# Giant Light Metal Technology (Kunshan) Co Ltd *v* Aksa Far East Pte Ltd [2014] SGHC 16

**Case Number** : Suit No 105 of 2012

**Decision Date** : 28 January 2014

**Tribunal/Court** : High Court

**Coram** : Andrew Ang J

**Counsel Name(s)** : Rebecca Chew Ming Hsien, Paul Tan Beng Hwee and Lim Huay Ching (Rajah & Tann LLP) for the plaintiff; Goh Siong Pheck Francis, Loh Ern-Yu Andrea and Samantha Shing (Harry Elias Partnership LLP) for the defendant.

**Parties** : Giant Light Metal Technology (Kunshan) Co Ltd — Aksa Far East Pte Ltd

*Conflict of laws – Foreign Judgments – Recognition*

*Conflict of laws – Foreign Judgments – Enforcement*

28 January 2014

**Andrew Ang J:**

**Introduction**

1 This was an action concerning the recognition and enforcement at common law of a foreign judgment obtained from the Suzhou Intermediate Court, Jiangsu Province, in the People's Republic of China ("the PRC Court"). In particular, the case raised novel issues as to when a foreign court is said to have international jurisdiction and how a foreign judgment is enforced by the Singapore courts under Singapore private international law.

2 On 16 December 2010, Giant Light Metal Technology (Kunshan) Co Ltd ("the Plaintiff") successfully obtained judgment against Aksa Far East Pte Ltd ("the Defendant") in the PRC Court for breach of contract ("the PRC Judgment"). The Plaintiff then sought to enforce against the Defendant in Singapore the PRC Judgment for the payment of various sums of moneys.

**Background facts**

3 The Plaintiff is a company incorporated in the People's Republic of China ("the PRC") and is engaged in designing and producing aluminium and alloy materials for the purposes of industrial and commercial use.

4 The Defendant is a company incorporated in Singapore and is in the business of general wholesale trade, including general import and export of goods.

5 On or around 18 December 2003, the parties entered into a contract for the Plaintiff to purchase from the Defendant two new generator sets with new engines, which were to be manufactured by the Cummins Engine Company Inc in England, United Kingdom ("the Contract"). The total purchase price of the generator sets was US$200,000 of which the Plaintiff paid US$190,000.

6 A further party to the Contract was Shanghai Yates Genset Co Ltd ("Shanghai Yates"), a

company incorporated in the PRC which acted as guarantor for the Defendant in the purchase of the generator sets. Shanghai Yates was a sub-distributor of the Defendant in the PRC at the relevant time.

7 After receiving the generator sets from the Defendant, the Plaintiff was not satisfied with them: they were not new generator sets nor manufactured in England and were not capable of use. [note: 1] The Plaintiff thereafter instituted a civil claim against the Defendant and Shanghai Yates for breach of the Contract in the PRC Court on 25 July 2005 ("the 2005 Proceedings"). The Defendant responded by filing a "Statement of Defence" and also sent its representative, Mr You Tian Fen ("Mr You"), to attend court hearings. [note: 2] Subsequently, the 2005 Proceedings were discontinued on 10 September 2007 "to enable parties to attempt to resolve the matter". [note: 3]

8 In the event, the out-of-court negotiations failed. On 9 May 2008, the Plaintiff re-commenced proceedings for the same claim against the Defendant and Shanghai Yates in the PRC Court ("the 2008 Proceedings"). The relevant court documents were served on the Defendant in Singapore at the Defendant's registered office address via diplomatic channels on 6 November 2008. [note: 4] The Defendant did not dispute that it was properly served. The Defendant, however, chose to ignore the 2008 Proceedings and did not enter an appearance, taking no part in the proceedings.

9 Shanghai Yates on its part filed two defences to the Plaintiff's claim in the 2008 Proceedings and attended hearings in the PRC Court on 17 April 2009 and 20 October 2010. The PRC Court heard submissions by representatives of the Plaintiff and Shanghai Yates and, upon further consideration, awarded judgment in favour of the Plaintiff in the PRC Judgment. The section of the PRC Judgment which sets out the orders made is reproduced as follows: [note: 5]

> In summary, as the subject delivered by [the Defendant] was not consistent with the contract, [the Defendant] was in material breach. The claim of [the Plaintiff] for rescission of the contract, refund of price and return of goods, and compensation for damages were consistent with the law. In respect of the loss of US$145,383.28 claimed by [the Plaintiff], loss of freight of RMB7,088 was admitted by the court, and the remaining amount of loss lacked basis and was not upheld by the court. In accordance with Sections 97, 126, 130, 135, 136 and 148 of PRC Contract Law, Section 28 of Rules of Supreme Court on Evidence in Civil Proceedings, and Section 136 of PRC Civil Procedure Law, it is judged as follows:
>
> 1. [The Contract] between [the Plaintiff] and [the Defendant] be rescinded;
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> 2. [The Plaintiff] to return two AC-1130 Cummins diesel generator sets to [the Defendant];
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> 3. [The Defendant] to refund the price of US$190,000 to [the Plaintiff];
>
> 4. [The Defendant] to compensate [the Plaintiff] for the loss of RMB7088;
>
> Paragraphs 2, 3 and 4 above shall be performed within one month after this judgment comes into effect.
>
> 5. Other claims of [the Plaintiff] be rejected.
>
> If any party fails to make payment within the period specified by the court, it shall pay double interest on the outstanding amount in the period of delay in accordance with Section 229 of PRC Civil Procedure Law.

The court cost for this case shall be RMB25,560 for which [the Plaintiff] shall pay RMB11,034 and [the Defendant] shall pay RMB14,626.

If any party feels aggrieved by this Judgment, [the Plaintiff] or [Shanghai Yates] may, within 15 days from the date of service of this judgment thereon, and [the Defendant] may, within 30 days from the date of service of this judgment thereon, file a petition for appeal with this court, with such number of copies corresponding to the number of the opposite parties, to appeal to the Jiangsu Higher Court …

10 The PRC Judgment was served on the Defendant at its registered office in Singapore on 25 March 2011 through diplomatic channels, and the deadline within which the Defendant could have brought an appeal to the Jiangsu Higher Court expired on 25 April 2011.

11 The generator sets were thereafter not collected by the Defendant. Neither did it pay the judgment sums ordered to be paid to the Plaintiff. This was despite a letter of demand sent by the Plaintiff to the Defendant on 22 July 2011. [note: 6] It appeared that the Defendant was not interested in collecting the generator sets despite the Plaintiff being ready and willing for the Defendant to do so. A director of the Defendant, Ms Yong Yit Yeng Mavis, even went so far as to say in cross-examination that she was not interested in taking the generator sets back and would rather dispose of the generator sets in the PRC. [note: 7]

12 As a result of the Defendant's non-compliance with the PRC Judgment, the Plaintiff, on 10 February 2012, commenced the present action in Singapore, claiming, *inter alia*:

(a) the sums of US$190,000 and RMB7,088 as ordered in the PRC Judgment ("the PRC Judgment Sums");

(b) the Defendant's PRC court fees ordered under the PRC Judgment of RMB14,626 which had been paid by the Plaintiff ("the PRC Court Fees");

(c) interest on the PRC Judgment Sums and the PRC Court Fees; and

(d) costs.

