

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

[2024] SGHC 63

Suit No 716 of 2021
(Registrar's Appeal No 211 of 2023)
(Summons No 179 of 2024)

Between

The Resolution and Collection Corporation
(formerly known as Housing Loan Administration Corporation)
... Plaintiff

And

1. Tsuneji Kawabe
2. Kawabe Bussan Co Ltd
3. Yoshiko Kawabe
4. Michiyo Kawabe
5. Natamon Protpakorn
6. D-well Pte Ltd
7. Cloud Bliss Limited

... Defendants

JUDGMENT

[Civil Procedure — Discovery of documents — Specific discovery]

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The Resolution and Collection Corp

v

Tsuneji Kawabe and others

[2024] SGHC 63

General Division of the High Court — Suit No 716 of 2021 (Registrar's Appeal No 211 of 2023 and Summons No 179 of 2024)
Choo Han Teck J
29 February 2024

8 March 2024

Judgment reserved.

Choo Han Teck J:

1 The plaintiff, a Japanese-incorporated company, obtained judgments in Japan (“the Japanese Judgments”) in 2001 against the first defendant (“Mr Kawabe”) and his company, the second defendant. Mr Kawabe has died, and the plaintiff wants to enforce the judgments against the third defendant, who is the first defendant’s widow (“Mrs Kawabe”). The plaintiff is also pursuing the action against the fourth defendant (“Ms Michiyo”) who is the daughter of the first and third defendants. The fifth defendant is an associate of the first defendant, but he is in Thailand and has not entered an appearance in this action. The sixth and seventh defendants are companies owned by Ms Michiyo. The plaintiff’s claim under the Japanese judgments as pleaded is “¥17,483,893,290”, which would be approximately S\$157,000,000.

2 It does not seem to be in dispute that Mrs Kawabe inherited the assets in the estate of Mr Kawabe, assets that the plaintiff claims to be entitled under the Japanese Judgments. Ms Michiyo had denounced her claim to her father’s assets, and so, under Japanese law, it is accepted that she would not have been entitled to his assets. But the plaintiff claims that somehow, Ms Michiyo is in possession of those assets — that purportedly should have been received by Mrs Kawabe.

3 The plaintiff obtained a Mareva injunction against Ms Michiyo and her companies, but that injunction had been set aside. In the interim, the sixth defendant had disclosed that it has assets worth S\$23m. The plaintiff then obtained leave to amend its statement of claim, but that is not presently relevant. It then filed SUM 2022 of 2023 (“SUM 2022”) for discovery of various categories of documents.

4 The assistant registrar below allowed 15 categories and dismissed some others. Ms Michiyo and the sixth and seventh defendants appeal against the order for the discovery against them (RA 211/2023). There is no appeal by the plaintiff.

5 Mr Shem Khoo, counsel for Ms Michiyo and the sixth and seventh defendants, sought to admit a further affidavit. Mr Daniel Lim, counsel for the plaintiff resisted, and eventually, Ms Michiyo filed SUM 179 of 2024 for leave to admit this affidavit. Mr Lim still objected on the ground that it is irrelevant and is not helpful. I see no reason not to have the affidavit admitted and will determine if it is of any relevance when I consider the submissions of counsel in the appeal. The categories allowed and under appeal from SUM 2022 are: Categories 1 and 2; Categories 4, 5, and 6; Categories 7 and 8; Categories 9

and 10; Category 11; Category 12; Category 13; Category 14; Category 17; and Category 18.

6 Under Categories 1 and 2, the plaintiff wants discovery of the account opening forms and subsequent bank statements of Ms Michiyo’s bank accounts here in Singapore. Under Categories 4, 5, and 6, the plaintiff wants discovery of Ms Michiyo’s income tax returns from 2000 to date. Under Categories 7 and 8, the plaintiff wants the financial statements and returns of the sixth and seventh defendants, respectively. The sixth defendant, a company incorporated in Singapore on 27 April 2016, is wholly owned by the seventh defendant, incorporated on 2 August 2018 in the British Virgin Islands. It is alleged that Ms Michiyo and the fifth defendant control the seventh defendant. Ms Michiyo claims to beneficially own the sixth and seventh defendants. Under Categories 9 and 10, the plaintiff wants the incorporation documents, minutes of meetings, board resolutions and communications of the sixth and seventh defendants, respectively.

7 Categories 11 and 14 relate to a Japanese company, My Planning Co Ltd (“My Planning”), incorporated on 24 March 2004, and Ms Michiyo is alleged to be its director. The plaintiff wants the incorporation documents, minutes of meetings, board resolutions, communications, and the documents relating to the properties purchased by My Planning. Category 12 relates to a Japanese company named Staycation Inc (“Staycation”). Category 13 relates to all contracts and documents in relation to real property purchased by the fourth, sixth and seventh defendants – an obviously wide and unsustainable order.

