IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 56

Originating Summons No 845 of 2017

In the matter of Section 4(10) of the Civil Law Act (Cap 43, 1999 Rev Ed) and s 18(2) read with the First Schedule of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed)

And

In the matter of an ICC arbitration between Hilton International Manage (Maldives) Pvt Ltd and Sun Travels & Tours Pvt Ltd

Between

HILTON INTERNATIONAL MANAGE (MALDIVES) PVT LTD

… *Plaintiff*

And

SUN TRAVELS & TOURS PVT LTD

… *Defendant*

GROUNDS OF DECISION

[Arbitration] — [Agreement] — [Breach]

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[Arbitration] — [Award] — [Recourse against award]

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v
Sun Travels & Tours Pvt Ltd

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High Court — Originating Summons No 845 of 2017
Belinda Ang Saw Ean J
24, 27 October, 2, 20 November 2017

14 March 2018

Belinda Ang Saw Ean J:

Introduction

1 Originating Summons No 845 of 2017 ("OS 845") dated 24 July 2017 (which was subsequently amended on 20 November 2017) is an application for a permanent anti-suit injunction to restrain a party from instituting or continuing with proceedings in a foreign court in breach of an arbitration agreement. Besides seeking a permanent anti-suit injunction, the plaintiff also applied for various declaratory orders from this court. In this case, OS 845 was taken out after arbitration proceedings between the plaintiff and defendant ("the Arbitration") had concluded and the Partial Award dated 27 May 2015 ("Partial Award") and the Final Award dated 17 August 2015 ("Final Award") (collectively "the Awards") had been issued in favour of the plaintiff, but the defendant (as the losing party in the Singapore-seated arbitration) successfully

obtained, on 9 March 2017, judgment in a civil action that it commenced on 16 October 2016 in the Maldivian High Court on the same issues raised and argued in the arbitration ("the March Judgment"). The plaintiff has appealed against the March Judgment, which effectively contradicts the outcome of the arbitration; this appeal is pending before the Maldivian appellate court at the time OS 845 was heard before me (see [19] below). In the meantime, the plaintiff's latest effort to enforce the Singapore award in Maldives has failed; the Maldivian court cited the existence of the March Judgment as the reason for the court's refusal to enforce the Awards.

2 The plaintiff argued that by commencing the Maldivian civil action in October 2016 ("the Maldivian action"), the defendant breached the arbitration agreement between the parties, namely its negative obligation not to seek relief in any other forum, and sought the relief in OS 845 to restrain the defendant from pursuing and/or continuing proceedings in the Maldives begun in breach of the arbitration agreement contained in the hotel management contract signed on 27 February 2009 ("the Management Agreement") and/or the Terms of Reference in ICC Arbitration Case Number 19482/TO dated 27 September 2013 ("the Terms of Reference"). The defendant claimed that the Maldivian action was simply part of the defendant's efforts to resist enforcement of the Awards in the Maldives, as it was entitled to do, and the plaintiff was simply coming to this court to aid its enforcement of the Awards. The defendant further argued that the court had no jurisdiction over the defendant, and in the alternative, that there were good reasons why a permanent anti-suit injunction should not be granted in this case.

3 During the course of the hearings, the parties were directed to address the additional issue of whether the defendant's commencement of the civil action in Maldives post arbitral award was an attempt to circumvent the Awards. If so, would the Maldivian action be a breach of the arbitration agreement between the parties, in particular a breach of its negative obligation not to commence proceedings in another forum and/or not to set aside or otherwise attack the Awards in a jurisdiction other than the seat of the Arbitration? These written grounds will discuss the implied promises identified in two English cases, namely *Ust-Kamenogorsk Hydropower Plant JSC v AES Ust-Kamenogorsk Hydropower Plant LLP* [2013] UKSC 35 *("AES UST*") and *C v D* [2007] EWCA Civ 1282 ("*C v D*"), and will also consider whether either breach could amount to, *inter alia*, a collateral attack on the Awards and/or an abuse of the Maldivian court process in the context of an application for a permanent anti-suit injunction. Underpinning this inquiry is the question as to whether or not the doctrine of abuse of process can apply where the decision under attack is that of an arbitral tribunal.

4 The following limited orders were made on 20 November 2017:

(a) The defendant is hereby permanently restrained (whether by its officers, servants, agents or any of them or otherwise howsoever) from taking any steps in reliance on the ruling in the March Judgment by the courts of the Republic of Maldives, or any decision upholding the March Judgment.[1]

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[1] Prayer 1(b)(i) of amended OS 845.

It is also declared that:

(b) The Awards are final, valid and binding on the parties;[2] and

(c) The defendant's claim before the courts of the Republic of Maldives in the Maldivian action is in respect of disputes between the plaintiff and defendant that have arisen out of or in connection with the Management Agreement, and any consequential proceedings resulting therefrom (including any appeals) are in breach of the arbitration agreement in the Management Agreement and/or the Terms of Reference.[3]

It is further ordered that:

(d) Nothing in this order shall prevent the defendant from objecting to the recognition or enforcement of the Awards, and

(e) The defendant is to pay the plaintiff the costs of and incidental to this application to be taxed on a standard basis, if not agreed.

5 In writing these grounds, I noticed an error on costs in the order of court extracted by the parties. Whilst the plaintiff had asked for indemnity costs, the court was not minded to grant that and informed the parties that costs would be awarded on a standard basis. The position taken is recorded in the court's Notes of Arguments. Thus, costs of and incidental to OS 845 were ordered to be taxed

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[2] Prayer 2 of amended OS 845.

[3] Prayer 3 of amended OS 845.

on a standard basis, if not agreed. I understand that an Assistant Registrar has drawn this mistake to the parties' attention.

6 The defendant has appealed against all the orders made on 20 November 2017. I now publish the reasons for the orders made.

The dispute and the Arbitration

7 The plaintiff is a company incorporated in the Maldives and is affiliated with a large hospitality company operating hotels and resorts worldwide. It owns several resorts in the Maldives. In February 2009, the parties entered into the Management Agreement whereby the defendant agreed to convert a hotel it owned in the Maldives ("the Hotel") to be managed by the plaintiff under the plaintiff's brand for an initial period of 20 years. Over the next few years, the defendant was dissatisfied with the Hotel's performance under the plaintiff's management. Eventually, in April 2013, the plaintiff gave notice to the defendant that the Management Agreement was terminated with immediate effect. The defendant accepted the plaintiff's termination a few days later on 2 May 2013 as a wrongful repudiation of the Management Agreement.

