Bellezza Club Japan Co Ltd *v* Matsumura Akihiko and others
[2010] SGHC 94

Case Number	: Suit No 173 of 2009 (Registrar's Appeal No 264 of 2009)
Decision Date	: 23 March 2010
Tribunal/Court	: High Court
Coram	: Belinda Ang Saw Ean J
Counsel Name(s)	: Alma Yong and Amelia Ang (Lee & Lee) for the plaintiff; Nanda Kumar and Zheng Sicong (Rajah & Tann LLP) for the first defendant.
Parties	: Bellezza Club Japan Co Ltd — Matsumura Akihiko and others

Civil Procedure

Conflict of Laws

23 March 2010

Belinda Ang Saw Ean J:

1 This action was brought to enforce a foreign judgment. On 9 July 2009, the plaintiff, Bellezza Club Japan Co Ltd, successfully obtained summary judgment on its claim to enforce the judgment the plaintiff had obtained in the Tokyo District Court on 11 July 2006 against the first defendant, Akihiko Matsumura ("D1"), which said judgment was upheld on appeal to the Tokyo High Court on 26 December 2007, and on further appeal to the Supreme Court of Japan on 18 July 2008. On 6 October 2009, D1's appeal against the 9 July 2009 order of the Assistant Registrar, Ms Ang Ching Pin ("AR Ang"), was dismissed. D1 has since appealed against my decision.

Background

2 The plaintiff is a company registered in Japan. At all material times, the plaintiff's shares were equally held by two companies, Tosho Corporation KK ("Tosho") and Brother Sales Ltd ("Brother Sales").

3 Between 12 February 1991 and 15 August 1994, the plaintiff extended three loans to Tosho and another two loans to a company affiliated to Tosho and KK Micro Device. During this period, D1 was a representative director and president of both the plaintiff and Tosho. The second and third defendants are the brothers of D1 and they held the post of director of Tosho at different times.

4 The plaintiff started an action in the Tokyo District Court against the defendants and 3 others as guarantors of the abovementioned loans ("the first Tokyo litigation"). The Tokyo District Court allowed the claims and gave judgment for the plaintiff on 11 July 2006, holding that D1 was jointly and severally liable with 3 others for a total sum of ¥1,217,139,001 with interest ("the Tokyo judgment"). It is common ground that the Tokyo judgment was handed down after a full trial on its merits. D1's appeal to the Tokyo High Court was dismissed on 26 December 2007. His further appeal from the Tokyo High Court to the Supreme Court of Japan was also dismissed on 18 July 2008. It is not disputed that there are no further avenues of appeal in Japan against the Tokyo judgment. The debate here focussed on the question of a re-trial as distinct from the notion of an appeal. A further point to note is that the plaintiff has recovered part of the judgment sum and interest. This action

was brought to enforce the Tokyo judgment for the outstanding judgment sum and interest. The application for summary judgment was filed only against D1 and not the other defendants.

5 Before the plaintiff brought this action in Singapore, two other actions were commenced in Japan. One of the actions was started by D1 in the Nagoya District Court on 3 August 2007 against the plaintiff and Brother Industries Ltd, the parent company of Brother Sales (the "Nagoya litigation"). The other action was commenced by the plaintiff in the Tokyo District Court on 7 November 2007 against D1 and others (the "second Tokyo litigation"). Both suits were pending in Japan when this appeal, ("RA 264/2009"), was listed for hearing before me.

D1's opposition to summary judgment

6 D1 resisted the application for summary judgment on several grounds. Counsel for D1, Mr Nanda Kumar ("Mr Kumar"), initially raised two arguments before AR Ang. First, the Tokyo judgment should not be enforced as it was not final and conclusive. Second, it was against the public policy of Singapore to enforce the Tokyo judgment which was in respect of transactions that may subsequently be found to be in violation of the laws of Japan.

