Global Distressed Alpha Fund I Limited Partnership *v* PT Bakrie Investindo [2013] SGHC 12

Case Number	: Originating Summons No 595 of 2011/C (Registrar's Appeal Nos 392 of 2012/L and 393 of 2012/Q)
Decision Date	: 16 January 2013
Tribunal/Court	: High Court
Coram	: Woo Bih Li J
Counsel Name(s)	: Hri Kumar Nair SC and Emmanuel Chua (Drew & Napier LLP) for the plaintiff/judgment creditor; Suresh Damodara (Damodara Hazra LLP) for the defendant/judgment debtor
Parties	: Global Distressed Alpha Fund I Limited Partnership — PT Bakrie Investindo

Conflict of Laws – Foreign judgments – Enforcement – Registration

16 January 2013

Woo Bih Li J:

Introduction

1 In Originating Summons No 595 of 2011/C ("OS 595"), Global Distressed Alpha Funds I Limited Partnership ("GDAF") obtained an order under the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) ("RECJA") to register a judgment that it obtained in its favour in the United Kingdom against PT Bakrie Investindo ("PT Bakrie"). GDAF also applied via Summons No 2944 of 2012/J ("SUM 2944") to examine one Robertus Bismarka Kurniawan ("Kurniawan"), a former President Commissioner of PT Bakrie. PT Bakrie subsequently applied via Summons No 4443 of 2012/M ("SUM 4443"), seeking, *inter alia*, to set aside the order for the registration of the judgment. PT Bakrie also applied via Summons No 4682 of 2012/S ("SUM 4682"), seeking, *inter alia*, to set aside the order to examine Kurniawan. An assistant registrar ("the AR") heard both parties and dismissed SUM 4443 and SUM 4682. PT Bakrie appealed against the AR's dismissal of SUM 4443 and SUM 4682 in Registrar's Appeal Nos 392 and 393 of 2012 ("RA 392" and "RA 393") respectively. Both RA 392 and RA 393 were heard by me. After hearing both parties' submissions, I dismissed both appeals. PT Bakrie has appealed against my decision. I now give the grounds of my decision.

Facts

2 GDAF is a company that is part of a group which invests in different types of private distressed commercial and sovereign debt claims around the world. PT Bakrie is a company incorporated in the Republic of Indonesia. It was established in July 1991 to act as an investment holding company for investments made by a prominent merchant family in Indonesia.

3 In 1996, one of PT Bakrie's subsidiaries, Bakrie Indonesia BV ("the Issuer"), issued US$50 million worth of loan notes. PT Bakrie guaranteed the payment of sums due under the notes through a guarantee dated 9 December 1996 ("the Guarantee") which was governed by English law. In 1999, the Issuer defaulted on the payment of the sums due under the notes.

4 Following the Issuer's default, PT Bakrie became liable under the Guarantee. In addition, PT

Bakrie also faced mounting debts from other sources. PT Bakrie's debts, including its liability under the Guarantee, amounted to over US$500 million.

5 Pursuant to Indonesian bankruptcy law, PT Bakrie entered into an arrangement ("the Composition Plan") with some but not all of its creditors. Under the Composition Plan, participating creditors swapped their claims against PT Bakrie for shares in two creditor special purpose vehicles to which PT Bakrie transferred its assets. On 6 March 2002, the Commercial Court of the Central Jakarta District Court ("the Jakarta Court") ratified the Composition Plan ("the Jakarta Court Order") such that thereupon, under Indonesian law, creditor claims against PT Bakrie, including those under the Guarantee, were discharged.

6 In 2009, GDAF bought US$2 million worth of the notes that were issued by the Issuer. GDAF sued PT Bakrie on the Guarantee in the United Kingdom of Great Britain in Claim No 2009 Folio 1623 ("the UK Proceedings"). A trial was conducted in the High Court of Justice, Queen's Bench Division, Commercial Court before Teare J.

7 On 17 February 2011, Teare J released his written judgment in *Global Distressed Alpha Fund 1 Limited Partnership v PT Bakrie Investindo* [2011] EWHC 256 (Comm) ("*Global*"). Teare J gave final judgment in favour of GDAF ("the UK Final Judgment") and ordered PT Bakrie to pay the following sums to GDAF: (a) US$2,000,000; (b) US$1,283,333.32 by way of interest accrued; and (c) interest continuing to accrue on the total amount of US$3,282,333.32 or such lesser amount as may from time to time be outstanding, at a rate of 9.625% per annum from 17 February 2011. Teare J also ordered PT Bakrie to pay GDAF's costs on the standard basis to be the subject of detailed assessment if not agreed. Pursuant to the UK Final Judgment, GDAF submitted its bill of costs, which was not contested by PT Bakrie. On 10 June 2011, the High Court of Justice issued a Default Costs Certificate in the same action ("the UK Default Costs Certificate"), which required PT Bakrie to pay the following sums to GDAF: (a) costs of £205,327.98 with interest at the rate of 8% per annum from 17 February 2011; and (b) costs of assessment £140 with interest at the rate of 8% per annum from 10 June 2011. No appeal was filed against the UK Final Judgment or the UK Default Costs Certificate (collectively, "the Entire UK Judgment") and the time for appeal has expired.

