-Li Andrew (jointly and severally) on party and party basis (Bill No.3) has been taxed before Master Hui of the High Court in Chambers on 14th January 2020 pursuant to the Judgment of The Honourable Madam Justice Mimmie Chan dated 25th September 2012 and the Order of The Honourable Justice Mimmie Chan dated 30th April 2013 and allowed as follows: -
>
> | | | **Party & Party** |
> |---|---|---|
> | Profit costs | : | $4,143,082.00 |
> | Disbursements | : | $10,428,972.13 |
> | Costs of Taxation | : | $543,169.99 |
> | Taxing fee | : | $165,653.00 |
> | **Total** | : | $15,280,877.12 |
>
> [bold font in original]

Procedural history

11 On 21 June 2021, Mdm Ha applied *vide* OS 618 for:

> The sealed Order of Court dated 30 April 2013 and Allocatur (Bill No. 3) dated 13 May 2020 made by the High Court of the Hong Kong Special Administrative Region, Court of First Instance in Action No. 4354 of 2003 (collectively, the "**Order of Court**"), copies of which are annexed hereto as **Annex 1**,

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12 HCK1 at paras 24 to 25.

13 HCK1 at para 26, pp 328 to 329 and pp 331 to 364.

14 HCK1 at para 32.

15 HCK1 at p 390.

> whereby the Defendant was ordered to pay the sum of HK$15,280,877.12 to Khoo Ee Liam, be registered as a judgment of the High Court of the Republic of Singapore pursuant to section 4(1) of the Reciprocal Enforcement of Judgments Act (Cap 265, 2001 Rev Ed)
>
> [bold font in original]

12 Order in terms was granted *ex parte* on 22 June 2021 (the "Registration Order"). The Registration Order was served on Mr Chen on or around 7 October 2021.[16]

13 On 26 October 2021, Mr Chen applied to set aside the Registration Order.[17] At the hearing of the setting aside application before the learned Assistant Registrar ("the AR"), Mr Chen relied on two grounds. First, more than six years had passed since the date of the foreign judgment. Second, insufficient notice was given to Mr Chen of the taxation proceedings. The learned AR rejected Mr Chen's submissions on both grounds and dismissed the setting aside application on 13 December 2021. Mr Chen's appeal against the AR's decision was heard before me on 24 January 2022.

The relevant statutory provisions

14 On 31 December 2021, the 2020 Revised Edition of Acts (the "2020 Rev Ed") came into force (see Revised Edition of the Laws (Section 7) Order 2021). One major change brought about by the 2020 Rev Ed is the removal of chapter numbers and the inclusion of the year of enactment in the short title of each Act. Another change involves the renumbering of sections and paragraphs, in particular where the section or paragraph numbering involved alphabetical

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16 AC1 at para 20.

17 Summons for Setting Aside Judgment/Order filed in HC/OS 618/2021 on 26 October 2021 by the defendant's solicitors (Summons No 4919 of 2021).

suffixes. For example, of relevance to the present case is the renumbering of paragraphs (*aa*) and (*b*) of s 4(3) of the REFJA as paragraphs (*b*) and (*c*) respectively in the 2020 Rev Ed.

15 As OS 618 was filed before 31 December 2021, all references to legislation in these grounds, including references to section and paragraph numbers, are references to the version in force prior to the coming into force of the 2020 Rev Ed (unless otherwise specified).

16 The setting aside of the registration of a foreign judgment under the REFJA is governed by s 5(1) of the REFJA, which reads:

> **Cases in which registered judgments must or may be set aside**
>
> 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 —
>
> (*a*) shall be set aside if the registering court is satisfied —
>
> *(i) that the judgment is not a judgment to which this Part applies or was registered in contravention of sections 3 and 4;*
>
> (ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case;
>
> (iii) that the judgment debtor, being a defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear;
>
> (iv) that the judgment was obtained by fraud;
>
> (v) that the enforcement of the judgment would be contrary to public policy in the country of the registering court; or

> (vi) that the rights under the judgment are not vested in the person by whom the application for registration was made;
>
> …
>
> [emphasis added in italics]

17 As provided in s 5(1)(*a*)(i), the registration of a judgment shall be set aside if:

(a) it is not a judgment to which Part I of the REFJA applies; or

(b) it was registered in contravention of ss 3 and 4 of the REFJA.

18 On whether Part I of the REFJA applies to a judgment, s 3(3) of the REFJA provides:

> (3) A judgment —
>
> (*a*) specified in an order under subsection (1) of a recognised court of a foreign country specified in the order; and
>
> (*b*) that is within subsection (2),
>
> is a judgment to which this Part applies.

19 In relation to s 3(3)(*a*), the Reciprocal Enforcement of Foreign Judgments (Hong Kong Special Administrative Region of the People's Republic of China) Order (GN No S 93/1999) ("the Hong Kong Extension Order") is an order made under s 3(1) of the REFJA. According to the Hong Kong Extension Order,

(a) Part I of the REFJA is extended to Hong Kong; and

(b) Hong Kong's High Court (consisting of the Court of Appeal and the Court of First Instance) and Hong Kong's Court of Final Appeal are

deemed superior courts of Hong Kong for the purposes of Part I of the REFJA.

20 It would not go unnoticed that there is a discrepancy between the text of the Hong Kong Extension Order, which refers to "superior courts", and the text of s 3(3)(*a*) as quoted at [18] above, which refers instead to a "recognised court". This is due to amendments made to the REFJA by the Reciprocal Enforcement of Foreign Judgments (Amendment) Act 2019 (Act 25 of 2019) (the "2019 Amendment Act"), which replaced the term "superior courts" in s 3 with the term "recognised court" in order to allow for registration of lower court judgments. As the Hong Kong Extension Order predates the 2019 Amendment Act, it tracked the language of s 3 prior to the amendments made by the 2019 Amendment Act (the "2019 amendments"), which referred to "superior courts". However, s 10 of the 2019 Amendment Act contains a transitional provision which reads:

> 10.—(1) Any order made before the date of commencement of this Act (called in this section the appointed date) under section 3 of the principal Act as in force immediately before that date, which —
>
> (*a*) extends Part I of the principal Act to a foreign country; and
>
> (*b*) deems a specified court of the foreign country as a superior court of that country for the purposes of Part I of the principal Act,
>
> has effect beginning on the appointed date as an order made under section 3 of the principal Act as if —
>
> (*c*) the order directed that that court is a *recognised court* of that foreign country for those purposes; and
>
> (*d*) the order directed that *final money judgments* of that court that are within section 3(2) of the principal Act are judgments to which Part I of the principal Act applies.
>
> [emphasis added in italics]

Reading the Hong Kong Extension Order together with s 10(1) of the 2019 Amendment Act, the HKCFI would be a recognised court referred to in s 3(3)(*a*) of the REFJA, and a final *money judgment* from that court would be a specified judgment referred to in s 3(3)(*a*).

