IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE

[2024] SGHC(I) 15

Suit No 4 of 2017 (Summons No 59 of 2023)

Between

Kiri Industries Ltd

… *Plaintiff*

And

(1) Senda International Capital Ltd
(2) DyStar Global Holdings (Singapore) Pte Ltd

… *Defendants*

JUDGMENT

[Civil Procedure — Judgments and orders]
[Civil Procedure — Service]

Kiri Industries Ltd
v
Senda International Capital Ltd and another
(Fan Jing, non-party)

[2024] SGHC(I) 15

Singapore International Commercial Court — Suit No 4 of 2017 (Summons No 59 of 2023)
Roger Giles IJ
16 May 2024

28 May 2024 Judgment reserved.

Roger Giles IJ:

Introduction

1 This judgment is in an application consequential on the judgment in *Kiri Industries Ltd v Senda International Capital Ltd* [2024] SGHC(I) 7, delivered on 27 March 2024 ("the Judgment"). The application is pursuant to a condition attached to an order then made, permitting an application to vary or discharge the order. The reasons which follow will show that the application should be dismissed, so that the order is unconditional.

The order and its condition

2 Kiri Industries Ltd ("Kiri") obtained an order for the examination of Ms Fan Jing ("Ms Fan") and Mr Ruan Weixiang ("Mr Ruan"), respectively the

director and the former director of Senda International Capital Ltd ("Senda"), as to Senda's means to satisfy costs orders in proceedings between Kiri and Senda ("the EJD order"). An order was then made giving leave to serve the EJD order on Senda, Ms Fan and Mr Ruan out of the jurisdiction ("the service out order"). Ms Fan and Mr Ruan are both nationals of the People's Republic of China ("China") and resident in China. In an application, SIC/SUM 59/2023 ("SUM 59"), by Senda and Ms Fan to set aside the EJD order and the service out order, and by Ms Fan also to set aside an order for substituted service on her, in the Judgment I declined to set aside the EJD order or to set aside the service out order in relation to Senda, but set aside the service out order so far as it concerned Ms Fan.

3 In the Judgment it was noted (at [16]) that the prayers in SUM 59 were not limited to the EJD order and the service out order so far as they concerned Ms Fan, and that the then applicants' submissions were at times made as if Mr Ruan was an applicant and the EJD order and the service out order should also be set aside so far as they concerned him. The reasons continued:

> Mr Ruan is not an applicant, plainly deliberately so, and it is necessary to confine the application to the positions of Senda and Ms Fan. Mr Sanjiv Rajan ('Mr Rajan'), leading counsel for Kiri, nonetheless accepted that if the reason for setting the EJD order aside applied equally in relation to Mr Ruan, the order should also be set aside as against him, and it must be the same for the service out order: see *R. D. Harbottle (Mercantile) Ltd v National Westminster Bank Ltd* [1978] QB 146 in relation to the discharge of an injunction. Mr Toh Kian Sing SC ('Mr Toh'), leading counsel for the Applicants, invited that course.

4 The service out order was set aside so far as it concerned Ms Fan for two substantive reasons. Did they apply equally in relation to Mr Ruan?

5 One of the reasons, in the Judgment referred to as ground (a), plainly did not apply in relation to Mr Ruan, and it was said (at [60]) that it was not a case of consequential setting aside of the service out order so far as it concerned him.

6 The other reason, referred to as ground (c), rested on the Treaty on Judicial Assistance in Civil and Commercial Matters between the People's Republic of China and the Republic of Singapore concluded in 1999 ("the Treaty"). The ground was, in short, that the alternative process of taking evidence by judicial assistance under the Treaty should be followed as the examination of Ms Fan as to Senda's means, rather than permitting service of the EJD order on Ms Fan, a Chinese national resident in China, requiring her to come to Singapore and be examined. As recorded at [78] of the Judgment, Mr Rajan did not question that the Treaty provided a way of enquiring into Senda's means, or question that the EJD order could be implemented by judicial assistance under the Treaty.

7 After the consideration of the ground (at [72]–[79]) and the statement of that conclusion (at [80]), it was said (at [81]):

> It is difficult to see why this ground does not apply equally to the service out order so far as it concerns Mr Ruan. The service out order should also be set aside so far as it concerns him, but subject to any application made within 10 days by the parties or either of them to vary or discharge the order; any such application may be made by letter to the Registry.

