Beckkett Pte Ltd *v* Deutsche Bank AG and another
[2010] SGHC 284

Case Number : Suit No 326 of 2004 (Registrar's Appeal No 99 of 2010)

Decision Date : 24 September 2010

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Davinder Singh SC and Pradeep Singh (Drew & Napier LLC) for the plaintiff; Ang Cheng Hock SC, William Ong, Loong Tse Chuan and Kenneth Lim (Allen & Gledhill LLP) for the first defendant.

Parties : Beckkett Pte Ltd — Deutsche Bank AG and another

Civil Procedure

Conflict of Laws

24 September 2010 Judgment reserved.

Judith Prakash J:

Introduction

1 This registrar's appeal is another chapter in this epic piece of litigation which has occupied the courts in Singapore since 2004. The plaintiff, Beckkett Pte Ltd ("Beckkett"), wishes to be free of the Singapore proceedings in order to pursue remedies against the first defendant, Deutsche Bank AG (the "Bank"), in the courts in Indonesia. This might seem a rather odd course for Beckkett to take since it has been awarded judgment against the Bank by the Singapore courts but has yet to be equally successful in Indonesia. Yet when asked to elect between continuing the Singapore litigation (essentially by proceeding with the assessment of the damages payable by the Bank) and pursuing its Indonesian action, Beckkett chose the latter course.

2 The underlying application, Summons No 5313 of 2009, was filed by the Bank on 9 October 2009. By it, the Bank applied for the following orders:

(a) That Beckkett be ordered to withdraw forthwith, and be restrained from prosecuting or continuing to prosecute, the appeal which it had filed in Indonesia against the decision of the District Court of South Jakarta (the "District Court") in Suit No 649/Pdt.G/2008/PN.JKT.SEL (the "Indonesian action"); and

(b) That Beckkett be restrained from commencing or continuing any further or other proceedings of any nature in Indonesia or anywhere else in the world against the Bank, its agent and/or employees, in relation to the Bank's sale in Indonesia of the Pledged Shares (see [7] below) on 21 November 2001.

3 The application was heard before Assistant Registrar David Lee (the "AR") over several days. On 12 February 2010, the AR released a long and carefully considered judgment ([2010] SGHC 55) giving his reasons for the following findings (at [122] – [126]):

(a) That the legal proceedings in Singapore and Indonesia were duplicative.

(b) That in making the application, the Bank had come to the court with clean hands and was entitled to equitable relief.

(c) The parties were amenable to the jurisdiction of the Singapore courts and that Singapore is the natural forum of the litigation.

(d) The conduct of Beckkett in maintaining suits in both Indonesia and Singapore after the Singapore Court of Appeal rendered its judgment was vexatious and oppressive.

(e) The circumstances, however, were such that it would be unjust for an anti-suit injunction to be granted against Beckkett.

(f) It would not be tenable either to maintain the status quo by dismissing the Bank's application and therefore Beckkett had to be ordered to make an election between proceeding in Singapore for an assessment of damages and pursuing its claim through further appeals in Indonesia. This election would be final and irrevocable.

4 Beckkett did not appeal from this decision. Subsequently it elected to pursue the Indonesian action. The Bank, however, lodged an appeal and maintained before me that the AR's order giving Beckkett the option of an election should be set aside and, instead, the anti-suit injunction it had applied for should be granted.

Background

Course of the litigation in Singapore

5 The facts giving rise to the original law suit are a matter of public record. They are set out at length in the judgment of the court of first instance, *Beckkett Pte Ltd v Deutsche Bank AG and another* [2008] 2 SLR(R) 189 and that of the Court of Appeal, *Beckkett Pte Ltd v Deutsche Bank AG and another and another appeal* [2009] 3 SLR(R) 452. I will summarise them as briefly as possible (relying a great deal on the AR's account).

6 Beckkett is a Singapore company. It and its subsidiary, PT Swabara Mining and Energy ("SME"), owned shares in PT Asminco Bara Utama ("Asminco") which in turn owned shares in PT Adaro Indonesia ("Adaro") which owned a coal mine in Kalimantan. SME, Asminco and Adaro are Indonesian companies.

