

28/12

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY
COMMERCIAL LIST

2153

C.L. 102/89

**LOW
PRIORITY**

BETWEEN

EQUITICORP FINANCE
GROUP LIMITED & ORS

Plaintiffs

AND

D.F. COLLETT & ORS

Defendants

Hearing: 6 December 1989
Counsel: B.P. Henry for plaintiffs
D.F. Dugdale for second defendant
Judgment: 6 December 1989

(ORAL) JUDGMENT OF BARKER J

The plaintiffs have judgment against the second defendant, Mr Cheah, in the sum of \$7,558,291. This was obtained on 17 December 1987 in summary judgment proceedings before Master Towle. The second defendant appealed that decision as far as the Privy Council, which on 12 July 1989, upheld the judgment of the Master.

The plaintiff has registered the judgment in both the United Kingdom and the Republic of Singapore under the equivalent legislation in those jurisdictions to the New Zealand Reciprocal Enforcement of Judgments Act 1934.

The plaintiffs' claim against the other seven defendants is similar to that on which it obtained judgment against the second defendant.

Various pieces of litigation have now been removed into the Commercial List; although summary judgment matters are not appropriately dealt with in the Commercial List, counsel considered that because of S.24G of the Judicature Act 1908 this application should be considered by a Commercial List Judge so there can be no argument as to jurisdiction.

The second defendant seeks to set aside the judgment. That application has yet to be resolved. A defended application for stay of execution pending hearing of the setting aside application was refused by Sinclair J on 21 September 1989. That application was made on different grounds from the present.

The present application is based on the contention by the second defendant that the judgment has been satisfied between the time of the Court of Appeal judgment and the Privy Council judgment. The second defendant seeks a stay and stresses urgency because, under the Singaporean enforcement proceedings, there is to be a sale of the second defendant's household chattels on 8 December 1989. There are other proceedings pending in both England and Singapore for examination of the second defendant and/or garnishee orders against him. I

understand there is a Mareva injunction issued in the High Court at Singapore which prevents him removing his assets from that jurisdiction.

The affidavit filed on behalf of the plaintiffs discloses that shares, which were part of the security for a guarantee in respect of a 'put option' - the basis of the plaintiffs' claim - were sold by the plaintiffs on 12 December 1988 for \$3,409,428. It is not disputed that the judgment against the second defendant must now be reduced pro tanto.

The second defendant also claims that the plaintiff held a collateral mortgage over some 70 million shares in a listed English company, London Pacific Limited; that, if sold the proceeds of these shares would extinguish the judgment debt. As to this, the plaintiff says that the collateral mortgage over London Pacific shares secured a different advance of some \$58 million to the second defendant and had little if anything to do with the first transaction.

Because the affidavit in support of the present application was faxed from Singapore only this morning Mr Henry for the plaintiffs has had no opportunity to file affidavits in reply. I indicated to counsel that in the circumstances I might be prepared to make an interim order of stay pending Mr Henry preparing an affidavit in reply. Mr Henry indicated he would need some days within which to reply.

There is also the situation where Sinclair J, in a judicial conference on 16 August 1989, ordered the plaintiffs to file an affidavit stating the situation in respect of the London Pacific shares and the mortgage of them. Mr Henry says that that order was made before the litigation was removed to the Commercial List; he assumed that the order was in some way cancelled - a view which I do not share.

However, it seems important to have the application to set aside the judgment dealt with as a matter of urgency. I have arranged for it to be heard by a Commercial List Judge on 1 February 1990.

In the meantime -

- (1) The plaintiff is to file affidavits in reply to the affidavit recently filed by the second defendant within 14 days;
- (2) Any affidavit in reply by the second defendant is to be filed by 20 January 1990;

I make no orders but record the following undertakings of the plaintiff, namely; to take no steps to enforce the judgment registered in either Singapore or the United Kingdom, and, in particular, to call off the sale of the chattels to be held in Singapore on 8 December 1989.

There is apparently some small charge due to the Sheriff's office in Singapore pending the ultimate sale of those chattels. I direct that that charge, from today onwards, be borne equally by the plaintiffs and the second defendant pending further order of the Court.

I direct that any further interlocutory applications by any party in this litigation, including those not represented today, be filed by 23 January 1990.

Any outstanding applications between the plaintiffs and the second defendant which have not already been heard will be dealt with on 1 February. I shall allow for a half days hearing.

R. J. Barker

Solicitors: Phillips Nicholson, Auckland, for plaintiffs
Kensington Swan, Auckland, for second
defendant

