IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 256

Suit No 1206 of 2015 (Summons No 3356 of 2016)

Between

Trung Nguyen Group Corporation

… *Plaintiff*

And

(1) Trung Nguyen International Pte Ltd
(2) Le Hoang Diep Thao
(3) Doan Thi Anh Tuyet
(4) Le Thi Cam Tu
(5) Le Thi Cam Van
(6) Trung Nguyen Instant Coffee Corporation
(7) TNI Limited Company

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure] — [Stay of Proceedings]
[Conflict of Laws] — [Natural Forum]

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v
Trung Nguyen International Pte Ltd and others

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4, 11 August 2016

21 November 2016

Valerie Thean JC:

Introduction

1 I granted the first and second defendants ("the Applicants") a stay of proceedings in this action on the ground that Vietnam was the *forum conveniens* to determine the claim in this action. The plaintiff has appealed and I now furnish the grounds for my decision.

Facts

2 The plaintiff is a company incorporated under the laws of Vietnam.[1] Its Chairman and legal representative is one Dang Le Nguyen Vu ("Vu"). The plaintiff is in the business of producing, processing and distributing coffee.[2]

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1 Amended Statement of Claim at para 1a.

2 *Ibid* at para 1c.

3 Vu and the second defendant, Le Hoang Diep Thao ("Thao") married in Vietnam in 1998. In 1999, they set up their first café.[3] Their business prospered and the plaintiff, incorporated in 2006, became the vehicle through which the business is run. The first defendant, a Singapore company incorporated in 2008, is used to supply the plaintiff's coffee products to international clients.

4 Vu and Thao's relationship began to deteriorate in 2013. In early April 2015, Thao was dismissed from her position as the permanent Vice-General Director of the plaintiff.[4] In October 2015, Thao petitioned for divorce in the People's Court of Ho Chi Minh City.

5 On 26 November 2015, the plaintiff commenced this action in Singapore.

The plaintiff's claim

6 Central to this action is a dispute over the first defendant's shares, presently held by Thao as the result of a transfer dated 15 July 2015.

7 In the plaintiff's first Statement of Claim dated 26 November 2015, the plaintiff first sued the first defendant and Thao for the fraudulent transfer of shares in the first defendant and for failure to deliver certain financial and management reports due in respect of the first defendant.[5] Subsequently, the plaintiff successfully applied to join the five remaining defendants and to amend its statement of claim to include a wider claim in conspiracy on 29 March 2016. The Amended Statement of Claim was filed and served on 13

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3 Submissions of the defendants dated 2 August 2016 at para 4.

4 Thao's sixth affidavit at paras 62 – 65.

5 Statement of Claim at para 22.

June 2016. This stay application, together with another application for an extension of time to apply for a stay, was thereafter taken out on 11 July 2016. I gave an extension of time for the stay application on 4 August 2016 (this order is not the subject of appeal). This application was argued on the basis of the Amended Statement of Claim.

8 The plaintiff relied on three main allegations to support its claim in unlawful means conspiracy:[6]

(a) an unauthorised and fraudulent transfer of the plaintiff's 7,520,800 shares in the first defendant to Thao in July 2015;

(b) the inducement, thereafter, of the first defendant to breach its contract with the plaintiff and cause a diversion of monies, which were due to the plaintiff, to the seventh defendant; and

(c) theft of the plaintiff's (and its subsidiaries' and associate companies') 15 seals and business registration certificates on 16 October 2015.

I will elaborate on each of the above allegations.

Fraudulent transfer of shares

9 The first defendant's shares were initially held by Thao when it was first incorporated in April 2008. On 11 January 2011, Thao agreed to transfer her shares to the plaintiff for US$372,000 ("the 2011 Contract").[7] The transfer was completed on 23 January 2013,[8] with the plaintiff holding 520,800

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6 *Ibid* at para 20.

