Seagate Technology International
v
Vikas Goel

[2016] SGHC 12

High Court — Suit No 1041 of 2014
Edmund Leow JC
4 November 2015

Civil procedure — Inherent powers

Credit and security — Guarantees and indemnities

29 January 2016 Judgment reserved.

Edmund Leow JC:

Introduction

1 The defendant in the present case has not entered an appearance to the present proceedings. The plaintiff seeks to obtain judgment on the merits of its case under O 13 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC") as it seeks to enforce judgment in India wherein a default judgment is not enforceable, and a judgment on the merits is requirement for enforcement. The plaintiff's claim against the defendant is for a sum of about US$14.1m as the sum owed under a guarantee dated 3 July 2009 issued by the defendant in favour of the plaintiff and the interest thereon. After hearing the plaintiff's evidence and considering the documentary evidence presented, I am satisfied that the

defendant's liability under the guarantee has been established and arisen, and accordingly grant judgment in favour of the plaintiff.

Facts

2 The plaintiff, Seagate Technology International, is a company incorporated in the Cayman Islands.

3 The defendant is an Indian national and was formerly the managing director and shareholder of a company incorporated in Singapore, eSys Technologies Pte Ltd (the "Company"). The defendant previously held 99.9% of the shareholding in the Company. Even though the defendant is no longer a direct shareholder of the Company, he retains an interest in the Company via his shareholding in the parent company, Rainforest Trading Ltd, a company incorporated in the British Virgin Islands (the "Parent Company"). The Company is no longer known as eSys Technologies Pte Ltd but is now known as Haruki Solutions Pte Ltd and is presently undergoing litigation.

The guarantees issued pursuant to the Final Settlement Agreement

4 The plaintiff, the Company, and their affiliated companies entered into a Final Settlement Agreement and Mutual Release dated 1 July 2009 (the "Settlement Agreement") to settle various disputes between them on the terms and conditions laid out therein. The relevant terms of the Settlement Agreement are as follows:

> 2. PROMISSORY NOTE. Prior to or simultaneous with the Parties' execution of the Final Settlement Agreement, eSys Singapore shall issue to Seagate Technology International ("STI") an interest-free promissory note in the amount of $15,000,000.00 in U.S. dollars (the "eSys Singapore Note"), payable over five years from the Effective Date as follows:

> (a) Monthly payments: $100,000 in Singapore dollars shall be paid to STI in each month of the first year of the eSys Singapore Note, with all monthly payments no later than twelve months after the Effective Date ("Monthly Installments") … If any monthly payment is not received within ten (10) calendar days of the due date, STI shall have the option at that time to notify eSys Singapore that the eSys Singapore Note has been accelerated; in the event that STI gives such notice to eSys Singapore, the full amount of the outstanding balance … will become immediately due and payable to STI by eSys Singapore and any and all guarantors of the Note. As set forth in the Note, the outstanding accelerated balance shall accrue interest at 10% per annum.
>
> (b) The outstanding balance payment: The final payment of the outstanding balance shall, when added to the monthly payments previously received, make the total amount paid equal to U.S. $15,000,000.00.

5 In accordance with clause 2 of the Settlement Agreement, the Company issued to the plaintiff an interest-free promissory note dated 1 July 2009 (the "Singapore Note"), whereby the Company agreed to pay the plaintiff the sum of US$15m in monthly instalments of S$100,000 on the last day of each month for 12 consecutive months beginning in the month of July 2009. After the monthly payments had been made, the Company was required to make payment of the outstanding amount of the principal balance by 1 June 2014. Under the terms of the Singapore Note, if the Company failed to make payment within 10 days of the monthly payment due date, the plaintiff would have the option of declaring the entire outstanding sum under the Singapore Note as immediately due and payable by way of a Notice of Acceleration. The unpaid amount would also accrue interest at the rate of 10% per annum from the date of default. Thereafter, if payment was not received within 30 days from the date of the Notice of Acceleration, the defendant, as guarantor of the Singapore Note, would become immediately liable for the entire amount due and owing.

