IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 190

Suit No 858 of 2021 (Registrar's Appeal No 171 of 2022)

Between

(1) Panircelvan s/o Kaliannan
(2) Teo Khim Ho
(3) Koh Hwee Ben Erin
(4) Ng Yim Har
(5) Chang Mun Kum Christina
(6) Tan Hock Seng
(7) Roger Teo Kok Wei
(8) Tong Lay Yeen Giovanna
(9) Koh Thong Juay
(10) Tong Siew Geok

… *Plaintiffs*

And

Ee Hoong Liang

… *Defendant*

GROUNDS OF DECISION

[Civil Procedure – Foreign Judgments – Enforcement – Fraud]
[Civil Procedure – Foreign Judgments – Enforcement – Breach of Natural Justice]

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v
Ee Hoong Liang

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Kwek Mean Luck J
5 July 2022

11 August 2022

Kwek Mean Luck J:

Introduction

1. In Suit 858 of 2021 ("Suit 858"), the Plaintiffs sought to enforce a judgment that they obtained in the US District Court against the Defendant. The AR granted summary judgment in favor of the Plaintiffs in SUM 277 of 2022 ("SUM 277"). The Defendant appealed against the AR's decision in RA 171 of 2022 ("RA 171"). The Defendant submitted that the US judgment should not be enforced because of fraud as the Plaintiffs did not disclose to the US Courts that they had separately received settlement payouts. The Defendant also submitted that there was a breach of natural justice by the US Courts. I dismissed the appeal. The Defendant has appealed against my decision. I set out the detailed reasons for my decision below.

Background Facts

2. The Plaintiffs commenced proceedings in the US against the Defendant in May 2017 ("the US Action"). This was in respect of losses they suffered from "investment contracts" offered by North Dakota Developments ("NDD"). In September 2017, the Defendant filed: (a) his Motion to Dismiss the Complaint for lack of personal jurisdiction and improper venue; and (b) a Position Statement denying the allegations against him. On 27 March 2018, the US District Court denied the Defendant's Motion to Dismiss Complaint.

3. The Plaintiffs filed a Request for Admissions on 26 January 2018. The Defendant did not respond to this. He said that he did not receive this. On 21 September 2018, the Plaintiffs filed a Motion for Summary Judgment. On 28 September 2018, the Plaintiffs filed a Supplement for Motion of Summary Judgment ("the Supplement"). The Motion for Summary Judgment and the Supplement were left at the door of Defendant on or around 30 September 2018. The Defendant stated in his email dated 1 October 2018 to the US District Court that he had received on 31 September 2018, two bundles of court documents under the heading Supplement to Plaintiffs' Motion for Summary Judgment.

4. In his 1 October 2018 email to the US District Court, the Defendant informed the US District Court that he had moved house some months ago. As such, some of the court letters may not have reached him. The Defendant also requested for 45 days beginning 1 October 2018 to provide his response to the Plaintiffs' Motion for Summary Judgment. On 2 October 2018, he emailed the US District Court saying that he "may need 3 months extension instead of the

1.5 months requested…".[1] The US District Court officer replied "…I have relayed it to the Judge's chambers. Any request for extensions of time must be filed as a motion. The local rules of court do not permit Pro Se parties to file electronically. You must send a written motion via mail. An email is not sufficient…".[2] The Defendant replied and asked that it be relayed to the Judge's chamber "to allow [him] sufficient time to file the motion as the written motion will take some 3 weeks to reach [the Judge's] office by registered air mail".[3]

5. However, the Defendant did not follow up to provide the US District Court with his written motion to request for an extension of time. Neither did he provide his response to the Motion for Summary Judgment. On 31 December 2018, the US District Court granted the Plaintiffs' Motion for Summary Judgment ("the US Judgment").

6. The Defendant filed an appeal against the US Judgment on 28 February 2019. The appeal was dismissed by the US Court of Appeal on 18 June 2021. The Defendant filed a Petition for a Writ of Certiorari to the US Supreme Court on 22 September 2021. That was dismissed on 10 January 2022.

7. The full extent of the Defendant's engagement in the US Action is set out in the table below:

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1 Plaintiffs' Bundle of Cause Papers, Volume 2 ("2PB") at p300.

2 2PB at p300.

3 2PB at p386.

Date	**Event**
5 May 2017	The Plaintiffs commenced the US Action.[4]
1 Aug 2017	The Plaintiffs served the US Amended Complaint on the Defendant.[5]
10 Aug 2017	The Defendant filed Answer to the Amended Complaint.[6]
17 Sep 2017	The Defendant sent an email to the US District Court using his email address winstorn@singnet.com.sg ("Singnet Email Address").[7]
18 Sep 2017	The Defendant filed Motion to Dismiss Complaint in his personal capacity.[8]
	The US District Court replied to the Defendant's email dated 17 Sep 2017 informing the Defendant, *inter alia*, that he was required to participate in the Scheduling Conference fixed to be held on 22 September 2017.[9]
	The Defendant sent a further email to the US District Court using his Singnet Email Address.[10]
19 Sep 2017	The US District Court replied to the Defendant's email dated 18 Sep 2017.[11]

4 Plaintiffs' Bundle of Cause Papers, Volume 1 ("1PB") at p8.

5 1PB at p213.

