HCCT 4/2019

[2019] HKCFI 1630

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

CONSTRUCTION AND ARBITRATION PROCEEDINGS

NO. 4 OF 2019

BETWEEN

OUE LIPPO HEALTHCARE LIMITED	Plaintiff
and	
DAVID LIN KAO KUN	Defendant

Before: Hon Coleman J in Chambers

Date of Hearing: 25 June 2019

Date of Judgment: 25 June 2019

J U D G M E N T

Introduction

1. On 15 January 2019, B Chu J made an Order ("Enforcement Order") on the plaintiff's *ex parte* originating summons ("Originating Summons") filed on the same date. The Enforcement Order granted leave to the plaintiff to enforce against the defendant an arbitration award ("Award") in the same manner as a judgment or order of this Court.

2. The Award was dated 7 January 2019 and registered in the SIAC Registry of Awards as Award No 002 of 2019, following the arbitral proceedings in SIAC Arbitration No 6 of 2018.

3. As usual, the Enforcement Order allowed the defendant 14 days after service of it on him to apply to set aside the order, and further ordered that the Award should not be enforced until the expiration of that period or, if the defendant were to apply within that period to set aside the order, until the set aside application is disposed of.

4. Paragraph 3 of the Originating Summons, which sought a Mareva injunction against the defendant, was adjourned to the Summons Judge on 25 January 2019, but an interim injunction ("Injunction Order") was made until that date.

5. On 16 and 22 January 2019, the plaintiff issued a summons seeking continuation of the Mareva injunction ("Continuation Summons") and a summons seeking ancillary disclosure ("Disclosure Summons").

6. On 23 and 24 January 2019 respectively, the defendant issued a summons seeking to discharge the Mareva injunction ("Discharge Summons") and a summons seeking variation of the Enforcement Order ("Variation Summons").

7. On 25 January 2019, DHCJ Field made various orders on the various summonses. First, he extended time for the defendant to apply to set aside leave to enforce the Award ("Set Aside Application"), and within which the Award should not be enforced. Secondly, he adjourned the Continuation Summons, the Discharge Summons, the Variation Summons, paragraph 3 of the Originating Summons and the Set Aside Application (if any) for substantive argument with one day reserved, fixed in consultation with counsel's diaries and at the earliest possible date.

8. The hearing for that substantive argument was fixed for 3 June 2019.

9. The deputy judge also made an order continuing the Mareva injunction up to the substantive argument date, with the amendment to permit the defendant to draw an increased sum of money for legal advice and representation in these proceedings.

10. On the last day of the extended period, 15 February 2019, the defendant issued his Set Aside Application.

11. On 10 May 2019, the defendant issued a summons asking for the substantive hearing of the Continuation Summons, the Discharge Summons, the Variation Summons and paragraph 3 of the Originating Summons fixed for 3 June 2019 to be heard, but asking for the substantive hearing of the Set Aside Application also fixed for 3 June 2019 to be adjourned to be heard before a judge with one day reserved, fixed in consultation with counsel's diaries at the earliest possible date.

12. An extension of time within which the defendant might file further evidence for the Set Aside Application was also sought (though the defendant had not identified the nature of the additional evidence he said he wished to file, or what further enquiries he might make to be able to do so).

13. It can at once be pointed out that there was an incongruity in the defendant's seeking to put off his application to set aside the leave for enforcement, yet wanting at the same time to argue against the measures of protection put in place to aid and achieve practical enforcement. At the hearing, Mr Anson Wong SC, then acting for the defendant, recognized that incongruity and accepted that if the matter were to be adjourned, then all matters would have to be adjourned, and the ring held in the meantime.

14. Another reason why the defendant said an adjournment should be granted was because he had applied to set aside the Award in Singapore, and a hearing on that application has been fixed for 22 July 2019, which Mr Wong emphasized was less than two months away. Of course, in such a situation, I may exercise a discretion as to whether or not to adjourn the proceedings. But I agreed with Mr Maurellet SC for the plaintiff that the fact that an award debtor has commenced proceedings to challenge the Award in another jurisdiction does not of itself require the Hong Kong Court to refuse enforcement for the time being. I also noted that the defendant had offered no security in the meantime (consistent, of course, with his originally wanting to discharge the Mareva injunction that day).

