Kluwer Mediation Blog

Singapore Case Note: Enforceability of settlement agreements

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Since the signing of the Singapore Convention on Mediation in August this year, there has been an increased interest on the enforceability of settlement agreements, particularly those arising from mediation. The case of Law Chau Loon v Alphire Group Pte Ltd [2019] SGHC 275 from the Singapore High Court provides us with some general legal principles to consider when a settlement agreement is drafted. Although mediation did not take place between the parties in dispute, the principles stated by the High Court here remain relevant to the drafting of binding mediated settlement agreements (MSAs). This case is essential reading for mediators and lawyers involved in mediations in which Singapore law may be applicable in relation to enforcement.

Brief Facts

Law, who was the applicant in this case, concluded a settlement agreement with some Investors from Alphire Group Pte Ltd ('Alphire') over the satisfaction of a court judgment debt, which indebted the former to the latter. Consequently, there were plans by Alphire to file a bankruptcy petition against Law.

The timeline went something like this: Law met with one of the Alphire Investors who proposed a compromise over the judgment debt to the sum of S$1 million. Subsequently, on 2 February 2019, Law and the Investors met at the lobby of a local hotel. Law attended the meeting with S$1 million in cash at hand. Negotiations were held between the parties, and at the conclusion of the meeting, they agreed to a full and final settlement of the judgment debt, which involved payment of sums of money in addition to the S$1 million cash, a share transfer and disclosure of relevant information.

One of the Investors recorded the terms of the settlement agreement in a WhatsApp text message, which was sent to Law. The message contained the following text:
"We agree that if [Law] pays us S$1m (received on 2 February 2019) plus S$400,000 in 4 installments (sic) of S$100,000 each commencing 1st June 2019 (with cheques issued in advance) and provides all necessary information and contact particulars regarding the debtors owing amounts to Alphire and transfers his shares free of charge in the company to Alicia and confirms he has no claims against Alphire we will

agree to the settlement and withdraw our bankruptcy petition."

Subsequently, Alphire disclaimed the terms of the agreement between the parties. It argued that the terms of the agreement were subject to contract, and that there was no binding settlement agreement concluded between the parties. In addition it claimed that the Investors had no authority to conclude the settlement agreement with Law on its behalf. Law then proceeded to the High Court of Singapore seeking an order to enforce the settlement agreement.

Decision of the High Court

The High Court granted an order to enforce the settlement agreement. First, Judicial Commissioner Vincent Hoong found that the Investors had the implied actual authority to conclude the settlement agreement with Law on behalf of Alphire. The Court found that the directors of Alphire were actually subservient to the Investors, who exercised direct influence over the management and operation of the company. There was evidence that the directors had answered and/or reported on matters in respect to the management, operations and profitability of Alphire to the Investors. Further, the Court specifically found that the Investors' substantial involvement with the company's financial affairs led to the irresistible inference that they had an implied actual authority to conclude a settlement agreement over an outstanding judgment debt in favour of Alphire.

Secondly, the Court examined the context under which the settlement agreement was concluded. It was reiterated, "For there to be a valid settlement agreement, there must be 'an identifiable agreement that is complete and certain, consideration, as well as an intention to create legal relations' (*Gay Choon Ing v Loh Sze Ti Terence Peter and another appeal* [2009] 2 SLR(R) 332 … at [46])." The fact that the settlement agreement was recorded on a timestamped WhatsApp text message was a weighty consideration; the Court found that there was a complete and uncontradicted coincidence in the agreement recorded by the text message with the outcomes of the negotiation at the hotel lobby between the parties. The Court also took some post-contractual evidence into consideration: Alphire's solicitors, in a correspondence with Law's solicitors on 15 February 2019, had acknowledged that there was a full and final settlement reached between the parties on 2 February 2019.

The Court was satisfied that the terms of the settlement agreement were complete, certain and binding: this was bolstered by the fact that there was clear consideration (i.e., Law's obligation to pay S$1.4m to Alphire on agreed terms, in exchange for the settlement of the judgment debt) stated in the agreement. The Court also found that there was intention between the parties to create legal relations with each other, on the basis that the WhatsApp text message was couched in legalistic terms, and clearly reflected a quid pro quo negotiated between Law and the Investors.

Learning Points for mediators and lawyers representing clients in mediation

1) Mediators must confirm the credentials of parties representing corporate entities at a mediation. In this instance, Law was fortunate that the law was in his favour because he negotiated and concluded his settlement agreement with Investors who

were so heavily involved in Alphire that they were legally deemed to possess implied actual authority to bind the company to a settlement agreement, even though they were not company directors. Mediators should prioritise dealing with company directors, or the relevant associates and executives who hold letters of authority signed on a company letterhead. It is also the practice of some mediators to included clauses in the Mediation Agreemetn (also known as Agreement to Mediate) that the parties warrant that they possess authority to settle. While such a clause may not prevent unauthorised representatives participating in mediation, it will certainly minimise the risk of this occurring. Lack of authority or capacity to settle on behalf of a corporate entity would certainly fall within the grounds of refusal to enforce settlement agreements including those resulting from mediation – and this has been recognised in Article 5(1) of the Singapore Convention on Mediation. Although the Convention was not relevant to this case, it is an indicator of international approaches to issues of MSA enforcement in international settings.

2) Clear drafting of terms is crucial to an enforceable MSA. For example, where sums of money are agreed to be paid, the date of payment (or dates for payment of clearly-defined installment sums) should be expressly stated in the settlement agreement.

3) Settlement agreements may be concluded and recorded through text messaging and other timestamped online mediums or communication devices. Here the court implicitly recognised the increasing use of online negotiation and mediation and the growing field of online dispute resolution (ODR). Interestingly and indicative of international developments in mediation, the Singapore Convention on Mediation also recognises the ODR trend. It expressly provides that MSAs may be concluded using online technology: see section 2 on definition of "in writing" and section 4(2) in relation to evidence of an MSA.

4) Post-settlement correspondence (such as that between the lawyers in this case) may be administered in Court to prove that a (mediated) settlement agreement was indeed final and binding between parties.

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