7 After AR Ang entered judgment for the plaintiff, an affidavit was filed on 3 August 2009 on behalf of D1, claiming that one of the other guarantors who was held to be jointly and severally liable under the Tokyo judgment, namely KK Sogo Biyou Ikagaku Kenkyujo ("SBIK"), has an alleged monetary claim against the plaintiff, and that SBIK has therefore a right to set-off its monetary claim against SBIK's joint and several liabilities as guarantor to the plaintiff under the Tokyo judgment. The argument was that this right to set-off claimed by SBIK should be used to reduce the judgment sum in the event the plaintiff's entitlement to summary judgment stands. Counsel for the plaintiff, Ms Alma Yong ("Ms Yong"), objected to the late affidavit but she explained that she had nevertheless filed the plaintiff's affidavit in reply on 20 August 2009 so as not to delay the hearing. Given the state of affairs, I granted leave for both affidavits to be filed and relied upon for the hearing of RA 264/2009.

8 Mr Kumar raised another new argument in his written submissions. This argument was not pleaded in the Defence or raised in any of the affidavits filed on behalf of D1. It was claimed in the written submissions that D1 had a *bona fide* counterclaim in the Nagoya litigation against the plaintiff which constitutes an equitable set-off. By way of explanation, the Nagoya litigation arose out of a number of loans made by Brother Sales to the plaintiff, for which D1 had acted as guarantor. D1 claimed that, as guarantor, he has the right under Japanese law to obtain in advance reimbursement from the plaintiff, who is the principal debtor of those loans, even before the principal creditor calls on the loan. The equitable set-off was allegedly based on D1's claim for advance reimbursement in the Nagoya litigation. Mr Kumar argued that D1's counterclaim in the Nagoya litigation against the plaintiff was closely connected with the guarantees upon which the Tokyo judgment was founded so that it would be unjust for the plaintiff to enforce the Tokyo judgment without taking into account D1's counterclaim in the Nagoya litigation against the plaintiff. D1's counterclaim in the Nagoya litigation apparently far exceeded the plaintiff's claim in the present action against D1. [note: 1]

9 For the reasons given below, none of the grounds raised a triable issue. Suffice it to say at this point that D1's arguments were built entirely on suppositions rather than from credible facts in evidence. I also noted that the plaintiff had already enforced the Tokyo judgment in Japan, and had obtained partial satisfaction of the judgment sum and interest in 2006. The present action was commenced in Singapore for the outstanding judgment sum and interest on 20 February 2009.

Enforcement of foreign judgments: the law in general

10 The law on the enforcement of a foreign judgment as a debt at common law is well-settled. Foreign judgments *in personam* may be enforced by a claim in proceedings in Singapore if the foreign judgment is a money judgment of a court of competent jurisdiction, and that the judgment pronounced by the foreign court is final and conclusive as between the parties. Moreover, the Singapore court will not ordinarily reopen the merits of the claim on which the foreign judgment is based or challenge the factual findings made by the foreign court. The general rule was restated by the Court of Appeal in *Hong Pian Tee v Les Placements Germain Gauthier Inc* [2002] 1 SLR(R) 515 ("*Les Placements*") (at [12]):

> Quite apart from the arrangements under the RECJA or the REFJA, it is settled law that a foreign judgment *in personam* given by a foreign court of competent jurisdiction may be enforced by an action for the amount due under it so long as the foreign judgment is final and conclusive as between the same parties. The foreign judgment is conclusive as to any matter thereby adjudicated upon and cannot be impeached for any error, whether of fact or of law: *Godard v Gray* (1870) LR 6 QB 139. In respect of such an action, an application for summary judgment may be made on the ground that the defendant has no defence to the claim: *Grant v Easton* (1883) 13 QBD 302. …

11 There are three exceptions to the general rule on enforcement of a foreign judgment at common law. As the Court of Appeal in *Les Placements* said (at [12]):

> … The local court will only refrain from enforcing a foreign judgment if it is shown that the plaintiff procured it by fraud, or if its enforcement would be contrary to public policy or if the proceedings in which the judgment was obtained were opposed to natural justice: see *Halsbury's Laws of England* Vol 8(1) (Butterworths, 4th Ed) (1996 Reissue) paras 1008-1010.

