IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 172

Suit No 571 of 2017
(Summons No 1345 of 2018)

Between

Shanghai Turbo Enterprises Ltd

… Plaintiff

And

Liu Ming

… Defendant

GROUNDS OF DECISION

[Civil Procedure] — [Jurisdiction]

[Conflict of laws] — [Natural forum]

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Shanghai Turbo Enterprises Ltd
v
Liu Ming

[2018] SGHC 172

High Court — Suit No 571 of 2017 (Summons No 1345 of 2018)
Hoo Sheau Peng J
30 April, 14 May, 18 June 2018

30 July 2018

Hoo Sheau Peng J:

Introduction

1 This is an application by the defendant, Liu Ming ("Mr Liu"), to set aside an *ex parte* order of court obtained by the plaintiff, Shanghai Turbo Enterprises Ltd ("Shanghai Turbo"), for leave to serve the writ of summons, statement of claim and the *ex parte* order of court out of jurisdiction on Mr Liu in the People's Republic of China ("China"). I shall refer to the application as "the setting aside application", and the *ex parte* order of court as "the service order". Having heard the parties, I allowed the setting aside application and, accordingly, set aside the service order. In addition, I also set aside certain other interim injunction orders made in these proceedings. Shanghai Turbo has appealed against the decision. I now furnish my reasons.

Background

2 Shanghai Turbo is a company incorporated in the Cayman Islands and listed on the Singapore Stock Exchange ("SGX"). It wholly owns a Hong Kong incorporated entity, Best Success (Hong Kong) Ltd ("Best Success"). In turn, Best Success wholly owns Changzhou 3D Technological Complete Set Equipment Ltd ("CZ3D"), a company incorporated in China.

3 The group of three companies ("Group") is in the business of precision engineering. CZ3D is the only income generating entity, with a factory at 9 Yinghua Road, Zhonglou Economic Development Zone, Changzhou City, Jiangsu Province in China ("CZ3D factory").

4 Mr Liu is a Chinese citizen resident in Changzhou, Jiangsu Province, China. Mr Liu owns almost 30% of the shares in Shanghai Turbo. Another group of major shareholders, comprising various Japanese companies, owns 39.19% of Shanghai Turbo.

5 Sometime in 1997, Mr Liu's late father acquired CZ3D, and proceeded to expand the company. In 2005, Shanghai Turbo was formed to be the ultimate parent company of CZ3D and to achieve the listing on the SGX. Around then, Mr Liu took over the reins of the business from his late father.

6 From November 2005 to 15 April 2017, Mr Liu was the Executive Director of Shanghai Turbo. Also, he was its Chief Executive Officer from January 2010 to 15 April 2017. Until 15 April 2017, Mr Liu was a director of the three companies.

7 On 15 April 2017, at an annual general meeting of Shanghai Turbo, Mr Liu was removed as its Executive Director and Chief Executive Officer. On the

same day, board meetings were held by Best Success and CZ3D to remove Mr Liu as a director of the companies, and from his other management positions. New boards of directors (and new management teams) replaced the old boards of directors (and old management teams) led by Mr Liu. According to Shanghai Turbo, the removal of Mr Liu was because of the declining levels of profits under his management from 2014 to 2017.

The proceedings

8 Shortly after, on 27 June 2017, Shanghai Turbo brought these proceedings against Mr Liu for alleged breaches of certain post-termination obligations contained in an agreement entered into between the parties on 1 May 2016 in relation to Mr Liu's appointment as its Executive Director ("the Service Agreement").

The claim

9 In para 5 of the statement of claim, Shanghai Turbo pleaded the following material terms of the Service Agreement:

(a) By clause 2, Shanghai Turbo appointed Mr Liu as its Executive Director;

(b) Clause 3 provided for Mr Liu's duties as Executive Director, which included, *inter alia,* that he was to use "all proper means in his power to advise, promote, improve, develop, extend and maintain the Group's business …";

(c) By clause 9(a)(i), the Service Agreement shall "automatically terminate without any notice or payment in lieu of notice if … [Mr Liu] … ceases to be a director of [Shanghai Turbo] …";

(d) Upon termination of his appointment as Executive Director, Mr Liu shall have these obligations, namely:

(i) Deliver up to the board "all … documents and other papers and all other property belonging to [the Group] which may be in [his] possession or under his control": see clause 9(d)(ii) ("the delivery up obligation");

(ii) Not "solicit, interfere with or endeavour to entice away from [the Group] any person who to his knowledge is now or has been a client, customer or employee of, or in the habit of dealing with, [the Group]" within a period of 12 months, save with Shanghai Turbo's prior written consent: see clause 10(a)(i) ("the non-competition clause"); and

(iii) Not "disclose to any person, or himself use for any purpose … information concerning the business, accounts or finances of … [the Group] or any of its clients' or customers' transactions or affairs", save with Shanghai Turbo's prior written consent: see clause 10(b) ("the confidentiality clause").

10 In paras 7 to 34, Shanghai Turbo recounted, in considerable detail, the events after Mr Liu's removal on 15 April 2017 under the following sub-headings:

(a) "The Hostage Incident" – where Mr Liu and the old management of CZ3D purportedly confined seven individuals representing the new management in the CZ3D factory;

(b) "The Old Management's Continued Unlawful Resistance" – where Mr Liu and the old management of CZ3D purportedly prevented

the new management from taking control of the CZ3D factory up till the time of the commencement of the proceedings; and

(c) "Yin Baoneng" – where Yin Baoneng who was part of the old management was said to have instigated the employees of CZ3D to continue to resist the new management, and wrote a letter defaming the new management to SGX.

11 In paras 35 to 39, Shanghai Turbo alleged that Mr Liu failed to comply with the post-termination obligations:

(a) In breach of the delivery up obligation, after 15 April 2017, Mr Liu refused and/or failed to deliver up the CZ3D factory to the new management represented by Zhang Rong and Dai Xiaolong. His accomplices were Jiang Ronglin, Huang Xia, Pan Haiya, Liu Ning, Shen Liangda and Yin Baoneng;

(b) In breach of the non-competition obligation, Mr Liu diverted CZ3D's business, its client, Bejing Full Dimension Power Tech Co Ltd ("Beijing Full Dimension Power"), and employees to Changzhou Hengmiao Precise Machinery Limited ("Changzhou Hengmiao"). In doing so, he conspired with Chen Jianbo; and

(c) In breach of the confidentiality obligation, Mr Liu divulged confidential information concerning the business of CZ3D and the affairs of its client, Beijing Full Dimension Power, to Chen Jianbo and Yin Baoneng, and further instigated the latter to misuse the names of the Labour Union and the employees of CZ3D to send a letter defamatory of the new management to the SGX.

