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

[2024] SGHC 89

Suit No 695 of 2019

Between

Powercom Co, Ltd

… *Plaintiff*

And

Sunpower Semiconductor Limited

… *Defendant*

JUDGMENT

[Conflict of Laws — Enforcement — Foreign award]

Powercom Co, Ltd
v
Sunpower Semiconductor Ltd

[2024] SGHC 89

General Division of the High Court — Suit No 695 of 2019
Choo Han Teck J
20 February; 20 March 2024

27 March 2024 Judgment reserved.

Choo Han Teck J:

1 The plaintiff and defendant are Taiwanese-incorporated companies. The plaintiff sold 6-inch multi-solar cells and two photovoltaic inverters to the defendant, but the defendant did not make full payment. The plaintiff commenced legal action in the Taiwan Taipei District Court to recover the outstanding amounts and obtained judgment against the Defendant on 7 June 2013 ("DC Judgment"), for USD923,454.47 with interest at 5% per annum from 8 May 2012 to the date of payment.

2 The defendant appealed to the Taiwan High Court, which dismissed the appeal and issued its judgment on or about 23 September 2014 ("HC Judgment"). The defendant then appealed to the Taiwan Supreme Court against the HC Judgment. The Taiwan Supreme Court dismissed the appeal and issued its judgment on or about 18 May 2016. The present suit was filed on 11 July 2019 to enforce the DC Judgment as a foreign judgment, in Singapore.

To enforce a foreign judgment, the judgment must be final and conclusive as between the parties.

3 Counsel for the defendant, Mr K Muralitherapany, who was the defendant's 7th set of solicitors, submits that the plaintiff's claim to enforce the DC judgment is time-barred based on the 6-year limitation period as provided under s 6(1)(a) of the Limitation Act 1959 (2020 Rev Ed) ("LA"). He argues that the cause of action accrued from 7 June 2013, the date on which the DC Judgment was rendered, and the present action was filed on 11 July 2019. Mr Muralitherapany submits that the DC Judgment was final and conclusive, and therefore enforceable, as of 7 June 2013.

4 Counsel for the plaintiff, Mr Subir Grewal, submits that the cause of action, arising from the DC judgment, only accrued when the Taiwan Supreme Court gave its judgment on 18 May 2016. This is because the DC Judgment only became final and conclusive after the Taiwan Supreme Court rendered judgment.

5 The only issue before me is when the DC Judgment was considered final and conclusive, that is, it must be regarded as *res judicata*, or a final determination of the rights of the parties. The courts have made it clear that in determining whether a foreign judgment is final and conclusive, it is necessary to refer to the foreign law and assess whether the foreign court rendering the judgment would regard it as final and conclusive. At trial, both parties adduced expert evidence on Taiwan law in support of their positions.

6 The experts for both parties were largely in agreement on the Taiwan law. They said that the legal term "conclusive" does not appear in the translation of Taiwan law, and were thus unable to provide evidence on what "conclusive",

as conceived under Singapore law, means under Taiwan law. However, they explained, and agreed, that a "final" judgment means the end of the matter at that level of proceedings. Thus, the DC Judgment was a "final" judgment on 7 June 2013, as it cannot be varied or altered by the Taiwan Taipei District Court. The only avenue to vary the DC Judgment was to appeal.

7 The experts also explained that, under Taiwan law, the DC judgment became "binding" after the avenues of appeal up to the Taiwan Supreme Court were exhausted. They agreed that the DC Judgment became "binding", under Taiwan law, after the Taiwan Supreme Court issued its judgment on 18 May 2016. The effect of a "final and binding" judgment was that it is deemed to be *res judicata*, as provided under Article 400 of the Taiwan Code of Civil Procedure. Thus, in the present case, *res judicata* only applied to the DC Judgment after 18 May 2016. This was consistent across both parties' experts.

8 Mr Muralitherapany argues that whether the foreign judgment is *res judicata* between parties as required under Singapore law, depends on whether the matter was *res judicata* between parties at that particular court, namely, the Taiwan Taipei District Court. In other words, if the foreign judgment could not be varied, reopened, or set aside by the court that delivered it, then that would be sufficient to meet the requirements of "final and conclusive" under Singapore law. And, relying on the experts' evidence, counsel submits that it is undisputed that the District Court cannot alter or vary the DC judgment that it rendered on 7 June 2013 as "it is the end of the matter at that [court] level". Thus, the DC Judgment ought to be deemed final and conclusive, as conceived under Singapore law, on 7 June 2013.

