SPC Guiding Case No. 235: Application by S Shipping Co., Ltd. for Recognition of a Foreign Court Civil Judgment

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

Keywords

Civil; application for recognition of a foreign court civil judgment; reciprocal relationship; case-by-case review; de facto reciprocity; legal reciprocity

Holding

When a people's court reviews an application or request for recognition and enforcement of a civil judgment or ruling of a foreign court and determines whether a reciprocal relationship exists, it is not a necessary condition that the relevant foreign court has previously recognized and enforced a civil judgment or ruling of the people's court. If, according to the law of the relevant country, a civil judgment or ruling made by the people's court can be recognized and enforced by the courts of that country, and that country has no precedent of refusing to recognize and enforce judgments or rulings of the people's court on the ground that no reciprocal relationship exists, a reciprocal relationship for the recognition and enforcement of civil judgments and rulings between China and that country may be found.

Basic Facts

On March 5, 2010, S Shipping Co., Ltd. and Mou Hua (Hong Kong) Shipping Company concluded three time charter contracts, leasing three vessels to Mou Hua (Hong Kong) Shipping Company. On March 25, 2010, Mou Hua Logistics Holding (Group) Co., Ltd. (hereinafter "Mou Hua Logistics Company") issued three letters of guarantee to S Shipping Co., Ltd., providing security for the performance of the above charter contracts by Mou Hua (Hong Kong) Shipping Company. All three letters of guarantee agreed that English law would apply and that litigation would be submitted to the High Court of Justice of England located in London for trial. Because Mou Hua (Hong Kong) Shipping Company delayed payment of charter hire, S Shipping Co., Ltd. filed a lawsuit against Mou Hua Logistics Company with the English High Court based on the letters of guarantee. Mou Hua Logistics Company appeared and responded. On March 18, 2015, the English High Court rendered the judgment [2015] EWHC 718 (Comm), supporting the claims of S Shipping Co., Ltd. Thereafter, the English High Court further determined the amount of the claim and litigation costs, issuing orders on April 27, 2015 and October 3, 2016, a final costs certificate on November 1, 2016, and an amended order on May 17, 2018. Mou Hua Logistics Company was dissatisfied and appealed to the English Court of Appeal. On October 7, 2016, the English Court of Appeal rendered the judgment [2016] EWCA Civ 982, dismissing Mou Hua Logistics Company's appeal. Thereafter, the English Court of Appeal issued further orders on October 7, 2016 and May 8, 2017. Mou Hua Logistics Company failed to perform the obligations determined by the effective judgments. S Shipping Co., Ltd. then requested the courts of China to rule on recognition of the above judgments of the English High Court and the English Court of Appeal, as well as a related series of court orders. Mou Hua Logistics Company argued that China and the United Kingdom had not concluded or acceded to any international treaty on mutual recognition and enforcement of court judgments and rulings, and had not established a corresponding reciprocal relationship.

Judgment

On March 17, 2022, the Shanghai Maritime Court rendered the civil ruling (2018) Hu 72 Xie Wai Ren No. 1: recognizing the judgment [2015] EWHC 718 (Comm) rendered by the English High Court on March 18, 2015, and the orders issued on April 27, 2015 and October 3, 2016, the final costs certificate issued on November 1, 2016, and the amended order issued on May 17, 2018 in that case; and recognizing the

judgment [2016] EWCA Civ 982 rendered by the English Court of Appeal on October 7, 2016, and the orders issued on October 7, 2016 and May 8, 2017 in that case.

Reasoning

This case was an application for recognition of a foreign court civil judgment. According to Article 289 of the Civil Procedure Law of the People's Republic of China (as amended in 2021), a people's court shall review applications or requests for recognition and enforcement of legally effective judgments and rulings made by foreign courts in accordance with the international treaties concluded or acceded to by the People's Republic of China, or in accordance with the principle of reciprocity. Since China and the United Kingdom had not concluded or acceded to any international treaty on mutual recognition and enforcement of court civil judgments and rulings, the principle of reciprocity should serve as the basis for reviewing whether to recognize the judgments of the English courts.

The principle of reciprocity is a concrete manifestation of the principle of equality and mutual benefit in private international law. The Civil Procedure Law of China does not limit the principle of reciprocity to requiring that the relevant foreign court has first recognized and enforced the civil judgments and rulings of the people's court. Of course, if the relevant foreign court already has a precedent of recognizing and enforcing civil judgments and rulings of the people's court, a de facto reciprocal relationship for the recognition and enforcement of civil judgments and rulings between China and that country may naturally be found. However, even without a precedent of recognizing and enforcing China's civil judgments and rulings, if, according to the law of the country of the foreign court that rendered the judgment, its conditions for recognizing and enforcing judgments and rulings of foreign courts are substantively the same as or more lenient than the conditions prescribed by Chinese law, then it may be found that the civil judgments and rulings made by Chinese courts can be recognized and enforced by the courts of that country under equivalent circumstances. On this premise, if the courts of that country have no precedent of refusing to recognize and enforce the civil judgments and rulings of Chinese courts on the ground that no reciprocal relationship exists, a legal reciprocal relationship for the recognition and enforcement of civil judgments and rulings between China and that country may be found.

In this case, the applicant S Shipping Co., Ltd. did not provide evidence that the English courts had a precedent of recognizing and enforcing the civil judgments and rulings of Chinese courts, and could not prove that a de facto reciprocal relationship for the recognition and enforcement of civil judgments and rulings existed between China and the United Kingdom. However, judging from the specific practice of the English courts, when recognition and enforcement of a foreign court's judgment or ruling is sought in the United Kingdom, under the common law rules of the United Kingdom, a new lawsuit must be brought before the English courts based on the foreign court's judgment or ruling; if the conditions for recognition and enforcement are met, the English court will render a judgment substantially consistent with the original judgment, which will then be enforced according to the enforcement procedures prescribed by English law. This is also the customary practice of common-law countries. According to English law, the existence of a relevant treaty is not a necessary condition for the recognition and enforcement of judgments and rulings of foreign courts; there is no evidence proving that there are legal obstacles to the recognition and enforcement of judgments and rulings of Chinese courts by the English courts, and no English court has been found to have refused to recognize and enforce judgments and rulings of Chinese courts on the ground that no reciprocal relationship exists. Therefore, a legal reciprocal relationship for the recognition and enforcement of civil judgments and rulings between China and the United Kingdom may be found. The English court judgments in this case did not involve circumstances violating the basic principles of Chinese law or harming China's national sovereignty, security, or public interests.

In summary, although China and the United Kingdom have not concluded or acceded to an international treaty on mutual recognition and enforcement of court civil judgments and rulings, the English court judgments in this case may be recognized according to the principle of reciprocity.

After this case ruled to recognize the English court judgments, the English High Court recognized two judgments of the Hangzhou court in Zhejiang, China in December 2022.

Relevant Legal Provisions

Article 299 of the Civil Procedure Law of the People's Republic of China (this case applied Article 289 of the Civil Procedure Law of the People's Republic of China as amended in 2021)

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