8 Around two weeks later, on 16 May 2013, the plaintiff commenced arbitration proceedings by submitting a request for arbitration to the International Chamber of Commerce ("ICC") Secretariat relying on cl 18.2 of the Management Agreement ("the arbitration agreement"), which reads:

> **18.2 Arbitration**
>
> … the Parties irrevocably agree that any dispute, controversy or claim arising out of or in connection with this [Management Agreement], or the breach, termination or invalidity thereof shall be finally settled under the Rules of Arbitration of the [ICC]

> by one (1) or more arbitrators appointed in accordance with said Rules. Any arbitration proceedings shall be conducted in English. The venue of the arbitration shall be Singapore International Arbitration Centre.

9 On 18 July 2013, the ICC Court of Arbitration ("ICC Court") fixed Singapore as the place of the Arbitration. The subsequent Terms of Reference signed by the parties stated that the ICC Court had fixed Singapore as the place or seat of the Arbitration.

10 The plaintiff's claim in the Arbitration was that the defendant was not entitled to terminate the Management Agreement either by virtue of the plaintiff's alleged contractual breaches or misrepresentations, and the defendant was thus liable to pay damages. The defendant claimed that the plaintiff had made certain fraudulent misrepresentations as to the financial projections provided before the parties entered into the Management Agreement, inducing the plaintiff to enter into the Management Agreement, and that the plaintiff had committed various breaches of the Management Agreement while operating the Hotel, justifying termination of the Management Agreement.

11 Both parties participated in the Arbitration, providing written submissions, witness statements, documentary evidence, and attended the oral hearings in July 2014 before a three-member arbitral tribunal ("the Tribunal"). On 27 May 2017, the Tribunal issued the Partial Award finding that the defendant's claims of contractual breach and negligent and/or fraudulent misrepresentation had not been made out and the defendant had thus not been entitled to terminate the Management Agreement. It dismissed the defendant's claims and awarded the plaintiff US$599,095.66 with interest for pre-termination and GBP 1,051,230.10 for legal and expert's fees and expenses. It

also awarded the plaintiff damages and costs in relation to the Tribunal and ICC's expenses, with the decision on quantum to be reserved to a further award.

12 The defendant stopped participating in the Arbitration after the issuance of the Partial Award. On 10 June 2015, the plaintiff made submissions to the Tribunal on the quantum of damages that the defendant should be liable for. The defendant did not respond to the plaintiff's submissions and the Tribunal issued the Final Award on 17 August 2015 determining the damages and ordering that the defendant pay to the plaintiff damages in the sum of US$20,945,000 at simple interest of 3.4% per annum, and US$342,500 for the ICC and Tribunal's administrative expenses.

Court proceedings in the Maldives

13 Two sets of proceedings were commenced in the Maldives following the issuance of the Final Award. Counsel for the plaintiff, Mr Toby Landau QC ("Mr Landau"), characterises the two sets of proceedings as following two analytically distinct tracks, namely an "enforcement" track (proceedings for the enforcement of the Awards and a "civil" track (the defendant's commencement of the Maldivian action in the Maldivian courts against the plaintiff for damages). Counsel for the defendant, Mr Andre Maniam, SC ("Mr Maniam"), on the other hand, argues that the proceedings cannot be as cleanly separated as Mr Landau maintains, and are all bound up with the issue of enforcement.

The plaintiff's enforcement proceedings

14 I start with the enforcement proceedings commenced by the defendant against the plaintiff in December 2015 in the Maldivian Civil Court under s 72

of the Maldivian Arbitration Act ("the First Enforcement Proceedings"). The defendant resisted the enforcement, arguing that enforcement of the Awards would be contrary to Maldivian public policy as the Management Agreement upon which the Awards were based was void for misrepresentation. On 28 September 2016, the Maldivian Civil Court (Property and Monetary Large Claims Division) held that the matter was beyond the jurisdiction of the division. The plaintiff then transferred the proceedings to the enforcement division of the Maldivian Civil Court in November 2016, but the judge declined jurisdiction on 29 November 2016 on the basis that only the Maldivian High Court had the jurisdiction to enforce arbitral awards. The plaintiff successfully appealed against this decision to the Maldivian High Court, which found that the Civil Court had jurisdiction under the Maldivian Arbitration Act.

15 The plaintiff thus re-commenced its enforcement proceedings in the Maldivian Civil Court ("the Second Enforcement Proceedings") on 23 April 2017. On 12 June 2017, the defendant made the same arguments it had made in the First Enforcement Proceedings to refuse enforcement. The plaintiff filed a response on 22 June 2017. The Maldivian Civil Court fixed a hearing on that same afternoon and held that the plaintiff could not enforce the Awards because of an existing judgment (*ie,* the March Judgment) issued by the Maldivian Civil Court in favour of the defendant in the defendant's civil action against the plaintiff ("the June Enforcement Judgment"). I now turn to this civil action.

The defendant's civil proceedings

16 The defendant commenced the Maldivian action after the First Enforcement Proceedings had begun and the Property and Monetary Large

Claims Division of the Maldivian Civil Court had declined jurisdiction. In that action, the defendant claimed against the plaintiff for damages totalling US$16,671,000 arising from breaches of the Management Agreement. The plaintiff filed a procedural objection relying on the arbitration agreement in the Management Agreement, and argued that the Tribunal had already determined and dismissed the defendant's misrepresentation claims.

17 At this point, the defendant did not dispute that its claims in the Maldivian action were the same as those raised in the Arbitration (breach and misrepresentation). It stated in its response to the plaintiff's procedural objection that its claims for fraudulent misrepresentations "[could] be determined in the Maldivian courts as a separate matter even though the same subject matter of the [Agreement] has already been decided by an [arbitral tribunal]". In its statement of claim for the Maldivian action, it also referred to the documents submitted for the Arbitration as support for its claim.

18 An oral hearing took place before the Maldivian Civil Court on 11 January 2017, where the court directed that it would determine the procedural and/or jurisdictional matters together with the merits of the case. Both parties submitted a written statement in the next two months. In particular, the defendant explained in its written statement that its claims in the Maldivian action were different from those determined by the Tribunal as the Tribunal had dealt with the validity of the Management Agreement whereas the Maldivian action related to the plaintiff's fraudulent misrepresentations.

19 Without further hearings or submissions, on 9 March 2017, the Maldivian Civil Court delivered a three-page written judgment (*ie*, the March

Judgment) stating that the defendant had made out its cause of action of misrepresentation, the Management Agreement was hence void and unenforceable in its entirety and the plaintiff was liable to pay US$16,671,000 to the defendant in damages. It was this March Judgment that was relied on by the Maldivian Civil Court to refuse the plaintiff's enforcement of the Awards in the June Enforcement Judgment (at [15] above). The plaintiff appealed against the March Judgment in March 2017 ("the Civil Appeal") and, at the time I heard the application, two hearings before the appellate court had been conducted on 1 and 8 August 2017 and the parties expected a further hearing before the appellate court.