8 Category 17 is the plaintiff’s request for “any other document showing the source of [Ms Michiyo’s] assets”, and Category 18 is the request for

communications between Ms Michiyo and her mother (the third defendant) and the fifth defendant “since the commencement of proceedings” that “relate to the Plaintiff’s claim against the Specific Defendants for the tracing of assets that have been allegedly siphoned out of the [second] defendant”. The Rules of Court applicable to this application and appeal are the Rules of Court (2014 Rev Ed).

9 Order 24 r 5(1) of the Rules of Court is as straightforward and clear as it is wide, but wide as it appears, there are limits as to how far a court may go to compel discovery of documents. Lest it be forgotten, this rule comes into play as an interlocutory power designed to not just ensure that the trial may proceed smoothly and efficiently, but that justice is done, and the rule is applied fairly and even-handedly. How that is achieved depends on the case in question.

10 In this case, we have a plaintiff with a judgment in hand against a defendant who has died, but he leaves behind his widow and a daughter. The latter has two companies, one of which is in possession of S\$23m worth of assets. That is a large amount, but is a fraction of the judgment debt. The daughter claims to have worked as an architect and opened her own architecture firm previously. She claims to have subsequently “ventured into the vacation rental and travel business”. It is possible that the assets came into her hands legitimately, or it may not. That is likely to be a focal point at trial.

11 It will be crucial that she explains her fortune, the question is whether she has to do so now, and by way of disclosing the documents that the plaintiff seeks. No one should, of course, be compelled to disclose matters out of the whim and fancy of the opposing party. Hence relevance and the likelihood of those documents being in her hands are important factors. There is merit in

Mr Khoo's argument that the plaintiff here is switching the burden of proof around. Of course, the plaintiff is not entitled to do that. It cannot demand that Ms Michiyo and her companies show every document that they have.

12 Text conversations between a mother and her daughter, and the private income tax returns are generally documents that deserve privacy and respect. A general demand for all tax returns and all commercial and board room minutes ought not be disclosed, not at this stage. The trial judge may, when the proceedings ripen at trial, make that order.

13 At the moment, there are relevant and obvious questions that Ms Michiyo and her companies will obviously have to answer at trial. And it will be expedient without being unfair to order these defendants to produce them now. But the orders should be tempered because the language under the plaintiff's application is too loose and too wide. I will deal with the straightforward ones first. I allow the appeal so far as Category 18 is concerned because documents after the commencement of proceedings between a party, her witnesses, and solicitors, are privileged.

14 It is possible that the relevance of the corporate and board documents of My Planning may eventually become apparent. This includes properties that My Planning has and how they were purchased. At this point, they are a step removed, and so the order against them ought, at least for the moment, also be removed. The same goes for Staycation. The appeal relating to Categories 11, 12, and 14 are allowed with liberty to the plaintiff to apply.

15 So far as Categories 1 and 2, 4,5, and 6, as well as 7 and 8 are concerned, a more restrained disclosure order should be made. The present discovery cast too wide a net over the personal affairs of Ms Michiyo and her two companies,

bearing in mind that there is presently no direct evidence that she was complicit in the affairs of her father, and subsequently, her mother. The plaintiff can only hope at present to draw an adverse inference by virtue of the large sums of money in the sixth defendant's hands. That, suspicious as it is, remains a suspicion. Thus, the most reasonable order, and the furthest that I am prepared to allow at this stage, is to order Ms Michiyo to disclose her tax returns from 2001 to 2004, as well as 2021 to 2023. These documents should be produced so as to show her capability of amassing S\$23m in the sixth defendant's assets. For the time being I will order her to disclose only the first four years since the commencement of the action in Japan, and the three years prior to 2024. Similarly, the sixth and seventh defendants have to produce documents to show where the S\$23m came from. Depending on the relevance of that disclosure, the orders regarding Categories 9 and 10, and 13 are set aside with liberty to the plaintiff to apply.

16 Costs here and below are reserved to the trial judge.

- Sgd -
Choo Han Teck
Judge of the High Court

Daniel Lim Ying Sin and Lakshmanan s/o Anbarazan (Joyce A. Tan
& Partners LLC) for the plaintiff;
Ng Yuen Siang (Eugene Thuraisingam LLP) for the 2nd defendant;
Shem Khoo Ching Shin, Veronica Teo Jia Hui, Edward N. Ong and
Joey Tan Zu Er (Focus Law Asia LLC) for the 4th, 6th and
7th defendants.