Westacre Investments Inc *v* The State-Owned Company Yugoimport SDPR (Deuteron (Asia) Pte Ltd, garnishee) and others
[2011] SGHC 123

Case Number	: Originating Summons No 1311 of 2004 (Summons Nos 2151 and 2152 of 2005; 4431, 4846, 5282, 5377 and 5736 of 2009; 5513 and 5763 of 2010)
Decision Date	: 19 May 2011
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Khoo Boo Jin and Tan Hsuan Boon (Wee Swee Teow & Co) for the judgment creditor; Gabriel Peter and Kelvin Tan (Gabriel Law Corporation) for the judgment debtor/garnishee; Lim Ai Min (Allen & Gledhill LLP) for the garnishee; Suresh Damodara (Damodara Hazra LLP) for the other parties.
Parties	: Westacre Investments Inc — The State-Owned Company Yugoimport SDPR (Deuteron (Asia) Pte Ltd, garnishee) and others

Civil Procedure – Conflicts of Law

[LawNet Editorial Note: The appeals to this decision in Civil Appeals No 7, 9, 60 and 63 of 2011 were heard by the Court of Appeal on 28 September 2011. No order was made for CA 7/2011 and CA 9/2011. The appeals in CA 60/2011 and CA 63/2011 were allowed. See [2012] SGCA 8.]

19 May 2011 Judgment Reserved

Choo Han Teck J:

Introduction

1 The garnishee proceedings before me have been long and acrimonious. Voluminous affidavits, both factual and expert, have been filed. Essentially, there is only one core issue to be answered: who possesses beneficial ownership of the monies in Deuteron (Asia) (Pte) (Ltd) ("the Garnishee")'s bank account with DnB Nor Bank ASA Singapore Branch ("the Bank")?

2 It is undisputed that the State-Owned Company Yugoimport SDPR ("the Judgment Debtor") owes Westacre Investments Inc ("the Judgment Creditor") a sum of more than £56 million (including interest) under a judgment from the English High Court on 31 March 1998 ("the English Judgment") [note: 1]. The Judgment Creditor is seeking to enforce the English Judgment in Singapore by garnishing the Garnishee's bank account which had more than US $17 million in 2009 [note: 2] ("the Funds"). The Judgment Debtor denies that it is the beneficial owner of the Funds and alleges that the Funds in the Garnishee's account is being held by the Judgment Debtor on trust for Teleoptik-Ziroskopi, Zrak-Teslic and Cajavec ("the Other Parties").

3 The Judgment Debtor based his allegations of a trust on four documents ("the 4 Trust Documents") relating to a contract to supply military equipment to a Government ("the Buyer"). Therefore, if a trust is found to exist, based on the interpretation of the 4 Trust Documents, the provisional garnishee order cannot be made final since the beneficial owner of the Funds is not the Judgment Debtor (see *Roberts v Death* (1881) 8 QBD 319 ("*Roberts v Death*")). However, if there is no trust, the evidence that the beneficial owner of the Funds is the Judgment Debtor cannot be

rebutted and the provisional garnishee orders will be made final (see [13] below).

The History of the Garnishee Proceedings

4 The long history of the garnishee proceedings is important because the Judgment Creditor argues that the trust argument raised by the Judgment Debtor is just one in a series of numerous applications by the Judgment Debtor to unnecessarily prolong and obfuscate the proceedings. In late July 2004, the Judgment Creditor discovered that the Funds were held for the Judgment Debtor in the Garnishee's account [note: 3] . Upon the *ex parte* application of the Judgment Creditor, the English Judgment was registered in Singapore under the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) pursuant to an order dated 5 October 2004 by the Singapore High Court. The Funds were enjoined by an *ex parte* mareva injunction on 28 October 2004, which remains in force.

5 The Judgment Creditor filed *ex parte* Summons in Chambers No 2151 of 2005 and 2152 of 2005 on 28 April 2005 to commence the garnishee proceedings against the Bank and the Garnishee. On 29 April 2005, the Court issued garnishee orders to show cause. However, on 5 June 2005, the Judgment Debtor applied to set aside the registration of the English Judgment in Singapore. The garnishee proceedings were thus stayed.

6 The Judgment Debtor's application in Singapore to set aside the registration of the English Judgment went on appeal to the Court of Appeal. At the initial hearing on 9 May 2007, the Court of Appeal directed the Judgment Creditor to refer to the English Court to determine if the English Judgment remained enforceable in England by way of a garnishee order despite the lapse of time (see *Westacre Investments Inc v The State-Owned Company Yugoimport SDPR (also known as Jugoimport-SDPR)* [2009] 2 SLR(R) 166 ("*Yugoimport*") at [10]). The reference proceedings went before Tomlinson J in the English High Court (see *Westacre Investments Inc v The State-Owned Company Yugoimport SDPR* [2008] EWHC 801 (Comm)) and the learned judge decided in favour of the Judgment Creditor. The Court ruled that the English Judgment remained enforceable in England ("the English Reference Proceedings"). Proceedings returned to the Singapore Court of Appeal and the Judgment Debtor's application to set aside the registration of the English Judgment was denied in the judgment of *Yugoimport* released on 30 December 2008. The Court of Appeal noted at [53] of *Yugoimport* that, "the [Judgment Debtor] not only did not seek out the [Judgment Creditor] to pay the amount awarded under the English Judgment, but [it] also deliberately gave a selective and incomplete picture to the English court about its assets for the purposes of stay proceedings in the UK… It was only by a stroke of luck that the [Judgment Creditor] came to know of the [Judgment Debtor's] alleged Singapore assets".

7 In 2009, the garnishee proceedings resumed. On 27 February 2009, the Judgment Debtor [note: 4] and the Garnishee [note: 5] filed affidavits alleging the Funds belonged to the Other Parties, but numerous documents referred to in their affidavits were not adduced. The Assistant Registrar ("AR") largely granted the Judgment Creditor's application for inspection of documents and on appeal I allowed to be inspected two documents in which the Judgment Creditor were unsuccessful before the AR on 30 July 2009. It is significant to note that one of the documents the Court ordered the Garnishee to produce was a Shareholders' Resolution of the Garnishee dated 8 April 1999 ("Shareholders' Resolution 8 April 1999") [note: 6] . This was a unanimous resolution of the Garnishee confirming that the Funds "belong wholly and exclusively to [the Judgment Debtor]".

8 After the protracted discovery proceedings ended (with disputes on the redaction of the 4 Trust Documents), the Judgment Debtor filed Summons No 4431 of 2009 ("Summons 4431") and

Summons No 5736 of 2009 ("Summons No 5736") to convert the originating summons and garnishee proceedings into a writ action. The Other Parties' Summons No 4846 of 2009 ("Summons 4846") is similar in substance. On the other hand, the Judgment Creditor filed Summons No 5282 of 2009 ("Summons 5282") to summarily determine for the purposes of the garnishee proceedings that the Funds belong "wholly and exclusively" to the Judgment Debtor. The Other Parties then contradicted its Summons 4846 by filing Summons No 5377 of 2009 ("Summons 5377") to summarily determine that the Funds belong "wholly and exclusively" to the Other Parties.

