IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 100

HC/Suit No 1245 of 2016
(HC/Registrar's Appeals No 84, 85 and 86 of 2018)
(HC/Summons No 1791 of 2018)

Between

Resorts World at Sentosa Pte Ltd

… *Plaintiff*

And

Sze Siu Hung

… *Defendant*

JUDGMENT

[Civil procedure] — [judgments and orders]
[Civil procedure] — [service]

Resorts World at Sentosa Pte Ltd
v
Sze Siu Hung

[2018] SGHC 100

High Court — HC/Suit No 1245 of 2016 (HC/Registrar's Appeals No 84, 85 and 86 of 2018 and HC/Summons No 1791 of 2018)
Choo Han Teck J
18, 30 April 2018

27 April 2018 Judgment reserved.

Choo Han Teck J:

1 The plaintiff operates a casino in Singapore. In November 2011, the defendant, a Hong Kong citizen, went to the plaintiff's casino and used $15m from a credit facility given to him by the plaintiff. A Hong Kong address was stated as the defendant's residential address in the credit agreement between the plaintiff and the defendant. Between December 2011 and March 2015, $5,571,073 of partial payments and $1,048,350 in rebates were set-off against the $15m owed by the defendant. This left a balance of $8,380,577 to be paid by the defendant.

2 The plaintiff's solicitors sent a letter of demand dated 26 October 2016 ("26 October 2016 letter") to four addresses connected to the defendant. Three of the addresses were in Hong Kong, whilst the last was in Fujian, China. These were addresses found in various searches made by the plaintiff.

3 By a letter dated 2 November 2016, the defendant's Hong Kong solicitors, M/s Michael Li & Co ("MLC"), replied to the 26 October 2016 letter, informing the plaintiff's solicitors that they were taking instructions from the defendant. On 10 November 2016, MLC sent another letter to the plaintiff's solicitors, denying the plaintiff's claim, and requesting for particulars and documents.

4 On 23 November 2016 the plaintiff commenced the present suit for the repayment of the $8,380,577. On 1 December 2016, the plaintiff applied for leave for service of the cause papers out of jurisdiction. This was granted. The plaintiff then appointed solicitors in Hong Kong, M/s Winnie Mak, Chan & Yeung ("WMCY"), to effect personal service on the defendant. WMCY wrote to MLC, asking if they had instructions to accept service on behalf of the defendant. On 15 December 2016, MLC replied saying that they did not have such instructions. WMCY thus proceeded to attempt personal service on the defendant a total of six times, unsuccessfully, at the three Hong Kong addresses.

5 As a result, the plaintiff applied for, and was granted, an order to effect substituted service. Substituted service was effected on 2 February 2017, by advertisement in an English language newspaper and a Chinese language newspaper, and the sending of copies of the advertisements to the three Hong Kong addresses.

6 Despite all this, the defendant did not enter an appearance. The plaintiff thus entered default judgment against the defendant on 2 March 2017. The default judgment was registered in Hong Kong, and notification of the registration order was sent to the same three Hong Kong addresses. On 2 August 2017 the defendant made his debut by applying to set aside the Hong Kong

court's order registering the default judgment. Making up for lost time, the defendant applied, in Singapore, to set aside the order for leave to serve the cause papers out of jurisdiction, the order for substituted service, and the default judgment entered against him. The defendant's applications were dismissed by the assistant registrar, and the defendant appealed before me.

7 On appeal, counsel for the defendant, Mr Chan, argues that the order for service out of jurisdiction should be set aside as the plaintiff did not make full and frank disclosure. Mr Chan submits that the plaintiff failed to bring the court's attention to the fact that "it knew and/or had reason to believe that the [defendant's] place of residence was in Fujian". In support of this, Mr Chan points to three alleged facts. First, the defendant had told the plaintiff's employee, Ms Gao, that he was resident in Fujian. Second, the plaintiff had commissioned a search on the defendant in Hong Kong which revealed that he was born in Fujian and had four listed addresses; the three Hong Kong addresses and the Fujian address. Third, the 26 October 2016 letter was sent to the three Hong Kong addresses and the Fujian address.

