

Singapore Court Permits for Use in Foreign Proceedings, Documents and Information Protected by *Riddick* Undertaking

The *Riddick* principle states that a party who discloses a document in an action under compulsion is entitled to the protection of the court against the use of the document otherwise than in that action. If a document is protected by the *Riddick* undertaking, it may nonetheless be used without the court's permission due to the nature of the related enforcement proceedings for which the document is used. Otherwise, the party seeking to use the document to commence or sustain related proceedings must seek the court's permission for the *Riddick* undertaking to be lifted.

In *Third Eye Capital Corp v Pretty View Shipping SA & Ors* [2024] SGHC 96 (*Third Eye Capital*), the General Division of the High Court of Singapore (**General Division**) granted the plaintiff permission to use in foreign proceedings, documents and information it had obtained from the defendants through examination of judgment debtor proceedings (**EJD Proceedings**).

Our Partners Koh Swee Yen, SC and Lin Chunlong, Senior Associate Tian Keyun and Associate Lucas Wong acted for the successful plaintiff.

Our Comments

The General Division's decision in *Third Eye Capital* is significant in two ways.

First, the General Division clarified that there is no need for an applicant seeking permission to use documents and information protected by the *Riddick* undertaking in related proceedings to establish an arguable case on the merits of the related proceedings. However, if the party resisting the grant of permission is able to demonstrate that the related proceedings are bound to fail or ought to be struck out, permission should not be granted as the application would be futile and the balance of interests would lie against giving permission.

Second, the General Division clarified that, while EJD Proceedings should not be used as a form of pre-action discovery to bring a claim, it would not be an abuse if information relevant to such a claim should emerge during the exercise of the judgment creditor's right to examine the corporate judgment debtor's officer(s). The General Division took the view that reasonable latitude ought to be afforded to a judgment creditor seeking information through EJD Proceedings. After all, a judgment creditor who conducts EJD Proceedings will rarely know the means available to him to enforce a judgment debt, and that is the very reason to initiate EJD Proceedings: to enable him to obtain information to decide what to do.

Background

The plaintiff was a Canadian company providing financial capital and credit services (**Plaintiff**). The third defendant, Parakou Tankers Inc (**Parakou**), was incorporated in the Republic of the Marshall Islands (**RMI**) and the holding company of the first and second defendants. All three defendants were in the shipping business. Parakou's sole shareholder, director, and chief executive officer was Mr Liu Por (**Liu**), a Singapore citizen.

The Plaintiff obtained two arbitration awards against the defendants (**Awards**) which remained wholly unsatisfied. The Plaintiff obtained leave to enforce the Awards in Singapore and entered judgment against the defendants (**SG Judgment**). The Plaintiff also obtained leave to enforce the Awards in the High Court of RMI (**RMI Court**) and obtained judgment (**RMI Judgment**).

The Plaintiff then commenced EJD Proceedings for Liu to be orally examined on whether the defendants had any property or means of satisfying the SG Judgment and to provide by way of affidavit the answers and documents sought by the Plaintiff. Liu filed five affidavits in the EJD Proceedings (**EJD Affidavits**) and was orally examined across four hearings.

The Plaintiff then applied for permission to use all the documents and information disclosed during the EJD Proceedings (collectively, **EJD Information**) to support intended proceedings in the RMI for an order to pierce Parakou's corporate veil and hold Liu personally liable for the judgment debt under the RMI Judgment (**RMI Application**).

There was no dispute that the EJD Information was covered by the *Riddick* undertaking. The Plaintiff argued that the court's permission was not required to use the EJD Information as the RMI Application was a related enforcement proceeding. Alternatively, the Plaintiff should be given permission to use the EJD Information in the interests of justice.

The defendants opposed the application. They contended that permission to use the EJD Information was required as the RMI Application was not a related enforcement proceeding and that permission should not be granted because:

- (a) The Plaintiff failed to establish an arguable case that Parakou's corporate veil should be lifted as against Liu;
- (b) The EJD Proceedings were conducted for a collateral purpose, namely to obtain information against Liu to support the RMI Application and not to ascertain whether the defendants had the assets or means to satisfy the SG Judgment; and
- (c) Liu would be irremediably and unfairly prejudiced if the EJD information was used in the RMI Application.

The General Division's Decision

Plaintiff required permission to use EJD Information for RMI Application

On the issue of whether permission was required for the use of the EJD Information, the General Division found that this hinged on whether the RMI Application was a "*related enforcement proceeding*".

It found that the RMI Application was not a related enforcement proceeding. There was no identity of parties. The true or substantive defendant in the RMI Application would be Liu, who was not a party to the arbitrations that resulted in the Awards or the EJD Proceedings. Moreover, by the RMI Application, the Plaintiff was not levying any "*traditional*" mode of execution in respect of the SG Judgment. While the ultimate objective of the RMI Application was to enable the Plaintiff to satisfy the Awards (and therefore also the SG Judgment), it was not a proceeding to "*enforce*" the judgment debt but to establish whether Liu was an appropriate party against whom enforcement proceedings could be brought. The RMI Application was in effect a "*fresh action*". Furthermore, the RMI Application, if successful, could also expose Liu to claims by

Parakou's other creditors, and could therefore have implications beyond the enforcement of the judgment debt. The RMI Application could not therefore simply be considered "*related enforcement proceedings*".

The General Division therefore held the Plaintiff required permission to use the EJD Information for the RMI Application.