9 On 24 August 2010, I dismissed Summonses 4431, 4846 and 5736 and allowed the garnishee proceedings to be summarily determined under O 49 r 5 and r 6(2) of the Rules of Court ("ROC") (Cap 322, R5, 2006 Rev Ed). As regards Summonses 5282 and 5377 for summary determination, I ordered on 21 September 2010 for parties to file further submissions regarding the governing law for the trust and whether the monies in the Garnishee's account could be traced to the trust. These submissions will be addressed in detail below.

Judgment Debtor failed to pay any of the legal cost due to the Judgment Creditor throughout their long-running litigation

10 Both Tomlinson J and our Court of Appeal have recognised the difficulty of enforcing a judgment debt when "faced with an uncooperative judgment debtor whose assets might be furtively squirreled away all over the globe" (*Yugoimport* at [26]). The Judgment Creditor submitted that the Judgment Debtor repeatedly denied their liability to the Judgment Creditor but failed before the [note: 7] :

(i) International Chamber of Commerce ("ICC") Arbitral Tribunal in 1994,

(ii) Swiss Federal Tribunal in 1994,

(iii) English High Court in 1998,

(iii) English Court of Appeal in 1999,

(iv) English House of Lords in 1999,

(v) English High Court in 2008, and

(vi) Singapore Court of Appeal in 2008.

However, the Judgment Debtor never paid a single cent towards the ICC award or the English Judgment. For the ICC Arbitration, the Judgment Debtor and its co-defendant agreed to pay one half of the arbitration costs of US $700,000. However, neither the Judgment Debtor nor its co-defendant paid their share of costs and the Judgment Creditor had to advance an additional US $350,000 for the

arbitration procedure to be completed [note: 8].

11 Under the cost order in the English Reference Proceedings, the Judgment Debtor was required to make an interim payment of £100,000 to the Judgment Creditor on account of costs by 5 May 2008. The Judgment Creditor did not receive any payment [note: 9]. The Singapore Court of Appeal in *Yugoimport* at [55] ordered "costs here and below" in favour of the Judgment Creditor, and these costs have yet to be taxed. The cost for the discovery application ordered to be paid by the Judgment Debtor and the Garnishee to the Judgment Creditor also has not been paid.

12 In my opinion, the long and acrimonious history behind the garnishee proceedings and the utter failure of the Judgment Debtor to pay any legal costs throughout the long-running litigation were relevant factors in considering if the garnishee proceedings should be converted into a writ action which will only lengthen proceedings and increase costs. The Judgment Debtor also pursued its case very unsatisfactorily. It was very late in the proceedings, on 21 September 2010, when the Judgment Debtor asked for four weeks to file an affidavit from the Buyer to confirm that the Funds were paid to acquire military equipment from the Other Parties through the Judgment Debtor. The Judgment Debtor failed to produce any affidavit within the four week deadline and filed Summons No 5513 of 2010 for leave to file an affidavit to adduce further evidence in the proceedings which included, *inter alia*, a letter from an Embassy of the Buyer. The Other Parties' Summons No 5763 of 2010 is similar in substance. I dismissed both Summonses on 17 December 2010 because the evidence the Judgment Debtor and Other Parties sought to produce was vague, equivocal and had little probative value. Furthermore, the applications were made late and appeared to me to be the latest in a series of applications that seemed designed to prolong a matter that should have been fully and finally determined (see [65]).

The Court's Discretion in Making a Provisional Garnishee Order Final

13 The burden of showing cause why a provisional garnishee order should not be made final is on the garnishee (*Leads Engineering (s) Pte Ltd v Chin Choon Co (Pte) Ltd* [2009] SGHC 53 ("*Leads Engineering*")) or the judgment debtor (see *Robert Petroleum Ltd v Bernard Kenny Ltd (in liquidation)* [1982] 1 All ER 685, reversed by the House of Lords in *Roberts Petroleum Ltd v Bernard Kenny Ltd (in liquidation)* [1983] 2 AC 192 only with respect to the exercise of the Court's discretion). The provisional garnishee order will not be made final if it would be inequitable or unfair (*per* Goh Phai Cheng JC in *Commercial Bank of Kuwait S.A.K. v Nair* [1993] 3 SLR(R) 281 at [18]).

Evidence to Show the Judgment Debtor Possesses Beneficial Ownership of the Funds

14 On 29 April 2005, the Court issued garnishee orders to show cause. The Judgment Creditor has strong evidence to show that there is a debt due from the Garnishee to the Judgment Debtor. The garnishee proceedings were commenced based on [note: 10]:

(a) the Notes to the Financial Statements of the Garnishee for the financial years 1998 to 2003, which all recorded that the Funds held by the Garnishee "belong wholly and exclusively to [the Judgment Debtor]", and

(b) an Affidavit filed by Mr Peter Lim Poh Weng on 10 November 2004 on behalf of the Garnishee, wherein the Garnishee confirmed at para 4 that it held the Funds "for and on behalf of the Judgment Debtors" ("Peter Lim's 10 November 2004 Affidavit") [note: 11]. This was filed pursuant to the mareva injunction which ordered the Garnishee to inform the Judgment

Creditor of all monies belonging to the Judgment Debtor which were held in bank accounts in the name of the Garnishee. At the time the affidavit was filed, Peter Lim was the 51% majority shareholder and director of the Garnishee [note: 12], and was a director since the incorporation of the Garnishee on 18 June 1991 [note: 13].

The Financial Statements of the Garnishee

15 On 18 June 1991, the Garnishee (then called FDSP (Asia) Pte Ltd) was incorporated in Singapore [note: 14]. The Judgment Debtor (then called the Federal Directorate of Supply and Procurement) became shareholders of the Garnishee on 28 October 1991 with a 51% shareholding in the Garnishee [note: 15]. It is undisputed that the Garnishee has been holding the Funds in its account with the Bank since November 1991 [note: 16].However, the existence of the Funds were not disclosed in the Garnishee's Financial Statements for 7 years, until 1999 when it was disclosed that the Funds belonged "wholly and exclusively to [the Judgment Debtor]" in the Garnishee's Financial Statements ended 30 June 1998.

16 Ever since the commencement of the garnishee proceedings as seen above in [14], the Garnishee has continued to file Financial Statements up to 30 June 2008 with the statement that the Funds "belong wholly and exclusively to [the Judgment Debtor]". [note: 17] Therefore, there was no change in the Financial Statements even after the Garnishee had notice of the garnishee proceedings. These Notes to the Financial Statements were prepared by the Garnishee's auditors and approved by the Garnishee's directors when they signed the Financial Statements [note: 18]. Therefore, for 10 years, the Garnishee's auditors and directors took the position that the Funds were owed to the Judgment Debtor. There was never any statement to suggest that the Funds belonged to anyone else.

17 The Judgment Creditor submits that after the Judgment Creditor pointed out the inconsistency in the Garnishee's Financial Statement in their affidavit filed on 14 July 2009 [note: 19], the Garnishee then stopped filing Financial Statements altogether. The Garnishee's Financial Statements for the year ended 30 June 2009 has yet to be filed and is long overdue. The Judgment Creditor's expert, Peter Jacob, a certified public accountant in Singapore, stated in his affidavit that the non-disclosure of the Funds for the year ended 30 June 1992 to 30 June 1997 was a breach of the applicable accounting standards in Singapore [note: 20]. The Judgment Debtor's expert, Jamshid K. Medora, also a certified public accountant in Singapore, agreed on this point [note: 21]. Peter Jacob also stated that in the absence of any reasonable explanation, the Garnishee's disclosure in its Financial Statements from 1998 to 2008 that the Funds "belong wholly and exclusively to the [Judgment Debtor]" should be accepted as true [note: 22].