**The issues**

13 Counsel for the parties submitted that the present case concerned the common law rules on recognition and enforcement of a foreign judgment, and brought to the court's attention the paucity of Singapore case law in this area. In particular, the parties highlighted to the court the lack of precedent in relation to the issues which arose directly for decision before me. As a result, parties relied (as a starting point) on the principles as stated in *Dicey, Morris and Collins on The Conflict of Laws* (Lord Lawrence Collins gen ed) (Sweet & Maxwell, 15th Ed, 2012) ("*Dicey, Morris and Collins*") at vol 1, paras 14R-020 and 14R-054:

**Rule 42**—(1) Subject to the Exceptions hereinafter mentioned and to Rule 62 (international conventions), a foreign judgment *in personam* given by the court of a foreign country with jurisdiction to give that judgment in accordance with the principles set out in Rules 43 [and Rules 44 to 46 which relate to when such jurisdiction does not exist], and which is not impeachable under any of [Rules 49 to 54 which relate to when the foreign judgment is impeachable], may be **enforced** by a claim or counterclaim for the amount due under it if the judgment is

(a) for a debt, or definite sum of money (not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty); and

(b) final and conclusive,

but not otherwise.

Provided that a foreign judgment may be final and conclusive, though it is subject to an appeal, and though an appeal against it is actually pending in the foreign country where it was given.

(2) A foreign judgment given by the court of a foreign country with jurisdiction to give that judgment in accordance with the principles set out in Rules 43 [and Rules 44 to 46 which relate to when jurisdiction does not exist], which is not impeachable under any of [Rules 49 to 54 which relate to when the foreign judgment is impeachable] and which is final and conclusive on the merits, is entitled to **recognition** at common law and may be relied on in proceedings in England.

(3) No proceedings may be brought by a person on a cause of action in respect of a judgment which has been given in his favour in proceedings between the same parties or their privies in a court in another part of the United Kingdom or in a court in an overseas country unless that judgment is not enforceable according to clause (1), or not entitled to recognition according to clause (2), of this Rule.

This Rule must be read subject to Rule 59.

…

**Rule 43**—Subject to Rules 44 to 46 [which relate to when jurisdiction does not exist], a court of a foreign country outside the United Kingdom has jurisdiction to give a judgment *in personam* capable of **enforcement or recognition** as against the person against whom it was given in the following cases:

*First Case*—If the person against whom the judgment was given was, at the time the proceedings were instituted, present in the foreign country.

*Second Case*—If the person against whom the judgment was given was claimant, or counterclaimed, in the proceedings in the foreign court.

*Third Case*—If the person against whom the judgment was given, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings.

*Fourth Case*—If the person against whom the judgment was given, had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of that country.

[emphasis in original in italics; emphasis added underlined and in bold]

14 Indeed, there does not appear to have been an occasion when a Singapore court was required to deal with the same scope of issues relating to the recognition and enforcement of a foreign judgment under the common law as in the present case. However, the common law rules in the other major common law jurisdictions on these issues are well established. Therefore, I accepted that the principles as stated in *Dicey, Morris and Collins* served as an appropriate starting point for analysis of the issues that arose. I also noted that Professor Yeo Tiong Min in *Halsbury's Laws of Singapore* –

*Conflict of Laws* vol 6(2) (LexisNexis, 2009) ("*Yeo*") also referred to case law from England (and other common law jurisdictions) and used the English position as the basis for his analysis of this area of Singapore private international law (see generally paras 75.155–75.240).

15 In order to make clear the framework for analysis of the issues in the present case, it is apposite that I draw attention to an important distinction between the recognition of a judgment and its enforcement, as summarised by Professor Adrian Briggs ("Prof Briggs"), in Adrian Briggs, *The Conflict of Laws*, (OUP, 2nd Ed, 2008) ("*The Conflict of Laws*") at pp 119–120:

> An important distinction must be drawn at the outset between the recognition of a judgment and its enforcement; and between these and the other effects which can be derived from a foreign judgment. *Recognition* of a judgment means treating the claim which was adjudicated as having been determined once and for all. It does not matter whether it was determined in favour of the claimant or the defendant, though judgments *in personam* are only ever recognized as effective against particular parties, and the material question will be whether that person is bound. …
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> …
>
> ***Not every judgment entitled to recognition may be enforced in England, but to be enforced, a foreign judgment must first be recognized. If it is to be enforced at the behest of the successful claimant, the judgment must meet further conditions*** ; but if enforcement is ordered, the judgment may be executed as if it had been given by an English court, either because it is ordered that the judgment be registered pursuant to statute which provides for this effect or (if enforced under the common law) because an English court gives its own judgment which itself becomes the order which may be enforced.
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> [emphasis in original in italics; emphasis added in bold italics]

16 This distinction was not made clear in the present case since the Plaintiff sought only the enforcement of the PRC Judgment and did not expressly indicate that the PRC Judgment should be recognised. However, I found that it must follow, as a matter of logic and principle, that the PRC Judgment be recognised before it can be enforced. In the words of Prof Briggs, quoted by Lord Rodger of Earlsferry in *Clarke v Fennoscandia Ltd* [2007] UKHL 56 at [21], "the logic of the law is that recognition is the necessary primary concern".

17 What determines whether a foreign judgment is capable of recognition and enforcement according to the common law rules of private international law is broadly stated in *Dicey, Morris & Collins*, para 14R-020 ("Rule 42") ([13] *supra*). However, a short summary of these requirements can be found in *The Conflict of Laws* (at pp 136 and 149) which I reproduce as follows:

> A judgment will be *recognized* at common law if it is *the final and conclusive judgment of a court* which, as a matter of English private international law, had '*international jurisdiction*', and as long as there is *no defence* to its recognition. …
>
> …
>
> As a matter of theory, *a foreign judgment which satisfies the criteria for its recognition creates an obligation which the judgment creditor may sue to enforce in an action*, founded on the foreign judgment, at common law. *The action is brought as one for debt; it follows that only final judgments for fixed sums of money can be enforced by such proceedings*. …

[emphasis added]

18 Parties made their submissions based on these general requirements, and were agreed on what were the issues necessary for me to decide the case. Importantly, the Defendant did not raise any objection that the PRC Judgment was not final and conclusive on its merits, allege any impropriety on the part of the Plaintiff in the PRC Court when obtaining judgment in their favour, nor raise any other defences to recognition and enforcement of the PRC Judgment. [note: 8]

19 Accordingly, the issues in determining whether the PRC Judgment should be recognised and enforced under the common law rules of Singapore private international law were as follows:

(a) Whether the PRC Court had international jurisdiction over the Defendant for the purposes of recognition and enforcement of the PRC Judgment ("Issue 1").

(b) Whether the Plaintiff's claim satisfied the requirement that only foreign judgments for a definite sum of money are enforceable ("Issue 2").

**Analysis of Issue 1**

***Preliminary considerations***

20 It is widely accepted that in deciding the issue of international jurisdiction, the common law is generally not concerned with how the foreign court had assumed jurisdiction over the party under its own laws (see *Buchanan v Rucker* (1808) 9 East 192 at 194; 103 ER 456 at 457). Instead, as stated by Prof Yeo in *Yeo* (at para 75.170):

> The principal question is whether the foreign court had jurisdiction over the party sought to be bound, in the private international law sense according to the law of the forum, such that the court of the forum will recognise an obligation on the party to obey the foreign judgment.

Therefore, whether the PRC Court had international jurisdiction over the Defendant was to be determined by Singapore private international law.

