THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

EMINENT TRADING & SERVICES PTE. LTD

Claimant

and

BEAUFOND PLC

Defendant

JUDGMENT OF JUSTICE WAYNE MARTIN

UPON the Part 7 Claim Form dated 17 August 2022 (the "Claim Form")

AND UPON the Defendant filings its Defence dated 9 September 2022 (the "Defence")

AND UPON the Claimant filing its Reply to Defence dated 26 September 2022 (the "Reply to Defence")

AND UPON the Claimant's Application No. CFI-054-2022/1 dated 26 September 2022 seeking an Immediate Judgment (the "Immediate Judgment Application")

AND UPON the Defendant's submissions in response to the Immediate Judgment Application dated 24 October 2022

IT IS HEREBY ORDERED THAT

1. The Immediate Judgment Application is granted.

2. Judgment be entered in the amount of USD 630,311.41, plus interest at the rate of 5.33% per annum from 17 August 2022 until the date of judgment, and thereafter at the rate applicable to judgments of this Court until payment is made in full.

3. The Defendant shall pay the Claimant's costs of the Immediate Judgment Application and the costs of the proceedings to be assessed by the Registrar if not agreed.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 10 November 2022
At: 9am

SCHEDULE OF REASONS

Summary

1. The Claimant has applied for immediate judgment. For the reasons which follow the Claimant has established that the Defendant has no real prospect of successfully defending the claim and that there is no other compelling reason why the case should be disposed of at a trial, and immediate judgment will be entered.

Procedural history

2. The proceedings in this Court were commenced when a Claim Form was filed on 17 August 2022. The Claimant is Eminent Trading & Services Pte. Ltd ("Eminent"), a company incorporated in and which carries on business in Singapore. The Defendant is Beaufond Plc ("Beaufond"), a company which is registered and carries on business in the Dubai International Financial Centre ("DIFC"). The claim is for USD 649,376.51.

3. The claim is based upon a judgment entered in the High Court in the Republic of Singapore on 26 January 2022 in proceedings brought in that Court by Eminent against Beaufond. Judgment was entered in the following amounts:

(a) USD 510,945.00;

(b) Interest at the rate of 5.33% per annum from 8 March 2021 to the date of judgment (26 January 2022) and thereafter until the date of payment in full;

(c) Costs in the amount of SGD 95,000; and

(d) Disbursements in the amount of SGD 10,073.02 and USD 3,122.20.

4. The Claim Form was accompanied by:

(a) A certified copy of the judgment entered in the High Court of Singapore;

(b) Transcript of the trial conducted in the High Court of Singapore on 26 January 2022 before Justice Choo Han Teck; and

(c) A letter dated 28 July 2022 from the Registry of the High Court of Singapore to the Singapore lawyers representing Eminent confirming that the judgment entered 26 January 2022 is a final judgment of the General Division of the High Court of Singapore and is capable of being enforced in Singapore.

5. The Claim Form was served upon Beaufond at its offices in DIFC on 25 August 2022.

6. On 9 September 2022, lawyers representing Beaufond filed an Acknowledgement of Service. Beaufond also filed a Defence on 9 September 2022. In the Defence reference is made to the terms of the Memorandum of Guidance - Enforcement between the DIFC Courts and the Supreme Court of Singapore dated 19 January 2015 (the "MoG"). After referring to the MoG, the Defence puts the Claimant to proof of the following matters:

(a) That the judgment of the Supreme Court of Singapore is final and conclusive and capable of being enforced; and

(b) That the amount of the judgment does not include taxes, fines or penalties.

7. In the Defence, it is further asserted that Beaufond was not present in the jurisdiction of Singapore when the proceedings were brought against it in that Court, and did not authorise anyone to represent its interests in the High Court of Singapore. The Defence further asserts that Beaufond never submitted to the jurisdiction of the Supreme Court of Singapore. The Defence sought the dismissal of the claim.

8. On 26 September 2022, Eminent filed a Reply to the Defence. The Reply takes issue with the assertions made in the Defence and refers to:

(a) The letter of 28 July 2022 from the Supreme Court of Singapore confirming that the judgment dated 26 January 2022 is a final judgment and is capable of being enforced in Singapore;

(b) The fact that Beaufond has not filed any appeal in the Singapore Courts in respect of that judgment;

(c) The fact that the Singapore judgment does not order the payment of taxes, fines or penalties;

(d) The fact that Beaufond submitted to the jurisdiction of the High Court of Singapore by filing a Memorandum of Appearance in the proceedings commenced against it;

(e) The fact that Beaufond participated in the proceedings in Singapore by filing a Defence and Counterclaim and participating in the process relating to discovery of documents in that Court;

(f) The fact that although Beaufond chose to discharge the lawyers representing it in the Singapore proceedings, it was given notice of all steps in the proceedings following the discharge of those lawyers; and

(g) The fact that Beaufond failed to appear or take part in the trial in the High Court of Singapore on 26 January 2022.

