Alberto Justo Rodriguez Licea and others *v* Curacao Drydock Co, Inc [2015] SGHC 136

Case Number : Suit No 643 of 2013 (Registrar's Appeal No 3 of 2015)

Decision Date : 21 May 2015

Tribunal/Court : High Court

Coram : Lee Seiu Kin J

Counsel Name(s) : Sim Chong (JLC Advisors LLP) for the plaintiff; Syn Kok Kay (Patrick Chin Syn & Co) for the defendant.

Parties : Alberto Justo Rodriguez Licea and others — Curacao Drydock Co, Inc

Conflict of Laws – Foreign Judgments – Enforcement

Civil Procedure – Foreign Judgments

21 May 2015

Lee Seiu Kin J:

Introduction

1 This is an appeal brought by Curacao Drydock Company, Inc ("Curacao") against the decision of the assistant registrar ("the AR") below in summons no 5365 of 2014 ("SUM 5365") where the AR dismissed its application to set aside a judgment obtained by the plaintiffs in default of its appearance and to strike out the plaintiffs' statement of claim ("SOC").

2 I dismissed the appeal and awarded costs to the plaintiffs fixed at $6,000 (inclusive of disbursements). I now give my reasons.

Background

Parties

3 The defendant is a dry-dock company registered in Curacao. The plaintiffs are Cuban workers who were found to be victims of a forced labour scheme instituted by the defendant company.

Proceedings in the United States [note: 1]

4 Sometime in August 2006, the plaintiffs commenced proceedings against the defendant in the United States District Court for the Southern District of Florida, Miami Division, ("the US Court") seeking compensatory and punitive damages for physical and psychological injuries suffered under a forced labour scheme ("the US Action") instituted by the defendant. These claims were founded on the Alien Tort Statute 28 U.S.C. § 1350 (2000) and the Racketeer Influenced and Corrupt Organizations Act 18 U.S.C. § 1962(b) (2000) ("RICO").

5 On 13 March 2007, the defendant filed a motion to challenge the suit on the basis that the US Court lacked personal jurisdiction and in the alternative, that the United States was *forum non conveniens*. The defendant subsequently withdrew its jurisdictional challenge, leaving *forum non*

conveniens as the only challenge. The *forum non conveniens* argument was eventually heard and rejected by the US Court.

6 Thereafter, the defendant elected not to defend the matter at trial and default judgment was entered against it. A trial on damages was later held on 20 October 2008 and the US Court awarded to the plaintiffs the sum of US$50m in compensatory damages and US$30m in punitive damages ("the US Judgment"). The defendant did not satisfy any part of the US Judgment.

Proceedings in Singapore

7 On 16 July 2013, five years after the US Judgment was obtained, the plaintiffs commenced a common law action against the defendant in Singapore to enforce the US Judgment ("the Singapore Action").The plaintiffs abandoned their claim for punitive damages and the Singapore Action proceeded solely on the US$50m which was awarded as compensatory damages.

8 On 13 August 2013, and by way of summons no 4119 of 2013, the plaintiffs applied for and obtained leave to serve the writ out of jurisdiction. After an attempt to serve the writ through diplomatic channels was unsuccessful, service of the writ was effected successfully on the defendant through a private agent.

9 The defendant did not enter any appearance. On 8 September 2014, and upon the plaintiffs' application, judgment in default of appearance was entered against the defendant ("the Singapore Judgment"). Following that, the plaintiffs took immediate steps to enforce the Singapore Judgment. The Singapore Judgment was duly served on the defendant who failed to satisfy the judgment.

10 On 22 September 2014, by way of summons no 4698 of 2014, the plaintiffs applied to garnish the debt due or accruing due from one of Curacao's debtors in Singapore, KGJ Cement (Singapore) Pte Ltd ("KGJ Cement"). A garnishee order to show cause ("the Show Cause Order") was granted against KGJ Cement. The defendant entered an appearance on 23 October 2014 after it was served with the Show Cause Order.

11 On 23 December 2014, the garnishee order against KGJ Cement was made absolute and a sum of US$82,618 was paid by KGJ Cement to the plaintiffs' solicitors.

