IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 228

Suit No 580 of 2013
(Summonses Nos 2397 of 2018 and 2887 of 2018)

Between

TMT Asia Limited

… Plaintiff

And

1. BHP Billiton Marketing AG (Singapore Branch)
2. BHP Billiton Marketing Asia Pte Ltd

… Defendants

GROUNDS OF DECISION

[Civil Procedure] — [Striking out] — [Abuse of process]

TABLE OF CONTENTS

TMT Asia Ltd
v
BHP Billiton Marketing AG (Singapore Branch) and another

[2018] SGHC 228

High Court — Suit No 580 of 2013 (Summonses Nos 2397 of 2018 and 2887 of 2018)
Woo Bih Li J
3, 29 August; 26 September 2018

19 October 2018

Woo Bih Li J:

Introduction

1 On 29 August 2018, I struck out the claim of the plaintiff, TMT Asia Limited ("TMTA") against the first defendant, BHP Billiton Marketing AG (Singapore Branch) ("D1") and the second defendant, BHP Billiton Marketing Asia Pte Ltd ("D2") on the ground that it was an abuse of the process of the court for TMTA to continue its claim against the defendants in the light of an open offer made by the defendants dated 25 January 2016. I understand that TMTA is appealing against my decision.

Background

2 TMTA is a company incorporated in the Marshall Islands. It claimed to be a diversified shipping company active in various parts of the shipping industry.

3 The BHP Billiton Group ("BHPB") comprises a large group of companies engaged in the discovery, acquisition, development and marketing of natural resources including iron ore. It operates as a single economic enterprise. BHPB is the world's largest diversified resources company, and is one of the world's leading iron ore producers.

4 D1 is the Singapore branch of BHP Billiton Marketing AG, a company incorporated in Switzerland which is wholly owned by BHPB. At the material time, D1 was engaged in the marketing and sale of commodities, and in the purchase of freight in support of such activities.

5 D2 is a company incorporated in Singapore and is wholly owned by another company incorporated in the Netherlands which, the defendants say, is a subsidiary of BHPB. D2 is engaged in marketing support, management and administrative services, technical, scientific and operational advice.

6 TMTA alleged that between late September and November 2012, it had purchased various forward freight agreements ("FFAs") based on the Baltic Capesize Index Time Charter Basket Average 4 Routes which were cleared on the Singapore Stock Exchange.[1]

---

[1] Para 19 of the Statement of Claim (Amendment No 2).

7 In summary, TMTA alleged that by virtue of BHPB's dominance in the Capesize market, the defendants were capable of and did manipulate freight prices for Capesize vessels to manipulate iron ore prices. Consequently, TMTA suffered losses amounting to US$70,000 which was subsequently increased to US$81,500 ("the Principal Sum")

8 TMTA also alleged a second cause of action based on the defendants' fraudulent misrepresentation of iron ore prices and/or freight prices on certain Capesize routes. The misrepresentation was alleged to have arisen from the defendants' manipulative conduct.

9 The defendants denied the claim and the loss.

10 The action was initially commenced on 22 February 2013 in the District Court. The defendants then filed Originating Summons No 366 of 2013 on 25 April 2013 to transfer the action to the High Court. The reasons given by defendants for the application to transfer were that it was a case of unusual complexity and/or it raised issues of public interest and/or important questions of law which ought to be decided by the High Court.[2] The issues of public interest and/or important questions of law involved an allegation by TMTA that FFAs were futures contracts dealt on a futures market in Singapore, and that the defendants' manipulative conduct was a breach of s 208(*a*) of the Securities and Futures Act (Cap 289, 2006 Rev Ed) ("the Act"). TMTA was not agreeable to the transfer. The claim then was for US$70,000 (later revised to US$81,500). On 12 June 2013, the High Court allowed the application to transfer the action to the High Court.

---

2 Para 10 of Rachel Agnew's affidavit dated 25 April 2013.

11 On 25 January 2016, Rajah & Tann Singapore LLP ("R&T"), the lawyers for the defendants, wrote to KhattarWong LLP ("KW"), the lawyers for TMTA, with an open offer ("the Open Offer"). In summary, the letter noted that BHPB had obtained an order dated 16 November 2012 in England which adjudged TMTA to owe BHPB an amount in excess of US$100 million ("the English Judgment"). This judgment had been registered as a judgment in the Singapore High Court in Originating Summons No 729 of 2015 ("OS 729/2015"). This order of registration was made on 11 August 2015.