9. The Defence was accompanied by various documents supporting the assertions made and to which reference will be made in due course.

10. On 26 September 2022, Eminent filed the Immediate Judgment Application. The Immediate Judgment Application is supported by the witness statement of Mr Mangesh Lokhande ("Mr Lokhande"), a director of Eminent. Reference will be made to that witness statement and to the documentary evidence exhibited to it in due course.

11. On 24 October 2022, the lawyers representing Beaufond filed a document referring to the Immediate Judgment Application and *"informing DIFC Court"* that Beaufond had commenced proceedings in the Courts of Dubai *"with the same subject of dispute"*. The document asked *"DIFC Court Registry to postpone the decision with regards to the Immediate Judgment Application"* until the proceedings in the Dubai Courts had been resolved.

12. The document was accompanied by a copy of a document apparently lodged with the Dubai Courts and a translation of that document into the English language. According to the translation, Beaufond has commenced proceedings in those courts against Eminent and Magic Pearl General Trading LLC claiming, against those parties, jointly and severally:

"An amount of USD 3,500,000 . as compensation for the damages caused thereto as a result of the first defendant's [Eminent's] breach of its contractual obligations to supply goods according to the specifications agreed upon, which caused the second defendant (Magic Pearl) to refuse the same and to arbitrarily deduct the same amount from the claimant's [Beaufond's] entitlements."

13. On the same day those documents were filed, the Registry of this Court sent an email to the lawyers representing Beaufond advising that:

"The Registry will not postpone decisions or stay proceedings absent an order. Please either file a consent order where both parties agree on staying the proceedings, or file the relevant application setting out the relief you seek from the court."

Jurisdiction

14. There is no doubt that the Court has jurisdiction to deal with Eminent's claim. Beaufond has filed an unconditional Acknowledgement of Service submitting to the jurisdiction of the Court. Further, Beaufond is a "DIFC Establishment" within the meaning of Article 2 of the Judicial

Authority Law[1] (the "JAL") and carries on business in the DIFC. It follows that the Court has jurisdiction pursuant to Article 5(A)(1)(a) of the JAL.[2]

15. Beaufond has commenced proceedings against Eminent and another in the onshore courts of Dubai and asserts that those proceedings are based upon the same subject matter as the proceedings in the High Court of Singapore which underpin the proceedings in this Court. However, there is no evidence before the Court to the effect that proceedings have been commenced in the Joint Judicial Committee[3] as a consequence of the commencement of those proceedings, nor has any application been made for a stay of these proceedings on the basis of the pendency of proceedings before the Joint Judicial Committee. As the Registry advised the lawyers representing Beaufond, an application followed by an order of the Court is a necessary precondition to any stay of proceedings in this Court based upon the commencement of proceedings in the onshore courts of Dubai.[4]

The MoG

16. The MoG between the DIFC Courts and the Supreme Court of Singapore is dated 19 January 2015. Article 2 of the MoG provides:

> "This Memorandum has no binding legal effect. It does not constitute a treaty or legislation, it is not binding on the judges of either party and does not supersede any existing or future laws, judicial decisions or court rules. It is not intended to be exhaustive and is not intended to create or alter any existing or future legal rights or relations or to create any binding arrangements for the reciprocal enforcement of each party's money judgments."

17. Nevertheless, the MoG provides a convenient guide to the principles and procedure which apply to the enforcement of the judgments of each Court by the other. In relation to the enforcement of judgments of the Supreme Court of Singapore in the DIFC Courts, the MoG relevantly provides:

> 14. "In order to be sued upon in the DIFC Courts, a judgment of the Supreme Court of Singapore must be final and conclusive. It may be final and conclusive even though it is subject to an appeal.
>
> 15. The DIFC Courts will not enforce certain types of judgments, for example judgments ordering the payment of taxes, fines or penalties.
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> 16. The Supreme Court of Singapore must have had jurisdiction, according to the DIFC Rules on the conflict of laws, to determine the dispute. The DIFC Courts will generally consider the Supreme Court of Singapore to have had the required jurisdiction only where the person against whom the judgment was given:
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> (a) was, at the time the proceedings were commenced, present in the jurisdiction; or
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> (b) was the claimant, or counterclaimant, in the proceedings; or
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> (c) submitted to the jurisdiction of the Supreme Court of Singapore; or
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> (d) agreed, before commencement, in respect of the subject matter of the proceedings to submit to the jurisdiction of the Supreme Court of Singapore.
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> .
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> 18. The DIFC Courts will not re-examine the merits of a judgment of the Supreme Court of Singapore. The judgment may not be challenged on the grounds that it contains an error of fact or law. A judgment of the Supreme Court of Singapore will be enforced on the basis that the defendant has a legal obligation, recognised by the DIFC Courts, to satisfy a judgment of the Supreme Court of Singapore.
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> 27. In order to enforce a judgment of the Supreme Court of Singapore in the DIFC Courts, a party must issue a Claim Form in the DIFC Courts, providing a concise statement of the nature of the claim and claiming the amount of the judgment debt. A certified copy of the judgment should be exhibited to the Claim Form."