21 In general, *Dicey, Morris & Collins* at para 14R-054 ("Rule 43") (see above at [13]) sets out four situations where a foreign court can be said to have international jurisdiction over a party such that a judgment *in personam* issued by that court may be recognised and enforced in the Singapore courts. Counsel for the Plaintiff, Ms Rebecca Chew ("Ms Chew") relied on two of these situations: (a) the Defendant had *voluntarily submitted* to the PRC Court at the relevant time (the first situation in Rule 43); and (b) the Defendant was *present* in the PRC at the material time (the third situation in Rule 43). Ms Chew then made two further submissions in the alternative. The first was that Shanghai Yates was the Defendant's privy for the purposes of submission to the PRC Court or presence in the PRC and, secondly, that the "real and substantial connection" approach adopted by the Canadian Supreme Court in *Beals v Saldanha* [2003] 3 SCR 416 should be applied in Singapore, the PRC having a real and substantial connection to the dispute between the parties.

22 Ms Chew also submitted, rightly, that if I were to find for the Plaintiff on just one of the above mentioned grounds that would be sufficient to establish that the PRC Court had international jurisdiction over the Defendant. Counsel for the Defendant, Mr Francis Goh ("Mr Goh"), agreed with this submission and accordingly resisted each ground.

***Voluntary submission to the PRC Court***

23 The case for finding that a foreign court has international jurisdiction over the defendant based on voluntary submission, as explained in *Dicey, Morris & Collins* (at para 14-069), "rests on the simple and universally admitted principle that a litigant who has voluntarily submitted himself to the jurisdiction of a court by appearing before it cannot afterwards dispute its jurisdiction". The question then is: what constitutes voluntary submission to the foreign court for the purpose of international jurisdiction?

24 In *WSG Nimbus Pte Ltd v Board of Control for Cricket in Sri Lanka* [2002] 1 SLR(R) 1088 at [54], Lee Seiu Kin JC held that what must be considered is whether the party "had taken a step in the proceedings which necessarily involved waiving their objection to the jurisdiction". The learned authors in Jonathan Hill and Adeline Chong, *International Commercial Disputes: Commercial Conflict of Laws in English Courts* (Hart Publishing, 2010) ("*Hill & Chong*"), further elaborate on what constitutes taking "a step in the proceedings" (at para 12.2.5):

> *A defendant is to be regarded as having submitted to the jurisdiction of the original court if he voluntarily appears in the proceedings to defend the claim on the merits*, if he counterclaims in those proceedings or if he agrees to submit to the jurisdiction of the court (for example, in a contractual jurisdiction clause). Contesting the jurisdiction and the merits of the case in the alternative also amounts to submission. In a situation where the original court rejects the defendant's challenge of its jurisdiction and the defendant proceeds to fight the case on the merits (without reserving the position on jurisdiction), the defendant must be regarded as having submitted. [emphasis added in italics]

25 Consistent with the general principle that whether a foreign court has international jurisdiction depends on the private international law rules of the forum and not the law of the foreign court, whether a party has voluntarily submitted to the foreign court is a question for Singapore private international law rules. This was stated unequivocally in the recent United Kingdom Supreme Court decision of *Rubin and another v Eurofinance SA and others* [2013] 1 AC 236, where Lord Collins of Mapesbury observed (at [161]) thus:

> The characterisation of whether there has been a submission for the purposes of the enforcement of foreign judgments in England depends on English law. The court will not simply consider whether the steps taken abroad would have amounted to a submission in English proceedings. The international context requires a broader approach. Nor does it follow from the fact that the foreign court would have regarded steps taken in the foreign proceedings as a submission that the English court will so regard them. Conversely, it does not necessarily follow that because the foreign court would not regard the steps as a submission that they will not be so regarded by the English court as a submission for the purposes of the enforcement of a judgment of the foreign court. The question whether there has been a submission is to be inferred from all the facts.

26 Importantly, Lord Collins qualifies the oft-cited proposition found in *Adams and others v Cape Industries Plc and another* [1990] Ch 433 ("*Adams v Cape*") (per Scott J at 461) that the fact that the foreign court considers there to have been a submission is a necessary, but not a sufficient, condition for the foreign court to have international jurisdiction. Instead, Lord Collins preferred the more nuanced approach taken in deciding whether there was submission for the purposes of international jurisdiction, and further reinforced this view by citing with approval the view of Thomas J in *Akai Pty Ltd v People's Insurance Co Ltd* [1998] 1 Lloyd's Rep 90 at 97:

> The Court must consider the matter objectively; it must have regard to the general framework of its own procedural rules, but also to the domestic law of the Court where the steps were taken.

> This is because the significance of those steps can only be understood by reference to that law. If a step taken by a person in a foreign jurisdiction, such as making a counterclaim, might well be regarded by English law as amounting to a submission to the jurisdiction, but would not be regarded by that foreign Court as a submission to its jurisdiction, an English Court will take into account the position under foreign law. …

27 This was also the approach Ms Chew suggested I take in deciding the matter, and I agreed. On that basis, Ms Chew submitted to the court that it was clear that the Defendant by entering a defence had submitted to the jurisdiction of the PRC Court in the 2005 Proceedings. It was apparent to me that no other conclusion could be drawn, and Mr Goh rightly accepted this to be the case as well. As mentioned above, however, the 2005 Proceedings were discontinued in 2007 for the purposes of out-of court negotiations, and later re-commenced as a fresh set of proceedings (*viz*, the 2008 Proceedings). The Defendant then ignored the 2008 Proceedings without even appearing in the PRC Court to raise a jurisdictional objection. Ms Chew submitted that the Defendant had nevertheless submitted to the PRC Court in relation to the 2008 Proceedings.

28 The submissions by both parties necessitated a careful analysis of a number of issues:

(a) first, what was the basis for the PRC Court's jurisdiction over the proceedings brought by the Plaintiff;

(b) secondly, whether the 2005 Proceedings and the 2008 Proceedings can be seen as one unit of litigation or a contiguous whole; and

(c) thirdly, whether consent to the jurisdiction of the PRC Court in the 2005 Proceedings should be imputed to the Defendant in the 2008 Proceedings.

I will deal with each of these issues in turn.

*The basis for the PRC Court's jurisdiction over the proceedings brought by the Plaintiff*

29 This was obviously a question relating to PRC civil procedure and jurisdiction rules, and required the aid of PRC legal experts. A joint expert report for this purpose was filed by Mr Tang Linfeng ("Mr Tang"), the expert witness on behalf of the Plaintiff, and Mr Hua Yin ("Mr Hua"), the expert witness on behalf of the Defendant. Both PRC legal experts were also cross-examined in court via the "hot-tubbing" procedure.

30 Significantly, Mr Tang and Mr Hua (especially after cross-examination) did not give vastly different legal opinions. Both experts agreed that the 2005 Proceedings and the 2008 Proceedings were technically different proceedings with different case numbers. Mr Tang, however, sought to downplay the significance of this.

31 Mr Tang opined that given the submission by the Defendant to the jurisdiction of the PRC Court in the 2005 Proceedings, its subsequent failure to object to the jurisdiction of the same court in respect of the same claim after having been served with the relevant court documents amounted to an acceptance of the PRC Court's jurisdiction. Unsurprisingly, Mr Hua did not agree. Mr Hua took the position that under Art 243 of the Civil Procedure Law of the People's Republic of China (2007) ("CPL 2007") ("Art 243"), there were two conditions which had to be fulfilled before a party is deemed to have accepted the jurisdiction of a PRC Court, *viz*, that (a) the party does not raise an objection to the court's jurisdiction; and (b) a defence is filed with the court. Art 243 states that:

> If in a civil action in respect of a case involving foreign element, the defendant raises no objection to the jurisdiction of a people's court and responds to the action by making his defence, he shall be deemed to have accepted that this people's court has jurisdiction over the case.