The permanent anti-suit injunction

20 The plaintiff applied to this court on 24 July 2017 for a permanent anti-suit injunction to restrain the defendant from commencing and/or proceeding with any action against the plaintiff in the Maldivian courts in relation to disputes arising from the Management Agreement; a declaration that the Awards are final, valid and binding on the parties; and a declaration that the defendant's actions were in breach of the arbitration agreement.

21 I found that there were three issues to be discussed in relation to the application for the permanent anti-suit injunction:

(a) Whether the court has jurisdiction over the defendant;

(b) Whether the court has the power to grant a permanent anti-suit injunction for an arbitration seated in Singapore where arbitration proceedings have already concluded and the award issued; and

(c) If the answers to (a) and (b) are yes, whether the court should grant the permanent anti-suit injunction in the overall circumstances of this case.

22 The plaintiff urged the court to grant declaratory orders if the court were not minded to grant the anti-suit injunction: see *Noble Assurance v Gerling-Konzern General Insurance* [2007] EWHC 253 at [101] and [109]. Suffice to say for now that first, the limited nature of the orders (see [4] above) reflected the court's view that the usual anti-suit injunction to restrain foreign court proceedings in respect of the disputes in connection with the Management Agreement would not be a proper order given the advanced state of the civil proceedings in the Maldives, which was in part the consequence of the length of time it took the plaintiff to apply for an anti-suit injunction. Second, whilst the orders restrain the defendant from relying on the March Judgment as an offensive challenge to the Awards in this case, they expressly state that they do not affect the right of the defendant as an award debtor to defend enforcement proceedings pursuant to Maldivian law.

Whether the court has jurisdiction over the defendant

23 For the grant of an anti-suit injunction over a foreign defendant, there must be *in personam* jurisdiction over the defendant either on the basis of the defendant's submission to the court's jurisdiction or service of the originating process on the defendant outside Singapore under the Rules of Court (Cap 322, R 5, 2012 Rev Ed) ("the Rules"): s 16 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("the SCJA"). For the latter, the plaintiff's claim must fall within one of the circumstances listed in O 11 r 1 of the Rules and the

originating process must have been served in the manner prescribed by the Rules: *Humpuss Sea Transport Pte Ltd (in compulsory liquidation) v PT Humpuss Intermoda Transportasi TBK and another* [2015] 4 SLR 625 ("*Humpuss*") at [100].

24 The plaintiff had applied for and obtained an order granting leave to the plaintiff to serve OS 845 on the defendant out of the jurisdiction. The defendant applied by way of Summons 4794 of 2017 to set aside this order on the basis that (a) the plaintiff's claim did not fall within the limbs of O 11 r 1; (b) there was no serious issue to be tried; (c) Singapore was not the most appropriate forum to try the case; and (d) there had been material non-disclosure in the application for leave to serve out of the jurisdiction. It also argued that the subsequent service of OS 845 on the defendant was invalid and should be set aside.

Order granting leave to serve out of the jurisdiction

25 I start with the order granting the plaintiff leave to serve OS 845 out of jurisdiction. The court will only grant leave for service out of jurisdiction where (*Siemens AG v Holdrich Investment Ltd* [2010] 3 SLR 1007 at [2]):

(a) The plaintiff's claim falls within the scope of O 11 of the Rules;

(b) The plaintiff's claim has a sufficient degree of merit; and

(c) Singapore is the most appropriate forum.

26 The plaintiff argued that by virtue of the parties' agreement on Singapore as the seat of the Arbitration, the defendant had submitted or agreed

to submit to the jurisdiction of the Singapore courts (O 11 r 1(*r*) of the Rules) and/or that the plaintiff's claim was under a contract (*ie*, the arbitration agreement in the Management Agreement) which contained a term to the effect that the Singapore court would have jurisdiction to hear and determine any action in respect of it (O 11 r 1(*d*)(iv) of the Rules).

27 The arbitration clause in the Management Agreement did not stipulate the seat of the Arbitration. It merely provided that the "venue of the arbitration shall be Singapore International Arbitration Centre" and the relevant disputes to be finally settled under the Rules of Arbitration of the ICC ("the ICC Rules"). The ICC Court fixed the place of the Arbitration as Singapore on 18 July 2013 in exercise of its power under Art 18(1) of the ICC Rules. Mr Maniam contended that as the ICC Court had fixed the seat of the Arbitration, the parties could not be taken to have expressly agreed on Singapore as the seat of the Arbitration and thus the defendant had not agreed to submit to the jurisdiction of the Singapore courts. Further, for O 11 r 1(*d*)(iv), which requires the claim to involve a breach of contract, Mr Maniam argued that the plaintiff was not truly trying to enforce the arbitration agreement as a matter of contract but to prevent the defendant from legitimately resisting enforcement of the Awards under Maldivian law.

28 I agreed with the plaintiff that the grant of an anti-suit injunction of the kind sought depends on the seat of the Arbitration rather than the governing law of the arbitration agreement: see *Shashoua v Sharma* [2009] EWHC 957 ("*Shashoua v Sharma*"). The governing law of the arbitration agreement determines the construction of the agreement, as well as questions as to formation, validity, effect and discharge of such agreements, whereas the seat

of the arbitration determines the relationship between the parties, and arbitrators and the supervisory courts. It was acknowledged in *West Tankers Inc v Ras Ruinione Adriatica di Sicurta SpA (The "Front Comor")* [2007] UKHL 4 at [19] that the exercise of the jurisdiction to restrain foreign court proceedings is generally regarded as an important and valuable weapon in the hands of a court exercising supervisory jurisdiction over the arbitration.

29 By choosing to arbitrate under the ICC Rules without any specific agreement as to the seat of the Arbitration, the parties had effectively agreed to allow the ICC Court the discretion to fix the seat of the Arbitration as per the ICC Rules, and were bound by the ICC Court's decision. Further, the parties had also agreed to the Terms of Reference, which expressly stated that Singapore was the place or seat of the arbitration. Factually, the state of affairs at the time the application for leave to serve OS 845 out of jurisdiction was that ICC Court had decided on Singapore as the seat and the Terms of Reference had been agreed. The parties had thus agreed to Singapore law as the curial law and to submit to the Singapore courts' supervisory jurisdiction over matters arising out of or in relation to the arbitration agreement. The court thus possessed jurisdiction over the matter.