7 Thao's sixth affidavit at para 38 - 40.

8 *Ibid* at para 46.

ordinary shares. In August 2014, the share capital was increased to 7,520,800 shares, with the plaintiff remaining as the only shareholder.[9] On 10 July 2015, a share transfer form was lodged with the Accounting and Corporate Regulatory Authority ("ACRA") effecting the transfer of these 7,520,800 ordinary shares in the first defendant from the plaintiff to Thao.

10 It was the plaintiff's case that this last transfer was fraudulent. On 8 July 2015, Thao, who was in Singapore[10], sent a blank share transfer form to the fourth defendant, Le Thi Cam Tu ("Tu") in Vietnam. Thao, it was contended, enlisted Tu's assistance in stamping the plaintiff's seal, without the plaintiff's authority, on the blank share transfer form.[11] Tu then arranged for the share transfer form to be delivered to Thao in a sealed envelope. When she received the share transfer form, Thao executed it as the buyer of the first defendant's shares. The third defendant, Doan Thi Anh Tuyet ("Tuyet") signed the form as a witness, although he admitted that he did not personally see Vu penning his signature on the form.[12]

11 The plaintiff engaged a handwriting expert who opined that Vu's signature on the share transfer form was most probably forged.[13] The plaintiff's case was that sometime between 8 July and 10 July 2015, Vu's signature on the share transfer form was forged or caused to be forged by Thao and/or Tu and/or Tuyet.

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9 *Ibid* at para 53.

10 Thao's sixth affidavit at para 70.

11 Amended statement of claim at para 25.

12 Thao's sixth affidavit at para 75.

13 Vu's 7th affidavit tab 20 para 7.

Inducement of breach of contract and diversion of profits

12 The plaintiff contended an agreement existed with the first defendant, through course of dealing, for the supply and sale of processed instant coffee ("the Supply Agreement"). The material terms of the Supply Agreement included, *inter alia*:

(a) The plaintiff, by its branch Saigon Coffee Factory ("SCF") would supply processed instant coffee products under the G7 brand to the first defendant for on-selling to international clients ("Sales Contracts").

(b) SCF, which imported raw materials, would be the shipper of the processed instant coffee products sold by the first defendant. All the records of shipments would be kept by the plaintiff. As an aside, the plaintiff would be eligible for a tax refund in Vietnam if, within a stipulated number of days, it exported processed instant coffee products that were made from the imported raw materials. The plaintiff had to submit evidence of this to the Vietnamese authorities to claim the tax refund.

(c) The plaintiff (acting through SCF) and the first defendant would deal exclusively with each other for the supply and sale of processed instant coffee products.

(d) The first defendant would provide financial reports on the sales to the plaintiff.

(e) For sales made to international clients (except those mentioned at (f) below):

(i) the international clients would pay the purchase price to the first defendant;

(ii) the first defendant would pay the plaintiff (through SCF) according to an internal pricing policy and retain the balance as earnings.

(f) For sales made to Guangxi Dongxing Linyuan Trade Co Ltd ("Guangxi") and Dongxing Taiping Trading Co Ltd ("Dongxing"):

(i) Guangxi and Dongxing would pay the purchase price directly to the plaintiff (acting through SCF); and

(ii) SCF would set off the amount paid by Guangxi and Dongxing against the amount owed by the first defendant in respect of all the other international sales.

