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

[2024] SGHC 189

Originating Application 1084 of 2023 (Summons No 46 of 2024)

Between

(1) Wang Bin

… *Claimant*

And

(1) Zhong Sihui

… *Defendant*

GROUNDS OF DECISION

[Arbitration — Enforcement — Foreign award — Defendant seeking to set aside enforcement order on ground that there was no proper notice of the arbitration proceedings — Section 31(2)(*c*) International Arbitration Act]
[Arbitration — Enforcement — Foreign award — Defendant seeking to set aside enforcement order on ground that claimant breached its duty of full and frank disclosure]

TABLE OF CONTENTS

Wang Bin
v
Zhong Sihui

[2024] SGHC 189

General Division of the High Court — Originating Application 1084 of 2023 (Summons No 46 of 2024)
Wong Li Kok Alex JC
18 March, 15 April, 13 May, 5 June 2024

23 July 2024

Wong Li Kok Alex JC:

Introduction

1 This decision arose from the defendant's application to set aside the enforcement order (the "Enforcement Order") granted by the court to the claimant in Originating Application 1084 of 2023 ("OA 1084") pursuant to the claimant's *ex parte* application. The claimant had succeeded in an arbitration (the "Arbitration") in Shenzhen, China under the auspices of the Shenzhen Court of International Arbitration (the "SCIA"). The claimant had obtained an award (the "Award") pursuant to that Arbitration against the defendant, amongst others.

2 The defendant sought in Summons No 46 of 2024 ("SUM 46") to set aside the Enforcement Order on the basis that: (a) she did not have proper notice of the arbitration proceedings pursuant to s 31(2)(*c*) of the International

Arbitration Act 1994 (2020 Rev Ed) ("IAA"); and (b) there was material non-disclosure of key facts in the claimant's application in OA 1084.

3 I dismissed the defendant's application in SUM 46. The defendant has appealed and I set out the reasons for my decision.

Facts

The dispute and the arbitration

4 The Arbitration arose out of a debt incurred by the defendant's husband, Lin Weisen ("Mr Lin") under a loan agreement ("Loan Agreement") with the claimant. The defendant had signed the loan agreement jointly with Mr Lin.[1] Mr Lin was the 1st respondent in the Arbitration and the defendant was the 2nd respondent in the arbitration. There were five other parties to the Arbitration who were all co-respondents in the Arbitration. According to the claimant, by way of guarantee contracts, these five other respondents (3rd to 7th respondents in the Arbitration) had jointly and severally agreed to guarantee the debt under the Loan Agreement.[2] As these five other respondents were not in issue in this application, I will say no more about them. The Award found that Mr Lin and the defendant had entered into the Loan Agreement and were liable to repay the principal amount of RMB 2,820,000 plus interest of RMB 341,200 (as at 19 August 2020) and costs of RMB 137,940 (the "Debt").[3]

---

[1] Claimant's 1st Affidavit dated 1 November 2023 ("WB-1") at para 7.

[2] WB-1 at para 11.

[3] WB-1 at para 21 and p 64.

5 As the Debt had not been paid by Mr Lin or the defendant, the claimant sought to enforce the Award in Singapore against the defendant.[4] The defendant is a Singapore citizen and the claimant avers that she has assets in Singapore.[5]

Procedural history

6 OA 1084 was an *ex parte* application. The court order granting the claimant leave to enforce the Award was granted on 20 November 2023.

7 One other material aspect of the procedural history was the defendant's application to file additional affidavits in support of her application in SUM 46. The defendant and Mr Lin had both filed affidavits on 4 January 2024 and 5 January 2024, respectively, in support of SUM 46 (respectively "ZS-1" and "LW-1"). The claimant filed his response affidavit on 30 January 2024 ("WB-2"). The defendant applied to file further affidavits in support of SUM 46 on the basis that the claimant's response affidavit had raised new issues that the defendant could not have contemplated would be raised. The Learned AR granted the defendant's application to file additional affidavits. The claimant appealed and this appeal was heard before me in HC/RA 38/2024 ("RA 38"). I dismissed the claimant's appeal and both the defendant and Mr Lin filed their second affidavits on 4 March 2024 (respectively "ZS-2" and "LW-2").

Summary of the parties' cases

8 The claimant presented his case simply. He argued that the defendant had actual notice of the Arbitration. The defendant was served with the arbitration papers by SMS as was permitted by Article 6(2) of the SCIA

[4] WB-1 at paras 13 and 22.

[5] WB-1 at para 25.

