IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA(I) 9

Court of Appeal / Originating Application No 3 of 2024

Between

Udenna Corporation

… *Applicant*

And

Pertamina International Marketing & Distribution Pte Ltd

… *Respondent*

In the matter of Originating Application No 23 of 2023 (Summons No 27 of 2024)

Between

Pertamina International Marketing & Distribution Pte Ltd

… *Applicant*

And

(1) P-H-O-E-N-I-X Petroleum Philippines, Inc (a.k.a. Phoenix Petroleum Philippines, Inc)
(2) Udenna Corporation

… *Respondents*

In the matter of Section 19 of International Arbitration Act 1994

And

In the matter of Order 23, Rule 10 of the Singapore International Commercial Court Rules 2021

Between

Pertamina International Marketing & Distribution Pte Ltd

… *Claimant*

And

(1) P-H-O-E-N-I-X Petroleum Philippines, Inc (a.k.a. Phoenix Petroleum Philippines, Inc)
(2) Udenna Corporation

… *Defendants*

JUDGMENT

[Civil Procedure — Service — Setting aside]

Udenna Corp
v
Pertamina International Marketing & Distribution Pte Ltd

[2024] SGCA(I) 9

Court of Appeal — Originating Application 3 of 2024
Steven Chong JCA and David Neuberger IJ
25 October 2024

27 November 2024 Judgment reserved.

Steven Chong JCA (delivering the judgment of the court):

Introduction

1 CA/OAS 3/2024 ("OAS 3") is an application by Udenna Corporation ("Udenna") for permission to appeal against the decision of the judge below (the "Judge") in SIC/SUM 27/2024 ("SUM 27"). SUM 27 was in turn an application by Udenna to set aside the attempted service of the originating process in SIC/OA 23/2023 ("OA 23") on Udenna in the Philippines. SUM 27 was dismissed by the Judge who found that OA 23 was validly served as evidenced by a certificate titled "Sheriff's Return of Service of Judicial Documents to Udenna Corporation" issued by Sheriff IV on behalf of the Honourable Executive Judge of the Regional Trial Court, Davao City in the Philippines on 22 April 2024 (the "Certificate").

2 After due consideration of the parties' submissions, we dismiss the application for the reasons set out below.

Background

3 The dispute between the parties originates from OA 23, which is an application by Pertamina International Marketing & Distribution Pte Ltd ("PIMD") to recognise and enforce the Final Award dated 28 November 2023 in SIAC Arb No. 084 of 2022 (the "Final Award"). In the Final Award, it was ordered that Udenna, as a third-party guarantor, was jointly and severally liable to PIMD together with P-H-O-E-N-I-X Petroleum Philippines, Inc (also known as Phoenix Petroleum Philippines, Inc) for certain sums plus interest. Udenna did not apply to set aside the Final Award within the relevant three-month period under the International Arbitration Act 1994 (2020 Rev Ed). Thereafter, PIMD commenced OA 23 on a without notice basis on 12 December 2023, and it was then granted substantively in terms *vide* SIC/ORC 69/2023 on 18 December 2023.

4 On 3 June 2024, Udenna filed SUM 27 for the following orders: (a) an order to set aside the attempted service of the originating process in OA 23 on Udenna on 22 April 2024 by the Philippines' Central Authority in accordance with the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the "HSC"); and (b) a declaration that the originating process in OA 23 has not been served on Udenna by reason of non-compliance with the Singapore International Commercial Court Rules 2021 (the "SICC Rules"). In SUM 27, Udenna submitted that such service was invalid because it was served at the wrong address, on the wrong person, on the wrong entity, through the wrong method and that it was contrary to the laws of the Philippines. According to

Udenna, service of the cause papers at Udenna's "usual or last known place of business" was not permitted under the laws of the Philippines, and that in any event, the address at which the papers were served was not its "usual or last known place of business". The material facts are summarised below.

5 On 27 December 2023, PIMD filed a form labelled "Request for Service Abroad of Judicial or Extrajudicial Documents" with the Supreme Court of Singapore for transmission to the Office of the Court Administrator of the Supreme Court of the Philippines to serve the papers in OA 23 on Udenna in the Philippines (the "HSC Request"). The HSC Request identified an address at Stella Hizon Reyes Road (the "SHRR Address") in a box on the form where an address for Udenna was required. In the following section, PIMD checked the entry that Udenna be served by way of "[p]ersonal service or service by sending a copy to the addressee's usual or last known place of business."

