IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 85

Civil Appeal No 69 of 2019

Between

Paulus Tannos

… *Appellant*

And

(1) Heince Tombak Simanjuntak
(2) Hardiansyah
(3) William E. Daniel
(4) Anita Saridewi
(5) Maria Margaretha Jusuf

… *Respondents*

Civil Appeal No 70 of 2019

Between

(1) Lina Rawung
(2) Pauline Tannos
(3) Catherine Tannos

… *Appellants*

And

(1) Heince Tombak Simanjuntak
(2) Hardiansyah
(3) William E. Daniel
(4) Anita Saridewi
(5) Maria Margaretha Jusuf

… *Respondents*

JUDGMENT

[Conflict of Laws] — [Foreign judgments] — [Recognition] — [Foreign bankruptcy orders]
[Conflict of Laws] — [Foreign judgments] — [Defences] — [Breach of natural justice]

Paulus Tannos
v
Heince Tombak Simanjuntak and others and another appeal

[2020] SGCA 85

Court of Appeal — Civil Appeals Nos 69 of 2019 and 70 of 2019
Sundaresh Menon CJ, Tay Yong Kwang JA and Woo Bih Li J
17 June 2020

27 August 2020 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the majority consisting of Tay Yong Kwang JA and himself):

Introduction

1 In February 2017, the appellants in these appeals were declared bankrupt by the Commercial Court of the Central Jakarta District Court. The respondents were appointed by the Indonesian court as the receivers and administrators of the appellants' estate. The respondents commenced proceedings *ex parte* in the Singapore High Court for recognition of the Indonesian bankruptcy orders against the appellants, who are residing in Singapore and have property here. The appellants, in turn, applied to set aside the *ex parte* order granted by the High Court judge ("the Judge"). The Judge dismissed the setting-aside application and it is against that decision that the appellants now appeal.

Facts

The parties

2 The appellant in the first appeal is Paulus Tannos ("Mr Tannos"), an Indonesian businessman. The appellants in the second appeal are Mr Tannos' wife and two daughters, Lina Rawung ("Ms Rawung"), Pauline Tannos ("Pauline") and Catherine Tannos ("Catherine"). The appellants are all Indonesian citizens and Permanent Residents of Singapore.

3 The first to fifth respondents in these appeals are the court-appointed receivers and administrators of the appellants in Indonesia. We refer to them collectively in this judgment as "the Receivers". At the present time, the first and second Receivers have officially resigned from their duties and been replaced by the fourth and fifth Receivers. For the purpose of this judgment, the active Receivers are the third to fifth named respondents.

Background to the dispute

4 Given the nature of the factual disputes in these appeals, we set out some background to the commencement of the bankruptcy proceedings and the making of the bankruptcy orders in Indonesia.

5 By way of a facility agreement dated 26 October 2011 and subsequently amended on 20 December 2011, PT Bank Artha Graha Internasional Tbk ("BAG") granted a loan of IDR200bn to PT Megalestari Unggul ("MLU"). The majority shareholder of MLU is Mr Tannos, who holds 60% of MLU's shares. The appellants are alleged to be the guarantors of the loan to MLU, by way of four deeds of personal guarantee purportedly signed by the appellants and dated 26 October 2011.

6 MLU was unable to repay the loan to BAG when it fell due on 26 October 2012. BAG sent several letters of demand to MLU from December 2012 to May 2013, but to no avail. BAG subsequently assigned its accounts receivables to another Indonesian company in November 2015, which in turn assigned all its receivables to PT Senja Imaji Prisma ("PT Senja") on 2 December 2016. PT Senja assigned a small part of its receivables to Satrio Wibowo and Jeffri Pane. The debt arising from the loan to MLU was accordingly owed to the following creditors in these proportions:

(a) PT Senja as to approximately 90% of the debt;

(b) Satrio Wibowo as to approximately 5% of the debt; and

(c) Jeffri Pane as to approximately 5% of the debt.

7 Under Indonesian law (Law No. 37 of 2004 on Bankruptcy and Suspension of Obligation for Payment of Debts ("the Indonesian Bankruptcy Law")), a process known as *Penundaan Kewajiban Pembayaran Utang* ("PKPU") exists. A creditor who suspects that a debtor may default on its obligations may petition the court to make a PKPU order. The making of a PKPU order temporarily suspends the debtor's repayment obligations, so that the debtor may propose a composition plan to its creditors for the restructuring of its loans. If the debtor fails to propose a composition plan that is approved by the requisite majority of its creditors, this will lead to the making of a bankruptcy order against the debtor. In effect, the PKPU proceedings require the debtor to initiate an acceptable restructuring or face bankruptcy. On 8 December 2016, PT Senja commenced PKPU proceedings against MLU and the appellants, as guarantors. For the reasons outlined above, this was in effect the precursor to the eventual making of a bankruptcy order against each of the appellants and MLU. Between 20 December 2016 and 23 December 2016, PT

Senja attempted to serve the notice of the PKPU proceedings on the appellants at their registered address at Depok, Indonesia. An advertisement of the filing of PKPU proceedings was also placed in the *Rakyat Merdeka*, a local Indonesian newspaper with limited circulation.

8 On 9 January 2017, the matter was heard by the Commercial Court of the Central Jakarta District Court. MLU was represented by counsel, but none of the appellants nor their counsel were present. The court granted the application and ordered the parties to undergo an interim debt rescheduling for 45 days to arrive at a composition plan that was agreeable to the creditors. We refer to the decision given on 9 January 2017 as "the PKPU Decision".

9 The PKPU Decision was followed by three creditors' meetings between 20 January 2017 and 17 February 2017. It was here that the appellants made their first appearance in the proceedings through their counsel. The appellants' counsel contended that the appellants had not received notice of the PKPU application or the PKPU Decision. The appellants also argued that the personal guarantees they had allegedly given in relation to the MLU loan were fraudulently obtained and invalid, as reflected in a number of related Indonesian proceedings that had been commenced in relation to the MLU loan and the guarantees.

10 As the creditors' meetings did not result in a successful composition plan, at the hearing on 22 February 2017, the Indonesian court pronounced MLU insolvent and the appellants bankrupt and appointed the first and second respondents as Receivers to administer the insolvency process. We refer to the decision given on 22 February 2017 as "the Bankruptcy Decision". The third respondent was subsequently added as a Receiver on 17 April 2017.

Procedural history of the recognition proceedings

11 On 28 December 2017, the Receivers filed Originating Summons No 1468 of 2017 in the Singapore High Court to recognise the bankruptcy orders against MLU and the appellants. The orders sought to be recognised were those in:

(a) the PKPU Decision made on 9 January 2017;

(b) the Bankruptcy Decision made on 22 February 2017; and

(c) the addition of the third Receiver on 17 April 2017.

We refer to these collectively as the "Indonesian Bankruptcy Orders" in the rest of this judgment.

12 The court granted *ex parte* recognition of the Indonesian Bankruptcy Orders against MLU on 11 January 2018, but noted that there should be a separate application filed against the appellants. As the Receivers undertook to file a fresh application against the appellants by the next day, the Judge also granted the recognition orders against the appellants on 11 January 2018. The Receivers duly filed the *ex parte* application against the appellants in Originating Summons No 71 of 2018 ("OS 71") on 12 January 2018.