13 According to the plaintiff, the Supply Agreement was carried out in accordance with its terms until about September 2015. From September to November 2015, Thao, Tu, Tuyet, TN Instant Coffee and/or TNI Ltd induced the first defendant to breach the Supply Agreement. Thereafter, in November 2015, instead of complying with the arrangement at (f), the first defendant, through its agents Thao and/or Tuyet, entered into contracts with Guangxi and Dongxing which in effect interposed TN Instant Coffee, instead of SCF, as the shipper of the processed instant coffee. The plaintiff estimated that between October 2015 and April 2016, US$9.4m had been diverted to TNI Ltd and away from the plaintiff.[14]

14 Thao was also said to have caused the first defendant to stop submitting its financial statement reports and other documents to the plaintiff

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[14] Plaintiff's submissions at para 31.

in accordance with the Supply Agreement. Further, as Thao and her co-conspirators had caused the plaintiff (acting through SCF) to be replaced by TN Instant Coffee as the shipper of the processed instant coffee products, the plaintiff was unable to submit the necessary documents to the Vietnamese authorities to claim the usual tax refund.[15]

Stealing of seals and business registration certificates

15 The plaintiff alleged that on 16 October 2015, Thao, Tu, Van and two other unidentified men broke into the plaintiff's premises in Vietnam and stole from the plaintiff's secretary business registration certificates, seals and seal specimen registration certificates of the plaintiff, its various subsidiaries and associated companies, including SCF.

16 According to the plaintiff, Thao wrongfully used these stolen seals to appoint herself as the Vice Chairperson of the Board of Directors and General Director of both the plaintiff and Trung Nguyen Investment Corporation, a 70% shareholder of the plaintiff. Further, she used TN Instant Coffee's seal to disrupt its business by closing two factories from 9 to 12 November 2015 and in March 2016, prohibiting key employees from entering the factories and obstructing deliveries.[16]

Summary of relief sought

17 The plaintiff alleged it suffered losses which included the value of the shares in the first defendant, the amounts wrongfully diverted to TNI Ltd and the amount it would have been able to claim as tax refunds. It also alleged loss of goodwill, loss for expenses incurred for the disruption of the business and

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15 *Ibid* at para 29.

16 Amended statement of claim at para 47.

loss of profits as a result of the business disruption caused by use of the stolen seals. It prayed for damages to be assessed as against the conspirators.

18 The plaintiff sought a declaration that it was the beneficial owner of the 7,520,800 shares of the first defendant. The plaintiff also claimed that Thao induced the first defendant to breach the Supply Agreement.[17]

19 Additionally, the plaintiff prayed for specific performance of an alleged agreement reached with the first defendant and Thao on 6 June 2013. Thao and the first defendant had agreed to provide the plaintiff with financial statement reports, management accounting reports and finance reports on a weekly, monthly, quarterly and/or yearly basis. These reports ceased to be provided after 19 October 2015 despite the plaintiff's demands.[18]

The stay application

20 In SUM 3356, the Applicants submitted that the heart of the dispute between the parties lay in the breakdown of the marriage between Vu and Thao; the dispute brought before the Singapore court was Vietnam-centric since it was a mere spill over of the larger breakdown between the two. The Applicants' grounds for contending that Vietnam was the natural forum were:

> (a) Most of the facts in relation to the allegedly fraudulent transfer of shares occurred in Vietnam; the alleged conspiracy was formed in Vietnam. Breaches of the Supply Agreement and the stealing of company seals and business registration certificates occurred in Vietnam.

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17 Amended statement of claim at para 88.

18 Amended statement of claim at paras 90 – 91.

(b) Most of the witnesses who had to testify were located in Vietnam and they were not compellable to testify in a Singapore court.

(c) There was a multiplicity of proceedings such that there was a risk of conflicting judgments.

(d) The proper law in relation to the various torts and the Supply Agreement was Vietnamese law since it bore the closest and most real connection with the alleged agreement.

21 The plaintiff, on the other hand, resisted the stay on the following grounds:

(a) Vietnam has no jurisdiction over the plaintiff's claim in conspiracy.

(b) The domicile of the parties pointed to Singapore as the more appropriate forum. The first defendant was a Singapore company. Thao was at all material times managing the affairs of the first defendant. Tuyet and Van were employees of the first defendant. Further, Tuyet was a permanent resident of Singapore.

(c) The non-party witnesses were all located in Singapore and thus the compellability of witnesses was not a relevant factor in determining whether Vietnam was a more appropriate forum.