21 In relation to s 3(3)(*b*), s 3(2) of the REFJA provides:

> (2) A judgment of a recognised court of a foreign country is within this subsection if —
>
> (*a*) it is given after the coming into operation of the order; and
>
> (*b*) it is final and conclusive as between the parties to it, unless it is an interlocutory judgment.

22 As for the reference in s 5(1)(*a*)(i) to registration in contravention of s 4 of the REFJA, the relevant parts of s 4 read:

> **Application for, and effect of, registration of foreign judgment**
>
> 4.—(1) A person, being a judgment creditor under a judgment to which this Part applies, may apply to the General Division of the High Court at any time —
>
> (*a*) *within 6 years after the date of the judgment*; or
>
> (*b*) where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings,
>
> to have the judgment registered in the General Division of the High Court.
>
> (2) On an application under subsection (1), the court shall, subject to proof of the prescribed matters and to the provisions of this Act, order the judgment to be registered.
>
> (3) A judgment shall not be registered under this section if at the date of the application —
>
> (*a*) it has been wholly satisfied;
>
> (*aa*) it has been discharged; or

> (*b*) it could not be enforced by execution in the country of the original court.
>
> …
>
> [emphasis added in italics]

23 Although s 5(1)(*a*)(i) also refers to registration in contravention of s 3 of the REFJA, it will be apparent from the discussion at [18]–[21] above that the provisions of s 3 do not set out any criteria for registration of foreign judgments. Instead, those provisions determine which judgments Part I applies to. Therefore, the ground for setting aside referred to in s 5(1)(*a*)(i) as "the judgment is not a judgment to which this Part applies" and the ground referred to as "registered in contravention of [section] 3" are, in reality, one and the same ground.

An oddity in the paragraphing of s 4(1) of the REFJA

24 A matter touched upon during oral submissions concerned an oddity in the paragraphing of s 4(1) of the REFJA. Due to the manner in which s 4(1) had been divided into paragraphs (*a*) and (*b*), it appears from a literal reading of s 4(1) that the six-year time limit for registration applies only to first instance judgments and not to judgments rendered on appeal, with the consequence that an appellate judgment may be registered *at any time* after it is rendered. This seems to be an absurd result, as there appears to be no principled reason why the registration of appellate judgments would not be subject to any time limit while the registration of first instance judgments would. However, as the present case concerns a first instance judgment, the treatment of appellate judgments did not arise for determination. I have therefore included only some brief observations in the Annex instead of dwelling on the matter in the main body of these grounds.

Parties' submissions

25 At the hearing of the appeal before me, Mr Chen abandoned the ground that he was not given sufficient notice of the taxation proceedings, and relied solely on the ground that the registration took place more than six years after the date of the judgment.

26 Mr Chen submitted that the 2020 Certificate is not a judgment capable of being registered independently of the 2013 Order.[18] Instead, the issue is whether the 2013 Order was a judgment within the meaning of s 4(1) of the REFJA at the time it was issued.[19] In his submission, the 2013 Order was a final and conclusive judgment even though it did not fix the quantum of costs to be paid.[20] Therefore, pursuant to s 3(3) read with s 3(2)(*b*) of the REFJA, the 2013 Order was, upon issuance, a judgment to which Part I of the REFJA applies. Since the 2013 Order was issued on 30 April 2013, the "date of the judgment" for the purpose of calculating the six-year period under s 4(1)(*a*) of the REFJA must be 30 April 2013. Consequently, Mdm Ha's application in OS 618, having been made on 21 June 2021, was brought out of time.

27 Mdm Ha submitted that OS 618 is not an application to register an order for costs to be taxed on its own, without an ascertained quantum.[21] Instead, OS 618 seeks to register "a judgment for … an ascertainable amount of costs".[22] This judgment for an ascertainable amount of costs became final and conclusive as between parties for the amount in question only upon the issuance of the

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18 Defendant's Written Submissions dated 20 January 2022 ("**DWS**") at para 3(b).

19 DWS at para 18.

20 DWS at paras 23 to 28.

21 Plaintiff's Written Submissions dated 20 January 2022 ("**PWS**") at paras 22 to 24.

22 Notes of Argument, 24 January 2022 ("**NA**") at p 4, ln 11–12.

2020 Certificate.[23] The date of this judgment for an ascertainable amount of costs is therefore the date of the 2020 Certificate. As the 2020 Certificate was issued on 13 May 2020, OS 618 was brought within time and the registration did not contravene s 4(1) of the REFJA.

28 Mdm Ha's counsel further submitted at the hearing that pegging the commencement of the six-year period to the date on which the amount of costs was quantified would also be consistent with the position at common law for enforcement of a foreign judgment by way of an action on the amount due under it.[24] Mr Chen's response was that the position concerning enforcement at common law is based on the interpretation and application of the Limitation Act (Cap 163, 1996 Rev Ed) (the "Limitation Act"). The REFJA should be interpreted based on words found in the REFJA itself and not by reference to the provisions of the Limitation Act.[25]

29 Mdm Ha also submitted that, as a HKCFI costs order could not be enforced by execution in Hong Kong until the amount of costs is ascertained, the registration of the 2013 Order before then would have been prohibited by s 4(3)(*b*) of the REFJA (now s 4(3)(*c*) in the 2020 Rev Ed). The 2013 Order therefore became registrable under the REFJA only upon issuance of the 2020 Certificate. Mr Chen's response was that the inability to register the 2013 Order prior to the issuance of the 2020 Certificate did not extend time for registration.

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23 PWS at paras 24 to 25.