6 On 11 January 2024, PIMD filed SIC/SOD 2/2024 to request that the documents be sent through the proper channels to the Philippines for service on Udenna at the SHRR Address or "elsewhere in Philippines" and that it may be served through the government of Philippines.

7 On 22 April 2024, the Sheriff of the Philippines Supreme Court delivered the relevant papers to Mr Alex Rian Barcos not at the SHRR address but at a different address viz, Bays 5 & 6, 6th Floor, Bormaheco Building, JP. Laurel Ave. Bajada, Philippines (the "BB Address"). On 23 April 2024, the service of OA 23 on Udenna was confirmed by the issuance of the Certificate.

Decision below

8 The SICC dismissed Udenna's application to set aside the attempted service of originating process against it in the Philippines in *Pertamina International Marketing & Distribution Pte Ltd v P-H-O-E-N-I-X Petroleum Philippines, Inc (also known as Phoenix Petroleum Philippines, Inc) and another* [2024] SGHC(I) 27 (the "Judgment").

9 The Judge proceeded on the basis that the Certificate was *prima facie* evidence of effective service of the relevant papers on Udenna and should be accepted by the court absent contrary strong and convincing evidence (Judgment at [21]).

10 The Judge found that the service effected by the Sheriff was not contrary to nor incompatible with the laws of the Philippines. Article 5 of the HSC permitted service not *only* by a method prescribed by the internal law of the State addressed to effect service for the service of documents in domestic actions upon persons within its territory but *also* "by a particular method requested by the applicant, unless such method is incompatible with the law of the State addressed". Thus, in accordance with Art 5(*b*) of the HSC, the essential question was not whether the service effected by the Sheriff was a method prescribed by the law of the Philippines regarding domestic actions but whether the method requested by PIMD pursuant to the HSC was incompatible with the laws of the Philippines (Judgment at [28] and [29]).

11 The Judge rejected the opinion of Udenna's expert on Philippine law that service of foreign process through the HSC must still be in accordance with the methods specifically prescribed under the Philippine Rules of Court for the service of papers in domestic actions upon persons within the Philippines. This

was contrary to Rule 14, Section 9 of the Philippine Rules of Court which expressly allows service to be made through methods consistent with international conventions such as the HSC. Furthermore, the Judge rejected Udenna's interpretation because it would render Rule 14, Section 9 redundant and would also mean that Arts 5(*a*) and 5(*b*) of the HSC provide for the same methods of service, rendering Art 5(*b*) superfluous (Judgment at [30] to [32]).

12 Finally, the Judge found that the *prima facie* evidence contained in the Certificate itself and the further evidence relied upon by PIMD including the important direct findings by PIMD's independent intelligence and investigations' expert, J.S. Held Singapore Pte Ltd ("J.S. Held"), pointed ineluctably to the conclusion that the BB Address was, at the very least, Udenna's usual or last known place of business.

Parties' cases on appeal

13 Udenna submits that permission to appeal against SUM 27 should be granted for the following reasons:

(a) In the Judgment at [21], the Judge stated that he would "proceed on the basis that the Certificate is *prima facie* evidence of effective service of the relevant papers on Udenna and should be accepted by this Court absent contrary strong and convincing evidence". The "strong and convincing" standard applied by the Judge is a *prima facie* error of law. In the alternative, the Judge's application of the "strong and convincing" standard gives rise to the question of the probative value to be attached to a certificate of service from a foreign country, which is a question of general principle decided for the first time.

(b) The interpretation of Art 5 of the HSC is a question of general principle that has not been decided before.

(c) The Judge's decision contains *prima facie* errors of fact.

14 PIMD submits that permission to appeal against SUM 27 should not be granted because:

(a) There was no *prima facie* error of law as the Judge applied the correct standard when considering the evidential effect of the Certificate.

(b) There is no general principle decided for the first time as the principles on statutory interpretation are settled.

(c) This is not an exceptional case where the Judge made any *prima facie* errors of fact that are obvious from the record.

Our Decision

The Certificate as prima facie evidence of effective service

15 We deal with Udenna's first ground for the application *ie*, that the "strong and convincing" standard applied by the Judge is a *prima facie* error of law, or alternatively, gives rise to a question of general principle decided for the first time.