18. This convenient summary of applicable legal and procedural principles will be applied in the analysis of the Immediate Judgment Application.

Immediate Judgment - principles and procedure

19. Part 24.1 of the Rules of the Dubai International Financial Centre Courts ("RDC") provides for the entry of immediate judgment that:

> "The court may give immediate judgment against the claimant or defendant on the whole of a claim, part of a claim or on a particular issue if:
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> (1) it considers that:
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> (a) the claimant has no real prospect of succeeding on the claim or issue; or
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> (b) the defendant has no real prospect of successfully defending the claim or issue; and
>
> (2) there is no other compelling reason why the case or issue should be disposed of at a trial."

20. This Court has generally adopted the principles enunciated by Simon J in *JSC BTA Bank v Skurikhin*[5] in relation to the exercise of the power to enter immediate judgment. In short, where immediate judgment is sought by a claimant, the Court must consider whether the defendant has a "realistic" as opposed to a fanciful prospect of success. A realistic prospect of success is one that carries some degree of conviction and not one

that is merely arguable.[6]

21. RDC 24.8 provides:

> "The application notice or the evidence referred to in it or served with it must:
>
> (1) Identify concisely any point of law or provision in a document on which the applicant relies; and/or
>
> (2) State that it is made because the applicant believes that on the evidence the respondent has no real prospect of succeeding on the claim or issue (as the case may be) or successfully defending the claim or issue to which the application relates;
>
> and in either case state that the applicant knows of no other compelling reason why the case or issue should be disposed of at a trial."

22. The Application Notice and accompanying statement of Mr Lokhande fulfil these requirements.

The evidence

23. The evidence in support of the Immediate Judgment Application comprises:

> (a) The documents filed with the Claim Form;
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> (b) The documents filed with the Reply to the Defence; and
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> (c) The witness statement of Mr Lokhande, and the various documents exhibited to that statement.

The facts established by the evidence

24. That evidence establishes the following facts.

25. On 8 March 2021, Eminent commenced proceedings against Beaufond in the High Court of Singapore being matter HC/S 240/2021.

26. On 18 May 2021, GSM Law LLP filed a Memorandum of Appearance on behalf of Beaufond in the Singapore proceedings.

27. On 16 June 2021, Beaufond filed a Defence and Counterclaim in the Singapore proceedings. In that Defence, Beaufond admitted that there was a written agreement between the parties for the sale (by Eminent) and purchase (by Beaufond) of a quantity of pharmaceutical product, being Gemcitabine Hydrochloride. In the Defence Beaufond alleged that the goods delivered by Eminent pursuant to the contract were not of satisfactory quality and/or fit for purpose and did not conform to industry specifications and were rejected for that reason by the end buyer of the pharmaceuticals, Magic Pearl General Trading LLC. Further, Beaufond counterclaimed for the amount of demurrage charges incurred storing the products supplied by Eminent which it asserted were defective.

28. On 22 June 2021, the solicitors for Beaufond responded to a request for production of documents by Eminent by advising where and when those documents could be inspected.

29. By Notice dated 29 July 2021, the solicitors representing Beaufond gave notice to Eminent requiring production of certain documents for inspection. On 18 August 2021, the solicitors representing Beaufond provided a list of documents which were discovered by Beaufond in relation to the Singapore proceedings and advised that those documents could be inspected at the offices of the solicitors. The list of documents was verified by an affidavit sworn by the Managing Director of Beaufond, Mr Sachin Saini ("Mr Saini").

30. On 30 July 2021, the solicitors representing Beaufond in the Singapore proceedings requested particulars of the Reply and Defence to Counterclaim served by Eminent in the course of those proceedings. Eminent answered the request by a document dated 10 August 2021.

31. On 1 November 2021, GSM Law LLP filed a Notice advising that they were ceasing to act for Beaufond in the Singapore proceedings. Thereafter all documents pertaining to the Singapore proceedings were served upon Beaufond by email to an address provided by Beaufond to the High Court of Singapore in a letter dated 14 October 2021.