7 The Bank is incorporated in Germany and has a registered branch in Singapore. In 1997, the Bank extended a loan to Asminco. This loan was supported by a guarantee from Beckkett and pledges by Beckkett and Asminco of their respective shares in SME, Asminco and Adaro (collectively, the "Pledged Shares"). Asminco did not repay the loan and the Bank sold the Pledged Shares to an Indonesian company named PT Dianlia Setyamukti ("DSM"). The sale was completed on 15 February 2002.

8 In April 2004, Beckkett started this action against the Bank. DSM was joined as the second defendant in February 2005. Beckkett claimed the following reliefs:

(a) A declaration that the sale of the Pledged Shares was invalid, null and void and for an order to set it aside.

(b) A declaration that the equity of redemption over the Pledged Shares had thereby been restored to Beckkett, SME and Asminco.

(c) An order that the Bank and DSM return the Pledged Shares to Beckkett, SME and Asminco respectively.

(d) Alternatively, damages to be assessed.

The Bank defended the claim and lodged a counterclaim for some US$98m against Beckkett as guarantor of the loan to Asminco.

9 The trial of the action occupied some 50 days in the High Court before Kan Ting Chiu J ("the Judge"). Judgment was reserved and delivered on 21 September 2007. The Judge dismissed Beckkett's claim against DSM and the Bank's counterclaim against Beckkett. He found (at [152]) that Beckkett had made out a claim that the Bank had failed to discharge its duties as pledgee when it sold the Pledged Shares but had failed to show that the Bank had sold those shares at an undervalue. The Judge therefore awarded Beckkett nominal damages of $1,000. Both Beckkett and the Bank appealed against this decision.

10 The appeals were heard on 23 April 2008 and judgment was reserved. On 27 April 2009, the Court of Appeal delivered judgment and allowed the Bank's appeal in full and Beckkett's appeal in part. The relevant findings of the Court of Appeal at [143] of its judgment are that:

(a) The Bank, in exercising its power of sale, did not take proper steps to sell the Pledged Shares at the best price and was therefore in breach of its duty as pledgee and Beckkett had proved that some of the Pledged Shares had been sold at an undervalue.

(b) It was not possible to determine whether the sale of the SME Shares had been at an undervalue until the values of other shares had been determined.

(c) Beckkett was entitled to have its loss, if any, determined at an inquiry for damages and it was further entitled, as guarantor of the loan, to prove any undervalue with respect to the Pledged Shares and to set the same off against the Bank's counterclaim.

(d) Having regard to the subsequent developments relating to some of the Pledged Shares and the conduct of Beckkett, it would be wholly inequitable for the court to set aside the sale of the Pledged Shares.

11 The Court of Appeal made orders to the following effect:

(a) It dismissed Beckkett's appeal against the Judge's decision to dismiss its claims to set aside the sale of the Pledged Shares against the Bank and/or DSM.

(b) It allowed Beckkett's appeal against the decision of the Judge dismissing Beckkett's claim for damages against the Bank and ordered that such damages be assessed before the Registrar.

(c) It ordered that judgment on the Bank's counterclaim against Beckkett be stayed pending the completion of the assessment of damages.

Course of litigation in Indonesia

12 On 2 May 2008, shortly after it had presented its appeal to the Court of Appeal, Beckkett filed the Indonesian action. Essentially its claim was that the sale of the SME shares by the Bank was unlawful under Indonesian law because:

(a) The sale of the SME shares was based on *penetapans* issued by the District Court pursuant to an *ex parte* application by the Bank.

(b) The *penetapans* were successfully challenged by Beckkett and subsequently set aside and revoked on 9 March 2005.

(c) Therefore, the sale of the SME shares was contrary to Indonesian law, being a violation of Articles 1155 and 1156 of the Indonesian Commercial Code.

It should be noted that in his judgment at first instance, the Judge had found (at [125] to [127] of his judgment) that the sale of the Pledged Shares was carried out after the *penetapans* were obtained from the District Court but that the *penetapans* had been set aside by the Jakarta High Court and had not been reinstated. He further held that under Indonesian law, the position was that there were no valid approvals for the sale and that the sale was not carried out by lawful means. The issues of the legality of the sale and the status of the *penetapans* were integral parts of the case presented by Beckkett before Kan J.

13 The reliefs claimed by Beckkett in the Indonesian action concerned the return of the SME shares and a declaration that it was the owner of these shares that it had pledged to the Bank. Beckkett also wanted declarations that the sale of the SME shares effected by the Bank was illegal and legally defective and that two documents, the Deed of Sale and Purchase and the Deed of Minutes, were null and void and any other documents based on the same were similarly null and void.

