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SERVICE OF PROCESS OUT OF JURISDICTION

In the recent case of *Humpuss Sea Transport Pte Ltd v PT Humpuss Intermoda Transportasi TBK [2015] SGHC 144*, the Court clarified uncertainties in the Rules of Court (“Rules”) with regard to service of process out of jurisdiction. The Court also provided guidance on the applicable methods of service contained in the Rules.

Salient Facts:

The Plaintiff commenced proceedings in the Singapore High Court against the Defendants, who were incorporated in Indonesia, and was granted leave to effect service out of jurisdiction.

The writ was translated in Bahasa Indonesia and sent to the Defendants by way of personal service at their respective addresses as well as courier service with the help of a practicing associate in Indonesia. The Defendants subsequently made an application to set aside the writ on the basis that the service was improper.

The Defendants contended that the Rules provided for only three (3) valid methods of service, as stipulated in O.11, r.4(2) of the Rules – through the government of Indonesia; through a Singapore consular authority in Indonesia; by a method of service authorised by the law of Indonesia for service for any originating process issued by Indonesia.

They took the position that the method of service effected in the present case was not a method of service authorised by the law of Indonesia for any originating process issued by Indonesia and thus the service was null.

The Plaintiff, on the other hand, contended that there were six (6) methods of service founded in O.11, r.3 and r.4 of the Rules – by way of personal service; by way of substituted service; service in accordance with a manner prescribed by law of Indonesia; through the government of Indonesia; through a Singapore consular authority in Indonesia; by a method of service authorised by the law of Indonesia for service for any originating process issued by Indonesia.

The Court’s Decision

The Court held that the method of service (i.e. by personal service through a private agent) employed by the Plaintiff on the Defendant was valid under the Rules. The Court went on to examine the various methods for service out of jurisdiction contained in the Rules.

The Court agreed that both O.11, r.3 and r.4 of the Rules provide alternative and complementary methods of effecting service out of jurisdiction. The Court clarified that the Rules provide for four (4) common methods for serving a writ outside of jurisdiction that are available regardless of the Defendant’s residency and a number of additional methods depending on the residency of the Defendant.

The Table below summarises the various methods discussed by the Court:

Common Methods

- 1) Personal Service;
- 2) Substituted Service with leave of Court;
- 3) Service by a method specifically authorized by the law of the foreign jurisdiction for the service of foreign process;
- 4) Service through a Singapore consular authority in that country.

A country with which Singapore has a Civil Procedure Convention

- 5) Service through the judicial authorities of the foreign jurisdiction.

A country with which Singapore does not a Civil Procedure Convention

- 5) Service through the government of the foreign jurisdiction;
- 6) Service by a method recognized by law of the foreign jurisdiction for the service of domestic process issued by the courts of the country.

The defendant resides in Malaysia or Brunei

- 5) Service through the government of Malaysia or Brunei;
- 6) Service by a method recognized in Malaysia or Brunei for the service of domestic process issued by the courts of Malaysia or Brunei.
- 7) By way of post from the Registrar of the Singapore court to the judicial officer exercising civil jurisdiction in the territory in which the Defendant resides.

Concluding Thoughts

With the upsurge in cross-border transactions, it is necessary for potential plaintiffs in Singapore to be aware of the ways in which a defendant residing abroad may properly be brought under the jurisdiction of the Singapore Courts.

An improper method of service on a potential defendant will likely result in the Court having to determine preliminary issues of service before dealing with the substantive claims. This is inconvenient and can be time-consuming and costly.

This judgment usefully clarifies the procedural framework with regard to service of process out of jurisdiction under the Rules.

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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