6 The Company's obligations and liabilities under the Settlement Agreement and the Singapore Note were secured by, *inter alia*, a guarantee entered into by the Parent Company on 3 July 2009 in favour of the plaintiff (the "Corporate Guarantee") and a guarantee entered into by the defendant on 3 July 2009 in favour of the plaintiff (the "Personal Guarantee"). The Personal Guarantee stated that the defendant unconditionally undertook a continuing obligation to, *inter alia*, pay the plaintiff at any time and from time to time immediately upon the plaintiff's first demand, all moneys and liabilities which the plaintiff may have sustained or incurred in connection with any breach of the terms of the Settlement Agreement by the Company. The Settlement Agreement also provided that the plaintiff could enforce the guarantees without first initiating proceedings or obtaining judgment against the Company.

The Company's monthly payments

7 From July 2009 to June 2010, the Company made monthly payments amounting to US$851,143.68. The principal balance payable by the Company by 1 June 2014 thereafter, pursuant to clause 2(b) of the Settlement Agreement and clause 1(b) of the Singapore Note was thus US$14,148,856.32 (the "Principal Balance"). But the Company failed to make payment of the said sum by 1 June 2014 and even after, when the plaintiff demanded repayment of the Principal Balance on 11 June 2014. On 1 July 2014, the plaintiff exercised its rights under the Corporate Guarantee, demanding that the Parent Company cure the Company's failure to pay the Principal Balance. The Parent Company similarly failed to do so. On 6 August 2014, the plaintiff exercised its rights under the Personal Guarantee to demand that the defendant cure the Company's failure to pay the Principal Balance by making the necessary payment within

seven days of the demand. The defendant has, to date, failed to pay to the plaintiff the Principal Balance or any part thereof.

The defendant's claim against the Company

8 Clause 6.3.2 of the Personal Guarantee expressly provides that until the Company's obligations have been paid and discharged in full, the defendant shall not compete with or in priority to the plaintiff, prove or make any claim in the insolvency of the Company. The defendant, on or about 29 May 2014, submitted a proof of debt in the liquidation proceedings of the Company of a sum of about US$14.4m, which appears to include the sum of about US$14.1m which is owed to the plaintiff if a claim is made out against the defendant under the Personal Guarantee.

The commencement of the present proceedings

9 The plaintiff commenced the current action against the defendant by filing a writ of summons and statement of claim, and serving both on the defendant via the process agent, Mr Samuel Chacko of Legis Point LLC, on 7 October 2014. Though the process agent disputes that he was duly appointed, at a hearing before Tan Lee Meng J on 17 March 2015, Tan J agreed with the plaintiff that the writ was validly served and granted an order-in-terms of the plaintiff's application to proceed to a full trial notwithstanding that the defendant had not entered an appearance and was absent in the proceedings.

Analysis

10 As a preliminary point, O 35 r 1(2) of the ROC specifically provides the following:

> If, when the trial of an action is called on, one party does not appear, the Judge may proceed with the trial of the action or any counterclaim in the absence of that party, or may without trial give judgment or dismiss the action, or make any other orders as he thinks fit.

It is clear from the above that the court has complete discretion to decide whether to proceed with the trial of the action or to dismiss the action or to give judgment without trial. In this case, it appeared to me that in the light of the circumstances of the case, the most appropriate course of action was to adduce evidence in the normal course of a trial to put it beyond doubt that the merits of the case had been duly considered. This would enable the plaintiff to enforce the judgment in India so that the plaintiff would not be forced to commence Indian proceedings and suffer further delay in obtaining relief and consequently, injustice. I thus directed my inquiry towards the subject matter of the claim – whether the defendant is liable to pay the plaintiff under the Personal Guarantee.