12 Where an allegation of fraud has already been raised, argued, and adjudicated upon by a foreign court (as was the case in the Tokyo judgment), the position in Singapore following the approach taken by Canadian and Australian cases is that the foreign judgment may be challenged here in Singapore on the ground of fraud only if fresh evidence has come to light, and only when the fresh evidence could not have been uncovered with reasonable diligence at the time of the trial (see *Les Placements* at [30]). In addition, the fresh evidence must be of a quality to make a difference to the outcome. D1's allegation in paras 9-24 of the Defence that the plaintiff's claims were tainted by fraud, deceit and/or mistake were already raised, argued and decided against D1 in the first Tokyo litigation, and on appeal by the Tokyo High Court. D1's second argument that the plaintiff's claims were against public order, morals, fairness and equitable principles was also, on appeal, rejected by the Tokyo High Court. D1's appeal to the Supreme Court of Japan, the final court of appeal, was dismissed on 18 July 2008. [note: 2] In resisting the application for summary judgment, D1 was in effect seeking to challenge the factual findings made in the Tokyo judgment or to reopen the merits of the claims by his argument that *if* D1 succeeds in the Nagoya litigation and the second Tokyo litigation, the findings in the two suits might provide grounds for a re-trial of the first Tokyo litigation and, hopefully, a revocation of the Tokyo judgment. [note: 3]

13 I will now deal with D1's grounds of opposition advanced by Mr Kumar as triable issues.

Issue 1: The Tokyo judgment was not final

The test of finality

14 Mr Kumar argued that the Tokyo judgment was not final and conclusive because it *may* be

subject to a re-trial under Article 338(1) sub-paras (vi) or (vii) of the Code of Civil Procedure (Act No 109 of June 26, 1996) ("CCP") (see [19] below). Before I deal with the question of a re-trial under the CCP, a good starting point is to examine the test of finality. A summary of this test can be found in Dicey, Morris and Collins, *The Conflict of Laws* (Sir Lawrence Collins gen ed) (Sweet & Maxwell, 14th Ed, 2006) at Vol 1, para 14-021:

> The test of finality is the treatment of the judgment by the foreign tribunal as *res judicata*. "In order to establish that [a final and conclusive] judgment has been pronounced, it must be shown that in the court by which it was pronounced, it conclusively, finally, and forever established the existence of the debt of which it is sought to be made conclusive evidence in this country, so as to make it *res judicata* between the parties." A foreign judgment which is liable to be abrogated or varied by the court which pronounced it is not a final judgment.

15 The test makes it necessary to refer to the foreign law in assessing the finality of the foreign judgment because it would, in the words of Lord Reid in *Carl Zeiss Stiftung v Rayner & Keeler Ltd (No 2)* [1967] 1 AC 853 at 919:

> … verge on absurdity that we should regard as conclusive something in a [foreign] judgment which the [foreign] courts themselves would not regard as conclusive.

16 Furthermore, the test of finality only requires that the judgment be final and conclusive in the particular court in which it was pronounced. The fact that the judgment may be altered or varied on appeal would not render it any less final or conclusive; this much was made clear in the decision of *Nouvion v Freeman* (1889) 15 App Cas 1 ("*Nouvion*") (at 13):

> … In order to its receiving effect here, a foreign decree need not be final in the sense that it cannot be made the subject of appeal to a higher Court; but it must be final and unalterable in the Court which pronounced it; and if appealable the English Court will only enforce it, subject to conditions which will save the interests of those who have the right of appeal.