Arbitration Rules (the "SCIA Rules")[6] and receipt had been confirmed.[7] The claimant submitted that the defendant also had knowledge of the Arbitration based on representations made by counsels for the respondents in the Arbitration. According to the claimant, Ms Ye Xiaoli ("Ms Ye") had initially entered an appearance on behalf of all the respondents in the Arbitration.[8] Subsequently, a Ms Wei Jiongyi ("Ms Wei") represented the 1st, 4th, 5th and 7th respondents in the Arbitration hearing itself. The claimant's case was that Ms Wei made representations to the tribunal that were consistent with the defendant's knowledge of the Arbitration.[9] Finally, the claimant contended that he had complied with his duty of full and frank disclosure so there was no reason not to allow the Enforcement Order to stand.[10]

9 The defendant's case was that she had been residing in Singapore throughout the time of the Arbitration. She did not have notice that there were arbitration proceedings ongoing against her at the time, let alone an Award made against her.[11] The defendant had been living in Singapore with Mr Lin's and her children. Mr Lin had been residing in China although there was no evidence that the couple were estranged.[12] The phone number on which the SCIA claimed the defendant had received the Arbitration documents (the "4732 Number") was registered to Mr Lin. According to the defendant, the phone was only in her possession because it would be used by her children and her helper and she did

---

[6] Claimant's Written Submissions dated 8 April 2024 ("CWS") at para 14.

[7] WB-2 at para 18.

[8] CWS at para 61c.

[9] CWS at paras 74–76.

[10] CWS at para 86.

[11] Defendant's Written Submissions dated 9 April 2024 ("DWS") at part IV(A) and ZS-1 at para 6.

[12] ZS-2 at para 11.

not check it.[13] That being the case, she did not receive actual notice of the Arbitration through the 4732 Number. The defendant also denied she had been in contact with or had given any instructions to either Ms Ye of Ms Wei.[14] In that regard, that also demonstrates she had not received actual notice of the Arbitration. Finally, the defendant alleged that the claimant had been guilty of material non-disclosures in his *ex parte* application in OA 1084. The defendant argued that the claimant deliberately neglected to mention to the court that the defendant had not entered an appearance in the Arbitration but had in fact said that the defendant had participated in the Arbitration and the Award was made against her.[15]

Issues to be determined

10 The two issues I had to determine were:

(a) whether the defendant had proper notice of the Arbitration; and

(b) whether there had been material non-disclosures on the part of the claimant in securing the Enforcement Order in OA 1084.

Issue 1: The defendant had actual notice of the Arbitration

Proper notice and actual notice

11 The defendant sought to set aside the Enforcement Order under s 31(2)(*c*) of the IAA on the basis that she was "not given proper notice of the appointment of the arbitrator or of the arbitration proceedings".

---

[13] ZS-2 at para 11.

[14] ZS-2 at paras 12–20.

[15] DWS at para 80.

12 Kristy Tan JC, in her recent decision in *DEM v DEL and another matter* [2024] SGHC 80 ("*DEM v DEL*"), summarised the distinction between proper notice and actual notice succinctly. Although Tan JC was addressing that difference in the context of s 48(1)(*a*)(iii) of the Arbitration Act 2001 (2020 Rev Ed) ("AA"), the principles are equally applicable to s 31(2)(*c*) IAA. At [73] of *DEM v DEL,* Tan JC noted that proper notice "would be notice that is effected in accordance with the parties' contract, the AA and/or any applicable institutional arbitration rules. Actual notice is not usually necessary, but where received, will preclude any complaint of lack of proper notice."

13 *DEM v DEL* included an analysis of Roger Giles IJ's decision in *DBX and another v DBZ* [2023] SGHC(I) 18 ("*DBX v DBZ*"). Giles IJ in *DBX v DBZ* found (at [92]–[93]) that there was sufficient basis for a finding of actual notice as the arbitration documents had been sent to the registered address and functioning email addresses of one of the corporate applicant in that case, and that applicant was thus aware of the arbitral proceedings. *DBX v DBZ* involved two applicants applying to set aside Singapore seated arbitration awards. One of the applicants was a natural person and the other was a company. The issue of actual notice was only directed at the company. For the purposes of this decision, references to "applicant" will refer to that company. The registered address in that case had been provided by the applicants to the respondent in that case as part of the applicant's Client Information Statements.

14 Giles IJ had added (at [93]), with reference to Philip Jeyaretnam J's decision in *Re Shanghai Xinan Screenwall Building & Decoration Co Ltd* [2022] 5 SLR 393 ("*Shanghai Xinan*"), on the point of proper notice that generally where an address has been given in a contract, there is an inference that the address is provided to facilitate communications and in the absence of

contrary intentions, service on that address would amount to proper notice (at [32] of *Shanghai Xinan*).

The claimant's case on actual notice

The 4732 Number

15 The claimant had based his arguments on actual notice only.[16] That being the case, I will not engage with an analysis of whether deemed notice constituted proper notice.

16 The claimant's arguments on actual notice centred around his interpretation of Article 6(2) of the SCIA Rules which I set out in full:

> Unless otherwise agreed by the parties, all written documents, notices and materials in relation to the arbitration proceedings may be delivered in person or sent by mail, facsimile, electronic mail, or any other means of electronic data interchange that can provide a record or delivery, or by any other means the SCIA consider appropriate.

17 The claimant's analysis of the cases (at [12]–[14] above) is that what constitutes actual notice is context specific.[17] In the present context, Article 6(2) of the SCIA Rules only requires evidence of delivery for actual notice to be confirmed.[18]

18 Turning to the present case, the claimant pointed to the following facts to support his case that the defendant had actual notice of the Arbitration.

