

Anti-Enforcement Injunctions To Be Granted Only When Exceptional Circumstances Warrant It, Rules Singapore Court of Appeal

The Court of Appeal has, in a landmark decision which considers the question of how a seat court should exercise its discretion in respect of an application for an anti-enforcement injunction, held that anti-enforcement relief should be granted only when exceptional circumstances warrant it: *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] SGCA 10.

Our Comments

This is the first reported decision involving an anti-enforcement injunction in Singapore, *i.e.*, an injunction to restrain reliance on a foreign judgment.

It is not uncommon in international arbitration to have one party seek to commence litigation in a foreign jurisdiction despite there being an arbitration agreement. Anti-suit injunctions are therefore commonly sought to restrain a breach by one party of the arbitration agreement, and generally, courts would readily grant the same. However where a party elects to participate in and contest that litigation, resulting in an adverse judgment, different considerations arise. In a “you cannot have your cake and eat it too” scenario, it may be too late to seek redress from the seat court after a party has taken part in, and lost the litigation in the foreign court.

Our Andre Maniam SC, Jenny Tsin and Koh Jia Wen of WongPartnership acted for the successful appellant.

This update takes a look at the Court of Appeal’s decision.

Background

The key facts relevant to the issues discussed in this update are summarised below.

The appellant resort operator, Sun Travels & Tours Pvt Ltd (“**Sun Travels**”) and the respondent hospitality company, Hilton International Manage (Maldives) Pvt Ltd (“**Hilton**”), an affiliate of Hilton Worldwide, were parties to a management agreement (“**Management Agreement**”) under which Hilton was appointed to manage the operations of one of Sun Travels’ resorts in the Maldives for a period of 20 years (“**Resort**”).

In 2013, Sun Travels gave notice to terminate the Management Agreement on the ground that, among other things, the Management Agreement was entered into as a result of fraudulent misrepresentations made by Hilton to Sun Travels. Hilton in turn took the position that the termination was a wrongful repudiation of the contract and commenced arbitration proceedings in May 2013 pursuant to the arbitration agreement in the Management Agreement, claiming damages for lost profits and sums due and owing under the Management Agreement. Sun Travels counterclaimed for, among other things, fraudulent misrepresentation and various breaches of duties by Hilton under the Management Agreement to manage the Resort with reasonable skill, effort, care, diligence and expertise. Singapore was fixed as the seat of the arbitration. The arbitral tribunal rendered awards

("**Awards**") in favour of Hilton and ordered, amongst others, that Sun Travels pay Hilton damages in excess of US\$20 million plus interest.

In or around December 2015, Hilton commenced enforcement proceedings in the Large Property and Monetary Claims division of the Maldivian Civil Court to seek to enforce the Awards in the Maldives ("**1st Enforcement Proceedings**"). Sun Travels resisted the same on ground that it would be contrary to Maldivian public policy to enforce the Awards which arise out of a void and invalid agreement. Hilton's application was dismissed on the ground that the matter was beyond the jurisdiction of the division in which it had been brought.

After Hilton's 1st Enforcement Proceedings was dismissed, in October 2016, Sun Travels filed a civil claim ("**Civil Claim**") against Hilton in the Maldivian Civil Court claiming damages against Hilton in excess of US\$16.6 million arising from misrepresentations and breaches of the Management Agreement. Hilton filed procedural objections. In a written judgment handed down in March 2017 ("**March Judgment**"), the Maldivian Civil Court ruled that Sun Travels had made out its case on misrepresentation, that the Management Agreement was void and unenforceable, and that Hilton was to pay Sun Travels damages in excess of US\$16.6 million. Hilton appealed against the March Judgment and judgment is presently reserved after hearings before the Maldivian High Court on 1 and 8 August 2017, and 12 November 2018.

While the Civil Claim was afoot, Hilton made further attempts to enforce the Awards, this time before the Enforcement Division of the Maldivian Civil Court: first on 29 November 2016 (when the court declined jurisdiction – a decision that was later reversed on appeal); and again on 23 April 2017. By way of a judgment handed down in June 2017 ("**June Judgment**"), the Maldivian Civil Court dismissed Hilton's application on ground that enforcement of the Awards "*could not be*

entertained at [the Civil] Court for the time being" in light of the March Judgment.