30 I accepted that the issue in OS 845 was whether there had been a breach of the arbitration agreement. The plaintiff's claim had a sufficient degree of merit as the commencement of the Maldivian action in the Maldivian Civil Court was likely to be a breach of the arbitration agreement, either of the defendant's obligation not to sue in any other forum or to attempt to set aside or otherwise attack the Award in places other than the seat of the Arbitration (*ie*, Singapore) and/or vexatious and oppressive conduct (further discussed at [48]-

[59] below). It also followed that Singapore, as the court exercising supervisory jurisdiction, was naturally the most appropriate forum in which an anti-suit injunction would be sought.

31 Finally, I found no merit in the defendant's claim that the plaintiff had failed to fulfil its duty of full and frank disclosure of all material facts in its application for the order (*The "Vasily Golovnin"* [2008] 4 SLR(R) 994 at [83]). Mr Maniam essentially argued that the plaintiff had not disclosed the fact that there had been no express agreement on the seat of the Arbitration in the arbitration agreement and the plaintiff had actually argued as such before the ICC Court, proposing that the seat of the arbitration be London. I found that the plaintiff had disclosed in its supporting affidavit (a) the relevant clause in the Management Agreement; (b) the fact that plaintiff had initially proposed London as the seat of the arbitration; and (c) the fact that ICC Court had fixed Singapore as the place/seat of the arbitration. In view of this, I found the plaintiff's failure to disclose its specific submission to the ICC Court that the Management Agreement had not expressly provided for a seat to be immaterial.

Whether OS 845 had been validly served

32 The next question was whether OS 845 had been validly served on the defendant. The plaintiff had essentially left a copy of OS 845 and the supporting affidavit at the defendant's office. Mr Maniam made extensive arguments on how the requirements O 11 r 4(2)(*c*) of the Rules had not been fulfilled. This provides that an originating process may be served on a defendant in a foreign jurisdiction (where no Civil Procedure Convention subsists) by a method authorised by the law of that country for service of any originating process

issued by that country, *ie*, the Maldives. Mr Maniam argued that Maldivian process was to be served by a court official, which was not done here, and also pointed out that there was no accompanying translation of OS 845 into Dhivehi as required by O 11 r 4(4) of the Rules.

33 With respect, this argument misses the point. The methods of service under O 11 r 4(2) are not the only means by which service overseas may be effected, and personal and substituted service are still permissible methods through which service of process overseas may be effected: *Humpuss* at [57]. The plaintiff relied on personal service, which is available to the plaintiff as long as it does not contravene the law of the foreign jurisdiction: O 11 r 3(1) read with r 3(2) of the Rules and *Humpuss* at [59(a)]. The common ground between the experts is that there is a gap in Maldivian law in respect of foreign proceedings. No evidence was adduced to show that such personal service of foreign process would contravene Maldivian law. The plaintiff's expert, Mr Mohamed Shahdy Anwar, opined that personal service of foreign process by private means (by way of hand delivery undertaken by members of a law firm) at the defendant's office would be good service under Maldivian law. The defendant's expert, Mr Azmiralda Zahir, did not state that personal service of foreign process was contrary to Maldivian law, only that it would have been possible for the plaintiff to seek the Maldivian court's assistance in serving OS 845 on the defendant via a court official. I thus found that it was open to the plaintiff to serve OS 845 on the defendant personally under O11 r 3(1) read with r 3(2) of the Rules.

34 However, such service had to be valid as a matter of Singapore law (the *lex fori*) and thus had to comply with O 62 r 4 of the Rules. In this case, I found

that it was insufficient to hand the cause papers (including, *inter alia*, OS 845, the supporting affidavit, the order of court for service out of jurisdiction) to the receptionist at the defendant's office and not serve them on an officer of the company such as the chairman, president, secretary, treasurer or other similar officer of the defendant at the defendant's office as required by O 62 r 4 of the Rules. The court was also told that copies of the cause papers were e-mailed to the defendant's chairman and managing director, the chief executive officer and the director. The defendant maintained that leaving a copy of OS 845 at the defendant's office and/or e-mailing a copy of the same to the defendant's representative does not amount to good service. The plaintiff then argued that the court should exercise its discretion to cure the irregularity in service as the method of service employed, although failing to comply with a procedural requirement provided for in the Rules, was successful in bringing notice of the claim to the defendant and was not contrary to the Maldivian law. In *Humpuss*, Steven Chong J (as he then was) held (at [92]) that such cases did not engage concerns over international comity or violate the specific proscription contained in O 11 r 3(2). In considering whether the defect in service should be cured, the court should consider the blameworthiness of the respective parties, whether the plaintiff had made a good faith effort to comply with the rules, whether the defendant would be prejudiced if the court's discretion were exercised in the plaintiff's favour, and the reasons which caused the non-compliance.

35 I found that the plaintiff had written to the defendant informing the defendant of OS 845 and the Singapore court's grant of leave to serve it on the defendant out of jurisdiction but the defendant had communicated that it would not be appointing any solicitors to accept service. On 17 August 2017, the plaintiff had left OS 845 and the supporting affidavit with the defendant's

receptionist and the defendant, as evidenced from its letter to the plaintiff, had clearly been aware of OS 845, but had refused to accept service. By sending the e-mails to the defendant's chairman/managing director as well the senior executive director, the plaintiff had taken reasonable steps to bring to the defendant's attention the application and the plaintiff had also attempted to ascertain the defendant's preferred method of service. Further, there would be very little prejudice to the defendant should the irregularity in service be cured, and I thus exercised my discretion to cure the irregularity.

36 As for the argument that there was no accompanying translation of OS 845 into Dhivehi as required by O 11 r 4(4) of the Rules, Mr Landau argues that translation is not required as personal service was effected under O 11 r 3 of the Rules. I agree. Order 11 r 4(4) applies to service described under O 11 r 4(2)(*c*) and r 4(3).

37 I thus found that the court had jurisdiction over the defendant for the purposes of granting the permanent anti-suit injunction and declaratory relief.

Whether the court has power to grant a permanent anti-suit injunction

38 I then turned to the question of whether the court has power to grant a permanent anti-suit injunction in relation to foreign court proceedings in the arbitration context. I found that the court had such a power, which stemmed from the court's general power to give legal and equitable relief (s 18(2) read with para 14 of the First Schedule of the SCJA), and that this power was not curtailed by Art 5 of the UNCITRAL Model Law on International Commercial Arbitration ("Model Law"). Section 4(10) of the Civil Law Act (Cap 43, 1999

Rev Ed) ("CLA") relates to the court's powers to grant an interim injunction. I will elaborate on this below.