8 The orders in due course made (at [110]) included that the service out order was set aside so far as it concerned Mr Ruan, with the condition "but subject to any application made within 10 days by the parties or either of them to vary or discharge the order". The application could be made by letter to the Registry.

Kiri's application

9 The course taken by the application was not straightforward, and should be described.

10 Kiri wrote to the Registry by a letter dated 4 April 2024. It was expressed to be an application pursuant to s 29B of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("the SCJA") seeking permission to make further arguments in respect of "one aspect of the Judgment", being "[the order that] the order for service out of jurisdiction … be set aside so far as it concerned Mr Ruan, subject to any application made within 10 days by the parties or either party to vary or discharge the *Service Out Order*" [emphasis added in italics]. Two arguments were set out: I will describe them later in these reasons.

11 There may have been a misunderstanding of the Judgment. "The order" in "to vary or discharge the order" in the condition was the order setting aside the service out order so far as it concerned Mr Ruan ("the Ruan set aside order"), not the service out order itself as identified in the italicised words in [10] above. When at the hearing of SUM 59 Kiri had not known the outcome of ground (c) or the reasons for upholding it, and had not been heard on whether the ground applied equally to the service out order so far as it concerned Mr Ruan, the condition gave Kiri as the potential applicant the opportunity to contend that it did not: it made no sense for Kiri to apply to vary *or discharge* the service out order. Further, contrary to Kiri's reference to variation or discharge of the service out order, the arguments appeared to be arguments for upholding that order.

12 The letter was also unclear. Did Kiri regard s 29B of the SCJA as the way of making an application as referred to in [110] of the Judgment? Or was

its letter a wider request for further argument pursuant to s 29B, not dependent on the permission to apply inherent in [110] of the Judgment? If the former, Kiri was under a misapprehension, since the condition gave Kiri the opportunity to contend that ground (c) did not apply equally to the service out order so far as it concerned Mr Ruan by the distinct process of an application made by letter to the Registry: however, whether Kiri intended that process could be clarified. As well, although the arguments were put forward in respect of the Ruan set aside order and its condition, as earlier noted they appeared to be arguments for upholding the service out order, going to whether ground (c) was a ground for setting aside the service out order at all rather than to whether it applied equally to the service out order so far as it concerned Mr Ruan. These matters were taken up in the letter next mentioned.

13 A letter from the Registry dated 8 April 2024 advised that so far as Kiri's letter was an application for further arguments under s 29B of the SCJA, no further arguments were required. Kiri was requested to advise whether the letter was intended as an application to vary or discharge the Ruan set aside order, as referred to in [110] of the Judgment. The letter continued:

> If so –
>
> a. *bearing in mind that that application concerns setting the service out order aside so far as it concerns Mr Ruan, if the reason for setting it aside in relation to Ms Fan applies equally in relation to Mr Ruan*, Kiri is invited to provide by a supplementary letter any further submissions on that matter within seven days from today (i.e. by 15 April 2024), and, for the avoidance of doubt, any such letter is to be copied to R&T; and
>
> b. if [Senda] wishes to assist the court by acting as contradictor, any submission to that end in response to the A&G letters should be provided by letter within 15 days from today's date (i.e. by 23 April 2024).
>
> [emphasis added in italics]

14 By a letter dated 8 April 2024, Kiri advised that the arguments in its letter of 4 April 2024 were "also arguments in support of the Plaintiff's application to vary or discharge the *order setting aside the service out order so far as it concerns Mr Ruan*" [emphasis added in italics]: that is, the Ruan set aside order. Any misunderstanding in the earlier letter was rectified.

15 Kiri provided further submissions by a letter dated 15 April 2024. It repeated in summary the arguments in the letter of 4 April 2024, and added two more arguments, which again I will describe later in these reasons. After an agreed extension of time, by a letter dated 30 April 2024 Senda provided submissions as contradictor. A brief oral hearing took place on 16 May 2024, to clarify and receive submissions on one matter in Kiri's submissions.

