**IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE**

**[2020] SGCA 59**

Civil Appeal No 173 of 2019

Between

Philippe Emanuel Mulacek

… *Appellant*

And

Carlo Giuseppe Civelli

… *Respondent*

In the matter of Suit No 676 of 2017

Between

Carlo Giuseppe Civelli

… *Plaintiff*

And

Philippe Emanuel Mulacek

… *Defendant*

Civil Appeal No 194 of 2019

Between

Philippe Emanuel Mulacek

… *Appellant*

And

(1) Carlo Giuseppe Civelli
(2) Aster Capital SA (Ltd) Panama

… *Respondents*

In the matter of Suit No 1159 of 2017

Between

(1) Carlo Giuseppe Civelli
(2) Aster Capital SA (Ltd) Panama

… *Plaintiffs*

And

Philippe Emanuel Mulacek

… *Defendant*

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# GROUNDS OF DECISION

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[Conflict of Laws] — [Natural forum]
[Conflict of Laws] — [Restraint of foreign proceedings]

# Mulacek, Philippe Emanuel
# v
# Civelli, Carlo Giuseppe and another matter

**[2020] SGCA 59**

Court of Appeal — Civil Appeal Nos 173 and 194 of 2019
Tay Yong Kwang JA and Belinda Ang Saw Ean J
12 June 2020

15 June 2020

**Belinda Ang Saw Ean J (delivering the grounds of decision of the court):**

1 The appellant, Philippe Emanuel Mulacek ("Mulacek"), appeals against the decision of the High Court judge ("the Judge") on the proper-forum issues in Suit No 676 of 2017 ("Suit 676") and Suit No 1159 of 2017 ("Suit 1159"). These suits were brought by the respondents, being Carlo Giuseppe Civelli ("Civelli") and a company controlled by him, whom we will not distinguish between for purposes of these appeals. Civil Appeal No 173 of 2019 ("CA 173") is Mulacek's appeal against the Judge's stay of his counterclaim in Suit 676 on grounds that Texas is the more appropriate forum, subject to respondents' undertaking to discontinue both Singapore suits. Civil Appeal No 194 of 2019 ("CA 194") is Mulacek's appeal against the Judge's refusal to grant an anti-suit injunction to restrain Civelli from pursing proceedings in Texas. We dismissed the appeals with costs on 12 June 2020. We now publish our grounds of decision.

2 The facts are set out in detail in the judgment below. In brief, Civelli commenced Suit 676 against Mulacek on 25 July 2017 to recover around US$3.7m for breach of two cash loan agreements. Mulacek's defence is that the US$3.7m was not a loan but a disbursement on a beneficiary's request, pursuant to an "asset management agreement" under which Civelli was a fiduciary for Mulacek and eight of his family members ("the Purported Beneficiaries"). Mulacek brought a counterclaim against Civelli for US$113m, alleging breach of fiduciary duty and breach of trust.

3 Civelli commenced Suit 1159 against Mulacek on 8 December 2017 to recover damages and an account of proceeds in relation to the sale of shares. Civelli alleged that he entered into a share loan agreement with Mulacek and transferred shares to the trust account of a mutually-known lawyer for Mulacek's use. Mulacek had, in breach of trust, instructed the lawyer to transfer the shares through accounts of corporations beneficially owned or controlled by him, including various accounts with JPMorgan Chase Securities and Chase Bank ("the Chase parties") in the United States. Mulacek's defence is that the arrangement to provide shares to him was not a loan but a request that Civelli provide shares from the assets owned beneficially by him under the asset management agreement.

4 Three days after commencing Suit 1159, Civelli commenced proceedings in the United States District Court for the Southern District of Texas against (amongst other parties) Mulacek and the Chase parties, though process was only served in April 2018. On 21 May 2018, the Chase parties filed a motion to dismiss the proceedings against them. This motion was dismissed. On 13 July 2018, Civelli then filed a First Amended Complaint joining four of the Purported Beneficiaries and increasing the quantum of damages claimed.

The claims in the First Amended Complaint subsumed the Singapore claims of breach of cash loan and share loan agreements. On 3 August 2018, Mulacek filed a motion to dismiss the First Amended Complaint. On 11 October 2018 the Texas court denied this motion on the basis that Civelli's claims were not time-barred and were not insufficiently pleaded. On 2 November 2018 Mulacek filed his Answer and Counterclaim to the First Amended Complaint, with his Texas counterclaim being substantially similar to his Singapore counterclaim. On 3 November 2018 Mulacek filed a motion to stay the Texas proceedings in favour of Singapore, which was dismissed by the Texas court on 4 January 2019 on the basis that Chase Securities was not amenable to the Singapore court's jurisdiction and so Singapore was not an available alternative forum.