6 1PB at p216.

7 Plaintiffs' Bundle of Cause Papers, Vol 3 ("3PB") at p878.

8 1PB at p190.

9 3PB at p878.

10 3PB at p881.

11 3PB at p881.

20 Sep 2017	The Defendant forwarded to the US District Court, an email which he had sent to the Plaintiffs' US Counsel on 24 August 2017, using his Singnet Email Address.[12]
	US District Court replied to the Defendant's email dated 20 September 2017.[13]
21 Sep 2017	The Defendant filed a Position Statement in his personal capacity.[14].
	Defendant used his Singnet Email Address to send an email to the Plaintiffs' US Counsel stating, *inter alia*, that he was willing to provide testimony at a deposition if the Plaintiffs dropped the US action against him. [15]
22 Sep 2017	The parties participated in a Scheduling Conference before a US magistrate judge. The magistrate judge made a Scheduling Order including discovery timelines. The Defendant was to give initial disclosure by 20 October 2017.[16]
23 Sep 2017	The Defendant sent an email to the Plaintiffs' US Counsel stating:[17] "I have consulted my top lawyer in Singapore. As long as I am improperly [served] and moreover [do] not consent to [North Dakota] jurisdiction and also lack of personal jurisdiction, I have no case to answer. Thank you."

12 3PB at p884.

13 3PB at p884.

14 1PB at p147.

15 3PB at p887.

16 1PB at p237; 3PB at p595.

17 3PB at p889.

6 Oct 2017	The Defendant sent an email to the US District Court, using his Singnet Email Address, stating *inter alia*:[18] "My Singapore lawyer says that I am improperly serve[d] and therefore there is [no] case for me to answer. I was improperly serv[d] in Singapore and not in USA."
	The Defendant sent an email to the Plaintiffs' US Counsel stating[19]: "By continuing sending me foreign court orders and improper[ly] serving me legal matters, you have committed an offence in Singapore by practising legal law in Singapore without a [licence] both wilfully and knowingly. Acting on my top Singapore lawyer['s advice], I will be keeping all your improper servings for the next 2 months which my top Singapore lawyer will file official complaint to our Law Ministries and to our Law Society and will also file a complaint to your USA law Association which you are a member."
23 Oct 2017	The Plaintiffs' US Counsel sent an email to the Defendant requesting him to provide disclosure by 25 October 2017.[20]
20 Dec 2017	The Plaintiffs' US Counsel sought a status conference to meet with the Court and the Defendant to discuss the Defendant's failure to provide disclosure.[21]

[18] 1PB at p220.

[19] 3PB at p891.

[20] 3PB at p629.

[21] 1PB at p237.

23 Jan 2018	The US District Court held a telephone status conference. Defendant failed to answer the call to join the status conference.[22]
26 Jan 2018	The Plaintiffs filed a Request for Production of Documents. The Defendant was given 30 days to provide a written response.[23] The Plaintiffs then filed Request for Admissions. Likewise, the Defendant was given 30 days to provide a written response.[24]
	The Plaintiffs' US Counsel sent an email to the Defendant attaching the Request for Production of Documents and the Request for Admissions.[25]
31 Jan 2018	There was a status conference but the Defendant did not attend.[26]
2 Mar 2018	The Plaintiffs' US Counsel sent an email to the Defendant asking for a response to the Request for Production of Documents and Request of Admissions, and for a meeting.[27]
15 Mar 2018	The Plaintiffs' US Counsel sent another email to the Defendant asking for a response to the Request of Production of Documents and Request for Admissions and for a meeting.[28]
27 Mar 2018	The US District Court denied the Defendant's Motion to Dismiss Complaint.[29]

22 1PB at p238.

23 1PB at p222.

24 1PB at p150.

25 1PB at p232.

26 1PB at p243.

27 1PB at p232.

28 1PB at p234.

29 1PB at p201.