Kiri's arguments

16 Kiri did not seek to resile from Mr Rajan's acceptance recorded at [16] of the Judgment, or submit that the acceptance should not be taken as extending to the service out order if the reason for setting it aside applied equally in relation to Mr Ruan as in relation to Ms Fan.

17 The first argument in the letter of 4 April 2024, which I will call "the Singapore effect argument", was that the EJD order as regards Mr Ruan "takes effect in Singapore, and not the PRC". It was said that, as observed in the Judgment (at [69]), the EJD order did not require any collection of evidence within China, but required that Mr Ruan come to Singapore to be examined, and bring a completed questionnaire and produce documents. So, it was said, the EJD order did not take effect in China, but took effect in Singapore, and applying *Gorbachev v Guriev* [2023] KB 1 ("*Gorbachev*") the service out order should therefore be upheld.

18 In *Gorbachev*, which was discussed at [76] of the Judgment, the court declined to set aside an order giving permission to serve on Cypriot companies an order for third party disclosure against a firm of English solicitors in relation to documents held by the firm on behalf of the companies, in the exercise of the discretion *inter alia* because the documents were within England and Wales. Kiri's point appeared to be that in *Gorbachev* the court considered that compliance with the order for production would take place in England and Wales, without any illegitimate interference with Cypriot sovereignty, and in the same way compliance with the EJD order would take place in Singapore without offence to Chinese sovereignty; so there was no reason to defer to the Treaty process.

19 The second argument in the letter of 4 April 2024, which I will call "the utility argument", was encapsulated in the submission "that there are good reasons why the available process for the collection of evidence under the Treaty should not be followed". It was said that the Treaty process was not merely slower and less convenient for Kiri (see the Judgment at [79]), but was "an entirely inadequate substitute" for the examination process and not "a true or feasible alternative to the EJD process in Singapore". Reasons for this were elaborated.

20 The third argument, added in the letter of 15 April 2024 and which I will call "the depositions argument", was that the Rules of Court (2014 Rev Ed) ("the ROC") "only contemplates the examination of persons out of jurisdiction in connection with a deposition under Order 39, rule 1 of the ROC". Kiri's point appeared to be that the ROC did not provide for the issue of a letter of request under the Treaty for taking evidence by judicial assistance as the examination of Mr Ruan as to Senda's means.

21 The fourth argument, also added in the letter of 15 April 2024 and which I will call "the necessity argument", was (with respect) rather obscure. It was said that the service out order was required "in order to serve the EJD order on Ruan through the Treaty mechanism, and the terms of the Service Out Order contemplate compliance with the Treaty"; that by force of various provisions of O 11 r 8 of the ROC, "for Kiri to invoke the operation of the Treaty procedures for the service of the EJD Order on Ruan in [the] PRC, it must have the leave of [the] Court to serve the EJD Order out of jurisdiction"; and that the service out order "is needed for Kiri to comply with the Treaty mechanism for the service of the EJD order on Ruan in [the] PRC under Order 11, rule 4(3) of the ROC". Kiri expressed willingness to amend the terms of the service out order "to clarify that any service and collection of evidence will be in accordance with the terms of the Treaty".

22 This was explained at the oral hearing. Kiri contemplated a first letter of request under the Treaty for service of the EJD order on Mr Ruan, and then a second letter of request under the Treaty invoking procedures which would mean that his evidence was taken in China. It was said that the questions and the substance of the evidence that would be taken pursuant to the second letter of request came from the EJD order, and that "for good order" the EJD order should first be served on Mr Ruan under the Treaty. Linked to the argument in the letter, Kiri's point was that service of the EJD order was a necessary (but query "for good order") part of the exercise of jurisdiction over Mr Ruan when taking his evidence in China through the Treaty process, and the service out order therefore could not be dispensed with. (The argument appeared to accept that Mr Ruan's evidence could be taken by way of judicial assistance under the Treaty as his examination as to Senda's means, and may not be consistent with the depositions argument; but this need not be gone into).

None of the arguments went to the issue in the application

23 The Ruan set aside order was made because ground (c), as upheld so far as the service out order concerned Ms Fan, was considered to apply equally to the service out order so far as it concerned Mr Ruan: [81] of the Judgment. As the Registry's letter of 8 April 2024 reminded Kiri, in the words italicised at [13] above, the condition to the Ruan set aside order permitted an application to vary or discharge the order in which the issue was whether or not ground (c) as the reason for setting aside the service out order so far as it concerned Ms Fan applied equally in relation to Mr Ruan.