15. But on 3 June 2019 I acceded to the application on the part of the defendant to adjourn the hearing to permit the filing of further evidence. Essentially, I accepted that the defendant had faced at least a tight timetable for filing responsive evidence, and Mr Wong had accepted candidly that without the chance to file further evidence the defendant would have an uphill task in seeking to set aside the enforcement of the Award, and therein lay the prejudice if no adjournment were granted.

16. Mr Wong asked for 14 days (namely until 17 June 2019) for the defendant to file his evidence, which I allowed, and I fixed the adjourned hearing for 25 June 2019. Because of the relatively short time between the dates, I did not require security to be provided in the interim between 3 and 25 June 2019 (ie today). In short, I was prepared only to give a short adjournment, to allow the defendant the requested 14 days for filing his evidence, and because I happened to be able to fix an early date for the hearing a week or so after that deadline.

17. The defendant did not file evidence within the time allowed, and instead on 17 June 2019 issued a summons seeking an extension of time for him to do so by 19 June 2019 ("Time Summons"). However, the defendant did not file evidence then either. I am told that he also failed to file evidence in further support of his own application in Singapore by the deadline set there of 14 June 2019, though he may have been granted an extension of time until today and may do so today. Nor did the defendant file any skeleton argument by the deadline on 20 June 2019.

18. Rather, in the afternoon of 20 June 2019, the defendant's solicitors wrote to say their client was withdrawing the Set Aside Application. They enclosed a draft consent summons, but – unheralded by the letter – that draft also had a provision for an indefinite stay of the Enforcement Order. Unsurprisingly, the plaintiff refused to give such consent, pointing out that withdrawal of a summons requires the leave of the Court.

19. The Court was sent or copied into the various correspondence between the parties, including by which the defendant's solicitors notified that they had been instructed not to file evidence, nor to file any skeleton argument. On 21 June 2019 I directed that if the defendant were to seek to withdraw the Set Aside Application, he would need to issue a proper summons for that purpose.

20. Against this chronology, Mr Christopher Chain, now acting for the plaintiff, submits it is clear that the defendant never had any answer to the plaintiff's evidence, that he has simply tried to buy time, and that he continues to seek to delay or frustrate the enforcement of the Award. That submission has force, but it is not of itself the answer to the various matters which remain before the Court for decision. But it does seem with the benefit of hindsight that allowing time for him to file evidence but fixing an early hearing might have called the defendant's bluff.

21. Anyway, on 24 June 2019 the defendant issued a summons seeking leave to withdraw the Discharge Summons, the Variation Summons, the Seta Aside Application and the Adjournment Summons as well as the Time Summons. Although not formally seeking an abridgement of time, it was made returnable before me this morning. The plaintiff opposes that application.

22. Although a summons has now been issued seeking leave to withdraw the Set Aside Application, I do not grant leave. It seems to me that there is an Award, and whether it might be enforced in Hong Kong is a question that needs to be – and can be – answered now, one way or the other. Voluminous evidence has been filed, and the defendant sought and was given the opportunity to file whatever other evidence he might wish to file in support of his position.

23. As Mr Chain has reminded me, the plaintiff brought the four deponents of its affidavit material at the hearing on 3 June 2019, so that they might be tendered for cross-examination in oral evidence. Of course, the hearing was adjourned, but I indicated that I did not think oral evidence would be of greater assistance than the material contained on the papers. Certainly, it was understood that the whole purpose of the adjournment of the matter to today was to conduct a consideration of factual matters, in light of the materials already filed and any other materials put forward by the defendant.

24. I should add that before issuing the summons seeking leave to withdraw his various applications, the defendant's solicitors had written to the plaintiff's solicitors (copied to the Court) saying that they had instructions to agree the directions proposed by Mr Chain in his skeleton argument about dismissing the defendant's applications and continuing the Injunction Order.

25. This morning, Mr Martin Kok, who informed me he was only instructed relatively late yesterday and apparently on a fairly limited basis, confirmed that the defendant was content for his applications either to be withdrawn or dismissed. The real dispute is as to the basis of dismissal, and whether it should be accompanied by any factual findings that I might make.

26. Had there been a genuine intention on the part of the defendant for a fully argued hearing this morning, I would have expected Counsel to have been instructed sufficiently in advance for that purpose. That no Counsel was instructed to conduct this hearing until late yesterday tends to suggest that the defendant did not intend that full argument, with the factual findings that might flow from it.