14 The Bank responded to the Indonesian action on 30 October 2008 by filing an application known as an "Absolute Competency Exception" in the District Court. Basically, it sought a stay of the Indonesian proceedings on the ground that Singapore was the proper forum under the relevant loan documentation and that Beckkett had acted in bad faith by filing its claim in Indonesia. This application was rejected on 8 January 2009. The Bank did not appeal.

15 The Indonesian action then proceeded on its merits. On or about 8 April 2009, the District Court dismissed the suit. On 13 April 2009, Beckkett filed an appeal against that decision (the "First Indonesian Appeal"). This was some two weeks prior to the issue of judgment by the Court of Appeal.

Subsequent developments in Singapore and Indonesia

16 On 25 May 2009, Beckkett filed a summons for directions for the assessment of damages in the Singapore High Court. Some three months later, on 24 August 2009, the Bank's solicitors in Singapore wrote to Beckkett's solicitors to ask Beckkett to withdraw the First Indonesian Appeal. The substantive response, only given on 17 September 2009, was that Beckkett did not intend to withdraw the First Indonesian Appeal.

17 On 28 September 2009, the Bank's Indonesian counsel received a notice from the High Court of Jakarta (the "JHC") informing him that the JHC had received the documents in the First Indonesian Appeal from the District Court. The parties accepted that as the appeal was against the whole of the District Court's judgment, the JHC was able to decide the First Indonesian Appeal on the basis only of the court record and the documents tendered by the parties before the District Court.

18 The Bank filed its application for an anti-suit injunction in Singapore on 9 October 2009, having informed the court two days earlier that it intended to do so. The hearing of the application took place on 18 November 2009 and the parties subsequently filed several sets of supplementary written submissions. The final set of submissions was put in by Beckkett on 4 December 2009.

19 The JHC released its decision on the First Indonesian Appeal on 12 January 2010. The appeal was unsuccessful. On or about 26 January 2010, however, Beckkett lodged an appeal (the "Second Indonesian Appeal") against this decision to the Supreme Court of Indonesia. As at the date of writing, no decision has been rendered on the Second Indonesian Appeal.

20 For completeness, I reiterate what happened thereafter. On 12 February 2010, the AR ordered Beckkett to elect between the legal proceedings in Singapore and Indonesia. On 26 February 2010, Beckkett elected to pursue its claims and remedies in Indonesia. It did not file an appeal against the AR's decision. On 4 March 2010, the Bank lodged the present appeal.

Issues

21 Since Beckkett has not appealed against the decision of the AR, it is in no position to challenge any of the holdings that he made. Thus, any issue that the AR decided in favour of the Bank and against Beckkett cannot be re-litigated in this appeal. The main issue to be decided on the appeal, therefore, is whether in all the circumstances, including his findings, it was the right course for the AR to put Beckkett to an election instead of issuing an anti-suit injunction against Beckkett. There are some sub-issues to be considered in this connection but before I deal with the issues on appeal, it may be useful to revisit the AR's findings.

The decision below

22 The issues that arose before the AR were the following:

(a) Whether there was duplication in the Singapore and Indonesian proceedings.

(b) Whether the Bank went before the court "with clean hands".

(c) Whether the requirements for an anti-suit injunction were met.

(d) Whether the court ought to put Beckkett to an election.

I am not going to repeat the arguments that the parties made before the AR in relation to these issues but I will set out his findings and reasons, indicating where these need to be revisited in the context of the appeal.

23 On the first issue, that of duplication, the AR rejected Beckkett's submission that there were different causes of action in Singapore and in Indonesia and therefore the two sets of proceedings were distinct. The AR considered that the fundamental point was that the reliefs sought in both jurisdictions *vis-à-vis* the return of the Pledged Shares were essentially the same and that both sets of proceedings had identical features including the reliance on alleged failure to comply with certain articles of the Indonesian Civil Code. He found that the situation went beyond multiplicity of proceedings and was a duplication of proceedings because in both jurisdictions the reliefs sought were the same, the parties were the same, the underlying bases for the causes of action were the same and the underlying transaction was the same.