8 PT Bakrie failed to satisfy any part of the Entire UK Judgment. On 18 July 2011, GDAF filed OS 595, seeking, *inter alia*, an order that the Entire UK Judgment be registered as a judgment of the High Court of Singapore pursuant to s 3 of the RECJA and an order that PT Bakrie be at liberty to apply to set aside the said registration within 14 days after service upon it (within the jurisdiction of Indonesia) of notice of such registration pursuant to O 67 r 7 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) if it has any grounds for so doing, and execution upon the Entire UK Judgment will not issue until after the expiration of that period or any extension of that period granted by the court or, if an application be made to set aside the registration, until such application has been disposed of.

9 On 18 July 2011, an assistant registrar granted an order in terms of OS 595 ("the Registration Order"). The Registration Order was served on PT Bakrie in Indonesia on 4 August 2011. No application to set aside the Registration Order was made within 14 days after service of the Registration Order.

10 On 24 October 2011, GDAF applied to the High Court of Justice for an order against PT Bakrie to identify the third party who funded PT Bakrie's defence in the UK Proceedings. Teare J granted the application on 14 December 2011, ordering PT Bakrie to provide, *inter alia*, information as to the person or persons who had in fact controlled the defence, as well as to provide various documents, including all documents containing information about the funding or payment of PT Bakrie's legal costs in the UK Proceedings. PT Bakrie ignored the order. However, the order granted by Teare J also

provided that should PT Bakrie default, PT Bakrie's solicitors in the UK Proceedings should provide GDAF's solicitors with such information and documents as it was able to. Thus, PT Bakrie's solicitors informed GDAF that a company named Integrated Financial Advisory Limited ("IFAL") was funding the defence. GDAF subsequently applied for and obtained an order dated 23 April 2012 ("the UK IFAL Costs Order") from the High Court of Justice that IFAL pay GDAF the legal costs of the UK Proceedings.

11 On 28 May 2012, GDAF applied in Originating Summons 506 of 2012/J ("OS 506") to register the UK IFAL Costs Order in the High Court of Singapore under s 3 of the RECJA. Philip Pillai J heard OS 506 on 31 May and 1 June 2012. He dismissed it on 1 June 2012. He issued his written grounds of decision in *Global Distressed Alpha Fund I Ltd Partnership v Integrated Financial Advisory Ltd* [2012] SGHC 152 ("the Singapore IFAL GD") on 25 July 2012. According to Mr Hri Kumar Nair SC ("Mr Nair"), counsel for GDAF, the issue then was whether IFAL had submitted to the jurisdiction of the court in the United Kingdom. He also submitted before me that there was evidence that the money used to fund PT Bakrie's defence in the UK Proceedings came from an account held in Singapore. He further said that GDAF had obtained a Mareva Injunction to freeze that account and an affidavit from IFAL disclosed a credit balance of $130,000 in the account. IFAL also said in that affidavit that it was holding the funds on behalf of an unnamed third party.

12 On 14 June 2012, GDAF applied via SUM 2944 seeking orders to, *inter alia*, examine Kurniawan as to PT Bakrie's assets and for Kurniawan to produce all books or documents in his possession, custody or power relevant to PT Bakrie's assets, as well as to compel Kurniawan to provide all the answers and documents sought by GDAF in a questionnaire for the examination, a copy of which was appended to SUM 2944. An Order in terms of SUM 2944 ("the EJD Order") was granted on 14 June 2012. On 16 June 2012, Kurniawan was personally served with the EJD Order at a taxi-stand at Changi International Airport.

13 The examination of Kurniawan was fixed for 3 July 2012 and 14 August 2012 but it was adjourned both times as PT Bakrie indicated that it would file the application to set aside the Registration Order and the EJD Order.

14 On 31 August 2012, PT Bakrie filed SUM 4443. The intended examination of Kurniawan on 4 September 2012 was adjourned to 16 October 2012 pending the outcome of the application. On 14 September 2012, PT Bakrie filed SUM 4682 to apply to set aside the EJD Order. Both SUM 4443 and 4682 were heard and dismissed by the AR on 24 September 2012.