16 In the Judgment at [21], the Judge held that the Certificate constitutes *prima facie* evidence of effective service, and should be accepted absent contrary strong and convincing evidence. In relation to the issue of whether the Certificate constitutes *prima facie* or conclusive evidence, we agree with the

Judge's analysis that a certificate of service as such constitutes *prima facie* evidence.

17 The Judge referred to O 5 r 12 of the SICC Rules, which states that an official certificate by the agency or person who effected service in the foreign country stating that service has been effected on the party to be served in accordance with the law of the foreign country and the date of the service is "evidence of those facts" (Judgment at [18]). The Judge's holding at [21] thus follows from O 5 r 12, since there can hardly be any dispute that a certificate of service should be, at the very least constitute evidence of the facts stated therein.

18 We turn to *ITC Global Holdings Pte Ltd (in liquidation) v ITC Ltd and others* [2011] SGHC 150 ("*ITC*"), which was cited in the Judgment at [19]. In *ITC*, the High Court stated that an official certificate from the foreign government or judicial authorities pursuant to O 11 r 3(5) of the Rules of Court 2014 (which is *in pari materia* with O 5 r 12 of the SICC Rules), *if provided*, "would be conclusive evidence of the date of service and that service was in accordance with the law of the country in which service was effected" (at [24]). It is significant to point out that in that case, no official certificate was in fact received. As such it was merely an observation made by the High Court in *obiter* and does not, in our view, support the proposition that a certificate of service, when received, should *always* be regarded as *conclusive* evidence, instead of just *prima facie* evidence.

19 The position that a certificate of service should be regarded as *prima facie* evidence is supported by the decision of the High Court in *Reemtsma Cigarettenfabriken GmbH v Hugo Boss AG* [2003] 3 SLR(R) 469 ("*Reemtsma*"), which Udenna submitted on in appeal. The court in *Reemtsma*

held that the certificate of service was *prima facie* evidence of the fact stated, which was sufficient evidence for a court to find that fact proved (at [9]), and then found that the respondents had the task of proving non-service, and that the legal burden remained on them to satisfy the court *on the balance of probabilities* that the motions were not served (at [10]). Although the applicants adduced the certificate, the respondents did not challenge its validity or adduce further counter-evidence, and thus could not satisfy the court on a balance of probabilities that the motions were not served at all.

20 Given that the Certificate constitutes *prima facie* evidence of effective service, the only question before us is the standard of proof required to rebut such evidence. We are of the view that it would be more appropriate to describe the standard of proof required to rebut the evidence of service as being on a balance of probabilities as was adopted in *Reemtsma*, instead of the "strong and convincing" standard articulated by the Judge. Any formula or description which involves departing from, or the appearance of departing from, the standard of proof of the balance of probabilities can create needless uncertainty. However, that being said, we do not think that the Judge's analysis of SUM 27 contains any *errors of law*, as he proceeded to correctly weigh the evidence placed before him. Based on the Certificate alone, PIMD would have discharged its evidential burden of adducing some evidence of effective service, which would then shift to Udenna to adduce some evidence in rebuttal. However, we agree with the Judge that Udenna failed to adduce adequate evidence in rebuttal of the Certificate.

21 In this regard, Udenna submits that the application of the "strong and convincing" standard effectively meant that the Certificate was seen as "conclusive evidence". Udenna argues that despite it producing clear evidence,

the Judge ultimately concluded that the BB Address was Udenna's "usual or last known place of business" (Judgment at [40]). However, the Judge was entitled to find that PIMD's evidence outweighed or displaced Udenna's evidence, and there is nothing to indicate that the Judge disregarded all evidence but the Certificate.

22 For completeness, Udenna's submission that the Judge laid down a general principle which was decided for the first time is without merit. Udenna asserts that the question of what probative weight should be attached to a certificate of service is "far from settled". O 5 r 12 of the SICC Rules makes it clear that a certificate of service is evidence of the facts therein. Interpreting O 5 r 12 only requires the application of established principles, and in any event, there is case law discussing the evidential value of a certificate, such as *Reemtsma* and *ITC*. The Judge ascribed the correct weight to the Certificate and in our judgment, he was right in treating it as *prima facie* evidence.

Art 5 of the HSC

23 Udenna submits that SUM 27 was the first time Art 5 of the HSC has been interpreted and applied by the Singapore courts. The Judge was faced with the novel issue of whether a method of service falling outside an exclusive list of acceptable service methods prescribed by the Philippines is considered "incompatible" under the schema of Art 5. In this regard, the Judge found that the service effected by the Sheriff was not incompatible with, in the sense of being prohibited by, the laws of the Philippines (Judgment at [42]).