The applicable Japanese law on the question of finality

17 Tsutomu Kuribayashi, a partner in M/s Kuribayashi Sogo Law Office, who represented the plaintiff in the first Tokyo litigation, confirmed in his affidavit filed on 20 May 2009 that Article 338 of the CCP refers to an application for a re-trial; it does not allow D1 to file an appeal and there is no further avenue for an appeal against the Tokyo judgment. Mr Kuribayashi also confirmed that an appeal to the Supreme Court of Japan is the final appeal, and that the decision of the Supreme Court of Japan of 18 July 2008 is final and binding regardless of the outcome of the Nagoya litigation and second Tokyo litigation. The point being made is that a re-trial is distinct from an appeal to a higher court. D1's position is not really different as the affidavits filed on D1's behalf referred only to a re-trial under Article 338.

18 Mr Kumar relying on the *Nouvion* submitted that the test of finality is simply to determine whether the foreign judgment *may* be abrogated, varied or altered by the same court which made it [note: 4]. According to his notion of the test, the Tokyo judgment cannot be final and conclusive as it may be subject to a re-trial by the Tokyo High Court and a subsequent order that the Tokyo judgment be revoked.

19 It is now a convenient juncture to refer to the English version of Article 338 which reads as follows:

Article 338 (Grounds for Retrial)

(1) Where any of the following grounds exist, an appeal may be entered by filing an action for retrial against a final judgment that has become final and binding; provided, however, that this shall not apply where a party, when filing the appeal to the court of second instance or final appeal, alleged such grounds or did not allege them while being aware of them:

(i) The court rendering judgment was not composed under any Acts.

(ii) A judge who may not participate in making the judgment under any Acts participated in making the judgment.

(iii) The judgment was made in the absence of the authority of statutory representation, authority of representation in a suit or the delegation of powers necessary for performing procedural acts.

(iv) The judge who participated in making the judgment has committed a crime in relation to his/her duties with regard to the case.

(v) Another person's act that is criminally punishable caused the party to admit any fact or prevented him/her from advancing allegations or evidence that should have affected a judgment.

(vi) The documents or any other objects used as evidence for making the judgment were forged or altered.

(vii) False statements by a witness, an expert witness, interpreter or a party or statutory agent who had sworn were used as evidence for making the judgment.

(viii) The judgment or other judicial decision on a civil or criminal case or administrative disposition, based on which the judgment pertaining to the appeal was made, has been modified by a subsequent judicial decision or administrative disposition.

(ix) There was an omission in a determination with regard to material matters that should have affected a judgment.

(x) The judgment pertaining to an appeal conflicts with a previous judgment that has become final and binding.

(2) Where any of the grounds set forth in item (iv) to item (vii) of the preceding paragraph exist, an action for retrial may be filed only if, with regard to a punishable act, a judgment of conviction or judgment of a non-penal fine has become final and binding, or a final and binding judgment of conviction or final and binding judgment of a non-penal fine cannot be obtained due to grounds other than grounds of lack of evidence.

(3) When the court of second instance has made a judgment on merits with regard to the case, no action for retrial may be filed against the judgment made by the court of first instance.

20 D1’s contention was that, in the event that he succeeds in obtaining judgment in either of the actions in the Nagoya litigation or the second Tokyo litigation, there *may* be grounds for a re-trial of the first Tokyo litigation. Elaborating, D1 said that *if* there was a finding that the evidence given in

the first Tokyo litigation was false or forged, he would then be able to rely on such a finding to file for a re-trial of the first Tokyo litigation pursuant to sub-paras (1)(vi) and/or (1)(vii) of Article 338. [note: 5]

21 Turning to D1's expert, Professor Hiroyuki Hirano from Keio Law School of Japan ("Professor Hirano") agreed in his affidavit that an action for a re-trial may be filed after final judgment has been issued in Japan, but his opinion was merely a theoretical one, and rightly so, given the assumptions he had to make. In his opinion, D1 would be able to file an action for re-trial of the first Tokyo litigation pursuant to Article 338 only *if* D1 prevails in the Nagoya litigation or the second Tokyo litigation *and* only *if* there are grounds for a re-trial under Article 338. [note: 6] In Professor's Hirano's own words:

> … the only option open to the 1st Defendant now is to wait for the judgment in either the Nagoya litigation or the 2nd Tokyo Litigation…

22 At the time the present action was commenced in Singapore to enforce the Tokyo judgment, the "option" for a re-trial in Japan pursuant to Article 338 was *not* available at all to D1. As Professor Hirano pointed out, the "option" was contingent not only upon a successful outcome for D1 in one of the two pending actions in Japan, but also upon there being grounds for D1 to rely on so that he could fulfil the conditions in Article 338. In short, D1's argument that the Tokyo judgment was inconclusive and not final was premised on an option that *may* become available in the future. The speculative basis underpinning the argument was not lost on AR Ang, and I agreed with AR Ang that the argument was "premised on uncertain outcomes of future events". AR Ang correctly concluded that: [note: 7]

> … there was no reason why this court should disregard the incontrovertible fact that the judgment at hand was issued by a competent court of foreign jurisdiction, affirmed by the highest appellate court in Japan and the [first defendant] has not requested for a stay of execution.

23 I agreed with Ms Yong that the Tokyo judgment is final and conclusive. In the case of *Vanquelin v Bouard* (1863) 15 CB (NS) 341; 143 ER 817 the defendant there sought to resist, in the Court of Common Pleas, the enforcement of a French default judgment that could be set aside as soon as the defendant entered an appearance according to French law. Erle CJ made it clear that until the defendant took steps to set it aside, the default judgment was final and conclusive for the purpose of bringing an action in England (at ER 828):

> The twelfth plea, to the first count, alleges that the judgment in the first count mentioned was a judgment by default for want of an appearance by the defendant in the court of the Tribunal of Commerce, and by the law of France would become void as of course on an appearance being entered. I apprehend that every judgment of a foreign court of competent jurisdiction is valid, and may be the foundation of an action in our courts, though subject to the contingency, that, *by adopting a certain course, the party against whom the judgment is obtained might cause it to be vacated or set aside. But, until that course has been pursued, the judgment remains in full force and capable of being sued upon*. The plaintiff, therefore, must have judgment on the demurrer to this plea.
>
> [emphasis added]

24 In the more recent case of *Schnabel v Lui* [2002] NSWSC 15 ("*Schnabel*") the Supreme Court of New South Wales was faced with a question not unlike the one argued in RA 264/2009: whether a US judgment was final and conclusive despite the existence of a rule in the United States Code

Annotated which allowed for relief from a final judgment to be granted on specific grounds. After a detailed examination of the authorities, Bergin J was satisfied that none of the authorities she reviewed stood for the bare proposition that just because a judgment could be varied or altered by the same court that made it, it must therefore follow that the judgment was inconclusive and not final. Rather, Bergin J was of the opinion that the party's ability to apply to have a judgment set aside was immaterial. What was crucial in Bergin J's opinion was that the US judgment was *res judicata* in the US courts as between the parties *until it was set aside* (*Schnabel* at para [133]):

> *Nouvion v Freeman* and *Vanquelin v Bouard* are authorities for the proposition that *the test of finality is how the foreign jurisdiction treats the judgment. The evidence in this case is overwhelming that the foreign jurisdiction treats the judgment as a final judgment and that it is res judicata the issues between the parties to the litigation*. The effect that an application under Rule 60 (b) may have on the finality of the US Judgment is expressly dealt with in the Rule. It sates [sic]: "A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation".
>
> [emphasis added]

