

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

[2024] SGHC 17

Originating Application No 899 of 2023

Between

DGX

... Claimant

And

DGY

... Defendant

GROUND S OF DECISION

[Conflict of Laws — Foreign judgment — Enforcement of non-money judgment under s 4(4) Reciprocal Enforcement of Foreign Judgments Act 1959 (2020 Rev Ed)]
[Statutory Interpretation — Construction of statute]

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

DGX

v

DGY

[2024] SGHC 17

General Division of the High Court — Originating Application No 899 of 2023

Lee Seiu Kin J

26 September, 11 October 2023

24 January 2024

Lee Seiu Kin J:

1 This was an application under the Reciprocal Enforcement of Foreign Judgments Act 1959 (2020 Rev Ed) (“the Act”) for the registration, in the General Division of the High Court of Singapore, of certain parts of an order (“the Court Order”) made by a magistrate of the Family Court of Western Australia (“the WA Family Court”). At the end of the first hearing on 26 September 2023, I adjourned the matter for the Applicant’s Counsel to conduct further research on the matter. At the adjourned hearing on 11 October 2023, after hearing further arguments, I dismissed the application. I now give my written grounds of decision.

2 The Claimant (“the Husband”) and Defendant (“the Wife”) were married in Singapore. They migrated to Australia with their two children in February 2009 and settled down in Perth, Western Australia. Unfortunately, the

marriage broke down and they took out divorce proceedings in the WA Family Court. The divorce was granted on 2 November 2021. The Court Order, which was dated 9 May 2023, related to the division of their matrimonial property. The Husband was ordered to procure the sale of four real properties that the parties owned jointly: three properties were in Australia and one in Singapore, which was an HDB apartment (“the HDB Flat”). Upon the sale of each property, the Husband was ordered to deposit the net proceeds into an Australian bank account that he was to open jointly with the Wife (“the Joint Account”). From the terms of the Court Order, it would appear that its purpose was to authorise the Husband to sell the four properties and deposit the proceeds into the Joint Account. The Court Order did not make any determination of the division of the matrimonial property and provided for a subsequent hearing to make that determination.

3 It was clear from the manner in which the Court Order was drafted that the Wife had not been cooperating with the WA Family Court. Hence, para 2 of the Court Order provided that a Registrar of the Family Court may sign any document required for the purpose of setting up the Joint Account. The general tenor of the Court Order was one in which the Husband would undertake the sale of all four properties with minimal input from the Wife and the Court was prepared to conduct an “undefended hearing” at a later date if the Wife did not turn up for that hearing.

4 In this application, the Husband sought to register paras 9 and 10 of the Court Order, which related to the HDB Flat and provided as follows:

9. [The HDB Flat] ... vests in the Husband from the date of [the Court Order] and he has absolute discretion and authority to –
 - (a) Place [the HDB Flat] on the market for sale “as is” within 14 days ...

- (b) Appoint a real estate agent in Singapore of his choosing (“Agent”) to conduct the sale.
 - (c) Sell [the HDB Flat] upon such terms and conditions as he sees fit after considering all reasonable recommendations of the Agent in relation to –
 - (i) The listing price;
 - (ii) The method of sale; and
 - (iii) Any offers received and recommendations as to counter-offers.
10. Simultaneously with the settlement of the sale of [the HDB Flat], the Husband do all acts necessary to disburse the sale proceeds as follows –
- (a) In payment of costs associated with the sale ...
 - (b) In discharge of HDB Housing Loan ...
 - (c) In replenishment of the Husband’s and the Wife’s respective CPF accounts; and
 - (d) The balance to be deposited into [the Joint Account] ...

5 As the HDB Flat was jointly owned by the parties, it was obvious that, for the Husband to effect its sale, he would not be able to rely on the Court Order solely, but would need a corresponding order from a court in Singapore. Therefore, the Husband made this application under the Act. Before embarking on an analysis of the Act, it would be useful to set out a brief history of the legislation relating to the reciprocal enforcement of judgments of courts outside Singapore.

6 Prior to 3 October 2019, the statutory regime for enforcement of judgments of courts outside Singapore was found in the Reciprocal Enforcement of Commonwealth Judgments Act 1921 (“RECJA”) for judgments of courts of Commonwealth countries, and the Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) (the “REFJA 2001”) for courts outside of the Commonwealth. In 2019, Parliament consolidated the regime by

repealing the RECJA and enacting the Reciprocal Enforcement of Foreign Judgments (Amendment Act) 2019 (Act 25 of 2019) (collectively, the “2019 amendments”) which amended the REFJA 2001 to encompass Commonwealth judgments. Further amendments were made to extend the registrability of foreign orders to include non-money judgments (which includes freezing orders and injunctions, mandatory orders and orders for specific performance), consent judgments, judicial settlements and interlocutory judgments, and of judgments from lower courts of the foreign states. However, the precise scope of enforceable court orders from any foreign court is a matter to be decided and negotiated by the Executive and will in turn depend on various factors, including the suitability of the foreign court and whether that court will grant similar treatment to the court orders of a Singapore court (*Singapore Parliamentary Debates, Official Report* (2 September 2019) vol 94 (Edwin Tong Chun Fai, Senior Minister of State for Law)). In *Ha Chi Kut (suing as the sole executrix of the estate of Khoo Ee Liam, deceased) v Chen Aun-Li Andrew* [2023] 3 SLR 283 at [51], Pang Khang Chau J similarly observed that the 2019 amendments “provided a framework for non-money judgments to be registered under the [Act] *but did not have the effect of making non-money judgments of all descriptions immediately registrable*” [emphasis in original omitted; emphasis added in italics].