24 It should be noted that the AR's opinion was that "[w]hile Beckkett may not be faulted in commencing the action in Indonesia while it was waiting for the Singapore Court of Appeal's judgment ... once the Singapore Court of Appeal's judgment was rendered, or once a reasonable period of time thereafter had lapsed ... Beckkett's justification for maintaining the Indonesian action out of prudence evaporated". My view on this is different but I will explain later.

25 The AR rejected Beckkett's submission that the Bank had failed to come to the court with clean hands. In this connection he held:

(a) The argument, made with reference to a certain submission in the Bank's Appellant's Case for the appeals before the Singapore Court of Appeal, that the Bank had been blowing hot and cold and had challenged Beckkett to bring a suit in Indonesia, was misplaced. The Bank's submission had to be read in its proper context and since the Bank had defended the claim in Singapore all the way to the Court of Appeal, it was a leap of logic to suggest that some few sentences in its submission were in effect an open challenge to Beckkett to bring a suit in Indonesia.

(b) The argument that the Bank's failure to challenge the District Court's finding on jurisdiction by failing to appeal against the rejection of its Absolute Competency Exception application should be held against it when it sought the equitable relief of an anti-suit injunction in Singapore initially appeared an attractive one to the AR. He rejected it because he considered that a reasonable litigant in the Bank's position had two options when its application was rejected: either to appeal on jurisdiction or to defend the main action. The Bank in deciding not to appeal may have been prompted by an interest in seeing a speedy resolution of the Indonesian action.

(c) The argument that the Bank had waived its right to an election was rejected. The AR considered that the authorities cited by Beckkett were of doubtful value for the proposition that the Bank's conduct amounted to a waiver and, in any case, his view was that the Bank's conduct in defending the action on the merits in Indonesia was reasonable.

(d) Looking at the conduct of the parties as a whole, while there may be have been some delay on the part of the Bank in bringing the application for an anti-suit injunction, that delay did not imbue the application with the lack of *bona fides*. It was not such a significant delay as to enable the court to reasonably impute a level of mischief or bad faith to the Bank.

26 Next, the AR dealt with the legal requirements for an anti-suit injunction. He based his analysis on the framework set out in *John Reginald Stott Kirkham and others v Trane US Inc and others* [2009] 4 SLR(R) 428 ("*Kirkham*") in relation to the principles to be applied when considering whether to grant an anti-suit injunction. Using this framework, he found:

(a) That the parties were amenable to the Singapore courts' jurisdiction since they had been actively engaged in this litigation before the courts for no less than five years.

(b) That at that point in time (*ie* the time at which the anti-suit injunction was being considered), Singapore rather than Indonesia was the natural forum for the dispute because:

(i) The parties had more than five years of litigation in Singapore as opposed to less than one year of litigation in Indonesia.

(ii) The parties were continuing to litigate in Singapore.

(c) The Bank had established a *prima facie* case that Beckkett's conduct had been vexatious and oppressive. When Beckkett first commenced the Indonesian action, since the Court of Appeal had not delivered judgment, Beckkett's conduct was not vexatious or oppressive because it did not know what the outcome of the Singapore action would be. However, the situation changed when the Singapore Court of Appeal judgment was rendered because it dismissed Beckkett's claim for a return of the Pledged Shares and ordered a remedy of damages only. It then became vexatious and oppressive on the part of Beckkett to maintain the Indonesian action concurrently in the hope of getting the Pledged Shares back. In this connection, the following passage from the AR's judgment is of special interest:

> 108 ... I am of the view that part of the Court's protection of its jurisdiction, processes and judgments, as well as its preservation of the principle of finality requires a finding that Beckkett's persistence in both jurisdictions *after* the Singapore Court of Appeal's judgment was rendered, is vexatious and oppressive. Quite simply, the Singapore Court of Appeal had dismissed Beckkett's claim for a return of the Pledged Shares. To condone Beckkett's persistence in the Indonesian proceedings without any sanction runs the risk that Beckkett may end up with a remedy that is inconsistent with the finding of the Singapore Court of Appeal. That would erode the sanctity to be found in the principle of finality, and may even send a wrong signal to future litigants that a Singapore Court of Appeal judgment is not worth much if one has sufficiently deep pockets to pursue another remedy in a foreign (and probably more favourable) jurisdiction after exhausting all avenues in Singapore and failing here. (emphasis in original)

(d) Nevertheless, Beckkett had discharged the burden on it to demonstrate that it would be unjust to Beckkett to grant an anti-suit injunction. Beckkett had propounded a correct principle of law in arguing that it was entitled to elect the remedy it wanted for the Bank's breach only at the point of enforcement. To order an injunction now would be tantamount to staying the Indonesian proceedings and this may in turn rob Beckkett of the fruits of its labour in the Indonesian proceedings. Since Beckkett could not be faulted for commencing the Indonesian proceedings but could only be faulted for maintaining them after the decision of the Singapore Court of Appeal, it would be unjust to grant an anti-suit injunction and rob Beckkett of the right of a successful appeal in Indonesia.