25 Furthermore, the decision of *Nouvion* cited by Mr Kumar is distinguishable given the nature of the foreign judgment in question. The plaintiff there had sought to enforce what was known as a remate judgment obtained in Spain through executive or summary proceedings which only allowed a defendant to raise a limited number of defences. Even after a remate judgment was granted, either party would be at liberty to bring plenary or ordinary proceedings in order to re-litigate the case on the merits and raise all legal defences. Crucially, the remate judgment could not be relied upon as a defence in the plenary proceedings and the House of Lords went on to hold that the remate judgment was not final. Lord Herschell concluded that (*Nouvion* at 11):

> … the plaintiff in such a suit, an executive suit, is not, by the decision which is now under appeal, deprived of his rights. He may still sue upon the original cause of action. Of course it may happen, as in this particular case, that such a suit is barred by lapse of time, but that is an accident. *The right of the plaintiff to sue on his original cause of action is not at all interfered with by the judgment which has been pronounced; and in such an action, if it were brought, all questions upon which the rights of the parties depend, and by the solution of which the obligation to pay must ultimately be determined, would be open to consideration* and could be dealt with by the Courts, and finally and conclusively settled. I do not, therefore, see that there is any wrong or any hardship done by holding that a judgment which does not conclusively and for ever as between the parties establish the existence of a debt in that Court cannot be looked upon as sufficient evidence of it in the Courts of this country.
>
> [emphasis added]

26 The Tokyo judgment was clearly different in character from the remate judgment in *Nouvion*. In contrast, in the present case, the affidavit evidence confirmed that if a party in Japan were to apply for a re-trial under Article 338, he would have to first rely on one of the specific grounds in Article 338(1) and not on his original cause of action which had been heard and determined in earlier proceedings.

27 A related but separate point raised by Ms Yong is that the plaintiff had already enforced, unconditionally, the Tokyo judgment in Japan before the present action was commenced in Singapore. It was certainly not D1's case that the Tokyo judgment was unenforceable in Japan, and it would be difficult to imagine on what basis D1 could resist enforcement in Japan when, as already mentioned,

his case was simply that the option to apply for a re-trial might be available to him in the future. Until that happened, the Tokyo judgment remained binding and enforceable in Japan as between the parties. Being *res judicata* between the parties, the Toyko judgment quite clearly passed the test of finality as pronounced in the authorities already discussed. In any event, the evidence on Japanese law on the nature of the Tokyo judgment was not disputed between the parties and that was sufficient for me to arrive at a conclusion as to the finality of the Tokyo judgment.

Issue 2: D1's claim that enforcement of the Tokyo judgment was against the public policy of Singapore

28 D1 argued that the courts in the Nagoya litigation and the second Tokyo litigation might find that the guarantees at issue in those cases were against the public order, morals or fair and equitable principles of law in Japan. Following that assumption, D1 advanced the argument that any such finding *could raise the implication* that the Tokyo judgment was also founded on guarantees that were similarly in breach of public order or principles of law in Japan, and that to allow the plaintiff to enforce the Tokyo judgment under such circumstances would be against the public policy of Singapore. Again, these arguments were premised on the pious hope that the Nagoya litigation and the second Tokyo litigation would be concluded in D1's favour and a chance of a re-trial of the first Tokyo litigation if there were findings that satisfy the grounds in Article 338.

29 As Ms Yong rightly pointed out, there is no *bona fide* issue that the Tokyo judgment would be against public policy in this country and that it, therefore, could not be enforced. The question of whether the guarantees in the first Tokyo litigation were "against the public order, morals, or fair and equitable principles of law in Japan" had already been raised, argued and decided in favour of the plaintiff by the Tokyo High Court.

Issue 3: D1's claim against the plaintiff in a separate action gave him an equitable set-off against the plaintiff's action

30 At the hearing of RA 264/2009, Mr Kumar argued that unconditional leave to defend should be granted because of D1's counterclaim against the plaintiff which constitutes an equitable set-off. [note: 8] I have alluded to this argument in [8] above. Mr Kumar explained that the counterclaim was based on D1's claim that, under Japanese law, a guarantor of a loan has the right to obtain an advance reimbursement from the principal debtor (*ie*. the plaintiff) even before the creditor calls on the loan.