Permission should be granted for use of EJD Information

The General Division noted that, in determining whether permission should be granted, the court would embark on a balancing exercise to assess "*whether the circumstances are such as to justify the lifting of the Riddick undertaking*", referring to the Court of Appeal's decision in *Lim Suk Ling Priscilla and another v Amber Compounding Pharmacy Pte Ltd and another and another appeal and another matter* [2020] 2 SLR 912 (**Amber Compounding**). One factor relevant in the present case was that the EJD Information was used to support related foreign civil proceedings.

The General Division found that the interests in allowing the Plaintiff to use the EJD Information for the RMI Application outweighed the interests protected by the *Riddick* undertaking for the following reasons:

- (a) The EJD Information was to be meaningfully used to support the Plaintiff's attempt to recover the amounts due under the RMI Judgment, and therefore, the SG Judgment.
- (b) The Plaintiff did not commence or pursue the EJD Proceedings for a collateral purpose.
- (c) There were no countervailing considerations against lifting the *Riddick* undertaking.

The General Division found that the RMI Application was a "*strong factor*" in favour of granting permission to use the EJD Information. First, the objective of the RMI Application was to enable the Plaintiff to enforce and satisfy the RMI Judgment, and therefore, also the SG Judgment. This was consistent with the purpose of the EJD Proceedings (through which the EJD Information was obtained). Even though the RMI Application was strictly not an "*enforcement*" of the SG Judgment, it was nonetheless a means to pursue a legitimate interest in satisfying the Awards, and therefore the SG Judgment.

Second, the SG Judgment and RMI Application were closely connected. As the defendants were no longer operating and Liu had apparently caused some of Parakou's assets to be transferred to himself and third parties, the plaintiff's ability to proceed against Liu personally could be the difference between recovery of the amounts due to the Plaintiff and a paper judgment.

The General Division did not accept the defendants' argument that, based on the Court of Appeal's decision in *Ong Jane Rebecca v Lim Lie Hoa and other appeals and other matters* [2021] 2 SLR 584, the burden fell on the Plaintiff to establish an arguable case for the RMI Application. The General Division clarified that there is no requirement for the applicant to establish an arguable case on the merits of the related proceedings. It would be inappropriate to impose such a requirement because this would usurp the function of the RMI Court and the General Division would be conducting an exercise for which it was less well equipped than the RMI Court. Moreover, to determine whether the Plaintiff could establish an arguable case would require the Plaintiff to produce before the General Division all the evidence it intended to rely on in the RMI Application. This would be untenable.

However, the General Division accepted that, if the party resisting the grant of permission is able to demonstrate that the related proceedings are bound to fail or ought to be struck out, permission should not be granted as the application would be futile and the balance of interests would lie against giving permission.

The General Division found that the EJD Information would be meaningfully used to support the RMI Application as the EJD Information was plainly relevant to the lifting of Parakou's corporate veil and the recovery of the judgment debt against Liu personally.

It further found that the EJD Information was not intended to be used for a collateral or alien purpose, and rejected the defendants' argument that the EJD Proceedings were pursued on a false pretence, i.e., to obtain information to mount an action against Liu personally. The General Division found that there was no evidence that the Plaintiff had wrongfully exploited the EJD Proceedings. While the EJD Proceedings should not be used as a form of pre-action discovery to pierce the corporate veil of Parakou and bring a claim personally against Liu, the General Division accepted that it was not an abuse if, as here, information relevant to such a claim emerged during a legitimate exercise of the Plaintiff's right to examine Liu. As the EJD Information – and in particular, Liu's own admissions and statements – suggested that he was the *alter ego* of the defendants, it was not objectionable for the Plaintiff to seek permission to use that information to pursue Liu and hold him personally liable for the amount owed by the defendants.

A judgment creditor who conducts EJD Proceedings will rarely know the means available to him to enforce a judgment debt, and that is the very reason to initiate EJD Proceedings: to enable him to obtain information to decide what to do. Hence, reasonable latitude ought to be afforded to a judgment creditor seeking information through EJD Proceedings.

Lastly, the General Division found that there were no countervailing considerations as set out in *Amber Compounding* against the lifting of the *Riddick* undertaking.

First, in the EJD Proceedings, there was no express preservation of Liu's right to not incriminate himself. The Plaintiff also did not give any express undertaking not to use the EJD Information. In any event, Liu was obliged to give honest answers and the defendants did not argue that any privilege against self-incrimination was engaged in this case.

Second, the General Division did not accord any significant weight to Liu's right to privacy. As a director, Liu owed fiduciary duties to Parakou which required him to act honestly in his dealings with Parakou's assets and operations. If Liu had transferred Parakou's assets to himself or to third parties to avoid execution, and in a manner which suggested that he treated those assets as his own, his right to privacy should not be allowed to prevent the lifting of the *Riddick* undertaking.

Third, the General Division rejected the defendants' contention that Liu had suffered "irremediable prejudice" because the Plaintiff intended to rely on (alleged) admissions by him in support of its case that he was the alter ego of Parakou although this had not been "*put*" to him during the EJD hearings. The Plaintiff was not required to "*put*" such a case to Liu simply because it was not advancing, and did not need to advance, that proposition at the EJD hearings.

Scope of EJD Information was not too wide

Finally, the General Division rejected the defendants' argument that permission given (if any) should be limited to the transcript of Liu's oral evidence. It was important that the RMI Court be given the full context of the answers provided by Liu in the EJD Proceedings and should therefore be allowed to refer to the EJD Affidavits. The RMI Court would be hampered in its review of the transcript if it did not also have access to the EJD Affidavits.

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 whom you normally work with or any of the following Partners:

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