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

[2023] SGHC 72

Suit No 153 of 2022 (Summons No 4463 of 2022)

Between

UCO Bank, Singapore Branch

… *Plaintiff*

And

(1) Green Mint Pte Ltd
(2) Gupta Vaibhav
(3) Arvind Sharma

… *Defendants*

EX TEMPORE JUDGMENT

[Civil Procedure — Inherent powers — Defendant not filing defence — Judgment on the merits of the claim]

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UCO Bank, Singapore Branch v Green Mint Pte Ltd and others

[2023] SGHC 72

General Division of the High Court — Suit No 153 of 2022 (Summons No 4463 of 2022)
Goh Yihan JC
18 January 2023, 28 March 2023

28 March 2023

Goh Yihan JC:

1 The plaintiff is UCO Bank, Singapore Branch. This is the plaintiff's application for a judgment on the merits of the claim against the second defendant, Mr Gupta Vaibhav, on a summary basis, or for the matter to proceed to trial. In brief, the plaintiff's claim against the second defendant is pursuant to the terms of a personal guarantee provided to the plaintiff in respect of funds extended by the plaintiff to the first defendant, Green Mint Pte Ltd.

2 I originally heard this matter on 18 January 2023. At the time, the second defendant had persistently failed to enter an appearance despite being given ample opportunities to do so. The plaintiff was therefore entitled to enter judgment in default of appearance. However, the plaintiff had sought a judgment on the merits. This is because India, where it intends to enforce the judgment against the second defendant's assets, does not recognise a foreign judgment that has not been given on the merits of a claim as being conclusive.

3 I was informed by the Registry just before the hearing on 18 January 2023 that the second defendant had through his nominee filed a Memorandum of Appearance ("MOA") on 17 January 2023. However, the Registry had not accepted the filing in time for the hearing because the MOA was filed out of time. There may also have been issues with how the nominee filed the MOA. I therefore adjourned the matter for the Registry to resolve these matters.

4 In the end, after a number of pre-trial conferences, the second defendant concluded that he does not intend to file a Defence to contest the plaintiff's claim. Accordingly, the learned Senior Assistant Registrar David Lee ("SAR Lee") directed the Registry to accept the MOA filed on 17 January 2023. He also confirmed with the plaintiff that, in light of the second defendant's decision not to contest the claim, it would not need to file further submissions in respect of the present application. Again, while the plaintiff is entitled to enter a judgment in default of defence, it still requires a judgment on the merits for the reasons that I have explained above. Therefore, the question that is raised in the present application remains whether the plaintiff is entitled to such a judgment on the merits of the claim.

5 Having considered the plaintiff's submissions and the relevant documents, I allow the plaintiff's application and enter judgment on the merits of the claim in its favour. I now provide my brief reasons for doing so.

Background facts

6 I begin with the relevant background facts. On 17 November 2020, the plaintiff extended a credit facility to the first defendant. This was contained in a Facility Agreement dated 17 November 2020 ("the Facility Agreement").

Pursuant to cl 1.1(a) of the Facility Agreement, this Agreement includes the facility letter dated 9 November 2020 ("the Facility Letter").

7 Under the Facility Agreement, the plaintiff agreed to disburse and/or make available the sum of US$2,900,000 to the first defendant under various facilities, which are provided by cl 2.1. On 17 November 2020, the second and third defendants, who were the directors of the first defendant, passed a board resolution for the first defendant to enter into the Facility Agreement with the plaintiff.

8 Importantly for present purposes, cl 4 of the Facility Agreement provides that the credit facility is to be secured by, among others, a personal guarantee. The second and third defendants duly executed personal guarantees in this regard ("the Personal Guarantees"). By way of the Personal Guarantees, the second and third defendants agreed and undertook to save the plaintiff harmless and keep the plaintiff indemnified from and against all claims, demands, losses, damages, costs, charges, and expenses whatsoever that it may sustain in respect of all moneys advanced and paid to the first defendant up to the amount of US$2,900,000. Further, the second and third defendants also agreed that as between the plaintiff and themselves, they are principal debtors together with the first defendant on a joint and several basis.

9 In accordance with the terms of the Facility Agreement read with the Facility Letter, the plaintiff granted the first defendant various Documents-on-Acceptance facilities and overdraft facilities. In particular, the plaintiff granted the first defendant the following facilities which the first defendant has failed to make payment of ("the Outstanding Facilities"):

Bill ID	Bill Type	Principal Amount	Start Date	Maturity Date
OBCD0372000661	DA	128,931.82	06.11.2020	08.04.2021
OBCD0372000782	DA	536,000.00	28.12.2020	28.04.2021
30370210400054	Overdraft	198,788.23	01.04.2021	

10 Clause 6 of the Facility Agreement provides that the interest charges payable on the facilities granted are as set out in the Facility Letter. Paragraph V of the Facility Letter in turn provides that the interest rate is fixed at USD LIBOR/COF (whichever is higher) + 3.50% per annum. Based on the applicable USD LIBOR/COF rate and the stipulated interest in the Facility Letter, the interest rate applicable to the principal sums arising from the Outstanding Facilities are as follows:

(a) Bill ID OBCD0372000661: 4.33%

(b) Bill ID OBCD0372000782: 4.3%

(c) Bill ID 30370210400054: 3.95%

11 Further, cl 22 of the Facility Letter imposes a penal interest that will be charged at 2% per annum. This is in accordance with the plaintiff's Loan Policy. Also, under the Facility Agreement, the first defendant agreed to pay the plaintiff on demand for all costs and expenses, including legal fees, incurred by the plaintiff in the administration and enforcement of the Facility Agreement.