---

[16] CWS at para 17.

[17] CWS at para 13.

[18] CWS at para 17.

(a) The SCIA's own delivery logs show that the documents relating to the Arbitration had been delivered to the 4732 Number.[19] The SCIA delivery logs further show that certain documents that were delivered - albeit not the notice of arbitration nor the notice of hearing – had in fact been opened and read through the 4732 Number.[20]

(b) The Loan Agreement included the 4732 Number as the defendant's phone number corresponding to where her name appears on the Loan Agreement (after Mr Lin).[21] The Loan Agreement also had the defendant's and Mr Lin's thumbprints pressed between two pages of that agreement.[22]

(c) The claimant had a photocopy of the defendant's passport with her signature and the 4732 Number noted on the copy.[23] The defendant's passport number is also included in the Loan Agreement next to the defendant's name.[24]

(d) The defendant had acknowledged that the 4732 Number was physically in her care and custody in Singapore.[25]

(e) The defendant and Mr Lin had provided evidence to the Chinese police as part of the "Registration Form of Temporary Residence for Visitors" ("Visitors Registration Form") that the 4732 Number was the

[19] WB-2 at para 18.

[20] WB-2 at para 23.

[21] WB-1 at p 71 (translation at p 74)

[22] CWS at para 26.

[23] WB-2 at para 13 and p 21.

[24] WB-1 at p 71 (translation at p 74)

[25] CWS at para 42 and ZS-2 at para 11.

defendant's contact number. The defendant pointed this out in her own affidavit.[26]

The Arbitration proceedings

19 The claimant also contended that the Arbitration proceedings themselves provided clear indications to the defendant having knowledge of those proceedings.

20 The claimant noted that Ms Ye submitted a defence on behalf of all the respondents *including* the defendant.[27] He also noted that the defence raised by the respondents in the Arbitration – that of the claimant making the respondents sign blank loan contracts – was consistent with the defendant's position in this application.

21 With respect to Ms Wei, the claimant's view is that the case is even clearer. Based on the translation of the transcript of the proceedings, Ms Wei had explicitly acknowledged that the defendant had received notice of the Arbitration. When asked by the tribunal whether the defendant had "received the Notice of Arbitration", Ms Wei responded, "Yes already received it".[28]

22 To demonstrate that this was not an inadvertent statement, the claimant also pointed to another part of the transcript where Ms Wei, when asked whether the warrant to act had been received from the defendant, answered that it had yet to be received as the defendant was overseas.[29]

---

[26] ZS-1 at para 14 and p 20 (translation at p 21)

[27] CWS at paras 61–62 and WB-2 at p 149.

[28] CWS at para 72 and WB-2 at p 136.

[29] CWS at para 74 and WB-2 at p 134.

23 Even though the tribunal ultimately concluded that it could not consider the defendant's case in the absence of a warrant to act from the defendant, the claimant maintained that the representations of Ms Ye and Ms Wei were clear evidence of the defendant's knowledge of the Arbitration.

The defendant's denials on actual notice

24 The defendant vigorously refuted that she had knowledge of the Arbitration. Mr Lin also filed two affidavits in support of her application in SUM 46.

The defendant's case on the 4732 Number and the Arbitration proceedings

25 The defendant's key line of defence on the claimant's case was that the 4732 Number did not belong to her but was in fact registered to Mr Lin.[30] She claimed that she had not written the 4732 Number on the scanned copy of the defendant's passport and it was Mr Lin who had conceded he had done so.[31] The defendant also took the position that the handwriting of the signature on the passport copy is different to the handwriting used to write the 4732 Number on the same copy.[32]

26 Mr Lin explained that the 4732 Number had been put down as the defendant's telephone number in the Visitors Registration Form because the authorities in China would want the contact number included to be the contact number of the host in China and not the visitor's foreign phone number.[33] To illustrate this, Mr Lin had stated in his second affidavit that the sample visitor

[30] LW-2 at p 19.

[31] ZS-2 at para 8 and LW-2 at para 9.

[32] ZS-2 at para 8.

[33] LW-2 at paras 12 to 14.

registration form provided by the People's Government of Guangdong Province (the "Sample Form") showed the phone number for both the host and the visitor to be the same phone number.

27 The defendant also argued that there was a complete absence of evidence or discussion in the Arbitration on the 4732 Number or that it belonged to the defendant.[34] In fact, the defendant alleged that it was a mistake on the part of the SCIA to take the view that she could be contacted at the 4732 Number.[35]

28 Although the defendant conceded that the 4732 Number was with her in Singapore, she submitted that it was used by her children and her helper. It was a spare phone that she did not check. If the messages from the SCIA were read, they were likely read by her children or helper and not brought to her attention.[36]

29 The defendant sought to distinguish *DBX v DBZ* on the basis that the respondent in that case had served arbitration documents on an address explicitly provided by the applicant in that case. That address was provided in the Client Information Statement signed by the applicant's director. The defendant also noted that Giles IJ in *DBX v DBZ* (at [91]) concluded that the applicant in that case had actual notice of that arbitration because the applicants had provided "unsatisfactory evidence" of it not having received such notice.