24 NA at p 4, ln 25 to p 5, ln 12.

25 NA at p 6, ln 27–32.

Analysis

30 The present case turns on the interpretation and application of the phrase "date of the judgment" in s 4(1)(*a*) of the REFJA. This in turn raises the question of what constitutes the relevant "judgment" for the purposes of applying the phrase "date of the judgment". Mdm Ha's position was that the "judgment" refers to a judgment for an ascertainable amount of costs, which necessarily requires that both the 2013 Order and the 2020 Certificate be taken into account and given effect.[26] Mr Chen appeared to take the position that the "judgment", at least for the purposes of s 4(1) of the REFJA, is the 2013 Order and nothing more.[27]

31 Since Mdm Ha's submissions were grounded partly on the position concerning enforcement of foreign judgments at common law and the legislative purpose of the REFJA, I will begin by first considering the position at common law, followed by considering the legislative history and purpose of the REFJA, before turning to evaluate the submissions made by Mr Chen for setting aside the registration.

Enforcement of foreign judgments at common law

32 As noted by the Court of Appeal in *Hong Pian Tee v Les Placements Germain Gauthier Inc* [2002] 1 SLR(R) 515 (at [12]):

> … it is settled law that a foreign judgment *in personam* given by a foreign court of competent jurisdiction may be enforced by an action for the amount due under it so long as the foreign judgment is final and conclusive as between the same parties. …

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26 PWS at para 22.

27 DWS at paras 18 and 23 to 28.

As emphasised by the Court of Appeal in *Poh Soon Kiat v Desert Palace Inc (trading as Caesars Palace)* [2010] 1 SLR 1129 ("*Desert Palace*") at [14], a foreign judgment may be enforced by an action for the amount due under it only if it is a judgment for a *definite sum of money*. A judgment of this nature was described in *Desert Palace* as a "foreign money judgment".

33 *Desert Palace* also clarified that the applicable limitation period for an action to enforce a foreign judgment is six years, as provided in s 6(1)(*a*) of the Limitation Act, and not twelve years as provided in s 6(3) of the Limitation Act for an action upon a judgment. This is because the action upon a judgment referred to in s 6(3) of the Limitation Act refers only to *domestic* judgments, whereas a common law action on a *foreign* judgment is an action on an implied debt. (at [49]–[53])

34 The six-year limitation period provided in s 6(1)(*a*) of the Limitation Act commences from the "date on which the cause of action accrued". A cause of action accrues when all the elements required to establish the cause of action are present. For an action to enforce a foreign judgment, these elements are: (a) a judgment *in personam* is made (b) by a foreign court of competent jurisdiction (c) for a definite sum of money (d) which is final and conclusive.

35 For a typical foreign money judgment, all four elements would come into existence at the same time and there would be no difficulties determining when the cause of action for enforcing the foreign judgment accrues in such cases. In the case of an order for costs to be taxed, element (c) does not come into existence until the amount of costs is quantified. Therefore, the cause of action for enforcing such a costs order by way of action on a foreign judgment would accrue only when the amount of costs is quantified. This means that the

six-year limitation period for enforcing such a costs order would not commence until the amount of costs is quantified.

36 While I am not aware of any authorities which directly support the proposition made in the preceding paragraph, there are authorities to similar effect in the context of *domestic* costs orders. In *Chohan v Times Newspaper Ltd* [2001] 1 WLR 184 ("*Chohan*"), costs orders were made in 1993 with the amount of costs certified in November 1994 after taxation proceedings. The judgment creditor presented a bankruptcy petition against the judgment debtor in February 2000. This was more than six years after the initial costs orders were made but less than six years after the date of certification. Anthony Mann QC (sitting as a High Court judge) found that the costs orders only became enforceable after they were quantified and certified, with the six-year limitation period under s 24 of the Limitation Act 1980 (c 58) (UK) ("LA 1980") starting to run only from this point. (Section 24 of the LA 1980 is *in pari materia* with s 6(3) of our Limitation Act, save that the limitation period provided under the LA 1980 is six years instead of twelve.) The following passage from the Mann QC's judgment is instructive (at pp 189E–190A):

> … At the date of an order for taxation of costs there is an order for the payment of costs which, for some purposes, will take effect as at the date it is pronounced. For example, that date will be the starting date for the computation of time limits for the ensuing taxation (RSC Ord 62, r 29, in the case of the old rules). However, that does not mean that the judgment is enforceable as at that date of the purposes of section 24 of the 1980 Act. I think that the order becomes enforceable for those purposes only when the costs are quantified and certified by the process of taxation. The order is, in effect (and sometimes, in my experience, in its actual wording) an order for the payment of such costs as are found proper and due on taxation. *If there were a money judgment which provided for payment of £x in, say, 14 days' time, I do not consider that an action on the judgment could be commenced before the expiry of that period of 14 days.* The normal costs order has a similar effect, albeit without an express reference to actual payment at a future date.

> … *While the costs order gives rise to rights, it does not give rise to an obligation to pay any sum until the costs are certified.* It is only at that point that the obligation becomes enforceable for the purposes of section 24 in any meaningful sense. *In the course of argument I asked Mr Lamacraft what the prayer in the particulars of claim would look like if an action were brought on a costs order before quantification. He said that it would contain a claim for the payment of costs to be quantified. I do not consider that any particulars like that would disclose a cause of action.* The beneficiary of a costs order has a right to have the costs taxed in the action in which the order is made; *there is no meaningful relief that could be granted in an action on the bare costs order, any more than there would be any meaningful claim that could be brought on a claim to pay a sum to be determined by valuation before that valuation was completed* (absent some claim for breach).
>
> [emphasis added in italics]

37 Even though *Chohan* is a judgment on s 24 of the LA 1980, which, like s 6(3) of our Limitation Act, employs the phrase "date on which the judgment became enforceable" instead of the phrase "date on which the cause of action accrued" employed in s 6(1), the reasoning in the passage quoted above applies with equal force to the enforcement of a foreign costs order in the nature of the 2013 Order. No meaningful relief could be granted on an action on such a bare costs order as it does not give rise to an obligation to pay any sum until costs are certified. In fact, Mann QC also considered that the same reasoning applies to a foreign costs order, when he commented in *Chohan*, at p 190, that:

> My reasoning is supported by what appears in *In re A Debtor (No 20 of 1953), Ex p The Debtor v Scott* [1954] WLR 1190. It is also supported by other passages and citations in *Berliner Industriebank Aktiengesellschaft v Jost* [1971] 1 QB 278; [1971] 2 QB 463 at first instance and on appeal. At first instance Brandon J, at p 285, relied on the fact that *an action on a judgment was based on implied debt, and was treated as an action in debt.* In the Court of Appeal Lyell J (who dissented in the result) acknowledged that an action on a foreign judgment was treated as an action arising on an implied contract to pay the amount of the foreign judgment. *That being the case it seems to me that a foreign judgment relating to money cannot be enforceable in this jurisdiction until it is reduced to an*

> *actual money judgment, that is until the amount is finally quantified. …*
>
> [emphasis added in italics]

38 Having established that, if a foreign judgment in the nature of the 2013 Order were to be enforced by action on the foreign judgment, the six-year limitation period for such an action would commence only when the amount of costs is quantified, I turn now to consider the legislative history and purpose of the REFJA.

Legislative history and purpose of the REFJA

39 In Singapore, there are two pieces of legislation providing for the enforcement of foreign judgments by way of registration – the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) (the "RECJA") and the REFJA. The RECJA is modelled on the UK's Administration of Justice Act 1920 (c 81) (the "AJA 1920") while the REFJA is modelled on the UK's Foreign Judgments (Reciprocal Enforcement) Act 1933 (c 13) (the "FJREA 1933").

40 The main differences between the AJA 1920 and the FJREA 1933 are:

(a) Registration of a judgment under the FJREA 1933 is as of right if the criteria for registration are satisfied, while registration under the AJA 1920 is subject to the registering court finding it just and convenient to do so.

(b) The period for making an application for registration under the FJREA 1933 is six years after the date of the judgment while the period for doing so under the AJA 1920 is one year, although this one-year period may be extended by the registering court.

(c) A foreign judgment which is registrable under the FJREA 1933 may not be enforced by a common law action on the foreign judgment, while the alternative of a common law action on the foreign judgment continues to be available for foreign judgments registrable under the AJA 1920.

41 The rationale for the enactment of the FJREA 1933 as well as for the differences between the registration regimes under the AJA 1920 and the FJREA 1933 are explained in the report of the Foreign Judgments (Reciprocal Enforcement) Committee chaired by Lord Justice Greer (United Kingdom, *Report of the Foreign Judgments (Reciprocal Enforcement) Committee* (Cmd 4213, 1932) (Chairman: Sir Arthur Greer) ("the Greer Report"), reprinted in *Butterworths Jurisdiction, Foreign Judgments and Awards Handbook* (Graham S McBain consultant ed) (Butterworths, 1994) ("*Butterworths Handbook*") at pp 356–422).

42 According to the Greer Report, when the UK government enacted the AJA 1920 to provide for reciprocal enforcement of judgments between different parts of the British Empire, a decision was made not to enact a similar statutory regime for enforcement of judgments of countries outside the British empire (at para 12). Several reasons were given for this decision including:

(a) the existing procedure for enforcing foreign judgments in England by action was found satisfactory and there was no evidence that foreign countries were dissatisfied with it; and

(b) it was comparatively rarer for British merchants to be concerned about enforcing British judgments abroad because:

> England was mainly a creditor country, and the arbitrations of the trade organisations of powerful

> importing associations were alike obligatory and respected, and British merchants were able to require security for export transactions.

However, after the enactment of the AJA 1920, the UK government received feedback concerning the unfairness arising from the fact that, while foreign judgments were easily enforceable in English courts by action, British merchants were facing difficulties enforcing English judgments in foreign countries (at para 14).

43 Lord Hailsham, LC appointed a preliminary committee in 1929 (also chaired by Lord Justice Greer), which recommended that the remedy was to conclude international conventions for reciprocal enforcement of judgments. For this purpose, legislation would be required. The preliminary committee further recommended that such legislation "should not depart from the substantive principles of the common law applicable to foreign judgments in general." (at para 16)

44 Thereafter, Lord Sankey, LC (who succeeded Lord Hailsham) appointed the Foreign Judgments (Reciprocal Enforcement) Committee in 1931 ("the Committee") to follow up on the recommendations of the preliminary committee. The Committee chose to embody its recommendations in the Greer Report in the form of a draft Foreign Judgments (Reciprocal Enforcement) Bill ("the Draft Bill"), draft rules of court, draft orders in council and draft international conventions to be negotiated with various countries (at para 3).

45 The Greer Report explained that one of the guiding principles followed by the Committee was that, in the proposed legislation, existing principles of the common law should generally be followed in matters of substance while the

procedure in the AJA 1920 should generally be followed in matters of procedure (at para 18).

46 Clause 2(1) of the Draft Bill is *in pari materia* with s 4(1) of the REFJA and similarly provides for an application for registration to be made "at any time within six years after the date of the judgment" (the Greer Report at p 23, *Butterworths Handbook* at p 374). The following explanation for the drafting of clause 2(1) was given at Annex V of the Greer Report (the Greer Report at pp 60–61, *Butterworths Handbook* at p 414):

> … The period for registration is six years from the date of the foreign judgment (*i.e., the same period as that now allowed at Common Law for bringing an action on the judgment*). In the Administration of Justice Act, 1920, the period is "six months or such longer period as the Court may allow." The Act of 1920, however, did not take away the right to bring an action on the judgment as an alternative to registration, and under that Act this method can be resorted to if the period for registration has run out. In this Bill (Clause 6) the alternative procedure of an action on the judgment is, for reasons explained below (paragraph 11), barred in the case of judgments which can be registered. *To allow a shorter period than six years for registration would involve a substantial diminution of the rights at Common Law of foreign judgment creditors*. It was found, moreover, desirable to specify in the conventions [referring to Draft Conventions with Belgium, Germany and France found in Annex IV of the Greer Report] the minimum period for applications to enforce judgments, and for this purpose the period of six months was clearly too short, and a purely discretionary power of extension of a short minimum period would not have been acceptable to the foreign experts nor satisfactory in operation in the case of the enforcement of English judgments abroad.
>
> [emphasis added in italics]

47 Thus, the Greer Report's rationale for the phrase "six years after the date of the judgment" was to provide the same period as was allowed at common law for bringing an action on a foreign judgment and to ensure that the statutory

regime set out in the Draft Bill would not involve a substantial diminution of the rights at common law of foreign judgment creditors.