12 As a result of these alleged breaches of the Service Agreement, Shanghai Turbo claimed to have suffered loss and damage, and sought, *inter alia*: (a) an order for Mr Liu to deliver up all documents, papers and all property belonging to the Group; (b) an account of all profits made by Mr Liu; (c) damages, interests and costs.

The application for service out of jurisdiction

13 As Mr Liu was in China, Shanghai Turbo applied for leave pursuant to O 11 r 1(*d*)(iii), (iv) or (*r*) of the of the Rules of Court (Cap 322, R5, 2014 Rev Ed) ("ROC") to serve the writ of summons, the statement of claim and the service order out of jurisdiction on Mr Liu. This application was filed on 4 July 2017 in Summons No 3029 of 2017. The supporting affidavit dated 4 July 2017 was filed by Chia Seng Hee ("Mr Chia"), an independent director and the non-executive chairman of Shanghai Turbo ("Chia's 1st affidavit").

14 At the *ex parte* stage, Shanghai Turbo relied on clause 17 of the Service Agreement and contended that by the provision: (a) the Service Agreement is governed by Singapore law (see O 11 r 1(*d*)(iii)); (b) the dispute relates to a contract with a term conferring jurisdiction on the Singapore courts (see O 11 r 1(*d*) (iv)); and/or (c) Mr Liu, had by an agreement, submitted to the jurisdiction of the Singapore courts (see O 11 r 1(*r*)).

15 Clause 17 of the Service Agreement states:

> Governing law
>
> *This Agreement shall be governed by the laws of Singapore/or People's Republic of China* and **each of the parties hereto submits to the non-exclusive jurisdiction of the Courts of Singapore/or People's Republic of China**.
>
> [Emphasis added in italics, underline and bold]

Clause 17 may be analysed as two sub-clauses. The first sub-clause (shown in italics) appears to deal with the proper law of the Service Agreement, while the second sub-clause (shown in bold) appears concerned with the choice of forum.

16 Departing from its position at the *ex parte* stage, Shanghai Turbo conceded before me that the first sub-clause disclosed no valid express choice of the parties as to the proper law of the contract, as it purported to provide for a "floating proper law". Nonetheless, Shanghai Turbo contended that the objective proper law is Singapore law, and maintained that the second sub-clause is valid. Mr Liu disputed the validity of the entirety of clause 17, and submitted that Chinese law is the proper law. I shall return to these arguments in due course. In any case, on 5 July 2017, the court granted the service order.

The other interim injunction orders

17 On 15 September 2017, in Summons No 4210 of 2017, Shanghai Turbo obtained an *ex parte* mareva injunction to restrain Mr Liu from dealing with his assets in Singapore up to the aggregate value of S$30 million. Specifically, the mareva injunction included Mr Liu's 30% shares in Shanghai Turbo ("the mareva injunction").

18 Thereafter, on 18 January 2018, in Summons No 155 of 2018, Shanghai Turbo obtained an *ex parte* order restraining Mr Liu from exercising the voting and other rights attached to the shares in Shanghai Turbo ("the voting rights injunction"), *inter alia,* so as to stop Mr Liu from replacing the new board, and discontinuing and/or delaying these proceedings.

19 At the same time, Shanghai Turbo also sought to add two other shareholders to these proceedings ("the non-parties"), namely Lin Chuanjun

("Mr Lin") (who acquired 5.87% of the shares in October and November 2017) and Zhang Ping ("Mr Zhang") (who acquired 4.77% of the shares in October and November 2017), alleging that they were acting in concert with Mr Liu. This was Summons No 156 of 2018. Separately, in Summons No 155 of 2018, Shanghai Turbo also applied for, and obtained, an *ex parte* order against the non-parties to restrain them from, *inter alia,* proceeding with an extraordinary general meeting to remove the new board, and from taking steps to discontinue and/or delay these proceedings ("the injunction against the non-parties").

The setting aside application

20 On 14 March 2018, Mr Liu entered an appearance in the proceedings. On 20 March 2018, Mr Liu lodged the setting aside application. Should the setting aside application be allowed, Mr Liu further prayed that the interim injunction orders be set aside or discharged. Shanghai Turbo contested the setting aside application. Among the many affidavits filed for the setting aside application, the main ones were Mr Liu's affidavits dated 22 March 2018 and 25 April 2018 ("Liu's 3rd affidavit" and "Liu's 5th affidavit", respectively), an affidavit of Mr Liu's foreign law expert, Zhou Jiang ("Mr Zhou") dated 24 April 2018 ("Zhou's affidavit"), and an affidavit of Mr Chia dated 24 April 2018. In Zhou's affidavit, Mr Zhou enclosed his legal opinion on aspects of Chinese law pertinent to the application ("Zhou's legal opinion").

The legal framework

21 Jurisdiction over a foreign defendant is established if there is (a) consent; (b) submission; or (c) valid service of the originating process out of jurisdiction.

22 In relation to (c), the Court of Appeal in *Zoom Communications Ltd v Broadcast Solutions Pte Ltd* [2014] 4 SLR 500 ("*Zoom Communications*") at

[26] stated that a plaintiff must meet three requirements before leave is granted for service out of jurisdiction:

(a) The claim must come within the scope of one or more of the limbs within O 11 r 1 of the ROC;

(b) The claim must have a sufficient degree of merit; and

(c) Singapore must be the *forum conveniens* for the trial of the action.

23 In addition, where the three requirements are met, leave to serve out of jurisdiction may be set aside where the plaintiff had failed to make full and frank disclosure of all the material facts when applying *ex parte* for leave: *Zoom Communications* at [28].

The issues

24 The parties clashed over three out of the four considerations set out at [22]–[23] above – namely, whether the claim falls within the scope of O 11 r 1(*d*)(iii), (iv) or (*r*) of the ROC; whether Singapore is the *forum conveniens* for these proceedings; and whether there was full and frank disclosure by Shanghai Turbo at the *ex parte* stage. While I was prepared to find that the claim falls within O 11 r 1(*d*)(iii) of the ROC, I found against Shanghai Turbo on the remaining issues. I shall analyse the issues in turn.