12 The letter maintained that TMTA's allegations in the Singapore action were baseless but made an open offer to settle TMTA's claim on terms that the defendants would pay the Principal Sum with interest and costs. The payment would be made by way of set-off against the judgment sum under the English Judgment. The offer was open for acceptance till 4pm of 1 February 2016. Athough there was some correspondence from KW which I will elaborate on later, the fact was that the offer was not accepted by TMTA.

13 On 2 March 2016, the defendants filed Summons No 979 of 2016 ("SUM 979/2016) to strike out TMTA's claim on account of the Open Offer. The application was heard on 26 May 2016 by Assistant Registrar Lim Sai Nei ("AR Lim") who dismissed it. The defendants did not file an appeal against this decision.

14 Instead, parties proceeded to the discovery stage and engaged in various interlocutory steps including an application by TMTA for discovery of various electronic documents, which was not proceeded with. On the other hand, the defendants filed Summons No 2853 of 2017 on 22 June 2017 for an order that they need not disclose any of their emails at the general discovery stage. This

application was dismissed by an Assistant Registrar but allowed on appeal to me, as I was of the view that such discovery was not necessary or appropriate in the light of discovery of other documents which the defendants would be making.

15 Subsequently, on 23 May 2018, TMTA filed Summons No 2397 of 2018 for discovery of various documents in eight categories from the defendants.

16 In turn, the defendants filed Summons No 2887 of 2018 on 25 June 2018 to strike out TMTA's claim under O 18 r 19 of the Rules of Court (Cap 322, R5, 2006 Rev Ed) ("ROC") or the inherent jurisdiction of the court, on the ground that the claim was frivolous or vexatious or an abuse of the process of the court.

17 Both applications were fixed for hearing before me on 3 August 2018. On that day, I directed that pursuant to O 14 r 12 and/or O 33 r 2 of the ROC, a preliminary point or issue be decided first. The preliminary point or issue was whether TMTA is entitled or should be permitted to continue with the action in the light of the Open Offer and, if not, what the appropriate order should be. I adjourned the hearing to a date to be fixed by the Registrar. The two applications were adjourned pending the outcome of the preliminary point or issue.

18 The date for hearing of the preliminary point or issue was fixed for 29 August 2018. At that hearing, I informed counsel that an alternative way of framing the issue was whether the continuance of the action was an abuse of the process of the court in the light of the Open Offer. After hearing submissions, I decided that TMTA was not entitled and should not be permitted to continue with the action in the light of the Open Offer. In other words, it was an abuse of

process for TMTA to do so. I therefore struck out TMTA's claim in the action. I allowed parties to try and agree on the issue of costs and the quantum thereof failing which they could submit on costs on a date which had already been reserved in the event that an additional hearing date after 29 August 2018 was necessary. I add that TMTA subsequently indicated that it intended to appeal against my decision. Accordingly, the parties agreed to defer the question of costs pending the outcome of TMTA's appeal to the Court of Appeal.

The parties' arguments and the court's reasons

Res judicata and issue estoppel

19 The first question to be considered was whether there was *res judicata* in view of the decision of AR Lim on 26 May 2016 ("AR Lim's Decision").

20 To recapitulate, the defendants had filed SUM 979/2016 to strike out TMTA's claim pursuant to O 18 r 19 and/or the inherent jurisdiction of the court on the ground that the claim was frivolous and vexatious and/or an abuse of the process of the court. AR Lim dismissed the application, and the defendants did not appeal against that decision. The defendants had relied on the Open Offer to support their application.

21 AR Lim was aware that the defendants had made two earlier applications. One was for the determination of certain questions of law pertaining to the Act and the second was to strike out TMTA's claim under O 18 r 19 and/or the inherent jurisdiction of the court. After certain decisions by an Assistant Registrar, appeals were filed and eventually heard by Prakash J. At that time, Prakash J declined to strike out the claim because the claim raised issues of public importance and ought not to be summarily determined.

Secondly, there were a number of important factual findings that had to be made before certain questions raised could be answered (see *TMT Asia Ltd v BHP Billiton Marketing AG (Singapore Branch) and another* [2015] 2 SLR 540).