48 Having considered the legislative history and purpose of the FJREA 1933 and, by extension, of the REFJA, including the rationale for the six-year limit for registration of a foreign judgment, I turn now to consider the structure of the enforcement regime under the REFJA.

Structure of enforcement regime under the REFJA

49 After the 2019 amendments, which came into force on 3 October 2019, the REFJA now provides for enforcement of both money judgments and non-money judgments. A money judgment is defined in s 2(1) of the REFJA simply as "a judgment under which a sum of money is payable …" while a non-money judgment is defined simply as "a judgment that is not a money judgment …". Section 4(3A) of the REFJA provides that a non-money judgment may be registered only if the registering court "is satisfied that enforcement of the judgment would be just and convenient". No such restriction applies to money judgments, which remain registrable as of right if the criteria for registration are satisfied.

50 The REFJA as it stood prior to the 2019 amendments (the "pre-2019 REFJA") only allowed for registration of money judgments. This arose from the fact that, back then, s 3(2) of the REFJA read:

> (2) Any judgment of a superior court of a foreign country to which this Part extends, other than a judgment of such a court given on appeal from a court which is not a superior court, shall be a judgment to which this Part applies, if —
>
> (*a*) it is final and conclusive as between the parties thereto;

> (*b*) *there is payable thereunder a sum of money*, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; and
>
> (*c*) it is given after the coming into operation of the order directing that this Part shall extend to that foreign country.
>
> [emphasis added in italics]

The effect of s 3(2)(*b*) in the pre-2019 REFJA was that a judgment had to be one under which a sum of money was payable in order to be registrable. The 2019 amendments took this requirement out from s 3(2) and folded it into the newly created definition of "money judgment" referred to at [49] above.

51 The 2019 amendments provided a *framework* for non-money judgments to be registered under the REFJA but did not have the effect of making non-money judgments of all descriptions immediately registrable. This is because, after the 2019 amendments, s 3(1) of the REFJA now provides:

> 3.—(1) If the Minister is satisfied that, in the event of the benefits conferred by this Part being extended to ***a particular description of judgments*** *given in a particular court or description of courts of a foreign country*, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of ***similar judgments*** *given in a similar court or similar courts of Singapore*, the Minister may, by order in the *Gazette*, direct that —
>
> (*a*) this Part applies to that foreign country;
>
> (*b*) the court or courts of the foreign country specified in the order is a recognised court or are recognised courts of the foreign country for the purposes of this Part; and
>
> (*c*) *judgments specified in the order of any such recognised court or courts*, if within subsection (2), are judgments to which this Part applies.
>
> [emphasis added in italics and bold italics]

Thus, it is envisaged that, under the 2019 amendments, a particular description of judgments will be registrable under the REFJA only if it is specified in an order made by the Minister under s 3(1) of the REFJA. As explained by the Minister during the second reading debates on the 2019 amendments (*Singapore Parliamentary Debates, Official Report* (2 September 2019), vol 94 (Mr Edwin Tong, Senior Minister of State for Law)):

> These reforms provide the *broad statutory framework for Singapore to negotiate enforcement agreements or arrangements with foreign countries*. However, *the precise scope of enforceable judgements will be decided and negotiated with each foreign country individually*. So, the fact that we have the Act or the Bill being passed into the Act, does not automatically mean that there will be a whole series of countries that will come on board. What will happen thereafter is, armed with these amendments, *we will then proceed to negotiate with foreign countries, and decide in the case of each country, what is suitable, what is appropriate* and obviously, on a reciprocal basis.
>
> [emphasis added in italics]

52 As noted at [20] above, arising from s 10(1)(*d*) of the 2019 Amendment Act, final money judgments of the HKCFI are, upon the commencement of the 2019 Amendment Act, deemed to have been specified pursuant to an order made under s 3(1) of the REFJA for enforcement under the REFJA. After the 2019 amendments, no orders had been made under s 3(1) of the REFJA to extend Part I of the REFJA to non-money judgments of any description from Hong Kong. It therefore remains the case, to this day, that the only judgments from Hong Kong that may be registered under the REFJA are money judgments.

Expert opinion on Hong Kong law

53 Mdm Ha filed an opinion from a Hong Kong law expert, Mr Kenneth Sit, which made two main points:

(a) The 2013 Order could not be enforced in Hong Kong before the amount of costs was quantified and certified after taxation proceedings.[28] In support, the expert cited a passage from *Hong Kong Civil Procedure 2022* (Hon Mr Justice Fok PJ gen ed) (Sweet & Maxwell, 2021) (*ie*, Hong Kong's equivalent of the *White Book*) at para 45/1/2, which reads:

> Execution for costs cannot issue on any judgment for "costs to be taxed", until the certificate for costs has been filed and the costs duly taxed … A judgment or order for costs to be taxed is enforceable by execution on production of the judgment or order and taxing-master's certificate. …

(b) The 2013 Order "only became final and conclusive and enforceable as an order for the payment of money upon the completion of the taxation proceedings" with the 2020 Certificate.[29]

54 The opinion of Hong Kong law experts is relevant for two reasons. First, it is relevant for the purpose of Mdm Ha's submission based on s 4(3)(*b*) of the REFJA (at [29] above), as that submission turns, in part, on whether the 2013 Order could be "enforced by execution in the country of the original court". Second, it is relevant for the purpose of determining whether and when a foreign judgment is final and conclusive under s 3(2)(*b*). This is because a foreign judgment will not be regarded as final and conclusive for the purpose of enforcement in this jurisdiction if it is not considered final and conclusive under the laws of the country in which the foreign judgment was given (see *Nouvion v Freeman* (1889) LR 15 AC 1 at 9, 13 and 18, *Carl Zeiss Stiftung v Rayner & Keeler Ltd (No 2)* [1967] 1 AC 853 at 919 and *Berliner Industriebank Aktiengesellschaft v Jost* [1970] 3 WLR 743).

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[28] Expert Report exhibited in Affidavit of Mr Kenneth Hoi Wah Sit filed on 19 November 2021 ("**KHWS**") at paras 6, 7 and 9(2).