32 Mr Hua gave further evidence that it was incumbent on a defendant to raise his objection to the adjudicating court in the PRC if it took issue with the jurisdiction of that court, but reiterated that no defence was filed in the 2008 Proceedings by the Defendant. On a plain reading of Art 243, it appeared to me that Mr Hua's evidence on this matter was more persuasive on the issue of whether the Defendant had accepted the jurisdiction of the PRC Court. That was, however, not the end of the matter.

33 Mr Tang gave further evidence that the PRC Court in both the 2005 Proceedings and the 2008 Proceedings would have taken jurisdiction over the matter under Art 241 of the CPL 2007 ("Art 241") and would not have had to refer to Art 243 at all. Art 241 states that:

> In the case of an action concerning a contract dispute or other disputes over property rights and interests, brought against a defendant who has no domicile within the territory of the People's Republic of China, if the contract is signed or performed within the territory of the People's Republic of China, or if the object of the action is located within the territory of the People's Republic of China, or if the defendant has distrainable property within the territory of the People's Republic of China, or if the defendant has its representative office within the territory of the People's Republic of China, the people's court of the place where the contract is signed or performed, or where the object of the action is, or where the defendant's distrainable property is located, or where the torts are done, or where the defendant's representative office is located, shall have jurisdiction.

34 It was agreed by both parties that the contract had been signed in the PRC, delivered on a cost, insurance and freight basis in Shanghai, and installed at the Plaintiff's premises in Suzhou. Further, it was not disputed that the PRC Court would have jurisdiction over the 2005 Proceedings and the 2008 Proceedings because one of the requirements of Art 241 was satisfied. It was also confirmed by both experts that where the PRC Court had jurisdiction under Art 241, Art 243 would not be applicable. This was because a "case involving foreign element" in Art 243, was taken to mean a case which did not meet any of the requirements under Art 241.

35 The experts also gave evidence that the PRC Court would investigate on its own motion whether they had jurisdiction over any particular matter. This was supported by the fact that the PRC Court issued a Notice of Case Acceptance dated 12 May 2008, which indicated that they would be accepting the case as they had "conducted [their] examination and found [that the case] had met the acceptance conditions stipulated in the 'Civil Procedure Law of the People's Republic of China'", notwithstanding that the Defendant had clearly not filed a defence in the 2008 Proceedings.

36 Therefore, I accepted the evidence by Mr Tang that Art 243 was not actually applicable to either the 2005 Proceedings or the 2008 Proceedings. Whether the Defendant had voluntarily accepted the PRC Court's jurisdiction under PRC law was not relevant to the PRC Court's determination that it had jurisdiction over the proceedings brought by the Plaintiff. It was also clear that the experts were agreed that the PRC Court had properly taken jurisdiction over the 2008 Proceedings under its own laws.

*Whether the 2005 Proceedings and the 2008 Proceedings can be seen as one unit of litigation or a contiguous whole*

37 Ms Chew submitted that taking an objective assessment of all the facts, including how the PRC Court took jurisdiction over the 2005 Proceedings and the 2008 Proceedings, the Defendant's failure to appear in the 2008 Proceedings must be viewed in conjunction with its voluntary submission to the 2005 Proceedings. Ms Chew took the position that although the 2005 Proceedings and 2008 Proceedings were technically two separate proceedings, for the purposes of submission to jurisdiction they had to be viewed as a contiguous whole. This would mean that the submission by the Defendant to the PRC Court in the 2005 Proceedings would constitute submission in the 2008 Proceedings as well. The heart of this argument was that the 2005 Proceedings and the 2008 Proceedings were separate proceedings only as the result of a mere technicality; the Defendant had conducted itself in such a way that it had clearly consented to the jurisdiction of the PRC Court, and allowing the Defendant to deny its payment obligations under the PRC Judgment would go against any reasonable conception of fairness.

38 Mr Goh, on the other hand, maintained that the 2005 Proceedings and the 2008 Proceedings were separate proceedings that could not be viewed as "one unit of litigation" or treated as a contiguous whole. If I agreed with Mr Goh on this point, then Ms Chew's submission would not get off the ground.

39 In support of his objection, Mr Goh relied on the seminal English case on international jurisdiction of *Adams v Cape*. *Adams v Cape* involved a situation where Cape and Capasco, both English companies, presided over a group of subsidiaries engaged in the mining of asbestos in South Africa and the marketing of the mined asbestos. The mined asbestos was sold for use in a factory in Texas where its employees later suffered personal injury from exposure to asbestos dust. In 1974, 462 workers commenced proceedings against a number of companies, including Cape and Capasco, in Tyler, Texas ("the Tyler 1 Action"). Cape and Capasco protested the jurisdiction of the Tyler court. Those proceedings were eventually settled after the parties entered into a consent order where the workers were paid a sum of money by the defendants. Subsequently, another 206 workers instituted legal proceedings in the same court against the same defendants ("the Tyler 2 Action"). This time, Cape and Capasco chose to ignore the proceedings; they had by then removed their assets from the jurisdiction. The plaintiffs in the Tyler 2 Action, as a result, obtained default judgment against Cape and Capasco and sought its enforcement in England.

40 Before the English court, the plaintiffs sought to argue that the Tyler 1 Action and the Tyler 2 Action involved the same defendants and the same subject matter, and should be viewed as "one unit of litigation", despite there being different plaintiffs in both actions. The purpose of this was so that the submission to the Tyler court by Cape and Capasco in the Tyler 1 Action could constitute submission to the Tyler court in the Tyler 2 Action. Scott J rejected this argument, and held (at 462–463) that:

> … the "one unit of litigation" theory, when used to translate a submission to the jurisdiction in Tyler 1 into a submission to the jurisdiction in Tyler 2, ignores the essential basis of English law concerning submissions to the jurisdiction. *Where steps taken in proceedings are being examined in the context of an alleged submission to the jurisdiction, what is being sought is evidence of consent on the part of the defendant to the exercise by the court of jurisdiction over him. Until the settlement negotiations in September 1977 the jurisdiction objection which Cape and Capasco had taken was being maintained. I have already expressed the view that the pre-settlement procedural steps taken by Cape and Capasco in Tyler 1 could not, in the context of the federal procedure applicable in the Tyler court, be regarded as a waiver of the jurisdiction objection. But even if that is wrong, those steps could not possibly be regarded as evidencing Cape's and Capasco's consent to jurisdiction being exercised over them in future actions not yet started. Nor could Cape's participation in the application to Tyler 1 for a consent order, under*

*which the existing actions against Cape were to be dismissed "with prejudice," be regarded as evidencing that consent. Any other conclusion would, in my view, be grossly unfair to Cape and would divorce a submission to the jurisdiction from the bedrock of consent that ought to underlie it.* Accordingly, in my judgment, there was no submission to the jurisdiction by Cape or Capasco in the Tyler 2 actions. [emphasis added]

41 The reasoning of the judge is of particular import. First, Scott J focused on the lack of consent to the jurisdiction of the Tyler court by Cape and Capasco even in the Tyler 1 Action. Cape and Capasco had consistently objected to the jurisdiction of the Tyler court. It was only for the purposes of recording a consent order that Cape and Capasco entered an appearance in the Tyler 1 Action. Secondly, by extension, this meant that Cape and Capasco could not be taken to consent to the jurisdiction of the Tyler court in relation to any future proceedings which were not yet started regardless of the similarity of such proceedings with the Tyler 1 Action. Thirdly, the judge found that it would be "grossly unfair" to Cape and Capasco if consent to the jurisdiction of the Tyler court in the Tyler 2 Action was imputed to them merely because they were parties to a consent order in the Tyler 1 Action while maintaining their objection to the jurisdiction of the Tyler court at all times. Therefore, Scott J dismissed the "one unit of litigation" argument essentially because he found that Cape and Capasco had never properly consented to the jurisdiction of the Tyler court even in the earlier proceedings.