30 Similarly, the defendant also relied on the Hong Kong Court of First Instance's decision in *OUE Lippo Healthcare Ltd v David Lim Kao Kun* [2019] HKCU 2454 ("*OUE Lippo*"). *OUE Lippo* was also a case involving the enforcement of foreign arbitral award. The applicant in that case had identified

[34] DWS at para 39.

[35] ZS-2 at para 9.

[36] ZS-2 at para 11.

two email addresses at which notice of the arbitration could be brought to the arbitral respondent's attention. These were identified in addition to the arbitral respondent's physical address. The court in *OUE Lippo* found that the arbitral respondent likely received notice of the arbitration through these two means. In that regard, the court concluded (at [88]) that the arbitral respondent did not offer any explanation as to why it did not receive the arbitration documents at those email addresses.

31 The key distinction that the defendant sought to draw with these two cases was that, in this case, she had provided ample explanation of why she did not receive notice of the arbitration through the 4732 Number.

32 The defendant's final word on the Arbitration being brought to her notice through SMS on the 4732 Number was that it was an unreliable way of serving originating process by electronic means. In that regard the defendant relied on the decision of the Learned Assistant Registrar in *Storey, David Ian Andrew v Planet Arkadia Pte Ltd and others* [2016] SGHCR 7 ("*Storey*"). The defendant concurred with the Learned Assistant Registrar's position (at [13]) that service of originating process by electronic means other than email may not be effective at bringing notice to the person being served.

33 On Ms Ye's filing of the defence on behalf of all seven respondents in the Arbitration, the defendant's case was that the tribunal was clearly aware that this was in error, bearing in mind the absence of a warrant to act from the defendant.[37] This was confirmed when the tribunal concluded that the defendant did not attend the proceedings even though she had been "legally notified".[38]

---

[37] DWS at paras 68–69

[38] WB-1 at p 63.

34 With respect to Ms Wei's positions in the Arbitration proceedings, Mr Lin clarified that Ms Wei was mistaken in her representations to the tribunal (at [21] and [22] above) and produced a signed statement from Ms Wei attesting to this.[39] Mr Lin also gave evidence that as Ms Wei did not represent the defendant, she could not have known of the defendant's status and whether the defendant had notice of the Arbitration.[40] It was thus a leap of logic for the claimant to conclude otherwise.[41]

35 Finally, the defendant relied on the Court of Appeal decision in *PT First Media TBK (formerly known as PT Broadband Multimedia TBK) v Astro Nusantara International BV and others and another appeal* [2014] 1 SLR 372 ("*Astro*") as authority for the proposition that there is a high threshold to be met for a party asserting that otherwise actionable rights have been waived (*Astro* at [202]). According to the defendant, based on this proposition, the defendant cannot be said to have waived her objection to proper notice of the Arbitration.[42]

The defendant had actual notice of the Arbitration

Evidentiary findings

36 I start with certain findings on the evidence presented and on the burden of proof.

37 The claimant had presented evidence that the defendant's fingerprint was on the Loan Agreement (above at [18(b)]). The defendant had also argued (above at [25]) that the handwriting on the copy of her passport which had been

[39] LW-2 at para 20 and Tab 5.

[40] LW-2 at paras 18–19.

[41] DWS at paras 62–64.

[42] DWS at para 76.

given to the claimant was not her handwriting. In the absence of expert testimony on fingerprints and handwriting, I was not able to make a finding on either of these points.

38 Mr Lin presented a signed statement (above at [34]) from Ms Wei that she had misspoken when she confirmed to the tribunal that the defendant had received the Notice of Arbitration. The claimant objected to the inclusion of this statement as evidence. The claimant argued that as this statement was not given in affidavit, it was not verifiable and Ms Wei was thus not able to be called as a witness for cross-examination.[43] Further, as the evidence produced is based on assertions outside the court and under the cover of Mr Lin's affidavit, the claimant argues – based on *Re X Diamond Capital Pte Ltd (Metech International Ltd. Non-party)* [2024] 3 SLR 913 (at [22]) – that this is hearsay evidence and should be inadmissible. I agreed with the claimant's submissions on this point and attached little or no weight to the statement from Ms Wei.

39 To the extent that the defendant relied on *Astro* (above at [35]) to argue that there should be a higher burden of proof when finding that proper or actual notice had been provided pursuant to s 31(2)(c) IAA, I disagreed. The waiver issue in *Astro* was specific to a waiver to object to a joinder application (*Astro* at [199]) and not on whether a party had received notice of arbitration proceedings. Further, both Tan JC in *DEM v DEL* (at [92(f)]) and Jeyaretnam J in *Shanghai Xinan* (at [33]) had rightly decided the respective notice questions in those cases on a balance of probabilities.

Decision on actual notice

40 On a balance of probabilities, I found that the defendant had actual

[43] CWS at paras 82–83.

notice of the Arbitration.

