IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 10

Civil Appeal No 221 of 2017

Between

SUN TRAVELS & TOURS PVT LTD

… *Appellant*

And

HILTON INTERNATIONAL MANAGE (MALDIVES) PVT LTD

… *Respondent*

JUDGMENT

[Arbitration] — [Agreement] — [Breach]

[Arbitration] — [Anti-suit injunction]

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Sun Travels & Tours Pvt Ltd
v
Hilton International Manage (Maldives) Pvt Ltd

[2019] SGCA 10

Court of Appeal — Civil Appeal No 221 of 2017
Andrew Phang Boon Leong JA, Judith Prakash JA and Steven Chong JA
8 November 2018

12 February 2019 Judgment reserved.

Steven Chong JA (delivering the judgment of the court):

Introduction

1 This appeal raises an interesting issue: how a seat court should exercise its discretion in respect of an application for an anti-suit injunction when the foreign court has already issued a judgment in favour of the other party in a civil action where the issues litigated were the same as those in the prior arbitration. This judgment will examine whether a different approach is warranted in the treatment of the specific category of anti-enforcement injunctions in contradistinction to the usual form of anti-suit injunctions which restrain *ongoing* proceedings, and if so, what that approach should be and the principles that inform the difference. It will also engage a number of related considerations, including the significance that ought to be accorded to a party's delay in seeking anti-suit relief and the different shades of meaning that comity can take on.

2 In the present case, a dispute between the parties was properly brought before an arbitral tribunal which led to two awards against the appellant, Sun Travels & Tours Pvt Ltd ("Sun"). The respondent, Hilton International Manage (Maldives) Pvt Ltd ("Hilton"), took various steps to enforce the awards against Sun in the Maldives. Initially, Hilton did not make much headway because there was some confusion as to which court in the Maldives is vested with the jurisdiction to deal with enforcement matters. In the midst of this confusion, Sun commenced an action in the Maldives essentially re-litigating the issues which had already been decided in the arbitration. Instead of immediately applying for anti-suit relief from the seat court, *ie*, the Singapore court, Hilton sought to challenge the Maldivian action on jurisdictional grounds. Hilton, however, failed in its jurisdictional challenge. Significantly, the Maldivian court, which invited the parties to submit on both jurisdiction and merits concurrently, issued a judgment awarding substantial damages to Sun. The findings were, in essence, the complete opposite of the findings by the arbitral tribunal. Notwithstanding the issuance of this judgment, Hilton sought to enforce the awards again, but this time, enforcement was denied on account of the Maldivian judgment. To add to the complication, Hilton has since appealed against the judgment. The appeal has been heard and is pending decision by the Maldivian appellate court.

3 It was against this background that Hilton applied for an anti-suit injunction before the High Court Judge below ("the Judge"). She correctly found that the Maldivian action was "already too far advanced to warrant an anti-suit injunction". She instead granted an anti-enforcement injunction to prevent Sun from relying on the Maldivian judgment. In her view, the applicant's delay went towards limiting the scope of injunctive relief granted,

as opposed to denying any injunctive relief altogether in the light of the two Maldivian court judgments as well as the ongoing appeal.

The factual background

4 Sun was a resort operator that owned the Iru Fushi Beach & Spa Resort in the Maldives ("the Hotel"). Hilton was a Maldivian-incorporated company affiliated with a large hospitality company operating hotels and resorts worldwide.

5 In January 2009, Hilton and Sun began to discuss the possibility of entering into a management agreement.[1] In the course of these discussions, Hilton provided a set of projections on occupancy rates, room rates and gross operating profit. This was subsequently revised on 26 February 2009,[2] and this revised set of projections ("the Revised Projections") was later relied on by Sun for its misrepresentation claims (see [11] below).

6 On 27 February 2009, the parties entered into a management agreement under which Sun agreed to let Hilton manage the Hotel ("the Management Agreement"). On 1 May 2009, the Hotel was handed over to Hilton, and on 1 July 2009, the Hotel officially opened for business under the management of Hilton.[3]

7 Between 2010 and 2012, the Hotel's gross operating profit was 37% to 43.1% below the Revised Projections.[4] Sun became dissatisfied with the performance of the Hotel as managed by Hilton.[5]

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1 ROA Vol III Part A, p 58.

2 ROA Vol III Part A, pp 63–64.

3 ROA Vol III Part A, p 64.

8 On 30 April 2013, Sun gave notice to Hilton that the Management Agreement was terminated with immediate effect. On 2 May 2013, Hilton accepted Sun's termination on the basis that it was a wrongful repudiation of the Management Agreement, and it considered itself discharged from all further contractual obligations to Sun under the Management Agreement.

The arbitration proceedings

9 On 16 May 2013, Hilton commenced International Chamber of Commerce ("ICC") arbitration proceedings ("the Arbitration") pursuant to an arbitration agreement in the Management Agreement (cl 18.2). In a nutshell, Hilton contended that Sun was not entitled to terminate the Management Agreement and claimed damages for lost profit and for sums due and owing under the Management Agreement.

10 On 18 July 2013, the ICC Court of Arbitration fixed Singapore as the seat of the Arbitration.

11 The list of issues for the Arbitration were set out in the parties' Terms of Reference, dated 27 September 2013. The focus of the Arbitration was on the two justifications that Sun provided for terminating the Management Agreement. First, Sun alleged that the Revised Projections constituted fraudulent misrepresentations. Secondly, Sun alleged that Hilton had breached its obligation to use the "skill, effort, care, diligence and expertise reasonably expected of a prudent international operator" (cl 3.1.3 of the Management Agreement) by failing to (a) maintain proper books and records (cl 7.1);

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4 ROA Vol III Part A, p 65.

5 RCB, p 10 (para 26).

(b) repair and maintain the Hotel (cl 6.1); and (c) maintain proper financial controls and corporate governance (cl 6.2).[6] Hilton disputed all of the above.[7]

12 Both parties participated in the Arbitration, up until the date on which the Partial Award was delivered. The oral hearings took place during the period between 21 July 2014 and 31 July 2014.[8] On 27 May 2015, the arbitral tribunal ("the Tribunal") issued the Partial Award. The Tribunal dismissed Sun's misrepresentation claims and found that Hilton was not in breach of the Management Agreement. The Tribunal awarded Hilton the sum of US$599,095.66 with interest for its pre-termination claims and £1,051,230.10 for legal and expert's fees and expenses incurred in the Arbitration. It also awarded Hilton damages and costs of the Arbitration comprising the fees and expenses of the Tribunal and the ICC administrative expenses (both of which were to be reserved to a further award).[9]

13 Following the release of the Partial Award, counsel for Sun ceased to represent Sun in the Arbitration, and asked the Tribunal to direct further correspondence directly to Sun.[10] On 10 June 2015, Hilton made submissions to the Tribunal on the quantum of damages that Sun should be liable for. Sun chose not to respond to Hilton's submissions even after the Tribunal afforded Sun ample opportunities to do so.

14 On 17 August 2015, the Tribunal issued the Final Award ordering Sun to pay Hilton damages in the sum of US$20,945,000 plus interest, as well as

6 ROA Vol III Part A, p 138 (para 365).

7 ROA Vol III Part A, p 66 (para 100).

8 ROA Vol III Part A, pp 50–53.

9 ROA Vol III Part A, p 194.

10 RCB, p 17 (para 46); ROA Vol III Part C, p 280.

US$342,500 for Hilton's share of the fees and expenses of the ICC and the Tribunal.[11]

The proceedings in the Maldives

15 We preface this section by noting that the proceedings in the Maldivian courts initially progressed along two different tracks before they converged in June 2017. The first related to proceedings by Hilton to enforce the Partial Award and the Final Award (collectively, "the Awards"), and the second related to a civil action commenced by Sun against Hilton. It is implicit in how we set out the facts below that we disagree with the suggestion made by counsel for Sun, Mr Andre Maniam SC, that *all* the proceedings in the Maldives were in fact bound up with the resisting of the enforcement of the Awards. We return to this point at [52] below.

The enforcement proceedings

16 In December 2015, Hilton commenced enforcement proceedings in the Large Property and Monetary Claims division of the Maldivian Civil Court ("the First Enforcement Proceedings").[12]

17 Sun resisted Hilton's application to enforce the Awards. In a Summary Statement dated 25 September 2016, Sun submitted that the Management Agreement was "a void and invalid/illegitimate agreement" because of the "deceit and misrepresentation" relating to the Revised Projections,[13] and therefore the enforcement of the Awards would be contrary to Maldivian public

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11 ROA Vol III Part C, p 283.

12 RCB, p 18 (para 52); ROA Vol III Part B, p 105.

13 RCB, pp 42–43 (paras 12, 13 and 15).

policy under s 74(a)(2)(bb) of the Arbitration Act (Act No 10/2013) (Maldives) ("the Maldivian Arbitration Act").[14] In addition, Sun submitted that the court should award it US$19.2m as damages for fraudulent misrepresentation based on the Revised Projections.[15]

18 On 28 September 2016, Civil Court Judge Hathif Hilmy held that the matter was beyond the jurisdiction of the division, and that it should instead be brought directly to the Enforcement Division of the Civil Court.[16] In his Summary Case Report, the judge also observed that none of the grounds listed for refusing recognition or enforcement of an arbitral award under s 74 of the Maldivian Arbitration Act requires a review of the merits.[17]

19 Hilton then proceeded to the Enforcement Division of the Maldivian Civil Court.[18] However, on 29 November 2016, Civil Court Judge Hassan Faheem Ibrahim from the Enforcement Division declined jurisdiction, holding that enforcement proceedings ought to be commenced in the High Court of the Maldives instead.[19]

20 On or around 26 January 2017, Hilton appealed against Judge Hassan Faheem Ibrahim's ruling.[20] It sought a determination that the Civil Court has the jurisdiction to enforce arbitral awards under the laws and regulations of the Maldives.[21] On 14 February 2017, Sun submitted an Appeal Response Form. It

14 RCB, pp 44–45 (para 17); ACB Vol II, pp 39–40.

15 RCB, p 19 (para 54).

16 RCB, pp 46, 49.

17 RCB, p 49.

18 ROA Vol III Part E, p 242.

19 RCB, p 51; RCB, p 20 (para 57).

20 ACB Vol II, p 13.

did not dispute that the Civil Court ought to have jurisdiction to decide on the enforcement of the arbitral awards, but it again rejected Hilton's assertion that the Awards were enforceable.[22]

21 On 20 April 2017, the High Court of the Maldives reversed Judge Hassan Faheem Ibrahim's ruling and found that the Civil Court was the "competent" court for the enforcement of arbitral awards under s 73(a) of the Maldivian Arbitration Act.[23]

22 On 23 April 2017, Hilton recommenced enforcement proceedings in the Maldivian Civil Court ("the Second Enforcement Proceedings").[24] On 12 June 2017, Sun raised the same arguments it had made in the First Enforcement Proceedings to resist enforcement. Hilton filed a response on 22 June 2017.[25] The judge assigned to the matter was Judge Hassan Faheem Ibrahim, and he fixed a hearing on that same afternoon to deliver his judgment. He held that the enforcement of the Awards "could not be entertained at [the Civil] Court for the time being" because of a Maldivian judgment issued in March 2017 in Sun's favour against Hilton.[26] We henceforth refer to the judgment issued in March as "the March Judgment" and Judge Hassan Faheem Ibrahim's judgment as "the June Judgment". We turn now to the civil action commenced by Sun.

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21 ROA Vol III Part E, p 261.