8 I do not accept this argument. Under O 11 r 2(1)(c) of the Rules of Court (Cap 332, R 5, 2014 Rev Ed) the plaintiff was required, in applying for leave for service out of jurisdiction, to state what place or country the defendant is, or probably may be found. The defendant is a Hong Kong citizen who, in his credit agreement with the plaintiff, listed a Hong Kong address. The searches conducted on the defendant showed Hong Kong addresses. The 26 October 2016 letter was replied to by Hong Kong solicitors engaged by the defendant. In these circumstances, the plaintiff was clearly entitled to state that the defendant is, or probably may be found, in Hong Kong. I do not see how it could have been material that another address, in Fujian, was connected to the

defendant, especially when that address was not a residential address, but an office address. I am also of the opinion that the defendant was trying to evade service and now, the consequences of his failure to respond earlier.

9 Mr Chan's next submission concerns the order for substituted service. Mr Chan argues that the order should be set aside for three reasons. First, the plaintiff did not make reasonable efforts to locate the defendant's residential address. Second, the plaintiff has not shown that the two modes of substituted service would bring the cause papers to the defendant's notice. Third, the plaintiff did not make full and frank disclosure that it knew or had reason to believe that the defendant's place of residence was in Fujian.

10 Mr Chan's third reason is the same as his argument in respect of the order for service out of jurisdiction, and is rejected for the same reasons. As for the other two reasons, I find that they are little more than afterthoughts dangled about to distract from the cause of these proceedings — the defendant's evasion of service. What is clear is that the defendant knew of the proceedings at the latest by 15 December 2016. According to the defendant, the 26 October 2016 letter was forwarded to him by the staff at the Fujian address. He then sought legal advice from MLC, who issued the letters dated 2 and 10 November 2016. On 12 December 2016, WMCY informed MLC of the proceedings and asked if they had instructions to accept service. MLC asked the defendant, who, despite knowledge of the proceedings, replied that he "did not wish to give instructions for it to accept service on [his] behalf." The defendant cannot now claim that he had no notice of the proceedings, or that the plaintiff did not make reasonable efforts to bring the cause papers to his notice.

11 This brings us to Mr Chan's last submission. He submits that the default judgment should be set aside as there is a prima facie defence. The defendant claims he has made full repayment of the $15m to Ms Gao, who, according to the defendant's friend, Mr Shi, admitted to misappropriating the monies. These payments are said to have been made through intermediaries as a result of China's exchange control regulations. In support of this argument, Mr Chan is seeking leave to adduce fresh evidence showing the defendant's transfer of a total of $15m to various intermediaries. In the alternative, Mr Chan submits that the credit agreement is void as a result of a unilateral mistake on the part of the defendant, who, after some alleged discussions between him, Mr Shi, and Ms Gao, thought he would only be liable for up to 70% of the debt incurred.

12 I reject Mr Chan's application and his arguments. First, as Mr Shankar, counsel for the plaintiff pointed out, the allegations of repayment and unilateral mistake only came out in the proceedings in Singapore. These defences were not mentioned at all when the defendant applied for the registration of the default judgment to be set aside in Hong Kong. The fresh evidence that Mr Chan seeks to adduce on appeal further confirms the weakness of the allegation that the defendant has made full payment. The fresh evidence shows that the $15m was paid to the alleged intermediaries from 6 January to 17 April 2012. But the plaintiff's accounts show that repayment (totalling $5,571,073, leaving a debt of $8,380,577) began in 24 December 2011, until 6 January 2015. How can the plaintiff have received repayments in December 2011 when the defendant, according to his evidence, only started repaying the plaintiff in January 2012? Something does not add up — and that is the credibility of the defendant's story.

13 For these reasons, I dismiss the defendant's appeals and the defendant's application to adduce further evidence. I will hear the question of costs on another date.

- Sgd -
Choo Han Teck
Judge

Shankar s/o Angammah Sevasamy and Qiu Jiehao Ivan (Straits Law Practice LLC) for the plaintiff
Chan Ming Onn David, Tan Su Hui, Chng Yan and Lee Ping (Shook Lin & Bok LLP) for the defendant.