12 On 16 April 2021, the plaintiff issued letters to the first and third defendants recalling the Outstanding Facilities and demanding payment of the sums due. On 27 April 2021, the plaintiff sent further statutory demands to the

second and third defendants seeking payment of the sums due. However, none of the defendants made any payment of the sums. By the plaintiff's determination, as of 19 January 2022, the sum payable by the defendants, in particular the second defendant, is US$925,361.73, which comprises the principal sums plus interest and legal fees incurred. The plaintiff relies on cl 10.6 of the Facility Agreement in respect of this determination. Clause 10.6 provides that save for manifest error, the plaintiff's determination of the sum payable under the Facility Agreement shall be conclusive of the sum payable by the defendants.

13 In addition to the sum of US$925,361.73, the plaintiff also seeks payment of the contractual interest of LIBOR/COF + 3.5% per annum + 2% per annum penal interest from 20 January 2022 to the date of payment. Finally, the plaintiff claims costs incurred from 19 January 2022 onwards, on an indemnity basis, pursuant to cl 20 of Facility Agreement.

Procedural history

14 In respect of these claims, the plaintiff had obtained judgment in default of appearance against the first defendant on 31 May 2022. The third defendant was made a bankrupt on 4 August 2022. As such, the plaintiff has brought the present application only against the second defendant.

15 With regard to the second defendant, the plaintiff had served the relevant cause papers on him by substituted service on 7 September 2022. However, the second defendant has not entered an appearance within the prescribed period of 21 days in accordance with O 12 r 4(*b*) of the Rules of Court (2014 Rev Ed) ("Rules of Court 2014"). On 30 September 2022, the second defendant was then granted an extension of time at a pre-trial conference to enter an appearance by

14 October 2022. On 4 October 2022, the second defendant requested for an extension of time for him to file the MOA. The court granted a further extension of time on 7 October 2022 for the second defendant to file his MOA by 21 October 2022. However, on 10 October 2022, the second defendant again requested for an extension of time to file his MOA. On 11 October 2022, the court indicated that the original deadline of 21 October 2022 was to remain.

16 On 17 October 2022, the second defendant wrote into court to state that he did not wish to seek any further extension of time and is "ready to face the verdict of the Honourable Court". He further stated that he "do not deny or accept [*sic*] the claim made by the plaintiff". Despite being told of the consequences of not entering an appearance at a further pre-trial conference on 21 December 2022, the second defendant did not file a MOA until 17 January 2023.

17 In the end, as I have alluded to above, the second defendant decided not to file a Defence despite having filed a MOA. The learned SAR Lee recorded the second defendant's decision, that was made during a pre-trial conference held on 15 March 2023, in the following terms:

> Ct: So I ask you again, do you want to contest the claim or not? I have already given you the indulgence to get the bank to provide you the statements or what you call the ledgers that you requested for. It shows the amount that is owing, does it not?
>
> 2D: Yes, Sir.
>
> Ct: So do you want to proceed or not? I have already given you more than enough time to decide and all the indulgences that you seek.
>
> 2D: I will not proceed.
>
> Ct: You confirm that you will not be filing the Defence then, right?

> 2D: Yes, Sir. I respect the Pf the UCO Bank itself [*sic*]. I do not want to go into Defence. I have very high regard for them. High regard for them.

This is therefore the procedural background against which the present matter now comes to be heard before me again.

My decision: the plaintiff is entitled to judgment on the merits in its favour

18 To my mind, there are three issues in the present application. First, whether the court has the power to consider a claim on its merits where the defendant is in default of defence. Second, assuming the court has such a power, whether it is appropriate to exercise it in the present case. Third, assuming that it is appropriate to exercise such a power, whether the plaintiff has discharged its burden of proving its claim for judgment to be entered on the merits in its favour.

19 Turning to the first issue, while there are no known local authorities where the court has considered a claim on the merits where the defendant was in default of *defence*, I find that the court may do so by virtue of its inherent powers. Preliminarily, for conceptual clarity, it is preferable to refer to the exercise of this power as the exercise of the court's "inherent powers". As the Court of Appeal observed in *Re Nalpon Zero Geraldo Mario* [2013] 3 SLR 258 at [33], there is a distinction between the "inherent jurisdiction" of the court and its "inherent powers", the former "being the court's inherent authority to hear a matter", while the latter "being its inherent capacity to give effect to its determination by making or granting the orders or reliefs sought by the successful party to the dispute". Here, it would not be wholly accurate to speak of "inherent jurisdiction", given that the court clearly possesses the authority to hear the present application by reason that the second defendant was validly

served. Rather, the present application is, in essence, a request for the court to give effect to its determination by granting the orders or reliefs sought by the plaintiff who, being entitled to judgment in default of defence, is in the same position as a successful party to the dispute. Therefore, it is the court's inherent powers, and not its inherent jurisdiction, that allows me to consider a claim on the merits where the defendant is in default of defence.