42 Such was not the case before me. The subsequent proceedings did not just involve the same claims and the same defendants; even the plaintiffs were identical. Leaving aside the indistinguishability between the 2005 Proceedings and the 2008 Proceedings, the Defendant by filing its defence had unequivocally consented to the jurisdiction of the PRC Court in the 2005 Proceedings. Therefore, if the Defendant's acceptance of the jurisdiction of the PRC Court in the 2005 Proceedings was indeed imputed to it in relation to the 2008 Proceedings, it would not "divorce a submission to the jurisdiction from the bedrock of consent that ought to underlie it" [note: 9] as would have been the case in *Adams v Cape*.

43 Therefore, I could not agree with Mr Goh on this issue. There was an earlier consent by the Defendant to the jurisdiction of the PRC Court such that it was *possible* for such consent to be imputed to the Defendant in respect of the later proceedings (*ie*, that the two sets of the proceedings could be seen as one unit of litigation or a contiguous whole). Whether such consent should be imputed, however, is a separate issue, and it is to this issue which I now turn.

*Whether consent to the jurisdiction of the PRC Court in the 2005 Proceedings should be imputed to the Defendant in the 2008 Proceedings*

44 Submitting in favour of an affirmative answer to the question, Ms Chew cited the English Court of Appeal decision in *Murthy and another v Sivajothi and others* [1999] 1 WLR 467 ("*Murthy*"). In *Murthy*, the plaintiffs who were resident in Florida were induced by the first defendant to transfer large sums of money to him purportedly for the purpose of establishing a trust fund for the plaintiffs' children. The plaintiffs also agreed to convey two properties to the first defendant for use as collateral on a loan to finance the first defendant's alleged business venture. The first defendant then mortgaged the properties to a third party who later brought proceedings in Florida for foreclosure against the plaintiffs, the first defendant and the first defendant's company. The parties to the proceedings then entered into a stipulation for settlement agreement, which was a document drawn up to settle or stay the foreclosure proceedings. The plaintiffs subsequently advanced in the same proceedings, claims to set aside the stipulation for settlement agreement, and cross-claims against the first defendant for having fraudulently deprived the plaintiffs of their properties and moneys. The plaintiffs obtained judgment in default against the first defendant in respect of those cross-claims,

and then sought to enforce the judgment in England. The first defendant argued in England that when he submitted to the jurisdiction of the Florida court, it was only in relation to the mortgagee's foreclosure action and not to the cross-claims made by the plaintiffs against him.

45 Disagreeing with the first defendant, Evans LJ (at 476E) held that:

> … when a person submits to the jurisdiction of a foreign court in respect of a claim made against him by the plaintiff or claimant in those proceedings, then he can also be taken to have submitted to its jurisdiction in respect of, first, claims concerning the same subject matter and, secondly, related claims in the sense described above. This is provided, of course, that such claims may properly be brought against him under the rules of procedure in the foreign court, either by the original claimant or by others who are parties to the proceedings there at the time when he makes the submission.

The other judges agreed with the approach adopted by Evans LJ and concluded that the submission in the foreclosure action could extend to the cross-claims advanced by the plaintiffs against the defendant, since those claims were "related claims". This was so even though the initial claim was by a mortgagee for foreclosure while the cross-claims were based on fraud with respect to both the moneys transferred to the defendant and the two mortgaged properties. Evans LJ further held (at 477D) that:

> … Whether a particular claim should be regarded as related in this sense must always be a question of fact and degree. It may not be enough that its joinder is permitted by the rules of procedure in the foreign court, and, as stated above, I am willing to accept [the defendant's] submission that the English court's rules should not be unfair to the defendant. But I do not see that it can possibly be unfair to the defendant to hold that claims which resulted in the judgment, which the plaintiffs now seek to enforce against him, were related to the claims made against him by [the mortgagee] and in respect of which he accepted the jurisdiction of the Florida court.

46 Ms Chew also sought to rely on two later cases that applied *Murthy*, *viz*, the English Court of Appeal case of *Lawrence Robert Whyte v Marsha Whyte* [2005] EWCA Civ 858 ("*Whyte*") and the English High Court case of *Joint Stock Company "Aeroflot – Russian Airlines" v Boris Abramovich Berezovsky and another* [2012] EWHC 3017 (Ch) ("*Aeroflot*"). In *Whyte*, the wife submitted to the jurisdiction of the Texas Court in relation to divorce proceedings which resulted in a custody order providing that her daughter should reside in Texas. In breach of this order, the wife abducted her daughter to Russia. The girl was subsequently recovered by the husband. In Texas, the husband had the option of taking up an application based on the custody order for costs and expenses of recovering his daughter, but chose instead to institute an originating petition under Chapter 42 of the Texas Family Code seeking costs of recovery of the daughter, damages for pain and suffering, and punitive damages. He obtained default judgment against the wife and subsequently sought to enforce the judgment in England. The wife argued that she did not submit to the proceedings brought under the Chapter 42 originating petition, and so the requirement of international jurisdiction was not satisfied. Buxton LJ held (at [8]) that an action relating to the breach of the custody order was actually part of the original subject matter, and that it would be "quite impossible to say that the mother did not submit to [the Texas court which applied the Texas Family Code] when she submitted to the divorce decree that it enforces". Thorpe LJ added further (at [12]), that:

> … *The objection to jurisdiction seems to me to depend on the purely technical point that the father elected to seek the redress to which he was clearly entitled by originating petition under chapter 42 rather than by an application in the divorce proceedings*. Had he obtained an order for the reimbursement of his costs and expenses under clause 20 of the consent order the mother

would clearly have no ground on which to contest jurisdiction. He might have limited his order under chapter 42 to the reimbursement of the same costs and expenses. *That only illustrates how unrealistic it would be to find a submission to the jurisdiction in the first instance but not in the second*. [emphasis added]

47 In *Aeroflot*, Justice Floyd held that based on the principle in *Murthy*, it was "realistically arguable" that a judgment obtained in Russia against the defendant to uplift or index the amount of damages awarded under an earlier Russian judgment to account for inflation could be a related claim. Therefore, the defendant in submitting to the jurisdiction of the Russian court for the earlier claim could be taken to have submitted to the later indexation proceedings.

48 Underlying all three of these cases is the principle that the courts are willing to recognise, for the purposes of international jurisdiction, that a party's consent to the jurisdiction of a foreign court in relation to certain claims may be imputed to further claims in some circumstances. Prof Briggs in a case commentary on *Murthy* in Adrian Briggs, "B: Private International Law" (1998) 69 BYIL 332 at 352, suggested that "the effect of a submission in *Murthy* was that it amounted to an inchoate submission to other claims, reasonably closely related to that one commenced by the writ". Such "inchoate submission" – as seen in *Whyte* and *Aeroflot* – is also possible in relation to claims which are brought pursuant to subsequent and separate proceedings in respect of the same parties, rather than just to claims which are part of the same proceedings.