(d) The substance of the tort of conspiracy occurred in Singapore. The conspiracy began with Thao taking control of the first defendant and then continued with Thao inducing the first defendant to breach the Supply Agreement. These acts happened in Singapore making it the place of the tort.

(e) The divorce proceedings between Vu and Thao were wholly separate and distinct from the Suit. The other proceedings were commenced for strategic reasons to bolster the Applicants' application for a stay, and thus an abuse of process.

(f) The plaintiff would not be able to enforce a judgment obtained in Vietnam even if the Vietnamese court declared that the purported transfer of the shares in the first defendant was fraudulently procured. Any judgment would not be for a sum of money but a mere declaration that the purported transfer was invalid. Such a judgment could not be enforced in Singapore because Vietnam was not party to the Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed).

Principles for granting a stay

22 The principles for granting a stay of proceedings on the basis of *forum non conveniens* are well established. At the first of two stages, the critical question is whether there is another available forum which is clearly or distinctly more appropriate than Singapore: see *CIMB Bank Bhd v Dresdner Kleinwort Ltd* [2008] 4 SLR(R) 543 ("*CIMB Bank v Dresdner*") at [26]. Put another way, the inquiry is which forum has the most *real and substantial connection* with the dispute. Generally, the court will consider the following non-exhaustive factors: (a) personal connections, (b) connections to events and transactions, (c) governing law, (d) other proceedings and (e) shape of the litigation: see *JIO Minerals FZC and others v Mineral Enterprises Ltd* [2011] 1 SLR 391 ("*JIO Minerals*") at [42].

23 If there is another available forum that is more appropriate than Singapore, the second stage of the *Spiliada* test requires the court to consider whether justice nevertheless requires that a stay should *not* be granted. This

stage is only engaged if in the first stage of the inquiry, the court ascertains that there is indeed a more appropriate forum than Singapore.

Stage 1 of *Spiliada*: Was Vietnam a more appropriate forum?

Assets, events and transactions

24 Here, the personal connections of the parties to the dispute weighed in favour of Vietnam. All the parties, with the exception of the first defendant, were either Vietnamese nationals or Vietnamese entities. The plaintiff pointed to the fact that Tuyet was a Singapore permanent resident, but this was not of much significance given her Vietnamese nationality and the personal links of all the other defendants to Vietnam.

25 I turn now to the assets, events and transactions from which the dispute was said to have arisen out of. The plaintiff's case was that it owned the first defendant arising from an acquisition, now disputed by Thao,that occurred in Vietnam and was governed by Vietnamese law.

26 Thao, Tuyet and/or Tu, it was contended, entered into a conspiracy to cause loss to the plaintiff. This began with Thao's allegedly fraudulent acquisition of 7,520,800 shares in the first defendant from the plaintiff. It was not disputed that a blank share transfer form was drawn up in Singapore and sent to Tu who was in Vietnam. Tu was alleged to have wrongfully affixed the plaintiff's seal on the blank transfer form before arranging for it to be sent back in a sealed envelope to Thao in Singapore. Thao's evidence, which was supported by Tuyet, who signed the share transfer form as a witness, was that Vu's signature was already on the share transfer form when the sealed envelope was opened. The Applicants thus submitted that any forgery must have occurred in Vietnam. The plaintiff disputed this claiming that the forgery occurred in Singapore. In my view, it could not be determined with reasonable

certainty, based on affidavit evidence alone, *where* the alleged forgery occurred. Nor was the place of forgery fundamental to the conspiracy.