15 PT Bakrie filed RA 392 and RA 393 on 25 September 2012. I heard both appeals on 11 October 2012. I dismissed them on 31 October 2012. I assume that in the meantime, the examination of Kurniawan was deferred pending the outcome of the appeals before me. As mentioned above, PT Bakrie has appealed against my decision.

Decision

The Registration Order

16 Mr Suresh Damodara ("Mr Damodara"), counsel for PT Bakrie submitted that the Registration Order should be set aside on three grounds, *viz* that (a) registration of the Entire UK Judgment was not "just and convenient" under s 3(1) of the RECJA; (b) the Entire UK Judgment was "in respect of a cause of action which for reasons of public policy ... could not have been entertained by the registering court" under s 3(2)(*f*) of the RECJA; and (c) GDAF had failed to meet its obligation to give full and frank disclosure in its *ex parte* application in OS 595 before the court. These three grounds

will be addressed *seriatim* below.

Whether the registration of the Entire UK Judgment was just and convenient under s 3(1) of the RECJA

17 Under s 3(1) of the RECJA, the court has a discretion to refuse to register a judgment on the ground that it is not "just and convenient" that the judgment "should be enforced in Singapore". Section 3(1) of the RECJA provides as follows:

> **Registration in Singapore of judgments obtained in superior courts in the United Kingdom**
>
> **3.**—(1) Where a judgment has been obtained in a superior court of the United Kingdom of Great Britain and Northern Ireland the judgment creditor may apply to the High Court at any time within 12 months after the date of the judgment, or such longer period as may be allowed by the Court, to have the judgment registered in the Court, and on any such application the High Court may, if in all the circumstances of the case it thinks it is just and convenient that the judgment should be enforced in Singapore, and subject to this section, order the judgment to be registered accordingly.

18 Furthermore, O 67 r 9(3) of the Rules of Court states:

> (3) Where the Court hearing an application to set aside the registration of a judgment registered under the first Act [*ie*, the RECJA] is satisfied that the judgment falls within any of the cases in which a judgment may not be ordered to be registered under section 3 (2) of that Act or that it is not just or convenient that the judgment should be enforced in Singapore or that there is some other sufficient reason for setting aside the registration, it may order the registration of the judgment to be set aside on such terms as it thinks fit.

19 As the Court of Appeal in *Yong Tet Miaw and another v MBF Finance Bhd* [1992] 2 SLR(R) 549 ("*Yong Tet Miaw*") said at [18], the court has a discretion not to register a judgment or, having registered it, to set aside the registration on the "just and convenient" ground or for "some other sufficient reason".

20 In determining whether to register a foreign judgment under the RECJA or set aside a previous registration, the court must consider "all the circumstances of the case" and should permit registration only if it is "just and convenient that the judgment should be enforced in Singapore" (*Westacre Investments Inc v The State-Owned Company Yugoimport SDPR (also known as Jugoimport-SDPR)* [2009] 2 SLR(R) 166 ("*Westacre*") at [21]). However, the phrase "just and convenient" does not grant an untrammelled discretion to the court; the court will set aside the registration of a foreign judgment only where it is practicable and required by the interests of justice (*Yong Tet Miaw* at [31]).

21 Mr Damodara emphasized that the purpose of registering a foreign judgment in Singapore is to enforce it in Singapore. He stressed that it was not just and convenient to register the Entire UK Judgment for that purpose because GDAF knew fully, at and before the time of the filing of OS 595, that PT Bakrie was a dormant company without any assets. In support of his argument, he referred to various statements made on behalf of GDAF and a statement in the Singapore IFAL GD. I will refer to them in chronological order.

22 Adam Charles Ronney ("Ronney"), a barrister acting for GDAF made a second witness statement dated 24 October 2011 to support GDAF's application for information which would be used in turn to

support an application that an order for costs be made against a third party who was suspected of funding the defence of PT Bakrie in the UK Proceedings. Although Mr Damodara referred to paragraphs 26 to 47 of that statement, he highlighted paragraph 29. I will set out paragraphs 27 and 28 as well as 29 for reasons which will be apparent later. Paragraphs 27, 28 and 29 of that statement stated:

> 27 In his witness statement of 29 October 2010, the Defendant's legal advisor, G.P. Aji Wijaya, confirmed that the Defendant has no employees and is a dormant company which has no assets (see paragraphs 10 and 13). ...
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> 28 In these circumstances, the only reasonable explanation for the lawyers' continued involvement in the litigation is that their bills have been paid. And where the Defendant's evidence is that it has no assets, I believe that those bills must have been paid by someone else, namely the Third Party.
>
> 29 The Defendant is a dormant company with neither assets nor employees, so it had little, if anything to gain from the proceedings. I believe that an inference can safely be drawn from the Third Party's funding of the litigation that it had an interest (although I cannot say what) in defending the claim.