Whether the claim falls within O 11 r 1 of the Rules of Court

25 To prove that a claim falls within O 11 r 1 of the ROC, a plaintiff has to meet the standard of a good arguable case: *Bradley Lomas Electrolok Ltd v Colt Ventilation East Asia Pte Ltd* [1999] 3 SLR(R) 1156 at [19]. As set out at [13]

above, Shanghai Turbo sought to rely on O 11 r 1(*d*)(iii), (iv) or (*r*) of the ROC which state:

> **Cases in which service out of Singapore is permissible (O 11 r 1)**
>
> 1. …[S]ervice of an originating process out of Singapore is permissible with the leave of the Court if in the action —
>
> …
>
> (*d*) the claim is brought to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being (in either case), a contract which —
>
> …
>
> (iii) is by its terms, or by implication, governed by the law of Singapore; or
>
> (iv) contains a term to the effect that that Court shall have jurisdiction to hear and determine any action in respect of the contract;
>
> …
>
> (*r*) the claim is in respect of matters in which the defendant has submitted or agreed to submit to the jurisdiction of the Court; …

26 As mentioned at [16] above, Shanghai Turbo conceded that the first sub-clause of clause 17 disclosed no valid express choice as to the proper law. However, it maintained that the objective proper law of the Service Agreement is Singapore law, thus satisfying O 11 r 1(*d*)(iii) of the ROC. Alternatively, the second sub-clause of clause 17 is valid, and that by virtue of the same term, Mr Liu has agreed to submit to the jurisdiction of the Singapore court. Thus, the limbs within O 11 r 1(*d*)(iv) or (*r*) of the ROC are met. In response, Mr Liu contended that clause 17 is invalid and unenforceable in its entirety. In any event, the Service Agreement is governed by Chinese law. Therefore, the claim falls outside O 11 r 1 of the ROC. I shall deal with these arguments in turn.

Proper law of the Service Agreement

27 To determine the proper law of a contract, it is the law of the forum which is to be applied, *ie,* Singapore law. Parties were in agreement that the three-stage test in *Pacific Recreation Pte Ltd v S Y Technology Inc and another appeal* [2008] 2 SLR(R) 491 ("*Pacific Recreation*") is applicable. The first stage requires the court to examine the contract in question to determine if it expressly states what the governing law should be. If the first stage yields no result, the second stage then requires the court to ascertain whether the intention of the parties as to the proper law of the contract may be inferred from the surrounding circumstances; failing which, the third stage then directs the court to examine which system of law the contract has the closest and most real connection to, and that system of law would then be taken as the governing law.

28 Turning to the first stage, clause 17 of the Service Agreement is titled "Governing Law" and states that the Service Agreement "*shall be governed by the laws of Singapore/or People's Republic of China*" [emphasis added]. On a plain reading, clause 17 does not purport to select any single proper law to govern the Service Agreement. Rather, it provides for an option between Singapore and Chinese law, without stating the mechanism by which the choice between the two would be made.

29 The following passage from *Dicey and Morris on The Conflict of Laws* (Lawrence Collins gen ed) (Steven & Sons Limited, 11th Ed, 1987) vol 2 ("*Dicey & Morris*") at p 1169 is instructive:

> Whether a provision in a contract amounts to an express choice of law is a matter of construction. … But the commonly found provision for alternative applicable laws, that where a seller sues the contract is governed by the law of the buyer's country (and vice versa) may not be an express choice of law… A

> contract cannot exist in a vacuum, and the governing law cannot be ascertained from such a clause at the time the contract is made.

30 As explained by Megaw LJ in *Armar Shipping Co Ltd v Caisse Algerienne D'Assurance Et De Reassurance* [1980] 2 Lloyd's Rep 450 ("*The Armar*") at 266, at the time of the making of any contract, there must be a law governing that contract. The governing law cannot be expressed to "float" in abeyance until the happening of some subsequent event. In *Dubai Electricity Co and ors v Islamic Republic of Iran Shipping Lines* [1984] 2 Lloyd's Rep 380 ("*The Iran Vojdan*") at 385, Bingham J followed *The Armar,* and elaborated further, stating that "[t]he proper law is something so fundamental to questions relating to the formation, validity, interpretation and performance of a contract that it must … be built into the fabric of the contract from the start and cannot float in an indeterminate way until finally determined…" Such a "floating" choice of law clause would be unenforceable.

31 Turning to the Singapore position, in *Halsbury's Laws of Singapore* Vol 6(2) (LexisNexis, 2013) at para 75.356, citing the two English cases above, Prof Yeo Tiong Min sets out the legal proposition that the proper law of a contract must be ascertainable at the time the contract comes into existence, and cannot float in suspense. Such a provision "would be meaningless and will have no legal effect". I accept this to be the position in Singapore.

32 I agreed with the parties that the first sub-clause discloses no valid express choice of law. I should add that unlike the clauses in *The Armar* and *The Iran Vojdan*, which in each case provided for a mechanism by which the "floating" choice of law would crystallise on the election of a specified party, clause 17 does not set out any mechanism for either party to choose between Singapore law and Chinese law, or what the subsequent event to determine the

proper law would be. This added to the uncertainty in the provision, and fortified my conclusion that no valid express choice of law was made by the parties.

33 Since there is no valid express choice of law in the Service Agreement, I move to the second stage of *Pacific Recreation.* In my view, it was rather artificial to seek to infer the intention of the parties from the other surrounding circumstances, given that clause 17 indicated that parties had applied their minds to the choice of law but had made no valid express choice as to a single governing law, and specifically no clear choice between Singapore law and Chinese law. In the circumstances, I thought it appropriate to proceed direct to the third stage, so as to determine which system of law has the closest and most real connection with the Service Agreement and the circumstances surrounding its inception.

34 Indeed, as observed in *Pacific Recreation* (at [47]), to bypass the second stage is not "as significant a step as it seems" because the same factors as raised in the second stage would often have to be addressed at the third stage. This was true in the case put before me; there was a significant degree of overlap in the factors relied on by both parties in both stages. In relation to the inquiry at the third stage, it was also stated in *Pacific Recreation* (at [49]) that the "closest and most real connection" test was the same as the objective test of what the reasonable man ought to have intended if he had thought about the matter at the time when he made the contract.