20 My conclusion that the court has the inherent power to consider a claim on the merits of this claim is supported by the High Court decision of *Transasia Private Capital Ltd (in its capacity as manager, for and on behalf of Asian Trade Finance Fund, a sub-fund of TA Asian Multi-Finance Fund) v Todi Ashish* [2021] 4 SLR 1121 ("*Transasia*"), where Andre Maniam JC (as he then was) set out the applicable law comprehensively. In the similar context where the defendant was in default of *appearance*, the learned judge observed (at [13]) that the Singapore courts have held that the court has inherent power to do so, as evidenced in cases such as *Singapore Telecommunications Ltd v APM Infotech Pte Ltd* [2011] SGHC 147, *Indian Overseas Bank v Svil Agro Pte Ltd and others* [2014] 3 SLR 892, and *Seagate Technology International v Vikas Goel* [2016] SGHC 12. I respectfully agree with Maniam JC and take the view that while these authorities concerned the situation where the defendant was in default of *appearance*, the reasoning in those cases is equally applicable to the case where the defendant is in default of *defence* (see *Transasia* at [13], citing *Panwell Investments Pte Ltd v Lau Ee Theow* [1996] 3 SLR(R) 73 at [24]). In my view, this is because the basis upon which the court may consider a claim on the merits in such situations is *not* founded on the provisions of Rules of Court 2014, which differentiates between a judgment given in default of appearance and a judgment given in default of defence; rather, the court's ability

to do so is founded on its inherent powers which is not affected by the fact that the defendant did not file a defence, as opposed to not entering an appearance.

21 Further support for the existence of the court's inherent power to consider a claim on the merits, regardless of whether the defendant was in default of appearance or in default of defence, may be derived from the English authorities. In *Berliner Bank AG v Karageorgis and another* [1996] 1 Lloyd's Rep 426 ("*Berliner Bank*"), the English High Court held that it has the inherent power to order a full trial of the claim where a defendant is in default of appearance *or in default of defence* (at 428). *Berliner Bank* was subsequently followed by the same court in *Eurasia Sports Ltd v Tsai and others* [2020] EWHC 81 (QB), where Foster J opined that the court has the option of giving either a judgment in default or a reasoned judgment on the merits where one or more of the defendants has served no defence and has not appeared at the trial, provided that the court is satisfied that the absent party has been given fair warning of the proceedings and of the trial date (at [19]). In light of the statements of law that were expressed in both local and English authorities, I am satisfied that I have the power to consider the merits of the present claim even where the defendant is in default of defence.

22 As for the second issue, I am of the view that this is an appropriate case to consider the plaintiff's claim on its merits. Similar to *Transasia*, the plaintiff has adduced a legal opinion from an Indian lawyer to the effect that s 13(*b*) of the Code of Civil Procedure 1908 (Act No 5 of 1908) (India) provides that a foreign judgment would not be considered conclusive under Indian law if it has not been given on the merits of the case. As such, and adopting the test employed by Maniam JC in *Transasia*, this is an appropriate case to consider the plaintiff's claim on its merits because not to do so would cause serious

injustice to the plaintiff given that it would not be able to enforce the judgment in India against the second defendant's assets (see also *Berliner Bank* at 428).

23 Finally, as for the third issue, I am satisfied that the plaintiff has discharged its burden of proving its claim for judgment to be entered on the merits in its favour. Based on the evidence adduced via affidavit for the plaintiff, which I have recounted above by way of the relevant background facts, I am satisfied that the plaintiff's claim against the second defendant is made out by its reliance on the Facility Agreement and the Facility Letter, to the following extent:

(a) the sum of US$925,361.73 being moneys due from the Outstanding Facilities plus interest and legal fees incurred;

(b) the payment of the contract interest of LIBOR/COF + 3.5% per annum + 2% per annum penal interest from 20 January 2022 to the date of payment; and

(c) the further costs incurred from 19 January 2022 onwards, on an indemnity basis, pursuant to cl 20 of Facility Agreement.

24 In particular, I am satisfied that the plaintiff can rely on cl 10.6 of the Facility Agreement in respect of its determination of the sums payable by the second defendant. Alternatively, I am also satisfied that the plaintiff is able to substantiate the claimed sums by reference the Facility Agreement and the Facility Letter.

25 For completeness, I do not order that the matter proceed to trial since I am satisfied on the evidence that the plaintiff is entitled to judgment on the merits.

Conclusion

26 For all these reasons, I grant the plaintiff judgment on the merits against the second defendant in terms of prayer 1 (as amended) of the present application.

Goh Yihan
Judicial Commissioner

Bazul Ashhab bin Abdul Kader, Chan Cong Yen Lionel and Caleb Tan Jia Chween (Oon & Bazul LLP) for the plaintiff;
The second defendant absent and unrepresented.