22 ROA Vol III Part B, p 153.

23 ROA Vol III Part B, p 163.

24 ROA Vol III Part E, p 51 (para 32).

25 RCB, p 21 (paras 60–62).

26 RCB, p 70.

Sun's civil action

23 In October 2016, after Judge Hathif Hilmy's decision and before Hilton commenced enforcement proceedings in the Enforcement Division of the Civil Court (see [18]–[19] above), Sun commenced a civil action against Hilton ("the Maldivian Suit").[27] In the Maldivian Suit, Sun claimed damages against Hilton totalling US$16,671,000 arising from alleged misrepresentations and breaches of the Management Agreement.[28] Both claims were similar to those brought by Sun in the Arbitration (see [11] above).[29] In addition, the relief sought by Sun in both the Maldivian Suit and the Arbitration was the same: damages in excess of US$16m.[30]

24 In Sun's Submission of Claims, Sun also made reference to the Arbitration.[31] At paragraph 8.13, Sun elaborated on the outcome of the Arbitration and it appears that the Awards were appended:

> Notwithstanding the fact that the Management Agreement was signed by both parties due to [Hilton's] fraudulent and misleading conduct, the Arbitral Tribunal held that the agreement was valid and thereby instructed [Sun] to compensate [Hilton] for their loss suffered due to the termination of the Agreement. The Arbitral Tribunal awarded a partial award and a final award on the matter. Nevertheless, the implementation of a decision that decided that an agreement in the Maldives which was entered into through the fraudulent and misleading conduct of one party and which has been ruled to be a valid agreement shall contradict the Maldivian Contract Act and public policy of the Maldivian Government. Such an agreement must not be implemented. (Copy of the partial award given by the International Chamber of Commerce in the

27 ACB Vol II, p 11 (para 26); RCB, p 22 (para 64).

28 RCB, p 57.

29 RCB, pp 53, 56 (paras 8.5 and 8.14) and 92–94.

30 RCB, p 93.

31 RCB, p 55 *et seq*.

> International Court of Arbitration on 27 May 2015 attached as "Document 7" and the copy of the final award given by the same on 17 August 2015 attached as "Document 8") [emphasis in underline in original]

25 On 27 November 2016, Hilton filed a procedural objection. In essence, Hilton highlighted that Sun's claims concerned an agreement with an arbitration clause, that the Tribunal had already issued the Awards determining and dismissing the claims brought by Sun in the Maldivian Suit, and that enforcement of the Awards was still ongoing in the Civil Court.[32]

26 On 3 January 2017, Sun filed its response to Hilton's procedural objection.[33] The material passages of its response are as follows:

> 2. [Sun] notes that a decision by the [Tribunal] that the Tribunal is vested with the jurisdiction to decide a case which involves alleged fraudulent misrepresentations or acts in breach of law in the transaction can be subject to retrial in courts. [Sun] also notes that this is practiced even today by the judiciaries of other democratic legal systems. Further, it is noted that if the decision of the Tribunal was based on acts in breach of law, the substantive decisions of the Tribunal will be subject to revision. As such, reference is made to the United Kingdom Court of Appeal Case of *Soleimany v Soleimany* (1988) 3 WLR 811. This case involves a decision of an Arbitral Tribunal with respect to a contract made to smuggle carpet from Iran. However, since the decision was based on a contract in breach of law, the matter was determined in a United Kingdom Court whereby it was ruled that the contract was made in breach of law. (A copy of United Kingdom Court of Appeal case *Soleimany v Soleimany* (1988) 3 WLR811 [*sic*] is attached herewith as "Document 10" of [Sun].)
>
> 3. This matter concerns a claim for compensation for damage incurred by [Sun] due to the [Management Agreement] entered into by [Sun] upon fraudulent misrepresentations by [Hilton] to [Sun]. For the same reason as in *Soleimany v Soleimany* (1988), this matter can be determined in the Maldivian courts as a separate matter **even though the same**

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32 ROA Vol III Part K, pp 131–133.

33 RCB, p 60.

> **subject matter of the Management Agreement has already been decided by an Arbitral Tribunal.**
>
> 4. With respect to the statement by [Hilton] that [Hilton] has submitted and is currently in the midst of enforcement proceedings for the Arbitral Award in the Civil Court's Enforcement Section via the Civil Court Case No. 2398/Cv-C/2016, it is noted that in [Judge Hassan Faheem Ibrahim's decision dated 29 November 2016], it has been decided that the [Awards] can be enforced after a decision is made by the High Court with respect to the Arbitral Award. **[Sun] notes further that no claims for Arbitral Award enforcement proceedings are ongoing in any of the courts in Maldives at the moment**. For this reason, [Sun] submits that there are no hurdles to carrying out these proceedings with respect to this matter.
>
> [emphasis added in bold; emphasis in underline in original]

27 Two points about Sun's response are of note. First, Sun stated that it was raising the "same subject matter of the Management Agreement [that had] already been decided by an Arbitral Tribunal". Nonetheless, Sun's case was that its claim could be subject to a *retrial or a revision* as the Awards were based on a contract "in breach of law". Secondly, Sun stated that it was not aware that there were any *ongoing* enforcement proceedings. We note at this juncture that one of the arguments raised by Hilton before us was that Sun had thereby misled the Maldivian courts as it knew that Hilton was pursuing the enforcement of the Awards in the Maldives. We elaborate on this below at [122].

28 On 11 January 2017, an oral hearing took place before the Maldivian Civil Court, and the court directed that it would determine *the procedural and/or jurisdictional matters at the same time as the merits of the case*.[34] This turn of events was not consistent with what Hilton had anticipated. It had been advised that the Maldivian Civil Court should either have declined jurisdiction over the

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34 RCB, p 27 (para 70).

Maldivian Suit or dismissed the claims altogether by terminating the proceedings.[35]

29 On 30 January 2017, Hilton submitted a written statement reiterating the procedural objection it had made earlier on 27 November 2016 but it did not specifically respond to the factual allegations made against it.[36]

30 On 6 February 2017, Sun submitted a further response.[37] It took the position that the Maldivian Suit pursued a separate claim that was unrelated to the enforcement of the Awards and was based on a different subject matter. Sun's case was that the Arbitration "was based primarily on the manner in which [Sun] terminated the Management Agreement", whereas the Maldivian Suit focused on the fraudulent misrepresentations which Sun relied on in entering into the Management Agreement. Moreover, Sun submitted that the Maldivian Suit fell into the category of previous cases where "a court of the respective country will be able to hear a case where the agreement which contains the dispute resolution clause was one which was entered into fraudulently".

31 Sun's response on 6 February 2017 ended with a request for "an opportunity to present witness statements and witnesses and for the case to be concluded as soon as possible".[38]

32 On 26 February 2017, a further hearing was held. No witnesses were heard, and arguments were presented on why Sun's claim under the Maldivian

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35 RCB, p 23 (para 67).

36 RCB, p 62 (para 1).

37 RCB, p 62 *et seq*.

38 RCB, p 66.

Suit should be heard irrespective of the Awards. Hilton restated its procedural objection.[39]

33 On 9 March 2017, the judge hearing the Maldivian Suit, Civil Court Judge Ali Naseer, delivered a three-page written judgment[40] (*ie*, the March Judgment) holding that:

(a) Sun had made out its case on misrepresentation. The Management Agreement was executed between the parties "through misrepresentations by [Hilton], whereby facts that were known or believed to be false was represented as true, relying upon which the other party entered into the [Management] Agreement".

(b) The Management Agreement was hence deemed to be void and unenforceable pursuant to Maldivian contract law.

(c) Hilton was to pay US$16,671,000 in damages to Sun.

34 The March Judgment was delivered without the hearing of any witness (despite Sun's request: see [31] above) or any oral hearings on the substantive issues. Nor did the judge refer to the Arbitration and the Awards, even though both Sun and Hilton had addressed the procedural objection in respect of the Maldivian Suit.[41]

35 The March Judgment was then subsequently relied on by Judge Hassan Faheem Ibrahim to refuse Hilton's enforcement of the Awards, as set out in the June Judgment (see [22] above).

39 RCB, p 28 (para 74).

40 RCB, p 67 *et seq*.

41 Respondent's Case, para 51.

36 On 21 March 2017, Hilton appealed against the March Judgment ("the Maldivian Appeal") and two hearings before the High Court of the Maldives were conducted on 1 and 8 August 2017. At the end of the hearing on 8 August 2017, the High Court stated that it would reserve judgment, which would be delivered at or following a final hearing. At the time of the parties' written submissions to this court, the High Court had not issued a judgment or made any other orders or directions in respect of the Maldivian Appeal.[42]

The proceedings in Singapore

37 On 24 July 2017, after the June Judgment was delivered and about nine months after the commencement of the Maldivian Suit, Hilton filed Originating Summons No 845 of 2017 ("OS 845") for:[43]

> (a) a permanent anti-suit injunction to restrain Sun from commencing and/or proceeding with any action against Hilton in the Maldivian courts in relation to disputes arising from the Management Agreement;
>
> (b) a declaration that the Awards are final, valid and binding on the parties; and
>
> (c) a declaration that Sun's claim in the Maldivian Suit and any consequential proceedings resulting therefrom (including any appeals) are in breach of the arbitration agreement in the Management Agreement.

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42 Respondent's Case, para 54.

43 ACB Vol II, p 7.

38 The application was heard over four days in the months of October and November 2017. On 20 November 2017, which was the final day of the hearings, counsel for Hilton, Mr Toby Landau QC, sought to amend OS 845 to include a few additions (amendments reflected in italics):[44]

> A permanent anti-suit injunction to restrain Sun (whether by its officers, servants, agents or any of them or otherwise howsoever) from:
>
> …
>
> *b. taking any steps in reliance on:*
>
> > *i. [the March Judgment], or any decision upholding the [March Judgment]; and/or*
> >
> > *ii. any decision, judgment or ruling of the courts of the Republic of Maldives which results from any action brought by it against Hilton in the courts of the Republic of Maldives, in respect of disputes between Hilton and Sun that have arisen out of or in connection with the [Management Agreement].*

39 At the close of submissions, Mr Landau agreed to drop prayer (b)(ii).[45]

40 The Judge then made the following orders on the same date:[46]

> 1. [Sun] is hereby permanently restrained (whether by its officers, servants, agents or any of them or otherwise howsoever) from taking any steps in reliance on [the March Judgment] by the courts of the Republic of Maldives, … or any decision upholding the [March Judgment].

This order will be referred to hereinafter as the Injunctive Order. The Judge also declared that:

> 2. The [Awards] are final, valid and binding on the Parties; and

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44 ACB Vol II, p 59.

45 RCB, p 84.

46 ACB Vol I, pp 44–45.

> 3. [Sun's] claim before the courts of the Republic of Maldives in [the Maldivian Suit] is in respect of disputes between [Hilton] and [Sun] that have arisen out of or in connection with the [Management Agreement], and any consequential proceedings resulting therefrom (including any appeals) are in breach of the arbitration agreement(s) in the Management [Agreement] and/or the Terms of Reference …

The Judge also ordered that:

> 4. Nothing in this order shall prevent [Sun] from objecting to the recognition or enforcement of the [Awards]; and
>
> 5. [Sun] is to pay [Hilton] the costs of and incidental to this application, which is to be taxed, if not agreed.

41 On 14 March 2018, the Judge delivered her grounds of decision (the "Judgment").

42 In her Judgment, the Judge first established that the Singapore courts have *jurisdiction* over Sun as OS 845 was validly served (Judgment at [23]–[37]). Next, the Judge held that the Singapore courts also have the *power* to grant a permanent anti-suit injunction and that the source of this power is s 18(2) read with paragraph 14 of the First Schedule to the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") (Judgment at [43]).

43 The Judge then turned to the question of whether she ought to exercise her discretion to grant the anti-suit injunction. Her reasoning may be summarised as follows:

> (a) First, the Judge found that the Maldivian Suit re-litigated the same issues and relief that were already determined in the Arbitration. Hence, the commencement of the Maldivian Suit was a breach of Sun's negative obligation not to set aside or challenge the Awards other than through the setting aside procedures of the seat court. It was also

vexatious and oppressive conduct in the sense that Hilton was being vexed by further proceedings in relation to the exact same claims that it had successfully defended in the Arbitration (Judgment at [58]–[59]).

(b) The Judge noted that courts should be more circumspect in deciding whether to grant a permanent anti-suit injunction to restrain a party to an arbitration agreement from continuing with foreign proceedings because the question of whether such foreign proceedings constitute an abuse of the foreign court's process is primarily a matter for the foreign court to determine. Even though permanent anti-suit injunctions do not directly offend the principle of comity as they operate as a restraint on the party to the arbitration agreement rather than on the foreign court, practically, such injunctions do indirectly interfere with the foreign court's processes (Judgment at [56]).

(c) The Judge noted that applications for anti-suit injunctions had to be made promptly and before foreign proceedings were too far advanced (Judgment at [61]). In considering the issue of delay, both the *length* and the *consequences* of the delay had to be considered. The Judge agreed with Mr Maniam that Hilton should have brought the application in Singapore more expeditiously. The Maldivian Appeal had progressed too far to warrant an anti-suit injunction to restrain Sun from involvement in the pending appeal and beyond (Judgment at [63]). Hence, the Judge did not restrain Sun from "commencing or continuing with foreign proceedings", which was what Sun had originally sought for. Instead, she allowed Hilton's amended prayer for injunctive relief to enjoin Sun from relying on the March Judgment (and any judgments upholding the March Judgment). The Judge emphasised that her order

"ha[d] the effect of an injunction but *does not stop the appeal process*" [emphasis added] (Judgment at [64]).

(d) The Judge also stressed that the orders "[did] not affect the right of [Sun] as an award debtor to defend enforcement proceedings pursuant to Maldivian law" (Judgment at [22]).