30 Mar 2018	The Plaintiffs filed Motion to Compel Initial Disclosures and Discovery.[30]
19 Apr 2018	The US District Court ordered the Defendant to provide initial disclosure and discovery responses by 1 May 2018[31]. The court clerk was also directed to send a copy of the Order to the Defendant's Singnet Email Address.
21 Sep 2018	The Plaintiffs filed the Motion for Summary Judgment.[32]
26 Sep 2018	The Plaintiffs filed the Supplement to Motion for Summary Judgment.[33]
27 Sep 2018	The Plaintiffs' US Counsel sent an email to the Defendant's Singnet Email Address attaching *inter alia*: (a) the Motion for Summary Judgment; and (b) the Supplement to Motion for Summary Judgment[34].
29 Sep 2018	Personal service of *inter alia*: (a) the Motion for Summary Judgment; and (b) the Supplement to Motion for Summary Judgment on the Defendant.[35]
1 Oct 2018	The Defendant sent an email to the US District Court, using his Singnet Email Address, stating:[36] "…As I have already [moved] my house some few months ago, some of the court letters [m]ay not have [reached] me. Only on 31st

[30] 1PB at p236.

[31] 1PB at pp242-243.

[32] 1PB at p245.

[33] 3PB at p647.

[34] 1PB at p266.

[35] 1PB at p268.

[36] 2PB at p387.

	[September] 2018 evening time that I received two bundles of court documents with the latest [d]ated 26th [September] 2018 under headings Supplement to Plaintiffs [Motion] for [Summary Judgment] [a]nd that Plaintiffs do not oppose any reasonable extension requested by [D]efendant. Please allow at least 45 days from 1st Oct to file my official hard copy reply as it will take some 3 weeks or 21 days to reach USA by registered air mail. Please inform Judge of my sincere request. If I can finish on time the reply, I will send a soft copy [b]y email to you first…"
2 Oct 2018	The Defendant sent a further email to the US District Court, using his Singnet Email Address, stating:[37] "…I have found very much difficulties in locating [a] US lawyer. I have written to a few of them [a]nd only one reply saying that they are unable to take my case and others with no reply. I am afraid that I may need 3 months extension instead of the 1.5 months requested…"
	The US District Court replied to the Defendant's email of 2 Oct 2018 stating:[38] "…I have relayed it to the Judge's chambers. Any request for extensions of time must be filed as a motion. The local rules o court do not permit Pro Se parties to file electronically. You must send a written motion via mail. An email is not sufficient…"
	The Defendant replied to the US District Court's email of 2 Oct 2018 using his Singnet Email Address, stating:[39]

[37] 2PB at p387.

[38] 2PB at pp386-387.

[39] 2PB at p386.

	"Thank you so much for your prompt reply. Please relay to the judge's chambers to allow me sufficient time to file the motion as [the] written motion will take some 3 weeks to reach your office by registered air mail."
31 Dec 2018	The US District Court made an Order granting the Plaintiffs' Motion for Summary Judgment.[40]
10 Jan 2019	The Plaintiff's Singapore then solicitors attempted service of the US Judgment on the Defendant.[41]
30 Jan 2019	The Defendant's US Counsel requested for an extension of time to file an appeal to the US Court of Appeal. The request was granted.[42]
28 Feb 2019	The Defendant filed his Notice of Appeal to the US Court of Appeal.[43]
30 Sep 2019	The Defendant filed a Motion to Disqualify Counsel for the Plaintiffs before the US District Court [44]
24 June 2020	The US District Court dismissed the Motion to Disqualify Counsel[45]
18 June 2021	The US Court of Appeal dismissed the Defendant's appeal.[46]
22 Sep 2021	The Defendant filed a Petition for a Writ of Certiorari to the US Supreme

40 1PB at pp100-103.

41 1PB at pp123-127.

42 1PB at p165.

43 1PB at p10.

44 1PB at p161.

45 1PB at p163.

46 1PB at p105.

	Court.[47]
10 Jan 2022	The US Supreme Court denied Defendant's Petition for a Writ of Certiorari.[48]

8. In Suit 858, the Plaintiffs sought to enforce the US Judgment against the Defendant in Singapore.

Issues on appeal

9. The Defendant raised two issues on appeal:

a. Issue 1: Whether enforcement of the US Judgment should be refused on the grounds of fraud and/or material non-disclosure. The basis for this allegation arose from the Plaintiffs' failure to disclose the undisputed material fact that they had received settlement payouts from the related Pearce & Durick Class Action ("the Class Action").

b. Issue 2: Whether the US Court's reliance on the Defendant's "Deemed Admissions" in granting the US Judgment, instead of the positions stated and the documents submitted by the Defendant, constituted a breach of natural justice. This is by virtue of the fact that the Defendant did not receive the Plaintiffs' request for admissions dated 26 January 2018 ("the Requests for Admissions") and had no opportunity to respond to the same.

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47 2PB at p434.

48 1PB at p119.

