



LEGAL UPDATES

Arbitration

Giant Light Metal Technology (Kunshan) Co Ltd v Aksa Far East Pte Ltd [2012] SGHC 2

In this case, the Singapore High Court dismissed the Defendant's application to stay an action ('Action') to recover a debt which arose from the Defendant's non-payment of a judgment sum awarded by the Suzhou Intermediate Court, Jiangsu Province, in the People's Republic of China ('PRC').

The High Court found that since the Plaintiff's Action relating to the debt arising from the PRC Court's judgment did not fall within the terms of the parties' arbitration agreement, section 6 of the Singapore International Arbitration Act ('IAA') which provides that where any party to a valid arbitration agreement to which the IAA applies institutes court proceedings against another party to that agreement "*in respect of any matter which is the subject of the agreement*", any party may, before taking a step in those proceedings, apply to the court to have the proceedings stayed" did not apply. Accordingly, the Defendant's application to stay the proceedings did not succeed.

The Defendant had argued that there was a clear arbitration agreement in its contract and that the Plaintiff was in breach of this agreement by commencing the Action in Singapore.

The High Court rejected the Defendant's arguments and was of the view that on the face of the arbitration agreement, it was clear that it only applied to disputes or controversies occurring during performance of the contract.

Citing the case of *Tjong Very Sumito [2012] SGHC 125*, the Court acknowledged that section 6 of the IAA could only apply if a claim, in respect of which a party was seeking a stay, fell within the terms of an arbitration agreement. The High Court therefore sought to determine whether the Defendant was seeking:

- stay of a dispute arising out of the contract during the performance of the contract; or
- stay of the Plaintiff's claim for a debt arising from the PRC judgment.

If the latter, the defendant's application could not succeed.

The High Court concluded that the Action related to a debt arising from the PRC judgment. Accordingly, the Defendant was seeking to stay the Plaintiff's debt claim, rather than any dispute or controversy arising out of or relating to the contract. Since the Action did not fall within the terms of the arbitration agreement, section 6 of the IAA was inapplicable and the stay was refused.

The High Court also noted that the Defendant made the conscious decision neither to object to the proceedings before the PRC Court nor to appeal against the PRC judgment when it was granted. Coupled with the fact that the Defendant did not argue that the PRC judgment was either not made by a court of competent jurisdiction or that it was in any way irregular, the High Court found that there could be no question that the PRC judgment was final and conclusive.

Restraint of Trade Clauses v Payment-for-Loyalty Clauses

Mano Vikrant Singh v Cargill TSF Asia Pte Ltd [2011] SGCA 42

In this case, the Plaintiff-employee appealed against the decision of the Singapore High Court which had decided that a clause in the employee's incentive bonus plan, which allowed the employer to forfeit the employee's deferred bonus in the event he resigns and joins a competitor during the effective period of the non-compete prohibition, did not amount to a restrictive covenant which was in restraint of trade as it does not prohibit the employee from competing with the employer. Instead, the Court found that the clause merely set out what the employee would have to forfeit should he choose to compete upon his resignation, and served to operate as a financial disincentive to the employee from competing after he leaves the employer.

On appeal, the Singapore Court of Appeal reversed the decision and held that the issue did not turn not on what choices the employee had, but whether the content of the clause involved a restraint. As the clause dealt with monies which the employee was legally entitled and sought to restrain him from leaving the employment to join a competitor by way of a threat to forfeit monies already vested in the employee, the clause was accordingly in restraint of trade.

The Court of Appeal distinguished such a clause from a payment-for-loyalty clause, which entailed an additional payment to the employee as an incentive for him to continue in the employer's employment. The latter clause would not be in restraint of trade as it does not deal with monies already vested nor govern the post-termination conduct of the ex-employee.

International Child Relocation

AZB v AYZ [2012] SGHC 108

In this case, the Singapore High Court granted a mother's application to permanently relocate overseas with her child despite the fact that other ancillary matters were still pending

The appellant father was a wealthy Malaysian businessman while the respondent mother was an American residing in Singapore. The mother was the primary care-giver of the parties' only child, a 9 year old daughter. Parties divorced and the mother applied to permanently relocate to the United States. The Family Court granted her application and the father appealed.

The High Court held that when considering an application for relocation, the litmus test was whether the best interests of the child would be served by a move back to the United States. The real reason for the courts placing such great weight on a reasonable application by a primary caregiver to relocate with the child, was grounded on the premise that the well-being of the child and that of the primary caregiver were inextricably tied together. The court is therefore loath to interfere with important life decisions of the primary caregiver, so long as they are reasonably made, and are not against the interests of the child.

The mother's decision to relocate was found, on the facts, to be eminently reasonable as she had never quite been able to feel comfortable and at home in Singapore, given her uncertain residential status. It also did not help that the mother had no family members or close friends in Singapore to act as a support group for her. The father, being aware of the mother's vulnerability and insecurity in this regard, was found to have exploited it to



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his advantage. In light of these circumstances, it was only understandable that the mother wished to be in an environment where she had the best chance of regaining psychological and emotional stability and to delay the mother's plan to relocate would unnecessarily prolong her agony and discomfort and ultimately not be in the child's best interest.

Amendments to KLRCA Arbitration Rules

The Kuala Lumpur Regional Centre for Arbitration (KLRCA) has launched its latest Arbitration Rules, which came into effect on 2 July 2012. The Rules are an update of the 2010 KLRCA Arbitration Rules and have been revised after taking into account KLRCA's administrative experiences as well as feedback from stakeholders including case administrators, legal professionals, arbitrators as well as parties to the proceedings.

New changes include: provisions stipulating the information, documents and fee required for registration of a matter with the KLRCA, a reduction of the time for appointment of arbitrator to 30 days, provisions relating to challenge of arbitrators, provisions stipulating that the Director of KLRCA will confirm the appointment of arbitrators appointed by parties or any appointing authority agreed by them, clarity of procedure for extension of time, delivery and release of awards to parties and consent awards, default application of the KLRCA Schedule of Fees unless parties otherwise agree, time for payment of provisional deposits, streamlining of payment of arbitrator's disbursements and KLRCA's administrative costs.