

Perwira Affin Bank Berhad (formerly known as Perwira Habib Bank Malaysia Berhad) v Lee
Hai Pey and Another
[2007] SGHC 76

Case Number : OS 1054/1996, RA 600008/2006
Decision Date : 21 May 2007
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Leo Cheng Suan (Infinitus Law Corporation) for the plaintiff; Denis Tan (Toh Tan & Partners) for the second defendant
Parties : Perwira Affin Bank Berhad (formerly known as Perwira Habib Bank Malaysia Berhad) — Lee Hai Pey; Tham Kwok Onn

Civil Procedure – Foreign judgments – Reciprocal enforcement – Judgment obtained in Malaysia – Registration in Singapore – Application for registration order to be perfected – Whether just and convenient to allow foreign judgment to be enforced in local courts – Section 3(1) Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed)

21 May 2007

Judith Prakash J:

1 For nearly 20 years, the plaintiff, Perwira Affin Bank Berhad (“the bank”), has been trying to enforce a judgment that it obtained against Mr Tham Kwok Onn (“Mr Tham”), the second defendant in this originating summons. The saga is not over yet as Mr Tham has appealed against the order that I made on 15 January 2007, the effect of which was to endorse the decision of the assistant registrar that the bank was to be at liberty to take execution proceedings to enforce the said judgment.

Chronology of events

2 This saga started in 1988 when the bank commenced an action in the High Court of Malaya at Kuala Lumpur against Mr Tham, who had acted as guarantor of a loan extended by the bank, and applied for summary judgment. On 23 September 1988, the bank’s application was successful and judgment was entered against Mr Tham. Mr Tham appealed against this decision. Two years later, the High Court of Malaya dismissed Mr Tham’s appeal. He then filed a further appeal to the Supreme Court of Malaysia.

3 While the appeal was pending, in December 1990, the bank obtained an order registering the Malaysian judgment in Singapore under the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) (“the Act”). Mr Tham then successfully applied to this court to set aside such registration on the grounds that an appeal against the judgment was pending in Malaysia and therefore that the same was not registrable under the Act.

4 On 1 November 1994, the Supreme Court of Malaysia dismissed Mr Tham’s appeal against the judgment. In June 1995, the bank applied again to register the judgment in Singapore under the Act. Registration was obtained but Mr Tham was able to set this second order aside as well on the basis that more than six years had elapsed from the date of the original judgment and therefore it was no longer enforceable in Malaysia without the leave of court and that the bank had not obtained leave from the Malaysian court for this purpose. The court hearing the application in Singapore decided that

it would not be just or convenient to enforce the Malaysian judgment here when its enforceability in Malaysia was suspect.

5 The next step taken by the bank was to apply to the High Court of Malaya for leave to execute the judgment against Mr Tham. Leave was granted on 23 May 1996. Consequently, the bank commenced the present proceedings *viz*, originating summons 1054 of 1996 in this court and procured the third registration of the Malaysian judgment on 28 October 1996 ("the third registration order"). Mr Tham, naturally, applied for the third registration order to be set aside but, when his application came on for hearing before the assistant registrar in February 1997, it was dismissed. Mr Tham then appealed to the judge in chambers. It should be noted that in November 1996, Mr Tham had applied to set aside the Malaysian court order granting leave for the enforcement of the judgment. That application had been heard in December 1996 and had been dismissed by the senior assistant registrar of the High Court in Kuala Lumpur. Mr Tham then filed an appeal against that dismissal and that appeal was pending at the time of Mr Tham's application to set aside the registration in Singapore.

6 In Singapore proceedings, the appeal was heard by Warren Khoo J. The original application by Mr Tham had been to have the third registration order set aside or to have proceedings in relation to the third registration order stayed pending the determination in the Malaysian courts of the question of the enforceability of the Malaysian judgment. On 25 March 1997, Khoo J allowed Mr Tham's appeal in part and ordered a stay of proceedings on the third registration order in the alternative terms of the latter's application. The reason for this decision as stated in Khoo J's grounds of decision [1998] 1 SLR 357 was:

10. I took the view that [ss 3(2) of the Act] does not, and is not intended to, set out in any exhaustive way the circumstances in which a judgment should not be registered. There is the general requirement, set out in ss (1), that the court must be satisfied that in all the circumstances it is just and convenient that the judgment be allowed to be enforced. We have here a case where the judgment had ceased to be enforceable unless leave of court was obtained; leave was obtained *ex parte* and confirmed on an *inter partes* hearing, but [Mr Tham] is entitled to file an appeal against the decision and has done so. There is no telling which way the appeal will go. In these circumstances, it seems to me preferable not to allow the judgment to be enforced here than to allow it to be enforced, with all the attendant consequences to [Mr Tham].

7 There were two more developments before the matter reached its present stage. Firstly, Mr Tham's appeal against the Malaysian decision granting leave to enforce the judgment was dismissed by the Malaysian Court of Appeal. Secondly, his application, by way of motion to the Federal Court of Malaysia, for leave to appeal further to the Federal Court was dismissed by the Federal Court on 25 October 2004.

8 After all this, the bank came back to this court. On 6 March 2006, it filed an application for the third registration order to be perfected. Mr Tham contested this application. After hearing parties, however, the assistant registrar decided on 23 November 2006 that the bank's application should be granted. Mr Tham appealed again. I heard his appeal and dismissed it and he now wishes to take the matter further.