18 Zoran Matic, a director of the Garnishee, stated in his affidavit that he had suggested to the auditors of the Garnishee to insert the statement into the Financial Statements to make it clear that the Funds do not belong to the Garnishee [note: 23]. Zoran Matic stated that it did not mean that therefore the Funds belonged to the Judgment Debtor as it was always clear that they were holding it for the Other Parties. I do not accept Zoran Matic's explanation of the Statement since the Statement clearly evinces that the Garnishee held the Funds for the Judgment Debtor.

Unanimous Shareholder Resolution and Settlement Agreement

19 At [7] above, I have already mentioned Shareholders' Resolution April 1999 which was a

unanimous resolution of the Garnishee confirming that the Funds "belong wholly and exclusively to [the Judgment Debtor]". This was signed by Mr Peter Lim (51% shareholder) and General Jovan Cekovic (then Director-General of the Judgment Debtor, 49% shareholder) on behalf of the Judgment Debtor. This resolution has not been amended or revoked. I found Zoran Matic's explanation for this resolution, which was similar to the one he gave for the Financial Statements above (see [18]) unconvincing.

20 On 9 December 2005, Miodrag Milsosavljević, filed an affidavit for the Judgment Debtor as its legal counsel and exhibited a settlement agreement between the Garnishee and the Judgment Debtor to show that the monies did not belong to the Garnishee ("MM's 9 December 2005 Affidavit") [note: 24] . The Settlement Agreement dated 30 April 2001 was between Mr Jovan Cekovic and Mr Zoran Matic (both directors of the Judgment Debtor) and Mr Peter Lim (then director of the Garnishee). The Settlement Agreement states in Article (1), "All monies in [the Bank] belong solely to [Judgment Debtor]--- Agreed" [note: 25] .

21 The Garnishee has always maintained a consistent position that the Funds belonged to the Judgment Debtor. The complete reversal of position seems to be solely aimed at preventing payment to the Judgment Creditor.

December 1995 Letter

22 The Judgment Creditor submitted that when UN Sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro) ("Yugoslavia") was suspended in December 1995, the Garnishee tried to wire the Funds to a Hong Kong bank account of a company called "Acedale Holdings Limited". The Garnishee gave such instructions to the Bank in a December 1995 letter [note: 26] which was given with the knowledge and consent of the Garnishee's three Yugoslavian directors and the Judgment Debtor, who issued a Certificate dated 15 December 1995 confirming the Directors were citizens of Yugoslavia [note: 27] .

23 The Judgment Creditor highlighted that the December 1995 letter was a crucial point because the UN Sanctions relating to entities in Bosnia Herzegovina remained in effect. Two of the Other Parties were companies registered in Bosnia Herzegovina and the Garnishee should not have requested all the Funds to be released since the Funds belonging to those two Other Parties remained frozen. Thus, the Judgment Creditor argue, not without merit, that the Garnishee's statement that it was "fair" to "return to" the Garnishee's Yugoslavian directors (who were representatives of the Judgment Debtor) "their moneys" [note: 28] confirm that all the Funds belonged to the Judgment Debtor and thus eligible for release pursuant to the suspension of the UN Sanction for Yugoslavia. In the end, the Funds remained frozen in Singapore as a result of a directive from the Monetary Authority of Singapore ("MAS") in February 1996.

24 In my opinion, even without the December 1995 Letter, the Judgment Creditor has satisfied their burden of proving that the Garnishee owed the Funds to the Judgment Debtor. Therefore, unless the Judgment Debtor can show that it held the Funds only as a trustee, I am satisfied that the provisional garnishee orders should be made final.

Evidence to Show the Judgment Debtor Only Held the Funds as a Trustee

25 The 4 Trust Documents the Judgment Debtor relies on are:

(1) Contract dated 23 July 1991 ("Supply Contract") between the Buyer and the Judgment Debtor (various portions redacted) [note: 29],

(2) Contract SDPR/SIN-1 dated 21 October 1991 ("Pre-Protocol") between the Judgment Debtor and Garnishee [note: 30],

(3) Contract E/4860-1 dated 12 December 1991 ("Commission Agreement") between Other Parties and Judgment Debtor (various portions redacted) [note: 31], and

(4) Protocol dated 28 December 1991 ("Protocol") between Other Parties, Judgment Debtor and Garnishee [note: 32].

26 The Judgment Debtor claims that they contracted the Supply Contract with the Buyer for the supply of military equipment for and on behalf of the Other Parties. The Judgment Debtor was acting as a commission agent for the Other Parties because the law in Yugoslavia at that time did not allow the Other Parties to enter into contracts for military armament with foreign parties directly. The Other Parties would be the suppliers for the Supply Contract. The other three 1991 documents (Pre-Protocol, Commission Agreement and Protocol) formalised the relationship between the Judgment Debtor and the Other Parties and confirmed that the Funds were for the Other Parties' needs.

27 Under Article 4.2.1 of the Supply Contract, the Buyer "will pay to the Seller 30% of the total value i.e. 10,631,624.72 (Say: US dollars Ten million six hundred thirty one thousand six hundred twenty four only) in advance by remittance, to the Seller's [Judgment Debtor] account with the National Bank of Yugoslavia, Military Department…" [note: 33]. This payment was received by the Judgment Debtor on 18 November 1991. The Judgment Debtor alleges that it is this very payment that forms the Funds the Judgment Creditor wish to garnish.

28 The Judgment Debtor claims that they received the payment from the Buyer on behalf of the Other Parties. However, pursuant to the instructions of the Other Parties, they remitted the payment to the Garnishee's account in Singapore, to preserve the value of the monies due to inflation in Yugoslavia and concerns about strict foreign exchange rules. There is no evidence of the instructions of the Other Parties to remit the monies to the Garnishee's account.

29 The Judgment Debtor claims that it was the MAS circulars (only terminated in 2009) which prevented the Funds from being used by the Other Parties to buy raw materials needed for the Supply Contract in the past 20 years. The Judgment Debtor submits that the Protocol states it is only allowed to claim a 2.5% commission fee of US $236,996.63 from the Funds and this is based on Article 14 of the Commission Agreement. The rest of the Funds are held by the Judgment Debtor as a trustee based on the 4 Trust Documents.

Contradictions in the Judgment Debtor's Affidavits

30 The Judgment Creditor submits that the Judgment Debtor's arguments relating to a trust have not been consistent. In MM's 9 December 2005 Affidavit, the Judgment Debtor relied *only* on the Protocol and the Settlement Agreement dated 30 April 2001 (referred to above in [20]). The Judgment Debtor did not mention the Supply Contract, the Pre-Protocol and the Commission

Agreement and only disclosed and started relying on these documents in 2009. In fact, the Judgment Creditor submits that it is not surprising the Judgment Debtor, Garnishee and Other Parties have abandoned mentioning the Settlement Agreement. This is because the Settlement Agreement is detrimental to their case and states that the Funds belong solely to the Judgment Debtor.

31 Although in MM's 9 December 2005 Affidavit, the Judgment Debtor referred to the Other Parties as "sub-suppliers", it now refers to the Other Parties as "manufacturers". This may be because the term "sub-suppliers" is suggestive that the relationship between the Other Parties and Judgment Debtor was more akin to a sub-contracting relationship than the agency relationship the Judgment Debtor alleges.