44 The Judge appeared to take the view that Hilton's delay and the March Judgment could be taken into account by limiting the injunctive relief to enjoin Sun from relying on the March Judgment or any decision upholding it. She made the following observation at [22]:

> Suffice to say for now that first, the limited nature of the orders … reflected the court's view that the usual anti-suit injunction to restrain foreign court proceedings in respect of the disputes in connection with the Management Agreement would not be a proper order given the advanced state of the civil proceedings in the Maldives, which was in part the consequence of the length of time it took the plaintiff to apply for an anti-suit injunction.

The Judge reiterated this view at [64] of the Judgment:

> The state of affairs was that the March Judgment had already been delivered and the plaintiff's appeal against the March Judgment was heard on 1 and 8 August 2017 and the parties were either awaiting directions for further arguments or even the possibility of a decision on the merits. An appropriate order would be to restrain the defendant from *inter alia* relying on the March Judgment.

Post-hearing developments

45 During the oral hearing before us on 8 November 2018, Mr Maniam informed us that a further hearing has been fixed on 12 November 2018 before the High Court of the Maldives. We asked the parties to update us on any further

developments and the parties did so in their letters dated 16 November 2018 (by Hilton) and 26 November 2018 (by Sun).

46 At the 12 November 2018 hearing, the High Court of the Maldives informed the parties that there were changes to the bench of the High Court hearing the appeal. The bench had been reconstituted, with two out of the three judges replaced. The High Court of the Maldives then invited the parties' respective Maldivian counsel to address the court on the Maldivian Appeal.

47 In the light of the orders made by the Judge, counsel for Sun was hesitant and expressed reservations as to whether he should address the court. Nevertheless, the High Court of the Maldives invited Sun's Maldivian counsel to do so, and only then did Sun's Maldivian counsel address the court briefly on the reasons as to why the March Judgment should be upheld. The parties were then informed that a judgment would be handed down at a further hearing.

48 In their letters, the parties were not able to agree on the *consequence* of the conduct of Sun's Maldivian counsel during the hearing before the Maldivian High Court on 12 November 2018. Mr Landau considered that Sun had breached the orders made by the Judge, whereas Mr Maniam took the view that Sun had not, given that the Judge's order was not intended to "stop the appeal process".

49 In addition to the updates, Mr Landau also sought leave, by way of a letter dated 23 November 2018, to tender an additional authority, the case of *Qingdao Huiquan Shipping Company v Shanghai Dong He Xin Industry Group Co Ltd* [2018] EWHC 3009 (Comm) ("*Qingdao*"), but without furnishing any

further arguments. On 27 November 2018, we granted leave for Hilton to do so, and we will address *Qingdao* below.

The issues arising on appeal

50 On appeal, the Judge's findings on the court's jurisdiction and power to grant the anti-suit injunctive relief were not challenged. Instead, the parties' arguments were confined to the following three issues:

(a) First, whether the Maldivian Suit could be considered to be bound up with the resisting of enforcement proceedings in the Maldives.

(b) Secondly, whether the Judge was correct in granting the injunctive relief.

(c) Thirdly, whether the Judge was correct in granting the declaratory relief.

51 We will deal with these issues in turn and elaborate on the parties' arguments below.

Issue 1: Characterising the Maldivian Suit

52 We turn first to the argument that the Maldivian Suit is bound up with the resisting of the enforcement of the Awards. Mr Maniam submitted that both the Maldivian Suit and the enforcement proceedings, at their core, concern the same underlying issue *ie*, whether it would be contrary to Maldivian public policy to enforce the Awards. The Maldivian Suit was therefore "part of [Sun's] resistance to enforcement of the [A]wards": [47]

> The issue of whether the Management Agreement was procured by fraud, and *consequently whether it would be contrary to* Maldivian public policy to enforce the Awards ("**the Issue**"), was a matter which the Appellant was entitled to ask the Maldivian court to resolve *as part of the Appellant's resistance to enforcement of the awards*. That Issue was first raised in opposition to the First Enforcement Proceedings; *the Appellant continued to press for a determination of the Issue by commencing the Maldivian [Suit]*, and that culminated in the March Judgment which was then found in the June [Judgment] to be a valid basis for not enforcing the Awards.
>
> [emphasis added in italics and in underline; emphasis in original in bold]

53 We reject this submission without hesitation and find that Sun had clearly gone beyond what would ordinarily be considered to be permissible attempts to resist the enforcement of the Awards.

54 First, as we noted above at [23], the claims brought and the relief sought by Sun in the Maldivian Suit were similar to those in the Arbitration. The Judge noted at [58] of her Judgment that Mr Maniam had not suggested in the proceedings below that the Maldivian Suit was "an independent action with causes of action that were different from the underlying Arbitration". Sun was not merely adopting a defensive posture in respect of the Awards. Instead, Sun revived its claim for damages for misrepresentation and breach of the Management Agreement when these claims had already been dismissed in the Arbitration. We agree with the Judge that this "exposed [Sun's] true objective in the Maldivian Suit which was to rectify the outcome in the unfavourable Awards", and this was an impermissible way of challenging the Awards (Judgment at [59]).

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47 Appellant's Case, para 33.

55 Secondly, at the time when Sun commenced the Maldivian Suit, Hilton had already commenced the First Enforcement Proceedings (even though this set of proceedings was stymied because Hilton first brought the application in the wrong division of the Maldivian Court (see [18] above) and because the Enforcement Division then wrongly thought that it had no jurisdiction (see [19] and [21] above)). It was obvious from the circumstances that Hilton would continue to enforce the Awards, and Sun could have resisted the enforcement in the enforcement proceedings, just as it had done in the First Enforcement Proceedings (see [17] above). Instead, Sun commenced a separate civil action in the Maldivian court.

56 Thirdly, it is telling that in Sun's response to Hilton's procedural objection dated 3 January 2017, it averred that the "decision by the [Tribunal]… can be subject to *retrial* in courts" [emphasis added; emphasis in original omitted] (see [26]–[27] above). It had not, on any occasion, adopted the position that it was merely seeking the non-recognition and non-enforcement of the Awards before the Maldivian courts.

57 We therefore agree with Mr Landau that the Maldivian Suit should not be treated as part of Sun's efforts to resist enforcement. Instead, this was a case where there were two distinct tracks that converged when the March Judgment was used as the basis for refusing enforcement in the June Judgment (see [15] above). But while it was Sun that began paving the track relating to the Maldivian Suit, it was, in our view, Hilton that had allowed the two tracks to merge into one because of its delay in seeking injunctive relief from the Singapore courts. We will discuss the implication of this in the following section.

Issue 2: Injunctive relief

The parties' cases

58 Mr Maniam submitted that the appeal against the injunctive relief should be allowed on account of delay and the advanced stage of proceedings. Even if Sun had breached the arbitration agreements or had acted vexatiously and oppressively, Hilton had not acted promptly, and it had continued to participate in the Maldivian Suit even after the Maldivian court had informed the parties that it would be determining the disputes over jurisdiction *and* the substantive merits together. For reasons of comity, the injunction should be refused. Hilton's decision to participate in the Maldivian proceedings without simultaneously obtaining anti-suit relief resulted in the March Judgment. The situation developed further when Hilton commenced the Second Enforcement Proceedings, which led to the June Judgment. In that sense, while it was Sun that created the situation, it was Hilton that "stayed on" and compounded the considerations that militate against the granting of anti-suit relief.

59 Mr Maniam submitted that the Judge had erred in approaching the present case as a "plain vanilla anti-suit injunction", when the case law is clear that as a general rule, an anti-enforcement injunction restraining a party from relying on a foreign court judgment would not be granted save in exceptional circumstances.

60 Mr Maniam also highlighted that the orders would interfere with the appeal process in the Maldives. He accepted that the orders required Sun not to make submissions in reliance on the March Judgment. On this footing, he noted that even though the Judge had indicated that her orders would not interfere with the appeal process in the Maldivian courts, Sun would not be able to exercise a

further right of appeal (if it lost the Maldivian Appeal), or defend the March Judgment if Hilton exercised its right of appeal because Sun could not make any arguments in support of the March Judgment.

61 Mr Landau submitted that even though a judgment had been issued, that was not a bar to anti-enforcement relief. Instead, the court had to assess whether the judgment in question held sufficient reason for comity (in terms of the effort, time and resources the foreign court spent on the case) to weigh in favour of refusing the granting of the anti-enforcement injunction.

62 Mr Landau submitted that the considerations that went into whether an anti-enforcement injunction should be granted were similar to those governing anti-suit relief, except that the court must also consider the fact that a foreign court judgment has been delivered. There was no need to establish fraud to warrant the court's intervention. The present case was sufficiently exceptional on account of the vexatious and oppressive conduct of Sun *as well as* the fact that the Maldivian Suit was commenced in breach of the arbitration agreements. In addition, the March Judgment was, according to Mr Landau, an act of "international delinquency" and an "aberration" that took the parties by surprise because it was issued without any hearings to address the substantive issues and without examining the evidence. As regards delay, Mr Landau submitted that there was no requirement for a party to seek injunctive relief from the seat court once an action was afoot in the foreign court. In the present case, Hilton was entitled to raise jurisdictional objections in the Maldivian court and it was only compelled to seek injunctive relief when the March Judgment was deployed in the enforcement track of the Maldivian proceedings, *ie*, during the Second Enforcement Proceedings.

63 Mr Landau accepted that even though the Judge had expressly stated that the injunction would not impede the Maldivian Appeal (see [43(c)] above), in effect, the Injunctive Order meant that "the appeal will not proceed or [Sun] will lose the appeal". Mr Landau construed the Injunctive Order to mean that Sun would only be able to raise arguments that were not already considered in the March Judgment, and that the Maldivian appellate court would have to be informed that the respondent in the Maldivian appeal was no longer relying on the March judgment. The significance of that would be left for the Maldivian appellate court to decide.

The applicable law

General principles

64 The jurisdiction to grant anti-suit injunctions is an ancient one with roots in equity and the Court of Chancery: Richard Fentiman, *International Commercial Litigation* (Oxford University Press, 2nd Ed, 2015) ("*Fentiman*") at para 16.10; David Joseph *QC*, *Jurisdiction and Arbitration Agreements and their Enforcement* (Sweet & Maxwell, 3rd Ed, 2015) ("*Joseph*") at para 12.08; Steven Gee *QC*, *Commercial Injunctions* (Sweet & Maxwell, 6th Ed, 2016) ("*Gee*") at paras 14-001–14-002. While such injunctions were originally used to prevent parties from pursuing an action in the courts of common law, they were soon used to restrain proceedings in other parts of the UK, and then, in their modern incarnation, to restrain the pursuit of foreign proceedings: *Airbus Industrie GIE v Patel* [1999] 1 AC 119 at 133; Trevor Hartley, "Comity and the Use of Antisuit Injunctions in International Litigation" (1987) American Journal of Comparative Law 487 at pp 489–490.

65 The general principles governing the issue of anti-suit injunctions are fairly uncontroversial and they were summed up by Lord Goff of Chieveley in the Privy Council decision of *Société Nationale Industrielle Aero-Spatiale v Lee Kui Jak and Another* [1987] 1 AC 871 ("*Lee Kui Jak*") at 892:

> The law relating to injunctions restraining a party from commencing or pursuing legal proceedings in a foreign jurisdiction has a long history, stretching back at least as far as the early 19th century. From an early stage, certain basic principles emerged which are now beyond dispute. First, the jurisdiction is to be exercised when the "ends of justice" require it … Second, where the court decides to grant an injunction restraining proceedings in a foreign court, its order is directed not against the foreign court but against the parties so proceeding or threatening to proceed … Third, it follows that an injunction will only be issued restraining a party who is amenable to the jurisdiction of the court, against whom an injunction will be an effective remedy … Fourth, it has been emphasised on many occasions that, since such order indirectly affects the foreign court, the jurisdiction is one which must be exercised with caution …

These principles have, in turn, been cited with approval by this court in a number of decisions: see, *eg*, *John Reginald Stott Kirkham and others v Trane US Inc and others* [2009] 4 SLR(R) 428 at [25] ("*Kirkham*"); *Koh Kay Yew v Inno-Pacific Holdings Ltd* [1997] 2 SLR(R) 148 at [14]; *Bank of America National Trust and Savings Association v Djoni Widjaja* [1994] 2 SLR(R) 898 at [11].

66 Apart from endorsing the principles in *Lee Kui Jak*, this court in *Kirkham* also identified the following five factors that have to be considered when deciding whether to grant an anti-suit injunction (*Kirkham* at [28]–[29]):

(a) whether the defendant is amenable to the jurisdiction of the Singapore court;

(b) whether Singapore is the natural forum for resolution of the dispute between the parties;

(c) whether the foreign proceedings would be vexatious or oppressive to the plaintiff if they are allowed to continue;

(d) whether the anti-suit injunction would cause any injustice to the defendant by depriving the defendant of legitimate juridical advantages sought in the foreign proceedings; and

(e) whether the institution of foreign proceedings was or would be in breach of any agreement between the parties.