27 On the issue of whether Beckkett ought to be put to an election, the AR considered that to let things remain at status quo would also lead to an unjust result. Beckkett's submission that undertakings would be sufficient was rejected since the AR considered them inadequate to address the potential prejudice, both to the parties as well as to the sanctity of the principle of finality in the Singapore courts. The court's discretion to enjoin a party from proceeding in another jurisdiction in order to protect the jurisdiction of the local court extended to an order for an election. In coming to his final conclusion, the AR stated:

> 121 ... only an order for a final and irrevocable election within a reasonable time would allow Beckkett to pursue its remedies without the added costs to the Bank or to the Courts of both jurisdictions as a result of Beckkett's vexatious and oppressive conduct in persisting with its actions in both Indonesia and Singapore. While Beckkett may have demonstrated that it would be unjust for an anti-suit injunction to be granted, it cannot evade from the reality that an order for an election is the just and equitable order to move the litigation between the parties forward.

Issues on appeal

28 The basis for this judgment is the AR's finding that the Singapore and Indonesian proceedings

are concurrent and duplicate proceedings. I have no reservations about the correctness of that finding.

29 The authorities show that if duplicate proceedings are conducted concurrently in two different courts or two different jurisdictions by a plaintiff, that plaintiff bears the burden of justifying the continuance of the concurrent proceedings. See *Australian Commercial Research and Development Ltd v ANZ McCaughan Merchant Bank Ltd* [1989] 3 All ER 65 at 70 and *Yusen Air & Sea Service (S) Pte Ltd v KLM Royal Dutch Airlines* [1999] 2 SLR(R) 955 ("*Yusen*") at [27]. In this case, the AR has found that Beckkett was not able to justify the continuance of both the Singapore and the Indonesian proceedings. That finding stands and I have no quarrel with it.

30 In *Multi-Code Electronics Industries (M) Bhd and another v Toh Chun Toh Gordon and others* [2009] 1 SLR(R) 1000, Chan Seng Onn J endorsed the legal principles contained in para 933 of *Halsbury's Laws of England* vol 37 (Butterworths LexisNexis, 4th Ed Reissue, 2001) as to the options available to the court when there are concurrent and vexatious proceedings in two different jurisdictions. These are:

(a) to require the plaintiff to elect which set of proceedings he wishes to continue; or

(b) to stay the local proceedings; or

(c) to grant an anti-suit injunction restraining the plaintiff from pursuing the foreign proceedings.

31 In this context it is also pertinent to bear in mind the following observations of the Court of Appeal in *Yusen*:

> 27 In our judgment, when a plaintiff sues the same defendant in two or more different jurisdictions over the same subject matter, the defendant can take up an application to compel the plaintiff to make an election as to which set of proceedings he wishes to pursue. For the purposes of an election, the considerations of *forum conveniens* do not come into play. However, the defendant would need to demonstrate a duplicity of actions in the different jurisdictions. Once this is established, the burden of proof then shifts to the plaintiff to justify the continuance of the concurrent proceedings by showing 'very unusual circumstances'. If the plaintiff fails to demonstrate such unusual circumstances, he would have to make an election.
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> ...
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> 34 It is also our considered view that the plaintiff's election is not the only way to resolve this issue. Apart from compelling the plaintiff to elect, it remains open to the defendant to take up an application for a stay of local proceedings or a restraint of foreign proceedings if the defendant wishes to have the action tried in one of the jurisdictions where the plaintiff has commenced an action.

32 The issue that falls squarely to be decided by me is whether in all the circumstances of this case it served the ends of justice to allow Beckkett to make an election rather than to compel Beckkett to drop the Indonesian action and continue only with the present action by proceeding with the assessment of damages. To answer this question, I will first consider the extent of Beckkett's vexatious conduct.

