

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 262

OS 880/1999

Between

Fortune Hong Kong Trading
Ltd

... Plaintiff

And

Cosco-Feoso (Singapore) Pte
Ltd

... Defendant

GROUND OF DECISION

Civil Procedure — Service

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**Fortune Hong Kong Trading Ltd v Cosco-Feoso (Singapore)
Pte Ltd**

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Choo Han Teck JC
06 October 1999

1 : The plaintiff is a Hong Kong company carrying on the business of trade financing. The defendant is a Singapore company dealing in gas oil. In August 1997 the defendant sold a cargo of gas oil to a company called Pacific Fond who arranged for a letter of credit to be opened by the plaintiff in payment of the cargo. Delivery was to be made against presentation of the bill of lading. The plaintiff, however, accepted a letter of indemnity in lieu of the bill of lading. The cargo was eventually discharged to a third party. In the meantime, the defendant obtained payment of about US\$915,000 under the letter of credit. On 30 July 1998 the plaintiff issued a writ of summons against the defendant out of the Admiralty and Commercial Court in the High Court of England and Wales for breach of contract. The plaintiff also obtained leave to serve the writ out of jurisdiction against the defendant. A concurrent writ was issued on 3 September 1998. The plaintiff's solicitors in Singapore were instructed to serve the concurrent writ on the defendant. This was done by the solicitors by way of leaving a copy of the writ at the defendant's premises in Singapore. Such service would have been proper and valid had the writ been issued in Singapore.

2 The defendant applied to the English High Court to set aside the writ on the ground of irregular service, namely, the failure to comply with O 65 of the Singapore Rules of Court. The matter came up for hearing before the learned Thomas J. It seems that counsel appearing before the learned judge in England were unable to gather sufficient material to assist the court in determining the issue. The matter was adjourned for the parties to proceed with an alternative approach, that is, for the issue to be determined by the Singapore court. Consequently, the plaintiff applied by way of this summons for a declaration that service was properly effected. As it transpired, counsel before me were unable to produce any fresh material, or argument, and thus the only advantage I have over the Honourable Justice Thomas lies in the confidence of interpreting a local statutory provision on home ground.

3 The submission of Mr Kwek for the plaintiff is that on a literal reading of O 65 r 2(1) itself does not apply unless there has been a request by letter from the foreign tribunal for service of the foreign writ on a Singapore defendant. The relevant provision reads as follows:

*This Rule applies in relation to any process required in connection with civil proceedings pending before a court or other tribunal of a foreign country **where a letter of request from such a tribunal requesting service on a person in Singapore of any such process sent with the letter is received by the Minister** and is sent by him to the Supreme Court with an intimation that it is desirable that effect should be given to the request. [Emphasis mine.]*

4 It is to be noted that O 65 is entitled 'Service of Foreign Process' and sets out two procedures for effecting service of a foreign process. The first is under r 2 and the second under r 3, which deals with service of a foreign process in which there subsists a Civil Procedure Convention between the foreign country and Singapore concerning the service of such process. Rule 3 is,

therefore, irrelevant to the present case. There is no other statutory provision governing the service of foreign process other than O 65. Mr Kwek submitted that no request was made by the English court to the Minister here and, therefore, O 65 r 2 is of no application. He concluded that since r 3 also does not apply, the plaintiff was right in effecting service of the English writ on the defendant here as if it was a local writ. He says that this has been the practice of the solicitors and no challenge has ever been made against it. He was, however, unable to refer to any authority which expressly endorsed the practice. I should also note at this point that there is no question of waiver or estoppel in the present case before me.

5 Mr Kwek draws support for his main argument from the Malaysian decision of **United Overseas Bank Ltd v Wong Hai Ong** [1999] 1 MLJ 474 in which the learned judge Chin J was quoted as saying, ‘Order 65 does not cover cases where there is no letter of request from a foreign tribunal.’ However, he urged me to take a different view of that other part of the learned judge’s decision in which he held that the provisions under the Rules must be observed, and ‘other methods of service will not be allowed since it amounts to the exercise of the jurisdiction of the Singapore Courts in Malaysia.’

6 Order 65 is similar to the English O 69. The editors of the 1999 edition of the **White Book** makes the following comment: ‘It equates the method of service of foreign process for requests received by the Senior Master for such service emanating from a non-convention country through the Secretary of State for Foreign and Commonwealth Affairs ...’ This is a significant departure from their previous view that O 69 applies only when a letter of request from a foreign tribunal is received (see the 1979 edition). In my view, O 65 r 2(1) should not be read literally. It is a provision which involves the service of a foreign process,

and, understandably, any rule which sets out directions as to how a foreign process may be served in this country is likely to be phrased diplomatically. Thus, rather than bluntly directing that a foreign tribunal shall send a letter of request through the Minister in Singapore, in order to effect service of process emanating from that tribunal, O 65 is worded in a way in which the method of serving a foreign process is `equated` with the letter of request. If Mr Kwek is right, then the Rules Committees here and in England must have overlooked an obvious situation, thus creating an unintended lacuna. I think that such oversight is most unlikely. I find, therefore, that there being no other provision regulating the service of a foreign process in Singapore other than O 65, it follows that O 65 r 2(1) sets out the applicable procedure to be followed.

7 It remains for me to consider Mr Kwek`s contention that service by an agent direct is good service by reason of the practice of the solicitors here. There is no evidence before me of such practice, let alone a practice approved by the courts. Order 65 is a direct statutory procedural rule. In our adversarial system of justice, the rules of court are the rules of engagement, adherence to which is what differentiates a boxing match from a street fight. I note counsel`s point that the ruling by Chin J has caused problems to foreign plaintiffs because it prohibits the use of the more efficient agent direct in serving process on a Malaysian defendant. In this regard, I can say that this is not at all a problem in Singapore. The Registrar (the equivalent of the Senior Master in England) here sees to it that within two weeks of request the registry will make the requisite three attempts at service before the plaintiff may apply for substituted service. In my view, therefore, service in Singapore via O 65 is probably as efficient as service by an agent direct, if not more so.

8 I note also Mr Kwek's concern that any interpretation of O 65 as applying to all non-convention foreign process may lead to a conflict with English law which he says no longer requires service of its process out of jurisdiction by way of a letter of request to the Minister of the foreign state, but by way of an agent direct. I am not convinced that that is the law in England, but I may have to defer to the English court on this point. In any event, it is possible that the rules of one country governing the service of foreign process may differ from the rules of the foreign country regulating the issue of its process out of jurisdiction, but I do not think that this necessarily creates an insurmountable obstacle to a foreign plaintiff. For example, our O 11 r 4(2)(c), which permits service of a Singapore writ overseas by a method authorised by that country for service of any originating process issued by that country, has now been somewhat diluted by Chin J's ruling, but nonetheless, I think that our Rules of Court are sufficiently wide and flexible to meet the Malaysian procedural requirements in respect of service of foreign process.

9 For the reasons above, I hold that service of a foreign process in Singapore must comply with O 65 and insofar as the plaintiff failed to do so, the writ of summons in Action No 198 Folio 956 issued out of the Admiralty and Commercial registry of the High Court of England and Wales on 30 July 1998 was not validly served on the defendant in Singapore. Costs to follow the event.

10 **Outcome:**

11 Order accordingly.

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262

Choo Han Teck JC

Winston Kwek Choon Lin (Colin Ng & Partners) for the plaintiff
Daniel Goh Choon Wah (Ang & Partners) for the defendant