11 To determine whether the true nature of the obligation which is being assumed by the defendant is a promise to answer for the debt, default or miscarriage of another, one has to look to the specific terms of the Personal Guarantee. It is eminently clear that the defendant has undertaken to answer for the Company's debt or default, in particular, in respect of the obligations owed by the Company to the plaintiff. The defendant is further obliged to indemnify the plaintiff for all losses and damages sustained under or by reason of or in connection with the Company's breach of the Settlement Agreement. Given that the Company's obligations to pay the Principal Balance and interest thereon arose under or in connection with the Settlement Agreement, the obligation to indemnify the plaintiff for all losses in connection with the Company's breach to pay the Principal Balance and interest is within the scope of the obligations which the defendant undertook.

12 It is also apparent that the plaintiff has satisfied the conditions for demand of payment (under clauses 2.3 and 2.5 of the Personal Guarantee) as the Company has failed to make payment of the Principal Balance and has not cured that failure within any of the ten days thereafter. In addition, the Parent Company has failed to discharge its obligations to cure the Company's failure. Further, the plaintiff has duly made a demand against the defendant by way of a letter dated 6 August 2014 in which a certificate stating the sum of the Principal Balance, signed by an officer of the plaintiff and accompanied by the Schedule attached to the Singapore Note was issued to the defendant. By way of clause 2.4 of the Personal Guarantee, the defendant has further accepted that such a certificate in the form stipulated therein will be accepted by the defendant as conclusive evidence as against him of the amount so owed. On the documentary evidence and the testimony of the witness, Mr Eric Roring Pesik, associate general counsel of the plaintiff, I am satisfied that the defendant has failed to repay the Principal Balance and the interest thereon. Once a borrower has defaulted on payment, the guarantor's liability arises automatically: *Indian Overseas Bank v Svil Agro Pte Ltd* [2014] 3 SLR 892 (at [39]). I am also satisfied that under the terms of the Personal Guarantee issued by the defendant, he is liable to repay all such debts and interest thereon.

13 In addition to the Principal Balance, the outstanding sums against the defendant owed to the plaintiff include contractual interest accrued on the Principal Balance at the rate of 10% per annum (pursuant to clause 3 of the Singapore Note) from 1 June 2014 until full payment, and costs and expenses sustained by the plaintiff (under clause 2.3 of the personal guarantee) to be assessed. In the light of the documentary evidence presented to the court, I am of the view that the defendant's liability has arisen, and I grant judgment in

favour of the plaintiff. I also grant the plaintiff a declaration that the defendant does indemnify the plaintiff in respect of all losses, damages, charges, costs and expenses of whatever nature which the plaintiff has and may at any time and from time to time sustain by reason of any breach of the terms of the Settlement Agreement. Given that the plaintiff has also proved that the defendant has breached clause 6.3.2 of the Personal Guarantee in competing with the plaintiff to prove a debt in the liquidation proceedings of the Company, I grant the injunction to restrain the defendant from committing or continuing to commit the aforementioned breach of contract.

Conclusion

14 Therefore, for the reasons given above, I grant judgment in favour of the plaintiff for the following sums:

(a) US$14,148,856.32 being the Principal Balance;

(b) Contractual interest accruing daily at the rate of 10% per annum pursuant to clause 3 of the Singapore Note, from 1 June 2014 until full payment; and

(c) Costs and expenses sustained by the plaintiff under clause 2.3 of the Personal Guarantee, to be assessed.

An injunction is also granted against the defendant from making any claim or effecting any set off against the Company for reimbursement of any sums paid by the defendant to the plaintiff in respect of any of the Company's obligations, and from proving or making a claim in the insolvency of the Company in competition or in priority to the plaintiff, until the Company's obligations have

been paid and discharged in full (as defined in the Personal Guarantee). Costs to be awarded to the plaintiff, to be taxed if not agreed.

Edmund Leow
Judicial Commissioner

Tan Ruyan Kristy and Li Fangyi (Allen & Gledhill LLP) for the plaintiff.