49 The question then is when consent will be imputed or "inchoate submission" be said to arise. *Murthy* provided two factual reference points for consent to be so imputed: where the subsequent claim concerns the same subject matter; and where the subsequent claim is related to the original claim. Which subsequent claims will fall under these categories is then a matter of degree based on the circumstances. The courts in making this assessment seemed to be informed by concerns of fairness to both the plaintiff and the defendant, and also a desire to disregard technical impediments created by procedural rules under both foreign and forum law. With respect, I agree with such an approach.

50 In my view, the present case was one that warranted a finding of inchoate submission by the Defendant to the 2008 Proceedings. The Defendant had consented to the jurisdiction of the PRC Court in the 2005 Proceedings. There was then a break in the proceedings due to the Plaintiff's attempt to resolve the matter out-of-court. Mr Tan Chian Huat, a director of the Defendant at the material time, gave evidence that he was relieved at this development; he was thankful that the case was withdrawn because he believed that the Plaintiff would have succeeded in its claim in the PRC Court. [note: 10] When the proceedings were restarted in 2008 by the same plaintiff against the same defendant for the same claim in the same court, the later proceedings were separate from the 2005 Proceedings only because of a technicality. The Defendant then sought to exploit this procedural technicality by ignoring the 2008 Proceedings based on legal advice that any judgment awarded in such circumstances would not be enforceable in Singapore. [note: 11] To bring home the point, if the 2005 Proceedings were *stayed* rather than *withdrawn*, there would have been no dispute at all that the Defendant had accepted the jurisdiction of the PRC Court.

51 I found that although the facts of the present case were different from *Murthy*, *Whyte*, and *Aeroflot* – the subsequent proceedings were exactly the same as the earlier proceedings, and the earlier proceedings did not finally dispose of the parties' rights – this was one instance where consent to the jurisdiction of the PRC Court by the Defendant should properly be imputed. To my mind, there was no unfairness to the Defendant in imputing such consent. *Per contra*, there would be unfairness to the Plaintiff were the Defendant allowed to take advantage of abortive out-of-court negotiations to escape liability for its wrongdoing.

52 Therefore, I found that the Defendant had voluntarily submitted to the jurisdiction of the PRC Court in the 2008 Proceedings and, accordingly, the PRC Judgment was a judgment of a court that had international jurisdiction for the purposes of recognition and enforcement.

***Conclusion on Issue 1***

53 Since international jurisdiction may be established on alternative grounds and having found that the Defendant had voluntarily submitted to the jurisdiction of the PRC Court for the purposes of recognition and enforcement of the PRC Judgment, I did not consider further the other grounds for international jurisdiction raised by the Plaintiff.

54 At this juncture, the Plaintiff had satisfied all the necessary requirements for the PRC Judgment to be *recognised* in Singapore. The only question then was whether this PRC Judgment should be *enforced* in Singapore. This question is the subject of the analysis of Issue 2 below.

**Analysis of Issue 2**

55 Mr Goh submitted that the "law is clear that an enforceable foreign judgment must be a pure money judgment". [note: 12] He pointed out that the PRC Judgment was for the rescission of the Contract and consisted in the main of two obligations: the return of the generator sets by the Plaintiff and the refund of the purchase price by the Defendant. He maintained that the two obligations flowed from the rescission of the Contract and "[could not] be separated", with the result that the PRC Judgment was not a judgment for a definite sum of money and was unenforceable in Singapore.

56 In support of his submission, Mr Goh relied on the Court of Appeal's decision in *Poh Soon Kiat v Desert Palace Inc (trading as Caesars Palace)* [2010] 1 SLR 1129 ("*Poh Soon Kiat*"). That case concerned the recovery of a foreign gambling debt owed by the defendant to the plaintiff. Summary judgment was sought by the plaintiff in Singapore based on a foreign judgment obtained in the Superior Court of the State of California for the County of Santa Clara which set aside a fraudulent transfer of the defendant's interest in a particular property while ordering that the property be sold and the proceeds applied to satisfy judgment debts arising from an earlier judgment of the same Californian court for the gambling debts owed. The Court of Appeal allowed the defendant's appeal on a number of grounds, in particular that the Californian judgment sought to be enforced in Singapore was not for a definite sum of money but was for the setting aside of a fraudulent transfer of property instead.

57 Ms Chew did not seek to challenge the requirement that only foreign judgments for a definite sum of money are enforceable as applied in *Poh Soon Kiat* and, understandably so, as this court is bound by that decision in any case. Instead, Ms Chew disagreed with the Defendant's characterisation of the PRC Judgment. She submitted that the judgment merely entailed two separate obligations which the parties had to satisfy and that the Defendant was still liable to pay the Plaintiff the PRC Judgment Sums even though the Defendant was not in possession of the generator sets. Importantly, Ms Chew clarified that the real issue was whether "the Defendant [was] somehow absolved from performance of its obligation to make payment under the PRC Judgment". In that regard, Ms Chew submitted that that could not be the case and that there was "nothing preventing this Court from ordering that the Defendant [perform its obligation to make payment under the PRC Judgment]," [note: 13] the Defendant's obligation to pay the Judgment Sums not being contingent on the Defendant having received the generator sets. Ms Chew maintained that the enforcement action (by way of a debt claim) did not fall foul of the requirement that only judgments for a definite

sum of money are enforceable.

58 The submissions by both parties raised the following issues for consideration:

(a) The conceptual basis for the enforcement of foreign judgments in Singapore.

(b) Whether the Defendant's obligation to pay the Plaintiff the PRC Judgment Sums could be enforced, given that the generator sets were still in the Plaintiff's possession.

(c) Whether the Plaintiff's claim was precluded because the PRC Judgment comprised other obligations which were not for a definite sum of money.

***The conceptual basis for enforcement of foreign judgments in Singapore***

59 A foreign judgment has no direct operation in Singapore and cannot be enforced immediately without more in the Singapore courts by way of execution. This accords with the common law. As explained in *Dicey, Morris & Collins* at para 14-002, "[t]his follows from the circumstance that the operation of legal systems is, in general, territorially circumscribed". The process by which a foreign judgment is recognised and enforced was explained by Prof Briggs in Adrian Briggs, "Recognition of foreign judgments: a matter of obligation" (2013) 129 LQR 87 ("*Briggs*") at pp 88–89 (albeit in the context of recognition and enforcement of foreign judgments in England):

> … A successful litigant with a foreign judgment in his favour cannot enforce that judgment in England. No measures of execution may be taken on the strength of it. *The claimant must instead bring original proceedings before the English court, in order to obtain, speedily or eventually, an original English judgment, which alone is the judgment which can be enforced*. The nature of these English proceedings will depend on the nature of the anterior foreign judgment. If the foreign judgment took the form of a final order to pay a sum of money, the claimant may sue to recover that sum as a debt due and owing: the issue of a claim form followed by an application for summary judgment will in many cases produce an enforceable English judgment in short order. If the foreign judgment is otherwise, no debt action will lie, with the result that the claimant must fall back and sue on the underlying cause of action. However, if the foreign judgment was entitled to recognition, the usual course of proceedings from issue of process to English judgment will be to use the foreign judgment as a short-cut, allowing and requiring the issue of substance to be treated as *res judicata*; after which the English court will be able to give judgment. Its order may not be in precisely the same terms as that made by the foreign court, but in most cases, the English order will be close to the one the foreign court made. Either course results in a judgment of the English court and it is this which is enforceable in England. [emphasis added]

60 The present proceedings were instituted on this very basis; the PRC Judgment *per se* did not afford the Plaintiff any direct rights against the Defendant in Singapore. In that sense, it is indeed a misnomer – as suggested by Prof Briggs in *Briggs* at p 87 – that the common law is said to allow for the enforcement of foreign judgments. Any judgment enforced in Singapore (under the common law) is ultimately one given by the Singapore courts. The foreign judgment merely "prepare[s] the ground for the making of a local order" (see *Briggs* at p 89).