67 Although the factors are to be considered in the round, a breach of an agreement has been regarded as a separate basis on which an anti-suit injunction may be granted; one that is distinct from vexatious or oppressive conduct: *UBS AG v Telesto Investments Ltd and others and another matter* [2011] 4 SLR 503 ("*Telesto Investments*") at [111]; *BC Andaman Co Ltd and others v Xie Ning Yun and another* [2017] 4 SLR 1232 ("*BC Andaman*") at [53]; *Lakshmi Anil Salgaocar v Jhaveri Darsan Jitendra and another* [2018] SGHC 90 at [15]; *Fentiman* at para 16.39. This was also the view that the Judge took at [58] of her Judgment.

68 In cases involving an arbitration agreement or an exclusive jurisdiction clause, it would suffice to show that there was a breach of such an agreement, and anti-suit relief would ordinarily be granted unless there are strong reasons not to: *Donohue v Armco Inc and others* [2002] 1 All ER 749 ("*Donohue*") *per* Lord Bingham at [24], *Morgan Stanley Asia (Singapore) Pte (formerly known as Morgan Stanley Dean Witter Asia (Singapore) Pte and others v Hong Leong Finance Ltd* [2013] 3 SLR 409 ("*Morgan Stanley*") at [29]. There will be no need to adduce additional evidence of unconscionable conduct in such cases. Crucially, however, this approach is subject to an important caveat: there is no

requirement for the court to feel any diffidence in granting an anti-suit injunction, "*provided that it is sought promptly and before the foreign proceedings are too far advanced*" [emphasis added]: *Aggeliki Charis Compania Maritima SA v Pagnan SpA (The "Angelic Grace")* [1995] 1 Lloyd's Rep 87 ("*The Angelic Grace*") at 96. In the same vein, Lord Bingham in *Donohue* at [24] had also held that "a party may lose his claim to equitable relief by dilatoriness or other unconscionable conduct". The issue of delay and how it relates to comity are key to the determination of this appeal and we turn now to it.

Delay and comity

69 It is well-established that even though anti-suit injunctions operate *in personam*, they nevertheless indirectly interfere with the foreign proceedings. Indeed, Steyn J in *ED & F Man (Sugar) Ltd v Yani Haryanto (No 2)* [1991] 1 Lloyd's Rep 161 opined that injunctive relief with extraterritorial effect is "inconsistent with normal relations between friendly sovereign states, and… subversive of the best interests of the international trade system" (at 168). This is why the jurisdiction to grant anti-suit relief must be exercised with caution: *Lee Kui Jak* at 892 (see [65] above).

70 It has been suggested that the decision in *The Angelic Grace* heralded a departure from this cautious approach. This can be gleaned from Lord Mance's judgment in *AES Ust-Kamenogorsk Hydropower Plant LLP v Ust-Kamenogorsk Hydropower Plant JSC* [2013] 1 WLR 1889 ("*AES*") at [25] (*cf Ecobank Transnational Incorporated Ltd v Tanoh* [2016] 1 WLR 2231 ("*Ecobank*") at [83] which suggested that any reluctance had "evaporated" much earlier):

> By the 1990s it had come to be thought that the power to injunct foreign proceedings brought in breach of contract should be exercised "only with caution", because English courts
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> "will not lightly interfere with the conduct of proceedings in a foreign court": see e g *Sokana Industries Inc v Freyre & Co Inc* [1994] 2 Lloyd's Rep 57, 66, per Colman J. But in *Aggeliki Charis Cia Maritima SA v Pagnan SpA (The Angelic Grace)* [1995] 1 Lloyd's Rep 87… the Court of Appeal held, citing [*Pena Copper Mines Ltd v Rio Tinto Co Ltd* (1911) 105 LT 846] and other authority, that courts ought not to feel diffident about granting an anti-suit injunction, if sought promptly. Without it the claimant would be deprived of its contractual rights in a situation where damages would be manifestly an inadequate remedy. The time had come, in Millett LJ's words, at p 96, "to lay aside the ritual incantation that this is a jurisdiction which should only be exercised sparingly and with great caution". An injunction should be granted to restrain foreign proceedings in breach of an arbitration agreement "on the simple and clear ground that the defendant has promised not to bring them".

71 This reasoning by Millett LJ in *The Angelic Grace* was subsequently relied on in a proliferation of cases to support the proposition that an injunction to enforce an exclusive jurisdiction clause or an arbitration clause is not regarded as a breach of comity: *Deutsche Bank AG and another v Highland Crusader Offshore Partners LP and others* [2010] 1 WLR 1023 ("*Deutsche Bank*") at [50]; *BC Andaman* at [55]; *Telesto Investments* at [109]. Mr Landau also advanced the argument that "[c]omity is not a concern where an anti-suit injunction is issued to protect interests arising from an arbitration agreement".[48]

72 But it is important to understand the precise considerations of comity the authorities above were concerned with. In *The Angelic Grace*, Millet LJ referred to the need to avoid casting doubt on the adequacy of the foreign court processes, and the need to respect the foreign court's view on whether the foreign proceedings were vexatious or oppressive (at 96):

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[48] Respondent's Case, para 111(b)(*i*).

> There have been many statements of great authority warning of the danger of giving an appearance of undue interference with the proceedings of a foreign Court. Such sensitivity to the feelings of a foreign Court has much to commend it where the injunction is sought on the ground of forum non conveniens or on the general ground that the foreign proceedings are vexatious or oppressive but where no breach of contract is involved. *In the former case, great care may be needed to avoid casting doubt on the fairness or adequacy of the procedures of the foreign Court. In the latter case, the question whether proceedings are vexatious or oppressive is primarily a matter for the Court before which they are pending.* But in my judgment there is no good reason for diffidence in granting an injunction to restrain foreign proceedings on the clear and simple ground that the defendant has promised not to bring them. [emphasis added]

73 In *Deutsche Bank*, Toulson LJ held, at [50]:

> An injunction to enforce an exclusive jurisdiction clause governed by English law is not regarded as a breach of comity, because it merely requires a party to honour his contract. *In other cases, the principle of comity requires the court to recognise that, in deciding questions of weight to be attached to different factors, different judges operating under different legal systems with different legal policies may legitimately arrive at different answers, without occasioning a breach of customary international law or manifest injustice, and that in such circumstances it is not for an English court to arrogate to itself the decision how a foreign court should determine the matter. The stronger the connection of the foreign court with the parties and the subject matter of dispute, the stronger the argument against intervention.* [emphasis added]

74 This need to take cognisance of and respect the foreign court's decision to assume jurisdiction was cited by the Judge in her earlier decision in *Morgan Stanley* at [34], where reference was also made to *Amchem Products Inc v British Columbia (Workers' Compensation Board)* [1993] 1 SCR 897 at 931–932. These considerations, however, do not apply when the granting of an anti-suit injunction is founded on a breach of agreement. In such a case, the local court is not arrogating to itself jurisdiction over a dispute that a foreign court had exercised jurisdiction over; it is merely enforcing the parties' agreement.

As Longmore LJ put the point in *OT Africa Line Ltd v Magic Sportswear Corporation and others* [2005] 2 Lloyd's Rep 170 at [32], the issuance of an anti-suit injunction in the context of an exclusive jurisdiction clause is "to uphold party autonomy not to uphold the courts of any particular country".

75 In this sense, comity loses some significance in cases involving exclusive jurisdictional clauses and arbitration agreements. But it will be incorrect to say that in such cases comity considerations can never be engaged. This was the position taken by the English Court of Appeal in *Ecobank* at [106] and by the Court of Appeal of Hong Kong in *Sea Powerful II Special Maritime Enterprises (ENE) v Bank of China Ltd* [2017] 1 HKC 153 ("*Sea Powerful*") at [18]. Both refer to delay in bringing the application for injunctive relief and explain how delay relates to comity.

76 *Ecobank* concerned a dispute between a bank and its employee, Mr Tanoh. The employment contract between the parties contained a London arbitration clause. In March 2014, the bank terminated Mr Tanoh's employment. On 4 April 2014, Mr Tanoh commenced proceedings against the bank in Togo (in the Labour Court of Lomé) for unfair termination and breach of the Togo Labour Code. On 12 May 2014, Mr Tanoh commenced proceedings against the bank in Côte d'Ivoire (in the Abidjan Commercial Court) for the tort of inaction arising from its failure to disapprove of defamatory statements made by a government corporation representative on the board of the bank. In both Togo and Côte d'Ivoire, the bank was ordered to plead to the merits of Mr Tanoh's claim, in addition to its challenge on jurisdiction. On 22 December 2014, the bank commenced arbitration proceedings against Mr Tanoh in accordance with the arbitration clause. The Togolese and Ivorian courts then gave judgments allowing Mr Tanoh's substantive claims on 3 February 2015

and 15 January 2015 respectively. On 10 April 2015, the bank applied for an injunction to restrain Mr Tanoh from relying on the judgments obtained in Togo and Côte d'Ivoire. At the time of the application, the bank's appeal against the Côte d'Ivoire court's first instance decision in favour of Mr Tanoh had been dismissed (the bank stated that it intended to appeal further), while its appeal against the Togo court's first instance decision in favour of Mr Tanoh had been provisionally stayed. The arbitral tribunal had also not rendered its award on the merits of the bank's claim.

77 Christopher Clarke LJ (with whom the other two judges agreed) upheld the first-instance judge's decision to refuse the application. In doing so, he set out a number of principles which we find helpful:

> 122 … An injunction is an equitable remedy. Before granting it the court must consider whether it is appropriate to do so having regard to all relevant considerations, which will include the extent to which the respondent has incurred expense prior to any application being made, the interests of third parties, including, *in particular, the foreign court, and the effect of making such an order in relation to what has happened before it was made.*
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> …
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> 126 Moreover the prejudice or detriment which would be involved in Ecobank allowing the proceedings to continue without seeking injunctive relief and then securing an injunction would not have been limited to Mr Tanoh. *It extends to third parties involved in the litigation and, most importantly, the foreign courts* which, in the present case, have held hearings and produced judgments of considerable length which are obviously the product of much labour.
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> …
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> 132 Comity has a warm ring. It is important to analyse what it means. We are not here concerned with judicial *amour propre* but with the operation of systems of law. Courts around the free world endeavour to do justice between citizens in accordance with applicable laws as expeditiously as they can with the resources available to them. This is an exercise in the fulfilment

> of which judges ought to be comrades in arms. The burdens imposed on courts are well known: long lists, size of cases, shortages of judges, expanding waiting times, and competing demands on resources. The administration of justice and the interests of litigants and of courts is usually prejudiced by late attempts to change course or to terminate the voyage. *If successful they often mean that time, effort, and expense, often considerable, will have been wasted both by the parties and the courts and others. Comity between courts, and indeed considerations of public policy, require, where possible, the avoidance of such waste.*
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> …
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> 134 Whilst a desire to avoid offence to a foreign court, or to appear to interfere with it, is no longer as powerful a consideration as it may previously have been, it is not a consideration without relevance. A foreign court may justifiably take objection to an approach under which an injunction, which will (if obeyed) frustrate all that has gone before, may be granted however late an application is made (provided the person enjoined knew from an early stage that objection was taken to the proceedings). Such an objection is not based on the need to avoid offense to individual judges (who are made of sterner stuff) but on the sound basis that to allow such an approach is not a sensible method of conducting curial business.
>
> 135 … Timing is of considerable significance. The grant of an interlocutory injunction to prevent the commencement or continuance of a duplicate set of proceedings may well be a sound step which (a) gives effect to contractual rights and (b) avoids the cost and waste of rival proceedings operating in tandem and the risk of inconsistent judgments – results which considerations of comity would favour. *In the case of an anti-enforcement injunction the application will, by definition, be made after the rival proceedings have run to judgment. The grant of an injunction will mean that the cost of those proceedings and the resources of the rival court will (unless the injunction is discharged) have been wasted.* It will not avoid the risk of inconsistent decisions although it will preclude the respondent from enforcing the existing potentially inconsistent decision.
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> [emphasis added]

78 The excerpt encapsulates how delay in bringing an application for an anti-suit injunction engages considerations of comity. Comity involves "respect for the operation of different legal systems" (at [137]), and it requires, where

possible, the avoidance of wastage of judicial time and costs that would inevitably be occasioned by the abandonment of proceedings or when a party is precluded from relying on the judgment of the rival court (at [132]). Comity is not based on the need to avoid offending the foreign court, but on the "sound basis that to allow such an approach is not a sensible method of conducting curial business" (at [134]).