35 To support the argument that Singapore law is the governing law, Shanghai Turbo broadly relied on the following points:

(a) *Place of listing.* In 2005, Mr Liu chose to list the business on the SGX, instead of other stock exchanges in Hong Kong or Shanghai. As

Shanghai Turbo is subject to SGX listing rules and to Singapore laws, Mr Liu must have agreed to subject himself to the same when he signed the Service Agreement;

(b) *Place where the board of directors is "seated"*. Under the Service Agreement, Mr Liu was accountable to and owed obligations to the board, and the board is based in Singapore;

(c) *The commercial arrangement.* Mr Liu specifically chose to enter into a relationship of employment with Shanghai Turbo, the Singapore-listed entity, rather than CZ3D, although CZ3D was the only operational and income-generating entity in the Group;

(d) *Place where the service is to be performed.* The fact that Mr Liu was seconded to CZ3D and therefore carried out most his obligations in China should not be given much weight. Under clause 4 of the Service Agreement, Mr Liu could have been seconded to any company within the Group, and therefore required to work in whichever country that the Group had operations in;

(e) *Remuneration.* Mr Liu's remuneration was paid by Shanghai Turbo, and the terms are set out in clause 5. Admittedly, for Mr Liu's appointment, Shanghai Turbo was to pay him "a basic salary at the rate of RMB360,000 per annum in China, payable by equal monthly instalments … of RMB30,000." However, in addition, Shanghai Turbo was to pay Mr Liu "RMB220,000 every four months, *payable in Singapore dollars, … in Singapore*, in August, December and April of each year" [emphasis added]; and

(f) *References to Singapore statutes.* There were references to two Singapore statutes within the Service Agreement. In clause 1, a reference was made to s 6 of the Companies Act (Cap 50, 1994 Edition), by incorporating its definition of "related corporation". Further, the parties specifically excluded the application of the Contract (Rights of Third Parties) Act (Cap 53B) within clause 16.

36 On the other hand, Mr Liu highlighted that by its nature, the Service Agreement is an employment agreement, dealing with his appointment as an Executive Director, and not with his appointment as a director *per se*. The following points were raised for consideration:

(a) *Place of execution.* Mr Liu contended that the parties signed the Service Agreement in China, with Mr Chia signing on behalf of Shanghai Turbo (see para 20 of Liu's 5th affidavit). This is disputed by Mr Chia;

(b) *Place where the service is performed.* The place of the performance of Mr Liu's duties was always meant to be in China, and in relation to CZ3D. Effectively, CZ3D was Mr Liu's employer;

(c) *Parties' residence and/or place of incorporation.* Mr Liu, the employee, was resident in China at the material time, and it was always contemplated that he would be stationed in China. As for Shanghai Turbo, the employer, it is incorporated in the Cayman Islands;

(d) *Place of listing*. While the listing in Singapore means that the SGX listing rules would affect Mr Liu's appointment, obligations or duties as a director, this has nothing to do with his employment as an

Executive Director (which was purely a contractual arrangement, governed by the Service Agreement);

(e) *References to Singapore statutes*. The reference to the Companies Act was purely definitional; the definition in the Singapore Act was referred to only as a convenient handle and nothing more should be inferred from this. The reference to the Contract (Rights of Third Parties) Act was only for the purpose of *excluding* it from consideration, and in any case that exclusion would only be relevant if Singapore law is the governing law of the Service Agreement; and

(f) *Remuneration.* The monthly payments were denominated in RMB, and paid in China to Mr Liu. Although the additional payment was payable in Singapore in Singapore dollars, this was only for three times a year. Even then, the amount was denominated in RMB.

37 I accepted that the place of performance is ordinarily a highly relevant connecting factor that takes precedence even over the place where the contract is executed (*Dicey & Morris* at p 1193). I also accepted that in the present case, both parties' obligations were to be substantially performed in China, where CZ3D's place of business and operations were. As regards remuneration, it was not without significance that *all* remuneration was denominated in RMB, even if some of it was eventually paid out in Singapore dollars. These factors pointed in favour of Chinese law as the governing law.

38 However, these factors were in my view balanced by the factors pulling in favour of Singapore law. In this regard, it was important that Mr Liu chose to sign the Service Agreement with Shanghai Turbo rather than CZ3D, *notwithstanding* that CZ3D was at that time the only income-generating entity

with actual business operations. This deliberate structuring of the commercial arrangement between the parties was significant, and pointed away from Chinese law as the governing law. Further, the references to Singapore statutes in the Service Agreement demonstrated a direct connection between the agreement and Singapore law.

39 By the connecting factors put forth by the parties, this was not a clear cut case. While there were factors pointing towards Chinese law, there were also factors pointing towards Singapore law. While I was inclined to the view that there were more connecting factors pointing towards Chinese law, a conclusive determination would include resolving the disputes of facts such as those surrounding the execution of the Service Agreement (see [36(a)] above). I therefore make no conclusive finding as to the governing law of the Service Agreement. At this stage, what Shanghai Turbo was required to do was only to show a good arguable case that the Service Agreement is "governed by the law of Singapore", so that its claim falls within O 11 r 1(*d*)(iii). This I was persuaded to find in Shanghai Turbo's favour for present purposes.

Validity of Clause 17

40 I go on to consider Shanghai Turbo's submissions on O 11, r 1(*d*)(iv) and 1(*r*). To recapitulate, Shanghai Turbo contended that clause 17 conferred non-exclusive jurisdiction on both the Singapore and Chinese courts. Mr Liu argued that the entire clause 17 is invalid. By Singapore law, if the "floating" choice of law sub-clause is invalid, the "floating" jurisdiction sub-clause contained in the same clause falls; it is not severable. By Chinese law, it would also be unenforceable.

41 The validity of a contractual term falls to be determined according to its proper law. As I did not make a conclusive finding as to the proper law of the Service Agreement, I shall analyse the validity of clause 17 under both Singapore and Chinese law.

Singapore law

42 To the extent that the first sub-clause of clause 17 purports to provide for a "floating" proper law, it is unenforceable under Singapore law. The question then is whether the second sub-clause (which pertains to jurisdiction) is nevertheless severable and therefore enforceable.

43 In *The Iran Vojdan*, the clause in question allowed one party (the carrier in a bill of lading) to elect between (i) Iranian law and the exclusive jurisdiction of courts in Teheran; (ii) German law and the exclusive jurisdiction of the courts in Hamburg; or (iii) English law and the exclusive jurisdiction of the courts in London. Bingham J held, at 385, that construing the clause as a whole, the choice of jurisdiction cannot be "excised from … these sub-clauses and given independent effect if the choice of law falls". These options are "intimately connected with the choice of law options", and it would be "artificial and unreal to give effect to the ancillary provision while rejecting the main provision to which it is … parasitic". Therefore, the entire clause fell.