22 There was one critical difference between the application before Prakash J and that before AR Lim. At the time of the hearing before Prakash J, the defendants had not yet made the Open Offer. AR Lim was aware of this difference. However, she took into account the fact that the defendants had applied to transfer the case to the High Court on the basis that it raised issues of public interest and/or important questions of law. AR Lim did not think that the mere fact that TMTA wanted to negotiate a global settlement (of other matters) instead of accepting the Open Offer, made its claim obviously frivolous or vexatious. Hence, AR Lim dismissed SUM 979/2016.

23 TMTA did not suggest that the decision of Prakash J raised any issue of *res judicata* or issue estoppel since at that time the Open Offer had not yet been made. Its argument of *res judicata* or issue estoppel was based solely on the decision of AR Lim.

24 TMTA submitted that the elements of issue estoppel were set out by the Court of Appeal in *Lee Tat Development Pte Ltd v MCST Plan No 301* [2005] 3 SLR (R) 157 (at [14]–[15]). They are:

(a) There must be a final and conclusive judgment on the merits;

(b) That judgment must be of a court of competent jurisdiction;

(c) There must be identity between the parties to the two actions that are being compared; and

(d) There must be an identity of subject matter in the two proceedings.

25 TMTA submitted that requirements (b), (c) and (d) were met. It also submitted that requirement (a) was also met because AR Lim had conclusively decided not to strike out the claim in SUM 979/2016.

26 The defendants submitted that there were new developments since AR Lim's decision. In particular, the Act had been amended to address some of the issues pertaining to the Act which would have arisen in the trial of the claim. However, they accepted that the amendments would not have retrospective effect. Instead, their point was that these issues would no longer arise in respect of future conduct.

27 They also submitted that a decision which was in substance interlocutory should not prevent the later ventilation of the same issue, relying on *Transpac Capital Pte Ltd v Lam Soon (Thailand) Co Ltd* [1999] 3 SLR(R) 454 ("*Transpac Capital*").

28 I was of the view that *Transpac Capital* was not authority for the proposition that an application decided on an interlocutory basis could, as a general rule, be made and heard again. The facts and issues in that case were different and did not assist the defendants. I need not elaborate on them here.

29 As for the amendments to the Act, I was of the view that such amendments did not mean that no other similar case would arise in the future. There might still be cases arising from causes of action which accrued before the Act was amended. To that extent, a decision of the court might still be of public interest and/or important.

30 I return to TMTA's submission on issue estoppel. I agreed that requirements (b) to (d) were met but not requirement (a).

31 The decision of AR Lim was not final and conclusive, at least not in relation to the preliminary point or issue that was before me. It was a decision in respect of an application under O 18 r 19 of the ROC. The threshold in that provision is different from that in O 14 r 12 or O 33 r 2. If the matter or issue was arguable, the court was not obliged to strike out TMTA's claim under O 18 r 19. AR Lim did not decide that there was no abuse of the process of the court but rather that the point was arguable and hence did not merit a striking out.

32 As mentioned above, I raised the question of a preliminary point or issue under O 14 r 12 and/or O 33 r 2 of the ROC. Order 14 r 12 states:

> **Determination of questions of law or construction of documents**
>
> **12.**—(1) The Court may, upon the application of a party or of its own motion, determine any question of law or construction of any document arising in any cause or matter where it appears to the Court that —
>
> (*a*) such question is suitable for determination without a full trial of the action; and
>
> (*b*) such determination will fully determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.
>
> (2) Upon such determination, the Court may dismiss the cause or matter or make such order or judgment as it thinks just.
>
> (3) The Court shall not determine any question under this Order unless the parties have had an opportunity of being heard on the question.

> (4) Nothing in this Order shall limit the powers of the Court under Order 18, Rule 19 or any other provision of these Rules.

33 Order 33 r 2 states:

> **Time, etc., of trial of questions or issues**
>
> **2.** The Court may order any question or issue arising in a cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.

34 Under these provisions, the court could of its own motion determine any question or issue whether of fact or law or partly of fact and partly of law before the trial of the action. The process under either of these provisions was especially useful where there was no substantial dispute of fact.

35 Furthermore, in so far as TMTA was pressing for a trial, it was for the court to decide whether to try any matter or issue first before the trial under O 33 r 2 of the ROC.

36 Accordingly, I was of the view that AR Lim's decision did not preclude this court from considering the preliminary point or issue under O 14 r 12 and/or O 33 r 2.

Is TMTA's claim an abuse of process of the court in view of the Open Offer?

