IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 137

High Court Suit No 671 of 2015
(HC/Registrar's Appeal No 231 of 2016)

Between

Shi Wen Yue

… *Plaintiff*

And

(1) Shi Minjiu
(2) Fan Yi

… *Defendants*

GROUNDS OF DECISION

[Conflict of Laws] — [Judicial Settlements] — [Enforcement]
[Conflict of Laws] — [Foreign Judgments] — [Enforcement]

Shi Wen Yue
v
Shi Minjiu and another

[2016] SGHC 137

High Court — HC/Suit No 671 of 2015 (HC/Registrar's Appeal No 231 of 2016)
Choo Han Teck J
5 July 2016; 12 July 2016

19 July 2016

Choo Han Teck J:

1. This was an appeal by the defendants (hereafter the appellants) against the Assistant Registrar's ("the AR") decision to grant summary judgment to the plaintiff (hereafter the respondent) to enforce a mediation paper issued by the Zhou Shan City Intermediate Court ("the Mediation Paper"). The appellants and respondent are China nationals. The respondent sued the appellants in the Zhou Shan City Court to recover a loan of RMB 9,300,000. The Zhou Shan City Court ordered that the appellants pay to the respondent the sum claimed as well as interests of RMB 2,173,634 as at 30 June 2014 and further interest at 2% after July 2014. The appellants appealed the order to the Zhou Shan City Intermediate Court which sent the parties for mediation. The parties reached an agreement through mediation and the Zhou Shan City Intermediate Court issued the Mediation Paper recording the terms of agreement on 3 March 2015.

2. On 30 March 2015, the appellants defaulted on the first instalment payment and the respondent commenced enforcement proceedings in China on 1 April 2015. On 3 July 2015, the respondent filed the present suit in Singapore to enforce the Mediation Paper as a China judgment in Singapore and applied for summary judgment. In the meantime, the appellants have filed for a retrial in China to set aside the Mediation Paper. The respondent's position before the AR in the summary judgment hearing was that the Mediation Paper was a final and conclusive judgment under Chinese law that could be enforced in Singapore. The respondent also argued that even if the Mediation Paper was not a judgment, it could still be enforced because it was undisputed that the appellants owed the respondent the sums and they had no defence in respect of the sums owed. The respondent thus submitted that there were no triable issues in this case.

3. The appellants argued that the Mediation Paper was not a judgment under Chinese law but was only an agreement. Further, they submitted that under the terms of the Mediation Paper and Chinese law, the sums could only be enforced in China and not in Singapore. Accordingly, they submitted that these were triable issues. The AR agreed with the appellants that the Mediation Paper was not a judgment, but he found that the Mediation Paper was enforceable as an agreement because the appellants did not have a viable defence to the claim. He therefore granted summary judgment.

4. On appeal, the appellants' counsel argued that the application for summary judgment was wrong. He submitted that there were triable issues in the present case. The triable issues raised by the appellants were:

(a) Whether the Mediation Paper was a judgment;

(b) Whether the Mediation Paper could be enforced overseas concurrently; and

(c) Whether the Mediation Paper was liable to be set aside.

The respondent relied on the arguments that it raised before the AR. I agreed with the appellants that there were triable issues and allowed the appeal. An application for summary judgment to enforce a foreign judgment may of course be made if the defendant has no defence to the claim but a summary judgment should not be granted when there is a fair or reasonable possibility of a real or *bona fide* defence to a plaintiff's claim. A complete defence need not be shown, but the defendant only needs to show that there is a triable issue or question or that for some other reason there ought to be a trial.

5. A final and conclusive foreign judgment rendered by a court of competent jurisdiction, which is also a judgment for a definite sum of money, is enforceable in Singapore unless it was procured by fraud, or its enforcement would be contrary to public policy or the proceedings in which it were obtained were contrary to natural justice (*Poh Soon Kiat v Desert Palace Inc (trading as Caesars Palace)* [2010] 1 SLR 1129 at [14]). The main issue in this summary judgment application was whether the Mediation Paper was such a judgment. The parties were right in accepting that the issue of whether the Mediation Paper was a judgment was governed by Chinese law and thus adduced expert evidence by affidavit. The respondent engaged Wang Liangping as his Chinese law expert while the appellants engaged Li Xiaoping as their Chinese law expert.

