

Global Distressed Alpha Fund I Ltd Partnership v Integrated Financial Advisory Ltd
[2012] SGHC 152

Case Number : Originating Summons 506 of 2012/J
Decision Date : 25 July 2012
Tribunal/Court : High Court
Coram : Philip Pillai J
Counsel Name(s) : Daniel Soo Ziyang (Drew & Napier LLC) for the plaintiff; Defendant unrepresented
Parties : Global Distressed Alpha Fund I Ltd Partnership — Integrated Financial Advisory Ltd

Civil Procedure – foreign judgments

25 July 2012

Judgment reserved.

Philip Pillai J:

1 The applicant, a Bermuda-incorporated company known as Global Distressed Alpha Fund I Limited Partnership ("GDAF"), had obtained judgment from a United Kingdom court ("Principal UK Judgment") against an Indonesian incorporated company, PT Bakrie Investido ("PT Bakrie"), which was the guarantor of notes issued by Bakrie Indonesia BV, a special purpose vehicle ("SPV") incorporated in the Netherlands. (The court proceedings leading up to the Principal UK Judgement are referred to hereinafter as the Principal UK Proceedings.) GDAF subsequently attempted to enforce the Principal UK Judgment against PT Bakrie and discovered that it was then dormant.

2 On 23 April 2012, GDAF applied for and obtained an order in Case No 2009 Folio 1623 ("the UK Order") joining Integrated Financial Advisory Limited ("IFAL"), a company incorporated in the British Virgin Islands, as a party to the Principal UK Proceedings pursuant to s 51 of the Senior Courts Act 1981 (UK) (c 54) ("Senior Courts Act"). Under the UK Order, IFAL was ordered to pay £242,251.07 in costs and interests and a further £20,000 for the cost of both that application and an earlier application to serve IFAL out of jurisdiction. To date, IFAL has neither responded nor made any payment to GDAF. The application before me was GDAF's application to register the UK Order in the High Court of Singapore under s 3 of the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, Rev Ed 1985) ("RECJA"). GDAF coupled this application with a further application for a mareva injunction against IFAL. The applicant is not applying to register the Principal UK Judgment.

3 The factual matrix that surrounds this application was briefly described in the affidavit filed by GDAF's Singapore legal counsel in support of its application ("Affidavit"). It was recounted that in 1999, Bakrie Indonesia BV, a Dutch SPV in the Bakrie group, defaulted on sums due on its US\$ 50 million guaranteed notes with interest of 9.625% ("B I Notes"). PT Bakrie was the guarantor of the B I Notes under a guarantee governed by English law ("Guarantee"). Following Bakrie Indonesia BV's default on the B I Notes, PT Bakrie entered into an arrangement with some but not all of its creditors for certain B I noteholder creditors to swap their claims under the Guarantee for shares in a new company under a composition plan ("Composition Plan"). The Composition Plan was ratified by the Commercial Court of the Central Jakarta District Court and under Indonesian law, thereupon effectively releasing all creditor claims against PT Bakrie including those under the Guarantee.

4 In 2009, GDAF purchased US\$ 2 million B I Notes from a previous B I noteholder who had neither

agreed to nor participated in the Composition Plan. GDAF subsequently commenced the Principal UK Proceedings against PT Bakrie on the Guarantee which resulted in the Principal UK Judgment. PT Bakrie appeared and defended the Principal UK Proceedings. The Guarantee was governed by English law, and the UK court adopted the position in *Antony Gibbs & sons v La Industrielle et Commerciale des Metaux* (1890) QBD 399 that foreign insolvency proceedings could not affect obligations under contracts governed by English law unless they could be said to have been varied, released or extinguished in accordance with English law. At the end of the trial in February 2011, the UK court gave judgment for GDAF against PT Bakrie for the principal amount of US\$ 2 million plus interest and ordered PT Bakrie to pay GDAF's costs on the standard basis to be assessed if not agreed and further to pay £75,000 on account of costs.

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.