27. Nevertheless, it seems to me that where there is not exactly common ground between the parties as to the basis of the dismissal, it is open to me to decide that basis. As I have already indicated, I think I can and should analyse the materials and make such findings as seem to me to be appropriate on those materials. I am not concerned as to any particular use in other jurisdictions of any findings I make in Hong Kong. Nor, in making factual findings, do I need to rely on any law of any other jurisdiction.

28. I am not attracted to the idea that someone in the position of the defendant in this case can at least on the surface maintain stringent opposition to the plaintiff's enforcement and factual assertions, only to cave in at the last moment, probably in the hope of avoiding foreseeably adverse factual findings.

29. Nor do I accept the suggestion from Mr Kok from the Bar table that the defendant has not filed his further evidence in Hong Kong because he is stretched thinly, and may have concentrated on the Singapore proceedings. The arguments and evidence in Singapore and in Hong Kong seem to be almost the same, or at least are substantially overlapping, and there is no reason given by the defendant why he could not have filed evidence in one jurisdiction if he genuinely intended to file evidence in the other.

30. I acknowledge that Mr Kok is in an awkward position, with his relatively limited instructions for conducting any hearing this morning. But the defendant has chosen not to file further evidence and has chosen to instruct his representatives not to prepare for a hearing which until the eleventh hour was intended as a substantive hearing. The defendant must live with the consequences of that.

Some Background

31. The plaintiff is a public company incorporated in Singapore, and listed on the Catalist Board of the Singapore Exchanges Securities Trading Limited.

32. The defendant is an individual of Chinese nationality. He describes himself as a Taiwanese and a medical physician with over 30 years of healthcare management experience. Since around 1996, he has worked on the Mainland as a physician and surgeon and been involved in the management of hospitals on the Mainland. One such hospital was in Wuxi ("Wuxi Hospital").

33. There is a Share Purchase Agreement dated 18 February 2013 ("Original SPA") apparently made between the plaintiff and the defendant, and which contains an arbitration clause ("Arbitration Clause") at Clause 13.2. The Original SPA was subject to further amendment, novation, and supplemental agreement by documents dated 20March 2013 ("First Amendment Agreement"), 7 May 2013 ("Deed of Novation") and 8 July 2013 ("Second Supplemental Agreement").

34. Whilst the First Amendment Agreement retained the Arbitration Clause, the Deed of Novation and Second Supplemental Agreement contained exclusive jurisdiction clauses in favour of the Singapore courts.

35. Disputes and differences having arisen between the plaintiff and the defendant, the plaintiff commenced the Singapore arbitration proceedings which led to the Award. The arbitration proceedings were conducted by an experienced sole arbitrator.

36. The defendant did not enter any appearance, nor did he take any part, in the Singapore arbitration proceedings. Why that happened is one of the issues that falls to me to determine.

37. The Award ordered the defendant to pay to the plaintiff's damages in the sums of RMB 58,837,898 and US$32,840,185.87, together with costs and fees of the arbitration proceedings in the sum of SG$842,822.66, with interest to accrue on all sums owed by the defendant under the Award from 7 January 2019 to the date of full payment.

38. These figures total in the order of HK$330 million. The essence of the basis of the Award is that the defendant took payment on the sale of the ultimate interest of Wuxi Hospital, then caused the ultimate interest to be transferred back to himself, effectively taking the substantial money paid but giving nothing in return, and leaving the (novated) plaintiff in the position of being deprived of both the purchase price and the interest that the price was supposed to have purchased. Hence, the substantial amount of the Award.

39. There have been a number of proceedings both in Hong Kong and in the Mainland, as part of the wider disputes between the parties to the Award and related parties. I do not think I need to go into the detail of those disputes save to note that reference has been made to various documents filed by the parties in them, and in particular to statements made there which may be inconsistent with statements now made for the purposes of these proceedings.

40. From the defendant's point of view, he relies on the fact that the plaintiff was closely associated with various opposing parties of his in the other sets of proceedings. Hence, he says the SIAC Arbitration and the present proceedings are part of a broader dispute between the plaintiff's camp/associates and himself.