32. On 27 December 2021, the solicitors representing Eminent sent an email to the address which had been provided by Beaufond marked for the attention of Mr Saini advising of recent developments in relation to the proceedings, confirming that the trial would proceed on 26 January 2022 as previously fixed and enclosing a written outline of the case that would be presented on behalf of Eminent. The solicitors for Eminent received confirmation that the email had been received and opened at the various email addresses within Beaufond to which it was sent.

33. Further, various emails were sent by the solicitors representing Eminent to the email addresses given by Beaufond enclosing documents and providing advice with respect to various procedural steps taken between the time at which Beaufond became unrepresented, on 1 November 2021, and the trial on 26 January 2022.

34. Beaufond did not appear at that trial. Counsel for Eminent tendered a bundle of documents in evidence, together with an affidavit which comprised the evidence in chief of Eminent's only witness, Mr Lokhande.

35. Mr Lokhande was sworn and affirmed the truth of the contents of his affidavit. In the course of short oral evidence Mr Lokhande also confirmed that the product, the subject of the contract of sale, was a pharmaceutical product intended for use by cancer patients to treat particularly breast and liver cancer. Obviously, as Beaufond was not represented, Mr Lokhande was not cross-examined.

36. Following Mr Lokhande's evidence counsel for Eminent presented oral submissions to the trial judge, who ordered that judgment would be ordered in the terms sought. Following further submissions, orders were also made in relation to the costs of the proceedings.

37. The judgment of the Singapore Court, dated 26 January 2022, was apparently extracted on 24 February 2022 and this Court has been provided with a certified copy of that judgment dated 27 May 2022. As noted, the Court has also been provided with a letter from the Supreme Court of Singapore confirming that the judgment is a final judgment and is capable of being enforced in Singapore.

Conclusions drawn from the facts established by the evidence

38. The facts established by the evidence sustain the following conclusions:

(a) Judgment has been entered against Beaufond in the Supreme Court of Singapore in the amounts specified in that judgment;

(b) The judgment is final and conclusive;

(c) The judgment is not subject to appeal;

(d) The Supreme Court of Singapore had jurisdiction to determine the claim before it and in particular Beaufond submitted to the jurisdiction of that Court and invoked its processes by filing a Counterclaim and requesting, and obtaining the production of documents by way of discovery; and

(e) The Singapore judgment does not include any orders for the payment of taxes, fines or penalties but is limited to amounts due under a contract for the sale of goods, together with interest and legal costs and disbursements.

39. Put more generally, the evidence establishes that there is a final judgment of the High Court of Singapore in favour of Eminent, which is enforceable against Beaufond in the amounts specified in that judgment. That judgment gives rise to a cause of action which is enforceable in this Court, pursuant to these proceedings.

40. For these reasons Eminent has established that Beaufond has no real prospect of successfully defending the claim. There is no suggestion that there is any other compelling reason why the case should be disposed of at a trial. It follows that the requirements of RDC 24.1 have been met, and immediate judgment should be entered against Beaufond.

The quantum of the judgment

41. The various components of the amount for which judgment was entered in the High Court of Singapore have been set out above. In these proceedings, Eminent claims USD 649,376.51. However, when the Immediate Judgment Application was brought, there was no evidence, nor any calculations provided showing how the various components of the judgment entered by the Supreme Court of Singapore gave rise to a debt in the amount claimed in these proceedings.

42. This omission was drawn to Eminent's attention and rectified by an email showing that the amount claimed was made up the following components:

(a) The principal amount of the judgment, namely, USD 510,945.00;

(b) Interest from 8 March 1991 until the date of the Singapore judgment in the amount of USD 24,249;

(c) Interest from the date of the Singapore judgment until the date the Claim Form was lodged in this court (17 August 2022) in the amount of USD 15,943.21;

(d) The total amount of the costs allowed pursuant to the Singapore judgment, converted into US dollars, in the amount of USD 79,174.20; and

(e) Legal fees and disbursements incurred between the entry of judgment in Singapore and the commencement of proceedings in this court, in the amount of USD 19,065.10.

43. I have checked the figures and calculations relating to the various components of the claim, and all are in order. However, there is no legal principle or contractual provision which entitles Eminent to include legal costs incurred prior to the commencement of proceedings as a component of its claim. When this proposition was put to Eminent, it did not seek to submit to the contrary. Accordingly, judgment should be entered for the amount claimed, reduced by the component of the claim relating to legal costs incurred prior to the commencement of proceedings in this Court, which comes to USD 630,311.41. Interest should accrue on that amount at the rate of 5.33% per annum from 17 August 2022 until judgment and thereafter at the rate applicable to judgments of this court.

44. There will also be an order that Beaufond pay Eminent's costs of the application and the proceedings to be assessed by the Registrar if not agreed.