5 Returning to the proper-forum issues in the Singapore proceedings, on 14 August 2019 the judge rendered her decision allowing Civelli's *forum non conveniens* application to stay Mulacek's counterclaim subject to the respondents' undertaking to discontinue the Singapore suits, and dismissing Mulacek's application for an anti-suit injunction. This brings us to the present appeals.

6 The applicable principles are not in dispute. The resolution of CA 173 hinges on the natural forum enquiry, at the first stage of which a defendant must establish there is another available forum which is clearly or distinctly more appropriate than Singapore. The relevant factors include (a) the parties' personal connections; (b) connections to relevant events and transactions; (c) the governing law of the dispute; (d) the existence of other proceedings elsewhere; and (e) the overall shape of the litigation. The natural forum enquiry is also relevant to CA 194, given that this is also a consideration in deciding whether

to grant an anti-suit injunction: see *Lakshmi Anil Salgaocar v Jhaveri Darsan Jitendra* [2019] 2 SLR 372 ("*Lakshmi*") at [50] and [53].

7 In our judgment, the starting point is that these appeals are brought against orders made by the Judge *in the exercise of her discretion*. Mulacek has not shown that the Judge applied the wrong principles or that she has taken into account irrelevant facts. As the decided cases demonstrate, the court takes a holistic view of all relevant matters and makes a qualitative assessment as to which jurisdiction is the more appropriate forum to do justice in each situation. We find that the Judge has satisfactorily done so by considering all the relevant connecting factors. We make three further points.

8 First, the Texas court has ruled that it will assume jurisdiction. There is nothing inherently wrong with, or objectionable about, the Texas ruling that would warrant this court asserting jurisdiction in disregard of judicial comity, especially given how the Texas proceedings are at a more advanced stage than the Singapore suits. The further evidence we have admitted by consent by paper hearing shows that the Texas proceedings are much further along, with discovery almost completed.

9 Second, this case is distinguishable from *Lakshmi* because there is insufficient evidence of the Texas proceedings being a tactical or strategic choice on Civelli's part in order to oppress Mulacek. In *Lakshmi*, this court had held at [129] that:

> … even where the foreign court has declined to stay its proceedings, it would not invariably be a breach of comity for the domestic court to grant an anti-suit injunction if it finds that (a) it is clearly the more appropriate forum for the dispute; *and* (b) the defendant in the application has acted in a vexatious or oppressive manner in commencing the foreign proceedings.

Mulacek has not established vexation or oppression. While he alleges that Civelli's inclusion of four of the Purported Beneficiaries as defendants in the Texas proceedings was designed to pressure him, that assertion is unfounded because the joinder of these Beneficiaries is *prima facie* necessary to resolve the issues in the Texas proceedings. Moreover, the significantly larger amount claimed in the Texas proceedings compared to the Singapore suits is explicable by how Mulacek's own counterclaim has enlarged the scope of the dispute. Nor does the timing of commencement of proceedings assist Mulacek. Even though the Texas proceedings were commenced after the Singapore suits were filed, Mulacek had yet to be served with process for the latter at that time. This makes it difficult to conclude that the Texas proceedings were tactically motivated at the time of commencement. We also consider it significant that the Judge's refusal of the anti-suit injunction and order to stay Mulacek's counterclaim on *forum non conveniens* grounds was conditional upon the respondents' undertaking to discontinue the Singapore suits.

10 Third, all litigants are now before the Texas court following the dismissal of the motions filed by the Chase parties and Mulacek to dismiss the proceedings against them. Justice is better served in this case by having all litigants in a single forum, and such an objective should prevail over the weight of any countervailing considerations.

11 Accordingly, there is no reason to disagree with the Judge's conclusions and we dismiss both appeals. The appellant is to pay to the respondents costs and disbursements fixed at a global figure of $45,000, for both appeals and the four summonses that were not objected to (these being CA/SUM 26/2020, CA/SUM 27/2020, CA/SUM 47/2020, and CA/SUM 48/2020). In view of our dismissal of the appeals, the respondents are to discontinue the two suits within seven days from 12 June 2020. There will be the usual consequential orders.

Tay Yong Kwang
Judge of Appeal

Belinda Ang Saw Ean
Judge

Salem Bin Mohamed Ibrahim, Charlene Wee Swee Ting, Goh Kian Hong Kenneth and Leu Yong Ren (Salem Ibrahim LLC) for the appellant in both appeals;
Cavinder Bull *SC*, Woo Shu Yan, Tay Hong Zhi Gerald, Ho Wei Wen Daryl and Sun Fangda (Drew & Napier LLC) for the respondent in CA/CA 173/2019 and the respondents in CA/CA 194/2019.