79 The above reasoning in *Ecobank* was subsequently adopted by Kwan JA in *Sea Powerful* at [21]. The substantive dispute in *Sea Powerful* concerned the wrongful discharge of cargo. The bank, which was the lawful holder of the bill of lading, had commenced proceedings against the owner of the vessel in the Qingdao Maritime Court ("QMC"), which was allegedly in breach of an arbitration clause in the bill of lading. The cargo was fully discharged on 31 December 2013, and any claim had to be made within 12 months. The bank issued its statement of claim on 15 September 2014, but it was only served on the vessel owner on 13 May 2015 after a delay of eight months. The owner challenged the jurisdiction of the QMC on 5 June 2015. The QMC ruled against the owner on 29 June 2015. The owner appealed against that decision. On 25 September 2015, the owner filed an application in the Hong Kong High Court for an injunction to restrain the bank from continuing proceedings in the QMC. On 6 November 2015, the owner's appeal against the QMC's ruling on jurisdiction was dismissed by the Shandong Higher People's Court.

80 In upholding the trial judge's decision to refuse the injunction, Kwan JA, delivering the judgment of the court, applied the reasoning in *Ecobank*. Taking heed of the comity considerations mentioned therein, Kwan JA noted that the two decisions rendered by the Chinese courts would "practically be

overturned", and that the Chinese courts would regard the application as an "intrusion or obstruction of [their] judicial sovereignty" (at [23]).

81 In our judgment, comity considerations are relevant when there is delay in bringing an application for anti-suit relief, and this is true even if the proceedings involve an exclusive jurisdiction clause or an arbitration agreement (as was the case in *Ecobank* and *Sea Powerful*). We set out two other propositions that are relevant to this appeal.

82 First, the longer the delay and the more advanced the foreign court proceedings become, the stronger the considerations of comity would be. It was observed in *Ecobank* that "the longer an action continues without any attempt to restrain it, the less likely a court is to grant an injunction and considerations of comity have greater force", as more time, effort and expense will be wasted by the abandonment of proceedings which compliance with an anti-suit injunction would bring about (at [133]). This court in *Beckkett Pte Ltd v Deutsche Bank AG* [2011] 2 SLR 96 at [24] had also observed that "considerations of comity grow in importance the longer the foreign suit in question has continued, and the more the parties and the foreign court have engaged in its conduct and management".

83 While the length of delay is relevant, what is of greater importance is the extent to which the delay has allowed foreign proceedings to have progressed: *Niagara Maritime SA v Tianjin Iron & Steel Group Company Limited* [2011] EWHC 3035 (Comm) at [22], citing Thomas Raphael, *The Anti-Suit Injunction* (Oxford University Press, 2008) ("*Raphael*") at para 8.11. Where a foreign judgment has already been delivered as a result of delay, a host of different considerations come into play, and for reasons expounded on below

(see [97] and [98]), we are of the view that exceptional circumstances must be shown *in addition* to the usual requirements for anti-suit relief.

84 The second proposition is that delay cannot be justified on the basis that jurisdictional objections are being raised in the foreign court. In *The Angelic Grace*, it was contended that the proper approach would have been to defer any application for an injunction until "something ha[d] gone wrong", such as when the foreign court accepted jurisdiction (at 95). Leggatt LJ rejected this approach, and found that this would be patronising and would achieve the "reverse of comity":

> I can think of nothing more patronising than for the English Court to adopt the attitude that if the Italian Court declines jurisdiction, that would meet with the approval of the English Court, whereas if the Italian Court assumed jurisdiction, the English Court would then consider whether at that stage to intervene by injunction. That would be not only invidious but the reverse of comity.

85 This same approach was adopted in *Toepfer International GmbH v Molino Boschi SRL* [1996] 1 Lloyd's Rep 510 at 516 where the court held that it had never been the law that a foreign defendant could with complete impunity allow foreign proceedings to continue practically to judgment and then seek at the last minute relief from the local court which would halt or undermine the foreign proceedings. Foreign defendants could not participate for years in foreign proceedings before seeking, when they felt that matters were turning against them, to prevent or pre-empt (or even, as in this case, to nullify) any foreign determination by seeking injunctive relief.

86 This reasoning was endorsed in *Ecobank* at [129]–[130]: an applicant could not have two bites at the cherry; it could not, without seeking or

threatening injunctive relief, resist the foreign proceedings on jurisdictional grounds, only to seek an anti-enforcement injunction when its challenge failed.

87 The case of *ADM Asia-Pacific Trading Pte Ltd v PT Budi Semesta Satria* [2017] 1 Lloyd's Rep 1 affords a useful example. It concerned an action brought in the Indonesian courts in breach of an arbitration agreement. The applicant of the anti-suit injunction had engaged in a jurisdiction dispute even though it knew that it would be required to file a substantive defence (it had done so with the intention of claiming costs from the respondent in the arbitration as damages for breach of the arbitration agreement). Justice Phillips observed that the applicant was clearly content for the matter to be dealt with in the Indonesian courts until the Indonesian courts made a decision contrary to its interests. It was only then that the applicant belatedly sought intervention of the English courts. The applicant was therefore "in a very real sense, attempting to have the best of all words". Taking into account "general discretionary considerations and the needs of comity", Phillips J refused the application (at [55]–[56]).

Anti-enforcement injunctions

88 We turn now to discuss anti-enforcement injunctions. At the outset, we should state that it is common ground between the parties that anti-suit relief may be granted on the basis of a breach of an arbitration agreement notwithstanding that arbitration proceedings have ended and an award has been rendered. In post-award situations, anti-suit injunctions have been granted to enjoin parties from challenging the award outside the seat (*C v D* [2008] Bus LR 843, *Roger Shashoua and others v Mukesh Sharma* [2009] 2 All ER (Comm) 477 and *Terna Bahrain Holding Company WLL v Al Shamsi and others* [2013] 1 Lloyd's Rep 86) or from bringing court proceedings in respect of claims that

have already been determined in arbitration (*Michael Wilson & Partners Ltd v Emmott* [2018] EWCA Civ 51).

89 But in the cases referred to above, relief was sought during the *pendency* of foreign court proceedings. Where the foreign court has already issued a judgment, any application to enjoin a party from relying on or enforcing that foreign judgment should generally be refused not least because such an injunction would necessarily not have been sought with sufficient promptitude: *Ecobank* at [131]. In other words, anti-enforcement injunctions call for special consideration because *prima facie* undue delay would be implicit from the very nature of such applications for injunctive relief.

90 The authorities have uniformly expressed the need to exercise great caution in granting anti-enforcement injunctions – even more so as compared to anti-suit injunctions restraining ongoing court proceedings – because of the way they interfere with foreign proceedings.

91 In *ED & F Man (Sugar) Ltd v Yani Haryanto (No 2)* [1991] 1 Lloyd's Rep 429 ("*Man Sugar*"), the plaintiff ("Man") entered into two agreements for the sale and purchase of sugar with the defendant, Mr Haryanto, and both of these agreements contained arbitration agreements. Disputes arose, and the parties went to arbitration. Shortly after, three English actions were commenced. In the first, Mr Haryanto sought a declaration that he was not bound by the disputed contracts and an injunction restraining Man from pursuing the arbitration. This action was dismissed, as was the appeal. In the second, Mr Haryanto sought a declaration that the disputed contracts were unenforceable and/or void for being illegal and contrary to English public policy. Man in turn commenced the third action seeking a declaration that

Mr Haryanto was estopped from making the contentions in the second action. The parties settled and Mr Haryanto agreed to pay Man US$9m. Mr Haryanto then commenced proceedings in Indonesia claiming annulment of the disputed contracts. Man sought enforcement of the acknowledged debt. The Indonesian court found that the disputed contracts as well as the settlement agreement were illegal. Man then applied to the English courts for a declaration that the settlement agreement, the acknowledgement of debt and the security furnished were valid and binding, as well as an injunction restraining Mr Haryanto from relying on the Indonesian judgment to (a) bring or defend proceedings in England; (b) bring or defend proceedings in Indonesia; or (c) bring or defend proceedings in other countries (at 437).

92 Neill LJ held that point (a) was uncontroversial as the Indonesian judgments would not be recognised for being inconsistent with the earlier judgments of the English courts. As regards points (b) and (c), Neill LJ held that "it would be wrong for this Court to grant an injunction which is designed to take effect inside Indonesia and which would interfere or purport to interfere with the judgment of a court of competent jurisdiction inside that country" (at 437). Mann LJ also added that the material considerations are of "respect for decisions of foreign Courts properly given within their jurisdictions and of not constraining albeit indirectly, the ability of foreign Courts to apply their local law in regard to the recognition and enforcement of judgments" (at 440). Put differently, it was for the foreign court to decide whether to recognise the judgments of the English or Indonesian courts (see also *Ecobank* at [108]).

93 A similar approach was adopted in *Industrial Maritime Carriers (Bahamas) Inc v Sinoca International Inc (The "Eastern Trader")* [1996] 2 Lloyd's Rep 585 ("*The Eastern Trader*"). There, the time charterers ("IMC")

commenced an arbitration pursuant to an arbitration clause in the charterparty, claiming demurrage from the charterers ("Sinoca"). This led to an interim award against Sinoca. After the interim award was rendered, IMC commenced an action in the US courts attaching 1000 tons of chickpeas in a warehouse belonging to Sinoca. Sinoca then commenced an action in the courts of Algeria for IMC's wrongful exercise of lien and breach of the charterparty, among other claims. Meanwhile, IMC commenced an English action seeking a declaration that the claims advanced by Sinoca in Algeria were within the scope of the arbitration agreement and an interlocutory injunction against the continuance of the Algerian proceedings. After the Algerian court issued a judgment in favour of Sinoca, IMC applied to amend the application to include a prayer not to enforce the Algerian judgment until after the English courts had determined whether Sinoca's claims in Algeria fell within the scope of the arbitration agreement (at 602). Justice Rix (as he then was) noted that it would not be "for an English injunction to pre-empt a decision based on local law" if Sinoca were to enforce the judgment elsewhere such as in the US. Further, Rix J was of the view that "to injunct a party from reliance on its foreign judgment is a *far greater interference in the judicial process* than occurred in *The Angelic Grace*, where the foreign proceedings were still in their infancy" [emphasis added] (at 603).

94 In *Mamidoil-Jetoil Greek Petroleum Co SA and another v Okta Crude Refinery AD* [2003] 1 Lloyd's Rep 1 ("*Mamidoil*"), a dispute arose out of a 1993 contract between the plaintiff ("Jetoil") and the defendant ("Okta"). In May 1999, Jetoil commenced proceedings in the English courts against Okta for breach of contract. While English proceedings were ongoing, a joint venture company known as Elpet, which was also the majority stakeholder of Okta, commenced proceedings against Jetoil in the Macedonian courts in November

2001 based on the 1993 contract. Elpet eventually succeeded in obtaining an interim injunction ("the Macedonian interim injunction") which prevented Okta from paying any damages to Jetoil that the English court had adjudged to be due. In response, Jetoil applied to the English courts for an anti-enforcement injunction to prohibit Okta from relying on the Macedonian interim injunction.

95 Although Aikens J accepted that Elpet was a privy of Okta and was therefore bound by the English court's decision on Okta's rights and liabilities under the 1993 contract, he rejected Jetoil's anti-enforcement injunction application. Citing *Man Sugar*, Aikens J held that the grant of an anti-enforcement injunction against Elpet/Okta would "interfere, albeit indirectly, with the process of the [Macedonian] courts or those of other countries to decide, in accordance with their own laws and procedure, whether to [recognise] and enforce a judgment of a foreign court" (at [204]). Further, Aikens J also observed that granting such an injunction would place Okta in an impossible position if Jetoil attempted to enforce the English court's decision in Macedonia. This was because the Macedonian court had already ordered that Okta was not to pay any damages to Jetoil, and Okta's disobedience of that order "may well be the equivalent of a contempt and could expose [its officers] to criminal sanctions" (at [207]).

96 The subsequent decision of *Masri v Consolidated Contractors Int (UK) Ltd and others (No 3)* [2009] QB 503 was not a case concerning anti-enforcement injunctions, but Collins LJ (as he then was) observed, after considering *Mamidoil* and *Man Sugar*, that "it will be a rare case in which an injunction will be granted by the English court to prevent reliance abroad on, or compliance with, a foreign judgment, or an injunction which will indirectly have

that effect", but nonetheless, such a power will be exercised in "exceptional circumstances" (at [94]).

97 All of the above decisions were considered by Christopher Clarke LJ in *Ecobank*, and he concluded that the number of cases in which anti-enforcement injunctions have been granted in the past are few and far between (at [118]). Christopher Clarke LJ highlighted, at [136], that there are *further* considerations (on top of comity as defined at [78] above) which underpin the need for caution in anti-enforcement injunction cases. First, any such order, if it is to be enforced in other countries, would preclude foreign courts of their prerogative to consider whether the judgment in question should be recognised or enforced. Secondly, an anti-enforcement injunction would be an indirect interference with the execution of the judgment in the country of the court which pronounced the judgment and where one can expect the judgment to be obeyed.

