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

[2023] SGHC 100

Suit No 716 of 2021
(Summons No 334 of 2023)

Between

The Resolution and Collection Corporation
(formerly known as Housing Loan Administration Corporation)
… *Plaintiff*

And

1. Tsuneji Kawabe
2. Kawabe Bussan Co Ltd
3. Yoshiko Kawabe
4. Michiyo Kawabe
5. Natamon Protpakorn
6. Dwell Pte Ltd
7. Cloud Bliss Limited

… *Defendants*

JUDGMENT

[Civil Procedure — Trial — Bifurcation]

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The Resolution and Collection Corp
v
Tsuneji Kawabe and others

[2023] SGHC 100

General Division of the High Court — Suit No 716 of 2021 (Summons No 334 of 2023)
Choo Han Teck J
29 March 2023

17 April 2023 Judgment reserved.

Choo Han Teck J:

1 The plaintiff, a Japanese-incorporated company, is wholly owned by the Deposit Insurance Corporation of Japan ("DICJ"). The DICJ assigns its loan receivables to the plaintiff, who then manages the recovery of payments due. The 1st Defendant ("Mr Kawabe") was a Japanese national, and has since died. He was formerly the representative director of the 2nd Defendant ("Kawabe Bussan Co Ltd"), a company incorporated in Japan. The plaintiff obtained two judgments against Mr Kawabe and Kawabe Bussan Co Ltd — from the 8th Civil Division ("Judgment No 1") and 11th Civil Division ("Judgment No 2") of the Osaka District Court, on 26 July 2001 and 27 July 2001 respectively. The plaintiff says that Judgments Nos 1 and 2 establish that Mr Kawabe was liable for fraudulently taking monies out of Kawabe Bussan Co Ltd. This resulted in Kawabe Bussan Co Ltd defaulting on its credit facilities. The judgment debt under Judgments Nos 1 and 2 amounted to JPY 17,483,893,290, excluding

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interest accruing. However, as Japanese judgments have a validity period of ten years, a separate judgment was obtained from the 22nd Civil Division of the Osaka District Court on 17 July 2021 ("Judgment No 3") renewing the validity of Judgments Nos 1 and 2. The plaintiff commenced this action to recover the money under the two 2001 judgments as renewed by Judgment No 3 (the "Japanese Judgments").

2 Mr Kawabe died before satisfying the judgment debt under the Japanese Judgments. Under Japanese Law, Mr Kawabe's wife, the 3rd Defendant ("Mrs Kawabe"), succeeded to all his assets and liabilities, including the liabilities under the Japanese Judgments. This made Mrs Kawabe directly liable for the judgment debt. Mr Kawabe had a daughter, the 4th Defendant ("Ms Michiyo Kawabe"). However, Ms Michiyo Kawabe did not inherit the assets and liabilities of Mr Kawabe, because she renounced her inheritance from Mr Kawabe after his death. Thus, Ms Michiyo Kawabe avoided direct liability under the Japanese Judgments.

3 In this action, the plaintiff claims that although Mrs Kawabe inherited the liabilities of Mr Kawabe (which include the Japanese Judgments), she did not receive nor possess the assets of Mr Kawabe and Kawabe Bussan Co Ltd. The plaintiff claims that it is Ms Michiyo Kawabe, instead, who holds these assets, through two corporations — the 6th and 7th Defendants, both beneficially owned by her. The 6th Defendant ("Dwell Pte Ltd") is a Singapore incorporated company whose founding director is Ms Michiyo Kawabe. Dwell Pte Ltd is the sole shareholder of the 7th Defendant, a company incorporated in the British Virgin Islands. The plaintiff claims that the 5th Defendant, a Thai national who is an associate of Mr Kawabe, is in possession of some of Mr Kawabe's assets. However, the 5th Defendant has not entered an appearance in this suit. Thus, the

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plaintiff's claim in this suit is against the 4th, 6th and 7th Defendants, that is, Ms Michiyo Kawabe and the two companies she owns ("the Specific Defendants"). The crux of the plaintiff's claim against the Specific Defendants, as the plaintiff's counsel Mr Daniel Lim submits, lies in unjust enrichment and/or knowing receipt of the assets they received from Mr Kawabe over which he was found to be liable under the Japanese Judgments. In the Statement of Claim (Amendment No. 2), the plaintiff seeks the following reliefs:

> AND the Plaintiff claims:
>
> (1) JPY 17,483,893,290 yen as well as money accruing from 7,312,983,074 yen thereof at an annual interest rate of 14% during the period starting from 1 January 2021, until the full payment of such amount has been made, pursuant to the Japanese judgment from the 22nd Civil Division, Osaka District Court in Case No. Reiwa 3 (wa) -2193 which became final and binding on 17 July 2021 ("**Judgment No 3**").
>
> (2) A declaration that the following accounts and assets belong to and/or are held on trust for the benefit of the 1st and/or 2nd Defendant and are subject to the Plaintiff's claim (1) above:
>
> […]
>
> [emphasis in original]