23 Rooney made a fourth witness statement dated 6 March 2012 to support GDAF's application that the third party, *ie*, IFAL be made a party to the UK Proceedings and be ordered to pay GDAF's costs of the UK Proceedings. Paragraphs 10, 20 and 21 of the fourth witness statement stated:

> 10 In his witness statement dated 29 October 2010, the Defendant's legal advisor, G.P. Aji Wijaya, confirmed that the Defendant has no employees and is a dormant company which has no assets (see paragraphs 10 and 13). ...
>
> 20 GDAF believes that the conduct of the defence by an impecunious, dormant Defendant company, funded by an unknown corporate entity which has not revealed itself even to the lawyers acting for the Defendant, was designed to avoid any practical liability for the Claimant's costs in the event the defence failed, which it did.
>
> 21 In those circumstances, I respectfully submit that it would be just and convenient for the Court to join IFAL to these proceedings for the purpose of ordering it to pay the costs of the Claimant in full. In summary:
>
> a. The Defendant has not paid for the defence of these proceedings, because it did not have the resources to do so;
>
> ...

24 When GDAF filed OS 506 to register the UK IFAL Costs Order in Singapore, that application was supported by an affidavit of 28 May 2012 from Soo Ziyang Daniel ("Soo"), an advocate and solicitor in Singapore. Soo said at paragraphs 24 and 38a:

> 24 It became evident to GDAF that PT Bakrie was in fact a dormant company without any assets, and the litigation had in fact been funded and/or controlled by a third party with an interest in defending the claim. This had been confirmed by one of PT Bakrie's lawyers, Mr GP [Aji] Wijaya in his affidavit ...
>
> 38 The grounds of GDAF's application [to have IFAL pay the costs] are set out in the 4th

Witness Statement of Mr Rooney dated 6 March 2012. In summary, the basis of GDAF's application was that:

(a) PT Bakrie had not paid for the defence of the proceedings, because it did not have the resources to do so;

...

25 I come now to the Singapore IFAL GD. Mr Damodara relied on [5] where Pillai J said:

5 PT Bakrie failed to make any of the payments ordered. GDAF discovered that PT Bakrie was at the time of its enforcement attempts, a dormant company without any assets, and concluded that its legal costs for the Principal UK Judgment had been funded and/or controlled by a third party with an interest in defending the claim. It is not in evidence before me that PT Bakrie has been a dormant company and without any assets at all material times of the Principal UK Proceedings or the UK Order.

26 It is true that Rooney and Soo had in their witness statement and affidavit respectively, asserted that PT Bakrie has no asset. They even said that GP Aji Wijaya ("Wijaya"), a legal advisor of PT Bakrie, had "confirmed" this, thereby suggesting that Wijaya was confirming what GDAF already knew. While I accept that Rooney's statements and Soo's affidavit could and should have been more carefully worded, it was clear to me that GDAF was basing its assertion about the absence of assets from what Wijaya himself had asserted. This is evident when one considers paragraph 29 of Rooney's second witness statement (which Mr Damodara was highlighting) together with paragraphs 27 and 28 thereof, and not in insolation. As for Soo, he was simply regurgitating what Rooney had said.

27 As for the Singapore IFAL GD, it was obvious to me that Pillai J's reference to what GDAF had "discovered" was based on what Soo was alleging in his affidavit which was, as I have said, a regurgitation of what Rooney had said in his statements. These were, in turn, based on what Wijaya had asserted. There was no independent discovery by GDAF.

28 The truth of the matter was that even though GDAF had taken the position that PT Bakrie has no asset, GDAF itself did not know, one way or another, whether this was true. Having been led to think that PT Bakrie did not have any asset, GDAF then inferred that a third party, which turned out to be IFAL, was funding PT Bakrie's defence of the UK Proceedings.

29 The more relevant question is whether PT Bakrie in fact has any asset and not whether GDAF thought at any point of time that it did not have any asset.

30 In this regard, it was significant that Mr Damodara had stressed that GDAF had thought or knew that PT Bakrie did not have any asset, and not that PT Bakrie in fact did not have any asset.

31 PT Bakrie remains a live company. It is obvious that it is in the best position to know whether it has any assets at all. Yet, none of its current directors or senior officers has filed any affidavit in the proceedings before me to clarify once and for all its financial position. Only Kurniawan and Wijaya, PT Bakrie's former President Commissioner and legal adviser respectively, have filed affidavits in the present proceedings in support of PT Bakrie's applications.