Circumstances surrounding the Open Offer

37 I come now to the Open Offer. R&T had said that persisting with the present action would be extremely time consuming and involve enormous and

disproportionate expense to the parties. Accordingly, the defendants made the Open Offer without any admission of liability, on the following terms:

> 5. …
>
> (a) subject to paragraph 5(b) below, our clients shall make a payment to your client of an amount equivalent to all the damages, compensation, interest and costs which your client is seeking to recover in Suit 580, comprising:
>
> (i) the sum of US$81,500;
>
> (ii) interest on the sum of US$81,500 to be fixed at 5.33% from the date of the writ to the date of your client's acceptance of this offer; and
>
> (iii) costs of Suit 580 to be taxed or agreed;
>
> (b) the payment referred to in paragraph 5(a) above shall be made by way of set-off against the judgment sum owed by your client to BHP Billiton Marketing AG under the English Judgment;
>
> (c) your client shall file and serve a notice of discontinuance of Suit 580 within 7 business days of the date of acceptance;
>
> (d) the set-off shall be effected in full and final settlement of all claims between the parties in Suit 580 and strictly without any admission of liability; and
>
> (e) such settlement shall be subject to contract between the parties.
>
> …

38 The offer was open for acceptance until 4pm of 1 February 2016.

39 On 1 February 2016, KW wrote to R&T to ask them to hold their hands as KW was taking instructions. KW expected to revert by the close of business of 2 February 2016.

40 On 3 February 2016, KW wrote to say that the action raised issues of public importance, the resolution of which would be critical to the financial

industry and others. A proper finding as to the liability of the defendants was critical.

41 KW also said that it would be in the interests of the parties to reach a global settlement of all disputes between the parties. There had been a miscarriage of justice in relation to the English Judgment. KW suggested a without prejudice meeting to discuss: (a) the present action, (b) the English Judgment, (c) OS 729/2015 (which resulted in the registration of the English Judgment), and (d) a civil judgment in the Ningbo Maritime Court of the People's Republic of China which apparently D1 (or D2) had obtained against TMTA.

42 R&T replied on 6 February 2016. They noted that TMTA did not dispute the fact that persisting with the present action would involve enormous and disproportionate expense to the parties. It was also evident that the present action had been commenced to pressurise the defendants into revisiting the judgments which had been obtained against TMTA. KW's letter only served to reinforce the defendants' view that the present action was an abuse of process and that TMTA had no real interest in proceeding with the action to resolve issues of public importance.

43 KW replied on 16 February 2016 to disagree with R&T's allegation of abuse of process of the court. KW reminded R&T that the action had been transferred from the District Court to the High Court on the defendants' application, on the basis that there were issues of public importance. As the outcome of the action would have an industry-wide impact, TMTA disagreed that legal costs would be enormous and disproportionate.

44 KW wrote again on 16 March 2016 to R&T to say that TMTA's representatives were in Singapore that day and the next day, and to suggest a meeting the next day to explore the possibility of an amicable global settlement. There was no written response from R&T to this suggestion.

45 It was obvious from the above correspondence that TMTA had effectively refused to accept the Open Offer even though it did not say so explicitly. Although the Open Offer lapsed at 4pm on 1 February 2016, the point was whether TMTA's refusal to accept it demonstrated that its action was an abuse of process of the court. In any event, the defendants did from time to time mention in various affidavits thereafter that the offer was still open for acceptance. This was reiterated once more in R&T's letter dated 23 August 2018 to KW before the substantive hearing before me on 29 August 2018. It was clear that TMTA did not want to accept the Open Offer.

The defendants' case

46 The main thrust of the defendants' submissions was that TMTA's continuation of the action would serve no useful purpose in the light of the Open Offer under which TMTA would receive all the reliefs it was seeking in its claim. The defendants relied on the recent decision of the English Court of Appeal in *Balk v Otkritie International Investment Management Ltd and others* [2017] EWCA Civ 134 ("*Balk*").

47 In that case, the claimant had obtained an order against Ms Balk, the fourth defendant, for payment of about US$37 million as damages for procuring breach of contract and as equitable compensation and/or pursuant to a personal liability to account for dishonest assistance and knowing receipt. At a hearing to deal with consequential matters, the court of first instance had to consider if

any deduction should be made from the sum awarded to the claimant to take into account recoveries which the claimant had already made. As a result of certain decisions by the court of first instance, no deduction was made for any sum already recovered by the claimant. Ms Balk then obtained leave to appeal against this aspect of the decision of the court of first instance in respect of three sums of money which the claimant had received, and proceeded to file her appeal. By the time her appeal was heard by the Court of Appeal, the claimant had made an open offer to give her credit for the three sums of money which her appeal was based on. She did not respond substantively to the offer. Her appeal was dismissed in the light of the open offer.