9 Mr Grewal's case is that given that *res judicata*, under Taiwan law, only applies to the DC Judgment after the Taiwan Supreme Court rendered judgment, the DC Judgment ought to be deemed final and conclusive under Singapore law after 18 May 2016. I accept Mr Grewal's submission. In my view, "final and conclusive" in the present case must mean *res judicata* after the appeals have been determined, and not *res judicata* at the court of first instance.

10 It is a fundamental principle of law and justice that a successful claimant must be allowed to enforce a judgment obtained in his favour. All the more so where, as in this case, the claimant had succeeded not once or twice, but thrice. The defendant here appealed, unsuccessfully, twice. It now lies ill in the defendant's mouth to claim that the plaintiff is time-barred from enforcing the judgment, because the defendant itself prolonged the day of reckoning of its own volition.

11 It is clear that the courts have consistently expressed the view that the test of finality only requires that the judgment be final and conclusive in the particular court in which it was pronounced, and the fact that the judgment may be altered or varied on appeal would not render it any less final or conclusive. (*Bellezza Club Japan Co Ltd v Matsumura Akihiko and others* [2010] 3 SLR 342 at [16]) A judgment is final and conclusive on the merits if it is one which cannot be varied, re-opened or set aside by the court that delivered it (*The Bunga Melati 5* [2012] 4 SLR 546 at [81]). At first blush, this principle applies in favour of the defendant. However, it is equally clear that the equities of the case weigh against the defendant.

12 The concept behind the finality and conclusiveness of a judgment is to prevent the losing party from filing unmeritorious appeals or causing unjust delay to the prevailing party's enforcement of rights under the judgment in its

favour. (*Sang Cheol Woo v Spackman, Charles Choi and others* [2022] SGHC 298 at [44]) Thus, it is sensible to deem the foreign judgment as final and conclusive, even if it is subject to appeal, to allow the prevailing party to commence its enforcement applications. Otherwise, the losing party can rely on the availability of appeal to defend and unnecessarily delay enforcement proceedings, subject of course to the stipulated window of appeal.

13 However, in the present case where the losing party had, in fact, exercised its right to appeal, at multiple instances, it is inappropriate to hold that "final and conclusive" refers to *res judicata* before the appeals were determined. It is cynical for the defendant to claim that the DC judgment is final and conclusive while treating it as plainly the opposite, by appealing against the same. Where appeals are pending determination, the matter has not been put to rest until the outcomes of the appeals have been determined. Therefore, in these situations, the judgment would be final and conclusive only after the appeals had been determined. It would be absurd to allow the losing party to appeal against the first instance judgment, and also argue in the same breath that the first instance judgment is deemed final and conclusive such that the cause of action to enforce that judgment has accrued. To hold thus is an open invitation to a defaulting party to mount appeal after appeal merely to let the time limitation run its course. Indeed, in all these instances it is the duty of the court to prevent abuse of process.

14 In the same vein, where the party who had lost, files appeals, unsuccessfully, against the judgment, the prevailing party must be entitled to enforce the judgment. Where enforcement proceedings have commenced and an appeal against the foreign judgment is pending determination, the court is also entitled to stay the enforcement proceedings pending the outcome of the appeal, ensuring that neither party is prejudiced. This latter form is more

appropriate where the enforcement is sought within the jurisdiction in which the judgment was obtained. In the present case, the foreign law and procedure does not allow the judgment that the plaintiff had obtained, to be binding until the end of the appeal process.

15 Accordingly, I find that the DC Judgment was only final and conclusive after 18 May 2016, and that the plaintiff's claim is therefore not time-barred under s 6(1)(a) LA. Judgment shall be entered in favour of the plaintiff to enforce the DC Judgment against the defendant. In the circumstances, I award costs to be paid by the defendant to the plaintiff, to be taxed, if not agreed. Alternatively, counsel may submit costs to me within seven days and I will fix the costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Subir Grewal and Wan Chi Kit (Aequitas Law LLP) for the plaintiff;
K Muralitherapany and Jolene Tan Shi Yun (Joseph Tan Jude Benny LLP) for the defendant.