13 On 21 February 2018, the appellants filed Summons No 903 of 2018 to set aside recognition of the Indonesian Bankruptcy Orders against them. Ms Rawung, Pauline and Catherine later filed a separate setting aside application in Summons No 1188 of 2018 as they instructed a different set of solicitors from Mr Tannos. These setting aside applications, which the Judge dismissed, are the subject of the present appeals.

Decision below

14 We briefly summarise the arguments made and the decision of the Judge below. The parties were not in dispute as to the applicable requirements for common law recognition of foreign judgments. The appellants however argued that the recognition orders should be set aside by reason of the Receivers' failure to disclose to the Judge four material points: (a) that the Indonesian Bankruptcy Orders had been made in breach of natural justice in that the appellants had no or insufficient notice of the PKPU proceedings; (b) that there were pending appeals and judicial review applications against the Indonesian Bankruptcy Orders before the Supreme Court of Indonesia; (c) that the validity of the debts were disputed; and (d) that the debts had been partially satisfied in Indonesia. Relying on the same facts, the appellants argued that the requirements for recognition of the Indonesian Bankruptcy Orders were not met, because they were not final and conclusive judgments, and/or the defences of fraud and breach of natural justice applied.

15 The Judge first noted that there were prior High Court cases in Singapore recognising foreign corporate insolvency proceedings on the basis of common law, which included the Judge's own decisions in *Re Opti-Medix Ltd (in liquidation) and another matter* [2016] 4 SLR 312, *Re Taisoo Suk (as foreign representative of Hanjin Shipping Co* Ltd) [2016] 5 SLR 787 and *Re Gulf Pacific Shipping Ltd (in creditors' voluntary liquidation) and others* [2016] SGHC 287. These cases had endorsed the common law requirements for recognition of foreign judgments in *Giant Light Metal Technology (Kunshan) Co Ltd v Aksa Far East Pte Ltd* [2014] 2 SLR 545 ("*Giant Light Metal*") at [13] and [17]. Accordingly, the Judge was of the view that recognition should also be granted to foreign *bankruptcy* orders when the following requirements were

met (see *Heince Tombak Simanjuntak and others v Paulus Tannos and others* [2019] SGHC 216 ("the GD") at [19]):

(a) the foreign bankruptcy order was made by a court of competent jurisdiction;

(b) the court had jurisdiction on the basis of the debtor's domicile or residence, or submission by the debtor to the jurisdiction of the court;

(c) the order was final and conclusive; and

(d) no defences to recognition applied.

16 The Judge first held that the appellants had submitted to the Indonesian court's jurisdiction by their participation in the various creditor meetings forming part of the PKPU process (GD at [25]). Second, although the issue of whether there were in fact pending appeals against the Indonesian Bankruptcy Orders spawned many further affidavits from the parties and expert reports on the availability of such remedies, the Judge ultimately concluded that the position was "not entirely definitive" and that the appellants had failed to show that the orders were *not* final and conclusive (GD at [28] and [36]).

17 Third, the Judge held that no defences against recognition were established. There was no breach of natural justice because the appellants had adequate notice of the proceedings, and actually participated in parts of the process (GD at [40]). There was also nothing in the nature of fraud in relation to the conduct of the Indonesian proceedings (GD at [44] and [46]).

18 As the appellants' arguments on material non-disclosure hinged partly on the existence of pending appeals and the possibility of a breach of natural

justice in the PKPU proceedings, which the Judge had dismissed on the facts, the Judge also held that the Receivers did not breach their duty of full and frank disclosure in respect of these points (GD at [55]). Where the issue of non-disclosure of the potential invalidity of the appellants' personal guarantees was concerned, the Judge accepted the Receivers' explanation that the Indonesian judgments impugning the validity of the guarantees had been overturned by the Supreme Court of Indonesia, and therefore that there was no need to disclose these. Finally, the Judge was also not convinced that the underlying debts had been discharged and therefore that the Receivers were in breach of their duty of disclosure by failing to raise it to the court's attention in seeking recognition of the Indonesian Bankruptcy Orders (GD at [56]).

Issues to be determined

19 On appeal, the appellants contested almost all the legal requirements for recognition of foreign judgments at common law, and maintained their position that there had been material non-disclosure on the part of the Receivers. But in oral submissions, counsel for the appellants chose to emphasise – rightly in our view – the issue of natural justice, focusing on the appellants' lack of notice of the PKPU proceedings and their absence at the PKPU hearing.

20 The issues to be decided in these appeals are: (a) whether there was material non-disclosure in the obtaining of the *ex parte* recognition orders; and (b) whether the requirements for recognition of the Indonesian Bankruptcy Orders are satisfied. Where the latter issue is concerned, the central question is whether the Indonesian Bankruptcy Orders were obtained in breach of natural justice. The natural justice point did not stand alone but also turned on factual disputes relating to other requirements of the recognition test, such as the adequacy of service on the appellants and whether there was any recourse before

the Indonesian courts against the Indonesian Bankruptcy Orders that was available to the appellants. We will elaborate on these issues in due course in our analysis below.

The law on recognition of foreign bankruptcy orders

21 The recognition of the Indonesian Bankruptcy Orders in this case proceeded on the basis of the common law, because the UNCITRAL Model Law on Cross-Border Insolvency enacted in our Companies Act (Cap 50, 2006 Rev Ed) does not apply to personal bankruptcy orders. As mentioned, the parties were content to proceed on the basis that the requirements laid down in *Giant Light Metal* ([15] *supra*), and endorsed in *Humpuss Sea Transport Pte Ltd (in compulsory liquidation) v PT Humpuss Intermoda Transportasi TBK and another* [2016] 5 SLR 1322, applied to the question of recognition of the Indonesian Bankruptcy Orders. The Judge, on the other hand, noted the potential argument against applying the requirements for recognition of *in personam* foreign judgments to bankruptcy orders, which are orders *in rem*, though he was ultimately not convinced that such a distinction should be drawn.

22 Since the parties are in agreement on the applicable requirements, since there were no arguments before us on the points raised by the Judge and since the relevant jurisprudence concerning the recognition of foreign corporate insolvency orders at common law all stemmed from a single judge of the High Court (see [15] above), we do not venture into the philosophical questions relating to the true nature of a bankruptcy order and the principle of modified universalism in this context. Instead, we leave open the question whether this reasoning is correct.

23 We turn to address the issues in these appeals, beginning with the issue of material non-disclosure.

Whether the Receivers were in breach of their duty of full and frank disclosure

24 The appellants did not concede their submissions on material non-disclosure on appeal, but as counsel for the appellants acknowledged, it was not their main point of attack against the recognition orders granted below. Counsel highlighted that their complaint was primarily with the Receivers' failure to disclose: (a) that the validity of the personal guarantees had been impugned in related proceedings before the Indonesian court; and (b) that there was an issue regarding service of the PKPU summons and that breach of natural justice could be a potential defence to the recognition of the Indonesian Bankruptcy Orders.