27 The plaintiff's case was that the conspiracy to cause loss to the plaintiff continued, with TN Instant Coffee and TNI Ltd (both Vietnamese companies) joining in as co-conspirators to induce the first defendant to breach the Supply Agreement. It was clear that the Supply Agreement had more connections to Vietnam as compared to Singapore. The alleged terms of the Supply Agreement, was that the plaintiff, acting through a *Vietnamese* branch, SCF, would directly ship from *Vietnam* processed instant coffee products under the G7 brand to international clients. All records of shipments would be kept by the plaintiff in Vietnam. Payments from Guangxi and Dongxing were made to the plaintiff in Vietnam through SCF. Other clients made payment to the first defendant who would retain part of those monies as profit and remit the rest to the plaintiff in Vietnam. In addition, the first defendant was required to provide the plaintiff with certain documents to allow it to qualify for a tax refund in Vietnam. Further, the sales contracts with the international clients provided as a means of dispute resolution for arbitration by the Foreign Trade and Arbitration Committee at the Chamber of Commerce and Industry of Ho Chi Minh City.[19] This showed that even the sales contracts with international clients that the first defendant (which was the only significant link that the dispute had with Singapore) had entered into were more closely connected to *Vietnam*.

28 The plaintiff averred that the conspiracy to induce the breach of the Supply Agreement flowed from the initial conspiracy to deprive the plaintiff of the shares, and concomitantly, control, of the first defendant. Thao and the co-conspirators were said to have caused TN Instant Coffee to replace SCF in

[19] 12th Affidavit of Vu at page 700.

Vietnam as the shipper of processed instant coffee products. Then there was the matter of the diversion of proceeds paid by Guangxi and Dongxing to TNI Ltd when they were supposed to be paid to the plaintiff. This also occurred in Vietnam. The first defendant also stopped providing the required documents to the plaintiff preventing it from obtaining the tax refund in Vietnam.

29 Finally, the plaintiff contended that Van joined the conspiracy and together with Thao, Tu and two unidentified men, broke into the plaintiff's premises in *Vietnam* to steal business registration certificates, seals and seal specimen registration certificates of the plaintiff (including those of its various subsidiaries and associated companies). Thao then used these seals to disrupt the business of TN Instant Coffee, indirectly disrupting the plaintiff's business, by closing factories in *Vietnam* and prohibiting key employees from entering the premises.

30 Considering all of the above, I found that there was a preponderance of connecting factors, in terms of the assets, events and transactions related to the dispute, to Vietnam. The only significant factor that connected the dispute to Singapore was the fact that the first defendant was a Singapore company, and its shares were assets in Singapore. Other than this, all the other significant events occurred in, or were at least connected with, Vietnam. Similarly most, if not all, of the material transactions were more closely connected to Vietnam.

Choice of law and the place of the dispute

31 The main cause of action in this suit is the tort of conspiracy. The choice of law rule that Singapore courts apply for torts is the double actionability rule: the tort must be actionable under both the *lex fori* and the *lex loci delicti* (see *JIO Minerals* at [88], *Rickshaw Investments Ltd and another v Nicolai Baron von Uexkull* [2007] 1 SLR 377 ("*Rickshaw*

Investments") at [53]. In this case, the plaintiff did not adduce any evidence as to whether the defendants' actions constituted a tort in Vietnam, because they were of the view that the place of the tort was Singapore.

32 In *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and others* [2013] 1 SLR 1254 at [77], the High Court applied the following factors in determining the place of tort for a claim in conspiracy: (a) the identity, importance and location of the conspirators; (b) the place(s) of any agreement or combination; (c) the nature and place(s) of the concerted action; (d) the nature and place(s) of any unlawful act or means; and (d) the plaintiff's location and the place(s) where he or it suffered loss.