44 In *The Frank Pais* [1986] 1 Lloyd's Rep 529, which was also cited by Mr Liu, Sheen J had to construe a two-part clause. The first part provided that any dispute under the bill of lading "shall be decided in the country where the Carrier has his principal place of business and the law of such country shall apply, *except as provided elsewhere herein*" [emphasis added]. The second part provided that "[n]otwithstanding the Carrier has the option to decide that the

dispute may be determined by the Courts of any other country applying the law in force therein." Sheen J severed the last five words of the first part (as shown in italics), and the whole of the second part, stating that the option contained in the second part was not one which the law would recognise (at 531). However, the first part was preserved, so as to give accord to the agreement between the parties for jurisdiction to rest with the country in which the carrier had his principal place of business, and for the law of that country to apply.

45 On a close reading of clause 17, I came to the view that clause 17 could not be severed so as to give independent effect to the second sub-clause. This could not be achieved without the court rewriting the contract for the parties.

46 To begin, I noted that the word "and" connects the second sub-clause to the first sub-clause. These are not structured as separate sub-clauses within the clause, as was the case in *The Frank Pais*. This showed that the two sub-clauses are intimately linked.

47 Should I take the approach in *The Frank Pais,* and excise the first sub-clause up to and including the word "and", the remaining sub-clause would read: **"[E]ach of the parties hereto submits to the non-exclusive jurisdiction of the Courts of Singapore*/or* People's Republic of China**" [emphasis added] ("the remaining sub-clause"). Shanghai Turbo contended that the remaining sub-clause would mean that each party has agreed to the non-exclusive jurisdiction of the courts of both jurisdictions. In other words, the "/or" is to be given a conjunctive reading. To my mind, it is not entirely *clear* that this meaning should be adopted.

48 In this connection, it is significant that the two references to the two jurisdictions within the two sub-clauses are exactly the same, namely

"Singapore/or People's Republic of China". In particular, "/or" is used in both the sub-clauses. Even if the first sub-clause were to be severed from the second sub-clause, the meaning of "/or" in the former nonetheless informs the latter. In this regard, it is difficult to read "/or" in the first sub-clause as anything but as a disjunctive "or". Indeed, it is not Shanghai Turbo's position that it should be read conjunctively. If so, it is highly unlikely that parties intended for "/or" to be given two different meanings in the same clause. The "/or" in the second sub-clause should carry the same meaning as that in the first sub-clause. Contrary to what Shanghai Turbo contended, the remaining sub-clause does not mean that each party has already agreed to the non-exclusive jurisdiction of the courts of both jurisdictions.

49 Following from the above, should "/or" be given a disjunctive meaning, the parties have expressed the intention for some form of choice to be made with regards the alternative jurisdictions. As Mr Liu pointed out, the remaining sub-clause could possibly mean that each of the parties has already submitted to one jurisdiction on a non-exclusive basis, or that each of the parties has a choice to do so. However, no mechanism is set out as to how such a choice is to be made. Indeed, what remains of the second sub-clause, so excised, is ambiguous, and gives room for at least two interpretations. I had some difficulty with construing what it would then mean or how it would operate.

50 All the uncertainty lends weight to the point made by Mr Liu that much like the clause in *The Iran Vojdan*, the choice of jurisdiction is meant to be paired with the choice of law, and stands or falls with the choice of law provision. Upon a reading of the entire clause, I agreed with Mr Liu that there was meant to be pairing, in that the non-exclusive jurisdiction of Singapore would be dependent on the choice of Singapore law, and that the non-exclusive jurisdiction of China would be dependent on the choice of Chinese law. Reading

"/or" in the second sub-clause conjunctively is akin to substituting "and" for "/or", and is to change the nature of the agreement between the parties. As such, by Singapore law, I am of the view that the second sub-clause falls along with the first sub-clause.

Chinese Law

51 Turning to apply Chinese law, I begin by noting that only Mr Liu adduced expert evidence of Chinese law in the form of Zhou's legal opinion. Significantly, Shanghai Turbo did not produce any evidence to contradict Mr Zhou's position on Chinese law.

52 Having reviewed Zhou's legal opinion, I am satisfied that substantially the same result obtains under Chinese law. In relation to the first sub-clause, Mr Zhou's evidence is that the position under Chinese law is also that a contract "cannot be simultaneously governed by the laws of two countries", and that clause 17 would likely be deemed too ambiguous to be enforceable. Mr Zhou did not take the view that the second sub-clause on jurisdiction would necessarily fall along with the invalid first sub-clause on choice of law (paras 37–38 of Zhou's legal opinion). However, the second sub-clause would only be valid insofar as it confers jurisdiction on the Chinese courts because there is no real connection to Singapore. Even then, he was of the view that the reference to "Courts of… the People's Republic of China" in the second sub-clause would be too vague to be enforceable, as there were "thousands of courts" in China (paras 34–35 of Zhou's legal opinion).

53 As there was no countervailing expert opinion, and I did not find serious inconsistencies with Mr Zhou's report, I saw no reason to reject Mr Zhou's evidence on Chinese law or his conclusions.

Conclusion

54 Thus, it appeared to me that under both Singapore and Chinese law, clause 17 would be invalid and unenforceable in its entirety. Accordingly, O 11 r 1(*d*)(iv) or (*r*) of the ROC would not be satisfied.

Whether Singapore is the *forum conveniens*

55 With that, I turn to the second issue. The legal basis for the requirement that Singapore be the *forum conveniens* appears to be premised on O 11 r 2(2) of the ROC which provides that no leave to serve out of jurisdiction will be granted unless it is "made sufficiently to appear to the Court that the case is a proper one for service out of jurisdiction": *PT Gunung Madu Plantations v Muhammad Jimmy Goh Mashun* [2018] SGHC 64 at [30].

56 To establish this requirement, the two-stage test contained in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 ("*The Spiliada*") is to be applied:

> (a) The first stage is to determine by reference to the connecting factors, the natural forum, *ie,* the forum which has the most real and substantial connection with the dispute. The question is whether there is some other available and more appropriate forum, aside from Singapore, for the trial of the action. The relevant connecting factors would include locations of the parties, relevant witnesses, facts and evidence and the applicable law to the issues. Such connecting factors may also be grouped into five types, being personal connections, connections to events and transactions, governing law, other proceedings and shape of litigation: *JIO Minerals FZC and others v Mineral Enterprises Ltd* [2011] 1 SLR 391 ("*JIO Minerals*") at [41]–[42]. Where the defendant

seeks to set aside leave to serve out of jurisdiction, the burden lies on the plaintiff to establish that Singapore is the more appropriate forum: *Zoom Communications* at [71].