On 24 July 2017, after the June Judgment was delivered and about nine months after Sun Travels' commencement of the Civil Claim, Hilton filed an application in the Singapore High Court to seek, among other things, a permanent anti-suit injunction to restrain Sun Travels from taking any steps in reliance on the March Judgment or any decision upholding the March Judgment.

The High Court decided in Hilton's favour and granted Hilton a permanent anti-suit injunction ("**Injunction**"), on ground that the March Judgment was obtained in breach of the arbitration agreement contained in the Management Agreement.

Sun Travels appealed to the Court of Appeal against the High Court's decision.

The Court of Appeal's decision

The Court of Appeal allowed the appeal and discharged the Injunction.

The Court of Appeal addressed the question of how a seat court should exercise its discretion in respect of an application for an anti-enforcement injunction, *i.e.*, an injunction to restrain reliance on a foreign judgment. It held that anti-enforcement relief calls for special consideration because *prima facie* undue delay would be implicit from the very nature of the application for such injunctive relief. Where the foreign court has already issued a judgment, any application to enjoin a party from relying on or enforcing that foreign judgment should generally be refused — not least because such an injunction would necessarily not have been sought promptly enough.

In particular, the Court of Appeal held that:

- Comity considerations are relevant when there is delay in bringing an application for anti-suit relief. The longer the delay and the more advance the foreign court proceedings

become, the stronger the considerations of comity would be. The extent to which the delay has allowed foreign proceedings to have progressed is an even more important factor;

- The consideration of comity is amplified in the case of an anti-enforcement injunction, *i.e.*, where a foreign judgment has already been delivered. An anti-enforcement injunction would not only preclude foreign courts of their prerogative to consider whether the judgment in question should be recognised or enforced, but it also amounts to an indirect interference with the execution of the judgment in the country of the court which pronounced the judgment and where one can expect the judgment to be obeyed;
- Notably, anti-enforcement injunction proscribes the enforcement of the foreign judgment on pain of contempt proceedings in the jurisdiction where the injunction is granted. Hence, granting an anti-enforcement injunction is comparable to nullifying the foreign judgment or stripping it of any legal effect when ordinarily only the foreign court can set aside or vary its own judgments, and this extends far beyond the non-recognition and non-enforcement of a foreign judgment in the local jurisdiction, which, in any case, is within the local court's purview;
- Therefore, great caution need to be exercised in granting anti-enforcement injunctions. An anti-enforcement injunction sought after the issuance of a court judgment should generally be refused, unless there are exceptional circumstances which warrant it;
- These exceptional circumstances must be demonstrated over and above the usual requirements for granting an anti-suit injunction, and it would be insufficient to merely show a breach of a legal right or vexatious or oppressive conduct;

- Exceptional circumstances may be found where a judgment has been procured by fraud, or where an applicant could not have sought relief before the judgment was given because of his lack of knowledge of the foreign proceedings until the delivery of the foreign judgment (for *e.g.* where the judgment was obtained too quickly or secretly to enable an injunction to be obtained);
- While there is no closed list of exceptional circumstances where an anti-enforcement injunction may be warranted notwithstanding that a foreign judgment had been issued, any new category of exceptional circumstances would be recognised only when the equities of the case are in favour of granting the anti-enforcement injunction either as a response to unconscionable conduct (as in the case of fraud), or when the applicant has not lost its entitlement to equitable relief on account of unconscionable delay (such as when the applicant had no knowledge of the foreign proceedings until the judgment was rendered); and
- A close examination of the circumstances of each case is necessary to determine whether exceptional circumstances have been established to warrant the grant of an anti-enforcement injunction.

On the facts of the case, the Court of Appeal held that, by the time Hilton sought anti-enforcement relief from the High Court, its delay had resulted in three critical events: the Maldivian Civil Court had delivered the March Judgment; Hilton had appealed against that and the appeal was pending; and the June Judgment had also been delivered by the Maldivian Civil Court. While Hilton could and should have simultaneously sought injunctive relief from the Singapore courts, its failure to do so allowed the Maldivian proceedings to reach an advanced stage. Further, the mere fact that Hilton had made jurisdictional objections in the Maldivian Civil Court did not justify the delay in seeking the injunction. There

were no exceptional circumstances which warranted the grant of the anti-enforcement injunction in favour of Hilton.

In the circumstances, the Court of Appeal allowed the appeal against the Injunction granted by the High Court.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the partner at WongPartnership that you normally deal with or any of the following partners:



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