What is the Proper Law of the 4 Trust Documents?

32 Both Parties provided expert evidence of Serbian (formerly Yugoslavian) Law and Indian Law without directly addressing which was the proper law of the 4 Trust Documents. I therefore asked the parties to submit on whether Serbian, Indian or Singapore law is the proper law of the 4 Trust Documents.

33 It is settled law that a three stage approach is applied to determine the governing law of a contract:

(i) whether the contract expressly states its governing law,

(ii) if the contract is silent, whether it can infer the governing law from the intentions of the parties, and

(iii) if the court is unable to infer the parties' intentions, which law has the closest and most real connection with the contract (see *Pacific Recreation Pte Ltd v SY Technology Inc and another appeal* [2008] 2 SLR(R) 491 ("*Pacific Recreation*")).

34 The proper law of the Supply Contract is clear from its express choice of law clause. Under Article 15 of the Supply Contract, the contract is governed by the law of India.

35 Although the Commission Agreement does not have an express law, it has a choice of court clause under Article 11.1, "any disputes in connection with the present Contract that cannot be settled through an agreement of the contracting Parties involved shall be resolved by a regular court in Belgrade". However, that *per se* is not determinative of the proper law of the contract and Article 11.2 envisages that if the dispute involves the Buyer (from the Supply Contract) the court action may be "in Yugoslavia or abroad". I found that it is reasonable to infer that the parties intended that the law of India that governs the Supply Contract would similarly govern the closely related Commission Agreement. The Court of Appeal in *JIO Minerals FZC and others v Mineral Enterprises* [2011] 1 SLR 391 at [81] accepted the proposition that it is possible to infer that the parties intended that a contract be governed by the same law that governs a closely related contract and cited Lawrence Collin *et al* (ed), *Dicey and Morris on the Conflict of Laws* (Stevens & Sons, 11th Ed, 1987):

> … The legal or commercial connection between one contract and another may enable a court to say that the parties must be held implicitly to have submitted both contracts to the same law…

36 The close relation between the Supply Contract and the Commission Agreement cannot be disputed. Article 1.2 of the Commission Agreement states that the Supply Contract "is an integral part of the present contract and the parties hereto undertake to fulfil it under the terms and in the manner specified in the Contract concluded between the [Judgment Debtor] and the Buyer and in the present contract" [note: 34]. The implied law of the Commission Agreement is thus the law of India.

37 However, the law of India cannot be the implied law for the Pre-Protocol and the Protocol. While the Pre-Protocol and Protocol bears some relation to the Supply Contract and Commission Agreement, they are clearly separate financial arrangements. The Pre-Protocol and Protocol was made between the Garnishee (Singapore company), the Judgment Debtor and Other Parties (all former Yugoslavian companies) in Singapore regarding how the payment from the Supply Contract was to be disbursed by the Garnishee in Singapore. The only connecting factor would be that the payment came from the Supply Contract which was governed by the law of India. Considering the commercial context of the Protocol and Pre-Protocol, it is artificial to infer that the parties intended to have the law of India govern the former Yugoslavian companies' financial arrangement in Singapore.

38 Taking the objective law approach of finding the law which has the closest and most real connection with the Pre-Protocol and Protocol, the proper law is the law of Singapore. The Pre-Protocol is an agreement between the Judgment Debtor and Garnishee (Singapore company) to put the advance payment from the Supply Contract in the Garnishee's bank account in Singapore. This agreement was made in Belgrade on 21 October 1991. The terms of the Pre-Protocol were to be determined in a further Protocol and that Protocol would form an integral part of the Pre-Protocol (see Article 7 of the Pre-Protocol). The Protocol was signed in Singapore on 28 December 1991. In *Pacific Recreation* at [43], the Court of Appeal held that the place of contracting was generally not important in determining the governing law of a contract unless the contract was to be performed in that country. As the main actor in the Pre-Protocol and Protocol was the Garnishee who had to effect payments to the suppliers from the monies kept in its Singapore Bank Account, the closest and most real connection would be the law of Singapore.

Was the Judgment Debtor a trustee under Indian Law?

Admissibility and Mode of Proof of Foreign Law

39 The proof of foreign law in a domestic court is a question of fact (see s 47(1) of the Evidence Act (Cap 97, 1997 Rev Ed) ("Evidence Act") and *Wu Yang Construction Group Ltd v Zhejiang Jinyi Group Co, Ltd and others* [2006] 4 SLR(R) 451 ("*Wu Yang*")). Therefore, when the expert witnesses of the Judgment Creditor and Judgment Debtor gave opposing depositions, there are arguably disputes of facts which might be unsuitable for summary determination. However, as held in *Sakthivel Punithavathi v PP* [2007] 2 SLR(R) 983 at [75]-[76]:

> "[w]here there is conflicting evidence between experts it will not be the sheer number of experts articulating a particular opinion or view that matters, but rather the consistency and logic of the preferred evidence that is paramount… Evidence must invariably be sifted, weighed and evaluated in the context of the factual matrix and in particular, the objective facts".

There was no necessity for further cross-examination of the opposing expert witnesses since the opposing expert witnesses were given ample opportunity to respond to each other's submissions. Furthermore, it was extremely clear that the logic and reasoning of the Judgment Creditor's expert witness was preferred. The assertions from the Judgment Debtor's and Other Parties' expert witnesses were implausible and unsupported by legal basis.

40 Section 47(1) of the Evidence Act also governs the admissibility of expert opinions on foreign law. It was held in *Pacific Recreation* at [62] that generally, a written opinion of an expert may be proved without calling the expert to give oral evidence only if the requirements of s 62(2) of the Evidence Act are satisfied. I was satisfied that s 62(2) of the Evidence Act was fulfilled, because the direct oral evidence of the expert witnesses could not be obtained "without an amount of delay or expense which the court regards as unreasonable". In view of the history and length of these proceedings, calling in the Indian expert witnesses for trial would only increase cost and time without adding to the merits of the claim. It was unreasonable to incur the additional delay and expense when, as stated above at [39], further cross-examination was unnecessary.

The Supply Contract and the Commission Agreement

41 Although the Judgment Debtor submitted that it acted as the Other Parties' commission agent when it contracted with the Buyer under the Supply Contract, it was unusual that the Commission Agreement was entered into only after the Supply Contract was formed on 23 July 1991. The Commission Agreement was signed on 12 December 1991, almost six months after the Supply Contract was formed. Nada Manic's (an employee of the Judgment Debtor) Affidavit in 17 November 2009 [note: 35] stated that there was an oral commission agency agreement already in place between the Judgment Debtor and the Other Party before they contracted the Supply Contract. However, in Nada Manic's Affidavit filed on 27 February 2009, when the Judgment Debtor first disclosed the Commission Agreement, no mention was made of the fact that an oral commission agency agreement was already in place. I found that the alleged existence of an oral commission agency agreement was just another bare assertion, like the Judgment Debtor's assertion that the Buyer was still waiting for the Supply Contract to be performed after 20 years of inaction. These assertions made very late in the proceedings were not backed up by any evidence. In the light of the inconsistencies in the Judgment Debtor's affidavits and the selective manner in which they disclosed information, I find that no oral commission agency agreement existed. Any commission agency relationship must stem from the Commission Agreement.