Set Aside Application

41. Logically, it seems to me the first matter to consider is the Set Aside Application, by which the defendant sought to set aside the leave granted to enforce the Award as though it were a judgement of the Hong Kong Court. If such leave is set aside, the various orders made dependent upon or ancillary to it are likely simply to fall away.

42. As to the relevant principles on setting aside leave to enforce arbitration awards, it is well-known that the Hong Kong Court is generally pro-enforcement of Convention Awards, and the structure of the Arbitration Ordinance is to discourage unmeritorious points and to uphold Convention Awards unless a complaint of substance is made out.

43. When looking at the complaints, the Court is concerned not with the substantive merits of the dispute underlying the arbitral proceedings and the award, but with the structural integrity of the proceedings. The burden of establishing good grounds for the Court to interfere rests with the defendant. The standard of proof is on a balance of probabilities, but as always the more serious the allegation under the complaint the more cogent and persuasive must be the evidence required to make good that complaint.

44. The matter will ordinarily be dealt with in affirmation/affidavit evidence. A direction for cross-examination is rare, not least because it is rarely appropriate or likely to assist.

45. The grounds upon which the defendant made the Set Aside Application are as follows.

46. First, the defendant asserted that the arbitration agreement in the Arbitration Clause relied on by the plaintiff in the SIAC Arbitration was not valid under the law to which the parties subjected it and/or under the law of the country where the Award was made ("Validity Point").

47. Secondly, the defendant asserted that he was not given proper notice of the appointment of the arbitrator and/or of the proceedings in the SIAC Arbitration ("Notice Point").

48. Thirdly, the defendant said that he was unable to present his case in the SIAC Arbitration. This point seems to me to be dependent on the Notice Point, and to stand or fall with it.

49. Fourthly, the defendant said that the Award deals with a difference not contemplated by or not falling within the terms of any purported submission to arbitration and/or contains decisions on matters beyond the scope of any purported submission to SIAC Arbitration ("Scope Point").

50. Fifthly, the defendant said that it would be contrary to public policy to enforce the Award. Whilst the defendant has asserted in general terms that the plaintiff's intended enforcement of the Award is a sham and abusive exercise, no separate reason other than the previous challenges is identified as to giving rise to a public policy point, and I do not think this argument therefore adds anything to the analysis, or needs to be further considered.

51. It is convenient to deal with each of the Validity Point, Notice Point and Scope Point in turn.

Validity Point

52. The defendant has sought to redefine the Original SPA as the Purported SPA, as he denies that he ever in fact signed on or agreed to it. I do not think that arguing about definitions is helpful, and I shall continue to refer to the relevant agreement as the Original SPA, whilst recognising the defendant's case that it was not signed on or agreed to by him, and is (as he put it) merely a forged document.

53. Because the Original SPA was not agreed to by him, the defendant says he never agreed to the Arbitration Clause.

54. The defendant says he recognises his own signature on the signature page of the Original SPA, but he never signed on or agreed to the contents as reflected in the body of the Original SPA. He confirms that he had signed some agreement in around early 2013 (of which he says he did not retain a copy), but asserts it was certainly not the Original SPA now produced by the plaintiff.

55. The defendant makes reference to certain indications of forgery. One is that the initials "DL" appearing on various pages of the Original SPA were not put there by him, and are different to his handwriting. Another is by reference to the pagination of the document, which he says has all the hallmarks of an attempt to piece together two (or more) separate documents into one, so as to give the appearance of a single full document.

56. The defendant also relies upon the fact that unlike the Original SPA, the Deed of Novation and the Second Supplemental Agreement did not have arbitration clauses, but rather Singapore courts exclusive jurisdiction clauses. He says this supports his case that the signature page on the Original SPA was fraudulently attached to the body of it, which contain terms including the Arbitration Clause which he did not agree to at all.

57. The plaintiff has filed a significant amount of evidence countering the suggestion of forgery. First, the plaintiff points out that the defendant admits that there was an agreement for the relevant sale and purchase of shares between its predecessor (until the novation) as purchaser and Dr Er and the defendant as vendors. Secondly, the plaintiff points out that the defendant admits signing the 3 subsequent agreements which novated and amended the terms of the Original SPA, and which form a cohesive whole, including by cross-referencing and wholesale reproduction of clauses between them.