41 The claimant's evidence was sufficiently cogent and consistent for me to accept his case. The claimant had obtained the defendant's contact number (the 4732 Number) from Mr Lin. This number was written on both the Loan Agreement and the copy of the defendant's passport (above at [18(b)] and [18(c)]). It did not matter that the 4732 Number was registered to Mr Lin as this was not definitive of whether the defendant had received actual notice of the Arbitration. At best, this fact only created a rebuttable presumption as to whether the defendant had actual notice of the Arbitration. I found that she had such actual notice. The 4732 Number was in the defendant's custody and control (above at [18(d)]). The defendant's own affidavit had shown that the 4732 Number was her telephone number in her Visitor Registration Form with the Chinese Authorities (above at[18(e)]).

42 The SCIA logs showed that the Arbitration documents were all sent and received by the 4732 Number (above at [18(a)]). Even if I accept that the defendant only became aware of the Arbitration when the later documents in the Arbitration were sent to her and read on the 4732 Number (such as the Letter of Absence from Hearing[44]) on 1 December 2021, this was still almost two months before the Award was issued on 21 January 2022. There was ample opportunity for the defendant to raise objections as to findings of her having been "legally notified" of the Arbitration (above at [33]).

43 In that regard, I did not agree with the claimant's position (above at [17]) that Article 6(2) of the SCIA Rules only requires evidence of delivery for actual notice to be confirmed. The claimant seemed to have relied on his reading of

[44] WB-2 at para 23.

Giles IJ's judgment in *DBX v DBZ* (at [93]) that delivery to a registered mailing address and a functioning email address was sufficient basis to demonstrate actual notice. Reading paragraph [93] from *DBX v DBZ* more closely, I noted that Giles IJ had in fact said that delivery to a registered mailing address and a functioning email address was "[*a*] sufficient basis … " [emphasis added] for his finding and not the only basis. Further, reading the preceding paragraph [92] of *DBX v DBZ*, Giles IJ had specifically stated that he was satisfied that actual notice was provided because the arbitral respondent was "well aware of the arbitral proceedings and had full opportunity to present their case". That being the case, I did not agree that a finding of actual notice only requires evidence of the act of delivery, but also evidence that the arbitral respondent had received and was aware of the arbitration in question. As noted at [41] and [42] above, I found that she had such actual notice.

44 Turning to the submissions by Ms Ye and Ms Wei in the Arbitration, I could not concur with the claimant's case and conclude that the defendant had entered an appearance and taken part in the proceedings (above at [8]). The tribunal had clearly noted that there was no warrant to act from the defendant in the proceedings (above at [33]). Whilst this precluded Ms Ye and Ms Wei from entering an appearance and a defence on the defendant's part, I do not see why they should preclude me from considering the statements made by Ms Wei in the proceedings. As noted by the claimant (above at [21]), Ms Wei clearly acknowledged (as noted in the transcript) that the defendant had received the Notice of Arbitration. Ms Wei's further acknowledgement that the defendant was abroad and Ms Wei was waiting for the defendant's warrant to act (above at [22]) lends greater support that Ms Wei's statement, of the defendant having received the Notice of Arbitration, was not an isolated one. These submissions by Ms Wei on their own were not sufficient to demonstrate actual notice. However, they corroborated the claimant's case of actual notice. That being the

case and having looked at the claimant's evidence in totality, I found that the claimant had made out the case that the defendant had actual notice of the Arbitration.

45 Conversely, I found the evidence given on behalf of the defendant to be inconsistent and contradictory. The defendant's denials that she had notice of the Arbitration through the 4732 Number were bare (above at [25]) but she relied on Mr Lin to provide some colour to her assertions. The defendant and Mr Lin were both given an opportunity to file second affidavits to bolster the defendant's case (above at [7]). The evidence provided on behalf of the defendant ultimately did not help her case.

46 After the defendant conceded in her first affidavit that she had provided the 4732 Number to Chinese authorities in her Visitor Registration Form (above at [18(e)]), Mr Lin attempted to explain in his second affidavit that this was meant to be the phone number for the visitor's host in China and not the visitor's own phone number. I found this explanation convoluted and difficult to follow. The Sample Form used by Mr Lin to explain this[45] was clearly a different form to the one disclosed in the defendant's first affidavit. Amongst other things, the latter form did not have separate spaces for the host's information. Further, if the Chinese authorities wanted only one phone number (the host's phone number), it was not explained why there were separate spaces for the visitor's phone number and the host's phone number. The fact that the Sample Form had the same (sample) phone number filled for both spaces did not hold much sway for me as it was a sample. Finally, if the phone number inserted into the defendant's Visitor Registration Form was supposed to be the host's phone number, it was also not explained why the 4732 Number was used and not Mr

[45] LW-2 at pp 38–39.

Lin's other phone number. The evidence points to that latter number as the number Mr Lin had been regularly using, bearing in mind it appeared first on the Loan Agreement and the 4732 Number was used by the children. This was not explained by Mr Lin or the defendant.

47 Mr Lin also explained that he did not want the defendant to be involved with the loan as it was for his own business and the defendant's role was to look after the children.[46] This was inconsistent with the fact that Mr Lin left the 4732 Number with the defendant when he went back to China[47] after previously having written the 4732 Number on the copy of the defendant's passport which he gave to the claimant.[48] It was thus open for the claimant to contact the defendant on this number if there was a default on the Loan Agreement.

