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No. 93823-7

COURT OF APPEALS
DIVISION ONE
APR 4 2016

No. 73956-5-I

KUNG DA CHANG and MICHELLE CHEN,

Appellants,

v.

SHANGHAI COMMERCIAL BANK LIMITED,

Respondent.

APPEAL FROM THE WASHINGTON STATE SUPERIOR COURT
IN AND FOR THE COUNTY OF KING

Shanghai Commercial Bank Limited v. Chang, et al

Case No. 12-2-21293-7 SEA

The Honorable Laura G. Middaugh

REPLY BRIEF OF APPELLANTS KUNG DA CHANG AND MICHELLE CHEN

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COURT OF APPEALS DIV I
STATE OF WASHINGTON
2016 APR -4 PM 2: 11

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I. ARGUMENT IN REPLY

A. Michelle Chen was not a party to the Facility Letter or the Hong Kong Lawsuit, so her rights and the rights of KD Chang and Michelle Chen's marital community could not have been adjudicated in HCA 806.

SCB asserts that, under Hong Kong law, a judgment entered solely against one spouse may be enforced in Hong Kong against that spouse's separate property and all property acquired by the spouses during the marriage that is not the separate property of the other spouse.[1] According to SCB, by entering the Hong Kong Judgment, the Hong Kong court has already determined the extent to which the judgment is enforceable against KD Chang and Michelle Chen's property in Washington and, presumably, any jurisdiction where SCB seeks to enforce it.[2]

However, SCB's position ignores the key facts: 1) Michelle Chen was not a party to the Facility Letter; 2) Michelle Chen and the marital community were not parties to the Hong Kong Lawsuit; and 3) the Hong Kong Judgment does not name Michelle Chen or the marital community. While Hong Kong law may determine the extent to which the Hong Kong Judgment may be enforced against KD Chang and Michelle Chen's property in Hong Kong, since Michelle Chen was not named in the Hong Kong lawsuit, the Hong Kong court could not have adjudicated her rights under

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[1] Opp. Br. 27
[2] Id.

Washington law. The King County lawsuit seeking enforcement of the Hong Kong Judgment is Michelle Chen's opportunity to challenge the community nature of the obligation.

B. Appellants are not "seeking refuge under Washington law".

SCB attempts to vilify KD Chang and Michelle Chen by asserting that they are attempting to seek refuge under Washington law and put assets out of reach. However, nothing could be further from the truth. SCB's allegations again ignore the facts and Washington law.

SCB claims that KD Chang and Michelle Chen did not disclose their Washington residency to SCB. First and foremost, Michelle Chen did not sign the Facility Letter and was unaware of the agreement until after the Hong Kong lawsuits were filed. To argue that she failed to disclose her Washington residency to SCB is disingenuous.

Second, SCB's argument that it did not know that KD Chang was a Washington resident is merely SCB's counsel's interpretation of why the Facility Letter was sent to KD Chang at an address in Shanghai.[3] SCB did not submit any sworn affidavits stating that it was unaware that KD Chang was a Washington resident. The address where the documents were sent is KD

[3] The argument was raised at oral argument on SCB's Second Motion for Summary Judgment.

Chang's father's address, who was the sole beneficiary and decision-maker on the account, which SCB knew.

Third, contrary to SCB's assertions, KD Chang and Michelle Chen are not arguing that the Hong Kong Judgment is *per se* unenforceable against their marital community under the Uniform Foreign-Country Money Judgments Recognition Act. Moreover, KD Chang and Michelle Chen do not dispute that a foreign judgment on a breach of contract claim obtained solely against one spouse is presumed to be a community obligation under Washington law. However, the presumption of a community obligation is rebuttable and KD Chang and Michelle Chen have raised genuine issues of material fact regarding the community nature of the Hong Kong Judgment.

C. The *Manche* case cited by SCB supports KD Chang and Michelle Chen's position.

In the *Manche* case cited by SCB, the creditor obtained a judgment solely against the husband. The creditor subsequently sought to enforce the judgment against community property. As in this case, the wife was not a party to the original action. The court found, "a judgment rendered upon a community obligation in an action to which the wife is not a party is enforceable against the community property, though the question of the community character of the obligation will remain open to the wife to be

determined in some appropriate proceeding".[4]That is exactly what Michelle Chen is doing in the King County lawsuit: challenging the community nature of the Hong Kong Judgment.

D. Even if the *McKee* conditions apply, analysis of each condition favors Michelle Chen.

Because the provisions of the Facility Letter ceased to exist upon entry of the Hong Kong Judgment and because any choice-of-law provision would be enforceable against Michelle Chen, the Court need not consider the *McKee* conditions discussed by SCB.[5] However, even if they do apply, the *McKee* conditions are satisfied in this case.

