Introduction

In the case of *Poh Soon Kiat v Desert Palace Inc* [2009] SGCA 60, the Singapore Court of Appeal had to decide whether a foreign judgment was enforceable in Singapore. In doing so, it laid down the requirements which a foreign judgment must meet before the Court will enforce it. It also clarified the limitation period foreign judgments are subject to.

Chan Sek Keong CJ, delivering the judgment of the Court, established that an enforceable foreign judgment must order the defendant to pay the claimant a definite and ascertained sum of money; also, the judgment cannot order the defendant to do anything else, such as specific performance. A foreign judgment which satisfies these requirements is enforceable in Singapore unless it is procured by fraud, contrary to public policy, or contrary to natural justice.

An action to enforce a foreign judgment is subject to section 6(1)(a) of the Limitation Act and not section 6(3) (which was held to only apply to local judgments), and must therefore be brought within 6 years from the date on which the foreign judgment ought to have been satisfied.

Brief Facts

1. The Appellant incurred a significant gambling debt to the Respondent.
2. The Respondent then obtained 2 default judgments (“the 1999 judgments”) from US courts in 1999 for more than US$2 million.
3. The Respondent later discovered that the Appellant had transferred some of his property, and commenced an action in the US to set aside the transfer. A California judgment was obtained in November 2001 (“the 2001 judgment”), ordering that:
   a. The transfer was to be set aside;
   b. The property was to be sold and the proceeds applied to the 1999 judgments;
   c. If sale proceeds were insufficient, the Appellant would remain liable for the shortfall.
4. The sale proceeds did not cover the judgment debt, and the Respondents commenced proceedings in Singapore (“the Singapore action”) in October 2007 to recover more than US$4 million now due.
Issues

The Singapore Court of Appeal had to decide a number of issues, including:

(i) Whether the 2001 judgment was a foreign judgment for a fixed sum of money, and thus enforceable in Singapore;

(ii) Whether the limitation period applicable to the Singapore action was 6 years under section 6(1)(a) of the Limitation Act (“the LA”) or 12 years under section 6(3).

Holding Of The Court of Appeal

The Court decided that the 2001 judgment was a judgment setting aside a transfer of property, and thus not enforceable in Singapore. It was also found that the applicable limitation period was 6 years.

Enforceability of Foreign Judgments

In order to be enforceable, a foreign judgment must order the defendant in the action to pay the claimant a definite and ascertained sum of money. It is acceptable if an arithmetical calculation is required to ascertain the sum. The judgment cannot order the defendant to do anything else, such as specific performance.

A foreign judgment which satisfies these requirements is enforceable in Singapore unless it was procured by fraud, its enforcement is contrary to public policy, or the proceedings were contrary to natural justice.

In this case, the 2001 judgment was not a foreign money judgment, but a judgment setting aside the Appellant’s transfer of property.

(i) The Respondent’s complaint which led to the 2001 judgment sought that the Appellant’s transfer of property be set aside, and that the property be held in constructive trust.

(ii) The 2001 judgment did not order a definite sum to be paid. It stated that the Appellant would remain liable for the shortfall after the proceeds of sale were applied, but this was merely an acknowledgement of the 1999 judgments. The Appellant would have remained liable for the shortfall even if this was not ordered.

The 2001 judgment was thus not enforceable in Singapore. On this ground, the Singapore action was struck out.
Applicable Limitation Period

Although the Singapore action had already been struck out, the Court went on to consider the applicable limitation period, and decided that it was provided by section 6(1)(a) of the LA, and not section 6(3).

(i) Section 6(1)(a) of the LA applies to actions founded on contract or tort, and sets a 6 year limitation period from the date on which the cause of action accrued.

(ii) Section 6(3) of the LA applies to actions upon any judgments, and sets a 12 year limitation period from the date on which the judgment became enforceable.

The Singapore Court of Appeal agreed with the Nova Scotia Supreme Court in the case of Jean Pollier v Peter A Laushway [2006] NSSC 165, which held that:

“A foreign judgment is regarded as creating a debt between the parties to it… The debt so created is a simple contract debt and not a specialty debt, and is subject to the appropriate limitation period…”

The Court also relied on the UK case of Berliner Industriebank Aktiongesellschaft v Jost [1971] 1 QB 278, a decision on the 1939 UK Limitation Act, on which our LA was based. Brandon J held that the basis of an action on a foreign judgment was that:

“where a court of competent jurisdiction has adjudicated a certain sum to be due from one person to another a legal obligation arises to pay that sum on which an action of debt to enforce the judgment may be sustained.”

Since an action on a foreign judgment is an action on an implied debt, it is founded on contract, and thus subject to the section 6(1)(a) limitation period of 6 years. Therefore, even if the Respondent’s action had been based on the 1999 judgments, which were ostensibly enforceable money judgments, it would have been time-barred.

Concluding Words

Parties seeking to enforce foreign judgments in Singapore should thus ensure that the judgment in question is a money judgment. The Courts will look into the nature of the order and refuse to enforce it if it is not a money judgment.

Furthermore, parties should always take note of the applicable limitation period. This case clarifies that actions on foreign judgments should be brought within 6 years, which should alleviate any uncertainty for future litigants on this matter.

If you would like more information on the above, please contact Chandra M. Rethnam or Chou Tzu, whose contact details appear below, or contact the Knowledge and Risk Management Group at eOASIS@rajahtann.com, and we would be happy to assist you.
Dispute resolution

Contacts

Chandra Mohan Rethnam  
Equity Partner  
D (65) 6232 0552  
F (65) 6225 9630  
chandra.mohan@rajahtann.com

Chou Tzu  
Partner  
D (65) 6232 0390  
F (65) 6225 9630  
tzu.chou@rajahtann.com

Please feel free to also contact the Knowledge and Risk Management Group at eOASIS@rajahtann.com