4 The Specific Defendants contends that the plaintiff is time-barred from enforcing the Japanese Judgment, and that the plaintiff lacks *locus standi* to seek a declaration of trust in favour of the 1st and 2nd Defendants. The Specific Defendants then applied, by way of HC/SUM 344/2022, for a bifurcation of trial under Or 33 rr 2 & 3 of the Rules of Court (Cap 322, 2014 Rev Ed) ("ROC 2014") to have these two issues tried as preliminary issues. The issues are set out as follows:

(a) Whether the plaintiff is time-barred from enforcing the Japanese Judgments against the 1st and 2nd Defendants; and

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(b) Whether the plaintiff has *locus standi* to seek a declaration that the 4th, 6th and 7th Defendant's assets are held on trust for the benefit of the 1st and 2nd Defendants.

Collectively referred to as ("the Preliminary Issues").

5 There is no dispute regarding the principles for the bifurcation of a trial. The primary consideration is whether it would be expeditious and cost-saving: *Dai Yi Ting v Chuang Fu Yuan (Grabcycle (SG) Pte Ltd and another, third parties)* [2022] SGHC 253. That would depend on whether the Preliminary Issues are sufficiently demarcated from the main issues at trial, whether the Preliminary Issues will likely dispose of the entire action, and whether there is prejudice to the other party.

6 Mr Lim argues that a bifurcation of trial is meant to determine liability and damages separately. Although a bifurcation of liability and damages is the common use under Or 33 of the ROC 2014, the rule allows "any question or issue" to be determined as a preliminary issue. The question is, whether, it is just and convenient to order a bifurcation in this action.

7 Counsel for the Specific Defendants, Mr Shem Khoo, says that the Preliminary Issues will likely dispose of the entire action if decided in his clients' favour. He points to the prayers of the plaintiff, which suggest that their entire action is contingent on the enforcement of the Japanese Judgments. According to him, since the Preliminary Issues will determine if the Japanese Judgments can be enforced, he says that a bifurcation of trial is appropriate. I am unable to agree with Mr Khoo. The prayers of a plaintiff merely reflect the heads of relief which that plaintiff seeks from the court. The choice of relief, however, is a separate issue from the trial process which establishes liability

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based on the causes of action pleaded, namely, unjust enrichment and knowing receipt. At best, a determination of the Preliminary Issues might preclude the plaintiff from obtaining some remedies or against some of the defendants, but it may not dispose of the entire action.

8 Furthermore, it cannot be said that the Preliminary Issues are clearly demarcated from the other issues in the main trial. The Specific Defendants' application is premised on the assumption that the plaintiff's causes of action, namely, unjust enrichment and knowing receipt, rests on the enforceability of the Japanese Judgments. I accept that the plaintiff's pleadings are unclear as to the particulars of unjust enrichment and knowing receipt, but it cannot be said that the plaintiff's action rests on the enforceability of the Japanese Judgments. It is clear from the pleadings that this dispute has been ongoing for more than 20 years. The acts of the 1st and 2nd Defendants, who are liable under the Japanese Judgments, may not necessarily have to be proved by way of an enforcement of foreign judgments. This is a matter of legal advice, and outside the ambit of this application. But these possibilities lead to the conclusion that even if the Preliminary Issues were to be resolved against the plaintiff, other issues remain — for example, whether the plaintiff has, or has sufficiently pleaded a cause of action for knowing receipt or unjust enrichment against Ms Michiyo Kawabe or the 6th and 7th defendants, and if so, whether it has proven its case.

9 Furthermore, the facts and evidence that may have to be led to prove (or disprove) the Preliminary Issues overlap and are relevant against the Specific Defendants in respect of the knowing receipt and unjust enrichment part of the action. Mr Shem has submitted that a claim for knowing receipt or unjust enrichment cannot succeed — mainly, but not only, because the 6th and

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7th Defendants were only incorporated in 2016. This is not the right time to delve into the merits of the plaintiff's case, and even assuming that it may not succeed at trial, it is inappropriate to allow a bifurcation of the issues.

10 For the foregoing reasons, a bifurcation of trial will not be just and convenient in this action. I thus dismiss the application of the Specific Defendants. Costs will be reserved to the trial judge.

- Sgd -
Choo Han Teck
Judge of the High Court

Daniel Lim Ying Sin (Joyce A. Tan & Partners LLC) for the plaintiff;
Ng Yuen Siang (Eugene Thuraisingam LLP) for the 2nd defendant;
Shem Khoo Ching Shin and Veronica Teo Jia Hui (Focus Law Asia LLC) for the 4th, 6th and 7th defendants.

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