58. Further, it is pointed out that the defendant has not identified any single clause within the Original SPA to which he says he did not agree, other than the Arbitration Clause. Insofar as the suggestion appears to come from the defendant that the Arbitration Clause was forged to replace an existing exclusive jurisdiction clause in favour of the Singapore courts, the plaintiff asks the rhetorical question why it would do that, when it might consider a Singapore court exclusive jurisdiction clause even more favourable than the Arbitration Clause.

59. The plaintiff also refers to the fact that in 2014 the defendant himself specifically attempted, or at least threatened by his own solicitors, to invoke the Arbitration Clause against the plaintiff. By so doing, the defendant must have been aware of the Arbitration Clause and asserting its validity. I agree.

60. There are also a number of previous statements made by the defendant which are difficult to reconcile with his current stance that the Original SPA has to some extent been forged. Indeed, reference was made to the Original SPA on numerous occasions in the previous proceedings in the Mainland, and no challenge to the authenticity of it was ever made by the defendant.

61. The plaintiff has also produced evidence of the extensive negotiations leading to the Original SPA, and the genesis of the Arbitration Clause. Indeed, that evidence seems to me to demonstrate that the dispute resolution clause became a live issue at the instigation of an assistant to the vendors, including the defendant himself. Subsequently, the defendant signed a document containing the Arbitration Clause which had been negotiated to replace an exclusive jurisdiction clause in favour of the Singapore courts which had appeared in an earlier draft.

62. As to the allegations arising from the initials, there is affidavit evidence from various persons who were present during the negotiations and at the time the Original SPA was signed (including evidence from Dr Er, the other vendor) who attest to seeing the defendant signing the document, and adding his initials on the relevant pages. I accept that evidence.

63. As to the allegations arising from the pagination, it appears to be common ground that the form of the Original SPA now produced is the combination of the originally signed version and a subsequent version with a few minor changes, which combination was put together at the suggestion of the defendant's representative for convenience. I accept that evidence. Indeed, it is clear that the terms of the original intended sale took place, the consideration was exchanged, and necessary transfer documents were executed for the transfer of shares from the vendors to the purchaser.

64. Looking at the materials overall on this Validity Point, I reject the defendant's assertions. I find as facts that the Original SPA and the Arbitration Clause are valid and binding (as indeed are the subsequent documents in the suite of documents, being the First Amendment Agreement, the Deed of Novation and the Second Supplemental Agreement), and that the defendant did agree to the terms of the Original SPA, including the Arbitration Clause.

65. Put simply, the Validity Point taken by the defendant has no merit.

66. I think I am entitled to take into account what seems to me to be the defendant's lack of truthfulness on this point in my assessment of his evidence on other points. It might also be said that I have taken into account on the Validity Point my assessment of his evidence on the other points. In other words, I have assessed the credibility of the defendant on the materials overall, without inappropriate compartmentalisation point by point, albeit recognising that individuals can be untruthful on one point whilst being truthful on another.

Notice Point

67. The concept of 'proper notice' may be different from 'actual notice' and brings into play questions of fairness. Proper notice is usually concerned with an assessment of whether the notice is likely to bring the relevant information to the attention of the person notified. That may take into account any contractually agreed notice provisions, any agreed dispute resolution mechanism and relevant institutional rules. It is a question of fact.

68. Where the lack of proper notice is said to have occasioned an inability to present one's case, the conduct complained of must be sufficiently serious or egregious to say that a party has been denied due process.

69. Obviously, due process is not violated where the party's absence is due to his own decision not to attend the arbitration proceedings.

70. The defendant says that he had no knowledge of the existence of the SIAC Arbitration, let alone the Award, until his solicitors notified him of it when they received from the plaintiff's solicitors the Originating Summons and the Order of 15 January 2019, on or around 17 January 2019.

71. The defendant says he was never made aware of these matters by any notification and/or document relating thereto via the address in Shanghai ("Shanghai Address") to which the plaintiff says it sent notices and documents.

72. Again, I do not think it helpful that the defendant has sought to redefine that address as the "Purported Shanghai Address", and I shall continue to use the definition of Shanghai Address, whilst recognising the defendant's case on this point. I would add that the redefinition is rather unattractive, for there is nothing "purported" about the Shanghai Address: it is in fact a real address, in fact of premises partly owned by the defendant, where in fact at least the defendant's wife seems to live, and which address in fact the defendant designated as the place where he might be sent contractual notices.