(b) As for the second stage, assuming that that Singapore is determined not to be the natural forum, the court is to consider whether there are circumstances by reason of which justice requires that the Singapore court ought to hear the matter. The court is concerned with whether justice to the parties can be delivered in the natural forum, although the court ought not to pass judgment on the competence of the judiciary in a foreign country: see *JIO Minerals* at [43].

57 Unsurprisingly, the parties took completely opposed positions on the facts and circumstances of the case. Weighing all the connecting factors, I found that Shanghai Turbo has failed to establish that Singapore is the *forum conveniens*. The connecting factors clearly point to China as the more appropriate forum for the trial of this action. I also found no reason why the Singapore court ought to hear the matter.

Stage one of the* Spiliada *test

Parties

58 I begin with the main parties. At the risk of repetition, Mr Liu is a citizen of China, who lives and works in China. As for Shanghai Turbo, it is incorporated in Cayman Islands. I should also point out that although CZ3D is not a party to the proceedings, it features prominently in the claim. In fact, the alleged wrongdoing by Mr Liu was directly in relation to CZ3D's affairs. CZ3D is incorporated in China. In short, the parties and CZ3D are not resident or

incorporated in Singapore, but Mr Liu and CZ3D are resident and incorporated in China respectively.

59 While Shanghai Turbo made much of the fact that it is listed on the SGX (with presumably large numbers of Singapore investors), this was quite a neutral factor. The nature of the claim is a contractual dispute; it has nothing to do with Shanghai Turbo's status as a listed company in Singapore, and is not a shareholders' dispute.

Governing law, and choice of forum

60 As stated in [39] above, I did not consider it necessary to conclusively determine the proper law of the Service Agreement. Even if Singapore law were to govern the Service Agreement, there was nothing before me to suggest that a Chinese court would have any difficulty applying Singapore law. Certainly, Shanghai Turbo did not identify any differences in the laws of Singapore and China applicable to the dispute which might trigger concerns with the matters being placed before a Chinese court. In my view, little weight should be given to the proper law of the Service Agreement. As I had earlier found, there was no valid choice of forum by the parties.

Place of the performance of the Service Agreement

61 While the Service Agreement was entered into by Shanghai Turbo with Mr Liu, it was meant to extend the duties of Mr Liu to the Group, particularly CZ3D. In the main, Mr Liu performed his duties under the Service Agreement in China, towards CZ3D. This was not seriously disputed by Shanghai Turbo which recognised that pursuant to clause 4, Mr Liu was seconded to work for CZ3D.

Place where the breaches occurred

62 Consequently, what cannot be challenged is the fact that all the alleged breaches happened in China. In other words, the cause of action arose in China. By Shanghai Turbo's own case, in relation to the breach of the delivery up obligation, the failure to deliver up the CZ3D factory (and all the other property belonging to CZ3D) happened in China over a period of almost five months from April to September 2017. Similarly, the diversion of CZ3D's business with Beijing Full Dimension Power to Changzhou Hengmiao, as well as the disclosure of CZ3D's confidential information to Changzhou Hengmiao, happened in China. Indeed, the actual wrongdoing has little to do directly with Shanghai Turbo, as a listed company in Singapore, or any entity or individual in Singapore. Rather, it has to do with CZ3D, its old and new management teams, as well as its employees, and Mr Liu's handling of CZ3D's affairs in China.

Witnesses

63 As the alleged misconduct happened in China, many individuals involved in the hostage incident and the events that followed are based in China. Significantly, Shanghai Turbo also mentioned a host of other Chinese entities in the statement of claim, including the local police involved in the hostage incident, the Labour Union, Beijing Full Dimension Power and Changzhou Hengmiao.

64 In *JIO Minerals,* the Court of Appeal observed (at [63]) that there were two distinct factors to be considered, namely (a) the convenience in having the case decided in the forum where the witnesses are ordinarily resident; and (b) the compellability of those witnesses. While it was recognised that the witness convenience factor would generally be of less significance today, given the ease

of travel and the possible use of technology, the witness compellability factor is an important consideration. In *Rickshaw Investments Ltd and another v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 at [19], the Court of Appeal observed that:

> … the importance of the location and the compellability of the witnesses depends on whether the main disputes revolve around questions of fact. If they do and, for example, the judge's assessment of a witness's credibility is crucial, then the location of the witnesses takes on greater significance because there would be savings of time and resources if the trial is held in the forum in which the witnesses reside and where they are *clearly* compellable to testify. [emphasis in the original]

65 In my view, this dispute is clearly a fact-intensive one. The evidence as to the alleged breach of the delivery up obligation alone is likely to be quite involved. Shanghai Turbo's case rests on many factual allegations, namely: (a) that members of the new management were taken hostage by a group of unidentified armed persons led by two of Mr Liu's associates when they tried to take control of the CZ3D factory; (b) that a deadlock resulted – one that even the local police could not resolve – because Mr Liu's associates refused to negotiate; and (c) that members of the old management continued to "instigate" employees to resist the new management's efforts to take over the factory for months thereafter. As set out at [10] above, the details are narrated in paras 7 – 34 of the statement of claim. These allegations are flatly denied by Mr Liu.

66 Unlike the breach of the delivery up obligation, Shanghai Turbo has not furnished such details in relation to the other two breaches of the non-competition and the confidentiality obligations. However, taking into consideration the nature of the allegations, I have no doubt that those inquiries would be fact intensive as well.

67 Against this backdrop, witnesses are important to the proceedings. At this stage, many of the key witnesses identified by both parties are Chinese individuals. In particular, Shanghai Turbo identified seven witnesses, four of whom are resident in China, namely Zhang Rong, Dai Xiaolong, Dai's assistant, Jiang Ronglin, one from Hong Kong, namely Alexander Cheung, and two from Singapore, namely Mr Chia and Raymond Lim.

68 While Mr Chia has been the main deponent for Shanghai Turbo thus far, he was not present at the events in China and is unlikely to be an important witness in respect of the breaches of the Service Agreement. As for the other witnesses who are not from China, namely Alexander Cheung and Raymond Lim, their involvement is confined to an unsuccessful attempt on 28 June 2017 to enter the CZ3D factory for the purpose of conducting an inspection. Allegedly, they were denied access by employees of CZ3D. Therefore, the key witnesses for Shanghai Turbo are the four witnesses from China. While Shanghai Turbo claimed that they were willing to come to Singapore to testify, there was no independent confirmation of this, save for Zhang Rong who confirmed on affidavit that he would do so.