48 The claimant's counsel had argued that the open offer was made on pragmatic grounds and to save costs. The issues of law thrown up by the appeal were not straightforward and the claimant did not wish to have them resolved if no practical benefit would be achieved by doing so. Even on the most favourable basis to Ms Balk, she would still owe the claimant more than US$16.5 million, and there was no realistic prospect of recovering this sum from her.

49 The Court of Appeal agreed. It said that Ms Balk should have accepted the offer as the claimant was ready to concede all that she had asked for and more. A hearing on the merits would have been an exercise in futility, and "would also have run counter to all the modern principles of case management which include encouraging the settlement of disputes, concentrating on the real issues between the parties, and making the best use of scarce judicial resources" (*Balk* at [23]). To put it bluntly, Ms Balk was abusing the process of the court by her refusal to engage with the open offer from the claimant and by insisting on proceeding with her appeal.

TMTA's reasons for not accepting the Open Offer

50 In arguments before me, TMTA raised a host of reasons to explain why it did not accept the Open Offer. Most, if not all, of these reasons were raised neither in correspondence from KW to R&T after the Open Offer was made, nor in arguments before AR Lim.

51 The first reason was that the Open Offer was made without admission of liability. TMTA submitted that it was entitled to a finding on the liability of the defendants.

52 TMTA attempted to distinguish *Balk* on the basis that in that case, Ms Balk was not seeking a finding of liability against the claimant on the issue of giving credit for certain sums recovered.

53 It seemed to me that Ms Balk was seeking a finding that the claimant there was liable to give her credit for certain sums recovered by it. Even if she were not seeking such a finding, the point remained that TMTA was not entitled to seek such a finding if TMTA would, by accepting the Open Offer, receive all the reliefs it was seeking in its claim. The finding of liability against the defendants was not a relief sought by TMTA. It was instead the basis on which TMTA was seeking the Principal Sum and ancillary relief.

54 To put the matter more starkly, if the defendants had made an open offer earlier to meet TMTA's claim for the Principal Sum entirely, before TMTA had commenced action, TMTA could not have refused the offer and proceed to file an action to recover the Principal Sum. It could not have insisted that it wanted a finding of liability against the defendants. That would have been an abuse of

the process of the court. The principle is the same even though the Open Offer was made much later after TMTA had commenced action.

55 TMTA's second reason was that the Open Offer had initially expired at 4pm on 1 February 2016. While subsequent affidavits for the defendants stated that the offer remained open for acceptance, TMTA said that there was no expiry date. The latest letter from R&T dated 23 August 2018 on the issue of the Open Offer stated that the offer was open for acceptance until it was withdrawn or the court disposed of the suit. The fact that the defendants could withdraw the offer without advance warning created uncertainty as to the length of time available to accept the offer. TMTA submitted that since the offer could be withdrawn at any time, TMTA was being pressurised to accept it as soon as possible.

56 I am of the view that such an argument was just an excuse. There was a specified time to accept the offer when the Open Offer was first made on 25 January 2016. TMTA chose not to accept it. Even if the offer had not been renewed, TMTA's refusal demonstrated that it was pursuing its claim for a collateral purpose which I will elaborate on later; or that, in any event, its continuance of the claim was still an abuse of the process of the court.

57 The renewal or repetition of the offer in various affidavits, as well as the latest renewal or repetition in R&T's letter of 23 August 2018 for the avoidance of doubt, presented TMTA with fresh opportunities to accept it. It was clear that the offer was still open to TMTA to accept. Therefore, TMTA had had more than enough time to accept it if it really wanted to. In the circumstances, it was irrelevant whether or not there was any expiry date to accept the offer.

58 TMTA's third and main reason was that the Open Offer was subject to contract. This would mean that there would be no agreement between the parties until the execution of a formal contract, and that parties would need to negotiate terms of the formal contract. On the other hand, the Open Offer required TMTA to file and serve a Notice of Discontinuance within seven business days of the date of acceptance of the offer, possibly even before parties executed a formal contract. This would leave TMTA in the invidious position of having to commence fresh proceedings to resolve any issues, in the event that no agreement was reached between the parties. Thus, as the offer was subject to contract, it involved a large amount of uncertainty.