61 Whether a particular foreign judgment is given legal effect in Singapore is then based upon the rules for recognition and enforcement under the common law as established earlier. Importantly, as long as the requirements for recognition and enforcement are met, the validity of the foreign judgment will not be scrutinised. The court will not re-examine the merits of the underlying claim in

the foreign judgment (see the English case of *Godard v Gray* (1870-71) LR 6 QB 139 and the Straits Settlement Court of Appeal decision in *Ralli and another v Anguilla* [1915–23] XV SSLR 33; Lawnet neutral citation [1917] SSLR 2). This is commonly attributed to the theory that where a judgment is issued by a court of competent jurisdiction over the parties, that judgment creates an obligation on the parties to abide by it which the courts of other countries ought to recognise and enforce (see generally: *Dicey, Morris & Collins* at paras 14-007 and 14-008; *The Conflict of Laws* at p 136; and *Hill & Chong* at para 12.1.2). Therefore, the Singapore courts in recognising and enforcing a foreign judgment are holding the parties to their obligation to abide by the foreign judgment, and nothing more.

62 Specific to the common law action to enforce a foreign judgment, where that judgment is entitled to recognition, "[t]he action will be commenced by the issue of process in the usual way, claiming the judgment sum as a debt" (Adrian Briggs and Peter Rees QC, *Civil Jurisdiction and Judgments* (Informa London, 5th Ed, 2009) ("*Briggs & Rees*") at para 7.70). This position in law has its roots in the division between law and equity prior to the enactment of the Supreme Court of Judicature Act 1873 (c 66) (UK). A foreign judgment was generally thought to be enforceable only in a Court of Law – as opposed to a Court of Chancery (but see R W White, "*Enforcement of Foreign Judgments in Equity*" (1980–1982) 9 Sydney L Rev 630 ("*White*")) – necessitating that the action be by way of a claim in *assumpsit* (*ie*, an action for recovery on a simple contract for definite sums of money).

63 The nature of the enforcement action at common law is put down as a reason for the requirement that only foreign judgments for a fixed sum of money may be enforced. Since the proper action for the enforcement of a foreign judgment was an action in *assumpsit*, it follows that an action for the enforcement of non-money foreign judgments cannot be countenanced (see generally: *Dicey, Morris & Collins* at para 14-022; *Briggs & Rees* at para 7.71; *The Conflict of Laws* at pp 149–150; White; S Pitel, "*Enforcement of Foreign Non-Monetary Judgments in Canada (and Beyond)*" (2007) 3 JPIL 241; R F Oppong, "*Enforcing Foreign Non-Money Judgments: an Examination of Some Recent Developments in Canada and Beyond*" (2006) 39 UBC L Rev 257; K Pham, "*Enforcement of Non-Monetary Foreign Judgments in Australia*" (2008) 30 Sydney L Rev 663; and V Black, "*Enforcement of Foreign Non-Money Judgments: Pro Swing v Elta*" (2005) 42 Can Bus LJ 81). This reason has been the subject of criticism that the form of the remedy should not affect substantive rights and that, as described in *The Conflict of Laws* by Prof Briggs (at p 149), "[t]he tail may be wagging the dog". Nevertheless, this requirement constituted the basis for one of the grounds of the Court of Appeal's decision in *Poh Soon Kiat*, and it was neither the occasion nor the place of this court to examine its propriety.

64 Be that as it may, the parties did not dispute that the PRC Judgment Sums were fixed and ascertained sums of money. The question was whether the PRC Judgment could constitute the basis of such a debt claim.

***The nature of the obligations owed by the parties under the PRC Judgment***

65 Parties (and in particular the Defendant) did not dispute that the orders made in the PRC Judgment gave rise to an obligation on the part of the Defendant to pay the Plaintiff certain ascertained sums of moneys. The point of contention here was whether the obligation of the Defendant to pay the Plaintiff the PRC Judgment Sums could be enforced given that the generator sets were still in the Plaintiff's possession.

66 As a preliminary point, this issue raised the question as to which law should govern how the obligations owed by parties under a foreign judgment should be characterised for the purposes of

enforcement. This was addressed by the Court of Appeal in *Poh Soon Kiat* which found (at [19]) that whether the Californian judgment was a "fresh foreign money judgment" was a matter to be determined according to Californian law. I respectfully agree. The court cited three authorities: *Carl Zeiss Stiftung v Rayner & Keeler Ltd* [1967] 1 AC 853 at 927; *Colt Industries Inc v Sarlie (No 2)* [1966] 1 WLR 1287 at 1293; and *Beatty v Beatty* [1924] 1 KB 807 (CA) at 816. I note that the three authorities cited stood for the proposition that the foreign law (and not the *lex fori*) determines whether a foreign judgment is final and conclusive for the purposes of recognition and enforcement, and did not directly concern the determination of the nature of the obligations owed under the foreign judgment. However, this issue was not raised before me by the parties whom – given the extensive expert evidence led on the matter – I took to accept that PRC law would apply in determining the issue. I therefore proceeded on that basis.

67 In that regard, the parties sought to lead evidence from the PRC legal experts on the interpretation of the PRC Judgment and what the order for the Plaintiff to return the generator sets to the Defendant entailed. Both the experts were agreed that under PRC law principles of fairness and good faith informed the resolution of this issue. Mr Tang interpreted that to mean that the party who was in breach of the contract would have to bear the expenses of returning the generator sets. The orders made in the PRC Judgment were then scrutinised with that premise in mind.

68 The PRC Judgment ordered that the Defendant was to compensate the Plaintiff for the loss of RMB7,088 in addition to the reimbursement of the purchase price of US$190,000. This RMB7,088 was for the costs incurred by the Plaintiff, after it had taken delivery, in transporting the generator sets from the dock to the Plaintiff's facility for installation. That the Plaintiff was compensated for this was not surprising given that the PRC Court found the Defendant liable for breach of the Contract. The PRC Judgment was, however, silent as to where the generators sets were to be returned to the Defendant. To my mind, the order for the Plaintiff to return the generator sets to the Defendant meant only that the Plaintiff was to make the generator sets available at its premises for collection by the Defendant. Were it otherwise, so that the Plaintiff was obliged to deliver the same to a location of the Defendant's choice, the PRC Court would have made further provision for the Plaintiff to be compensated for such expenses to be incurred. Only then would it be consistent with the PRC Court's order that the Defendant was to compensate the Plaintiff's transportation costs of RMB7,088. Mr Tang agreed with that analysis.

69 Mr Hua, however, disagreed. He was of the view that the PRC Court would not consider such matters until any subsequent claims for expenses incurred in fulfilling its obligations were in fact made by the Plaintiff. Mr Hua opined further that this would be the case even if, for example, the Plaintiff had an obligation to deliver the generator sets from the PRC to Singapore. I found that this was not consistent with the general principle of fairness and good faith which *both* experts agreed must inform the Plaintiff's obligation to return the generator sets. It would not be fair if the Plaintiff's obligation under the PRC Judgment entailed that it be put out of pocket until such time that it made a further claim before the PRC Court, notwithstanding that it was the innocent party.