6. The appellants' and respondent's experts disagreed starkly on the issue of whether the Mediation Paper was a judgment. The respondent's expert was of the view that the Mediation Paper was a consent judgment issued by a competent Chinese court recording the terms agreed upon from the mediation. On the other hand, the appellants' expert took the view that court judgments and mediation papers were governed by different chapters in the People's Republic of China Civil Procedure Law ("CPL") and that the Mediation Paper was not a consent judgment. There was also a disagreement between the parties over the translation of the term "调解书" used within the provisions of the CPL. The respondent's expert translated the term to mean "consent judgment" while the translation services of Lingotrans Services Pte Ltd which the appellants relied on translated the term to mean "mediation agreement".

7. The disagreement between the experts on this issue requires a trial, and a summary judgment is clearly inappropriate. The expert views of the expert witnesses must be tested and cross-examined before the court may determine the facts. In his Grounds of Decision ("the GD"), the AR offered his own translation and interpretation of the provisions of the CPL over those of the expert witnesses and translators. At [11] – [12] of the GD, the AR found that both parties did not accurately translate the term "调解书" and proceeded to proffer his own translation of the term:

> 11 Both parties *did not accurately translate the term.* Firstly, the defendants pointed out that Article 236 of the CPL — which the plaintiff relied on — deals separately with "调解书" and "民事判决、裁定", which were translated as "mediation agreement" and "civil judgment and ruling" respectively….
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> ….

> 12 Secondly, I am conversant in Chinese. *My own translation* of "民事判决、裁定" is "judgment, decision". "调解书" literally translates to "mediation paper" and no person conversant in Chinese would construe "调解书" to be equivalent to "民事判决、裁定". On the other hand "书" does not carry with it the notion of agreement; agreement is normally denoted by "协议". I therefore hold that "调解书" should be translated as "mediation paper".
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> [emphasis added]

This cannot be accepted. The use of documents in foreign languages in court is governed by O 92 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) which states that:

> Every document if not in the English language must be accompanied by a translation thereof certified by a court interpreter or a translation verified by the affidavit of a person qualified to translate it before it may be received, filed or used in the Court.

It is clear from O 92 r 1 that only a court interpreter or a person qualified to translate may offer a translation of a document not in the English language. Neither an AR nor a judge is in a position to offer his own translation of the Articles of the CPL as he is neither a court interpreter nor a person qualified to translate foreign text.

8. Moreover, even though the Evidence Act (Cap 97, 1997 Rev Ed) permits court decisions and legal codes of foreign jurisdictions to be admitted as relevant evidence, it is "very difficult for our courts to competently interpret on their own such raw sources of foreign law" and as a matter of prudence it is preferable that expert opinions are provided wherever possible to assist the court in this task (see *Pacific Recreation Pte Ltd v S Y Technology Inc and another appeal* [2008] 2 SLR(R) 491 at [60]). In the light of this, I also found

it inappropriate for the AR to substitute his views for those of the expert witnesses when arriving at his decision. Accordingly, I found that the issue of whether the Mediation Paper was a judgment was a triable issue where judgment could not be determined summarily.

9. The respondent argued that even if the Mediation Paper was not a judgment, it could still be enforced as an agreement between the parties. He referred to the terms of the Mediation Paper and the appellants' admission in their Defence that they were in default of the sums due. The appellants' defence on this submission was that the Mediation Paper could not be enforced outside of China because cl 3 of the Mediation Paper only provided for execution in China and that Article 224 of the CPL stated that it could only be enforced locally. In response, the respondent argued that cl 3 of the Mediation Paper did not preclude it from commencing execution outside of China but was only an acceleration clause which allowed for the entire sum to be claimed upon default.

10. The respondent's pleadings do not disclose the necessary facts to support his alternative case, *ie,* the claim for a contractually agreed sum which had been admitted to. Every pleading must contain a statement of the material facts on which the party pleading relies on to formulate his complete cause of action (see *Bruce v Odhams Press Ltd* (1936) 1 KB 697 approved in *Multi-Pak Singapore Pte Ltd v Intraco Ltd & Ors* [1992] 2 SLR(R) 382). I am citing these cases in case counsel had forgotten this very basic rule. Further, material facts, as stated in *Phillips v Phillips* (1878) 4 QBD 127 are "facts which will put the defendants on their guard and tell them what they have to meet". Counsel must therefore remember that pleadings are crucial in the litigation

process as the parties are entitled to give evidence on facts at trial only if those facts have been pleaded.