73. The defendant goes so far as to say that the plaintiff deliberately served the documents on the Shanghai Address, with full knowledge that he could not be contacted via that address, and notwithstanding that at the time of the commencement of the SIAC Arbitration, the plaintiff must have been aware of various other addresses through which he could have been contacted. Therefore, he says, "as such" the plaintiff failed to give proper notice to him.

74. The defendant points out that in various documents filed in Hong Kong Court proceedings and arbitration, the plaintiff became aware of the defendant's disclosed address as the Hong Kong Business Address, and the plaintiff has acknowledged that fact in its evidence in these proceedings. The defendant also points to the use of other business addresses in Shanghai mentioned in the Mainland proceedings, as well as the ability to contact him via his lawyers in Hong Kong and in the Mainland.

75. The plaintiff's Singapore legal representatives have provided a schedule detailing the service of notices and documents on the defendant in the course of the Singapore arbitration proceedings. Notices and documents were repeatedly sent to the defendant by registered post to the Shanghai Address, by courier to the Shanghai Address, and by email.

76. The plaintiff says that the Shanghai Address was the contractually agreed address for service of any notice, demands, or communications upon the defendant as expressly provided for in Clause 10.1 and Schedule one of the Original SPA. That is clearly correct.

77. The plaintiff also says that the Shanghai Address was the usual and/or last known place of abode of the defendant, and it has no reason to be aware why the defendant would not have received the numerous notices and documents sent to that address. Documents sent by registered post were returned undelivered, but the plaintiff says that service was valid under the SIAC Rules.

78. Nevertheless, from the above matters, it is clear that the plaintiff was aware of various other addresses at which it might have been possible to have contacted the defendant, one such address is a Hong Kong business address, being the principal place of business of a Hong Kong listed company of which the defendant is (or was until 7 September 2018) Vice-Chairman and Executive Director.

79. As to the point about the contractual address for service, the defendant argues that the plaintiff's reading of Clause 10.1 of the Original SPA is entirely wrong. That clause provides that all notices or communications "shall be in writing and delivered personally or sent by prepaid registered post given herein or to such other address as any Party may from time to time been notified for this purpose".

80. The defendant has placed emphasis under the words "or to such other address as any Party may from time to time been notified". However, it seems to me that the material words include the words "for this purpose". The relevant purpose is the purpose of giving notice in relation to matters arising out of the Original SPA (and the various subsequent agreements which motivated or amended its terms). The defendant does not suggest that he is given any change of address for that purpose.

81. It might also be taken into account that the Shanghai Address is the address of the defendant listed in the First Amendment Agreement, the Deed of Novation and the Second Supplemental Agreement, all of which the defendant admits signing.

82. Insofar as the defendant appears to be suggesting that he no longer uses the Shanghai Address, there is significant evidence to the contrary. In any event, it seems that he is one of the owners of that address, and there is evidence that his wife lives there.

83. Indeed, though various other addresses might have been bandied about from time to time, in January 2017 the defendant's legal representatives in Hong Kong deposed that he could be effectively served at the Shanghai Address, and that the address remains his residential address on public record. Nothing appears to have changed before the material times for the purposes of the current consideration.

84. There is evidence from a lawyer instructed by the plaintiff in the mainland who made two attempts personally to serve the Notice of Arbitration on the defendant at two of his addresses in Shanghai. The documents were left at the Shanghai Address after speaking to the defendant's wife at those premises, who said the defendant was not currently there. There were signs of the defendant's use of the premises.

85. There is evidence provided on behalf of the plaintiff, on the basis of information from Shanghai police officers believed to be true, that as of July 2018 the defendant was in occupation of the Shanghai Address together with his wife. Indeed, the defendant was apparently present at that address during an alleged assault on 17 July 2018.

86. Further, the plaintiff's application to the Shanghai Court for recognition and enforcement of the Award in the Mainland was likely served by the Court at the Shanghai Address provided to them. It seems they were mailed to that address through courier. In response the defendant's Chinese legal representatives attended a hearing on his behalf.

87. The defendant has markedly not deposed to having no use of or access to the Shanghai Address. In all the circumstances, I find as a fact that the defendant did receive the notices at the Shanghai Address, and that he was properly served at that address.