70 As mentioned earlier (see above at [11]), the Plaintiff was at all times ready and willing for the Defendant to collect the generator sets from them. The Defendant, however, had no such intention to do so. I found that the Plaintiff's obligation being simply to allow collection of the generator sets by the Defendant, it had done all that was required of it under the PRC Judgment. Indeed, that was all that could reasonably be expected of it.

71 To that end, the experts' view that "the obligations set out in the PRC Judgment are to be performed simultaneously" was really beside the point. [note: 14] Whether the Defendant was in possession of the generator sets or not in this case had no bearing on its obligations to pay the

Plaintiff the PRC Judgment Sums since it did not make any arrangement to collect the generator sets. It did not lie in the Defendant's mouth to say that it did not have to perform its obligation to pay the Plaintiff the PRC Judgment Sums because it did not collect the generator sets.

***Whether the Plaintiff's claim was precluded because the PRC Judgment comprised other obligations which were not for a definite sum of money***

72 Since the Defendant owed an obligation to the Plaintiff for the payment of the PRC Judgment Sums, the question was whether this could be enforced here notwithstanding that the PRC Judgment also included the Plaintiff's obligation to return the generator sets to the Defendant, the latter not being an order for payment of a fixed sum of money.

73 Ms Chew's submission in this regard was that a "judgment is enforceable so long as it orders the payment of 'a definite sum of money'", [note: 15] and it was beside the point that the PRC Judgment made further orders which were otherwise. The order for the Defendant to pay the Plaintiff the PRC Judgment Sums constituted a debt obligation which could found an action for enforcement in Singapore. Mr Goh submitted, on the other hand, that as long as the PRC Judgment contained obligations besides payment of a debt, the Plaintiff would be precluded from bringing a claim under the PRC Judgment.

74 I could not agree with Mr Goh. It is established that an action in *assumpsit* or debt may be brought against a defendant for costs awarded against him in a foreign judgment so long as the order for costs was final and for a definite and ascertained sum of money (see *Dicey, Morris and Collins* at para 14-022). Importantly, such an action could be maintained even where the costs order arose from a judgment where the substantive merits did not result in orders for definite sums of moneys. This was the case in *Russell v Smyth* (1842) 9 M & W 810 ("*Russell v Smyth*"), where an order for costs awarded in a foreign divorce suit was held to be enforceable (at 817):

> … The question arises in Scotland, and *the decree of the Court of Session creates a duty in the party to pay a debt*, and does not give rise to the question of jurisdiction. It is plain that this is not a decree of an ecclesiastical Court, *but of a Court of competent jurisdiction awarding costs*, and not having the power by its own process of enforcing the payment of them in this country. *An action of assumpsit, or debt, therefore, lies for the recovery of them*. … [emphasis added]

75 Consistent with the conceptual basis for the enforcement of foreign judgments explained earlier, the order for the defendant to pay costs of the divorce proceedings in *Russell v Smyth* constituted an obligation to pay a debt which could establish an action in *assumpit* or debt in England. *A fortiori*, where a foreign court makes an order for payment of a definite sum of money (other than for costs) amongst other orders, the order for payment of a definite sum of money should be capable of founding an action in debt.

76 It followed that in the present case, the PRC Judgment ordering that the Defendant pay the Plaintiff the PRC Judgment Sums was capable of founding the Plaintiff's debt claim in Singapore.

77 As an aside, I should add that Ms Chew also sought to rely on the doctrine that objectionable parts of a foreign judgment could be severed from the rest of the judgment such that the unobjectionable parts of the judgment may be enforced. In support of her submission, Ms Chew cited *Yeo* at para 75.168:

> A foreign judgment that is objectionable in part may be severed and the unobjectionable parts enforced, if the unobjectionable part could be clearly identified and separated from the

objectionable part. …

78 At first blush, Prof Yeo would seem to suggest that Ms Chew's submission had some merit. However, this warranted further consideration. The basis behind Prof Yeo's statement was the case of *Raulin v Fischer* [1911] 2 KB 93 which was also relied upon by Ms Chew. As pointed out by Mr Goh, the component of the judgment that was deemed objectionable in *Raulin v Fischer* was a penal payment based on a criminal sanction. Since a foreign penal law was unenforceable under private international law (see the English cases of *Huntington v Attrill* [1893] AC 150 and *United States of America v Inkley* [1989] QB 255), the English court severed that part of the judgment and enforced only the non-penal component of the foreign judgment. Ms Chew also relied upon the English Court of Appeal decision in *Lewis v Eliades and others* [2004] 1 WLR 692 ("*Lewis v Eliades*"). In *Lewis v Eliades*, the claimant obtained a judgment in the United States court which he sought to enforce in England. The judgment was for damages for breach of fiduciary duty and fraud, and damages based on statute. For the statutory damages, the claimant was entitled to treble damages, which were not enforceable in the English courts by reason of s 5 of the Protection of Trading Interests Act 1980 (c 11) (UK). Accordingly, the English court severed the statutory damages from the rest of the judgment and enforced that part of the judgment awarding damages for breach of fiduciary duty and fraud. The orders made in the PRC Judgment, however, were of a different nature entirely and did not involve the enforcement of foreign penal, revenue or other public laws. In that regard, I did not think it was appropriate to extend the concept of severance to the present case.

***Conclusion on Issue 2***

79 In the light of my conclusion that the PRC Judgment ordering the return of the generator sets did not require the Plaintiff to transport the same to a location of the Defendant's choice (it being the Defendant's obligation to collect the same), I held that the Defendant's obligation to pay the PRC Judgment Sums was enforceable in Singapore. To be clear, in arriving at this conclusion, I did not have to consider nor place any reliance on the validity or otherwise of the underlying claim in contract sued upon in the PRC Judgment.

**Overall conclusion**

80 For the foregoing reasons, I found for the Plaintiff, and made the following orders:

(a) The Defendant shall pay the Plaintiff the PRC Judgment Sums as ordered in the PRC Judgment.

(b) The Defendant shall reimburse the Plaintiff the PRC Court Fees ordered under the PRC Judgment.

(c) The Defendant shall pay interest on:

(i) the PRC Judgment Sums; and

(ii) the PRC Court Fees at the rate of 6.56% per annum for the period from 26 April 2011 to 7 August 2013, amounting to US$28,513.53 and RMB3,258.65 respectively.

(d) The Defendant shall pay interest on:

(i) the PRC Judgment Sums; and

(ii) the PRC Court Fees

at the rate of 5.33% per annum from 8 August 2013 until date of full payment.

(e) The Defendant shall pay the Plaintiff costs to be taxed unless agreed.

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[note: 1] AEIC of Tho Kee Ping at para 26.

[note: 2] AEIC of Wang Bulin at para 7; 1AB.72–76.

[note: 3] AEIC of Tho Kee Ping at para 29.

[note: 4] AEIC of Tho Kee Ping at para 31; 1AB.186–191.

[note: 5] AEIC of Tho Kee Ping at pp 281–282.

[note: 6] Agreed Bundle of Documents, vol 2 at pp 359–360.

[note: 7] Transcript dated 31 July 2013 at p 97.

[note: 8] Plaintiff's closing submissions at para 2; Defendant's closing submissions at para 4.

[note: 9] Defendant's closing submissions at para 82.

[note: 10] AEIC of Tan Chian Huat at [22]; Transcript dated 31 July 2013 at pp 64–65.

[note: 11] Transcript dated 31 July 2013 at pp 50 and 63.

[note: 12] Defendant's closing submissions at para 180.

[note: 13] Plaintiff's closing submissions at para 69.

[note: 14] Joint Expert Report at para 35.

[note: 15] Plaintiff's closing submissions at para 67.