25 The recognition orders below were granted *ex parte*, and there is a duty on the applicant of full and frank disclosure in such circumstances (*The Vasiliy Golovnin* [2008] 4 SLR(R) 994 at [83]). However, it was a relevant consideration to us that once the appellants had filed their applications to set aside the orders, the matter became fully contested with arguments on both sides on any issues of non-disclosure and their materiality. The Judge had considered all these matters and did not think that either alleged non-disclosure was relevant or material to his decision.

26 We also think that the points raised by the appellants did not amount to non-disclosure, or else were not sufficiently material to justify setting aside the *ex parte* orders. First, although it would have been prudent to disclose the existence of related Indonesian proceedings touching on the validity of the personal guarantees as part of the relevant background to the Indonesian bankruptcy proceedings, it was ultimately not a legally significant consideration

for the Singapore court where the usual requirements for recognition of foreign orders are concerned. The merits of the Indonesian Bankruptcy Orders were not a question for the Singapore court, unless it was argued that this affected the finality and conclusiveness of the orders to be recognised. Second, although it is well established that an applicant should disclose any potential defences to the grant of an *ex parte* order, any non-disclosure by the Receivers on this point would likely not have warranted setting aside the recognition orders entirely.

27 Accordingly, we dismiss the argument on material non-disclosure, and turn to the issue of natural justice.

Whether the Indonesian Bankruptcy Orders were obtained in breach of natural justice

28 The core principles of natural justice in the context of recognition and enforcement proceedings are well established. In *Jacobson v Frachon* 138 LT 386 at 392, cited in the seminal English case of *Adams and others v Cape Industries Plc and another* [1990] 1 Ch 433 ("*Adams v Cape Industries*") at 563, the Court of Appeal stated:

> The Master of the Rolls seems to prefer, and I can quite understand the use of the expression, 'contrary to the principles of natural justice;' the principles it is not always easy to define or to invite everybody to agree about, whereas with our own principles of justice we are familiar. *Those principles seem to me to involve this, first of all that the court being a court of competent jurisdiction, has given notice to the litigant that they are about to proceed to determine the rights between him and the other litigant; the other is that having given him that notice, it does afford him an opportunity of substantially presenting his case before the court.* Both those considerations appear to be essential if they are to be in accordance with natural justice. (Emphasis added.)

29 Although there is authority suggesting that the categories of what could amount to breach of natural justice are not limited to issues of notice and

opportunity to be heard (see *Adams v Cape Industries* at 564), the possible extensions of the rule do not concern us in this appeal. The appellants' primary argument is that they had not been given proper notice of the PKPU application prior to the PKPU hearing on 9 January 2017, and were therefore unable to attend and object to the orders for interim debt restructuring that were made against them. Consequently, although they learnt of the PKPU Decision afterward and participated in the creditors' meetings, this did not displace the significance or materiality of their absence at the PKPU hearing because it was too late by that time to object to the validity of the underlying debt.

30 A preliminary point that concerned us with regard to the issue of a potential breach of natural justice was whether the appellants had any legal recourse against the Indonesian Bankruptcy Orders in Indonesia. This issue arose because the appellants argue, in the alternative, that the Indonesian Bankruptcy Orders are subject to pending appeals and judicial review applications against the Bankruptcy Decision. As we suggested to counsel for the appellants, if recourse was being sought from the Indonesian courts, then it was not appropriate at this stage for the Singapore court to be commenting on the Indonesian process since any alleged violation of natural justice principles may yet be corrected by the Indonesian courts. But if on balance, no such recourse was available, this court would have to treat the Indonesian Bankruptcy Orders as the final word from the Indonesian courts and assess the merits of their recognition accordingly.

31 We therefore briefly address the preliminary issue of whether there was a pending challenge to the Indonesian Bankruptcy Orders in the Indonesian courts, before proceeding to analyse the substance of the appellants' submissions on notice and opportunity to be heard.

Availability of recourse against the Indonesian Bankruptcy Orders

32 As part of their alternative submission that the Indonesian Bankruptcy Orders should not be recognised because they were allegedly not final and conclusive judgments of the Indonesian court, the appellants adduced evidence to show that they had each filed appeals and/or judicial review applications against the Bankruptcy Decision to the Supreme Court of Indonesia. These applications were filed in February and March 2017, following the PKPU and Bankruptcy Decisions. On the other hand, the Receivers exhibited a letter dated 25 September 2018 from the Supreme Court of Indonesia stating that no appeal papers had been received from the Central Jakarta District Court ("the District Court") and that in any event, there was no recourse against the Bankruptcy Decision under Indonesian law. On balance, the Judge did not think that any substantive appeal was underway (GD at [36]).

33 Between February 2017 and November 2018, many letters were exchanged between the appellants, the Receivers and the Indonesian courts. These letters were primarily in relation to whether Catherine's application for judicial review, which was the earliest application filed on behalf of the appellants, had been sent to the Supreme Court of Indonesia for review.

34 Without descending into the details, we summarise the gist of the correspondence exchanged over a period of two years. Essentially, from its very first reply dated 27 April 2017 in response to Catherine's application, the District Court took the position that any appeals or judicial review applications against the PKPU Decision were ill conceived, and refused to forward any such files to the Supreme Court of Indonesia. In the District Court's view, under Arts 235 and 293 of the Indonesian Bankruptcy Law, no legal action could be taken against PKPU decisions. Accordingly, Catherine's application "[did] not meet

formal requirements" and the court of first instance could declare such petitions unacceptable, and decide not to forward them to the Supreme Court of Indonesia.

35 Mr Paulus Sinatra Wijaya ("Mr Wijaya"), as Catherine's legal counsel, wrote to both the High Court of Jakarta and the Supreme Court of Indonesia on 2 May 2017 objecting to the District Court's decision not to forward the files. It was through this letter that the High Court of Jakarta, which was otherwise not involved, first became apprised of the matter. It was alleged that: (a) the summons for the PKPU hearing had been "deliberately" sent to the wrong address, resulting in Catherine's absence and inability to be heard at the PKPU hearing; (b) the creditor PT Senja had "deliberately" concealed that the debt was not a simple or straightforward debt; and (c) the appellants had been "tricked" into becoming guarantors.

36 Both the Supreme Court of Indonesia and the High Court of Jakarta sought explanations from the District Court on these allegations. In a letter dated 10 August 2017, the District Court replied to the High Court of Jakarta explaining that the summons for the PKPU hearing had been sent to the correct address stated by Catherine in court documents, and that there was "no error in the address of the summons". There was no reply by the High Court of Jakarta.

37 The correspondence over the next year continued along the same lines. The District Court continued to maintain its position that the appellants had no further legal recourse, and declined to send the files to the Supreme Court of Indonesia. It appears that the appellants, knowing the District Court's position, wrote repeatedly to the High Court of Jakarta and the Supreme Court of Indonesia, seeking the appellate courts' intervention to order the District Court to allow the files to be sent.