31 In response, Ms Yong said that the equitable set-off argument was not pleaded in the Defence or raised in the affidavits. There was no affidavit evidence regarding this alleged right of advance reimbursement under Japanese law. Apart from Ms Yong's valid objections, D1 was no doubt seeking to avail himself of a counterclaim that was not brought in proceedings before me to argue set off in equity or otherwise. This was a wrong-headed argument that essentially assumed that a counterclaim pending in foreign proceedings could be introduced in such a manner in order to obtain unconditional leave to defend. Any set-off (assuming it was arguable) must be in respect of a counterclaim filed by D1 in the proceedings here. As Ms Yong pointed out, D1's pleadings did not aver to any set off by way of counterclaim in the Singapore proceedings. D1 also did not adduce any affidavit evidence of an arguable equitable set-off in the Singapore proceedings that was connected with any of the three exceptions to the general rule on enforcement of a foreign judgment at common law (see [11] above).

Issue 4: D1's claim that he was entitled to reduce the judgment sum based on a right to set-off between the plaintiff and SBIK

32 Mr Kumar's fall back argument was that any summary judgment in favour of the plaintiff ought to be reduced from ¥833,793,333 (that being the outstanding judgment sum) to ¥823,293,333 [note: 9], on the basis that one of the other guarantors, SBIK, who was also found liable to the plaintiff under the Tokyo judgment, has filed a "Notice of Set-off" against the plaintiff in Japan. [note: 10]

33 Ms Yong explained that SBIK's claim was already time-barred, but notwithstanding that legal impediment, SBIK had not raised this alleged set-off in the Tokyo litigation. Be that as it may, any set-off between SBIK and the plaintiff is wholly distinct and separate from the plaintiff's action to enforce the Tokyo judgment here in Singapore against D1. To raise this set-off as a triable issue, D1 would have to show that it could properly avail itself of SBIK's set-off. Mr Kumar cited two authorities, namely the English Court of Appeal decision of *United Overseas Limited v Peter Robinson Limited (trading as Top Shop)* (CA Transcript 91/0297, March 26 1991, unreported) and *Hawley & Hazel Chemical Co (S) Pte Ltd v Szu Ming Trading Pte Ltd* [2008] SGHC 13 in argument. Those authorities do not assist D1 as they deal with an equitable set-off as between a plaintiff and a defendant in the same summary proceedings. There is nothing in those authorities that suggests that a defendant could raise a defence of equitable set-off in summary proceedings based on a right to set-off between the plaintiff and another non-party. In any case, as Mr Yong rightly pointed out, in an action to enforce a foreign judgment, the exceptions to the general rule are fraud, public policy reasons and breach of natural justice. Set-off as such is not a recognised exception *per se*. This same point is relevant and also applies in answer to issue 3 above.

Conclusion

34 For the reasons stated, the plaintiff was entitled to summary judgment. Accordingly, RA 264/2009 was dismissed with costs at $3,800 and reasonable disbursements.

[note: 1] D1's written submissions dated 5 October 2009, paras 35 and 36

[note: 2] Affidavit of Tsutomu Kuribayashi's 1st affidavit para 18

[note: 3] Takenari Shimizu's 2nd affidavit paras 10 and 11

[note: 4] Appellant's Skeletal Submissions at para [80]

[note: 5] Appellant's Skeletal Submissions at para 71

[note: 6] Affidavit of Hiroyuki Hirano filed 3 June 2009, para 25

[note: 7] AR Ang's Minutes of 9 July 2009 paras 8 and 9

[note: 8] D1's written submissions dated 5 October 2009 paras 52-58

[note: 9] D1's Skeletal Arguments para 113

[note: 10] 3rd Affidavit of Takenari Shimzu para 10

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