32 Even if an affidavit were filed by a current director or senior officer of PT Bakrie to assert that it has no asset, a bare assertion alone may not be enough. The fact that substantial costs were incurred to defend the UK Proceedings suggested that PT Bakrie does have assets. The fact that PT

Bakrie was taking the trouble to set aside the Registration Order and the EJD Order also suggested that it does have assets. I did not think that the applications were filed by PT Bakrie only because they wanted to stop GDAF from harassing its officers or ex-officers as Mr Damodara had suggested.

33 Furthermore, at the hearing of SUM 4443 and SUM 4682 on 24 September 2012, GDAF's solicitors, Drew & Napier LLC, wrote a letter dated 26 September 2012 addressed to PT Bakrie's solicitors, Damodara Hazra LLP. The letter requested payment by 2 October 2012 of the costs of $9,000 that the AR had ordered against PT Bakrie in respect of PT Bakrie's applications to set aside the Registration order and the EJD Order. By a letter dated 28 September 2012, Drew & Napier LLC also wrote to Damodara Hazra LLP requesting them to confirm whether PT Bakrie is being funded by a third party in the present proceedings, and if so, to identify the third party. The costs of $9,000 were not paid before the deadline of 2 October 2012. However, they were paid on 8 October 2012 on the same day that GDAF filed an affidavit exhibiting the letters dated 26 September 2012 and 28 September 2012. By a letter dated 8 October 2012, Damodara Hazra LLP enclosed a cheque for the costs and revealed that the litigation of the present proceedings was funded by a third party, but stated that they had no instructions to disclose the third party's identity.

34 Mr Nair also informed me that after Pillai J's decision to refuse GDAF's application to register the UK IFAL Costs Orders in Singapore, GDAF has filed a fresh action to obtain an order from a Singapore court that IFAL pay such costs. As mentioned above, he informed me that there was evidence showing that the money funding PT Bakrie's defence in the UK Proceedings came from an account in Singapore. This allegation was not disputed by Mr Damodara but, in any event, I made no finding about it for the time being. If there are assets in Singapore, it remains to be seen who the true beneficial owner of those assets is.

35 Apart from the assertion that GDAF knew that PT Bakrie did not have any asset, Mr Damodara also submitted that it was not just and convenient to register the Entire UK Judgment because of the effect that registration of the Entire UK Judgment would have on the Composition Plan in Indonesia. He identified two specific consequences, *viz*, (a) PT Bakrie would be placed in an invidious and impossible position of being compelled by the Singapore court to disregard and act in contravention of the Jakarta Court Order; and (b) the floodgates will be opened in that everyone would be allowed to challenge and disregard the bankruptcy laws of Indonesia under the jurisdiction of Singapore.

36 However, Mr Damodara did not elaborate how compliance with the EJD Order would cause PT Bakrie to act in contravention of the Jakarta Court Order. Such compliance would be under compulsion of a court order and not voluntarily given. If assets of PT Bakrie are uncovered and GDAF manages to execute the Entire UK Judgment on them, that does not appear to be a voluntary act of payment by PT Bakrie acting in contravention of the Jakarta Court Order.

37 As for the argument of floodgates being opened for other creditors to disregard the bankruptcy laws of Indonesia under the jurisdiction of Singapore, not every creditor will be able to commence action in a foreign jurisdiction. Secondly, and more importantly, not every creditor will be able to obtain a favourable judgment from a foreign jurisdiction. Indeed, even in the context of the UK Final Judgment, PT Bakrie could, and perhaps should, have appealed against it as I shall elaborate below. It did not.

38 Mr Damodara also argued that there was "very real" prejudice to PT Bakrie should the Entire UK Judgment remain registered, because GDAF would be able to repeatedly apply to examine and harass past and present officers of PT Bakrie, in order to confirm what GDAF already knew, *viz* PT Bakrie has no assets. In my view, the assessment of prejudice requires a holistic approach which takes into account the perspective of both the judgment creditor and the judgment debtor: *Westacre* at [31].

In the present case, GDAF has obtained an order to examine Kurniawan because, as I have elaborated above, it is uncertain whether PT Bakrie has any assets. Indeed, there are reasons to suggest that it may still have assets. I was not persuaded that the EJD Order was for a collateral purpose, *ie*, to harass.

39 For the reasons set out above, I was not satisfied that the "just and convenient" ground for setting aside the Registration Order was established on the facts of the present case.

Whether the Registration Order should be set aside under s (3)(2)(f) of the RECJA

40 The next ground which Mr Damodara relied on to justify setting aside the Registration Order was that of public policy under s 3(2)(*f*) of the RECJA, which provides as follows:

> **Restrictions on registration**
>
> (2) No judgment shall be ordered to be registered under this section if —
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> ...
>
> (*f*) the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court.