The arguments

9 The arguments centred around exactly what Khoo J had done when he had partially allowed Mr Tham's appeal in March 1997. The bank's case in brief was that Khoo J had dismissed Mr Tham's appeal to set aside the third registration order and had only granted a stay of the enforcement proceedings pending Mr Tham's appeal to the Malaysian courts to determine the validity of the

Malaysian order that had given the bank leave to appeal. Therefore, it argued that once the Malaysian Court of Appeal had dismissed Mr Tham's arguments on this point, there could be no further arguments relating to the registration of the judgment in Singapore. The assistant registrar agreed with the bank's position and considered that Khoo J had simply been against the bank enforcing its judgment *immediately* because of the existence of the pending appeal in Malaysia. He had thus granted a stay pending the outcome of the Malaysian appeal but had not set aside the registration of the Malaysian judgment.

10 Trying to persuade me to reverse the assistant registrar's decision, Mr Tham made a two-fold argument. First, he said that Khoo J's decision was not a dismissal of his application to set aside the registration of the Malaysian judgment. Therefore, Mr Tham was entitled, after the Malaysian Court of Appeal dismissed his appeal, to proceed afresh with his application to set aside the third registration order because his right under that order which gave him 28 days to apply to set aside the third registration order, had been preserved by Khoo J's order of a stay of all proceedings.

11 Mr Tham's second argument was that if I accepted his first argument, then the court in determining whether the registration was to be set aside was entitled, under the "just and convenient" principle embodied in s 3(1) of the Act, to look at the enforceability of the Malaysian judgment based on its validity in Malaysia as of the present date and was not limited to the circumstances existing at the time of registration. In this connection, it was Mr Tham's argument that the Malaysian judgment was no longer enforceable or executable in Malaysia.

12 Mr Tham elaborated his first argument as follows. He said that Khoo J had reversed the assistant registrar's order dismissing Mr Tham's application to set aside the third registration order or alternatively stay all proceedings pending appeal. Instead, he ordered a stay of all proceedings pending appeal. In effect therefore, there was no determination on Mr Tham's application to set aside the third registration order. If Khoo J's decision had been an order dismissing Mr Tham's application to set aside the registration and a further order that pending the outcome of the Malaysian appeal all further proceedings should be stayed, then there would be nothing more that Mr Tham could say. It had been within Khoo J's powers to make such an order as the application had been for an order in the alternative. That, however, was not what Khoo J had done here.

13 I did not consider Mr Tham's second argument because, in my judgment, he failed on the first one. I considered that in effect Khoo J had upheld the assistant registrar's decision to dismiss the application to set aside the third registration order. It would be noted in the notes of hearing made by Khoo J on 25 March 1997, his Honour recorded his decision as follows:

Appeal allowed partially. Order in terms of para (ii) of the summons in chambers.

Paragraph (i) of Mr Tham's summons in chambers had contained the prayer for the order registering the Malaysian judgment to be set aside. The assistant registrar had dismissed the whole application which meant both paragraphs of the summons were denied. This meant that the registration order stood. As the appeal was only "allowed partially" what Khoo J was doing was to reverse the dismissal of the stay application made by para (ii) of the summons. Khoo J did not order that the third registration order be set aside. Instead, he simply made an order that granted a stay of further proceedings. His decision therefore was to maintain the status of the registration but not to allow any further enforcement proceedings for the time being. This decision was reflected quite clearly in the order of court which was extracted subsequently by Mr Tham, notwithstanding the slight ambiguity in para (i) of the order. The material part of that order read as follows:

(i) the Order of the learned Assistant Registrar Mr Tan Boon Heng which was given on the

19th day of February 1997 be set aside;

(ii) all proceedings in relation to the Order of High Court of Singapore dated 28th October 1996 insofar as they affect [Mr Tham] be stayed pending the outcome of applications in Malaysia regarding the enforceability of the Judgment of the High Court of Malaya at Kuala Lumpur (Commercial Division) obtained in Civil suit No. C3796 of 1985 and dated the 23rd day of September 1988;

(iii) the costs below and the costs of the Appeal fixed together in the sum of \$4,000 be paid by [the bank] to [Mr Tham].

If the third registration order had been set aside by reason of Khoo J's decision to set aside the assistant registrar's dismissal of Mr Tham's application, then it would not have been necessary to grant a stay as there would have been no proceedings to stay. The reason for the stay must be that the registration order was effective but, because he was not sure what the outcome of the Malaysian applications would be, Khoo J regarded it as not being just and convenient to allow further enforcement action in Singapore in respect of the Malaysian judgment for the time being. Looking at the grounds of decision delivered by Khoo J, it is clear that, as the assistant registrar below observed, Khoo J was against the bank enforcing the Malaysian judgment *immediately*, but it is equally clear that he did not consider the registration to be invalid. He just granted a stay pending the outcome of the Malaysian appeal. His primary concern was as to the uncertainty of the outcome of the Malaysian appeal.

14 In these circumstances, as the assistant registrar below recognised, the proceedings that came before her were really a continuation of the 1997 hearing and the issue was whether it was just and convenient to allow the Malaysian judgment to be enforced. She decided that it was because, despite the apparently long delay in enforcing the judgment, the bank had not been dilatory. The delay had resulted from Mr Tham's utilisation of his right of appeal in Malaysia and the stay order. Now that the Malaysian appeal process had been exhausted, there was no longer any uncertainty and it was just and convenient that the bank be allowed to perfect the order and enforce the judgment. I entirely agreed with the assistant registrar's reasoning. It was not, in my view, right to keep the bank out of the fruits of its judgment any longer. Mr Tham had had a full opportunity to contest the judgment and the decision giving leave to enforce the judgment and since he had failed on those counts, the bank's rights must be respected.

15 For the foregoing reasons, I dismissed Mr Tham's appeal.