

Article

BVI Court Orders Committal of Judgment Debtor Resident in Hong Kong: An Affirmation of the Commercial Court's Pro-Enforcement Approach

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In *Sang Cheol Woo v Charles C Spackman*, the BVI Commercial Court handed down its first written judgment on the issue of whether the Court has jurisdiction to grant a committal order against a judgment debtor resident and domiciled outside of the jurisdiction. Justice Wallbank ruled that the Court does have an inherent jurisdiction to make such an order against a personal judgment debtor over whom the Court had already established jurisdiction.

In 2011, the judgment creditor in *Sang Cheol*, Mr. Woo, obtained a foreign money judgment in the amount of approximately US\$4.6 million plus interest (the "**Korean Judgment**") against the judgment debtor, Mr. Spackman, who was an individual ordinarily resident in Hong Kong. In 2019, the judgment creditor issued a claim in the BVI in order to have the Korean Judgment recognized and enforced at common law (the "**Common Law Enforcement Claim**"). Permission was granted to serve the Common Law Enforcement Claim on the judgment debtor outside of the jurisdiction and thereafter a default judgment was entered against him in the BVI in excess of US\$14 million on account of his failure to respond to the Common Law Enforcement Claim.

On 20 August 2020, the Court made an examination order (the "**Examination Order**") compelling the judgment debtor to appear (via Zoom, because of the Covid-19 pandemic) to be examined under oath as to his means. The Examination Order was endorsed with a penal notice, which warned that the judgment debtor could be committed to prison if he failed to obey the order. The judgment debtor failed to appear for the oral examination.

On application of the judgment creditor, the court ordered that the judgment debtor be committed to 12 months in prison in the BVI on account of his contempt of court in breaching the terms of the Examination Order. The Court was satisfied that the judgment debtor's non-attendance was wilful and contemptuous (given evidence shown of his long history of evading personal service and enforcement in various jurisdictions worldwide). In a subsequent decision handed down in March, the Court ordered

further that a bench warrant be issued in order to authorize the police to arrest the judgment debtor and bring him before the court, should he enter the jurisdiction.

The judgment addresses important questions on the BVI Court's jurisdiction to grant such committal orders as well as the practical efficacy of the same given the judgment debtor's non-resident status. In respect of the Court's jurisdiction, the Court was satisfied (on the basis of an established line of English authorities) that the Court does have an inherent jurisdiction to make such an order in respect of a personal judgment debtor over whom the Court had already established jurisdiction. Given that permission to serve the judgment debtor outside of the jurisdiction had already been granted in respect of the Common Law Enforcement Claim, the Court ruled that there was no need for additional permission to be sought in respect of the Examination Order (which was itself incidental to the Common Law Enforcement Claim).

Regarding the efficacy of the order, the Court ruled that an order committing the judgment debtor to prison would not be in vain since it (i) furthered the public policy of ensuring respect for the administration of justice (which is undermined by litigants who disrespect court orders); and (ii) may have a coercive effect against the judgment debtor who may be required to travel to the BVI on business given his previous use of BVI corporate vehicles and his directorship of BVI companies. The Court expressly affirmed that the BVI is a pro-enforcement jurisdiction and noted further that securing compliance with orders of the Court, and deterring disobedience, are practical reasons for making a committal order. In an effort to encourage compliance, the Court ordered that the committal order would be suspended if the judgment debtor (within seven days) paid the judgment debt, or appeared for examination pursuant to the terms of the Examination Order.

This judgment serves as an important reminder of the BVI Commercial Court's commitment to assisting judgment creditors in obtaining the fruits of their judgment, irrespective of the location of the judgment debtor (whether resident in Asia or elsewhere outside of the jurisdiction).

If you are interested in understanding more about this legal development, please feel free to contact your usual contact at Conyers or the below authors.

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