24 Despite the reminder, and despite Kiri's recognition in its letter of 8 April 2024 that it was a question of variation or discharge of the Ruan set aside order and not of the service out order, none of the four arguments provided any basis for distinguishing between the positions of Ms Fan and Mr Ruan. Each of the arguments, if it had merit, challenged ground (c) as a ground for setting aside the service out order at all and, in the case of the necessity argument, included possible variation of the service out order; each challenged ground (c) as a ground for setting aside or varying the service out order in relation to Ms Fan just as much as a ground for setting it aside or varying it in relation to Mr Ruan. Put another way, each argument could have been put forward as an argument against ground (c) as a ground for setting aside the service out order so far as it concerned Ms Fan, before even coming to whether the ground applied equally to the service out order so far as it concerned Mr Ruan. Thus:

(a) as to the Singapore effect argument, if the service out order in relation to Mr Ruan took effect in Singapore, so also did the service out order in relation to Ms Fan;

(b) as to the utility argument, if there were good reasons why the available process for the collection of evidence under the Treaty should not be followed, the reasons were just as good for the service out order in relation to Ms Fan as for the service out order in relation to Mr Ruan;

(c) as to the depositions argument, if a letter of request could not issue for taking evidence by judicial assistance as the examination of Mr Ruan as to Senda's means, equally it could not issue for taking evidence by judicial assistance as the examination of Ms Fan as to Senda's means; and

(d) as to the necessity argument, if service of the EJD order was a necessary part of the exercise of jurisdiction over Mr Ruan through the Treaty process, it was equally a necessary part of the exercise of jurisdiction over Ms Fan through the Treaty process, and the service out order was equally required to serve the EJD order on Ms Fan.

25 Kiri's arguments were quite misdirected. They were not arguments against ground (c) applying equally to the service out order so far as it concerned Mr Ruan as it applied to the order so far as it concerned Ms Fan. They were arguments against the upholding of ground (c) as a ground for setting aside the service out order at all, whether so far as the service out order concerned Ms Fan or so far as it concerned Mr Ruan.

26 At the oral hearing Ms Wong Pei Ting, appearing for Kiri, with commendable frankness accepted that ground (c) "would apply to both Ruan and Fan". She submitted as a difference between Ms Fan and Mr Ruan that the service out order was set aside as regards Ms Fan on another ground, ground (a).

However, that is not a difference warranting discharge of the Ruan set aside order.

27 That is not just because the permitted application was only in relation to any differential application of ground (c) as between Ms Fan and Mr Ruan. The order setting aside the service out order so far as it concerned Ms Fan stands; ground (c) is a basis for that order equally with ground (a); and it cannot be that ground (c) is upheld in the Judgment as a ground for setting aside the service out order so far as it concerned Ms Fan but, unless there be a material difference in its application to them, is rejected in this consequential application as a ground for setting aside the service out order so far as it concerned Mr Ruan. Kiri's remedy, if it has one, is by overturning the upholding of ground (c) as a reason for setting aside the service out order as against Ms Fan also.

28 As noted above (at [11]), Kiri's arguments were put forward in respect of the Ruan set aside order and its condition; the order setting aside the service order so far as it concerned Ms Fan was not in question (and would not have been even if permission had been given for further arguments in respect of the Ruan set aside order and its condition pursuant to s 29B of the SCJA). I therefore do not in these reasons go into the difficulties in the arguments.

29 The assistance of Senda by its submissions, which however largely went to (and contested) the merits of the arguments, is acknowledged and appreciated.

Conclusion

30 Kiri has not provided reason for ground (c) not applying equally to the service order so far as it concerns Mr Ruan, and I remain of the view that it does. The application is dismissed, whereby the Ruan set aside order is unconditional.

Roger Giles
International Judge

Wong Pei Ting and Prabu Devaraj s/o Raman (Allen & Gledhill LLP) for the plaintiff;
Soh Yu Xian Priscilla and Lim Wee Teck Darren (Rajah & Tann Singapore LLP) for the first defendant and non-party.