11. In this case, it was not clear from the pleadings that the respondent was suing on a breach of contract or agreement. The pleadings only state:

(a) In paragraph 2 of the Amended Statement of Claim, the respondent pleaded that the parties had entered into a mediation agreement ("Court Mediation Agreement") which was subsequently recorded onto the Mediation Paper issued by the Zhou Shan City Intermediate Court. In this paragraph, there was reference to both the Court Mediation Agreement and the Mediation Paper.

(b) In paragraph 3 of the Amended Statement of Claim, the respondent listed the material terms of the Court Mediation Agreement and the Mediation Paper, which according to the respondent were identical. Likewise, both the Court Mediation Agreement and the Mediation Paper were mentioned.

(c) In paragraph 4 of the Amended Statement of Claim, the respondent pleaded that "[i]n breach of Clause 2 of *the Mediation Paper*, the [appellants] failed to make payment of 1,200,000 yuan on 30 March 2015" [emphasis added].

12. Although the pleadings refer to both the Mediation Paper, which the respondent pleaded was a consent judgment issued by the Chinese court (at paragraph 4 of the respondent's Reply), and the Court Mediation Agreement, it was clear from paragraph 4 of the Amended Statement of Claim that only a

breach of the Mediation Paper and not the Court Mediation Agreement had been pleaded. There was also no mention of the respondent's alternative case on the Amended Statement of Claim and the Reply. It is necessary for a party who is suing on a breach of contract to plead the breach. In light of the absence of such a pleading, I declined to grant summary judgment to the respondent on this basis.

13. In any event, even considering the issue on its merits, I found that the issue of whether the Mediation Paper could be enforced outside of China was a triable issue. As with the previous issue, both experts were similarly in disagreement as to whether the Mediation Paper could be enforced outside of China. First, there was disagreement on the interpretation of cl 3 of the Mediation Agreement. Further, the appellants' expert was of the view that Article 224 of the CPL precluded a person from applying for multiple enforcements in different jurisdictions while the respondent's expert held the view that it did not and cited Article 280 of the CPL to show that a party may apply directly to a foreign court for recognition and enforcement. Given the disagreements between the parties and their experts on this issue, summary judgment should not be granted. These issues must be decided at trial where the testimony of the expert witnesses would be scrutinised through cross-examination.

14. Lastly, I should mention that I do not think that the AR should have substituted his views over those of the expert witnesses when dealing with this issue as with the previous issue (see [7] – [8] above).

(a) At [21] – [22] of the GD, the AR took issue with the respondents' translation of cl 3 of the Mediation Paper and proceeded to offer his own translation.

(b) At [24] of the GD, the AR referred to Article 229 of the CPL, an Article that was not cited by either party and offered his own translation of it.

In both of these instances, the matters expressed are matters of fact, and the party expressing his views is liable to be cross-examined. The AR should not place himself in that situation.

15. The final basis of the appellants' resistance of summary judgment was that the Mediation Paper was liable to be set aside. According to them, a retrial petition in China had been filed on 10 March 2016 for the Mediation Paper to be set aside. The appellants also stated that the Chinese court will likely be setting the matter down for hearing in two to three months' time. The appellants' position was that if the petition was successful, the whole of the respondent's claim based on the Mediation Paper would be nullified. The respondent submitted that the arguments raised by the appellants were entirely untenable. The respondent argued that the action by the appellants to seek a retrial in China was filed late after the Mediation Paper had been executed in China and enforcement proceedings had commenced in Singapore and that such a re-trial petition was time barred under Chinese law. The impact of a re-trial or setting aside of the Mediation Paper is contingent on the finding of whether it is a judgment or otherwise. Given that I found that whether the Mediation Paper was a judgment was a triable issue, the issue of whether the

Mediation Paper was liable to be set aside was also a triable issue that cannot be determined summarily.

16. For the above reasons, I allowed the appeal. I also ordered that costs be in the cause for this appeal and the application for summary judgment below.

- Sgd -
Choo Han Teck
Judge

Tan Chee Kiong (Seah Ong & Partners LLP) for the appellants;
Pua Lee Siang (Kelvin Chia Partnership) for the respondent.