1. Washington law applies in the absence of a choice-of-law provision in the Facility Letter.

When engaging in a conflicts of law analysis, courts only look to the issue on which the two jurisdictions differ.[6] The sole issue on which Hong Kong and Washington differ is the scope of enforceability of the Hong Kong Judgment against Appellants' marital property. Since the King County lawsuit is an action to enforce a judgment, not the Facility Letter itself, the relevant factors the Court evaluates are: 1) the needs of the interstate and international systems, 2) the relevant policies of the forum, 3) the

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[4] Manche v. Russell, 121 Wash. 65, 66-67 (1922).
[5] See Appellants' Opening Brief at 17-22.
[6] Potlatch No. 1 Fed. Credit Union v. Kennedy, 76 Wn.2d 806, 813, 459 P.2d 32 (1969); Pac. Gamble Robinson Co. v. Lapp, 95 Wn.2d 341, 352-353 (1980).

relevant policies of other interested states and the relative interests of those states in the determination of the particular issue, 4) the protection of justified expectations, 5) the basic policies underlying the particular field of law, 6) certainty, predictability and uniformity of result, and 7) ease in the determination and application of the law to be applied.[7] As set forth in Appellants' Opening Brief, Washington law applies.[8]

2. Washington public policy favors protecting the marital community from debts that do not benefit the community.

Under Washington law, choice-of-law provisions will not be enforced against a spouse who did not sign an agreement.[9] Likewise, in instances where the community did not benefit from the debt, Washington law favors protecting the non-contracting party from the debt.[10]

In this case, SCB asks the Court to enforce the Hong Kong Judgment against Appellants' marital community, a judgment obtained solely against KD Chang and in proceeding in which Michelle Chen and the marital community were not named. Clearly it is Washington public policy to provide Michelle Chen an opportunity to challenge the enforceability of the Hong Kong

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[7] Restatement 2d of Conflict of Laws, § 6.
[8] Appellants' Opening Brief at 26-29.
[9] Oltman v. Holland Am. Line USA, Inc., 163 Wn.2d 236, 250 (2008), *cert. denied*, 554 U.S. 941, 129 S.Ct. 24, 171 L.Ed.2d 927 (2008).
[10] Merritt v. Newkirk, 155 Wash. 517 (1930).

Judgment against the marital community.

3. Washington's interest outweighs Hong Kong's interest.

The Hong Kong Judgment is presumed to be Appellants' community obligation, but, again, Washington's interest is in protecting Michelle Chen's interest in not having marital community property subject to debts that did not benefit the community. By disregarding the choice-of-law provision, the Court will afford Michelle Chen the opportunity to challenge the community nature of the Hong Kong Judgment, while at the same time taking into account any interests SCB may have.

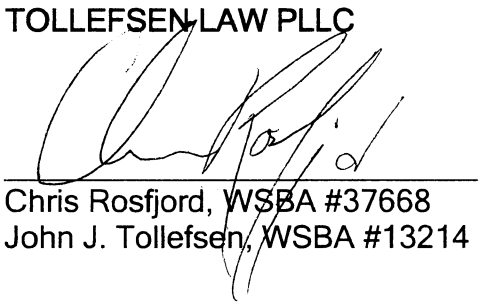
II. CONCLUSION

Upon entry of the Hong Kong Judgment, the Facility Letter merged into the Hong Kong Judgment and its contractual provisions ceased to control the relationship between SCB and KD Chang. SCB took the appropriate steps to seek enforcement of the Hong Kong Judgment. Because she was not a party to the Hong Kong lawsuit, Michelle Chen none of her rights or the rights of the marital community were adjudicated in the Hong Kong lawsuit. While the Hong Kong Judgment is presumed to be Appellants' community obligation, KD Chang and Michelle Chen have raised genuine issues of material fact regarding the community nature of the Hong Kong Judgment. The trial court's order granting SCB's Second

Motion for Summary Judgment should be reversed and the matter should be remanded for trial on the community obligation issue.

DATED this 4th day of April, 2016.

TOLLEFSEN LAW PLLC



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION 1

SHANGHAI COMMERCIAL BANK LIMITED, Respondents, vs. KUNG DA CHANG and "JANE DOE" CHANG, husband and wife, and the marital community comprised thereof, , Appellants.	Div. I Case No. 73956-5-I King County Superior Court Case No. 12-2-21293-7 SEA **PROOF OF SERVICE OF REPLY BRIEF OF APPELLANTS KUNG DA CHANG AND MICHELLE CHEN**

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I hereby certify that on April 4, 2016, the Opening Brief of Appellants Kung Da Chang and Michelle Chen was served on the following via hand delivery:

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Dated this 4th day of April, 2016, I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Signed in Lynnwood, Washington.

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