IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 65

Civil Appeal No 209 of 2019

Between

Sun Travels & Tours Pvt Ltd

… *Appellant*

And

Hilton International Manage (Maldives) Pvt Ltd

… *Respondent*

In the matter of HC/Originating Summons No 762 of 2017

In the matter of Section 19 of the International Arbitration Act (Cap. 143A)

And

In the matter of Order 69A of the Rules of Court (Cap 322,R5, 2006 Rev Ed)

And

In the matter of an ICC arbitration between Hilton International Manage (Maldives) Pvt Ltd and Sun Travels & Tours Pvt Ltd

Between

Hilton International Manage (Maldives) Pvt Ltd

… *Plaintiff*

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And

Sun Travels & Tours Pvt Ltd

… *Defendant*

EX TEMPORE JUDGMENT

[Civil Procedure] — [Judgments and Orders]

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Sun Travels & Tours Pvt Ltd
v
Hilton International Manage (Maldives) Pvt Ltd

[2020] SGCA 65

Court of Appeal — Civil Appeal No 209 of 2019
Andrew Phang Boon Leong JA, Judith Prakash JA and Chao Hick Tin SJ
6 July 2020

6 July 2020

Andrew Phang Boon Leong JA (delivering the judgment of the court *ex tempore*):

Introduction

1 This is an appeal against the decision of the High Court judge ("the Judge") in *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] SGHC 291 ("the GD"), which affirmed the decision of the learned Assistant Registrar ("the AR"). The Judge granted leave to appeal to this court as the application for leave to appeal "was not seriously resisted [by the respondent] as such" (see the GD at [46]). The Judge was also "satisfied that leave should be granted on the basis that there were questions of importance for which a Court of Appeal pronouncement or guidance would be useful" (see *ibid*).

2 As will be seen in the grounds that follow, the Judge had correctly identified all the reasons which supported his decision. We agree wholly with

them and, consequently, the decision he arrived at; the present judgment can therefore be brief. The detailed facts and background to this appeal may be found in the GD itself at [2]–[8].

Background and issue

3 The principal issue turned upon the interpretation of O 48 r 1(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("O 48 r 1(1)"), which pertains to examination of judgment debtor ("EJD") proceedings. O 48 r 1(1) itself reads as follows:

> **Order for examination of judgment debtor (O. 48, r.1)**
>
> **1.—**(1) Where a person has obtained a judgment or order for the payment by some other person (referred to in this Order as the judgment debtor) of money, the Court may, on an application made by ex parte summons supported by affidavit in Form 99 by the person entitled to enforce the judgment or order, order the judgment debtor, or, if the judgment debtor is a body corporate, an officer thereof, to attend before the Registrar, and be orally examined on ***whatever property the judgment debtor has and wheresoever situated***, and the Court may also order the judgment debtor or officer to produce any books or documents in the possession of the judgment debtor relevant to the questions aforesaid at the time and place appointed for the examination. [emphasis added in bold italics]

4 The respondent had applied for as well as obtained leave to enforce awards obtained in arbitration proceedings ("the Awards") in Singapore. A judgment was granted ("the Singapore Judgment"), which then formed the basis of the EJD proceedings that are the subject of the present appeal. In particular, pursuant to the EJD proceedings, a number of questions in the form of a questionnaire had been directed to an officer of the appellant, in preparation for the oral examination of the said officer. The appellant objected to some of the questions which fell within two categories. The first category concerned assets of corporate entities related to the appellant or the said officer. There is no

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appeal against either the AR's decision or the Judge's decision *vis-à-vis* this particular category of questions.

5 The second category of questions related to assets of the appellant *located in the Maldives*. These questions were permitted by both the AR and the Judge, notwithstanding the fact that the Awards could *not* have been enforced *in the Maldives at the time* (there is an appeal pending against the decision of the Maldivian court which had decided the same). The present appeal is with regard to the decision of the Judge *vis-à-vis* this particular category of questions.

6 Put simply, the main thrust of the appellant's argument in this appeal is that the language of O 48 r 1(1) and of Form 99 of the Rules of Court ("Form 99"), considered together with this court's decision in *PT Bakrie Investindo v Global Distressed Alpha Fund I Ltd Partnership* [2013] 4 SLR 1116 ("*PT Bakrie*"), meant that the Rules of Court permit questions as part of the EJD proceedings *only if* the *judgment concerned* (here, the Singapore Judgment) could be *enforced in* the *foreign jurisdiction* itself (here, the Maldives). The appellant also cited the AR's decision in *Indian Overseas Bank v Sarabjit Singh* [1990] 3 MLJ xxxi ("*IOB*") in support of its argument.