88. I also note that the defendant used the 2 email addresses identified by the plaintiff, and that the defendant has appeared to be careful about not saying that he did not have access to or use of those email addresses at the relevant times. Nor has he offered any explanation as to why email sent to him at those addresses might not have been received by him. In the circumstances, I also find as a fact that the defendant did receive the notices sent to him by email at those email addresses.

89. There is a wealth of evidence which seems to me to demonstrate that the defendant would likely have received notice of the SAIC Arbitration by documents sent to or left at the Shanghai Address, and sent to his email addresses. I am satisfied, and I find as facts, that service of documents and giving of notice was New York Convention compliant, that the defendant could have participated and had the full ability to have presented his own case, and that the non-participation by the defendant in the SIAC Arbitration was at his own choice.

90. For the avoidance of doubt, I wholly reject the suggestion that the plaintiff sought to hide the SIAC Arbitration proceedings from the defendant.

91. In any event, this point was considered by the arbitrator in the Award. The arbitrator was satisfied that proper notice had been provided to the defendant as required under the relevant SIAC Rules. I see no reason to interfere with that part of the Award.

92. The Notice Point taken by the defendant has no merit.

Scope Point

93. The defendant argues that the arbitrator lacked jurisdiction to make the Award. This was, first it is said, because there was no valid arbitration agreement, so that the Award must have dealt with matters beyond the scope of any arbitration agreement. Secondly, this was because the plaintiff was not a party to the Original SPA but instead to the Deed of Novation and the Second Supplemental Agreement, which contained exclusive jurisdiction clauses in favour of the Singapore courts.

94. I have already decided that there was a valid arbitration agreement in the Arbitration Clause.

95. Further, I reject the argument that the plaintiff was not able to take the benefit of the Arbitration Clause. By the Deed of Novation, the plaintiff was substituted in all respects for the original party substituted by it. It makes no sense at all to suggest that the plaintiff would have been bound by every other term of the Original SPA, but not the Arbitration Clause also contained in that document.

96. Again, I have taken into account the fact that the defendant has failed to identify any other term of the Original SPA which he says he did not agree.

97. I also note that the Scope Point was fully canvassed in the arbitration and dealt with in the Award. I see no reason to interfere with the Award in that respect. Though the plaintiff has produced an independent legal opinion also confirming the correctness of the Award on this point, I am not sure I really need to resort to that opinion. I am satisfied, and find as a fact, that the matters dealt with in the SIAC Arbitration and in the Award were all within the scope of the Arbitration Clause.

98. The Scope Point taken by the defendant has no merit.

Conclusion on Set Aside Application

99. I agree with Mr Chain's submission that the evidence against the defendant is overwhelming. The application has no merit, and I have no hesitation in dismissing it.

100. The Enforcement Order therefore becomes final.

Injunction

101. I note that there is now no issue as to the continuation of the Injunction Order. But, in any event, I shall say that I reject the defendant's allegations of non-disclosure. I am satisfied as to the real risk of dissipation. There is no basis to vary the terms of the Injunction Order. I refuse leave to withdraw the Discharge Summons and the Variation Summons and instead I dismiss them.

102. Therefore, on the Continuation Summons, I continue the Injunction Order until further order.

Other Matters

103. I think the Adjournment Summons was dealt with by me on 3 June 2019, so there is no point in the defendant now seeking its withdrawal, nor in my granting leave. I am, however, content to grant leave for the defendant to withdraw the Time Summons.

Costs

104. There is also no dispute on this. I award the plaintiff its costs on all matters on an indemnity basis.

105. I add that even without the concession, I would have ordered costs on an indemnity basis and for two reasons. First, because of the usual approach in arbitration related matters, not least where the plaintiff has been forced to seek to enforce the unpaid Award and until the last moment faced full-throttled opposition from the defendant. Secondly, I think the actions of the defendant in running a wholly unmeritorious case fall within the category which cries out for a visitation of indemnity costs.

106. I will deal with costs on a summary gross sum basis, on paper submissions and in a written ruling.

(Russell Coleman)
Judge of the Court of First Instance
High Court

Mr Christopher Chain and Ms Jasmine Cheung, instructed by Howse Williams, for the plaintiff

Mr Martin Kok, instructed by ONC Lawyers, for the defendant