38 In the meantime, on 6 September 2018, the Receivers wrote to the Supreme Court of Indonesia requesting information on whether there was a registered submission of appeal or judicial review in Catherine's case. The Supreme Court of Indonesia wrote back on 25 September 2018, stating:

> … [W]e haven't received the dossiers of the case with numbers mentioned above at cassation or judicial review stage. *In addition, in accordance with Article 235 and Article 293 of Law No. 37 of 2004, there can be no legal remedy for the case.* Therefore, the District Court of Central Jakarta have not sent the files to the Supreme Court of the Republic of Indonesia to date. [emphasis added]

39 At the time of this appeal, the appellants accept that apart from the correspondence referenced above, there have been no further developments in the appeals or judicial review applications in the Supreme Court of Indonesia.

40 In our judgment, it is not possible on balance to conclude that there are avenues of legal recourse being pursued at this time. The appellants did put in evidence three different expert reports, all stating that where there had been manifest error in the PKPU decisions rendered by the District Court, judicial review could be undertaken to rectify the error. No contrary expert evidence was produced by the Receivers. But even if the appellants' position is the correct one under Indonesian law, the correspondence did not indicate that the District Court had been successfully persuaded or been ordered to forward the files for further review. The lack of any further development in the case since 2018 is especially telling, as it suggests that there are in fact no appeals and applications pending before an appellate court.

41 On the basis that the Indonesian Bankruptcy Orders are not in the process of being appealed or set aside, we turn to the question of whether the orders were obtained in circumstances contrary to natural justice.

Notice and opportunity to be heard

42 Returning to the principles set out in *Adams v Cape Industries*, the heart of the issue of natural justice lies in the concepts of notice and of the opportunity to be heard. The appellants' argument on breach of natural justice is simple. They contend that notices of the PKPU application were not properly served on them, that they did not have actual notice of the proceedings, and that they were accordingly deprived of the opportunity to argue against the making of the PKPU orders that culminated in the Indonesian Bankruptcy Orders.

43 The Judge below dismissed the appellants' arguments on breach of natural justice, without appearing to have considered the issue of service in detail. The Judge was persuaded that as there had been "some actual participation" by the appellants in parts of the Indonesian proceedings, such as the creditors' meetings that *followed* the PKPU Decision, the appellants could not be seen to argue that they had insufficient notice of the PKPU proceedings (GD at [40]).

44 With respect, we disagree. The Judge's dismissal of the natural justice point may have been influenced by his earlier finding that as the appellants had participated in the PKPU proceedings *after* the PKPU Decision was rendered on 9 January 2017, this amounted to voluntary submission to the Indonesian court's jurisdiction (see GD at [25]). We agree that the appellant's participation in the creditors' meetings and the later bankruptcy hearing on 22 February 2017, which were all part of the court-supervised PKPU process, would amount to submission for the purpose of jurisdiction. But the appellants' participation in these later parts of the proceedings did not necessarily mean that the appellants had had the opportunity to register their protests against the *initiation* of the bankruptcy process, which was premised on the underlying debt arising from

the personal guarantees they had allegedly given. It is necessary to examine the substance and purpose of the proceedings that the appellants took part in in order to determine whether the natural justice objection remained open to them.

45 After the PKPU Decision was rendered on 9 January 2017, three meetings between the debtors and creditors took place. The transcripts and minutes of these three meetings were exhibited in the affidavits filed by the Receivers. These records showed that although the appellants' counsel raised objections at each meeting over the improper service of the PKPU summons, the appellants' absence at the PKPU hearing and their objections to the validity of the underlying debt, they were repeatedly told that these meetings were not the appropriate forum to raise objections to the PKPU Decision. At the first creditors' meeting on 20 January 2017, in response to counsel for Mr Tannos and Ms Rawung highlighting problems with the service of the PKPU summons and the validity of the underlying guarantees, counsel for the creditors stated:

> … [E]verything that concerning about the simplicity [of the debt], what has been decided by the Panel of Judges [at the PKPU Hearing], *I do not think here is the forum (for it).*
>
> …
>
> Our interest here is to hear the proposal from the Debtors, whether it can be fulfilled or not. That's our keynote here, so we feel for the *simplicity of debt and everything … are not relevant here*. Because we are all here … because of PKPU Decision.
>
> [emphasis added]

46 At the second meeting on 10 February 2017, the Receivers reminded the appellants that "[a]ny trivial matters or objection against the Suspension of Debt Payment Decision … will no longer be discussed in the meeting", because this was not part of the agenda at the creditors' meetings. Similarly, at the third meeting on 17 February 2017, both Catherine and Ms Rawung's counsel raised arguments that they had been absent at the PKPU hearing, that the guarantees

were invalid and that no debts were owed. In response, both the Receivers and the supervisory judge stated that the meeting was not the forum to discuss matters concerning the authentication of the debts, and that as there had already been PKPU orders made for restructuring of debts, it was "not justified to discuss other things beyond that, such as the origins of the case".

47 As for the bankruptcy hearing on 22 February 2017, it appears that the purpose of that hearing was simply to record whether the interim debt restructuring had been successful. The District Court noted that as the creditors had unanimously refused to approve a composition plan and grant the appellants and MLU a permanent suspension of debt repayment (also known as "fixed PKPU"), "the legal consequences on the rejection of the provision of Fixed PKPU is that the Court *must declare that the Debtors are Bankrupt*" [emphasis added]. There was therefore no scope for the appellants to argue against the validity of the PKPU Decision. The appellants' family lawyer, Mr Wijaya, deposed that he had informed the court at the bankruptcy hearing of the appellants' objections to the lack of notice and the validity of the underlying debt, and was told by the court that the way forward was to file an appeal. As we have found, however, to all indications, the Indonesian Bankruptcy Orders do not appear liable to appeal or review by a higher court in the Indonesian judicial system.

48 In these circumstances, it is clear in our view that despite attending the creditors' meetings and the bankruptcy hearing, the appellants no longer had the opportunity to raise their objections to service or to challenge their liability under the guarantees. Once the appellants failed to attend the PKPU hearing on 9 January 2017, the Indonesian Bankruptcy Orders would have followed as a matter of course so long as no composition plan was reached between the appellants and their creditors. With respect, given these circumstances, we do

not agree with the Judge that the appellants' participation in the later parts of the proceedings was sufficient to eliminate any concerns arising from any lack of opportunity to be heard in the PKPU process.

49 The issue of whether there was proper service of the PKPU summons thus assumes greater importance, because if the application had been properly served on the appellants, the appellants cannot be heard to argue that they did not have the opportunity to attend and make their objections at the PKPU hearing.

Whether there was proper service of the PKPU summons

50 The Receivers submit that the notices for the PKPU proceedings were properly served on the appellants: first by registered mail to the appellants' Indonesian address, and second by an advertisement taken out in the *Rakyat Merdeka* on 27 December 2016.

51 The problem faced by the Receivers was that the question of service of the PKPU summons was not a matter within their personal knowledge. The Receivers had not been appointed until after the PKPU Decision was rendered on 9 January 2017. The issue of whether service was properly effected was only known to PT Senja, the creditor who had made the PKPU application, but no evidence was forthcoming in that regard.