69 As for Mr Liu, he identified his other witnesses to be Chen Jianbo, Huang Xia, Liu Ning, Shen Liangda, Pan Haiya, Yin Baoneng and Wang Yunkai. They are all from China. While the others have been implicated as Mr Liu's accomplices in the hostage incident and other events, Wang Yunkai is apparently the person who told Mr Chia over a Wechat phone call that Mr Liu agreed to sell a third of his shareholding to him, and is acting in concert with him to go against the new board. According to Mr Liu, none of these key witnesses were prepared to come to Singapore to testify, and only Pan Haiya was willing to give evidence via video-link.

70 In addition, I was of the view that should the proceedings progress, there could well be other eyewitnesses who might have to give accounts of what happened at the CZ3D factory on 16 to 17 April 2017, and thereafter. Further, I noted that two other Chinese entities, Beijing Full Dimension Power and Changzhou Hengmiao, are also implicated in the other breaches. Shanghai Turbo did not provide details about the breaches, and while it might be speculative at this juncture, it may well turn out to be necessary for either party to call upon witnesses from either or both entities.

71 Shanghai Turbo sought to downplay the importance of the witnesses for the trial. I completely disagreed with its position. For the witnesses' convenience, and to save time and costs, it would be appropriate for the dispute to be dealt with in China. More importantly, it would be crucial for the hearing court to be able to compel these witnesses (and other potential witnesses) to testify. At para 52 of Zhou's legal opinion, he affirmed that the Chinese courts will be able to compel witnesses in China to attend before the Chinese courts. The balance tilts heavily in favour of China being the more appropriate forum.

Documents

72 Next, I turn to the documentary evidence that would likely be relevant to the alleged breaches. Apart from the Service Agreement, which is both in English and the Chinese language, the other relevant documents are likely to be in the Chinese language. Importantly, this would include all the business and accounts related documents of CZ3D, including any documentary information on its client, Beijing Full Dimension Power, said to have been disclosed to Changzhou Hengmiao. Should the trial be held in Singapore, all these would have to be translated for use before the court, thereby additional incurring time and costs.

Related action in China

73 Shortly after the proceedings were commenced, a related action was commenced by CZ3D against Mr Liu, as well as several of the potential witnesses, namely Chen Jianbo, Yin Baoneng, Huang Xia, Shen Liangda, Liu Ning and Pan Haiya, in the People's Court of Zhonglou District, China, on 1 August 2017 ("the Chinese action"). In this regard, related concurrent foreign proceedings would be a relevant connecting factor which a court is entitled to take into account when determining *forum conveniens: Virsagi Management (S) Pte Ltd v Welltech Construction Pte Ltd and another appeal* [2013] 4 SLR 1097 at [40].

74 Having perused the court papers, essentially, the Chinese action arises out of the same events leading to the alleged breach of the Service Agreement, specifically the breach of the delivery up obligation. This was not seriously disputed by Shanghai Turbo. The material difference is that the Chinese action is based on torts allegedly committed by Mr Liu against CZ3D, whereas the present proceedings are based on breaches of the Service Agreement. In that light, there is a risk of inconsistencies in findings made should the matters be dealt with by courts in two different jurisdictions. The existence of the Chinese action commenced by CZ3D after these proceedings were commenced, based on the same factual matrix, is another factor strongly in favour of China, rather than Singapore, as the *forum conveniens*.

Conclusion

75 In light of all of the foregoing, I was of the view under stage one of *Spiliada* test, Singapore is not the *forum conveniens* for these proceedings. The factors, in terms of personal connections, events and transactions, evidence and

other proceedings in China, point towards China as the more appropriate forum.

Stage two of the* Spiliada *test

76 Moving to the second stage, Shanghai Turbo argued that Singapore ought to hear the dispute. There would be denial of substantive justice, should it be forced to bring the proceedings against Mr Liu in China. Specifically, Shanghai Turbo raised two points:

(a) First, it argued that there is a real risk that Mr Liu and the non-parties, Mr Lin and Mr Zhang, will act in concert to replace the board, so as to discontinue the action against Mr Liu. Should it be forced to bring the action in China, Shanghai Turbo will not be able to maintain the interim injunctions against acts that will be carried out in Singapore, by Mr Liu, and by Mr Liu acting in concert with the non-parties. Even if Shanghai Turbo were able to apply for an order from the Chinese courts to restrain Mr Liu from doing anything to remove the board, such a non-monetary judgment from a foreign court cannot be enforced in Singapore.

(b) Second, Shanghai Turbo is a company with Singapore investors and substantial international investors, including the various Japanese companies which form a major group of shareholders (see [4] above). As such, the dispute should be heard in Singapore. It is in public interest for the matter to be heard in Singapore, so as to maintain the integrity and reputation of Singapore as an international financial centre.

77 In response, Mr Liu submitted as follows:

(a) In Zhou's legal opinion at para 56, he stated that the Chinese courts will be able to grant an injunction restricting Mr Liu from voting at Shanghai Turbo's annual general meeting. Shanghai Turbo has not contradicted this. Further, there is no evidence to suggest that Mr Liu would not comply with such orders, if made by the Chinese courts. This was a bare assertion on the part of Shanghai Turbo that Mr Liu would flout the Chinese court orders. Further, it was disingenuous to suggest that any new board would merely follow Mr Liu's instructions to discontinue any action against Mr Liu, rather than act in accordance with their duties as directors. This was an unfounded allegation.

(b) On the public interest argument, Mr Liu contended that this was but a "veiled attempt" to question the competency of the Chinese courts. This goes against the notion of comity of nations, and such an argument should not be accepted without cogent evidence in support.

78 Indeed, cogent evidence must be produced to show that a plaintiff will be denied substantial justice if the case is not heard in the natural forum. In considering the question, the court will avoid comparing the quality of justice obtainable under the two systems: see *JIO Minerals* at [43]. I did not see any merit in the argument framed as public policy. There was nothing cogent produced by Shanghai Turbo to substantiate its assertions, and I dismissed this argument as nothing more than a thinly veiled challenge of the competence of the Chinese courts.

79 On the first point, I agreed with Mr Liu that Shanghai Turbo had not raised any cogent evidence to show that it would not be able to obtain any suitable interim remedy in China. By para 56 of Zhou's legal opinion, it appeared that the Chinese court would be able to grant some relief to prohibit

Mr Liu from voting at Shanghai Turbo's annual general meetings. Further, I noted that by para 55 of Zhou's legal opinion, the Chinese courts may also make orders to preserve Mr Liu's assets in *China* pending any Chinese legal proceedings. Although this would not cover assets in Singapore, this would provide a measure of protection against any dissipation of Chinese assets to frustrate enforcement of a Chinese judgment. In any case, Shanghai Turbo made no suggestion that the bulk of Mr Liu's assets are situated in Singapore.

