

March 1, 2015

Court of Appeal – It's the High Court for applications to set aside Adjudication Determinations ("AD") and the State Courts or High Court (depending on adjudicated amount) for leave to enforce ADs.

Summary of case

In *Citiwall Safety Glass Pte Ltd v Mansource Interior Pte Ltd* [2014] SGCA 61, the Court of Appeal held that the current practice of applying to the High Court, to set aside ADs is correct. This is notwithstanding the fact that no legislation, the Building and Construction Industry Security of Payment Act ("SOPA") and Order 95 Rules of Court ("ROC") stipulate that such applications must be brought in the High Court.

Further, until Parliament reviewed the SOPA, an application for leave to enforce an AD may be brought in the State Courts or the High Court depending on the adjudicated amount involved.

Facts

The Respondent, Mansource Interior Pte Ltd, and the Appellant, Citiwall Safety Glass Pte Ltd were involved in an adjudication regarding the final payment for a supply and installation contract. An AD was issued in the Appellant's favour for the sum of \$239,633.46. The Respondent did not pay.

The Appellant successfully sought leave of the High Court to enforce the AD as a judgment under Section 27 SOPA ("Leave Order"). The Respondent then applied to set aside the Leave Order, the judgment obtained pursuant to the enforcement of the AD ("the Section 27 Judgment"), and the AD itself in the High Court ("setting-aside application"). Though the Respondent failed before the Assistant Registrar, it appealed successfully to the High Court Judge and the setting-aside application was allowed. The Appellant then filed a notice of appeal to the Court of Appeal, and furnished security for costs for the appeal in the sum of \$15,000 pursuant to O 57 r 3 ROC.

The Respondent applied to strike out the Appellant's notice of appeal on two grounds:

- The Appellant did not obtain leave to appeal to the Court of Appeal pursuant to Section 34(2)(a) of the Supreme Court of Judicature Act ("SCJA"), where leave to appeal was required if the amount in dispute was less than \$250,000 – the AD was for \$239,633.46; and
- The Appellant should have furnished \$20,000 (not \$15,000) as security, since the appeal was against a final order and not an interlocutory order.

In respect of the first issue, the Respondent argued that the exception in Section 34(2A)(c) of the SCJA was not applicable to the Appellant. Section 34(2A)(c) basically states that there is no requirement to obtain leave to appeal

to the Court of Appeal, even where the amount in dispute was less than \$250,000, where there is a law which requires the High Court to hear a case in the exercise of its original jurisdiction. The Respondent submitted that the High Court was not required by any law to hear and determine the setting-aside application, and in any case, setting-aside an AD was an exercise of the High Court's supervisory jurisdiction.

The Appellant's arguments

In reply, the Appellant argued that the setting aside application fell within the exception in Section 34(2A)(c) because:

- The Appellant filed its application for leave to enforce the AD in the High Court and the application was made pursuant to Section 27 SOPA;
- "The court" referred to in Section 27 meant the High Court;
- The Respondent's setting-aside application was made in the same proceedings, which were commenced by the Appellant in the High Court. The decision of the High Court was therefore given in its original jurisdiction; and
- Alternatively, if setting-aside an AD required an exercise of the High Court's supervisory jurisdiction, since the High Court is the only court with supervisory jurisdiction, the application was required by law to be heard by the High Court.

Decision of Court of Appeal

- Whether the notice of appeal should be struck out because leave was not obtained

Even though there were no written laws, specifically Section 27 SOPA and Order 95 ROC, which provide that setting aside an AD should be made to the High Court, the current practice of applying to the High Court to set aside an AD should prevail.

A setting-aside application requires an exercise of the court's supervisory jurisdiction

Setting-aside an AD was an exercise of the High Court's supervisory jurisdiction. The High Court has supervisory jurisdiction over all subordinate courts and tribunals by virtue of Section 27(1) SCJA, and Sections 19(3) and 52(2) of the State Courts Act. In so holding, the Court of Appeal also held that an exercise of the High Court's supervisory jurisdiction is part of its original jurisdiction, and the two are not mutually exclusive. Hence, when the High Court hears and tries an application to set aside an AD, it is in fact exercising its original jurisdiction. As such, the Appellant did not need leave to file its notice of appeal against the decision of the High Court as the exception in Section 34(2A)(c) SCJA applied to the present case.

- Whether the notice of appeal should be struck out due to inadequate security being furnished

The appeal was against a final order and not an interlocutory order. Once the High Court had set aside the AD, the Disputed Judgment and the Leave Order, the High Court's order was a final order as there was nothing further for the court to deal with. Thus the Appellant should have furnished \$20,000 as security. However, the Appellant's non-compliance was merely an irregularity, which the Court of Appeal could address under Order 2 Rule 1 ROC. The notice of appeal was not struck out and the Appellant was ordered to furnish additional security in the sum of \$5,000.

Comments

The Court of Appeal affirmed the prevailing practice of applying to the High Court to set aside an AD and/or a Section

Application to set aside an AD should be made in the High Court

27 Judgment despite there being no laws expressly mandating it to be so.

Application for Leave to Enforce an AD to be made either in State Courts or High Court

The Court of Appeal also noted that there was no express statutory provision requiring an application for leave to enforce an AD to be made to a particular court. Hence, the appropriate court to apply to would depend on the jurisdictional limits of the court. However, it would seem inconsistent if an application to set aside an AD can only be made in the High Court, whereas an application for leave to enforce an AD may be made in any court. Although this was true and it may be timely for Parliament to review the SOPA, the Court of Appeal confirmed that until such time, an application for leave to enforce an AD may be brought in the State Courts or High Court depending on the adjudicated amount involved.

Debtors should apply to set aside both the AD and Section 27 Judgment

The Court of Appeal also noted that since the AD forms the basis of a Section 27 Judgment, the said judgment would cease to exist once the AD is set aside. Nonetheless, the Court of Appeal advised that the debtor should be prudent and apply to set aside both the AD and the Section 27 Judgment, as it would extinguish the debtor's liability to pay in full.

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