52 The available evidence, moreover, suggested that there had in fact been difficulties with effecting service of the applications on the appellants. The Receivers relied on what they contend is the appellants' agreement for service to be effected by registered mail. Article 7 of the deeds of personal guarantee signed by each of the appellants stated that any notice relating to legal process

was "deemed to have been conveyed well if sent via registered mail" to the appellants' stated address in Depok, Indonesia.

53 Leaving aside the appellants' objections that the personal guarantees were fraudulent and that any such agreement for a specific method of service was invalid, there was evidence that service by registered mail had not been successful. In general, service of process by registered mail even under our law would be regarded as valid so long as the summons is shown to have been properly posted to the recipient at the correct address for service (see, for instance, *Bhagwan Singh v Chand Singh* [1968–1970] SLR(R) 50 at [18]). In this case, however, the courier service records showed that delivery of the legal documents to Depok had failed, with the reason stated being "*alamat tidak lengkap*", or *incomplete* address. In our view, the explanation by the courier company that there was an "incomplete address" leaves room for doubt over whether the notices may be regarded as having been properly sent to the appellants' address in Depok, in accordance with Art 7.

54 Against this, counsel for the Receivers informed us that after being appointed as interim receivers and administrators by the District Court, the Receivers had conducted their own checks to ensure that the PKPU summons had been properly served. This was because at the appellants' first appearance at the creditors' meeting on 20 January 2017, the appellants had alerted the Receivers to their objections over their lack of notice of the PKPU hearing. Counsel accepted however that although her instructions were that the Receivers had performed their own checks to satisfy themselves that service was properly effected, they had not deposed to this on affidavit; nor was there any documentary evidence demonstrating the steps taken by the Receivers to verify that service had been effected properly by PT Senja. No weight, therefore,

could be placed on the Receivers' assertions that service by registered mail had succeeded.

55 In the alternative, the Receivers point to the fact that PT Senja had taken out an advertisement in *Rakyat Merdeka* on 27 December 2016 to notify the appellants of the proceedings, and that this was in accordance with Indonesian rules on service. The Receivers exhibited to their second affidavit an extract of what is allegedly Art 6 para 7 of a set of Indonesian civil procedural rules (*Reglemen Acara Perdata* (*Reglemen op de Rechtsvordering)* (S. 1847-52, as amended by S. 1849-63) (Indonesia)), which states:

> For those whose residences are unknown, in the area where they [*sic*] actually located.
>
> … For those in Indonesia who have no residence or place where they can be located, and their abroad [*sic*] is unclear, … then the summon shall be affixed in the main door of the court room which used by the judge who received the suit to carry out the trial, whereas its second copy will be delivered to the prosecutor in the court who will marks [*sic*] the word 'acknowledged by' in the original suit letter.
>
> *Furthermore, the summon letter shall be published in one of the newspaper circulated in the area where the trial is held, or if such newspaper is non-existent, it must be published in the newspaper circulated in the nearest area.*
>
> …
>
> [emphasis in original removed; emphasis added]

56 Any attempt to rely on Art 6 para 7 was undermined by the fact that this provision was the only extract of the relevant Indonesian law that was translated into English. The rest of the provisions, and even the title of the rules, were exhibited in the Indonesian language. The Receivers also did not produce any expert opinion on Indonesian law that might assist us on how Art 6 para 7 should be interpreted, and whether it was applicable in this situation. Moreover, it is apparent from the plain wording of Art 6 para 7 that this method of service is

not of general application, but is reserved for cases where the defendants in question have "no residence or place where they can be located, and their [location] abroad is unclear". This leaves room for doubt as to whether the rule would even apply to the appellants, who clearly have a registered address in Indonesia that was known to the creditors. As it is incumbent on the Receivers to prove that service was proper, we are not satisfied in all the circumstances that notice of the PKPU proceedings had been given to the appellants in accordance with Indonesian law.

57 It was also contended for the Receivers that the Indonesian court hearing the PKPU application had considered the issue of service and made a finding that the requisite procedure for summoning the appellants was satisfied. In oral submissions, counsel for the Receivers pointed us to a letter sent by the Chairman of the District Court on 10 August 2017 to the High Court of Jakarta, in which the District Court took the position that the summons for the PKPU application had been duly delivered to the same address used by the appellants in other proceedings before the court.

58 Even if this letter could be regarded as the determinative view of the Indonesian court on the propriety of service, with respect, as the recognition court, we are not bound by the views of the foreign court on any question of whether the requirements of natural justice had been met. The issue of whether a foreign judgment or order should be refused recognition or enforcement because of a breach of natural justice is a question for the recognition court alone to answer. In *Jet Holdings Inc and others v Patel* [1990] 1 QB 335 at 345, the English Court of Appeal stated, in *obiter*, that logically the foreign court's views would be "neither conclusive nor relevant as to the propriety of its own proceedings". In Staughton LJ's view, if the English court considered that the foreign court had not observed the rules of natural justice, it should not have

made any difference that the foreign court believed it had observed those same rules (at 345). We agree. As the Indonesian Bankruptcy Orders were to be recognised in Singapore, it is for the Singapore court to be satisfied on the evidence that the manner in which the orders had been obtained complied with the core principles of natural justice. This is especially true in the circumstances of this case, where the Indonesian court would not have had the advantage of hearing the appellants' arguments on the propriety of service precisely because of their absence at the PKPU hearing and because the appellants were evidently denied any opportunity to appeal against the Indonesian Bankruptcy Orders.

Whether it could be inferred that the appellants had actual knowledge of the PKPU proceedings

59 We turn to the more contentious factual issue that occupied much of our attention at the hearing of these appeals. Having accepted that they did not have the evidence on hand to prove that service of the PKPU summons had been properly carried out, the Receivers urged us to draw the inference on the facts that the appellants did have actual knowledge of the PKPU proceedings prior to the hearing on 9 January 2017.

60 The appellants' case, both here and below, was that they had only learnt of the PKPU proceedings against them after the PKPU Decision had been advertised in two major Indonesian newspapers. In the first affidavit filed by Mr Wijaya in OS 71 in the High Court, at para 6, it was deposed that:

> I first came to know of the PKPU Decision when Mr Tannos contacted me and mentioned that he had learnt from some friends that the PKPU Decision had been *advertised* in the Indonesian newspaper. … [emphasis added]

61 It was not in dispute that the advertisements announcing the PKPU Decision were published on 13 January 2017. However, as the Receivers

pointed out, the appellants had in fact signed powers of attorney ("POAs") appointing their respective legal counsel a couple of days *earlier* on 11 January 2017. The Receivers also sought to demonstrate that from 11 January 2017, the appellants had begun systematically dissipating moneys from their bank accounts in Indonesia by withdrawing more than S$1m in total. MLU had also been represented by legal counsel at the PKPU hearing, and Mr Tannos was the majority shareholder of MLU. The Receivers therefore invited us to infer, in these circumstances, that the appellants must have known of the PKPU proceedings beforehand, but had deliberately chosen not to appear so that they could continue to dissipate their assets with impunity.