Conclusion

80 At the end of the day, the mere fact that a plaintiff may have a legitimate or juridical advantage in proceedings in Singapore will not be decisive: see *JIO Minerals* at [43]. By the above, I found that Shanghai Turbo has failed to show that it will suffer substantial injustice should the matter be heard in China.

Whether there was full and frank disclosure

81 The third issue in contention was whether at the *ex parte* stage, there was full and frank disclosure of the material facts by Shanghai Turbo. In *Manharlal Trikamdas Mody and another v Sumikin Bussan International (HK) Ltd* [2014] 3 SLR 1161, the High Court stated (at [78]):

> … The duty of disclosure that is owed relates to the facts which are set out in the supporting affidavit bearing in mind that the applicant has to establish a good arguable case. Copies of documents that are referred to in the affidavit should also be exhibited and the affidavit must also set out sufficient facts to demonstrate that Singapore is the *forum conveniens* …Given the *ex parte* nature of the application, the applicant *must* place *all* material facts before the court can be so satisfied. It goes without saying that this includes facts which are unfavourable to the applicant's case because the duty to make full and frank disclosure is not merely a matter of fairness between the parties to the action but it is a duty that is owed to the court. [emphasis in the original]

82 Turning to Chia's 1st affidavit, I noted that it comprises only 16 paragraphs over seven pages. The main exhibit was the Service Agreement, with two other exhibits meant to show Mr Liu's address in China. After setting out some background, Chia's 1st affidavit sought to cover the issues of whether the claim falls within O 11 r 1 of the ROC, whether Shanghai Turbo has a good arguable case, and where Mr Liu was to be found.

83 From this quick description, it was obvious that in Chia's 1st affidavit, Mr Chia did not deal with the issue of whether Singapore is the *forum conveniens* at all, and did not draw attention to the relevant facts to fulfil this requirement. Instead, in para 5 of Chia's 1st affidavit, Mr Chia simply stated that "[t]he facts of the matter have already been set out in the statement of claim", and provided a summary of the relevant facts from sub-para (a) to (i). At this juncture, I should state that there is clearly a distinction between a pleading and an affidavit; the former has no evidential value. Material facts should be stated in the supporting affidavit, rather than for cross-references to be made to the pleadings.

84 To compound the problem, the summary was merely concerned with matters in paras 36 to 39 of the statement of claim, which focus on setting out the alleged breaches under the Service Agreement (see [11] above). Mr Chia made no mention of the details within paras 7 to 34, which formed the factual matrix of the alleged breaches which Shanghai Turbo was relying on, including the hostage incident and what happened thereafter (see [10] above). Such details were important, as they would have revealed the connecting factors relevant to the consideration of the issue of *forum conveniens*. In fact, Mr Chia also did not mention that the key individuals are resident in China, or that CZ3D was incorporated in China. In contrast, I noted that in the second affidavit filed by

Mr Chia in support of the application for the mareva injunction, he set out in far greater detail the events that occurred in China.

85 Turning to the question whether the claim falls within O 11 r 1 of the ROC, at para 7 of Chia's 1st affidavit, Mr Chia stated that the Service Agreement is governed by Singapore law as it is explicitly stated in clause 17. Then, at paras 8 and 9, again relying on clause 17, Mr Chia deposed to the fact that there is a term granting non-exclusive jurisdiction to the Singapore courts, and parties have submitted to the jurisdiction of the Singapore courts. It was not specifically highlighted that clause 17 also provided for Chinese governing law, and non-exclusive jurisdiction of the Chinese courts. There was also no disclosure by Shanghai Turbo on the potential difficulties with the validity of clause 17.

86 In *The Vasiliy Golovnin* [2008] 4 SLR(R) 994 at [94], it was stated that:

> … Further, all material facts should be fairly stated in the affidavit, and it is not open to a plaintiff to say that it has fulfilled its duty to make full and frank disclosure because the relevant facts can be distilled somewhat from somewhere in the voluminous exhibits filed. In short, in the words of Bingham J in *Siporex Trade SA v Comdel Commodities Ltd* [1986] 2 Lloyd's Rep 428 at 437, the applicant "must identify the crucial points for and against the application, *and not rely on general statements and the mere exhibiting of numerous documents*". [emphasis in original]

In my view, Shanghai Turbo failed to mention the issue of *forum conveniens*, and to provide adequate disclosure of the relevant factors for the court's consideration. Specifically, Shanghai Turbo did not set out the material facts in the supporting affidavit, and did not refer to the correct paragraphs in the statement of claim. Also, Shanghai Turbo failed to point out the concerns as to whether the claim falls within O 11 r 1 of the ROC. In particular, it did not identify the crucial points for and against its case. I was of the view that

Shanghai Turbo did not make full and frank disclosure at the *ex parte* stage, and this ground alone would also have been sufficient for me to set aside the service order.

Conclusion

87 Accordingly, I allowed the setting aside application. As there is no basis to exercise jurisdiction over Mr Liu, there is no basis for the interim injunction orders to remain. As a consequence, I set aside the mareva injunction and the voting rights injunction against Mr Liu, as well as the injunction against the non-parties, Mr Lin and Mr Zhang. I granted costs of $20,000 with reasonable disbursements to be paid by Shanghai Turbo to Mr Liu.

88 For completeness, Shanghai Turbo applied for a stay of execution of the orders made pending appeal by way of Summons No 2349 of 2018, specifically the setting aside of the mareva injunction and the voting rights injunction against Mr Liu. I did not stay the execution of these orders as there were no special circumstances to do so. In any event, Mr Liu agreed to furnish certain undertakings pending appeal, to address Shanghai Turbo's primary concerns. It suffices for me to state that Mr Liu undertook that he would not dispose of his shares in Shanghai Turbo or withdraw his money from his Singapore bank account, and that he would not take steps to discontinue or delay the appeal.

Hoo Sheau Peng
Judge

Molly Lim SC (Wong Tan & Molly Lim) (instructed), Foo Soon Yien and Thaddeus Oh (BR Law Corporation) for the plaintiff;
Toh Kian Sing SC, Jared Kok and Chen Zhida (Rajah & Tann Singapore LLP) for the defendant;
P E Ashokan, Geraldine Soon and Christina Liew (Withers KhattarWong) for Non-Parties.