The source of the court's power

39 On the question of the source of the court's power, I started with the two places where the court's power to grant a permanent anti-suit injunction *cannot* be found. First, the court does not have the power under the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("the IAA") to grant a permanent anti-suit injunction. Its power to grant injunctions under the IAA is only limited to granting an interim injunction: s 12A(2) read with s 12(1)(*i*) of the IAA. This was acknowledged by Judith Prakash J (as she then was) in the case of *R1 International Pte Ltd v Lonstroff AG* [2014] 3 SLR 166 ("*RI International (HC)*") at [40].

40 Second, looking beyond the IAA and to the court's broader civil jurisdiction, the court does not have the power to grant a permanent anti-suit injunction by virtue of s 4(10) of the CLA. The plaintiff's initial argument on s 4(10) of the CLA relied on Prakash J's decision in *R1 International (HC)*. Prakash J held (at [43]) that:

> … the court's general injunctive power emanates from s 4(10) of the CLA. This is the power that the court exercises when it grants a permanent anti-suit injunction in aid of local court proceedings. There is no reason why this power cannot be exercised to make permanent anti-suit injunctions in aid of domestic international arbitration proceedings especially since… the courts can grant interim anti-suit injunctions in such situations.

41 I respectfully disagree with the analysis in *R1 International (HC)* on s 4(10) of the CLA being the source of the court's power to grant a permanent

anti-suit injunction. In doing so, I note that the analysis in *R1 International* in this regard was *obiter* as Prakash J had already held (at [35]) that the arbitration agreement had not been incorporated on the purchase order from which the dispute arose. There was thus no breach of the arbitration agreement and no basis upon which to grant a permanent anti-injunction injunction. Although the Court of Appeal in *R1 International Pte Ltd v Lonstroff AG* [2015] 1 SLR 521 ("*R1 International (CA)*") later reversed this finding, holding that the arbitration agreement had been incorporated into the purchase order and thus issuing the injunction (at [77]), it did so without further analysis on the specific source of the court's power to issue the permanent anti-suit injunction. Thus, although this court is bound by *R1 International (CA)* to hold that the court has the power to issue a permanent anti-suit injunction, it is not bound by the analysis in *R1 International (HC)* as to the source of such a power.

42 In my view, s 4(10) of the CLA only gives the court the power to issue an interim injunction and not a permanent injunction. This reads:

> ***Injunctions and receivers granted or appointed by interlocutory orders***
>
> (10) A Mandatory Order or an injunction may be granted or a receiver appointed by an interlocutory order of the court, either unconditionally or upon such terms and conditions as the court thinks just, in all cases in which it appears to the court to be just or convenient that such order should be made.

The phrase "by an interlocutory order of the court" should be read to apply not only to the appointment of a receiver, but also the grant of a mandatory order and an injunction. This reading of s 4(10) was affirmed in the Court of Appeal decision in *Swift-Fortune Ltd v Magnifica Marine SA* [2007] 1 SLR(R) 629 ("*Swift-Fortune*"). Chan Sek Keong CJ, delivering the judgment of the court,

held (at [64]) that the provision only gives the court power to grant *interlocutory* injunctions. Although that case concerned the interpretation of s 12(7) of the IAA, which has since been replaced by s 12A of the IAA, this court is nevertheless bound by this interpretation of s 4(10) of the CLA to hold that it does not give the court the power to grant a permanent injunction.

43 In my view, the court's power to issue a permanent anti-suit injunction properly stems from s 18(2) read with paragraph 14 of the First Schedule of the SCJA. This gives the court the power to "grant all reliefs and remedies at law and in equity", which necessarily includes the equitable remedy of a permanent injunction. This was affirmed by the Court of Appeal in *Swift-Fortune* (at [64]).

Art 5 of the Model Law

44 The next issue was whether the court's general power to grant such an injunction in the SCJA is constrained by Art 5 of the Model Law (having the force of law in Singapore pursuant to s 3 of the IAA). Art 5 reads:

> Article 5. Extent of court intervention
>
> In matters governed by this Law, no court shall intervene except where so provided in this Law.

Thus, if a matter is governed by the Model Law, the court's intervention is restricted to the extent provided for in the Model Law and nothing else. As the Model Law does not provide for a court's grant of permanent injunctions, the question is thus whether the grant of a permanent anti-suit injunction or other court intervention following the conclusion of arbitral proceedings is a matter governed by the Model Law.

45 Mr Landau argued that Art 5 does not limit the court's power to grant the injunction. First, as a matter of precedent, permanent anti-suit injunctions were granted in *R1 International (CA)* and *BC Andaman Co Ltd and others v Xie Ning Yun and another* [2017] SGHC 64 ("*BC Andaman*") to restrain court proceedings in breach of an arbitration agreement. Similar to the present case, the injunction in *BC Andaman* was granted after the arbitration proceedings had supposedly concluded. Second, Art 5 is concerned with court intervention in the arbitral process and is not intended to prevent courts from enforcing arbitration agreements by way of anti-suit relief. The courts' power to intervene is only limited by the Model Law in the matters governed by the Model Law: *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* [2013] 1 SLR 125 at [39]. It was also stated in the Report of the Secretary-General in the Analytical Commentary on Draft Text of a Model Law on International Commercial Arbitration (A/CN.9/264, 25 March 1985) that Art 5 would not exclude court intervention in any matter not regulated in the Model Law (at p 19). The grant of permanent anti-suit injunctions is not a matter regulated by the Model Law and thus Art 5 does not limit the court's power to grant such injunctions. Third, the anti-suit injunction sought was not tied to any ongoing arbitral proceedings as such proceedings had already concluded.

46 Mr Maniam did not take issue with Mr Landau's arguments, primarily because he accepted that the decision in *R1 International (CA)* was conclusive as to the court's power to grant an anti-suit injunction albeit the source of the power was not identified and discussed. The Court of Appeal (or the High Court) in *R1 International*, and the High Court in *BC Andaman*, did not appear to have considered the effect of Art 5 of the Model Law in coming to its decision. Nevertheless, my view is that Art 5 does not prevent the court from

issuing a permanent anti-suit injunction as the grant of a permanent injunction or other remedy is not a matter governed by the Model Law. This is especially so if arbitration proceedings have concluded, as there is no concern over excessive judicial interference into ongoing arbitral proceedings, as recognised by the Delhi High Court in *Indian Oil Corporation Ltd v Atv Projects India Ltd and Anr* LNIND 2004 DEL 486 at [17].

Whether the court should exercise its discretion to grant an anti-suit injunction

Grounds for granting the anti-suit injunction

47 Having established that the court has the power to grant the permanent anti-suit injunction sought by the plaintiff, the next issue was whether the court should exercise its discretion to grant the injunction, which is an equitable remedy. The plaintiff relied on the defendant's Maldivian action being a breach of the arbitration agreement, namely its negative obligation not to sue in another forum other than in arbitration proceedings.