33 It would be recalled that the AR's finding was that Beckkett's maintenance of the Indonesian

action only became vexatious when it failed to discontinue the same after the Singapore Court of Appeal delivered its judgment. His three reasons (at [106] to [110] of his judgment) for that finding were that:

(a) The prejudice to both parties in pursuing concurrent proceedings was not capable of compensation by any order of costs.

(b) The concurrent proceedings threatened the court's jurisdiction, processes and judgments, as well as the principle of finality.

(c) If both sets of proceedings were allowed to continue abreast, the inevitable risk was that one set of judicial resources would be wasted.

34 The AR placed a great deal of emphasis on the threat to the court's jurisdiction, processes and judgments, as can be seen from his repetition of this point in more than one place in his decision. That that emphasis was well placed is indicated by *Dicey, Morris and Collins on The Conflict of Laws* (Sir Lawrence Collins gen ed) (Sweet & Maxwell, 14th Ed, 2006) ("*Dicey & Morris*") at [12-069] to [12-074]. In its discussion at [12-070], *Dicey & Morris* states that the English court will restrain proceedings which interfere with its due process or with its jurisdiction to decide cases pending before it and, at [12-073], also proceedings which interfere with or undermine the control of the English court of its own process. The point was further emphasised by *Masri v Consolidated Contractors (UK) Ltd & Ors (No 3)* ("*Masri*"), an authority also relied upon by the AR. Several passages from the judgment of Lawrence Collins LJ bear citing:

82 I do not accept the judgment debtors' argument that there is a principle ... that the English court will not restrain relitigation abroad of a claim which has already been the subject of an English judgment adverse to the person seeking relitigate abroad. It has been established since at least 1837 that the fact that the respondent is seeking to relitigate in a foreign jurisdiction matters which are already res judicata between himself and the applicant by reason of an English judgment can be sufficient ground for the grant of an anti-suit injunction.

Protection of the jurisdiction

83 In *Bank of Tokyo Ltd v Karoon (Note)* [1987] AC 45, 63, Robert Goff LJ referred to the public interest in the finality of litigation, and said that there were authorities in England and the United States in which courts had granted injunctions restraining persons properly amenable to their jurisdiction from relitigating matters which had already been the subject of a judgment of the court of the forum ...

...

85 ... I doubt whether it is profitable to do more than note that the protection of the jurisdiction of the English court and its judgments by injunction has a long lineage. In my judgment there is no reason to doubt that in appropriate cases the English court may enjoin a foreign defendant against whom there is an English judgment (in proceedings to which the foreign defendant has submitted) from seeking to relitigate the same issues abroad.

...

100 ... It is consistent with principle for an English court to restrain relitigation abroad of a claim which has already been subject of an English judgment. There is long-established authority

that protection of the jurisdiction of the English court, its process and its judgments by injunction is a legitimate ground for the grant of an anti-suit injunction.

35 The above passages were cited by the AR as well. Whilst he realised that they highlighted the importance of finality in legal proceedings and the need for the court to protect its own jurisdiction, processes and judgments, he did not perhaps fully appreciate the impact that these statements of the law should have had on his assessment of the vexatious conduct of Beckkett. The situation here was that Beckkett had commenced a claim in Singapore against the Bank and had taken the matter to a long trial, after a number of interlocutory applications. It had succeeded, to an extent, against the Bank at first instance but not sufficiently in that it was given only a nominal remedy. It had therefore appealed and had followed the appeal through fully until all that was left to do was to await the decision of the Court of Appeal. It was at that stage that Beckkett started the Indonesian action and, in my judgment, commenced its course of vexatious conduct. Beckkett was uncertain of the relief that it would get from the Court of Appeal and therefore sought to secure its position by seeking the same relief from the Indonesian courts. If Beckkett indeed got the relief it prayed for in Indonesia before the Court of Appeal's judgment was given, that must have threatened the jurisdiction, processes and judgments of the Singapore courts and undermined the principle of finality. There would have been an immense waste of judicial resources in Singapore. Quite apart from the length of the High Court and Court of Appeal decisions and the time spent by the respective courts considering and weighing the evidence, the submissions and the law, there were five years of extremely contentious litigation involving the courts at all levels.

