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SERVICE OF PROCESS OUT OF JURISDICTION

In the case of *Omae Capital Management v Tetsuya Motomura* [2015] SGHCR 8, the Defendant was residing in Japan at the material time. He was notified of legal proceedings against him by way of AR Registered Post. Further, the documents were not translated into Japanese.

The Defendant applied to set aside such service on the basis that it was irregular. The heart of the application came down to two key questions:

1. Whether service by registered post of foreign court documents conforms to the domestic laws of Japan; and
2. If not, whether the Singapore Court should exercise its discretion to cure the irregularity in service.

With regard to the first question, it was the Plaintiffs' case that the Supreme Court of Japan had previously ruled that any irregularity in the service of foreign judgments could be cured so long as the defendant knew about the proceedings and had an unobstructed right to defend himself.

The Defendant contended that such a method of service is irregular as, although the Supreme Court of Japan had cured the irregularity, it was only done in the context of the enforcement of foreign judgments. The present case, which was at the commencement of proceedings stage, would have vastly different considerations. Further, the Plaintiffs' argument would result in an absurd conclusion as potential Plaintiffs could choose to serve court documents in any manner they wish in Japan so long as the Defendant knew about the proceedings and was not obstructed in his defence.

The Defendant provided to the Court Japanese commentary on how service by registered post was considered invalid under Japanese. The Defendant argued that even though Japan and Singapore were not party to any Civil Procedure Convention, any extrapolation of what would constitute valid service should be done so in a conservative manner.

The Court found in favour of the Defendant and ruled that service by registered post was irregular under Japanese law.

With regard to the second question, the Defendant successfully argued that there are three factors that the Court should consider when exercising their discretion to cure such an irregularity, namely:

1. Whether the Defendant was apprised of the proceedings;
2. Whether the Plaintiff had done all that he could to effect regular service; and
3. Whether the Plaintiff would be unduly prejudiced should the court refuse to cure the irregularities in service.

While the Court found that the Defendant was apprised of the proceedings, the Court crucially noted that the Defendant had not taken any step in the proceedings. Further, the Court also found against the Plaintiff on the other two factors. The Plaintiff had failed to show how they had done all that they could to effect regular service and had failed to show how the Plaintiff would be unduly prejudiced. Accordingly, Defendant's application to set aside the irregular service was allowed. [Note: The Plaintiff has since appealed]

The case is interesting as it discusses the factors relevant to the exercise of the Court's discretion in relation to irregularities in service out of jurisdiction of Singapore originating processes. While recent developments support the view that service out of jurisdiction of Singapore originating process merely functions as notice to the Defendant that a lawsuit has commenced against him in Singapore, this does not mean that plaintiffs can choose to serve court documents in any manner they wish.

Ultimately, any service of foreign court documents must conform to the domestic laws of the country where service is to be effected. Potential litigants should be cautious in adopting alternative modes of service, no matter the convenience, when serving official court documents in other jurisdictions.

The Defendant in the above case was represented by Dato' Peter Madhavan and Walter Ferix Silvester of JTJB LLP.

This update is for general information only and is it not intended to constitute legal advice. JTJB has made all reasonable efforts to ensure the information provided is accurate at the time of publication.



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