48 In all cases, the usual requirements for injunctive relief must be satisfied although these are readily satisfied where breach of an arbitration agreement can be demonstrated. Thus, if there is a valid arbitration agreement, the application is made without delay, the foreign action is not well-advanced, and there is no other reason why the injunction should be granted, injunctive relief would be granted. On the first requirement, where there is an arbitration agreement, the court will easily conclude that one party has breached an arbitration agreement by the commencement of court proceedings while arbitration proceedings are ongoing. Where there is an agreement to arbitrate,

the court is not concerned with considerations along traditional lines like whether the foreign proceedings are vexatious or oppressive. In *Aggeliki Charis Compania Maritima SA v Pagnan SpA (The Angelic Grace)* [1995] 1 Lloyd's Rep 87 ("*The Angelic Grace*"), Italian charterers chartered a vessel from its owners for the carriage of grain from Rio Grande to ports on the Italian Adriatic. During unloading operations, a collision occurred between the vessel and the charterer's floating elevator. The owners commenced arbitration proceedings in London relying on an arbitration clause in the charterparty. The charterer commenced proceedings before an Italian court in Venice. The owners applied to the English court for a declaration that the claims and counterclaims were within the scope of the arbitration clause and for an injunction to restrain the charterer from continuing proceedings in Italy. Rix J's decision at first instance to grant the declaration and injunction was upheld by the Court of Appeal. Millet LJ said (at 96):

> … in my judgment there is no good reason for diffidence in granting an injunction to restrain foreign proceedings on the clear and simple ground that the defendant has promised not to bring them.

Millet LJ recognised that the court's jurisdiction to grant the injunction was discretionary and not to be exercised as a matter of course but maintained that "good reason" needed to be shown why the jurisdiction should not be exercised in any given case. The burden of establishing the existence of such a "good reason" rests on the party in breach of the agreement to arbitrate. The fact that a foreign court (applying its own rules) has assumed jurisdiction does not constitute a good reason.

49 This position has been affirmed in Singapore. In *BC Andaman*, Quentin Loh J stated (at [65]) that a court would readily grant an anti-suit injunction to restrain proceedings brought in breach of an arbitration agreement. In *Maldives Airports Co Ltd and another v CMR Male International Airport Pte Ltd* [2013] 2 SLR 449 ("*Maldives Airport*"), the Court of Appeal affirmed *The Angelic Grace* and noted (at [42]) that the right to have disputes resolved pursuant to an arbitration agreement could be rightfully protected by an anti-suit injunction. Thus, it is clear that it is a breach of the arbitration agreement to commence court proceedings where arbitration proceedings are ongoing and such a breach will usually be protected by way of an anti-suit injunction. The novel issue in the present case is whether the same proposition applies when court proceedings are commenced *after* the arbitration has concluded and the arbitral award has been issued, or whether such a breach of the arbitration agreement, if any, should be characterised and considered differently.

50 Mr Landau argued on the plaintiff's behalf that it does not matter whether the court proceedings were commenced before, during or after arbitration proceedings, as any of these actions would constitute a breach of a party's negative obligation not to sue in another forum contained in an arbitration agreement. He relied on the UK Supreme Court decision in *AES UST* for the proposition that an agreement to arbitrate has positive and negative obligations. The positive agreement is to resolve the disputes within the scope of the arbitration agreement in the forum prescribed, and the concomitant negative obligation, which is implied, is that neither party will seek relief in any other forum. The UK Supreme Court held that the English courts had the power under s 37 of the Senior Courts Act 1981 (UK) to restrain, by the grant of an injunction, the commencement or continuation of proceedings brought in a

forum outside the Brussels/Lugano regime where an arbitration agreement existed, regardless of the fact that no arbitration proceedings were on foot or proposed.

51 Mr Landau thus argued that even without an ongoing arbitration (either because arbitration proceedings have not been commenced or have already concluded), the commencement of court proceedings in relation to disputes governed by the arbitration agreement is a breach of the arbitration agreement protectable by an anti-suit injunction. In this case, the defendant's Maldivian action, even though commenced post arbitral award, was in respect of disputes falling within the arbitration agreement and was a breach of its negative obligation not to seek relief other than pursuant to the terms of the arbitration agreement. Mr Landau argued that the Maldivian action was not concerned with enforcement of the Awards but the pursuit of substantial damages by the defendant, and accordingly the plaintiff sought relief from this court to prevent further breach of the arbitration agreement and "excise" (adopting Mr Landau's choice of word) the Maldivian action which should never have happened.

52 Mr Maniam, on the other hand, pointed out that *AES UST* concerned court proceedings commenced where arbitration proceedings were not on foot or proposed, and the breach of the negative obligation identified therein does not necessarily apply to commencement of court proceedings after the arbitration is concluded. He argued that the defendant's Maldivian action should properly be construed as the exercise of the defendant's right to resist enforcement and should not be the subject of an anti-suit injunction. The plaintiff was clearly seeking this court's assistance in its enforcement efforts in the Maldives, and had candidly stated in its written submissions that "the

declarations sought would assist [the plaintiff] in the enforcement of the [Awards] before the Maldivian courts". Mr Maniam contended that the defendant was entitled to submit on the issues in the Maldivian action in the Maldivian Civil Court for determination rather than raising these issues in response to the plaintiff's enforcement proceedings. Further, the June Enforcement Judgment delivered by the Maldivian Civil Court, which relied on the March Judgment, showed that the enforcement process and the defendant's Maldivian action were inextricably linked, and the defendant was entitled to continue its claim in the Maldivian action in order to resist enforcement of the Awards.

53 I start with the obligations arising from a positive agreement to arbitrate. In my view, there are at least two implied negative obligations arising from an agreement to arbitrate that are relevant to the present case, both differently textured. The first is as identified in *AES UST*, namely a negative obligation not to commence court proceedings stemming from an agreement to resolve any disputes by reference to arbitration (see *AES UST* at [1]). Where parties have agreed that certain disputes between them are to be resolved by arbitration, they undertake a negative obligation not to pursue claims in relation to such disputes in any other forum. I accept that such an obligation exists even where arbitration proceedings are not ongoing or even proposed.