42 The Judgment Creditor also pointed out that while the price payable to the Judgment Debtor was "fixed" under Article 4.2.1 of the Supply Contract, the price payable to the Other Parties was still provisional and was to be "agreed subsequently" under Article 2.2 of the Commission Agreement.

Findings of Indian Law

43 The issues under Indian Law were thus: (i) did the Judgment Debtor act as the Other Parties' commission agent at the time of the Supply Contract and (ii) did the Judgment Debtor hold the Funds as a trustee under the Supply Contract and Commission Agreement?

Judgment Creditor's Expert Evidence on Indian Law

44 The Judgment Creditor's expert witness is Mr Rajat Taimni ("Rajat"), a Partner in Tuli and Co, who practised law since 2000. Rajat specialises in Insurance Law which he states gives him expertise on assignment and privity of contracts. Rajat opined that the terms of the Supply Contract indicates it was only a bilateral contract [note: 36]: the Supply Contract only identifies two parties – the "Seller" (*ie*, Judgment Debtor) and the "Buyer", warranties are extended by the Judgment Debtor [note: 37] and the Supply Contract prohibits the assignment of rights and obligations unless the consent of the other party is obtained [note: 38].

45 Rajat opines that the Judgment Debtor did not execute the Supply Contract as agents of the

Other Parties. Under Indian law, the fact that the Commission Agreement was entered after the Supply Contract was "itself indicative that there was no agency between these parties at the time the Supply Contract was executed" [note: 39]. Rajat cites the Indian case of *Modi Vanaspati Manufacturing Company v Katihar Jute Mills (Pvt) Ltd* AIR 1969 Cal 496 ("*Modi Vanaspati*"), where the Court held that the fact the parties entered into subsequent contracts indicates there was no agency:

> The very fact that there were subsequent contracts between the Bhaduris and the Modis with the additional feature of a different price would indicate that the transactions were independent and separate.

Rajat concludes that the fact the Commission Agreement and Supply Contracts were signed on different dates, terms and prices were indicative that there was no agency relationship between the Judgment Debtor and the Other Parties [note: 40].

46 Rajat states that there is no support in Indian law for the proposition that merely because business must be transacted through a Government Entity, that Government Entity necessarily becomes the agent of the local buyer/seller [note: 41]. Based on *Serajuddin and Ors v The State of Orissa* AIR 1975 SC 1564 ("*Serajuddin*") and *K Gopinathan Nair v State of Kerala* AIR 1997 SC 1925 [note: 42], Rajat submits that unless a principal-agent relationship can be specifically proven, the mere fact that a state owned company is used as a channelising agent to enter into transactions will not be sufficient to establish agency between the parties. Special factors would be required and Rajat did not find any special factors in the present case [note: 43]. Rajat quoted *Serajuddin*, the facts of which are similar to our case. In *Serajuddin*, the appellant entered into two contracts with the State Trading Corporation ("the Corporation"). The Corporation then entered into identical contracts with foreign buyers for sale of the identical goods purchased by the Corporation from the appellant. The appellant contended that because it had to act through the Corporation, it meant the Corporation was acting as its agent. Rajat quoted these passages from *Serajuddin*, where the majority held there was no agency for, *inter alia*, the following reasons:

> The Corporation entered on the scene and entered into a direct contract with the foreign buyer to export the goods. The Corporation alone agreed to sell the goods to the foreign buyer. The Corporation was the exporter of the goods. There was no privity of contract between the appellant and the foreign buyer. The privity of contract is between the Corporation and the foreign buyer… In the present case, there is no principal and agent relationship between the appellant and the Corporation and in the absence of such relationship the agency of necessity does not arise.
>
> The fact that the exports can be made only through the State Trading Corporation does not have the effect of making the appellants the exporters where there is direct contract between the Corporation and the foreign buyer.

47 Briefly, Rajat also opines that there was no privity of contract between the Other Parties and the Buyer and there was no consent for a valid assignment of the rights and obligations under the Supply Contract to the Other Parties. Therefore, the Supply Contract was executed between the Buyer and the Judgment Debtor, "each for and on its own behalf respectively, and for no other". Rajat opines under Indian law, the Funds "lawfully belonged to the Judgment Debtor". From Rajat's conclusions, there could be no question of the Judgment Debtor holding as a trustee.

Other Parties' Expert Evidence on Indian Law

48 The Other Parties' Expert on Indian Law was Dr Sudhir Ravindran ("Dr Sudhir"), a lawyer specialising in intellectual property law. I found Dr Sudhir's evidence very unhelpful. Dr Sudhir stated that he disagreed with Rajat that there was no agency between the Other Parties and the Judgment Debtor merely because the subsequent contracts and the Supply Contract were signed on different dates [note: 44]. Dr Sudhir stated that the Court decided there was no agency between the parties in *Modi Vanaspati* because the prices were different. However, as stated above at [45], this was exactly what Rajat opined, that is, there was no agency between the parties because the prices in the Supply Contract and Commission Agreement were different like in *Modi Vanaspati*.

49 Dr Sudhir places the burden of proof on the Judgment Creditor to disprove that the Judgment Debtor and Other Parties are not in an agency relationship since the Judgment Debtor and Other Parties do not dispute about the existence of such an agency relationship [note: 45]. This is to put the cart before the horse since Dr Sudhir does not state how the Judgment Debtor and Other Parties have shown that they have actually established an agency relationship. Dr Sudhir also states that the Supply Contract does not prohibit the addition of the Other Parties as long as it is in compliance with Article 16.2 of the Supply Contract:

> Any alteration or additions to this Contract shall be valid only if they are given in writing and are signed by the persons authorised by both parties for this purpose.

This is consistent with Rajat. However, Dr Sudhir's opinion does not have any factual basis since the Judgment Debtor did not adduce evidence that Article 16.2 of the Supply Contract was complied with – there is no written authorisation by both the Judgment Debtor and Buyer. Therefore, Dr Sudhir's opinion that privity of the contract between the Other Parties and the Buyer "cannot be ruled out" based on the *possible* compliance of Article 16.2 of the Supply Contract (which was never proven) is extremely unhelpful.

50 Dr Sudhir agrees with Rajat that the "Judgment Debtor has not assigned its rights and obligations to the [Other Parties] under the Supply Contract" [note: 46], however Dr Sudhir strangely opines that the Judgment Debtor "delegated" its rights and obligations to the Other Parties but the "Judgment Debtor is still obliged to perform under the Supply Contract". I reject Dr Sudhir's views because his views on "delegation" come from a United States textbook and not from any official source of Indian law. Furthermore, the context from which it was quoted actually equates "delegation" with "assignment". Additionally, Dr Sudhir does not substantiate why there is a "delegation" instead of an "assignment". In comparison, Rajat's submissions are inferences based on official sources of Indian law.

51 Dr Sudhir's conclusion that the Funds does not belong to the Judgment Debtor is based on the assumption that the Protocol is governed by Indian law [note: 47]. As this assumption no longer stands, *a fortiori*, Dr Sudhir's conclusion carries little weight. I find Dr Sudhir's opinion to be largely consistent with Rajat's submissions on those matters that support the Judgment Creditor's case.