98 For these reasons, it would not be sufficient to simply demonstrate (a) a breach of a legal right; or (b) vexatious or oppressive conduct in an anti-enforcement injunction case. To ground an anti-enforcement injunction solely on such bases would not square with the observation in *Ecobank* that there has been no case where an anti-enforcement injunction has been granted "simply on the basis that the proceedings sought to be restrained were commenced in breach of an exclusive jurisdiction or arbitration clause" (at [118]). And to set the same requirements for the granting of both an anti-suit injunction and an anti-enforcement injunction would also accord no weight at all to the further considerations that had been elucidated in *Ecobank*. Notably, because an anti-enforcement injunction proscribes the enforcement of a foreign judgment on pain of contempt proceedings in the jurisdiction where the injunction is granted, granting an anti-enforcement injunction is comparable to *nullifying* the foreign

judgment *or stripping the judgment of any legal effect* when only the foreign court can set aside or vary its own judgments. This extends far beyond the non-recognition and non-enforcement of a foreign judgment in the local jurisdiction, which is, in any event, within the local court's purview.

99 That is not to say that anti-enforcement injunctions can never be granted. There have to be exceptional circumstances that warrant the injunction: *Masri* at [94]; *Raphael* at para 5.54; *Halsbury's Laws of Singapore* vol 6(2) (LexisNexis, 2016 Reissue) at para 75.239. We emphasise that this must be demonstrated over and above the usual requirements for the granting of an anti-suit injunction. In this regard, we respectfully disagree with the Judge's view that Hilton's delay and the fact that the March Judgment had already been delivered could simply be taken into account by limiting the injunctive relief granted (see [44] above).

100 The most commonly cited example to justify the grant of an anti-enforcement injunction involves situations *where a judgment has been procured by fraud*, as was the case in *Ellerman Lines, Limited v Read and others* [1928] 2 KB 144 ("*Ellerman*"). In that case, the defendants who owned a salvage steamer had signed a salvage form as contractors to salvage the claimant's ship. The salvage steamer was under the command of one of the defendants, Mr Landi. The salvage form contained an arbitration clause and a clause stipulating that the contractor would agree not to arrest the salved property unless there was an attempt to remove it before security for the salvor's claim had been provided. Security was provided but Mr Landi caused the vessel to be arrested at Constantinople. The master of the vessel went to the Turkish court to seek the vessel's release. Before the Turkish court, Mr Landi fraudulently claimed that he had not authorised his solicitors to accept the security offered,

and answered so on oath. As a result, the master withdrew from the proceedings. The case was then heard in the master's absence and a judgment in favour of Mr Landi was delivered. The claimant brought an English action claiming damages for breach of contract and also sought an injunction to restrain the defendants from seeking to enforce the Turkish judgment. The first-instance judge did not grant the injunction but the claimant successfully appealed. Scrutton LJ held that an injunction should be granted because the judgment had been obtained by "fraudulent lies", and that if there was no such authority for that proposition as yet, they would make one (at 152–153). Eve J agreed that an injunction should be granted in the situation where the judgment was "ultimately obtained by a deliberate and flagrant misrepresentation" (at 158).

101 Two other exceptions were mentioned in *Ecobank*: where the applicant could not have sought relief before the judgment was given (a) because the relevant agreement was reached post-judgment; or (b) because he had no means of knowing that the judgment was being sought until it was served on him such as where the judgment was obtained too quickly or secretly to enable an injunction to be obtained (at [118]–[119]).

102 The first exception recognised by Christopher Clarke LJ in *Ecobank* stems from the case of *Bank St Petersburg OJSC and another v Arkhangelsky and another* [2014] 1 WLR 4360 ("*Arkhangelsky*"). In 2009 and 2010, the claimants (the Bank of St Petersburg ("the Bank") and its chairman, Mr Savelyev) obtained judgments in Russia against the defendants (the Arkhangelskys) for debts that the Oslo Marine Group (which was owned by the Arkhangelskys) owed to the Bank. After obtaining the judgments, the claimants sought to enforce them in Russia, Bulgaria and France. The Arkhangelskys then commenced an action in the British Virgin Islands against the claimants and

other related parties for conspiracy, deceit, duress and intimidation. Thereafter, the parties reached an agreement for the English court to have exclusive jurisdiction over "the substantive dispute" between the parties. The parties then brought actions in England, and the Arkhangelskys sought an interim injunction restraining the claimants from enforcing the Russian judgments anywhere in the world. The first-instance judge, Hildyard J refused to grant the injunction and the Arkhangelskys successfully appealed.

103 Longmore LJ (with whom the other two judges agreed) granted the injunction because he found that the parties had entered into an exclusive jurisdiction agreement in favour of the English court *after* the issuance of the judgments by the Russian courts, and that agreement covered enforcement proceedings relating to those Russian judgments as well (at [31]). Longmore LJ also disagreed with Hildyard J's finding that this would be an unwarranted interference with proceedings in the French or the Bulgarian courts as the order would only affect the Bank and Mr Savelyev (at [35]). Notably, Longmore LJ went on to consider the claimants' argument that anti-enforcement injunctions were of an exceptional nature, and that it was only in the case of *Ellerman* that an anti-enforcement injunction had been granted (at [36]). Longmore LJ agreed that *Ellerman* was a "stronger case", because a trial had taken place and there was a finding that the Turkish judgment had been procured by fraud. But in *Arkhangelsky*, an interim injunction protecting the position pending trial could nevertheless be said to be appropriate given that there were allegations of fraud (at [38]).

104 The facts of *Arkhangelsky* are rather peculiar. Commentators have focused on the exclusive jurisdiction agreement entered into by the parties' post-judgment as justification for this exception (see, *eg*, *Fentiman* at para 16.04;

Joseph at para 12.98; *Gee* at para 14–055). But the upholding of the parties' agreement does not, in and of itself, entitle a party to an anti-enforcement injunction. Indeed, many of the precedents discussed also concern foreign proceedings brought in breach of an arbitration or exclusive jurisdiction clause, and it is not easy to understand why party autonomy should gain primacy merely because it manifested after a judgment. In our view, *Arkhangelsky* is not authority for the creation of a new exception, but a recognition that there was in fact no delay on the part of the applicant (see the second factor expressed at [117] of *Ecobank*), and an application of the exception in *Ellerman*. As regards the former point, it would be contrived to think that there was wastage of judicial resources or any interference in the foreign jurisdiction occasioned by the injunction given that the foreign judgments had been overtaken by the *subsequent* jurisdiction agreement (Christopher Clarke LJ noted that an anti-enforcement injunction in such a case played a role that was more similar to that of an anti-suit injunction: *Ecobank* at [117]). It may be said that the injunction would nonetheless preclude another foreign court from considering whether the foreign judgment should be enforced or not (which may turn on the construction of the jurisdiction agreement, as demonstrated by the difference in opinion between Longmore LJ and Hildyard J), but this, in and of itself, does not seem to suffice.

105 That leaves us with the exceptional circumstances of fraud and the lack of knowledge of the foreign proceedings until the delivery of the foreign court judgment. Both seemingly concern disparate fact patterns, but in our view, both stem from the roots of anti-suit injunction as a form of equitable relief (see [64] above). We turn now to the relevance of equitable principles, and to explain that what is required for an anti-enforcement injunction is exceptional circumstances

tied to the notion of unconscionability and not exceptional circumstances in the abstract.

Anti-suit injunctions as equitable relief

106 Thus far, the discussion on delay and its impact on anti-suit relief has centred on comity. But Mr Daniel Tan, in "Anti-Suit Injunctions and the Vexing Problem of Comity" (2005) 45(2) Virginia Journal of International Law 283, writing in the context of anti-suit injunctions in the US, warned against the blindsiding of traditional equitable principles, which he thought provided a principled jurisprudential basis that comity considerations could not (at pp 307–308). This is a salutary reminder of the anti-suit injunction's equitable nature. And indeed, in Lord Bingham's judgment in *Donohue* (which we have set out at [68] above), reference was made to anti-suit injunctions as *equitable* relief; the entitlement to which may be lost through dilatoriness and unconscionable conduct.

107 When the inherent equitable nature of the anti-suit injunction is used as the starting point of analysis, it becomes clear that the circumstances under which an anti-enforcement injunction may be granted and the impact that delay has on the court's discretion to award an anti-suit injunction are very much informed by equitable considerations.

108 This is borne out by case law in holding that the mere passage of time in and of itself is insufficient to bar anti-suit relief; instead, it must be coupled with (a) knowledge; and/or (b) prejudice or detriment. The comity considerations set out in *Ecobank* (see [78] above) are consistent with the latter requirement of prejudice or detriment. Christopher Clarke LJ in *Ecobank* agreed with the applicant's argument that the injunction is an equitable remedy and that

prejudice or detriment must be shown, but he was of the view that the question of prejudice or detriment should include third parties such as the foreign court (at [122], [124] and [126]). Further, support may be drawn from *Sea Powerful* at [20]–[21] where the Hong Kong court rejected the suggestion in *Essar Shipping Ltd v Bank of China Ltd (The "Kishore")* [2016] 1 Lloyd's Rep 427 ("*The Kishore*") that lack of promptness *alone* (without detriment or prejudice) can justify the refusal of an anti-suit injunction, citing *Ecobank* which was issued after *The Kishore*. In this sense, comity and equitable considerations are not distinct, and comity fits within the all-encompassing enquiry that the court has to undertake when granting equitable relief (see in particular *Ecobank* at [122]).

109 Further, as regards knowledge, it has been noted that in considering whether there is unacceptable delay, one must bear in mind the time at which it had become sufficiently clear that an application for anti-suit relief was justified: *Qingdao* at [29(3)], citing *Sana Hassib Sabbagh v Khoury and others* [2018] EWHC 1330 (Comm) at [33]–[36]). In *Qingdao*, the China proceedings were brought in April 2017 in breach of an arbitration agreement contained within a settlement agreement. But it was not until July 2017 that the counterparty was served with the proceedings, and Knowles J found that any delay began from July 2017 (at [40]).

110 In our judgment, this explains why a case where the applicant had no means of knowing that the judgment was being sought until it was delivered constitutes an exceptional situation where an anti-enforcement injunction may nevertheless be granted (*Ecobank* at [119]). Without knowledge, there can be no dilatoriness that would make the applicant's conduct inequitable or unconscionable.

111 In addition, it is clear that equitable considerations underlay the court's decision in *Ellerman* to grant an anti-enforcement injunction when the foreign judgment was procured by fraud. Scrutton LJ was of the view that the case required an extension of the existing practice of the Court of Chancery in restraining the prosecution of a suit in a foreign country that was contrary to equity and conscience to the restraint of reliance on a foreign judgment (at 152). Atkin LJ also stressed that the granting of an injunction did not mean that the English court was assuming jurisdiction over the foreign court. Instead, the court has to have regard to the "personal attitude" of the person who had obtained the foreign judgment. If there had been a breach of covenant or fiduciary duty, or a violation of the principles of equity and conscience such that it would be inequitable for him to enforce the judgment, the court may restrain him because he is "in conscience bound not to enforce that judgment" (at 155). Professor Harold Hanbury in "The Field of Modern Equity" (1929) 45 LQR 196 made the following observation on *Ellerman* at p 206 (see also *Fentiman* at para 16.04):

> … Only last year the struggle between Lord Coke and Lord Ellesmere was recalled by *Ellerman Lines, Ltd. v. Read*, where it was laid down that an injunction may be granted to restrain a British subject from enforcing a judgment obtained in a foreign Court, where such judgment is shown to have been obtained by fraud. It is superfluous to point out that this decision involved no assertion of superior jurisdiction by the English Courts over foreign Courts, *but rests on the familiar footing of the restraint exercised by equity against those who would insist upon a right where such insistence proves to be against conscience.* [emphasis added]

112 We would add a caveat to this fraud exception. In *Ellerman*, the master of the vessel did not have the necessary documents in the Turkish proceedings to prove his case that Mr Landi had in fact authorised his solicitors to accept the security offered, and elected to interrogate Mr Landi by compelling him to

answer on oath, whereupon Mr Landi lied: *Ellerman Lines v Landi and others (The "Falernian")* (1927) 29 Lloyds' Law Rep 15 at 20. But in a case where the applicant knew of the fraud before judgment was delivered but chose to remain silent, the appropriateness of anti-enforcement relief must be considered in the light of the silence, which may well alter where the equities lie. As the present case does not touch upon this scenario, we will leave it to be addressed in a suitable case.