54 The second negative obligation arising from an agreement to arbitrate is a negative obligation not to set aside or otherwise attack an arbitral award in jurisdictions other than the seat of the arbitration. In *C v D* , an insurance policy was concluded on a Bermuda form requiring the parties to arbitrate in London but providing for the law of the insurance contract to be New York law. After

the London arbitration had concluded, the defendant wrote to the arbitral tribunal stating that its findings constituted a manifest disregard of New York law and expressed its intention to apply to a federal court applying US federal arbitration law governing the enforcement of arbitral awards, which permitted the vacation of the award where the arbitrators had manifestly disregarded the law. The Court of Appeal upheld the injunction granted by the High Court to restrain the defendant from doing so on the basis that the parties' choice of England as the seat for the arbitration was an agreement as to the "forum for remedies seeking to attack the award". In the later case of *Shashoua v Sharma*, Cooke J, who was the first instance judge in *C v D*, explained (at [23]) that "by agreeing to the seat, the parties agree that any challenge to an interim or final award is to be made only in the courts of the place designated as the seat of the arbitration". The agreement to arbitrate implies a negative obligation that, following an agreement on the seat of the arbitration, the parties would not set aside or otherwise attack any issued award other than through the mechanisms provided for in the seat of the arbitration. This obligation is obviously distinct from the enforcement process, where an award debtor is legitimately entitled to resist enforcement in any jurisdiction in which enforcement of the award is sought.

55 Where court proceedings are commenced outside the seat of the arbitration *after* the conclusion of arbitration proceedings and the issuance of the award, it seems contrived to view the litigation as a breach of the defendant's negative obligation not to sue in any other forum as if arbitration proceedings had not commenced or were ongoing. After the conclusion of arbitration, the focus shifts to the validity and binding nature of the award, and the obligation of a party to an arbitration agreement takes on a different texture, namely to

honour the award and not undermine it in ways other than setting it aside in the seat of the arbitration or resisting enforcement. The more relevant question in such a case is thus whether the foreign litigation seeks to re-open matters decided in the arbitration to which the defendant was a party. If so, the foreign litigation amounts to an impermissible challenge opposing the arbitral award, breaching the second obligation mentioned in the foregoing paragraph. Where such proceedings are commenced in relation to claims already fully resolved by arbitration, this is in substance an attack on the award and is a breach of the party's obligation not to set aside or otherwise attack any issued award other than through the mechanisms provided for in the seat of the arbitration that is breached. Such proceedings can also often amount to vexatious and oppressive conduct by the defendant as in this case. There can be an abuse of the court's own process since there is no difference in the legal position whether the decision under attack is an arbitration award or decision of a court. Thus in *Emmott v Michael Wilson & Partners* [2016] EWHC 3010 (Comm), O'Farrell J found that court proceedings initiated in New South Wales by the defendant in 2016 in relation to issues that were resolved by arbitral awards issued in 2010 (on liability) and 2014 (on quantum) were "a collateral attack on the arbitration award", vexatious conduct, and an abuse of process (at [59] and [62]), and granted a permanent anti-suit injunction restraining the defendant from continuing with the proceedings in New South Wales on this basis (among others such as issue estoppel and in the general interests of justice).

56 In my view, in such cases, notwithstanding that the arbitration agreement has been breached, this court ought to be more circumspect in deciding whether to grant a permanent anti-suit injunction to restrain the defendant from continuing with the foreign proceedings. This is because the

question of whether such foreign proceedings constitute an abuse of the foreign court's process is primarily a matter for the foreign court to determine, as was acknowledged by Millet LJ in *The Angelic Grace* (at 96). Further, although permanent anti-suit injunctions are frequently said not to offend the principle of comity by virtue of being a restraint on the defendant and not the foreign court, the practical effect of such an injunction is nevertheless an indirect interference with the processes of the foreign court, especially in this case where the appeal in the Maldives is at a very advanced stage.

57 I add a final consideration. I accept Mr Landau's submission that the obligation not to sue in another forum and the obligation not to attack the award outside the seat of arbitration are not mutually exclusive, and the commencement of court proceedings may breach both obligations in some cases. The question in each case is which aspect of the contractual interest the court is primarily seeking to protect. The former obligation not to sue in another forum may be breached even when arbitration proceedings are purportedly concluded. *BC Andaman* provides a good example of such a case. There, the defendants commenced arbitration proceedings in February 2015. Following a procedural order issued by the tribunal on security for costs, the defendants informed the tribunal that they had decided to discontinue with the arbitration proceedings with immediate effect and sought an order from the tribunal that the proceedings were at an end. The tribunal declared the proceedings closed on 3 June 2016 and issued a final award dismissing the defendants' claims with prejudice and ordering costs against them on 24 July 2016. After the proceedings were declared closed but before the final award was issued (*ie*, 21 June 2016), the defendants commenced Thai court proceedings against, among others, the plaintiffs (some of whom had been parties to the arbitration). The

defendants' claims in the Thai court proceedings were substantially the same as those advanced and discontinued in the Singapore arbitration. These parties applied for a permanent anti-suit injunction from the Singapore courts. For the plaintiffs who were parties to the arbitration agreement but who were not respondents in the arbitration, Quentin Loh J granted an anti-suit injunction to protect the substantive contractual rights of the plaintiffs who were parties to the arbitration agreement (but who were not respondents in the arbitration), as the dispute involved in the Thai proceedings was covered by the arbitration agreement and should have been submitted for arbitration (at [62], [64]-[68]). For the plaintiffs who were parties to both the arbitration and the arbitration agreement, Loh J granted the anti-suit injunction on the basis that the defendants' conduct was vexatious and oppressive conduct as it was clearly a re-litigation of the dispute it had initiated in the Singapore arbitration but refused to pursue (at [60]). Although the arbitration proceedings had formally concluded, this was due to the defendants' discontinuation of their claims at a very early stage of the arbitration, and the issues could not be said to have been properly heard or resolved in the arbitration. Consequently, it is arguable in my view that the "final award dismissing the defendants' claims with prejudice and ordering costs" was not an "award" within the meaning of s 2 of the IAA. There was no adjudication by the tribunal on the substance of the dispute. It was thus more appropriately a breach of the defendants' obligation not to sue in another forum, rather than an attempt to set aside or otherwise attack the award.