48 Still on the 4732 Number, the defendant submitted[49] that there was an absence of evidence or finding on the 4732 Number in the Arbitration regarding that number being a reasonable why in which the defendant could be contacted. The assumption is that the claimant must have presented this number to the tribunal as the defendant's phone number otherwise SCIA would not have known to contact her there. There was no denial or attempt by Mr Lin in the Arbitration to convince the tribunal that the 4732 Number did not belong to the defendant. Mr Lin insisted that he did not want the defendant to be contacted for something that was his own business (above at [47]). Mr Lin and the defendant then did not explain why Mr Lin did not do all that he could in the Arbitration to ensure that the defendant was not contacted when he had: (a)

[46] LW-1 at para 22 and LW-2 at para 10.

[47] LW-2 at para 15.

[48] LW-2 at para 9.

[49] DWS at para 39.

provided the 4732 Number as the defendant's contact number in the passport copy given to the claimant; and (b) left the 4732 Number with the defendant in Singapore.

49 The defendant said that the 4732 Number was mistakenly used by SCIA in contacting her.[50] Even if Mr Lin was not aware that the SCIA used the 4732 Number to contact the defendant during the Arbitration, he would have known when the Award was issued (see Section (V) of the Award[51]). Mr Lin did not challenge the Award at the time or to clarify with the tribunal how it concluded that the defendant had been legally served. If Mr Lin wanted to ensure that the defendant was not disturbed as he now claims (above at [47] and [48]), he should have challenged the Award at the time rather than wait for an enforcement action. I made the same observation with respect to Ms Wei's recent statement (above at [38]). Although I have noted (above [38]) that I attached little or no weight to that statement, it was an implausible statement to make some two and a half years after the Arbitration. If the correction was to have any persuasive effect, it would have been made during the Arbitration, when or soon after the Award was made.

50 It was not for the defendant to say now that these were all Mr Lin's actions and they distracted from her case that she did not have notice of the Arbitration. The defendant and Mr Lin's cases were joined at the hip. They had communicated, coordinated and filed affidavits together in OA 1084. They cannot now disown that. The defendant pointed out at [31] above that actual notice had been established in *DBX v DBZ* and *OUE Lippo* because the arbitral respondents in those cases had failed to properly answer the inference as to why

[50] ZS-2 at para 9.

[51] WB-1 at p 63.

they did not receive notice of documents that had been sent to a contact point that had been identified as contact points for those respondents. I reached a similar conclusion in this case. The 4732 Number was a contact point for the defendant. The SCIA logs had shown that the 4732 Number had received (and in some cases) opened and read the arbitration documents. The defendant's and Mr Lin's failed to properly answer why they claim the defendant did not received and become aware of the Arbitration.

51 I also did not accept the defendant's evidence that the 4732 Number was used by her children and helper so she did not check it. If a phone was being used by her young children and a helper whilst in her custody, as a parent, there would be more reason for her to check the phone regularly to ensure that there were no untoward calls or messages received. What was even more egregious was Mr Lin's assertion that he left the 4732 Number in Singapore so that the children could use it to play and do their homework.[52] Mr Lin did this knowing that this was a number on which creditors would call or leave messages.

52 Finally, I considered the defendant's reliance on the Learned Assistant Registrar's decision in *Storey* (above at [32]) stating the unreliability of electronic communications other than email. The defendant attempted to draw rough parallels between: (a) a finding of proper notice pursuant to s 31(2)(c) IAA by this court as the enforcement court; and (b) this court's own rules for service of originating process. Other than to say that both concepts involve notice of proceedings, the defendant did not elaborate further on why or how that parallel should be drawn bearing in mind the difference in provenance of the two concepts. The defendant has not convinced me in that regard. Moreover, in *Storey*, the Learned Assistant Registrar noted that the fear, of the

[52] LW-2 at para 15.

ineffectiveness of electronic means at bringing notice, "should not be overblown" and that such risks can be curtailed by certain court-imposed requirements, such as proof that the electronic method relied on was recently used by the person to be served (at [13]–[14]). In any event, the decision in *Storey* was more than eight years' ago. Since then, the Supreme Court Practice Directions 2021 have shown that substituted service by email and *other internet electronic means* is permitted (at para 65(3)). Service by push notifications on Singpass is also permitted (Media Release: New electronic option to effect substituted service of court documents for civil proceedings <https://www.judiciary.gov.sg/news-and-resources/news/news-details/media-release-new-electronic-option-to-effect-substituted-service-of-court-documents-for-civil-proceedings> (17 August 2022) at paras 1–4 and 7–8). Just as we have moved from communications by postal mail to faxes and then to email, so we should also be prepared to consider communications beyond email. Many jurisdictions have already done so with short messaging services displacing email as the main form of business communications. We should not fail to recognise this.

53 Consistent with *DBX v DBZ* (above at [13]), I found that the 4732 Number was a number that had been provided to the claimant for the purposes of contacting the defendant. I also found that the defendant had indeed been contacted on the 4732 Number, had actual notice of the Arbitration and chose to ignore it.