59 I was of the view that the third reason was again another excuse from TMTA. If it was minded to accept the offer without any alleged uncertainty, KW could and would have stated to R&T that a formal contract was unnecessary since all the material terms were already contained in the offer.

60 Indeed, R&T confirmed before me that the defendants were not insisting that a formal contract be signed. The condition to have such a contract was withdrawn.

61 The fourth reason raised by TMTA was more ludicrous. TMTA said that since it owed money only to D1 and not to D2, D2 would not be in a position to set-off the Principal Sum D2 was to pay to TMTA against any sum payable by TMTA to D2. The offer prejudiced TMTA's right to recover payment from D2.

62 However, once the set-off by D1 was implemented, the Principal Sum would have been paid. There would be no question of TMTA seeking payment

again from D2. When this was pointed out to TMTA's counsel, she did not pursue the fourth reason. I add that TMTA did not suggest that the mode of payment, *ie*, by way of set-off by D1, was objectionable in principle.

63 TMTA's fifth reason was that it was unclear from the offer how its costs were to be taxed if there was no agreement on the quantum of costs, if a Notice of Discontinuance was filed before taxation.

64 As regards the question of the quantum of costs payable by the defendants to TMTA, I was of the view that this could be easily resolved if parties did not agree on the same. TMTA's counsel agreed that TMTA could have obtained an order for taxation if necessary. Also, if there was genuine concern about the question of costs, KW could have easily responded to R&T to say that the Notice of Discontinuance was to be filed after the quantum of costs was resolved. This suggestion would likely not be contentious.

65 Furthermore, if there was any urgency, the court could determine or fix the quantum of costs at short notice without the need for taxation. Indeed, I mentioned this avenue to TMTA's counsel and suggested that I could forthwith proceed to fix the quantum of any costs that the defendants were to pay to TMTA if TMTA was minded to and did accept the offer. Unsurprisingly, this suggestion did not make any difference to TMTA.

Concluding findings

66 For the same reasons as stated in *Balk*, I was of the view that it was an abuse of process of the court for TMTA to seek to continue its claim instead of accepting the Open Offer.

67 If the matter proceeded to trial, much more time and costs would be incurred. For example, parties were still engaged in a dispute over discovery. Applications in respect of discovery had been made before and a fresh application (by TMTA) was pending. It was not a question of transferring the action back to the District Court to save some costs, as suggested by TMTA. It was also not simply a question of saving costs for the parties if the claim was struck out. There is a public interest that the court's resources should not be used for a claim that had become academic in view of the Open Offer.

68 The defendants alleged that TMTA had raised markedly similar allegations in the United Kingdom, if not elsewhere, to the ones underlying its claim in the Singapore action to resist D1's prosecution of its own claim under the English judgment, and that the English court had found TMTA's allegations of market manipulation against D1 to be fanciful. They also alleged that TMTA sought to re-litigate these issues in the English High Court by commencing fresh proceedings against D1 in June 2014. This claim was successfully set aside by D1.[3] Nevertheless, in arguments before me, D1 did not suggest that TMTA's claim in the Singapore action was *res judicata* or that there was issue estoppel as a result of any English court decision. Hence, it was not necessary for me to consider whether the English courts had made a final and conclusive decision on the merits of TMTA's allegations of manipulation and misrepresentation.

69 Be that as it may, the correspondence from KW to R&T soon after the Open Offer was made demonstrated that TMTA's focus was not on its claim in the present action but the resolution of its liability under the English judgment. I was of the view that TMTA's action was initiated for a collateral purpose,

---

[3] Paras 13–18 of Leah Ratcliff's affidavit dated 25 June 2018.

which was to put pressure on D1 not to insist on or pursue its legal rights in full under the English judgment.

70 In any event, even if there was no collateral purpose, it was still an abuse of the process of the court for TMTA to continue with its claim in the face of the Open Offer. Accordingly, I found it appropriate to strike out TMTA's claim in the present suit.

Woo Bih Li
Judge

Deborah Evaline Barker, SC and Hewage Ushan Saminda Premaratne (KhattarWong LLP) for the plaintiff;
Poon Kin Mun Kelvin, On Wee Chun Derek and Ang Tze Phern (Rajah & Tann Singapore LLP) for the first and second defendants.