To determine whether the registration of a judgment should be refused or set aside pursuant to s 3(2)(*f*) of the RECJA, the court identifies the cause of action that the judgment is based on and examines the cause of action to see whether it is contrary to the public policy of Singapore, be it public policy at common law or emanating from statute (see *Poh Soon Kiat v Desert Palace Inc (trading as Caesars Palace)* [2010] 1 SLR 1129 at [73] and [114]).

41 Mr Damodara argued that the doctrine of international comity is part of the public policy of Singapore and fell within the meaning of "public policy" under 3(2)(*f*) of the RECJA, and, since registering the Entire UK Judgment would be to disregard the Jakarta Court Order under the Composition Plan which discharged all of PT Bakrie's liabilities under Indonesian law, international comity was breached and the Registration Order should be set aside pursuant to s (3)(2)(*f*) of the RECJA.

42 The cause of action that the Entire UK Judgment is based on must first be identified. From a reading of Teare J's judgment in *Global*, it is clear that GDAF based its cause of action upon a guarantee that was governed by English law. The cause of action is basically one in contract, specifically on a contract of guarantee. Such a cause of action is common. This cause of action is not in any way contrary to the public policy of Singapore. Mr Damodara did not argue that the cause of action that the Entire UK Judgment was based on was contrary to international comity; rather he argued that the effect of registering and enforcing it would be to breach international comity. However, under s 3(2)(*f*), the court does not look at the effect of registering and enforcing a judgment under the RECJA.

43 Furthermore, the doctrine of comity did not necessarily aid PT Bakrie. What Mr Damodara was suggesting was that this court should uphold the Jakarta Court Order and disregard the Entire UK Judgment without more. That appeared to be a selective application of the doctrine of comity. It is established that the court in the enforcement forum should not, and would not, investigate or rehear the merits of a foreign judgment that is sought to be enforced in the enforcement forum. This was accepted by the Court of Appeal in *Hong Pian Tee v Les Placements Germain Gauthier Inc* [2002]

1 SLR(R) 515 ("*Hong Pian Tee*") at [28] and [31]:

> 28 It is also vitally important that **no court of one jurisdiction should pass judgment on an issue already decided upon by a competent court of another jurisdiction. This is the doctrine of comity.** After all, two tribunals, both acting conscientiously and diligently, could very well come to a different conclusion on the same facts. There is no question of which is being more correct. To seek to make such an evaluation would be an invidious exercise and could lead to the undesirable consequence which we have mentioned before of encouraging judicial chauvinism. It must be borne in mind that **the enforcement forum is not an appellate tribunal *vis-à-vis* the foreign judgment**.
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> ...
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> 31 This common law principle of according finality to a foreign judgment was at one time thought to be based on the doctrine of comity. English judges then believed that the law of nations required the courts of one country to assist those of any other and they feared that if foreign judgments were not enforced in England, English judgments would not be enforced abroad: *Roach v Garvan* (1748) 1 Ves Sen 157 at 159. However, this theory seems to have given way to what is known as the doctrine of obligations, namely, that the foreign judgment imposes a duty or obligation on the defendant to pay the judgment sum which the courts in the enforcement country are bound to enforce: *Schibsby v Westenholz* (1870) LR 6 QB 155 at 159. Whatever may be the correct legal foundation, or for that matter it could be a combination of both, **the cardinal principle is that no one court should sit in judgment over the final decision of a competent court of another jurisdiction**. A party, litigating in a foreign court, must diligently muster all the evidence and raise all pertinent issues in that forum. He should not have any expectation that any carelessness or omission on his part could nevertheless be made good in the forum of enforcement.
>
> [emphasis added in bold]

Similarly, in *Yong Tet Miaw*, the Court of Appeal quoted with approval a passage from *Cheshire & North's Private International Law* (11th Ed, 1987) to the same effect as follows (at [20]):

> The principle of enforcing foreign judgments is encapsulated in the passage from *Cheshire & North's Private International Law* (11th Ed, 1987) at p 361 quoted by Chao Hick Tin J in his judgment, and which we agree should apply in Singapore with equal force. It reads:
>
> > It is well established that in an action on a foreign judgment **the English court is not entitled to investigate the propriety of the proceedings in the foreign court. Erroneous judgments delivered by a foreign court are not void in England.** The merits of the case have been argued and determined, and **if one of the parties is discontented with the decision his proper course is to take appellate proceedings in the forum of the judgment. The English tribunal, in other words, cannot sit as a Court of Appeal against a judgment pronounced by a court which was competent to exercise jurisdiction over the parties.**
>
> [emphasis added in bold]

44 Nevertheless, I accepted that the situation before me was more complicated because the Entire UK Judgment appeared to be in conflict with the Indonesian Court Order. It seemed to me that both the principle of universality mentioned by Teare J and the doctrine of comity were relevant and

that they should be considered under the just and convenient factor in s 3(1) of the RECJA read with O 67 r 9(3) of the Rules of Court rather than under s 3(2)(*f*) of the RECJA.