113 To conclude on this point, while there is no closed list of exceptional circumstances where an anti-enforcement injunction may be warranted notwithstanding that a foreign judgment had been issued, any new category would only be recognised when the equities of the case are in favour of granting the anti-enforcement injunction: either as a response to unconscionable conduct (as in the case of fraud), or when the applicant has not lost its entitlement to equitable relief on account of unconscionable delay (such as when the applicant had no knowledge of the foreign proceedings until the judgment was rendered). A close examination of the circumstances of each case is necessary to determine whether exceptional circumstances have been established to warrant the grant of an anti-enforcement injunction.

Concluding remarks

114 It would be helpful to summarise the above.

(a) First, we stress again the importance of comity, and that comity considerations may potentially apply even in cases where anti-suit relief is sought for a breach of an arbitration or exclusive jurisdiction clause, particularly where there has been delay in seeking relief (see [69] and [75] above).

(b) When there has been extensive delay, the foreign court would have expended vast amounts of judicial time and costs, and respect for the operations of foreign legal systems entails caution in exercising the jurisdiction to enjoin a party from relying on the foreign court's decision (see [78] above).

(c) This consideration is amplified when an anti-enforcement injunction is sought *after* the issuance of a court judgment and such injunctions should generally be refused; not least for want of sufficient promptitude. Further, two additional considerations come into the picture: first, such an injunction would preclude other foreign courts from considering whether the judgment in question should be recognised and enforced; and secondly, it would be an indirect interference with the execution of the judgment in the jurisdiction where the judgment was given and where the judgment can be expected to be obeyed (see [89] and [97] above).

(d) There is, therefore, an additional requirement to show that there are exceptional circumstances that warrant the exercise of the court's jurisdiction. Such recognised exceptions include cases of fraud and cases where the applicant had no knowledge that the judgment was being sought until *after* the judgment was rendered. In respect of these exceptions, the equities of the case lie in favour of granting the anti-enforcement injunction (see [105] and [113] above).

Assessment of the parties' arguments

115 To recap, the Maldivian Suit was commenced in October 2016, and the March Judgment was delivered about five months later, on 9 March 2017.

Hilton appealed against this judgment on 21 March 2017. The Second Enforcement Proceedings was brought on 23 April 2017. On 22 June 2017, the June Judgment was issued, and the enforcement of the Awards was refused on account of the March Judgment. Hilton then sought relief from the Singapore court on 24 July 2017.

116 By that time, the Maldivian courts had delivered two judgments, and the appeal against the March Judgment was underway. The Maldivian Suit had reached an advanced stage. We agree with Mr Maniam that exceptional circumstances have to be shown to justify an injunction to restrain Sun from relying on the March Judgment. We disagree with the suggestion by Mr Landau that an anti-enforcement injunction should be granted simply because there was both a breach of the arbitration agreements as well as vexatious or oppressive conduct. These are the two bases on which the *usual* anti-suit relief may be granted to enjoin foreign proceedings, but exceptional circumstances have to be shown in addition to those bases to warrant anti-enforcement relief (see [67], [97]–[99] above).

117 Mr Landau's primary argument was that the March Judgment was an "aberration" that took the parties by surprise. He brought us through a narration of events, including Judge Hathif Hilmy's case report (see [18] above) as well as Sun's response in the Maldivian Suit on 6 February 2017 (see [31] above) where Sun had requested for an opportunity to present witness statements and witnesses. Mr Landau submitted that Judge Hathif Hilmy's case report assured the parties that the Maldivian court was like any other Model Law jurisdiction (see below at [132] for reference to the "Model Law") that would not revisit the merits of the substantive dispute when enforcement of awards is sought. Further, given that no witnesses were ever called and the hearings thus far had only been

on Hilton's jurisdictional objections, Mr Landau submitted that the March Judgment (a ruling on the merits) was completely unexpected and the circumstances were sufficiently exceptional to warrant an anti-enforcement injunction.

118 We reject this argument, and we make four points in this regard. In the first place, as we have noted at [84] above, the general rule is that an applicant seeking anti-suit relief has to do so without delay and the mere fact that it was making jurisdictional objections in the foreign court does not excuse the delay in any way. As we have stated above, to allow an applicant to make jurisdictional objections in the foreign court and then seek injunctive relief if the outcome was not in the applicant's favour would be the "reverse of comity" as Leggatt LJ observed in *The Angelic Grace*. Such an approach would encourage litigants to participate in the foreign proceedings until the foreign court has reached a conclusion on jurisdictional matters, and then seek injunctive relief against that decision if it was unfavourable to them (see also [85]–[87] above). Hence, while there is no rule prohibiting Hilton from participating in the Maldivian Suit, Hilton could and should have simultaneously sought injunctive relief from the Singapore court, and its failure to do so allowed the Maldivian proceedings to reach an advanced stage.

119 Secondly, we are not convinced that this is a case where Hilton had withheld taking immediate steps in the Singapore court on account of Judge Hathif Hilmy's case report and Sun's response on 6 February 2017 (see [117] above). Even if there was any reason to wait and see how the proceedings in the Maldives would unfold given the view that Judge Hathif Hilmy had earlier expressed, by 11 January 2017, Hilton should have been acutely aware of the need to seek anti-suit relief immediately as that was when the Maldivian court

directed that the jurisdictional matters *and* the merits of the case be heard together. As Mr Markus Stefan Esly, a representative of Hilton, had deposed in his affidavit, Hilton had been advised that the Maldivian court should have declined jurisdiction or dismissed the claims altogether by terminating the proceedings (see [28] above). Yet Hilton continued to participate in the Maldivian Suit. Even after the March Judgment was delivered, Hilton did not take immediate steps to seek relief from the Singapore court. Instead, Hilton appealed against the March Judgment and then proceeded to commence the Second Enforcement Proceedings thereafter. In our judgment, Hilton had ample opportunity to seek assistance from the Singapore courts to stop the Maldivian Suit in its tracks but it appeared to be quite content to wait until there were two Maldivian judgments against it and a pending appeal. By then, it was far too late. The "surprise" that Mr Landau described was therefore an afterthought. It was clear that Hilton was not planning to take any step to seek injunctive relief in the seat court *before* the outcome of the Maldivian Suit was known. What was surprising was not so much the *result* the first-instance Maldivian court reached in the Maldivian Suit, but the perceived *haste* with which the March Judgment was delivered.

120 Thirdly, to the extent that Mr Landau was suggesting that the Maldivian Suit was not properly conducted, this was not an issue for the Singapore courts to decide, rather it is a matter to be dealt with in the Maldivian Appeal. The Maldivian courts are better placed to decide on matters of their procedure and it is not for the Singapore courts to comment on the propriety of the proceedings in the Maldives. Indeed, we note that one of Hilton's grounds of appeal in the Maldivian appeal is that Judge Ali Naseer had not given due consideration to the principles of due process and fairness.[49] Moreover, based on the documents

[49] ROA Vol III Part F, p 31 (para 8.3.1).

before us, it appears to us that even though the Maldivian court had informed the parties that it would be dealing with matters of jurisdiction and the merits at the same time, Hilton made a conscious decision not to submit on the merits (perhaps for strategic reasons). This can be seen from Sun's response on 6 February 2017 where it noted that Hilton had only made "procedural observations".[50] This is therefore not a case where Hilton had been denied its right to be heard or to adduce evidence; on the contrary, Hilton had made all the arguments that it had intended to make. In any event, Mr Landau confirmed that there is no evidence before us to establish that the conduct of the Maldivian proceedings was in violation of the Maldivian rules of procedure (for instance, that they necessarily had to hear witnesses before delivering judgment) or that the Maldivian Suit was improperly conducted under Maldivian law.

121 Fourthly, as we have noted at [113] above, this additional requirement to show exceptional circumstances to warrant anti-enforcement relief is rooted in principles of equity and the notion of unconscionability. We do not think that it is open to an applicant to simply point to some "aberration", "surprise" or unexpected outcome and expect that the seat court would exercise its jurisdiction to grant an anti-enforcement injunction. The nature of the relief requires that such jurisdiction be exercised very sparingly.

122 For completeness, we deal briefly with Hilton's submission that Sun had procured the March Judgment by misleading the Maldivian court (*ie*, that there was no ongoing enforcement proceedings in any of the Maldivian courts) in Sun's response to Hilton's procedural objection dated 3 January 2017 (see [26]–[27] above). At that time, the Enforcement Division of the Maldivian Civil Court had already declined jurisdiction to hear the enforcement proceedings

[50] RCB, p 62 (para 1).

brought by Hilton on the basis that only the Maldivian High Court had the necessary jurisdiction. Hilton only appealed against this decision on or around 26 January 2017 (see [20] above). Thus, Sun was strictly not wrong in informing the court that there was *no ongoing* enforcement proceeding as at 3 January 2017. In any event, Sun had referred to the Arbitration and the Awards in its Submission of Claims, so the Maldivian court was clearly aware of them; therefore, it was wholly immaterial whether the court knew that there were *ongoing* enforcement proceedings or not.

123 On the issue of comity, we have addressed the suggestion in Hilton's written submissions that comity is irrelevant where the anti-suit relief sought is to protect interests arising from an arbitration agreement (see [71] *et seq*). Mr Landau's other argument was essentially that the March Judgment is not worthy of comity considerations because the effort expended on it must have been negligible.[51] This argument appears to be entirely premised on the length of the March Judgment (which spans two and a half pages). We cannot accept this argument. To use judgment length as a proxy for judicial time and resources is too reductionistic and it disregards a multitude of other factors, such as the legal system of the foreign court in question. In any case (and we make this point only to reject this submission completely), from a scan of the parties' submissions to the Maldivian courts and the other Maldivian court decisions, the March Judgment does not appear to us, relatively speaking, to be unusually short.

124 Finally, we briefly comment on the further developments in the Maldivian Appeal mentioned at [47]–[48] above as we found them to be demonstrative of how an anti-enforcement injunction can constitute an indirect

[51] Respondent's Case, para 111(b)(*ii*).

interference in foreign court proceedings. Despite the Judge's intention not to interfere with the appeal process (Judgment at [62]–[63]), it was unclear how it could be carried out in practice. As referred to above at [60] and [63], Mr Maniam accepted that Sun could not make arguments in support of the March Judgment whereas Mr Landau went further to say that the practical effect of the order was that "the appeal will not proceed or [Sun] will lose the appeal". During the hearing on 12 November 2018 before the High Court of the Maldives, Sun's Maldivian counsel was asked to address the court on the reasons why the March Judgment should be upheld even after the court was informed of the Injunctive Order (see [46] above). Sun's Maldivian counsel was therefore put in an invidious position. Even on Mr Maniam's narrower construction of the Judge's order, Sun could not meaningfully participate in the Maldivian Appeal without seeking to support the March Judgment and seemingly flouting the Injunctive Order at the same time.

125 For the above reasons, although we agree with the Judge's view that the Maldivian Suit was brought in breach of the arbitration agreements and amounted to vexatious and oppressive conduct on the part of Sun, the dispute has been taken out of the hands of the Singapore courts. Hilton's delay had resulted in three critical events. The March Judgment was delivered. It was then appealed against and the appeal is pending. The June Judgment was also delivered. As there were no exceptional circumstances shown, we are unable to uphold the Injunctive Order.

126 Finally, the case of *Qingdao* tendered by Hilton following the appeal hearing did not change our view on this aspect of the appeal. That case was clearly distinguishable as there was no foreign judgment which contradicted any arbitral award or judgment of another court. In fact, the judgment of the Qingdao

Intermediate People's Court supported the claimant's ("Qingdao") application for an anti-suit injunction in the UK courts against the respondent ("SDHX"). In addition, the court found that there was benefit from the clarity provided by the Qingdao Intermediate People's Court as it explicitly found that SDHX's claim was premised on a settlement agreement that contained an arbitration agreement, a fact which was not readily apparent given that the settlement agreement was between Qingdao and another party related to SDHX (at [19]).

Issue 3: Declaratory Relief

127 The Judge also granted two declarations in favour of Hilton (see [40] above): (a) first, a declaration that the Awards are final, valid and binding on the parties; and (b) secondly, a declaration that Sun's claim in the Maldivian Suit is in respect of disputes between Sun and Hilton that have arisen out of or in connection with the Management Agreement and any consequential proceedings (including appeals) would be in breach of the arbitration agreements.

The parties' cases

128 Neither Mr Maniam nor Mr Landau specifically addressed the declarations in their oral arguments, and were content to rely on the parties' respective written submissions. Sun submitted that the declarations interfere with the recognition or enforcement process in the Maldives and run counter to the Maldivian judgments. Sun further argued that there is no real controversy for the court to resolve in Singapore because the only real controversy is in the Maldives, and it pertains to whether the March Judgment (the impediment to Hilton's recognition and enforcement efforts) ought to be upheld on appeal.[52]

[52] Appellant's Case, paras 46–48.