62 On this point, we granted the appellants leave to file further affidavits from Mr Tannos and Mr Wijaya to explain the seeming discrepancy between Mr Wijaya's affidavit evidence and the date of signing of the POAs. We allowed this because we were mindful of the fact that because of the way the matter had developed on appeal, the inferences to be drawn from the facts on whether there had been service and actual notice would assume greater significance to the outcome of the case than they did in the proceedings below. In his latest affidavit, Mr Tannos clarified that he had come to know of the PKPU proceedings on 10 January 2017, when a friend based in Indonesia sent him a photograph of a print article in the *Kontan* newspaper reporting on the PKPU Decision against the appellants and MLU. Mr Tannos then sent the article to Mr Wijaya, who prepared draft POAs for each of the appellants and emailed them to Mr Tannos on 11 January 2017. The POAs were executed by the appellants on 11 January 2017 at the Indonesian embassy in Singapore, and the original copies were delivered by courier to Mr Wijaya who arranged for them to be signed by the appellants' respective Indonesian counsel. Mr Wijaya also clarified that the expression used in his first affidavit was an error, and that he

should have stated that the PKPU Decision had been "*reported*" in the Indonesian newspaper rather than "advertised" (see [60] above).

63 The Receivers dispute the position that is now taken by the appellants. The Receivers contend that the new version of events advanced by Mr Tannos and Mr Wiaya is inconsistent with the position they had always maintained in their affidavits and in written and oral arguments before the High Court in OS 71. Further, the evidence exhibited in Mr Tannos' and Mr Wijaya's new affidavits in support of their assertions was thin, and it was simply incredible that Mr Wijaya who was himself a lawyer would have been so careless as to confuse the words "reported" and "advertised" when describing how Mr Tannos came to know of the PKPU Decision. The Receivers accordingly sought to discredit the new version of events advanced by the appellants.

64 It is true that the evidence provided by Mr Tannos and Mr Wijaya in support of their assertions is unsatisfactory in some respects. The photograph of the *Kontan* print article, exhibited in Mr Tannos' new affidavit, is undated, and it is not possible to verify if it was indeed published on 10 January 2017. There is no electronic trail proving when Mr Tannos had received the news from his unnamed acquaintance, or when Mr Tannos had forwarded the photograph to Mr Wijaya. We also note, from the record of the proceedings below, that the appellants did make submissions to the effect that their knowledge of the PKPU Decision came from the two advertisements in *Bisnis Indonesia* and *Media Indonesia*, although they did not seem to recognise the point made by the Receivers at the oral hearing below that on this basis, the POAs would have been signed *before* the advertisements were published.

65 The weaknesses in the evidence, however, did not disprove the truth of Mr Tannos' latest evidence. The *Kontan* article, though undated, could only

have been published after the PKPU Decision was rendered. Moreover, we were not convinced that the appellants' position in the High Court was determinative of the fact that their clarifications in their latest affidavits were untruthful. In fairness to the appellants, the exact date on which Mr Tannos learnt of the PKPU Decision was not regarded as a significant issue in the High Court. It was only at the hearing of this appeal that the inferences to be drawn about when the appellants had actual knowledge of the proceedings became of central importance.

66 This, in our view, was the crux of the matter. Although it is natural to be sceptical of the appellants' new explanation of how they came to learn of the PKPU proceedings, the evidence was consistent with the broader position taken by the appellants that they had only learnt of the PKPU Decision *after* it was rendered. That broader position was maintained by the appellants all throughout the proceedings below, and on appeal as well. Conversely, it seemed to us that there was little and arguably no evidence at all suggesting that the appellants knew of the proceedings prior to 9 January 2017. First, the Receivers' submission on this point was built on their case theory that the appellants were evading service in order to dissipate moneys in advance of any PKPU orders that might be made against them. The evidence simply did not bear this out. The Receivers themselves conceded that the bank statements revealed that any withdrawal of moneys had taken place at the very earliest on 11 January 2017. This was simply inconsistent with the Receivers' case that the appellants knew of the proceedings before the hearing itself. We would also note that the bank statements relied on by the Receivers show that there were both substantial outflows *and inflows* of money into the appellants' bank accounts over the relevant period. It is simply not possible to conclude that there was a clear effort to dissipate assets from this evidence alone.

67 Second, there was no basis for the submission that the appellants would have known of the proceedings because of MLU's involvement. MLU's company records reflect that Mr Tannos has not been a director of MLU since 24 May 2013. We would be slow to infer from the fact of his majority shareholding alone that he was necessarily aware of the PKPU proceedings against him and the appellants.

68 In our view, it was also improbable that the appellants would have known of the proceedings and chosen to stay away. Counsel for the appellants submitted that the appellants' conduct in showing up at the subsequent PKPU proceedings and protesting the lack of service and also the validity of the underlying debt must be taken into account. There is much force in this. The appellants' main defence to the PKPU Decision, which they maintained all throughout the creditors' meetings, the bankruptcy hearing, and even in affidavits filed in these recognition proceedings, was that the personal guarantees were invalid and that there was no debt owed by the appellants personally to the creditors. Assuming that the appellants had learnt of the PKPU application against them prior to the hearing, it was simply illogical that they would not have appeared to contest the making of the PKPU orders against them. Indeed their conduct at the creditors' meetings and their subsequent efforts to mount an appeal and seek review suggested that they were perfectly committed to seeking to vindicate their rights before the Indonesian courts but were left with no avenue to do so. Coupled with this, the original POAs were incontrovertible proof that the appellants had been in Singapore on and around 11 January 2017. This increased the likelihood that they would not have had notice of the PKPU proceedings, whether from service by courier or from the advertisement in the *Rakyat Merdeka*. We also found it significant that after learning of the proceedings, instead of continuing to remain elusive and

complete whatever dissipation they were allegedly seeking to effect, they attended the PKPU proceedings, engaged counsel who also attended and acted for them in these proceedings, and mounted a defence, the essential features of which have, as we have noted, remained consistent throughout this long process.

69 It seems to us, rather, that the suggestion that the appellants knew of the proceedings beforehand and chose not to appear is an *ex post facto* argument run by the Receivers with the benefit of hindsight. The appellants could not possibly have anticipated then that staying away from the PKPU hearing and then having the order made against them would potentially provide a basis for them to resist the recognition of the Indonesian Bankruptcy Orders in these Singapore proceedings. In truth, there was no conceivable benefit to the appellants to have feigned ignorance of the pending bankruptcy applications against them in Indonesia for a short but critical period of a few days before the PKPU decision was made. This becomes a compelling consideration for concluding that they were not at the hearing because they did not know about it, particularly since there is no evidence to suggest that they were seeking to move their assets overseas to evade the judgment of the Indonesian court. As noted above, there was no evidence at all of any movement of funds before 11 January 2017, which was after the PKPU decision; even then, the sums withdrawn especially net of the deposits were, in the aggregate, quite modest.