12 To date, the defendant has not paid the balance of the Singapore Judgment. The plaintiffs have instituted two further sets of garnishee proceedings against the defendant's debtors in Singapore. These proceedings were pending at the time of this appeal.

Decision of the AR

13 Before the AR, the defendant sought the following substantive reliefs:

(a) To set aside judgment entered in default of appearance and the execution issued thereon.

(b) To strike out the SOC for being scandalous, frivolous or vexatious or an abuse of the process of the court or under the inherent jurisdiction of the court.

14 Counsel for the defendant conceded at the outset that the Singapore Judgment was a regular default judgment and he sought to set it aside on the basis of two submissions. *First*, counsel submitted that Singapore was *forum non conveniens* because the alleged acts occurred in Cuba, the defendant company is registered in Curacao and the plaintiffs are Cuban. *Second*, counsel suggested

that the US Judgment could not be enforced in Singapore because it contains punitive damages. He relied on s 3(2) of the Reciprocal Enforcement of Foreign Judgment Act (Cap 265, 2001Rev Ed) ("the REFJA") to support his submission.

15 In the AR's view, the defendant's submissions failed to raise triable issues that merited the setting aside of the Singapore Judgment. In coming to her conclusion, the AR applied the test laid down by the Court of Appeal in *Mercurine Pte Ltd v Canberra Development Pte Ltd* [2008] 4 SLR(R) 907 (at [60]) ("the *Mercurine* test") which requires the party seeking to set aside a regular default judgment to establish a *prima facie* defence in the sense of showing triable or arguable issues. Any undue delay in applying to set aside the default judgment would also be a relevant factor to be taken into consideration.

16 In relation to the defendant's first argument, the AR decided that *forum non conveniens* was an irrelevant consideration. In her view, the issue of *forum non conveniens* did not arise since the matter concerned the enforcement of a foreign judgment and was not a fresh suit commenced by the plaintiffs. As regards the second argument, the AR determined that the issue of punitive damages was similarly irrelevant as the plaintiffs had dropped the punitive elements of the US Judgment from its SOC. Further, the AR noted that the counsel for the defendant had not adduced any authority to show that the entire US Judgment would be tainted by the presence of punitive elements in it. Finally, the AR noted that the defendant had failed to explain its default in appearance and the delay before it filed its setting aside application.

17 It is also important to note that the counsel for the defendant withdrew his prayer for striking out at the proceedings below. This followed the AR's suggestion that the counsel proceed only with the setting aside application since the reliefs sought in SUM 5365 were essentially two separate applications and should have been pursued separately.

My decision

18 On appeal, counsel for the defendant relied on the same set of written submissions and resurrected the same arguments canvassed in the proceedings below. The defendant's arguments are summarised at [14] above. For reasons similar to the AR, I found that those arguments presented no triable issues.

19 It is trite that an applicant seeking to set aside a regular default judgment is required to show that there were triable or arguable issues. As stated succinctly by Hobhouse J in *The "Ruben Martinez Villena"* [1987] 2 Lloyd's Rep 621, there is no purpose in setting aside a judgment if there is not going to be something to be gained by having a trial.

Forum non conveniens

20 I agreed with the AR's determination that the issue of *forum non conveniens* was irrelevant to the enforceability of foreign judgments and therefore, did not constitute a triable issue.

21 Apart from registration under the REFJA or the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed), a foreign judgment may be given effect to under the common law if it satisfies the legal requirements of the forum. It is also apposite to note that the enforcement of a foreign judgment under the common law creates a fresh obligation to pay the judgment debt which is an independent obligation, distinct from the original cause of action underlying the foreign judgment (*Ralli And Another v Angullia* [1917] SSLR 33).