Our decision

7 With respect, there is, in fact, ***a fundamental flaw*** in ***the underlying premise*** of the appellant's argument – it presupposes that questions pursuant to the EJD proceedings can be asked with regard to assets *within* a particular jurisdiction (here, the Maldives) *only if* the judgment creditor (here, the respondent) can satisfy the court that the judgment concerned (here, the Singapore Judgment) *can be* ***enforced*** within ***that*** jurisdiction (here, the Maldives). The underlying premise, in other words, is that the ***purpose*** of

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the EJD process relates ***only*** to ***enforcement*** of judgments within the jurisdiction *in which the assets reside* and that, therefore, if the judgment creditor cannot satisfy the court that the judgment concerned *can*, in fact, be ***enforced*** in ***that*** *particular jurisdiction*, then questions asked pursuant to the EJD process *cannot* pass legal muster and thus cannot be permitted.

8 Even a cursory look at the language of O 48 r 1(1) (in particular, the phrase "whatever property the judgment debtor has and wheresoever situated" (emphasised in the Order which has been reproduced above at [3]) demonstrates that the *purpose* of the EJD process is *not* restricted to the *enforcement* of judgments *within the jurisdiction in which the relevant assets reside*. As the Judge clearly stated more than once in the GD, the EJD process is for the *central purpose* of ***information gathering*** on the part of the judgment creditor so as to determine how it might enforce the judgment (see the GD at [20], as well as at [26], [34] –[37]). This makes sense from a ***practical*** *perspective*, especially in the context of the world as we know it today. In particular, with, *inter alia*, the advent of technology, assets can be moved with ease across international borders; in particular, funds can be transferred almost instantaneously. The *physical* location of a judgment debtor's assets, whilst important, can be changed almost in the blink of an eye. In this regard, the Judge noted (and accepted, rightly in our view) the respondent's argument, as follows (see the GD at [30]):

> As was argued by the respondent, information would be ***useful*** *even if* ***execution is not possible in the current location of the appellant's assets*** (*ie*, the Maldives) *as the assets* ***may be moved, converted into other assets or generate income.*** *These* ***could lead to other assets of funds*** *against which execution is available.* [emphasis added in italics and bold italics]

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9 Indeed, *information* becomes of the first importance. This was a point that did not escape the notice of the Judge who observed thus (see the GD at [35]):

> The EJD process is ***only*** about ***gathering information so that the judgment creditor may determine how enforcement should be pursued***. Questions irrelevant to this should certainly be excluded, *but it is* ***not irrelevant*** *to determine* ***where*** *assets may be situated,* ***even if*** *the* ***judgment*** *is* ***not enforceable in one jurisdiction***. In ***this day and age***, assets can certainly ***be almost anywhere in the world***, and enforcement may be pursued in different *fori*. ***Limiting the EJD process as the appellant contended would be far too restrictive***. [emphasis in italics in original; emphasis added in bold italics and underlined bold italics]

10 In summary, the fundamental flaw in the underlying premise of the appellant's argument is that it has ***conflated*** the concept of ***information gathering*** pursuant to the EJD process with the concept of the actual ***enforcement*** of the relevant judgment abroad (see also the GD at [36] and [35], where the Judge observed that the appellant's argument "***elided*** the information gathering process with the actual enforcement process" [emphasis added]). This is *not* to state that there can be no *overlap* between information gathering on the one hand and the actual enforcement process on the other. However, it is clear that the former is *broader* in scope than the latter.

11 As already noted, the concept of *information gathering* that is embodied in the EJD process is supported by the ***language*** of O 48 r 1(1) itself. We also agree with the Judge that there is nothing in Form 99 that detracts from this analysis. The language in Form 99 itself is neutral at best (see also the GD at [24]) and, in any event, O 48 r 1(1) is the "control centre" or governing provision and cannot be read as being subject to what is merely the prescribed form to facilitate its operation under this Order (see also the GD at [23]). We

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add that this particular construction of the language of O 48 r 1(1) is *not* mere arid literalism but (as noted above at [8]) is *consistent with* the ***purpose*** of the EJD process in relation to ***information gathering***.

12 In so far as the relevant ***case law*** is concerned, it is clear that the approach that the Judge adopted (and which we have endorsed) is wholly consistent with our decision in *PT Bakrie* as well as the decision of the AR in *Pacific Harbor Advisors Pte Ltd and another v Tiny Tantono (representative of the estate of Lim Susanto, deceased) and another suit* [2015] SGHCR 3 ("*Pacific Harbor*"). In particular (and as the Judge pointed out (see the GD at [28])), our decision in *PT Bakrie* emphasises that EJD proceedings relate to information gathering and do *not* involve execution of the judgment concerned. While the fact situation in *PT Bakrie* was somewhat different, the *general principle* that can be drawn from the case itself is as we have just stated. As the Judge also noted (see the GD at [29]), *Pacific Harbor* is also consistent with the approach just mentioned. The only authority which supports the appellant's case is that of the AR in *IOB*. To the extent that it is inconsistent with our decision, it should not be followed.