6 GDAF's counsel then asked PT Bakrie's legal counsel in the Principal UK Proceedings, Baker Botts (UK) LLP ("Baker Botts") to identify the third party who paid PT Bakrie's legal costs in those proceedings. Baker Botts responded that it was authorised by its client to disclose that its invoices were paid by IFAL, but did not provide any further documents and information. GDAF then applied to the UK court and obtained an order against PT Bakrie and in default, Baker Botts, to identify the third party which funded PT Bakrie's defence in the Principal UK Proceedings and to disclose certain documents for the purpose of making an order under s 51 of the Senior Courts Act. PT Bakrie did not respond to this order. Baker Botts responded that it had assumed the individuals instructing it were duly appointed representatives of PT Bakrie, although it had not verified this. Further, Baker Botts clarified that it had not made checks on the identity of IFAL, its relationship with PT Bakrie, or the reasons why an apparently unrelated entity had paid PT Bakrie's legal counsel costs in the Principal UK Proceedings. Baker Botts however provided transaction reports which revealed, *inter alia*, that IFAL had paid PT Bakrie's legal costs in full, that IFAL and PT Bakrie shared a common registered address in Jakarta, and that IFAL's transfers to Baker Botts were made via the Royal Bank of Canada, Singapore.

7 GDAF submitted before the UK court, in its application under s 51 of the Senior Courts Act to render IFAL a party to the Principal UK Proceedings for purposes of costs, that it believed IFAL was controlled and/or owned by the Bakrie family which was based in Indonesia, and that it functioned as the family's investment holding company. GDAF there argued that "as far as [it could] tell, IFAL and/or its directors controlled PT Bakrie's defence, and were the party with the real interest in the UK proceedings in the UK." On 2 March 2012, the UK court granted GDAF permission to serve an application under s 51 of the Senior Courts Act on IFAL out of jurisdiction at its registered BVI office. The notice of application was served on IFAL in the BVI, albeit with IFAL's name incorrectly stated on the notice. However, upon it being brought to the UK court's attention, the court accepted that this error did not affect the merit of the application. On 23 April 2012, the UK court granted the UK Order which joined IFAL as a party to the Principal UK Proceedings for the purposes of ordering costs against IFAL. Under the UK Order, IFAL was ordered to pay to GDAF costs and interests as well as the costs of GDAF's application and the application for service out of jurisdiction. The UK Order further provided that the corrected order was to be served on IFAL. The order was duly served, and IFAL has not to date made any application to set it aside.

8 GDAF now seeks to register the UK Order against IFAL in Singapore under s 3 of the RECJA. The RECJA enables Commonwealth judgments to be enforced in Singapore through the simple process of registration. Thereafter, under s 3(3) of the RECJA, such registered judgments have the same force

and effect for the purposes of execution as if they had been originally obtained from the Singapore courts. Section 3(1) of the RECJA provides that a judgment creditor who has obtained a judgment (including an order) in a superior court of the United Kingdom or other Commonwealth country may apply to the High Court to register it and that the High Court may, if it thinks it just and convenient in all the circumstances of the case that the judgment be enforced in Singapore, register such judgment. However, s 3(2) of RECJA provides the circumstances in which such judgment shall not be registered. Of relevance in the present application is s 3(2)(b) of the RECJA which provides that no judgment shall be ordered to be registered if "the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court".

9 As can be inferred from Baker Bott's transaction invoices which revealed the existence of IFAL's account with the Royal Bank of Canada in Singapore, GDAF's real objective was to obtain a mareva injunction against IFAL in the event that IFAL continues to maintain and have any funds in an account with Royal Bank of Canada in Singapore. GDAF conceded that, unlike PT Bakrie which appeared and defended the Principal UK Proceedings leading to the Principal UK Judgment, IFAL was not a resident in the UK, did not carry out business in the UK, and did not appear or participate in the proceedings leading to the UK Order. GDAF however submitted that IFAL should be deemed to have voluntarily submitted to the jurisdiction of the UK courts by reason only of its having paid PT Bakrie's legal costs in the Principal UK Proceedings.

10 The first obstacle to this application is presented by the clear text of s 3(2) RECJA which requires that IFAL voluntarily appeared or otherwise submitted or agreed to submit to the jurisdiction of the UK court. In the face of this clear text, the evidence submitted to establish that IFAL otherwise submitted or agreed to submit to such jurisdiction is thin. In any event, I would be slow to conclude, in light of the real purpose of this application and in these circumstances alone, that it would be just and convenient to enforce the UK Order by registration in Singapore pursuant to s 3(1) of RECJA.

11 For these reasons, I dismissed the Originating Summons.

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