22 The legal requirements for a common law action to enforce a foreign judgment were set out by the Court of Appeal in *Poh Soon Kiat v Desert Palace Inc* (trading as Caesars Palace) [2010] 1 SLR 1129 at [14]:

> A n *in personam* final and conclusive foreign judgment rendered by a court of competent jurisdiction, which is also a judgment for a definite sum of money … is enforceable in Singapore …

23 However, an action to enforce a foreign judgment would be subject to defences. These defences are compendiously stated in the following passage from *Halsbury's Laws of Singapore* vol 6(2) (LexisNexis, 2013 Reissue) ("*Halsbury*") at para 75.209:

> … Generally a foreign judgment would not be given effect to, in spite of the satisfaction of the requirements discussed above, if its recognition or enforcement (as the case may be) would be contrary to the fundamental public policy of the forum, where it would conflict with an earlier judgment from the forum or an earlier foreign judgment recognised under the private international law of the forum, or if the foreign judgment had been obtained by fraud or in breach of principles of natural justice, or if it would amount to the direct or indirect enforcement of foreign penal, revenue or other public laws.

24 It is therefore incumbent on the party challenging a common law action to enforce a foreign judgment to prove that the foreign judgment did not satisfy one or more of the necessary legal requirements of the forum *or* that one of the defences applies. It logically follows that, in order to set aside the Singapore Judgment, the defendant is required to demonstrate at least a triable issue in respect of the legal requirements of the forum or the available defences.

Sum of money in respect of a fine or other penalty

25 Counsel for the defendant argued that the US Judgment was unenforceable in Singapore by virtue of s 3(2)(b) of the REFJA. However, the relevance of s 3(2)(b) of the REFJA to a common law action to enforce a foreign judgment was not apparent from counsel's submission. Instead, what was apparent from the proceedings below was that counsel's objection concerned the punitive damages awarded by the US Court. Therefore, I assumed counsel was proceeding on the same basis.

26 Section 3(2)(b) of the REFJA reads as follows:

> (2) Any judgment of a superior court of a foreign country to which this Part extends, other than a judgment of such a court given on appeal from a court which is not a superior court, shall be a judgment to which this Part applies, if —
>
> …
>
> (*b*) there is payable thereunder a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or *in respect of a fine or other penalty*; and
>
> …
>
> [emphasis added]

27 Section 3(2) of the REFJA sets out the legal requirements that a foreign judgment must meet for registration under that Act; it does not apply to a common law action to enforce a foreign judgment. Therefore, counsel's reliance on s 3(2)(b) of the REFJA was clearly misplaced.

28 Nonetheless, even if counsel had relied on the common law equivalent of s 3(2) of the REFJA, I did not see anything objectionable about enforcing the US Judgment as it relates to the compensatory damages and not to the punitive damages awarded thereunder. According to *Halsbury* at para 75.168, a foreign judgment that is objectionable in part may be severed and the unobjectionable parts enforced, if the unobjectionable part could be clearly identified and separated from the objectionable part. In the present case, the punitive damages could easily be severed from the compensatory damages awarded under the US Judgment, and they were so severed in the Singapore Action which proceeded only on the basis of compensatory damages. Thus, the defendant's argument in respect of punitive damages must necessarily fail.

29 Though my preceding analysis was dispositive of the issue, I should point out an argument that was not raised by the defendant's counsel but one that I have considered. This is the question whether the US Judgment is unenforceable in Singapore because a successful civil claim under RICO (one of the claims advanced by the plaintiffs in the US Action) contravenes the common law equivalent of s 3(2) of the REFJA. RICO is primarily a penal statute with the object of deterring organised crime in the United States. In addition to its penal consequences, RICO permits one to bring a civil claim for treble damages ("RICO damages") where he/she has been injured by reason of an activity prohibited by RICO (see RICO § 1964(c)). In *Lewis v Eliades and others* [2004] 1 WLR 692 (at [50]), Potter LJ thought it arguable that the enforcement of a foreign judgment, which contains RICO damages, contravenes the common law rule against the enforcement of a foreign penal law. However, he declined to express a position on the issue as it was unnecessary in the case at hand.

30 In the present case, it is not clear from the face of the US Judgment whether the eventual award reflected a RICO component. I further note that the US Court had awarded compensatory damages and punitive damages, which would not be consistent with there being a penal element in the compensatory damages. Nonetheless, since the defendant did not raise the point, and I did not have the benefit of submissions on this aspect, I do not propose to express a concluded position on the matter.

31 For the reasons given above, I dismissed the appeal.

[note: 1] Plaintiffs' Bundle of Documents, Tab 4, Exhibit SKK-1 at p 2.

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