36 When Beckkett started the Indonesian action, the Bank had two options: to contest the jurisdiction of the Indonesian court and to apply for an anti-suit injunction. These were not mutually exclusive options. The Bank could have done both at the same time. Instead, it chose the first option and when this failed, it engaged Beckkett on the merits. It does not seem to have occurred to the Bank at any time prior to the result of the First Indonesian Appeal that it could have applied for an anti-suit injunction in Singapore. While it may seem immaterial at this stage, my view of the situation is that the Bank had a very strong chance of succeeding in such an application had it been brought shortly after the Indonesian action was started. What is material now is whether the Bank's failure to apply earlier and its decision to participate in the Indonesian action should prejudice the strength of its case now.

37 The AR considered this issue as being one of "clean hands". He resolved it in favour of the Bank. Primarily, the AR considered that the Bank had acted reasonably in contesting the Indonesian action on the merits. Whilst Beckkett, having not appealed the AR's decision, cannot now challenge that judgment in relation to the determination that its conduct was vexatious, it can still rely on the Bank's conduct to support the remedy of election and to contend that such participation bars the Bank from asking for an anti-suit injunction.

38 In relation to the doctrine of clean hands, ICF Spry, *The Principles of Equitable Remedies* (Sweet & Maxwell. 7th Ed, 2007) states at p 409:

> It is not uncommon to find broad statements that a plaintiff is not granted an injunction if he does not have clean hands. Properly understood these statements are correct; but they should be applied cautiously, for it is by no means true that a plaintiff who has acted unconscionably is refused all access to the court or that he is considered to be beyond protection for all purposes. ... It has been said that the principle on which the court acts is that protection is denied the plaintiff "where the right relied on, and which the court of equity is asked to protect or assist, is itself to some extent brought into existence or induced by some illegal or unconscionable conduct of the plaintiff", so that protection for what he claims involves protection for his own wrong: "No

court of equity will aid a man to derive advantage from his own wrong, and this is really the meaning of the maxim."

Also interesting is the footnote to the last sentence, which reads:

Meyers v Casey (1913) 17 CLR 90 at p 124. Isaacs J was not, however, considering cases where the court had been deceived or *its procedure otherwise abused. In these cases also relief is said to be refused because the plaintiff does not have clean hands*. So in *Armstrong v Sheppard & Short Ltd* [1959] 2 QB 384 at p 397 ground for refusing an injunction was found in an attempt to mislead the court. See also *Carmen v Fox Film Corporation* (1920) 269 F 928 (US). (emphasis added)

39 The Bank explained that it had participated in the Indonesian action because at the time the District Court rejected its challenge to the jurisdiction, the Court of Appeal had not given its decision whereas the Judge had found that the sale had been carried out by unlawful means under Indonesian law. Having decided not to appeal in Indonesia, the Bank had to contest the Indonesian action to prevent default judgment from being entered against it. While I can understand the Bank taking protective action to avoid a default judgment, what I do not understand and what the Bank did not explain, was why it did not at the same time apply in Singapore for an anti-suit injunction against Beckkett. To participate substantively in the Indonesian action which threatened to undermine the process of the Singapore courts without making any attempt in Singapore to stop Beckkett's prosecution of such proceedings was, to my mind, wrongful conduct on the part of the Bank and, in a normal case, would prejudice its application for an anti-suit injunction.

40 In this case, however, the fact that the Bank participated in the foreign proceedings cannot *ipso facto* mean that its application for an anti-suit injunction must be rejected. This is because a denial of the anti-suit injunction would also have the effect of perpetuating the wrong instigated by Beckkett *ie* the vexatious and oppressive Indonesian action that was started after Beckkett had had a full trial of its claim in Singapore and presented its appeal. In my view, while it is always vexatious for a plaintiff to start concurrent proceedings in different jurisdictions against the same defendant for the same reliefs arising out of the same cause of action, the present case is particularly egregious because of the stage that the proceedings in Singapore had reached when the Indonesian action was started.