33 It followed from my analysis of the personal connections and location of the parties, the various events and transactions comprising the tort, and the place where the plaintiff suffered damage, that the place of the tort is Vietnam. The connection of the true dispute between the parties to Singapore, apart from the fact that the first defendant, the plaintiff's conduit for international sales, was a Singapore company, was rather tenuous. The first defendant's liability under its supply agreement with the plaintiff was as a subsidiary company of the Vietnamese plaintiff. Most of the losses that the plaintiff said it suffered occurred in Vietnam. While the loss of the shares in the first defendant was suffered in Singapore, these were valuable only because their ownership entailed control of the export of the plaintiff's products; the effect of that loss was felt in Vietnam. The place where the tort occurred is *prima facie* the natural forum for determining the claim, unless that place was purely fortuitous (*Rickshaw Investments* at [39]). In this case, the place of the tort was not purely fortuitous and is Vietnam.

Availability of witnesses, convenience and expense

34 At the outset, I should state that I did not consider the availability of witnesses to be a weighty factor in favour of either party. Witnesses considered in this regard generally referred to non-party witnesses (see *Accent Delight International Ltd and another v Bouvier, Yves Charles Edgar and others* [2016] 2 SLR 841 at [96]). Further, in *CIMB Bank v Dresdner*, the Court of Appeal explained (at [69]):

> … In considering the location of witnesses as a factor, the court must bear in mind the issues in the action. Only witnesses whose evidence is potentially material and relevant to the issues in the action should be reckoned. … Moreover, location of witnesses is only really significant in relation to third-party witnesses who are not in the employ of the party as it could give rise to issues of compellability (see *Rickshaw Investments* ([25] *supra*) at [19]). … We are conscious that in this technologically-advanced age, the convenience of witnesses who may be located in a different jurisdiction should also be considered against the easy availability of video conferencing (see *Peters Roger May v Pinder Lillian Gek Lian* [2006] 2 SLR 381 at [26] and [27]).

35 Most of the material witnesses to the Suit were either in the employ of Thao or Vu and thus did not give rise to issues of compellability. The Applicants submitted that Le Tan Tai, who was the one who brought the share transfer form from Vietnam to Singapore, and Le Hanh Thi Bich, the secretary of the plaintiff who affixed the plaintiff's seal on the share transfer form, were not compellable to testify in Singapore. However, from the facts that were before me, it was evident that these two potential witnesses were willing to do the bidding of either Vu or Thao. I thus did not place significant weight on this factor.

Proceedings in Vietnam

36 The Applicants submitted that I should also have regard to the proceedings that had been commenced in Vietnam. They contended that there

was a real risk that Singapore courts and Vietnamese courts could arrive at inconsistent findings of *fact*. The proceedings which had been commenced in Vietnam were as follows:

(a) Divorce proceedings between Vu and Thao.

(b) Arbitration proceedings at the Vietnam International Arbitration Centre ("VIAC Arbitration"): Thao commenced arbitration claiming, in the main, that the transfer of her 520,800 shares in the first defendant under the 2011 Contract was invalid since the requisite licence from the Vietnamese Ministry of Planning and Investment ("MPI") was not obtained. Thao had also commenced civil proceedings in the People's Court of Ho Chi Minh City seeking to invalidate the transfer for the same reasons.

(c) Civil proceedings in the People's Court of Ho Chi Minh City. In these proceedings Thao was suing for wrongful dismissal as Permanent Vice General Director of the plaintiff in April 2015.

I will consider the effect of each of these proceedings in turn.

37 In the divorce proceedings, Thao sought division of, *inter alia*, 37,500,000 shares in the plaintiff. The plaintiff submitted that the divorce proceedings were wholly separate from the Suit. It pointed to its expert report on Vietnamese law which stated that property belonging to the plaintiff was separate and distinct from Vu's personal assets and would thus be excluded from the matrimonial pool of assets. Also, the plaintiff had brought the Suit in its "corporate capacity to recover control of" the first defendant and this was wholly distinct from the divorce proceedings initiated by Thao against Vu, in

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[20] Submissions of the plaintiff at para 85.

the latter's "personal capacity".[20] Further, it was said that Vietnamese law did not recognise the concept of beneficial ownership.[21]