7 Returning to the present application, the governing provision of the Act was s 4, the relevant parts of which stated as follows:

Application for, and effect of, registration of foreign judgment

4.—(1) A person, being a judgment creditor under *a judgment to which this Part applies*, may apply to the General Division of the High Court at any time —

- (a) within 6 years after the date of the judgment; or

- (b) where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings,

to have the judgment registered in the General Division of the High Court.

(2) On an application under subsection (1), the court shall, subject to proof of the prescribed matters and to the provisions of this Act, order the judgment to be registered.

(3) A judgment shall not be registered under this section if at the date of the application —

- (a) it has been wholly satisfied;
- (b) it has been discharged; or
- (c) it could not be enforced in the country of the original court.

(4) The registering court —

- (a) may only register a non-money judgment if, having regard to the circumstances of the case and the nature of the relief contained in the judgment, it is satisfied that enforcement of the judgment would be just and convenient; and
- (b) if it is of the opinion that such enforcement would not be just and convenient, may make an order for the registration of such amount as it considers to be the monetary equivalent of the relief.

[emphasis added]

8 Section 4(1) provided that the application for registration must relate to “a judgment to which [Part 1 of the Act] applies”. Therefore, the first question to decide was whether paras 9 and 10 of the Court Order was a judgment to which Part 1 of the Act applied. To decide this, I turned to s 3 of the Act, the relevant parts of which were as follows:

Extension of Part to judgments of recognised courts of foreign countries on basis of reciprocity

3.—(1) If the Minister is satisfied that, in the event of the benefits conferred by this Part being extended to a particular description of judgments given in a particular court or

description of courts of a foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of similar judgments given in a similar court or similar courts of Singapore, the Minister may, *by order in the Gazette*, direct that —

- (a) this Part applies to that foreign country;
- (b) the court or courts of the foreign country specified in the order is a recognised court or are recognised courts of the foreign country for the purposes of this Part; and
- (c) *judgments specified in the order of* any such recognised court or courts, if within subsection (2), are judgments to which this Part applies.

[emphasis added]

9 This provision required that an order must be made by the Minister and published in the Gazette before the Act applies to a particular type of judgment in a particular court of any foreign country. In this regard, the Minister promulgated the Reciprocal Enforcement of Foreign Judgments (United Kingdom and the Commonwealth) Order 2023 (“the Order”) which came into operation on 1 March 2023. Paragraph 2(1) of the Order stated that, for the purposes of s 3(1)(a) of the Act, Part 1 applies to the foreign countries specified in the first column of the Schedule. Australia was one of the countries specified there. Paragraph 2(2) of the Order further stated that, for the purposes of s 3(1)(b) of the Act, the courts specified in the second column of the Schedule were recognised courts of the foreign countries in the first column of the Schedule. The WA Family Court was specified in the second column of the Schedule in relation to Australia.

10 I come to the critical part of the Order, which would be para 2(3). This stated that “for the purposes of s 3(1)(c) of the Act, a judgment specified in the third column of the Schedule of a recognised court specified opposite that judgment in the second column of the Schedule is a judgment to which Part 1

of the Act applies”. In relation to the WA Family Court (and indeed to all courts in Australia specified in the second column of the Schedule), the third column provided as follows:

Any money judgment that is final and conclusive as between the parties to it

11 The Applicant’s Counsel attempted to submit that this description applied to the Court Order. However it was clear that the Court Order was not a money judgment which was defined in s 2 of the Act in the following manner:

“money judgment” means a judgment under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a similar nature or in respect of a fine or other penalty;

12 The Court Order was for the sale of the HDB Flat and did not order any party to make payment of any sum of money. This became clearer when one looks at the definition of non-money judgment in the same section:

“non-money judgment” means a judgment that is not a money judgment, but does not include a judgment under which a sum of money is payable in respect of taxes or other charges of a similar nature or in respect of a fine or other penalty;

13 In the second reading speech to the Reciprocal Enforcement of Foreign Judgments (Amendment) Bill (Bill No 19/2019), the Minister explained (*Singapore Parliamentary Debates, Official Report* (2 September 2019) vol 94 (Edwin Tong Chun Fai, Senior Minister of State for Law)):

... the precise scope of enforceable judgments will be decided and negotiated with each foreign country individually. So, the fact that we have the Act ... does not automatically mean that there will be a whole series of countries that will come on board. ... armed with these amendments, we will then proceed to negotiate with foreign countries, and decide in the case of each country, what is suitable, what is appropriate and obviously, on a reciprocal basis.

The factors that will be taken into account will include ... the compatibility of our respective court systems – Singapore’s and the foreign courts’ – the needs of users of our Court systems and, of course, our countries’ respective interests. ... while [the Act] will provide a broad menu of options available for negotiation, Singapore might enter into an agreement or arrangement with Country A for the reciprocal enforcement of only a limited category of judgments, whereas with Country B, there could be reciprocal enforcement of the full range of judgments under [the Act]. It really depends on what is also being negotiated and what is also being offered by the reciprocal country.

14 It would appear that the extension to non-money judgments has not yet been made in relation to Australian courts.

15 Therefore, this court was unable to come to the assistance of the Husband and I was compelled to dismiss his application.

Lee Siu Kin
Judge of the High Court

Tok Boon Leong (BL Tok & Co) for the claimant;
the defendant absent and unrepresented.