41 The court in deciding whether to grant an anti-suit injunction must always have regard to what the ends of justice require. This means that the court must consider not only the injustice to the defendant if the plaintiff is allowed to pursue the foreign proceedings but also the injustice to the plaintiff if he is not allowed to do so. See *Société Nationale Industrielle Aerospatiale Appellants v Lee Kui JAK and Another Respondents* [1987] AC 871 ("*Lee Kui Jak*") at 896. The AR was concerned that by granting the anti-suit injunction he would be robbing Beckkett of the "fruits of the labour" (at [112] of his judgment) it had put into the Indonesian action. In other words, the advantage which an anti-suit injunction would have deprived Beckkett of was the stage and development of those proceedings which had been reached by the effort that Beckkett had made. With due respect to the AR, however, I do not think that the stage of the Indonesian action is a legitimate advantage of which Beckkett cannot be deprived.

42 Beckkett had no business starting the Indonesian action in the first place. This is precisely the sort of action that the principles in *Masri* prohibit. Beckkett had submitted its claim to the courts of Singapore and had laboured long and hard (and caused the Bank to do so too) to bring it to trial and then before the appellate court. It did not know how the appellate court would decide but that was no excuse for it to attempt to bypass a possibly unfavourable decision of the Singapore courts by

taking action in Indonesia. In my view, it was an abuse of the process of the Singapore courts for Beckkett to take steps in Indonesia and no legitimate advantage could be obtained from the same notwithstanding that the Bank participated in the action. At present, although the proceedings in Indonesia have also gone to the appeal stage, they are not as advanced as in Singapore where the Court of Appeal has already given judgment and only the damages need to be assessed.

43 By allowing Beckkett to elect to proceed in Indonesia, the AR was giving Beckkett exactly what it wanted when it started the Indonesian action *ie* a second attempt to recover the Pledged Shares. Beckkett has by its actions undermined the processes of the Singapore courts and the principle of finality of litigation. In my view, it would not be right for this court to allow its judgments to be ignored by litigants who have sought the aid of this court by starting their litigation here. The ends of justice, not only for Beckkett and the Bank, but also for other litigants who litigate in good faith in the Singapore courts, can only be served by the grant of an anti-suit injunction in circumstances such as the present.

44 The last matter to be considered is whether considerations of comity should inhibit the grant of an anti-suit injunction. It has been held in *Royal Bank of Canada v Cooperatieve Centrale Raiffeisen-Boerenleenbank BA* [2004] 2 All ER (Comm) 847 at [50] that:

> considerations of comity grow in importance the longer the foreign suit continues and the more the parties and the judge have engaged in its conduct and management.

45 Given the advanced stage of the Indonesian action, considerations of comity take on importance. However, those considerations must be weighed against the public policy of the Singapore legal system. In the case of *Q & M Enterprises Sdn Bhd v Poh Kiat* [2005] 4 SLR(R) 494, Andrew Phang JC stated at [25]:

> The importance of international comity cannot be underestimated. The domestic courts of each country must constantly remind themselves of this point ... Nevertheless, it ought to be emphasised that the signal importance of the domestic legal system cannot be gainsaid either. Extreme positions on either side of the legal spectrum ought to be avoided. For example, international comity ought *not* to be accorded if to do so would offend the public policy of the domestic legal system (here, of Singapore). However, that having been said, legal parochialism must also be eschewed. (emphasis in original)

46 In the present case, refusing the anti-suit injunction because of international comity would offend the public policy of the Singapore legal system. It cannot be acceptable to our public policy to permit a litigant to begin a duplicate law suit in a foreign jurisdiction just after being heard by the Court of Appeal. I would go so far as to say that it cannot be acceptable to permit the start of such a duplicate law suit after the completion of a full trial in Singapore, even though judgment may have been reserved and not yet delivered.

Conclusion

47 For the reasons given above, I allow the Bank's appeal and make the following orders:

> (a) The Plaintiff shall withdraw forthwith, and is hereby restrained from prosecuting or continuing to prosecute, the appeal which it has filed in Indonesia against the decision of the Jakarta High Court in Matter No 475/PDT/2009/PT.DKI Jo and/or against the decision of the District Court of South Jakarta in Suit No 649/PDT.G/2008/PN.JKT.SEL.

(b) The Plaintiff shall be and is hereby restrained from commencing or continuing any further or other proceedings of any nature in Indonesia or anywhere in the world (apart from Singapore) against the First Defendant, its agents and/or employees, in relation to the First Defendant's sale in Indonesia of the Pledged Shares on 21 November 2001.

(c) The order of the Assistant Registrar on 12 February 2010 is set aside.

(d) The costs of this appeal and of the application below shall be taxed (if not agreed) and paid by the Plaintiff to the First Defendant.