

Case Bulletin: 2019/11

### **“Adjudication Supervision System” Still Hinders Summary Judgment at Common Law**

Order 14 – Summary Judgment of the Rules of the High Court (Cap. 4) (“**RHC**”) provides a procedure for enabling a plaintiff to obtain judgment without proceeding to trial (that is to say, to obtain judgment summarily) on the ground that he believes that his opponent has no defence to the claim. A plaintiff may bring an action to enforce a foreign judgment using the summary judgment procedures.

However, the “*Adjudication Supervision System*” (审判监督程序) under PRC law continues to hinder summary judgment applications in Hong Kong, see *Lin Chien Cheng v Hui Chi Keung* [2019] HKCFI 2686.

#### **I. Background**

1. In this action, the plaintiff sues the defendant for enforcement, at common law, of a PRC judgment in the sum of RMB 43,976,302.04. The plaintiff seeks summary judgment on its claim.
2. On 5 May 2014, the plaintiff commenced legal proceedings in the Intermediate People’s Court of Yangzhou, Jiangsu Province, which rendered a judgment in the sum of RMB 44,112,600 on 31 October 2017.
3. The defendant appealed against that decision on 24 January 2018 to the Higher People’s Court of Jiangsu Province, and the appeal was dismissed and the defendant was ordered to pay a revised sum of RMB 43,976,302.04.
4. On 14 November 2018, the defendant applied to the Supreme People’s Court

3<sup>rd</sup> Circuit Court for a review of the PRC judgment under the “Adjudication Supervision System”.

5. There is no dispute about most of the matters save for the question whether a Review prevents a PRC judgment from being determined as final and conclusive for the purposes of common law enforcement.

## II. Key Points

1. There is no dispute that for the purpose of common law enforcement of a foreign judgment, the foreign judgment has to be:
  - (1) for a debt or definite sum of money;
  - (2) made by a court of competent jurisdiction over the parties and the subject matter;
  - (3) between the same parties or their privies on an identical issue;
  - (4) final and conclusive on its merits; and
  - (5) not impeachable according to the rules on conflict of laws of Hong Kong.<sup>1</sup>
2. The “Adjudication Supervision System” does not necessarily render a judgment as not final and binding.
3. The current position of Hong Kong remains that it is an issue of public importance and involves complicated legal questions, it could not be determined in interlocutory proceedings without hearing evidence from expert witnesses.<sup>2</sup>

## III. Findings

There is no definitive authority on the issue whether a PRC judgment that is subject

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<sup>1</sup> See for example *JSC BTA Bank v Ablyazov* [2014] 5 HKC 209 at § 27.

<sup>2</sup> See for example *Lee Yau Wing v Lee Shui Kwan* [2007] 2 HKLRD 7479 at 751.

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to review under the “Adjudication Supervision System” is final and binding at common law. The matter remains open to be decided at trial after hearing expert witnesses. Until then, an application for summary judgment to enforce a PRC judgment will unlikely succeed.

### IV. Note

Presumably, the plaintiff could not rely on Order 71A of RHC and the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597), possibly because there was no applicable choice of court arrangement in writing, hence, the plaintiff had to seek recourse at common law.

On 18 January 2019, the Supreme People’s Court and the HKSAR Government signed the *Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region* (this “**Arrangement**”). This Arrangement will be implemented by local legislation in Hong Kong. It will take effect after both places have completed the necessary procedures to enable implementation and will apply to judgments made on or after the commencement date.

This Arrangement will apply to the reciprocal recognition and enforcement of legally effective judgments in civil and commercial matters, in the case of the Mainland, including a judgment of the second instance, a judgment of the first instance from which no appeal is allowed according to law or no appeal has been filed by the expiry of the statutory time limit for appeal, as well as the above types of judgments given in accordance with the Adjudication Supervision procedure.

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