13 Consistent with our analysis, like the Judge (see the GD at [42]), we are of the view that whether or not there is a possibility that the Singapore Judgment could be enforced in the Maldives is immaterial and irrelevant to the outcome of the present appeal.

14 A ***caveat*** is necessary at this juncture: information gathering pursuant to the EJD process is ***not*** a *licence for a fishing expedition* (which was one of the concerns raised by the appellant). Whether or not this is the case will depend on

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the precise facts and circumstances before the court. In this regard, the Judge observed as follows (see the GD at [38]):

> I accepted that the information gathering process could not be so broad as to capture past assets, though there may be some possible connection to the availability of present assets. The respondent here did not make such an argument. It is necessary that the information obtained should not be too remote or divorced from eventual enforcement; the possibility of movement and identification of other assets or funds that may be available, is sufficiently closely connected. I did not think that there was anything to be gained by attempting to formulate a precise rule on the limits of questions which can be asked in EJD proceedings in relation to foreign assets: the observations of Reyes J in *Bloomsbury International Ltd v Nouvelle Foods (Hong Kong) Ltd* [2005] 1 HKC 337 at [75], and cited in *Pacific Harbor*, commend themselves:
>
> > There must be some line beyond which a creditor examining under O 48 may not tread. That line cannot be drawn with precision. It is undesirable fully to articulate its boundaries. That would needlessly constrain the flexibility inherent in O 48.

15 We agree wholly with the observations just quoted. While legal principles can – and ought to be – articulated as clearly and coherently as possible, the *fact situations* to which they are at least potentially applicable are *myriad*. The *process* of *applying* the relevant *legal* principles to any given *fact* situation *cannot* be the subject of a coherent predictive formula. This is both logical and commonsensical. The ultimate decision arrived at by the court concerned will (to reiterate the fundamental point already made) depend on *the precise facts and circumstances of the case at hand*.

16 We also deal with the appellant's argument (raised in the High Court but not, correctly in our view, on appeal) that it would be against ***comity*** in requiring the questions concerned to be answered as there was an existing Maldivian judgment refusing enforcement of the Awards in the Maldives. We can do no

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better than to quote the Judge's reasons as to why comity was *not* threatened, as follows (see the GD at [41]):

> But these arguments on comity failed simply because comity was not threatened: the EJD proceedings only concerned the gathering of information, and did not by themselves constitute enforcement of the Singapore Judgment. It was hard to see how any impact could be felt in the Maldivian Action that would amount to interference or a disregard for the orders of the Maldivian court within its territory, whether or not any delay has been caused. The present proceedings and orders, did not clash at all with the Maldivian refusal to enforce the Awards.

17 Finally, we also think it important to highlight that accepting the appellant's submission would produce a number of undesirable implications from a *practical* perspective. For instance, the issue of the enforceability of a Singapore judgment in a *foreign* jurisdiction is one that must necessarily be determined by a competent *foreign* court. For a Singapore court to pre-emptively decide whether a Singapore judgment is enforceable in a *foreign* jurisdiction *before* a foreign court has to consider the issue, or, for that matter, *after* the foreign court has decided the issue, could result in inconsistent decisions across the two jurisdictions. Indeed, these would be clear examples of a breach of comity. Equally important is the position of a judgment creditor, who, at the time it seeks an EJD order, has not received satisfaction of the judgment debt. Permitting the judgment debtor to escape scrutiny of its assets on the basis that a Singapore judgment is not, at the material time, enforceable in the foreign jurisdiction, would serve as a perverse incentive for the judgment debtor to transfer its assets to the foreign jurisdiction in order to escape the necessary scrutiny that is inherent in an EJD proceeding (in this regard, see the observations by the Hong Kong Court of First Instance in *Bloomsbury International Ltd v Nouvelle Foods (Hong Kong) Ltd* [2005] 1 HKC 337 at

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[107] that "because the [judgment] debtor has committed a wrong in failing to pay, the Court must not be overly solicitous in his favour").

Conclusion

18 For the reasons set out above, we dismiss the appeal. We will now hear the parties on costs.

Andrew Phang Boon Leong	Judith Prakash	Chao Hick Tin
Judge of Appeal	Judge of Appeal	Senior Judge

Jenny Tsin, Ho Wei Jie and Wang Chen Yan (WongPartnership LLP) for the appellant;
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