58 In the present case, I found that the defendant's Maldivian action was squarely a breach of the defendant's negative obligation not to set aside or challenge the Awards other than through setting aside procedures in accordance with the law of the seat court. It bears repeating that in the midst of the plaintiff's

enforcement proceedings in the Maldives, the defendant commenced the Maldivian action claiming substantial damages in respect of all the claims that had already been resolved by the Awards. Again, there was no suggestion that the defendant's Maldivian action was an independent action with causes of action that were different from the underlying Arbitration and therefore permissible, and Mr Maniam did not try to style it that way. The Maldivian action re-litigated the same issues and damages that were already determined in the Arbitration and the outcome of the Maldivian action, *ie*, the March Judgment, was the opposite of what the Tribunal had decided in the plaintiff's favour. The Maldivian enforcement court's reliance on the March Judgment does not make the Maldivian action a legitimate resistance of the plaintiff's enforcement efforts; it reinforces the defendant's illegitimate attempt to challenge the Award. There is no doubt that the defendant's conduct was not only a breach of the arbitration agreement, but was also vexatious and oppressive, which is a separate ground on which a permanent anti-suit injunction can be granted. It is vexatious and oppressive in the sense that the plaintiff is being vexed twice by the defendant's litigation in the Maldives. Had the defendant acted in accordance with the law of the seat, the grounds to set aside the Awards would be limited. It would be clearly unjust for the plaintiff to be vexed by further proceedings in relation to the exact same claims that it had defended in the Arbitration, which the defendant had itself actively participated in until liability was established. As the defendant had intentionally circumvented the Awards, it would also be unjust for the defendant to be allowed to rely on the March Judgment in its enforcement proceedings, given that this judgment was the fruit of its breach of the arbitration agreement and its attempt to challenge the Awards.

59 For completeness, I was unconvinced by the defendant's contention that the Maldivian action was a cause of action in fraudulent misrepresentation distinct from the matters adjudicated by the Tribunal. As no independent basis existed for its damages claim, there is no reason to conclude that the Maldivian action was legitimately intended to resist enforcement in that jurisdiction. The claim for damages exposed the defendant's true objective in the Maldivian action which was to rectify the outcome in the unfavourable Awards. Having not applied to set aside the Awards in Singapore in accordance with the law of the agreed seat, the Maldivian action was a belated and impermissible challenge opposing the Awards.

The relevance of the plaintiff's delay

60 I also considered Mr Maniam's submission that there had been undue delay on the part of the plaintiff in making the application. It is not disputed that the Maldivian action was commenced in October 2016 and the March Judgment was entered on 9 March 2017. The plaintiff appealed against the March Judgment on 23 March 2017. The plaintiff's attempts to enforce the Awards in Maldives failed, and after the last attempt to enforce the Award on 22 June 2017, the plaintiff filed OS 845 on 24 July 2017. By the time the plaintiff obtained leave to serve out of jurisdiction on 10 August 2017, there had been two hearings of the appeal against the March Judgment on 1 and 8 August 2017.

61 The general principle is that applications for anti-suit injunctions must be made promptly and before foreign proceedings are too far advanced: see *Maldives Airports* at [42], citing *The Angelic Grace* at 69. This is not only to avoid prejudice to the defendant but also for considerations of comity. As

explained by Clarke LJ in the UK Court of Appeal case of *Ecobank Transnational Incorporated v Tanoh* [2015] EWCA Civ 1309 ("*Ecobank (CA)*") (at [132]-[137]), comity between courts requires a respect for the operations of different legal systems, including the desire to avoid wasted time and costs that arise from inconsistent judgments or proceedings left unpursued.

62 Mr Maniam pointed out that nine months had elapsed between the commencement of the Maldivian action (*ie*, October 2016) and the application for the permanent anti-suit injunction (*ie*, July 2017). Even after the March Judgment had been released, the plaintiff waited four months before applying to the Singapore court for a permanent anti-suit injunction, appealing against the March Judgment and commencing the Second Enforcement Proceedings in the interim. It was only when the June Enforcement Judgment was released that the plaintiff sought the anti-suit injunction from this court. As such, Mr Maniam submitted that the plaintiff unduly delayed in seeking relief from this court and the Maldivian action was too far advanced (at the appeal stage) to justify the anti-suit injunction.

63 I agree that not only is the length of delay relevant, the consequences of the delay will determine whether an injunction is appropriate. The court will also consider the effect of the delay on the other party. In this case, even though the defendant had breached the arbitration agreement and thereby caused inconvenience and expense in its pursuit of the Maldivian action, the plaintiff did not just stand by; it actually resisted the litigation. The delay in seeking the anti-suit injunction to restrain the defendant from continuing the proceedings will impact the processes of the appeal that is well advanced before the appellate

court. I therefore accept Mr Maniam's contention that the plaintiff should have brought this application in Singapore more expeditiously. Whilst the plaintiff's explanation that they had expected the Maldivian Civil Court to recognise and enforce the arbitration agreement, and that both parties did not expect the March Judgment on the merits to be handed down without any submissions or hearing on the merits of the defendant's claim in the Maldivian action, the fact of the matter is that the appeal is already too far advanced to warrant an anti-suit injunction to restrain the defendant from involvement in the pending appeal and beyond. The time during which the foreign jurisdiction is challenged should not be left out of account when considering the issue of undue delay (*Ecobank (CA)* at [125]) and I considered that this was a case where the plaintiff allowed the appeal against the March Judgment to progress to an advanced stage.

Restrain on reliance of the March Judgment

64 As stated, prayer 1(a) of the plaintiff's application was a typical anti-suit injunction against the defendant to restrain it from commencing or continuing with foreign proceedings against the plaintiff in disputes governed by the arbitration agreement. For the reasons stated above, I did not allow this prayer. Instead, I granted prayer 1(b)(i) of OS 845 (as amended on 20 November 2017). The state of affairs was that the March Judgment had already been delivered and the plaintiff's appeal against the March Judgment was heard on 1 and 8 August 2017 and the parties were either awaiting directions for further arguments or even the possibility of a decision on the merits. An appropriate order would be to restrain the defendant from *inter alia* relying on the March Judgment. This order has the effect of an injunction but does not stop the appeal process.

Conclusion

65 For the reasons above, I granted the plaintiff a limited permanent anti-suit injunction in relation to the March Judgment, a declaration that the Awards were final, valid and binding on the parties (as the period for setting aside of the Awards had expired), and a declaration that the defendant's claim in the Maldivian action was in respect of disputes between the plaintiff and defendant that have arisen out of or in connection with the Agreement and any consequential proceedings (including appeals) would be in breach of the arbitration agreement contained in the Agreement. It was also made clear that nothing in the order would prevent the defendant from objecting to the recognition or enforcement of the Awards in accordance with Maldivian law. Mr Maniam stated to the court that it was possible for the defendant to resist enforcement of the Awards without relying on the March Judgment.

66 Finally, the plaintiff argued for costs to be awarded to it on an indemnity basis. I was not minded to award indemnity costs. I ordered costs to be taxed on a standard basis if parties could not agree on costs.

Belinda Ang Saw Ean
Judge

Toby Landau QC (instructed), Paul Tan, Alessa Pang and David Isidore Tan (Rajah & Tann Singapore LLP) for the plaintiff;

Andre Maniam SC, Jenny Tsin and Koh Jia Wen (Wong Partnership LLP) for the defendant.

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