70 In the circumstances, we do not think there is any basis to draw the inference that the appellants knew of the PKPU proceedings prior to the hearing on 9 January 2017. Despite some weaknesses in the appellants' explanation of just how they came to know of the proceedings through the *Kontan* article, on the balance of probabilities we are satisfied on the evidence that is before us and having regard to all the circumstances that the appellants were not served with the PKPU application in time; nor had they known of the proceedings until the

PKPU orders had been made and by then, it was too late to do anything to reverse them. Since the making of the PKPU orders was a precursor to the Indonesian Bankruptcy Orders, we are satisfied that the appellants were deprived of a fair opportunity to be heard by the Indonesian court on why the PKPU Decision, and the subsequent Indonesian Bankruptcy Orders, ought not to be made.

Conclusion

71 For the foregoing reasons, we allow the appeals. Unless the parties are able to come to an agreement, they are to furnish within 14 days of the date of this judgment, written submissions limited to 7 pages for each side, dealing with the appropriate costs orders they contend should be made here and below.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Judge of Appeal

Woo Bih Li J (dissenting):

72 For the reasons given in the majority decision, I agree that the respondents have not established that service of the relevant papers was effected on the appellants prior to the PKPU Decision on 9 January 2017.

73 The question is whether the appellants in fact had notice of the PKPU proceedings before 9 January 2017, whether through MLU, which had been served and had notice and did attend on 9 January 2017, or through some other source. If the appellants in fact had prior notice and chose not to attend on 9 January 2017, then there is, in my view, no breach of natural justice by their non-attendance on that date. Indeed, the appellants do not contend otherwise.

74 It is within the appellants' own personal knowledge as to when and how they first learnt about the PKPU proceedings, *ie*, whether before, on or after 9 January 2017. It would have been a simple matter for them to state such information clearly and consistently if they had nothing to hide. Unfortunately for them, the information they provided was untrue, leading me to infer that they in fact learnt about the PKPU proceedings before 9 January 2017 and chose not to attend on 9 January 2017. Otherwise there would have been no reason to provide untrue information. I elaborate below.

75 The information from the appellants was given in the main through their Indonesian lawyer Mr Wijaya. His first affidavit was executed on 21 February 2018 and filed on 22 February 2018 to support the appellants' application to set aside the Singapore order dated 11 January 2018 which recognised the Indonesian Bankruptcy Orders leading to the appointment of the respondents as receivers and administrators of the appellants.

76 Paragraph 6 of Mr Wijaya's first affidavit states:

> I first came to know of the PKPU Decision when Mr Tannos contacted me and mentioned that he had learnt from some friends that the PKPU Decision had been advertised in the Indonesian newspaper. …

77 Paragraph 7 of his first affidavit also states:

> After checking the newspaper advertisements, I noted that a meeting had been scheduled for creditors and debtors by the Receivers who had obtained the PKPU Decision. I attended the meeting on behalf of Madam Lina Rawung and the other Tannos Family members were represented by other lawyers. …

78 It was not disputed that as Mr Wijaya's first affidavit stood, para 6 was referring to the same newspaper advertisement(s) referred to in para 7 of his first affidavit. It was also not disputed that, as subsequently elaborated, the newspaper advertisements referred to in both these paragraphs were advertisements in two newspapers, *ie*, *Media Indonesia* and *Bisnis Indonesia* ("the Two Advertisements"), both published on 13 January 2017. Accordingly, as these two paragraphs stood, Mr Wijaya was saying that Mr Tannos had first learnt about the PKPU proceedings from these newspaper advertisements. It was also not disputed that the other appellants would also have learned likewise through Mr Tannos.

79 As it turned out, each of the appellants had executed a power of attorney on 11 January 2017 in favour of an Indonesian lawyer or lawyers to act in the Indonesian proceedings in relation to the PKPU Decision. This date was two days before the 13 January 2017 date of the Two Advertisements. Therefore, it could not be that the appellants had learnt of the PKPU proceedings only from 13 January 2017.

80 The respondents' second affidavit executed on 27 March 2018 and filed in the Singapore proceedings pointed out that the appellants would have been fully aware of the PKPU Decision "at least since 11 January 2017" in view of the powers of attorney. There was no affidavit for the appellants to respond to this allegation. However, in fairness, I should mention that the relevant paragraph of the respondent's second affidavit was made to accuse the appellants of deliberately acting in breach of the PKPU Decision by dissipating their assets after 9 January 2017. It was not made specifically to assert that the appellants knew of the PKPU proceedings at least by 11 January 2017 and that the allegation in para 6 of Mr Wijaya's first affidavit was untrue.

81 In any event, in written submissions before the court below, the appellants' lawyers referred to the Two Advertisements as the date when the appellants first learned of the PKPU proceedings.

82 Importantly, in the course of oral arguments before the court below, the respondents' lawyer did stress that the appellants could not have known about the PKPU proceedings only from 13 January 2017 since they had executed the powers of attorney on 11 January 2017. Yet the appellants' lawyer maintained that the knowledge was from the Two Advertisements but gave no explanation on the apparent contradiction.

83 Later in para 43 of the Appellants' Case filed for their appeals to the Court of Appeal, their position was repeated. Indeed, the appellants continued to draw a distinction between the wider circulation of the two newspapers containing the Two Advertisements and the smaller circulation of an "obscure" Jakarta newspaper *Rakyat Merdeka* where an advertisement of the PKPU proceedings was placed on 27 December 2016 before the PKPU Decision was made on 9 January 2017. Paragraph 53 of Mr Tannos' second affidavit executed on 20 April 2018, before the Appellants' Case was filed, had made the same distinction. While it could be argued that the purpose of the distinction was only to show the effectiveness of the Two Advertisements as compared with the earlier one of 27 December 2016, this comparison was meaningful only if the Two Advertisements was the first time that the appellants came to know of the PKPU proceedings.

84 It is true that the respondents did not highlight (in their Respondents' Case for the appeals) the discrepancy between the date of 13 January 2017, being the date of the Two Advertisements, and the date of 11 January 2017, being the date of the various powers of attorney, even though, as mentioned above, the discrepancy had been mentioned orally to the court below. In any event, at the hearing before the Court of Appeal, the court drew this discrepancy, and, in particular, para 6 of Mr Wijaya's first affidavit, to the attention of the appellants' Singapore lawyer. The appellants were given a chance to explain by filing affidavits.

85 The appellants purported to provide the explanation by an affidavit from Mr Tannos executed on 26 June 2020 and one from Mr Wijaya also executed on 26 June 2020.

86 According to the latest affidavit from Mr Tannos executed on 26 June 2020, he first came to know about the PKPU proceedings after a friend in Indonesia sent him, in the morning of 10 January 2017, an electronic photograph of a newspaper article published by an Indonesian newspaper, *Kontan*, which reported the PKPU Decision against the appellants. He immediately sent this electronic photograph to Mr Wijaya.

87 I now elaborate on Mr Wijaya's latest affidavit filed on 26 June 2020. He referred to para 6 of his first affidavit and said that on 10 January 2017, he had received from Mr Tannos an electronic photograph of a newspaper article published by *Kontan* which reported the PKPU Decision against the appellants. He exhibited a copy of that article and said that when he had mentioned, in para 6 of his first affidavit, that the PKPU Decision had been "advertised" in an Indonesian newspaper, he should have used the word "reported" instead. On the same day and in response to instructions from Mr Tannos, he had proceeded to prepare powers of attorney for each member of the Tannos family in question and sent them by email to Mr Tannos in the morning of 11 January 2017. After the powers of attorney were executed in Singapore, they were sent to him in Indonesia by courier. He then arranged for the lawyers, who were so appointed, to sign the respective powers of attorney. He did not come to Singapore then.