Judgment Debtor's Expert Evidence on Indian Law

52 The Judgment Debtor's expert on Indian Law is Subramaniam Venkiteswaran ("Subramaniam"), a Senior Advocate of the Bar Council of Maharashtra and Goa. Subramaniam has been practising law since 1962 and his bio-data shows a specialisation in International Trade and Maritime law. Subramaniam opines that if (1) no foreign buyer can enter into contract with the Other Parties, (2) there were foreign exchange restrictions in Yugoslavia, and (3) the amount lying in Singapore is part of the consideration under the main supply contract, then the Funds were for the benefit of the Other

Parties [note: 48]. Subramaniam accepts that Rajat was correct in saying there is no privity of contract between the Other Parties and the Buyer [note: 49]. However, Subramaniam is of the view that as long as the Other Parties can only enter into contracts for military armaments through the Judgment Debtor, there is a legal fiction that the Judgment Debtor must have acted as the Other Parties' channelising agent. The problem with Subramaniam's view is that he cites no legal authority in support. Subramaniam does not even interpret the Supply Contract or Commission Agreement or elaborate on their relationship with each other. He admits that his opinion is drawn from first principles [note: 50]. There is also another flaw in Subramaniam's premise – even if the Other Parties can *only* enter into contracts for military armaments through the Judgment Debtor it does not follow that the Judgment Debtor had, in fact, entered into contract with the Buyer as the Other Parties' agent. The Judgment Debtor had capacity to contract on its own behalf.

53 I find Subramaniam's opinion deficient compared to that of Rajat. In my view, Subramaniam has not rebutted Rajat's evidence. Rajat opined that the legal fiction of the channelising agent only applies if there are special factors and Subramaniam did not address or substantiate what were the special factors of the case.

Conclusion

54 The Experts for the Other Parties and Judgment Debtor submitted their affidavits after looking through Rajat's affidavit and their opinions were in response to his affidavit. I will not repeat the opinion Rajat gave in his 2nd Affidavit filed on 12 January 2010, but he has comprehensively rebutted all of the opposing expert witnesses' opinions with Indian case law. There was no need in any event to rebut the opposing expert witnesses' opinions since I found them of little probative value. In *Wu Yang* at [15], the Court observed (perhaps disappointingly) that neither expert in that case referred to relevant treatises or articles and this "would have helped to inject an objective (not to mention, helpful) measure into their respective evidence". In this respect, Rajat's opinion seemed stronger than the opinions of both the opposing expert witnesses. I prefer Rajat's views for all the reasons I stated above and I find that under Indian law, the Judgment Debtor had contracted with the Buyer and received the Funds on its own behalf and not as a trustee.

Was there a trust under Singapore Law?

55 It is settled law that there needs to be three certainties to form a trust:

(1) certainty of intention to create a trust,

(2) certainty of subject matter of trust, and

(3) certainty of objects of trust (*Joshua Steven v Joshua Deborah Steven and others* [2004] 4 SLR(R) 216 at [12]).

The Pre-Protocol and Protocol had no express stipulation of a trust. The question was therefore whether, in light of the terms of the Pre-Protocol and Protocol, there was an intention to create a trust (*Hinckley Singapore Trading Pte Ltd v Sogo Department Stores (S) Pte Ltd (under judicial management)* [2001] 3 SLR(R) 119 at [33]) ("*Hinckley Singapore")*. I found that the Pre-Protocol and

Protocol exemplified no such certainty of intention.

Terms of the Pre-Protocol and Protocol

56 Article 4 of the Pre-Protocol states that the Funds "shall be used exclusively for purchasing the raw materials, parts, assemblies, sub-assemblies and other goods for the needs of the [Other Parties]". Article 5 of the Pre-Protocol states that the:

> authorized representative of the [Judgment Debtor] shall, based on the written request of the [Other Parties], issue a written order to the authorized person of the [Garnishee] to effect the payment on behalf of the [Other Parties] for the purchased goods.

57 Article 6 of the Pre-Protocol states:

> The [Judgment Debtor] and the [Other Parties]… shall make a protocol determining the details of the deposited amount, the manner of its handling, the procedure of the purchasing and paying for the goods requested by the [Other Parties] and all other particulars concerning the mutual rights and obligations of the [Judgment Debtor] and the [Other Parties] in respect of the [Funds].

58 The Protocol, reaffirming Article 4 of the Pre-Protocol, states that the Other Parties visited the Garnishee "in order to make an agreement on imports and payments for the components and production materials required against export deals" and that the Funds were "effected in favour of [Garnishee], for purchasing abroad the components and production materials required [for the Supply Contract]".

59 Two particular parts of the Protocol are the closest the Judgment Debtor have to indicate an intention to create a trust, namely, first, the "[Garnishee] shall earmark the funds on the account for the beneficiaries and shall then time deposit them based on the instructions received from each beneficiary" and the "[Garnishee] shall return to the [Other Parties] any funds that have not been spent, or shall use them for other purposes in accordance with the [Other Parties'] instructions".

60 However, examining the commercial context of the Pre-Protocol and Protocol as a whole, I am satisfied that the Judgment Debtor did not intend to create a trust and divest itself of its beneficial ownership of the Funds. The purpose of the Funds was stated clearly in the Pre-Protocol and Protocol – to purchase the raw materials and components the Other Parties needed as manufacturers of the Supply Contract. The Pre-Protocol and Protocol constituted the financial arrangement to determine the procedure in which the suppliers of these raw materials and components are paid. The suppliers would submit their invoices to the Garnishee to be paid instead of being paid by the Other Parties directly. In fact, the creation of such a complex financial arrangement would suggest that the Judgment Debtor was unwilling to part with the beneficial ownership and control of the Funds, since it would have been simpler for the Judgment Debtor to transfer the Funds to the Other Parties and for them to pay for their own raw components directly.

61 The terms of the Protocol also suggest that the arrangements were provisional and not completely finalised. The share of each beneficiary was not determined with finality in the Protocol. The Protocol states that:

> [t]he share of each participant in the business deal, made on the basis of the agreed interim participation of the [Other Parties] and utilization of the advance payment is presented in Appendix No. 1 of this Protocol. Upon reaching a final agreement of their participation, a final statement of accounts shall be made.

The provisional nature of each beneficiary's share of the Funds is reinforced by the later terms of the Protocol which states:

> [f]or completed transactions, [Garnishee] shall charge 1% of the purchase value for its actual costs, inclusive of all bank charges and its business expenses. The [Other Parties] shall respond and state their position on the above terms by 10 January 1992 … Both [Garnishee] and the [Other Parties] shall keep record of the funds spent by each of the [Other Parties], and after completing all the purchases, the manufacturers shall make the final statement of accounts.

62 The uncertainty of each of the Other Parties' share of the Funds supports the lack in certainty of intention in creating a trust. In *Hinckley Singapore*, the Court of Appeal held that in the absence of an express term creating a trust and where there are no other clear indices of a trust, the maintenance of a separate account by the agent was crucial to constitute the monies as trust monies. In *Re Lewis's of Leicester Ltd* [1995] 1 BCLC 428, a trust was found despite the money being deposited into a general bank account because there was an express stipulation of a trust in the contract and the trust monies could therefore be traced by equitable tracing rules. In *Re Fleet Disposal Services Ltd* [1995] 1 BCLC 345, the proceeds of the principal's goods were held to be trust monies because there was a designated account for the proceeds of sale and the credit period allowed for the agent to pay the principal was relatively short (five days).