129 On the other hand, Hilton submitted that the declarations are appropriate given that Sun had breached the arbitration agreements. Hilton took the position that the declarations do not affect the enforcement proceedings in the Maldives. The first declaration only confirms the effect of s 19B(1) of the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("the IAA") which states that "[a]n award made by the arbitral tribunal pursuant to an arbitration agreement is final and binding on the parties". The second declaration does nothing more than to declare that Sun is in breach of the arbitration agreements. Sun is not prevented by the declarations from arguing that Hilton had fraudulently induced Sun to enter into the Management Agreement, which was the argument that Sun had made in the First and Second Enforcement Proceedings. In addition, any persuasive value that the declarations may have on Sun's civil claim in the Maldivian courts is warranted, and the effect is also less intrusive than an anti-suit or anti-enforcement injunction. On that note, Hilton argued that there is a real controversy between the parties since the declarations would be of value to Hilton as a persuasive tool in the Maldivian proceedings.[53]

Source of power to grant declaratory relief

130 The preconditions for granting declaratory relief have been set out by this court in *Salijah bte Ab Latef v Mohd Irwan bin Abdullah Teo* [1996] 2 SLR(R) 80 ("*Salijah*") (at [50]):

(a) the existence of jurisdiction and power;

(b) that discretion ought to be exercised in favour of the application;

(c) the plaintiff has *locus standi*; and

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53 Respondent's Skeletal Submissions, paras 37–40; Respondent's Case, paras 97–103.

(d) that the defendant is a necessary defendant.

131 Although the parties have not focused their attention on the source of the court's power to grant declaratory relief in the arbitration context, we think it is important to first establish the source of the power, which is the first precondition to granting declaratory relief.

132 Certain areas of declaratory relief in the context of arbitration are statutorily provided for. This includes a declaration that an arbitral tribunal has or does not have jurisdiction, upon an application by a party to the arbitration pursuant to s 10(3) of the IAA or Art 16(3) of the UNCITRAL Model Law on International Commercial Arbitration ("the Model Law") (see *International Research Corp PLC v Lufthansa Systems Asia Pacific Pte Ltd and another* [2014] 1 SLR 130 at [11] and [63]; *BCY v BCZ* [2017] 3 SLR 357 at [35] and [97]). But apart from these specific statutory provisions, our courts also have wide-ranging powers to grant declaratory relief in respect of a Singapore-seated arbitration. For instance, this court in *AKN and another v ALC and others and other appeals* [2016] 1 SLR 966 granted a declaration that the claims and any relevant defences arising from the setting aside of a specific part of an arbitral award remained to be determined between the relevant parties (at [68]). This is not a form of declaratory relief explicitly mentioned in the IAA or the Model Law.

133 In our judgment, this wide-ranging power to grant declaratory relief is derived from s 18 of the SCJA, read with para 14 of the First Schedule to the SCJA; both provisions, read together, confer on the court the "[p]ower to grant all relief and remedies at law and in equity". In addition, O 15 r 16 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) clarifies that it is possible to seek only a

mere declaratory judgment or order from the court. The power to grant declaratory relief applies in all cases, including proceedings in the context of arbitration.

134 This, however, is not an unfettered power. In the context of arbitration, Article 5 of the Model Law provides that "[i]n matters governed by [the Model Law], no court shall intervene except where so provided in [the Model Law]". The *raison d'être* of this rule is not to promote hostility towards judicial intervention but to satisfy the need for certainty as to when court action is permissible: *LW Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd and another appeal* [2013] 1 SLR 125 ("*LW Infrastructure*") at [36]. This court in *LW Infrastructure* found that certain provisions, such as s 47 of the Arbitration Act (Cap 10, 2002 Rev Ed) ("the Act") should be read consistently with Art 5. The upshot of this is that in situations that are expressly regulated by the Act, the courts should only intervene where so provided in the Act (at [39]) (this position should similarly apply in the IAA context). In *LW Infrastructure*, this court upheld the High Court's decision *not* to declare that an arbitral award was deemed a nullity, because the Act already makes provisions for seeking relief in such circumstances, *ie*, to set aside the award under s 48(1)(*a*)(v) of the Act. This court then concluded that where relief has been provided in the Act, there is simply no basis for finding that there is any residual or concurrent jurisdiction for the court to make a declaration as to the validity of the award (at [42]).

135 However, in the present case, unlike *LW Infrastructure*, there is no specific provision in the IAA or the Model Law which addresses the specific declarations granted by the Judge. Hence, nothing in the IAA and the Model Law circumscribes the court's power to grant the declaratory relief sought by

Hilton under s 18 of the SCJA, read with para 14 of the First Schedule to the SCJA.

Discretion to grant declaratory relief

136 The party seeking declaratory relief has to show that the court's discretion ought to be exercised in favour of granting the relief. An important factor determining whether the discretion ought to be exercised is the existence of "a real controversy" (*Salijah* at [57] and [58]; *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 ("*Tan Eng Hong*") at [131], [132] and [137]). This court in *Tan Eng Hong* explained that "[w]here the circumstances of a case are such that a declaration will be of value to the parties… the court may proceed to hear the case and grant declaratory relief even though the facts on which the action is based are theoretical" (at [143]).

137 We agree with Hilton's submission that the present case has a more compelling basis for relief than a case where the facts are theoretical, as the declarations in question have real value: they may be used as a persuasive tool in proceedings in the Maldives.[54] The first declaration reiterates s 19B(1) of the IAA and confirms the finality, validity and binding nature of the Awards. A similar declaration was granted by the English High Court in *Noble Assurance and another v Gerling-Konzern General Insurance* [2008] Lloyd's Rep IR 1 ("*Noble Assurance*") (at [101], [103], and [109]). Toulson LJ stated the following at [101], which was cited by Loh J in *BC Andaman* (at [110]):

> … *It would be perfectly proper for this court to make summary declaratory judgments as to the interpretation, scope and validity of the award.* In effect, I have already done so in this judgment after hearing due argument on both sides. I have concluded that the arbitrators found that there was coverage for OPL

54 Respondent's Case, para 103.

> under the Gerling contract by reason of endorsement 18, regardless of the certificate policy, as well as by reason of the certificate policy. I have found that it was open to Gerling to advance assertions of misrepresentation and non-disclosure by way of defence in the arbitration and that Gerling ought to have done so if it wished to rely on such matters. *Such conclusions could properly be put into the form of a declaratory judgment.* [emphasis added]

138 The facts of *Noble Assurance* are somewhat analogous to the present case. In *Noble Assurance*, the parties arbitrated their disputes pursuant to an arbitration agreement, and the arbitral tribunal delivered an award finding that the defendant ("Gerling Insurance") had provided reinsurance coverage to the claimant ("Noble") and was therefore liable. The seat of the arbitration was England. Gerling Insurance then started proceedings in Vermont to (a) rescind the reinsurance contract; and (b) vacate the arbitration award. In dismissing Gerling Insurance's application to restrain Noble from taking any action to convert the arbitral award into a judgment or to enforce the award, the Vermont court found that Gerling Insurance failed to establish in relation to its claims either a likelihood of success on the merits or sufficiently serious questions going to the merits (at [66]). Subsequently, Noble applied to dismiss the Vermont action for lack of subject matter jurisdiction and improper venue, and Gerling Insurance applied for a summary judgment on its rescission claims. The Vermont court found that it had no subject matter jurisdiction in respect of the claims for *vacatur* of the award but it did have subject matter jurisdiction in respect of Gerling Insurance's other claims, and rejected Noble's submission on improper venue (at [78]). Gerling Insurance's motion for summary judgment was also denied (at [80]). In the course of his judgment, the Vermont court stated that whether the rescission claims were arbitrable and whether they should be submitted to the arbitration tribunal were not issues before him, and he opined that not all the facts relating to the rescission claims could fairly be considered

to fall outside the purview of the arbitration agreement. Noble then gave notice to Gerling Insurance that it was commencing a new arbitration, and applied to the English court for an injunction to restrain Gerling Insurance from taking further steps to prosecute proceedings in Vermont. A temporary injunction was granted on the bases that the Vermont proceedings were bought in breach of the arbitration agreement and the institution of the Vermont proceedings constituted an abuse which the court should restrain (at [82]).

139 In considering whether the temporary injunction should be continued, Toulson LJ (as he then was) held that for Gerling Insurance to have proceeded in this way in Vermont was properly to be described as "vexatious, oppressive, and an abuse of process and/or unconscionable" (at [95]); thus, the court had jurisdiction to grant an anti-suit injunction against Gerling Insurance. Toulson LJ went on to consider whether he should exercise his discretion in favour of granting the injunction. He considered the need for caution and respect for comity, and that granting the injunction might have the appearance of interference in the affairs of the Vermont court, especially when the Vermont court had already devoted considerable time on the issues in the Vermont action (at [100]). He arrived at the conclusion that the ends of justice would be sufficiently served if declaratory instead of injunctive relief was granted (at [109]). A declaration declaring the scope and affirming the validity of the award would provide a platform for the grounds of *res judicata* and collateral estoppel upon which Nobel might rely in the Vermont proceedings (at [103]).

140 Loh J in *BC Andaman* considered *Noble Assurance*, but declined to grant a declaration on the facts. In *BC Andaman*, the defendants and the plaintiffs (except for the fifth plaintiff) signed a shareholders' agreement governing their relationship with respect to a project called the Blue Canyon Project, which

contained a Singapore arbitration clause. The defendants commenced proceedings in the British Virgin Islands against all the plaintiffs and three others, claiming that they conspired to wrongfully oust the defendants in relation to the Blue Canyon Project. Two of the plaintiffs together with the three other parties ("the Stay Applicants") applied to stay the BVI proceedings, which resulted in a consent order for the defendants to refer all their claims to arbitration in Singapore in accordance with the arbitration agreement. The defendants then commenced proceedings in Thailand against the fifth plaintiff and others with regard to the same issue. The defendants commenced arbitration in Singapore against the Stay Applicants, but soon after, stated that they had lost all confidence in the fairness of the arbitration proceedings. After the arbitration proceedings had been declared closed, but prior to the issuance of the award, the defendants commenced a second set of proceedings in Thailand against all the plaintiffs and other parties. The defendants' claims in the arbitration proceedings were dismissed with prejudice. The plaintiffs sought permanent anti-suit injunctions to restrain the defendants from pursuing the Thai proceedings and any other proceedings in breach of the arbitration agreement, and a declaration that all claims arising out of or in connection with the Blue Canyon Project had been dismissed with prejudice in the arbitration. Loh J declined to grant the declaration sought because it was too broad, for the arbitral tribunal only dismissed with prejudice the claims that the defendants made against *two* of the plaintiffs. The declaration sought was broader than what Toulson LJ considered would be appropriate. Moreover, the declaration would be unnecessary given that permanent anti-suit injunctions were granted against all the plaintiffs except the fifth plaintiff (at [110]).

141 The present case is similar to *Noble Assurance* in that we have declined to grant an injunction. Nevertheless, we are of the view that this court has the

power to make declarations regarding the validity and effect of the Awards, and should do so in this particular case, given that the declaration is a reiteration of s 19B(1) of the IAA and would be of some value to Hilton in the proceedings in the Maldives.

142 We also find the second declaration granted by the Judge to be appropriate: it would signify that Sun had breached the arbitration agreements by instituting civil proceedings in the Maldivian courts when arbitration awards on the same dispute had already been issued. Similar declarations have been granted by the English courts. In *AES*, proceedings were brought in the Specialist Inter-District Economic Court of East Kazakhstan Oblast despite the existence of a London arbitration clause, and the UK Supreme Court upheld a declaration that certain claims could only properly be pursued in arbitration (at [17]). Similarly, the English Court of Appeal in *Through Transport Mutual Insurance Association (Eurasia) Ltd v New India Assurance Co Ltd* [2005] 1 Lloyd's Rep 67 upheld the declaration granted by the judge below declaring that the defendant was bound to refer any claims against the claimant to arbitration in accordance with the arbitration clause (at [63]).

143 We therefore dismiss the appeal against the Judge's orders for declaratory relief. These orders serve to uphold the integrity of the arbitration agreements and the Awards rendered on the basis of these agreements.

Conclusion

144 For these reasons, we allow the appeal against that the Injunctive Order but we dismiss the appeal against the orders for declaratory relief.

145 Given that the main issue in the appeal concerned the Injunctive Order, we consider it fair and appropriate to order Hilton to pay Sun some costs of the appeal which we fix at $30,000 inclusive of disbursements with the usual consequential order for payment out.

Andrew Phang Boon Leong	Judith Prakash	Steven Chong
Judge of Appeal	Judge of Appeal	Judge of Appeal

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