Issue 2: There had been no material non-disclosures on the part of the claimant

Duty of full and frank disclosure

54 The law on material non-disclosure in *ex parte* applications is well

established. An applicant must disclose to the court all matters within its knowledge even if they are prejudicial to its case (*The "Vasiliy Golovin"* [2008] 4 SLR(R) 994 ("*The Vasiliy Golovin*") at [83]). V K Rajah JA, delivering the judgment of the Court of Appeal in *The Vasiliy Golovin*, went on to say (at [84]) that the courts "will often apply the principle of proportionality in assessing the sin of omission against the impact of such default" so the court must assess the material facts and the circumstances in which the application was made. V K Rajah JA went on to say (at [94]) that it was also relevant how the material facts were presented to the court. These facts should be drawn to the courts attention rather than left in voluminous exhibits for the court to distil.

55 *The Vasiliy Golovin* was most recently affirmed in *The Republic of India v Deutsche Telekom AG* [2024] 1 SLR 56 ("*Deutsche Telekom*"). The Court of Appeal in *Deutsche Telekom* referred to *The Vasiliy Golovin* when making the point that the duty of full and frank disclosure "arises as a matter of common sense … and the application of the rule depends on an assessment of all the facts and circumstances in the case" (at [182]).

56 The defendant drew my attention to *Bahtera Offshore (M) Sdn Bhd v Sim Kok Beng and another* [2009] 4 SLR(R) 365 ("*Bahtera*"). The defendant stressed that Chan Seng Onn J in the *Bahtera* (at [20]) had pointed out the importance of the applicant addressing defences that the defendants are likely to raise against an application if that defendant was present.

The claimant's case for lowering the duty of full and frank disclosure in cases for enforcing foreign arbitral awards

57 I considered first one of the claimant's alternative arguments on full and frank disclosure in *ex parte* applications.

58 The claimant pointed to the Court of Appeal's decision in *Cupid Jewels Pte Ltd v Orchard Central Pte Ltd and another appeal* [2014] 2 SLR 156 ("*Cupid Jewels*") as authority for its proposition that the duty of full and frank disclosure should be moderated in cases involving the enforcement of foreign arbitral awards.[53] The Court of Appeal in *Cupid Jewels* (at [29]) limited the landlord's duty to disclose facts in applications for distress. The court reasoned that this struck a balance between the adequate protection for tenants on the one hand and the landlord's right to a straightforward remedy available under the law. The claimant drew parallels between a landlord's position in a distress context and an applicant seeking to enforce a foreign arbitral award on the basis that both were enforcement applications. The claimant's case was that an applicant in the latter case should also not be unduly burdened by the same onerous duties of full and frank disclosure as are typical in *ex parte* applications.[54]

59 I disagreed with the claimant. There is no authority for his proposition that the standard of full and frank disclosure should be lowered in cases involving the enforcement of foreign arbitral awards. The claimant himself brought the *Deutsche Telekom* case to my attention as a recent statement of full and frank disclosure[55] in the enforcement of foreign arbitral proceedings, but there was no mention in that case of the lowering of the standard of full and frank disclosure on applicants. Further, *Cupid Jewels* was clearly decided on a basis specific to that case. V K Rajah JA, in delivering the decision of the Court of Appeal, considered (at [28] and [29]) the rationale behind the approach to moderate disclosure requirements in distress applications. One such rationale

[53] CWS at para 92.

[54] CWS at para 93.

[55] CWS at para 88.

arose from the fact that distress originated as a self-help remedy for landlords and, coupled with the commonality of routine distress applications, the moderation approach in *Cupid Jewels* was a fair and logical one. An application for the enforcement of foreign arbitral awards has little in common with distress applications so the claimant's attempts at drawing that parallel was rejected.

60 The duty of full and frank disclosure in *ex parte* applications is not a duty that should be taken lightly. I made my decision on this issue with that context in mind.

There was no non-disclosure of material facts

61 The defendant focussed on one point in the claimant's first affidavit as evidence of material non-disclosure. I set out paragraph 17 of that affidavit in full:

> The Shenzhen Court of International Arbitration accepted my application. Mr Lin, Ms Zhong and five other entities all participated in the arbitration proceeding.

62 The defendant's case was that this statement was misleading in that Ms Zhong had not participated in the Arbitration. Her defence was that she was not aware of the Arbitration. By failing to disclose this to the court as part of the *ex parte* application in OA 1084, the claimant was in breach of his duties of full and frank disclosure.[56] The claimant only addressed the defendant's absence from the arbitration in his second affidavit, after the defendant had raised her lack of awareness of the Arbitration.