63 The Funds were deposited into the Garnishee's Bank account. It was not a designated separate account and the Funds were mixed with the Judgment Debtor or Garnishee's own monies. There is suggestion of separation since the Protocol stated the Garnishee should earmark the Funds and "time deposit them based on the instructions received from each beneficiary", however this separation is of doubtful value since the exact share of each beneficiary is still at the provisional stage. The conduct of the parties are consistent with the interpretation that no trust was formed on the Pre-Protocol and Protocol and most of the terms were agreed on only provisionally – the funds were never earmarked nor time deposited. The Protocol states that the beneficiaries shall receive balance bank statements on a monthly basis, but this was never done. The Judgment Creditor submits that the Other Parties were unable to produce any of their own financial statements showing the Funds belonged to them or state in their affidavits the specific amount of monies purportedly due to each of them from the Funds. There was no correspondence between the Judgment Debtor and the Other Parties for the last 20 years. The lack of any form of correspondence seemed implausible if the Other Parties were indeed the beneficial owners of the Funds since the large sum of monies would require at least a minimal form of accounting.

64 Therefore, I find that under Singapore Law no trust had been created. As no trust was found from the 4 Trust Documents, it is not necessary to determine whether the trust monies could actually be traced to the Funds.

Summary Determination for the Garnishee Proceedings

65 Under O 49 r 5 and r 6 of the ROC, if there is a dispute of liability or dispute regarding the beneficial ownership of the Funds, I had the discretion to order the issue to be sent for trial or to be summarily determined. The Judgment Debtor argued that under *Roberts v Death*, if a *prima facie* case of a trust is made out, an inquiry as to whether the Funds were trust monies should be carried out. *Roberts v Death* was approved by Lord Goff in the House of Lords case of *Deutsche Schachtbau-Und Tiefbohr-Gesellschaft M.B.H. v Shell International Petroleum Co Ltd (Trading as Shell International Trading Co)* [1990] 1 AC 295 ("*Deutsche Schachtbau-Und*"), who held that a claim that a third party was entitled to the beneficial ownership of the debt ought to be considered and decided upon an inquiry under the procedure established by Order 49, Rule 6 of the UK Rules of Supreme Court 1965

("R.S.C."). Order 49 Rule 6 of the R.S.C. (since replaced by the Civil Procedure Rules 1998) was substantially similar to our O 49 r 6 of the ROC.

66 Lord Keith, Lord Brandon and Lord Goff in *Deutsche Schachtbau-Und* stated that the procedure under rule 6 of R.S.C. applies where the garnishee suggests that the debt is due not to a third person, but is payable to the judgment debtor as a trustee. The Court would be bound to take that matter into account in exercising its discretion in whether to make the garnishee order absolute, but it would not be deprived of jurisdiction to make the garnishee order absolute if in the circumstances it were just to do so. Similar to the facts here, the garnishee in *Deutsche Schachtbau-Und* argued against the garnishee order being made absolute because the debt was payable to the judgment debtor only as a trustee. However, unlike our case, the beneficiary of the alleged trust in *Deutsche Schachtbau-Und* never attended before the court to state the nature of its claim. The courts below had also found that there was no evidence to support that the judgment debtor held the debt as a trustee. A significant factor in *Deutsche Schachtbau-Und* is that the beneficiary of the alleged trust was actually liable jointly and severally with the judgment debtor to the judgment creditor, therefore Lord Goff stated that it would not have been inequitable for the garnishee order to be made absolute in these circumstances. However, the garnishee order was not made absolute in the end because the House of Lords found that it would be inequitable when there was a real or substantial risk that the garnishee would be compelled by the legal process of a foreign court to pay the attached debt twice over.

67 I am of the view that a *prima facie* case of a trust was not made out and therefore there was no need for the issue to be sent for trial. Even if a *prima facie* case of a trust was made out, it is not necessary in every case that an inquiry would require a trial, for, *eg*, if there was a document clearly evidencing an express trust. The level of inquiry will depend on the weight of evidence produced.

68 The affidavits, factual and expert, filed for the garnishee proceedings were sufficient to dispose of the matter. There was little value in converting the proceedings into a trial. I found the *dicta* in the Privy Council case of *Eng Mee Yong and others v Letchumanan s/o Velayutham* [1979] 2 MLJ 212 useful, Lord Diplock stated:

> Although in the normal way it is not appropriate for a judge to attempt to resolve conflicts of evidence on affidavit, this does not mean he is bound to accept uncritically, as raising a dispute of fact which calls for further investigation, every statement on an affidavit however equivocal, lacking in precision, inconsistent with undisputed contemporary documents or other statements by the same deponent, or inherently improbable in itself it may be... It is for him to determine in the first instance whether statements contained in affidavits that are relied upon as raising a conflict of evidence upon a relevant fact have sufficient *prima facie* possibility to merit further investigation as to their truth.

69 The *dicta* in *Abdul Salam Asanaru Pillai (trading as South Kerala Cashew Exporters) v Nomanbhoy & Sons Pte Ltd* [2007] 2 SLR(R) 856 is also particularly relevant. Sundaresh Menon JC stated at [39]:

> It is often said that proceedings at the summary stage are not to be conducted as a trial on affidavits, but that does not mean anything set out in the affidavits is to be accepted without rational consideration to determine if there is a fair or reasonable probability of a real defence.

The evidence to support the existence of a trust proffered by the Judgment Debtor and the Garnishee were often inconsistent and implausible. The evidence was insufficient to substantiate a fair or reasonable probability of a trust.

70 Furthermore, it was not the Garnishee's case that it would be inequitable for the provisional garnishee order to be made final as they would be under a real or substantial risk of being compelled to pay the debt twice as in *Deutsche Schachtbau-Und*. Even if the Other Parties had a contractual claim against the Judgment Debtor based on the 4 Trust Documents, it would not be the Garnishee's obligation to pay.

71 As the garnishee order is basically an equitable remedy, the Court will seek to do justice not only between the parties but to any other persons who may be affected by the order. The Court will generally be reluctant to make the order final if to do so would unjustifiably give the judgment creditor priority over the other creditors, especially if the judgment debtor is insolvent (see *Pritchard v Westminster Bank* [1969] 1 WLR 547 and *Arab Bank Ltd v Ng Soo Kin and others (Bank of Montreal, third party)* [1988] 2 SLR(R) 1). However, I was not satisfied that the Other Parties even has a contractual claim against the Judgment Debtor since both sides did not provide evidence as to the continued existence of the contract or any performance on the contract on their part. The Judgment Debtor asserts that the Buyer is still waiting for the Supply Contract to be performed, but they can provide no evidence of correspondence from the Buyer and such an assertion seems implausible considering the twenty years that have passed since the Supply Contract was first contracted.

72 It was therefore not inequitable to summarily determine that the Funds belonged "wholly and exclusively" to the Judgment Debtor and for the provisional garnishee order to be made final.

Conclusion

73 I will allow Summons 5282 and dismiss Summons 5377. I also order for the provisional garnishee orders under Summons in Chambers No 2151 of 2005 and 2152 of 2005 to be made final.

74 Under O 49, r 10 of the ROC, unless the Court otherwise directs, the costs of the garnishee proceedings should be retained by the judgment creditor out of the money recovered by him under the order and in priority to the judgment debt. Considering the vexatious way the Judgment Debtor proceeded with its case, I will order the Judgment Debtor to pay costs of the garnishee proceedings to the Judgment Creditor.