[29] KHWS at para 6.

55 Mr Chen did not file an expert's opinion. Instead, Mr Chen urged me to give little weight to Mr Sit's opinion because it "did not set out any legal analysis, nor cite any authorities, for [its] conclusion".[30] Despite the foregoing criticism, I note that Mr Chen did not dispute Mr Sit's opinion on enforceability (as summarised at [53(a)] above).

56 As for the opinion summarised at [53(b)] above, I share Mr Chen's concern that Mr Sit may not have properly distinguished the concept of finality and conclusiveness, on the one hand, from the concept of enforceability on the other hand. I therefore found this part of the opinion to be not entirely helpful. However, this does not pose a serious obstacle for the resolution of the present case, as it appears from parties' submissions that it was not disputed that:

(a) prior to the issuance of the 2020 Certificate, the 2013 Order was final and conclusive as to liability for costs but not final and conclusive as to the amount of costs to be paid; and

(b) the 2013 Order became final and conclusive as to both liability and amount upon the issuance of the 2020 Certificate.

Evaluation of Mr Chen's main submission

57 Having laid the foregoing groundwork, I now turn to evaluate Mr Chen's main submission.

58 According to Mr Chen, the issue is whether the 2013 Order was "*at the time of its issuance*, a judgment within the meaning of s 4(1) of the REFJA"

30 DWS at para 35(b).

[emphasis added].[31] If so, the "date of the judgment" for the purpose of calculating the six-year period allowed for registration would be the date on which the 2013 Order was issued. The reasoning of this submission takes the following route:

(a) For a judgment to come within s 4(1), it has to be "a judgment to which this Part applies" (meaning Part I of the REFJA).

(b) Section 3(3) defines "a judgment to which this Part applies", and *one element* of that definition (as provided in s 3(3)(*b*)) is that it has to be a judgment within s 3(2) of the REFJA.

(c) Section 3(2) provides that a judgment of a recognised court is within s 3(2) if it is final and conclusive as between the parties to it, unless it is an interlocutory judgment.

(d) Since Mr Chen's liability to pay costs was finally determined by the 2013 Order, and the 2013 Order was not an interlocutory order, it was beyond question that the 2013 Order was "final and conclusive as between the parties to it". The fact that the amount of costs has not been quantified does not prevent the 2013 Order from being final and conclusive.

(e) Since the 2013 Order was final and conclusive at the date of its issuance, it was a judgment within s 4(1) of the REFJA from the date it was issued. The "date of the judgment" for the purposes of s 4(1) would therefore be the date on which the 2013 Order was issued.

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[31] DWS at para 18.

59 There are at least two problems with this line of reasoning. First, in so far as Mr Chen's reasoning is premised on whether the 2013 Order was a judgment within the meaning of s 4(1) of the REFJA *at the time of its issuance*, the analysis should be based on the text of the REFJA prevailing at the time the 2013 Order was issued, and not based on the text of the REFJA *after* the 2019 amendments (the "post-2019 REFJA"). Second, Mr Chen's analysis using the text of the post-2019 REFJA is, in any event, flawed because it focused on only one criterion – whether the 2013 Order was final and conclusive – while ignoring other relevant statutory criteria that had to be fulfilled.

60 In relation to the first problem identified in the preceding paragraph, as noted at [50] above, from its enactment in 1959 until the 2019 amendments, the REFJA provided only for the registration of money judgments. Prior to the 2019 amendments, the criteria to be met for a judgment to come within s 4(1) were set out in s 3(2) of the pre-2019 REFJA, which read:

> (2) Any judgment of a superior court of a foreign country to which this Part extends, other than a judgment of such a court given on appeal from a court which is not a superior court, shall be a judgment to which this Part applies, if —
>
> (*a*) it is final and conclusive as between the parties thereto;
>
> (*b*) *there is payable thereunder a sum of money*, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; and
>
> (*c*) it is given after the coming into operation of the order directing that this Part shall extend to that foreign country.
>
> [emphasis added in italics]

Thus, for a judgment to come within s 4(1) of the pre-2019 REFJA, the criteria to be met would be:

(i) the judgment is of a superior court of Hong Kong (s 3(2) *chapeau*);

(ii) it is final and conclusive as between the parties to it (s 3(2)(*a*));

(iii) there is payable thereunder a sum of money (s 3(2)(*b*)); and

(iv) it is given after the coming into operation of the Hong Kong Extension Order (s 3(2)(*c*)).

61 The 2013 Order did not meet criterion (iii) in the preceding paragraph *at the time of its issuance* as there was no "sum of money" payable thereunder until the amount of costs was quantified. At this point, it is useful to consider the explanation given in the Greer Report on clause 1 of the Draft Bill, which is *in pari materia* with s 3 of the pre-2019 REFJA. The relevant part of the explanation reads (the Greer Report at p 60, *Butterworths Handbook* at pp 413–414):

> 1. This Clause of the Bill provides for the extension, by Order in Council, of Part I of the Act (the arrangements for the enforcement in the United Kingdom) to the judgments of foreign countries, in cases where His Majesty is satisfied that reciprocal treatment is assured for judgments of the High Court in England, the Court of Session in Scotland and the High Court in Northern Ireland. The arrangements only apply to judgments:–
>
> (*a*) of superior courts of such foreign countries;
>
> (*b*) obtained after the date of the Order in Council;
>
> (*c*) which are final and conclusive;
>
> (*d*) *under which a sum of money is payable* (other than in respect of taxes or in respect of fines or penalty);
>
> (*e*) which have been given in civil proceedings.

> *Conditions (c), (d) and (e) are in accordance with the common law rules. …*
>
> [emphasis added in italics]

Thus, the phrase "there is payable thereunder a sum of money" (found in clause 1(2)(*b*) of the Draft Bill, s 1(2)(*b*) of the FJREA 1933 and s 3(2)(*b*) of the pre-2019 REFJA) is intended to refer to money judgments capable of being enforced by way of common law action on the foreign judgment. As noted at [32] above, such judgments must be judgments for definite sums of money. At the time of its issuance, the 2013 Order was not a judgment for a definite sum of money. Instead, to adopt the words of Mann QC in *Chohan* (see [37] above), the 2013 Order was, at the time of its issuance, a foreign judgment relating to money which "cannot be enforceable in this jurisdiction until it is reduced to an actual money judgment, that is until the amount is finally quantified". Therefore, the 2013 Order was not a judgment within the meaning of s 4(1) of the pre-2019 REFJA at the time of its issuance, and would not become a judgment within the meaning of s 4(1) until the amount of costs was quantified.