38 The Applicants on the other hand submitted that the Suit was "a mere spill over of the larger matrimonial dispute between [Vu] and [Thao] in Vietnam".[22] As the plaintiff pointed out, this was a little of an exaggeration because the divorce proceedings were concerned with dividing "common property" *of Vu and Thao*. One would expect, nevertheless, Vu's position in the divorce to be that those shares properly belong to the plaintiff and not to Thao. If that was indeed the case, and as pointed out by the Applicant's Vietnamese law expert, [23] it was likely that the Vietnamese court hearing the matrimonial dispute would inquire into circumstances surrounding the alleged forgery. There was thus a possible overlap in terms of the factual findings that the Vietnamese and Singapore court would have to make on this particular issue. This overlap might result in both jurisdictions arriving at findings of fact that are inconsistent.

39 The VIAC Arbitration (and the related civil proceedings) and civil proceedings for wrongful dismissal were commenced after this suit was started, and the plaintiff submitted that little or no weight should be given to the existence of such proceedings because they were an abuse of process commenced to bolster the argument that there was another more appropriate forum elsewhere. The plaintiff relied on the decision of the House of Lords in *De Dampierre v De Dampierre* [1988] 1 AC 92 (at 108) where Lord Goff of Chieveley pointed out that while foreign proceedings *may* be relevant to the inquiry of whether a stay should be granted, they may be of no relevance at all

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21 Vu's 11th affidavit Tab 1 at para 24.

22 Submissions of the defendants are para 57.

23 Thao's 8th affidavit tab 6 para 2b.

if, for example, one party had commenced the proceedings for the purpose of demonstrating the existence of a competing jurisdiction or the proceedings had not passed beyond the stage of the initiating process (see also *Peters Roger May v Pinder Lillian Gek Lian* [2006] 2 SLR 281 at [33] and *Exxonmobil Asia Pacific Pte Ltd v Bombay Dyeing & Manufacturing Co Ltd* [2007] SGHC 137 at [18]). In *The Hooghly Mills Co Ltd v Seltron Pte Ltd* [1994] 3 SLR(R) 757 ("*The Hooghly Mills*"), for example, while the proceedings in India had been filed in June 1993, the writ was only served by the respondent in January 1994, some three months after the writ in Singapore had been issued and served. The High Court opined that the delay in service of the writ indicated that there was no true desire on the part of the respondent to litigate in India (at [26]).

40 On the facts, I noted that the VIAC Arbitration was commenced by Thao slightly belatedly; she had known by 26 November 2015 (the date of the writ) that the plaintiff was claiming for the return of its shares in the first defendant. She only commenced the VIAC Arbitration on 9 June 2016. Further, the facts in relation to the VIAC Arbitration were known to her in 2011. The mere fact, however, that proceedings were commenced belatedly, by itself, could not show that those proceedings were defensive in nature and were commenced just to demonstrate the existence of a competing jurisdiction. In *The Hooghly Mills*, there was clear evidence before the court that the respondent had not pursued its claim with the expected rigour, as seen from the belated service of the writ.

41 In the VIAC Arbitration, and as part of her defence to the present suit, Thao was claiming that the transfer of the first defendant's shares pursuant to the 2011 Contract was invalid for failure to obtain the requisite licence from the MPI, as required under the terms of the contract. In my view, any findings that had to be made on this particular issue necessitated an inquiry into

Vietnamese policy on the effect of the MPI licence. As a result, those specific issues were more suited to determination by a Vietnamese tribunal.

42 Thao's claim for wrongful dismissal, on the other hand, lacked conviction. This was commenced on 27 July 2016, shortly after the filing of SUM 3356. It related to her dismissal in April 2015 before the alleged fraud occurred and was of marginal relevance to the suit at hand.