24 It is well-established that where a decision involves "only the application of established principles", there would be no question of general principle or importance (see *Lin Jianwei v Tung Yu-Lien Margaret and another*

[2021] 2 SLR 683 at [86]; cited in *Singapore Democratic Party v Attorney-General* [2022] 2 SLR 977 at [45]). In our view, the interpretation of Art 5 involves the application of established principles of statutory interpretation. In the Judgment at [42], the Judge dealt with Udenna's expert's opinion that Rule 14, Section 9 of the Philippine Rules of Court should be read to require service to be in accordance with the HSC and that this in turn requires service to be in accordance with the Philippine Rules of Court for service of domestic process. The Judge pointed out that this opinion would render Rule 14, Section 9 redundant, and would also mean that Arts 5(*a*) and 5(*b*) of the HSC provide for the same methods of service, *ie*, service consistent with the internal law of the State addressed for the service of documents in domestic actions. According to Udenna's interpretation of Art 5(*b*) of the HSC, the article would be superfluous, and thus, its interpretation cannot be correct. The mere fact that there is no Singapore case law specifically on the interpretation of Art 5(*b*), does not in and of itself constitute a question of general principle as the proper interpretation would entail the application of well-established principles of statutory interpretation.

Errors of fact

25 Only in *exceptional* circumstances would permission to appeal be granted where the error is one of fact which is obvious from the record and clear beyond reasonable argument (*Rodeo Power Pte Ltd and others v Tong Seak Kan and another* [2022] SGHC(A) 16 at [10]).

26 Udenna identifies three alleged errors in the Judge's factual findings. We disagree that the alleged errors, even on Udenna's own case, are obvious from the record and clear beyond reasonable argument. In any event, we are of the view that none of them appear to be errors of fact.

27 First, Udenna claims that the Judge at [33] of the Judgment found that Udenna's expert did not dispute PIMD's expert's evidence that service at the last known or usual place of business was *not prohibited* under Philippine law, although Udenna's expert clearly stated that such service was *incompatible*. However, the Judge did not make any such error of fact – he was cognisant that Udenna's expert was of the view that such service was incompatible with Philippine law (as it was not part of an exclusive list of methods prescribed by the Philippines), and merely pointed out that the expert did not further claim that such service was *prohibited* under Philippine law. This is undisputed, since the expert claimed that such service was allowed under certain circumstances.

28 Second, Udenna claims that the Judge found that Udenna did not directly challenge the evidence of J.S. Held on whether the BB Address was Udenna's usual or last known place of business (Judgment at [37]), although Mr Abarquez's witness statement and Udenna's written submissions clearly rejected J.S. Held's findings. Although Udenna submitted that the evidence pertaining to J.S. Held's findings was inadmissible and/or or should not be accorded any weight, and also provided its own evidence (as noted in the Judgment at [35]), it is undisputed that Udenna did not specifically adduce evidence to rebut the findings made by J.S. Held as listed at [36] of the Judgment. It was in this context that the Judge observed that "Udenna did not *directly challenge* the evidence of JS Held" [emphasis added].

29 Third, Udenna claims that the Judge found that the BB Address was Udenna's usual or last known place of business, although the record shows that it was the address of a different entity, PNX-U Insurance. This clearly does not constitute an error of fact, as the Judge's finding that the BB Address was Udenna's usual or last known place of business, despite Udenna's evidence on

PNX-U Insurance was based on his *assessment of* the evidence from both parties (Judgment at [35]–[40]). We should add that it is not uncommon for a registered address of one company to be the address of another company. They are not mutually exclusive.

Conclusion

30 For the above reasons, we dismiss OAS 3.

31 PIMD seeks costs of USD 12,000, while Udenna submits that costs of the application be costs in the appeal. We order costs of USD 5,000 all-in against Udenna.

Steven Chong
Justice of the Court of Appeal

David Neuberger
International Judge

Ng Kim Beng, Sim Daryl Larry, Jasmine Thng Khai Fang and Ho Linming (Rajah & Tann Singapore LLP) for the applicant;
Daniel Chia Hsiung Wen, Ker Yanguang, Charlene Wee Swee Ting and Chan Kit Munn Claudia (Prolegis LLC) for the respondent.