45 Teare J appeared to favour the principle of universality which would give effect to the Composition Plan, but he concluded that he was bound by *stare decisis* to follow the English Court of Appeal decision of *Antony Gibbs & Sons v La Société Industrielle et Commerciale des Métaux* (1890) 25 QBD 399 ("*Gibbs*"), which stood for the proposition that a discharge from any debt or liability under the bankruptcy law of a foreign country outside the United Kingdom is a valid discharge in the United Kingdom only if it is a valid discharge under the law governing the contract underlying the debt or liability. Thus, Teare J held that the discharge of PT Bakrie's obligation under the Guarantee as a matter of Indonesian law was of no effect under English law (which is the governing law of the Guarantee).

46 If PT Bakrie was dissatisfied with Teare J's decision, it should have filed an appeal especially in the light of the judge's apparent endorsement of the principle of universality. However, for reasons known only to it, PT Bakrie chose not to appeal against Teare J's decision.

47 Since the principle of universality had already been considered by Teare J applying English law which was the governing law of the Guarantee, it seemed to me that I ought to apply the principle in *Hong Pian Tee* and I so decided. Accordingly, I was not persuaded to set aside the Registration Order whether pursuant to 3(1) of the RECJA read with O 67 r 9(3) or s 3(2)(*f*) of the RECJA.

48 PT Bakrie ought to have filed an appeal in the UK Proceedings. One would have thought that the sensible thing for PT Bakrie to do now is for PT Bakrie to file an application in the United Kingdom for an extension of time to appeal against the Entire UK Judgment which is the root of its problems, rather than to try and attack it indirectly by challenging the steps taken in Singapore. Even if the Registration Order and the EJD Order were set aside, that would not stop GDAF from taking steps in other jurisdictions to enforce the Entire UK Judgment.

Material non-disclosure

49 The last ground which Mr Damodara relied on was that of material non-disclosure on the part of GDAF in the supporting affidavit filed for its application in OS 595. An applicant in an *ex parte* application to register a judgment under the RECJA owes a duty to make full and frank disclosure: *Madihill Development Sdn Bhd and another v Sinesinga Sdn Bhd (transferee to part of the assets of United Merchant Finance Bhd)* [2012] 1 SLR 169 at [24]. The applicant must disclose all material facts, even if they might be prejudicial to the applicant's claim: *The "Vasiliy Golovnin"* [2008] 4 SLR(R) 994 ("*Vasiliy Golovnin*") at [83] to [85] which involved an application for a warrant of arrest in admiralty proceedings.

50 The supporting affidavit was that of Ingrid Madeline Martine Coinquet, General Counsel of GDAF. It was filed on 18 July 2011. It appeared to have been filed by different solicitors from the present ones acting for GDAF. Mr Damodara submitted that GDAF failed to disclose the following facts:

(a) The existence of the UK IFAL Costs Order ("fact (a)");

(b) The basis of GDAF's application for the UK IFAL Costs Order and the factual assertion therein that PT Bakrie was dormant with no assets ("fact (b)");

(c) That GDAF had already been informed from as early as before the trial in the UK Proceedings that PT Bakrie was a dormant company and had no assets ("fact (c)");

(d) That GDAF was not aware of any enforcement prospects in Singapore for the Entire UK Judgment ("fact (d)");

(e) That GDAF had admitted that as a matter of Indonesian law, PT Bakrie was released from its obligations under the Guarantee and had already been informed that the Composition Plan resulted in the transfer of all of PT Bakrie's assets into the two creditor special purpose vehicles for distribution to its creditors ("fact (e)");

(f) That PT Bakrie, its management and/or assets were not based in and had no connection with Singapore ("fact (f)"); and

(g) The existence of the Jakarta Court Order and its legal effect, namely that it discharged PT Bakrie's obligations under the Guarantee as a matter of Indonesian law ("fact (g)").

51 I was of the view that fact (a) in itself was not material.

52 Facts (b) and (c) were material. GDAF ought to have disclosed them in the supporting affidavit and elaborate on why it was applying for registration of the Entire UK Judgment in Singapore. If its position was that it accepted that PT Bakrie has no assets, then it ought to explain why it was nevertheless seeking to register the Entire UK Judgment in Singapore. If its position was that PT Bakrie might have assets, then it ought to have disclosed what it had asserted previously to obtain the UK IFAL Costs Order, *ie*, that it had believed that PT Bakrie has no assets and that it was subsequently taking a different position. It then ought to have elaborated on why it was seeking registration in Singapore. That would have addressed the question whether GDAF itself had thought that there was any enforcement prospects in Singapore which pertained to fact (d).