[note: 1] Affidavit of Malcolm Brooks Savage, Jr filed on 9 October 2009, [34] [BOD – Vol 2D, Tab 50B].

[note: 2] Affidavit of Khoo Boo Jin filed on 8 May 2009, p 14 [BOD – VOL 2B, Tab 23].

[note: 3] Affidavit of Malcolm Brooks Savage, Jr filed on 28 October 2004, [26] [BOD – VOL 1B, TAB 3].

[note: 4] Affidavit of Nada Manic filed on 27 February 2009 [BOD – VOL 2A, TAB 16].

[note: 5] Affidavit of Zoran Matic filed on 27 February 2009 [BOD – VOL 2A, TAB 17].

[note: 6] Affidavit of Malcolm Brooks Savage, Jr filed on 14 July 2009, p 240 [BOD – VOL 2C, TAB 42].

[note: 7] The Judgment Creditor's Written Submissions for SUMs 4431, 4846, 5282, 5377 and 5736, dated 3 January 2011.

[note: 8] Affidavit of Caroline Anne Basset filed on 5 October 2004, p 115 [BOD-VOL 1A, TAB 1].

[note: 9] Affidavit of Malcolm Brooks Savage, Jr filed on 9 October 2009, [39] [BOD – VOL 2D, TAB 50B].

[note: 10] Affidavit of Malcolm Brooks Savage,Jr filed on 28 October 2004, [28]-[29] (BOD – VOL 1B, TAB 3]; Affidavit of Khoo Boo Jin filed on 28 April 2005, [7] [BOD- VOL 2A, TAB 11].

[note: 11] Affidavit of Lim Poh Weng filed on 10 November 2004 [BOD – VOL 2A, TAB 11].

[note: 12] Affidavit of Malcolm Brooks Savage, Jr filed on 28 October 2004, [58] – [61] [BOD – VOL 1B, TAB 3].

[note: 13] Affidavit of Malcolm Brooks Savage, Jr filed on 14 July 2009, p 156 [BOD – VOL 2C, TAB 42].

[note: 14] Affidavit of Malcolm Brooks Savage, Jr filed on 14 July 2009, p 20 [BOD – VOL 2C, TAB 42].

[note: 15] *Ibid*, p 24.

[note: 16] Affidavit of Goh Soke Eng (the Bank) filed on 13 May 2005, [5] [BOD – VOL 3, TAB 69].

[note: 17] Affidavit of Malcolm Brooks Savage, Jr filed on 14 July 2009, p 53, 57, 62, 66, 70, 75, 81, 86, 91, 96, 99, 106, 108, 114, 117, 124, 127, 135, 138, 146, 149 to 152 [BOD – VOL 2C, TAB 42].

[note: 18] *Ibid*, p 43.

[note: 19] *Ibid*, [24] – [26].

[note: 20] Affidavit of Peter Jacob filed on 11 January 2010, p 30, [4.1] [BOD – VOL 3, TAB 71A].

[note: 21] Affidavit of Jamshid K. Medora filed on 1 April 2010, p 4, [10] [BOD – VOL 3, TAB 71B].

[note: 22] Affidavit of Peter Jacob filed on 26 April 2010, p 30, [3.9] [BOD – VOL 3, TAB 71C].

[note: 23] Affidavit of Zoran Matic filed on 27 February 2009, [27]-[31] [BOD – VOL 2A, TAB 17]

[note: 24] Affidavit of Miodrag Milsosavljević dated 9 December 2005, Exhibit 3 [BOD – VOL 1B, TAB 9].

[note: 25] *Ibid*.

[note: 26] Affidavit of Malcolm Brooks Savage, Jr filed on 23 June 2010, p 34 [BOD – VOL 2E, TAB 65].

[note: 27] Affidavit of Malcolm Brooks Savage, Jr filed on 23 June 2010, p 37 [BOD – VOL 2E, TAB 65].

[note: 28] Affidavit of Malcolm Brooks Savage, Jr filed on 23 June 2010, p 36 [BOD – VOL 2E, TAB 65].

[note: 29] Affidavit of Malcolm Brooks Savage, Jr filed on 11 January 2010, p 98-117 [BOD – VOL 2E, TAB 60].

[note: 30] Affidavit of Nada Manic filed on 27 February 2009, pp 64-65 [BOD – VOL 2A, TAB 16].

[note: 31] Affidavit of Nada Manic filed on 27 February 2009, pp 15-31 [BOD – VOL 2A, TAB 16].

[note: 32] Affidavit of Nada Manic filed on 27 February 2009, pp 52-55 [BOD – VOL 2A, TAB 16].

[note: 33] Affidavit of Malcolm Brooks Savage, Jr filed on 11 January 2010, p 104 [BOD – VOL 2E, TAB 60].

[note: 34] Affidavit of Nada Manic filed on 27 February 2009, pp 15 [BOD – VOL 2A, TAB 16].

[note: 35] This document is missing in the BOD, see [12].

[note: 36] 1st Affidavit of Rajat Taimni, filed on 7 September 2009, p 14, [17] [BOD – VOL 4A, TAB 73].

[note: 37] Article 5.1 of the Supply Contract – 1st Affidavit of Rajat Taimni, filed on 7 September 2009, p 15, [18] [BOD – VOL 4A, TAB 73].

[note: 38] Article 16 of the Supply Contract – 1st Affidavit of Rajat Taimni, filed on 7 September 2009, p 14, [17] [BOD – VOL 4A, TAB 73].

[note: 39] 1st Affidavit of Rajat Taimni, filed on 7 September 2009, p 16, [22] [BOD – VOL 4A, TAB 73].

[note: 40] 1st Affidavit of Rajat Taimni, filed on 7 September 2009, p 16, [23] [BOD – VOL 4A, TAB 73].

[note: 41] 1st Affidavit of Rajat Taimni, filed on 7 September 2009, p 17, [24] [BOD – VOL 4A, TAB 73].

[note: 42] 2nd Affidavit of Rajat Taimni filed on 12 January 2010, p 19, [42b] [BOD – VOL 4B – TAB 77.

[note: 43] 1st Affidavit of Rajat Taimni, filed on 7 September 2009, p 17, [24] [BOD – VOL 4A, TAB 73].

[note: 44] Affidavit of Sudhir Ravindran filed on 16 November 2009, p 19, [19] [BOD –VOL 4A, TAB 74].

[note: 45] Affidavit of Sudhir Ravindran filed on 16 November 2009, p 21, [20b] [BOD –VOL 4A, TAB 74].

[note: 46] Affidavit of Sudhir Ravindran filed on 16 November 2009, p 26, [30] [BOD –VOL 4A, TAB 74].

[note: 47] Affidavit of Sudhir Ravindran filed on 16 November 2009, p 27, [34] [BOD –VOL 4A, TAB 75].

[note: 48] 1st Affidavit of Subramaniam Venkiteswaran filed on 17 November 2009, p 17, [17] [BOD – VOL 4A, TAB 75].

[note: 49] 1st Affidavit of Subramaniam Venkiteswaran filed on 17 November 2009, p 19, [23] [BOD – VOL 4A, TAB 75].

[note: 50] 1st Affidavit of Subramaniam Venkiteswaran filed on 17 November 2009, p 17, [18] [BOD – VOL 4A, TAB 75].