88 The copy of the *Kontan* article does not show the date of the newspaper. Even if that article was truly reported on 10 January 2017 in that newspaper, this does not necessarily mean that this was the genesis of knowledge of the appellants. The explanation in the latest affidavits of Mr Tannos and of Mr Wijaya raised even more questions. It is important to bear in mind that Mr Wijaya did not say in his latest affidavit that he had overlooked the *Kontan* article when he executed his first affidavit. Rather, his explanation was that

para 6 of his first affidavit was instead referring to the *Kontan* article (and not to the Two Advertisements) as the appellants' first source of information.

89 First, the latest affidavit of Mr Tannos did not exhibit the electronic trail by which he received the photograph of the *Kontan* article from his friend. Mr Wijaya's latest affidavit also did not exhibit the electronic trail by which he received the same from Mr Tannos.

90 Secondly, para 6 of Mr Wijaya's first affidavit had stated that Mr Tannos had "contacted" him and "mentioned" that he had learnt from friends that the PKPU Decision had been advertised in the Indonesian newspaper. This is quite different from his latest affidavit where he mentions that Mr Tannos in fact sent him an electronic photograph of the *Kontan* article.

91 Thirdly, there is a not insignificant difference between the word "advertise" and "report". Mr Wijaya would have been aware of the difference. Indeed he did not suggest otherwise. Yet he used the words "advertised" and "advertisements" in both paras 6 and 7 of his first affidavit. Mr Wijaya's latest affidavit did not suggest that para 7 of his first affidavit was also intending to refer to the *Kontan* article and not the Two Advertisements. Indeed, it is clear that para 7 was referring to the Two Advertisements. This is reinforced by the fact that para 7 states that, "After checking the newspaper advertisements, I noted that a meeting had been scheduled for creditors and debtors …". There is no scheduled date of meeting in the *Kontan* article. On the other hand, there is such a date in each of the Two Advertisements. Therefore, para 6 of his first affidavit was intending to and did refer to the Two Advertisements as well and not the *Kontan* article.

92 Fourthly, and most importantly, there was no mention of the *Kontan* article until the latest affidavits from Mr Tannos and from Mr Wijaya. Instead, the appellants had been referring all along only to the Two Advertisements as the genesis of the appellants' knowledge of the PKPU proceedings. There was no explanation as to why they had done so if indeed the genesis was the *Kontan* article instead.

93 It is clear that it was untrue that the Two Advertisements was the genesis of their knowledge. To explain the discrepancy between the date of the Two Advertisements and the date of the powers of attorney, the *Kontan* explanation was proffered. However, in my view, that explanation was also untrue for the reasons stated above. A second untrue statement was provided to cover up the first untrue one.

94 While there is some force in the observation that it did not make sense for the appellants to deliberately fail to turn up on 9 January 2017, the evidence of the two untruths cannot be ignored. The court does not have to be satisfied about the true motives of the appellants. The two untruths compel me to infer that they did know of the PKPU proceedings before 9 January 2017 but chose not to attend. Hence they could not provide a clear and consistent explanation as to when they first learnt of the PKPU proceedings. In the circumstances, there was no breach of natural justice and I would have dismissed the appeal.

95 In the light of the decision of the majority, it is unnecessary to address the question of non-disclosure by the respondents of various material facts as alleged by the appellants. However, I would mention that I found the respondents' attitude towards the duty to disclose material facts in an *ex parte* application quite disappointing.

96 As it turned out, there was at least one instance of non-disclosure of a material fact. In Suit 472/Pdt.Plw/2015/PN.Bks ("Suit 472/2015"), Mr Tannos and his wife, Ms Rawung, were two of the plaintiffs in the action. Their action sought a declaration that there were no guarantees from them to the original creditor, BAG, who was one of the defendants. The other appellants did not join as plaintiffs as apparently no claim had been made against them yet. There was a trial and witnesses. On or about 24 August 2016, a decision of the District Court of Bekasi, Indonesia, was granted in favour of Mr Tannos and his wife in which the court concluded that the personal guarantees in question of Mr Tannos and his wife were invalid. In July 2017, the defendants' appeal to the High Court of Bandung was dismissed.

97 On 28 December 2017, the respondents filed their initial application in Singapore for recognition of the Indonesian Bankruptcy Orders leading to their appointment as receivers and administrators of the appellants. The supporting affidavit for the respondents did not mention the Indonesian court decisions in favour of Mr Tannos and his wife in Suit 472/2015. As mentioned, the respondents' application was granted on 11 January 2018 (see [12] above).

98 When the appellants applied to set aside the Singapore recognition order, they made many allegations. One category pertained to the duty of the respondents to disclose material facts to the Singapore court as their application for recognition had been made *ex parte*. One of the matters that the respondents had allegedly failed to disclose was Suit 472/2015 and the favourable decisions in favour of Mr Tannos and his wife in respect of their personal guarantees.

99 In response, the Receivers said that the decision of the court in Bekasi had been annulled by the Supreme Court of Indonesia on 6 March 2018. However, this was two months after the initial supporting affidavit was filed on

or about 28 December 2017. At the time that affidavit was filed, the decision of the District Court of Bekasi, as well as the High Court of Bandung decision, still stood. The respondents did not offer any explanation as to why they omitted to disclose the earlier decisions in favour of Mr Tannos and his wife.

100 In oral submissions before us, the respondents' Singapore lawyer said that the respondents were relying on the Indonesian Bankruptcy Orders leading to the appointment of the respondents as receivers and administrators and not on the personal guarantees and hence there was no disclosure of Suit 472/2015 and the favourable court decisions which were not relevant.

101 I find this an unsatisfactory state of affairs. First, the explanation was given from the bar from the respondents' Singapore lawyer who should know better because it should have been given by way of an affidavit from at least one of the respondents.

102 Secondly, it was not a satisfactory explanation. The Indonesian Bankruptcy Orders were premised on the liability of the appellants under their respective personal guarantees. If some of them were not liable under the personal guarantees, it was incumbent on the respondents to disclose the court decisions in favour of Mr Tannos and his wife to the Singapore court and then explain why the respondents took the position that they were still entitled to obtain a Singapore recognition order notwithstanding these court decisions. It was then for the Singapore court to decide whether to grant the recognition order notwithstanding this disclosure. Whether or not the non-disclosure would have resulted in a setting aside of the Singapore recognition order is a separate matter.

Woo Bih Li
Judge

Philip Antony Jeyaretnam *SC* and Lau Wen Jin (Dentons Rodyk & Davidson LLP) for the appellants in CA/CA 69/2019 and CA/CA 70/2019;
Ho Pei Shien Melanie, Chang Man Phing Jenny, Lee Pei Hua Rachel and Poon Chun Wai (Pan Junwei) (WongPartnership LLP) for the respondents in CA/CA 69/2019 and CA/CA 70/2019.