53 In any event, I did not think that fact (d) was actually a fact. Mr Damodara had assumed that GDAF itself was not aware of any enforcement prospect in Singapore because he had assumed that GDAF was sticking to its previously held view that PT Bakrie has no assets.

54 Facts (e) and (g) overlapped. These were material facts that ought to have been disclosed in the supporting affidavit for the consideration of the Singapore court. GDAF ought to have disclosed the Composition Plan and the Jakarta Court Order and its admission in the UK Proceedings and explained why it considered that it was nevertheless entitled to rely on the Entire UK Judgment.

55 As regards fact (f), GDAF ought to have disclosed that PT Bakrie's management were not based in Singapore. As regards the question whether GDAF ought to have said that PT Bakrie has no connection with Singapore, that was a different assertion which GDAF need not have stated if they did not know one way or another. Whether GDAF knew that PT Bakrie has no assets in Singapore was also a "fact" assumed by Mr Damodara from GDAF's previous view and I need say no more thereon.

56 Apart from setting out some non-contentious information about the background leading to the Entire UK Judgment, the supporting affidavit stated that:

(a) No appeal had been filed;

(b) the Entire UK Judgment remained wholly unsatisfied;

(c) GDAF was entitled to enforce the Entire UK Judgment; and

(d) the Entire UK Judgment did not fall within any of the cases in which a judgment may not

be ordered to be registered under s 3(2) RECJA.

57 There was no discussion as to whether or not it was just and convenient to register the Entire UK Judgment in Singapore in the light of GDAF's previous belief and assertion that PT Bakrie has no assets and in the light of the Composition Plan and the Jakarta Court Order. It was clear that the supporting affidavit was superficial in view of all the circumstances, although it seemed to me that the non-disclosures were the result of a lack of competence and/or attention and/or co-ordination, rather than deliberate conduct.

58 Mr Nair submitted that even if there had been material non-disclosure by GDAF, the court still retains a discretion not to discharge the *ex parte* Registration Order. He relied on *Tay Long Kee Impex Pte Ltd v Tan Beng Huwah (trading as Sin Kwang Wah)* [2000] 1 SLR(R) 786 at [35] and *Mohamed Said bin Ali v Ka Wah Bank* [1989] 1 SLR(R) 689 at [17] and [18]. He also submitted that a more liberal attitude may be taken in relation to material non-disclosure in cases which do not involve Mareva Injunctions, citing *Kok Seng Chong v Bukit Turf Club* [1992] 3 SLR(R) 772 ("*Kok Seng Chong*") at [97].

59 In *Kok Seng Chong*, Michael Hwang JC made it clear that he was not suggesting that the duty of full and frank disclosure should be any less stringent in non-Mareva cases. What he was suggesting was that the court should be less ready in such cases to order a peremptory discharge of the injunction and to deny an application for a fresh injunction. I agree that the duty of full and frank disclosure is no less stringent and that the consequence of an order made on an *ex parte* application may be a relevant factor in a discharge application. I would also like to take this opportunity to remind litigants and their professional advisers to take the duty to disclose all material facts more seriously. It is too often the case that they emphasize material facts favourable to the applicant only. As for those material facts favourable to the other party, they either fail to mention them at all or fail to adequately bring them to the attention of the court.

60 Mr Nair sought to persuade me that if I were to set aside the Registration Order (and the EJD Order as well) on the ground of material non-disclosure, GDAF would have to re-apply for those orders with the consequence that it may not find Kurniawan in Singapore again. That might well have been the sanction GDAF deserved for the poor supporting affidavit that was filed. Fortunately for it, I was of the view that in all the circumstances, it was in the interest of justice not to allow PT Bakrie's application to set aside the Registration Order. PT Bakrie ought to have filed an appeal in the United Kingdom but did not. While GDAF's supporting affidavit for the application for the Registration Order was lacking, this was not deliberately so. There was no draconian effect immediately arising from the Registration Order itself. Indeed, after it was served on PT Bakrie, PT Bakrie could have applied to set it aside but did not do so until after GDAF had taken a further step in reliance on the Registration Order, *ie*, by applying for and obtaining the EJD Order and serving the latter on Kurniawan.

The EJD Order

61 Given my view that the Registration Order should remain undisturbed, it followed that GDAF should be allowed to proceed to examine Kurniawan. Indeed, Mr Damodara did not dispute that this was a natural consequence if I were to conclude that the Registration Order should not be set aside. Neither did he advance any other argument in respect of the EJD Order only.

Conclusion

62 For the above reasons, I dismissed PT Bakrie's appeals with costs.