43 Be that as it may, there was a real risk that the Vietnamese and Singapore courts may reach contrasting *findings of fact on material issues*. *In the light of the other factors pointing to Vietnam as the natural forum*, it was more just and efficient for all the players to be brought together in that one forum for the adjudication of all their disputes. In *Chan Chin Cheung v Chan Fatt Cheung and others* [2010] 1 SLR 1192 (see [44]–[46]), the Court of Appeal held that although the causes of action in Singapore and Malaysia were different, the trial courts would have to traverse much the same ground. In the result the High Court's order for a stay pending outcome of the Malaysian proceedings promoted international comity.

Conclusion on stage 1

44 Having considered the factors relevant to stage one of the *Spiliada* test, I found that the dispute was clearly more closely connected with Vietnam. Vietnam was clearly and distinctly the more appropriate forum for the resolution of the dispute in the Suit.

Stage 2 of *Spiliada*: Whether justice requires that a stay not be granted

45 At the second stage, the onus was on the plaintiff to show circumstances which made it just for a stay *not* to be granted.

46 The plaintiff's principal contention at the second stage was that it would be severely prejudiced because the Vietnamese courts did not have territorial jurisdiction over the first defendant. Further, it submitted that any judgment it may obtain in respect of the fraudulent transfer of the first defendant's shares would not be binding on a Singapore company. The plaintiff would not be able to obtain an enforceable declaration that it was the owner of those shares. Further, the plaintiff pointed to the fact that it sought orders under s 194 of the Companies Act (Cap 50, 2010 Rev Ed) which concerns the power of the court to rectify the register of members for companies (see s 196A and 196C of the Companies Act). It argued that it would not be able to obtain such orders in Vietnam.

47 The Applicants' expert in Vietnamese law disputed the fact that the Vietnamese court only had jurisdiction over entities within the territory of Vietnam. Further, they submitted that there was no juridical disadvantage to have the actions and complaints tried in Vietnam as it was the natural forum to decide all the disputes between the parties.

48 In my judgment, the reasons advanced by the plaintiff were not sufficient to justify a refusal of a stay. Nevertheless, as the first defendant is a Singapore company, and it was disputed as to whether the remedy under the Companies Act was necessary, these proceedings could be stayed pending the related proceedings in Vietnam, to leave the plaintiff to return, if necessary, to the Singapore courts to obtain its remedy under s 194 of the Companies Act or to effect the transfer of the first defendant's shares between the plaintiff and Thao. Such an arrangement was in my view just as it gave effect to the finding that Vietnam was the proper forum for the resolution of the dispute and at the same time allowed the plaintiff recourse in Singapore, if necessary, at the appropriate juncture.

Conclusion

49 I therefore granted a stay of proceedings pending the outcome of proceedings in Vietnam involving the plaintiff, Vu, and any of the defendants in relation to any of the disputes in these proceedings.

50 On a related note, the plaintiff had applied for various injunctions. In aid of the proceedings in Vietnam and to protect the interest of the plaintiff in the first defendant, I granted an interim injunction restraining Thao from disposing of her shares in the first defendant until the outcome of proceedings in Vietnam. As explained by the High Court in *Multi-Code Electronics Industries (M) Bhd and another v Toh Chun Toh Gordon and others* [2009] 1 SLR 1000 this was pursuant to the Court's residual jurisdiction under s 4(1) of the Civil Law Act (Cap 43, 1999 Rev Ed) that would allow the stayed Singapore action to be revived and carried forward if it became necessary (at [79]). That decision is not the subject of any appeal.

51 Costs, considered in the round for both the stay and injunction applications, were awarded to the Applicants in the sum of $15,000 (exclusive of disbursements).

Valerie Thean
Judicial Commissioner

Jimmy Yim SC, Erroll Ian Joseph, Mahesh Rai and Diedre Grace Morgan (Drew & Napier LLC) for the applicants in SUM 3356/2016;
Thio Ying Ying, Lim Yu Jia and Jolyn Khoo (Kelvin Chia Partnership) for the respondent in SUM 3356/2016.