62 Before dealing with the second problem identified at [59] above, it would be useful to clarify that, although questions concerning the status of the 2013 Order *at the time of its issuance* must be answered according to the law in force at the time the 2013 Order was issued, questions concerning the correctness of the Registration Order would have to be answered according to the law in force at the time OS 618 was filed. For this reason, it remains relevant and meaningful to consider the second problem with reference to the text of the post-2019 REFJA.

63 Turning to the second problem, it may be recalled that the relevant provisions in the post-2019 REFJA which define the judgments that Part I applies to are ss 3(2) and 3(3), which read:

> (2) A judgment of a recognised court of a foreign country is within this subsection if —
>
> (*a*) it is given after the coming into operation of the order; and
>
> (*b*) it is final and conclusive as between the parties to it, unless it is an interlocutory judgment.
>
> (3) A judgment —
>
> (*a*) specified in an order under subsection (1) of a recognised court of a foreign country specified in the order; and
>
> (*b*) that is within subsection (2),
>
> is a judgment to which this Part applies.

These two subsections require the following four criteria to be met:

> (i) the judgment is of a recognised court of Hong Kong (s 3(2) *chapeau*);
>
> (ii) it is given after the coming into operation of the Hong Kong Extension Order (s 3(2)(*a*));
>
> (iii) it is final and conclusive as between the parties to it (s 3(2)(*b*)); and
>
> (iv) it is a judgment specified in the Hong Kong Extension Order (s 3(3)(*a*)).

64 As noted at [59] above, Mr Chen's reasoning overly focused on criterion (iii) in the preceding paragraph and erroneously ignored the existence of criterion (iv), which criterion is very much an essential element of the statutory framework for registration of foreign judgments under the REFJA. In relation to criterion (iv), s 3(3)(*a*) of the REFJA refers to a judgment "specified in an order under subsection (1)". However, the text of the Hong Kong Extension Order, as promulgated, did not actually specify any type of judgment.

Nevertheless, when read with s 10(1)(*d*) of the 2019 Amendment Act (see [20] above), the Hong Kong Extension Order would, after the commencement of the 2019 Amendment Act, take effect as if final money judgments are judgments specified in the Hong Kong Extension Order. In other words, to fulfil criterion (iv) in the preceding paragraph, a foreign judgment has to be a money judgment. For the same reasons as those given at [61] above, the 2013 Order was not a money judgment until the amount of costs was quantified and therefore not a judgment within the meaning of s 4(1) of the REFJA until then.

65 For the reasons given at [59]–[64] above, Mr Chen's main submission, as summarised at [58] above, was misguided and could not be accepted by the court.

My decision

66 Having explained the difficulties with Mr Chen's main submission, I will now set out my decision.

67 I agreed with Mr Chen's submission that:

(a) the 2020 Certificate is not a judgment as it did not contain any direction or order for payment of costs, and merely quantified the amount of costs payable pursuant to the 2013 Order; and

(b) it is therefore incapable of being registered independently of the 2013 Order.[32]

But that submission does not bring Mr Chen very far, as Mdm Ha did not attempt to register the 2020 Certificate own its own. Instead, Mdm Ha sought

[32] DWS at paras 43 to 44.

to register the 2013 Order and the 2020 Certificate collectively.[33] Mdm Ha's treatment of the 2013 Order and the 2020 Certificate collectively in this manner is consistent with Mr Chen's submission that the 2020 Certificate merged with the 2013 Order.[34] The dispute between parties was whether, pursuant to such merger, the date of this merged or collective judgment (the "Collective Judgment") should, for the purposes of s 4(1) of the REFJA, be regarded as 30 April 2013 or 13 May 2020.

68 According to s 5(1)(*a*)(i) of the REFJA, the Registration Order shall be set aside if it was made in contravention of, *inter alia*, s 4. According to s 4(1), the judgment creditor of "a judgment to which this Part [*ie*, Part I of the REFJA] applies" may apply to have the judgment registered under the REFJA "within 6 years after the date of the judgment". The Collective Judgment is a judgment to which Part I of the REFJA applies as it fulfils all four criteria referred to at [63] above. The Collective Judgment came into being as a judgment for an ascertainable amount of costs, and consequently as a final money judgment, when the 2020 Certificate was issued. The "date of the judgment" for the purposes of s 4(1) is therefore 13 May 2020, the date of the 2020 Certificate.

69 To approach the analysis from a different angle, although the 2013 Order was a judgment providing for payment of money, it was not yet a money judgment, in the sense that it was not yet a judgment for a definite sum of money and no sum of money was yet payable under it. The 2013 Order was therefore not a judgment to which Part I of the REFJA applied until the amount of costs was quantified and certified with the issuance of the 2020 Certificate on 13 May 2020. It was only then that a sum of money was payable thereunder and it

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33 Prayer 1 of OS 618; NA at p 4, ln 11–14.

34 DWS at para 49.

became a judgment for a definite sum of money. Consequently, it was only at that point that the 2013 Order became a judgment to which Part I of the REFJA applied. The "date of the judgment" for the purpose of computing the six-year period allowed in s 4(1) for registration is therefore 13 May 2020.

70 Since OS 618 was filed on 21 June 2021, the application for registration was made within six years of the date of the judgment. The Registration Order was therefore not made in contravention of s 4 of the REFJA, and consequently not liable to be set aside.

71 The foregoing conclusion, arrived at through textual analysis of the REFJA, is also borne out by a purposive interpretation of the REFJA. As provided in s 9A(1) of the Interpretation Act (Cap 1, 2002 Rev Ed), an interpretation that would promote the purpose or object underlying a written law is to be preferred to an interpretation that would not promote that purpose or object. As noted at [45] above, one key object or purpose of the provisions of the FJREA 1933 (and consequently of the REFJA) is that the existing principles of the common law on enforcement of foreign judgments should be followed in matters of substance. Further, as noted at [47] above, the object and purpose of the phrase "six years after the date of the judgment" was to provide the same period as was allowed at common law for bringing an action on a foreign judgment. It was also to ensure that the registration regime under the FJREA 1933 (and consequently of the REFJA) would not involve a substantial diminution of the rights at common law of foreign judgment creditors. This was because one effect of the FJREA 1933 (and the REFJA) was to remove the option of enforcement at common law for judgments to which the FJREA 1933 (or the REFJA, as the case may be) applies (see s 6 of the FJREA 1933 and s 7(1) of the REFJA).

