Recognition and Enforcement of Chinese Monetary Judgments in Australia based on Chinese Citizenship

The Australian common law does not require reciprocity for recognizing and enforcing foreign judgments. Therefore, although Chinese courts have never recognized and enforced an Australian monetary judgment, Australian courts have recognized and enforced Chinese judgments. Thus far, there have been two Chinese judgments recognized and enforced in Australia (both in the State of Victoria). In both cases, the Australian judges considered whether the Chinese courts had international jurisdiction based on the defendants' citizenship/nationality.

The first case is *Liu v Ma*.[1] The plaintiff sought to recognize and enforce a default Chinese judgment (worth RMB 3,900,000) against the defendants. The defendants defaulted in the Australian judgment recognition and enforcement (hereinafter 'JRE') proceedings. By applying Australian law, the Supreme Court of Victoria held that the Chinese court had international jurisdiction over the defendants because they were born in China and held a Chinese passport, they had substantial activities or financial affairs in China, and Chinese law does not recognize dual nationality.

The second case, *Suzhou Haishun Investment Management Co Ltd v Zhao & Ors*, was rendered recently on 27 February 2019.[2] It is a summary judgment but, in contrast to *Liu*, the defendant thoroughly argued her case in the Australian JRE court. The plaintiff sought to recognize and enforce three Chinese judgments (worth RMB 20,000,000). The plaintiff brought Chinese proceedings against a Ms. Zhao and her company where she was the director and the sole shareholder. A few days before the Chinese proceeding was commenced, Ms. Zhao was informed that the plaintiff intended to sue her, and she left China with no intention to return. However, Ms. Zhao was still registered to an address in the Chinese court's jurisdiction under the hukou system (China's system of household registration). She possessed a Chinese identity card and held a Chinese passport.

The plaintiff tried various ways to serve Ms. Zhao but was unsuccessful. Finally, the service was conducted by public announcement. Ms. Zhao defaulted in the Chinese proceedings. But at the first hearing, a man purporting to be an employee of Ms. Zhao's company appeared before the Chinese judge. This man was asked by the Chinese judge whether he knew Ms. Zhao, to which he responded that she was 'the boss.' Although this man did not hold Ms. Zhao's power of attorney, he nevertheless indicated that he had with him documents verifying that Ms. Zhao was diagnosed with depression which explained why she could not attend the hearing. The Chinese court held that Ms. Zhao was aware of the proceedings and service by the public announcement was effective. Chinese judgments were rendered against Ms. Zhao and her company. Her company had no assets in China, so the plaintiff went to Australia to locate Ms. Zhao. The Australian court held that service by the public announcement was legal according to Chinese Civil Procedural law and there was no denial of natural justice. The Australian court also held that the Chinese court had international jurisdiction. First, because the parties submitted to the Chinese court by a choice of court clause in the loan contracts. Second, Ms. Zhao was a citizen of China, possessed a Chinese passport, held an identity card and submitted to the jurisdiction of the Chinese Court by agreement, so it is not necessary to decide whether she was considered by Chinese law to be domiciled in China.

Although the defendant's citizenship is not a ground for Australian courts to exercise direct jurisdiction, it remains to be ground in the Australian JRE proceedings to determine whether a foreign court has international jurisdiction. In *Independent Trustee Services Ltd v Morris*,[3] the plaintiff applied to enforce a UK judgment in Australia on the ground that the defendant had an active UK citizenship. The defendant was a UK citizen and held a UK passport issued in 2003 and current until 2013, and he used this passport to travel to Australia. The Supreme Court of New South Wales found that the defendant's citizenship was not some relic of an early stage of his life but was an active part of his present situation on which he had relied for international travel and for other purposes. It held that the UK judgment should be recognized and enforced because citizenship of a foreign country means allegiance to the foreign country, and it is a recognized ground of international jurisdiction on which the effectiveness of foreign judgments is accepted under the common law. However, even the judge deciding *Morris* acknowledges the 'absence of citation in the English authorities of any case in which this ground of jurisdiction has been contested and upheld

after argument'.[4] *Liu* cites the English case *Emanuel v Symon**[5]*, which found that a foreign court has international jurisdiction if the defendant is a subject of the foreign country in which the judgment has been obtained. However, this is a dictum rather than a holding. As Dicey, Morris and Collins The Conflict of Laws indicates there is no actual decision in English common law which supports that the courts of a foreign country might have jurisdiction over a person if he was a subject or citizen of that country. Private International Law in Australia by Reid Mortensen and et al also considers active citizenship is a dubious ground of international jurisdiction.

The cases involving Chinese citizenship and Hukou are more complicated. First, the fact that China does not recognize dual citizenship does not mean China is necessarily a Chinese citizen's domicile. A Chinese citizen automatically loses his/her Chinese citizenship only when a Chinese citizen has obtained foreign citizenship and resides overseas.[6] It is not uncommon that a Chinese citizen may reside overseas under a foreign permanent residency visa. Second, these groups of Chinese citizens still maintain a registered address in China (Hukou). This is because every Chinese citizen must have a Hukou even if s/he resides abroad. This Hukou may enable them to receive Chinese pension and voter registration. Third, under Chinese civil procedure law, a Chinese court has jurisdiction on a Chinese citizen when his or her Hukou is in its jurisdiction,[7] even if the Chinese citizen (defendant) is not present in China when the initiating process is commenced. If all other service methods are not successful, people's courts can use a public announcement to effect service. The question is whether Australian courts recognize and enforce the consequent Chinese default judgment based on the defendant's citizenship. I would suggest Australian courts to be cautious to follow *Liu* and *Zhao* regarding the issue of citizenship. The classical grounds for international jurisdiction are presence and submission. Service by a public announcement is hard to establish international jurisdiction on a defendant who is neither present nor submitted. Citizenship as a ground of international jurisdiction has been doubted by three English High Court judges[8] and rejected by the Irish High Court.[9] Additionally, *Liu* is a default judgment, so the citizenship issue has not been contested, and the defendant in *Zhao* submits to Chinese court by a choice of court clause.

[1] *Liu v Ma & anor* [2017] VSC 810.

[2] *Suzhou Haishun Investment Management Co Ltd v Zhao & Ors* [2019] VSC 110.

[3] *Independent Trustee Services Ltd v Morris* [2010] NSWSC 1218.

[4] Ibid, para 28.

[5] *Emanuel v Symon[1908] 1 KB 302.*

[6] Art. 9 of the Chinese Nationality Law, http://www.mps.gov.cn/n2254996/n2254998/c5713964/content.html.

[7] Under the Hague Service Convention, service on Hukou may not be upheld if the defendant can demonstrate that his habitual residence is different. If a Chinese citizen leaves its Hukou address and resides in another address continuously for more than one year, the latter address becomes his habitual residence and the court in that address also has jurisdiction.

[8] *Blohn v Desser [1962] 2 Q.B. 116, 123*; *Rossano v Manufacturers' Life Insurance Co Ltd [1963] 2 Q.B. 352, 382–383*; *Vogel v RA Kohnstamm Ltd [1973] Q.B. 133*; see also *Patterson v D'Agostino (1975) 58 D.L.R. (3d) 63*(Ont). Dicey, Morris and Collins The Conflict of Laws (15th ed) 14-085.

[9] *Rainford v Newell-Roberts [1962] I.R. 95*.