63 I found that the reality was more nuanced. As the claimant pointed out, the full text of the Award was attached to the claimant's first affidavit. The

[56] DWS at para 80.

translated version of the Award – at 27 pages – was not long. The tribunal's decision on the defendant's status in the Arbitration was plain at Section (V) of the Award is as follows:[57]

> "The second respondent failed to appear in court without justifiable reason after being legally notified, and did not submit any written defence statement or evidence. Hence, the second respondent was deemed to have waived the right to defend [her]self, and should bear the legal consequences arising thereform"

64 In hindsight, the claimant should have been clearer in his statement in paragraph 17 of his first affidavit. The word "participated" is ambiguous in the context of Section (V) of the Award. On the one hand, there was no evidence that being "legally notified" of the Arbitration under the auspices of the SCIA is synonymous with actual participation in the Arbitration. On the other hand, the tribunal also noted that the defendant failed to appear "without justifiable reason after being legally notified" and was "deemed to have waived" her rights, indicating tacit participation. In our court system, the tribunal's decision in Section (V) of the award is the equivalent of a judgment in default of appearance. I would be hard pressed to say that a defendant against whom default judgment has been entered participated in our court process. However, and for the reasons I have stated in this paragraph, it was not possible to make a definitive parallel between default judgment in our court system and the tribunal's position in Section (V) of the award. It was for that reason why I categorised the reference to "participated" in paragraph 17 of the claimant's first affidavit as ambiguous.

65 Turning to the argument that the claimant should have made known to the court that the defendant was going to raise a defence of not having proper

[57] WB-1 at p 63.

notice of the Arbitration. I disagreed with the defendant's arguments on this point. Again, with hindsight, the claimant could indeed have raised this issue as part of his duties of full and frank disclosure. However, putting myself in the claimant's shoes at the time, I do not concur with the defendant's analysis. Based on the claimant's case (above at [18(b)] and [18(c)]), he had a signed loan agreement and a copy of the defendant's passport, with both documents containing with the defendant's contact number (4732 Number). The SCIA had successfully served the Arbitration documents on the defendant (above at [18(a)]). Her husband, Mr Lin, had entered an appearance and was challenging the Arbitration and there were statements from the lawyers representing certain respondents in the arbitration (including Mr Lin) that they were also representing the defendant (above at [20] and [21]). With this information at hand, the claimant could reasonably conclude that the defendant would not be raising a defence of her not having proper notice of the Arbitration.

66 Based on my findings at [64]–[65] above, I found that the non-disclosures were inadvertent as the claimant had failed to perceive its relevance to the *ex parte* application in OA 1084 (*Bahtera* at [27]). Specifically with respect to [64] above, I found that the claimant's statement at paragraph 17 of his first affidavit was lazy but without deliberate deceptive intent.

67 I also noted the claimant's argument that these non-disclosures would not have made a difference to the *ex parte* application in OA 1084.[58] According to the claimant, even if the court had known that the defendant had not actively participated in the Arbitration and may raise a defence of not having proper notice of the proceedings, the Enforcement Order would still have been granted. In the circumstances of this case, I agreed with this conclusion. In that regard,

[58] CWS at para 95

whilst these omissions were non-disclosures, I did not find them to be material to OA 1084. Even if they were material, they were not sufficiently serious to the merits (*Bahtera* at [26]) of the *ex parte* application in OA 1084 to warrant the overturning of the Enforcement Order.

68 In summary, whilst the failure to specifically highlight Section (V) of the Award and the defendant's possible defence of not having proper notice of the Arbitration were non-disclosures, I did not find that they were material (above at [67]). Considering all the facts and circumstances in the application (including my finding at [66]), the claimant did not fall short of his duty of full and frank disclosure.

Conclusion

69 I dismissed the defendant's application in SUM 46.

70 The claimant's submitted that they were entitled to indemnity costs on the basis that:

(a) An alternative dispute resolution offer ("ADR Offer") had been made pursuant to O. 5, r. 1 of the Rules of Court 2021 (2020 Rev Ed).[59] The claimant's ADR offer was for the defendant to make full payment under the Enforcement Order without further interest, legal costs and disbursements after 5 February 2024.[60]

(b) The defendant had acted, dishonestly, in bad faith and for improper purposes in its application in SUM 46.[61]

---

[59] Claimant's Written Costs Submissions dated 20 May 2024 (CWCS) at Part II.

[60] CWCS at para 9.

[61] CWCS at Part III,

71 I agreed with the defendant's position that the ADR offer was not a reasonable or serious offer.[62] The ADR Offer was made on the same day that the claimant filed his second affidavit, before the defendant considered her own additional affidavit and was only open for 14 days. The ADR Offer (as noted at [70(a)] above) did not contain a sufficient element of compromise which could induce a settlement.

72 With respect to the defendant's conduct in SUM 46, I did not find that the defendant's had acted in such a way as to breach the high threshold of ordering indemnity costs. The defendant brought a narrow case for setting aside the Enforcement Order and its approach and arguments were not implausible or unreasonable.

73 For SUM 46, I ordered costs on a standard basis in favour of the claimant in the amount of $20,000 plus disbursements of $3,000.

Wong Li Kok Alex
Judicial Commissioner

Shaun Wong, Lim Shu Yi and Liu Jiayi (Shaun Wong LLC) for the claimant;
Jill Ann Koh Ying (Xu Ying) and Ron Koo Jin Rong (WongPartnership LLP) for the defendant;

[62] Defendant's Written Costs Submissions dated 31 May 2024.