72 In the light of the foregoing, an interpretation which results in the six-year period in s 4(1) of the REFJA commencing at the same time as the six-year limitation period for a common law action to enforce a foreign money judgment is to be preferred to an interpretation that does not. As noted at [35]–[38] above, in the case of foreign judgments ordering costs to be taxed, the six-year limitation period for enforcing the judgment at common law by action begins to run only when the amount of costs is quantified.

73 In coming to the foregoing decision, there was no need for me to rely on Mdm Ha's submission based on s 4(3)(*b*) of the REFJA (see [29] above). As such, I express no definite views on it.

Conclusion

74 Returning to the issues posed at [30] above, the relevant "judgment" for the purposes of applying the phrase "date of the judgment" in s 4(1)(*a*) of the REFJA is the judgment against Mr Chen for the quantified and certified amount of costs of HK$15,280,877.12. Consequently, the "date of the judgment" is 13 May 2020, the date on which the 2013 Order became a judgment for an ascertainable amount of costs as a result of the issuance of the 2020 Certificate. As OS 618 was brought less than six years from this date, the judgment was registered in compliance with s 4(1)(*a*) of the REFJA and, thus, not liable to being set aside under s 5(1)(*a*)(i) of the REFJA.

75 I therefore dismissed Mr Chen's appeal, and allowed the Registration Order to stand. After hearing parties' costs submissions, I ordered Mr Chen to pay costs fixed at S$8,000 (inclusive of disbursements) to Mdm Ha.

Pang Khang Chau J
Judge of the High Court

Tan Kai Liang, Mak Sushan Melissa and Lim Min Li Amanda (Allen & Gledhill LLP) for the plaintiff;
Soo Ziyang Daniel and Luis Inaki Duhart Gonzales (Selvam LLC) for the defendant.

Annex : The paragraphing of s 4(1) of the REFJA

A.1 Section 4(1) of the REFJA reads:

> 4.—(1) A person, being a judgment creditor under a judgment to which this Part applies, may apply to the General Division of the High Court at any time —
>
> (*a*) *within 6 years* after the date of the judgment; or
>
> (*b*) where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings,
>
> to have the judgment registered in the General Division of the High Court.
>
> [emphasis added in italics]

A.2 The structure of s 4(1) is such that s 4(1)(*a*) applies to first instance judgments while s 4(1)(*b*) applies to judgments rendered on appeal. The time limit of six years is mentioned only in s 4(1)(*a*) but not s 4(1)(*b*). The opening words or *chapeau* of s 4(1) ends with the phrase "at any time", before the paragraphs begin. In the light of the foregoing, if s 4(1) were to be read literally, the result would be that a first instance judgment must be registered within six years after the date of the judgment while an appellate judgment may be registered *at any time* after it is rendered (without any time limit).

A.3 This seems to be an absurd result, as there appears to be no principled reason why the registration of an appellate judgment is not subject to any time limit while the registration of a first instance judgment is.

A.4 As it turned out, the paragraphing of s 4(1) was introduced in the 2001 Rev Ed of the REFJA. Prior to the 2001 Rev Ed, s 4(1) read:

> 4.—(1) A person, being a judgment creditor under a judgment to which this Part applies, may apply to the High Court at any time ***within 6 years*** *after the date of the judgment*, or, where there have been proceedings by way of appeal against the

> judgment, *after the date of the last judgment given in those proceedings*, to have the judgment registered in the High Court …
>
> [emphasis added in italics and bold italics]

Thus, as originally drafted, s 4(1) contained an ambiguity, in that the phrase "within 6 years" could be read either as applying to both the phrase "after the date of the judgment" and the phrase "after the date of the last judgment given in those proceedings", or as applying only to the phrase "after the date of the judgment". If the former reading is adopted, the six-year limit would apply to the registration of both first instance judgments and appellate judgments. If the latter reading is adopted, the six-year limit would apply only to the registration of first instance judgments, with the consequence that there would be no time limit for the registration of appellate judgments.

A.5 Having regard to the context and purpose of s 4(1), it is clear that the former reading is correct. This is also how s 2(1) of the FJREA 1933, which is *in pari materia* with s 4(1) of the REFJA, has been interpreted: see K W Patchett, *Recognition of Commercial Judgments and Awards in the Commonwealth* (Butterworths, 1984) at para 3.26, and K R Handley, *Spencer Bower and Handley: Res Judicata* (LexisNexis, 5th Ed, 2019) at para 2.59.

A.6 In other words, the paragraphing introduced by the 2001 Rev Ed is erroneous. The correct way to paragraph s 4(1) would have been to place the phrase "within 6 years" at the end of the *chapeau* instead of at the beginning of paragraph (*a*), so that the provision would read:

> 4.—(1) A person, being a judgment creditor under a judgment to which this Part applies, may apply to the General Division of the High Court at any time *within 6 years* —
>
> (*a*) after the date of the judgment; or

> (*b*) where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings,
>
> to have the judgment registered in the General Division of the High Court.
>
> [emphasis added in italics]

A.7 The question which follows is whether, in the light of the changes made in the 2001 Rev Ed, s 4(1) of the REFJA should now be interpreted as imposing no time limit on the registration of appellate judgments. The limits of the Law Revision Commissioners' powers were considered by the Court of Appeal in *Yong Kheng Leong and another v Panweld Trading Pte Ltd and another* [2013] 1 SLR 173, which held at [66] that "the Law Revision Commissioners did not have the power to effect any substantive change to this (or, for that matter, any other statute)". Therefore, when a court interpreting a statutory provision is of the view that the adjustments made in a revised edition of the statutory provision may have inadvertently changed the meaning of the statutory provision, the court is entitled to look behind the text of that revised edition and, instead, interpret the provision on the basis of the text as it stood prior to the publication of that revised edition.