Principles on Summary Judgment

10. The legal principles for summary judgment under O 14 of the Rules of Court (Cap 322, R 5, 2004 Rev Ed) ("ROC") are well established. The plaintiff must first show that he has a *prima facie* case for summary judgment. If the plaintiff crosses that threshold, the defendant then bears the burden of raising "an issue or question in dispute which ought to be tried". In doing so, the defendant must bring forward some ground which raises a reasonable probability that he or she has a real or *bona fide* defence in relation to the issues in dispute which ought to be tried: *Goh Chok Tong v Chee Soon Juan* [2003] 3 SLR(R) 32 at [25]. Alternatively, the defendant may attempt to show that there ought to be a trial for some other reasons, even though there is no reasonable probability of a real or *bona fide* defence which ought to be tried. The court will enter judgment against the defendant only if the plaintiff has satisfied the court that there is no reasonable probability that the defendant has a real or *bona fide* defence and there is no other reason why there ought to be a trial: *Ritzland Investment Pte Ltd v Grace Management & Consultancy Services Pte Ltd* [2014] 2 SLR 1342 at [43]–[47].

Fraud Issue

11. For Issue 1, the Defendant submitted that the enforcement of the US Judgment should be refused on the ground of fraud and/or material non-disclosure. The Defendant argued that the Plaintiffs did not disclose the amount of payout they received from the Class Action settlement, nor the date on which they received the payout, in their Motion. Only a lump sum figure of US$852,638.81 was set out. The Defendant submitted that this affected the extent of double recovery for each plaintiff. The Defendant asserted that it was only after he had sight of the Plaintiffs' Statement of Claim dated 19 October

2021, that he discovered that it was unlikely that the Plaintiffs had disclosed the fact that they received the settlement payouts from the Class Action.[49]

Pleading of fraud

12. The Plaintiffs preliminary objection to this submission was that fraud had not been pleaded in the Defence.[50] Under O 18 r 8(1)(*a*) of the ROC, the Defendant is obliged to "plead specifically … fraud … which he alleges makes any claim or defence of the opposite party not maintainable". The Plaintiffs cited *Olivine Capital Pte Ltd and another v Chia Chin Yan and another matter* [2014] SGCA 19 at [43] and submitted that the Defendant cannot, without exceptional reasons, rely on an un-pleaded defence of fraud in a summary judgment application.

13. The Defendant responded by relying on *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2020] 2 SLR 1256. There, the Court of Appeal held at [125] that just because the word fraud is not utilised does not mean that a pleading is deficient. The key is whether the other party is taken by surprise. The Defendant submitted that it was very clear from the Plaintiffs' Submissions that the Plaintiffs knew the case they had to meet.

14. I noted that while the Defendant did not specifically plead fraud in his Defence, he did plead that the Plaintiffs' "dishonesty" misled the US Courts into granting the judgment.[51] The Plaintiffs would have known the nature of the Defendants' claim. Accordingly, the Plaintiffs would not have been surprised or prejudiced by it.

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49 4th Affidavit of Ee Hong Liang, at [6].

50 Plaintiff's Written Submissions ("PWS") at [48].

51 Defence at [6B] and [6D].

Whether the non-disclosure amounted to fraud

15. The thrust of the Defendant's legal submission for Issue 1 was that the US Judgment should be set aside as the Plaintiffs' non-disclosure of the settlement payout to the US District Court amounted to extrinsic fraud and/or material non-disclosure. The Defendant's characterisation of the fraud here as extrinsic fraud instead of intrinsic fraud was material. Case law has made a distinction between the two and imposed more stringent safeguards in respect of allegations of extrinsic fraud.

16. The Defendant's submission required an examination of three elements. First, whether the non-disclosure amounted to fraud. Second, whether the non-disclosure was material. Third, whether the fraud was extrinsic or intrinsic fraud.

17. I dealt first with whether the non-disclosure amounted to fraud. The threshold for proving fraud is very high. The mere fact that the plaintiffs may have presented erroneous or misleading evidence does not necessarily mean that it is a case of fraud; there must be a dishonest intention to mislead the court: *Ching Chew Weng Paul v Ching Pui Sim* [2011] 3 SLR 869 at [44]; *Eleven Gesellschaft Zur Entwicklung Und Vermarktung Von Netzwerktechonologien MBH v Boxsentry Pte Ltd* [2014] SGHC 210 ("*Boxsentry*") at [105].

18. In the present case, the Defendant raised the Plaintiffs' non-disclosure in the US proceedings, which the Plaintiffs did not dispute. However, unlike the plaintiff in *Boxsentry*, the Plaintiffs here did not provide any evidence that explained their purported non-disclosure, such that the court can conclude that their non-disclosure was not dishonest. Counsel for the Plaintiff was only able to refer me to the 1st Plaintiff's 1st affidavit in Suit 858 at [19], where he said that "the claim in this present suit is based exactly on what the US District Court

granted in the US Judgment, which in turn takes into account all amounts that the Plaintiffs are entitled to under the applicable law in the US Action and on the basis of the parties' pleaded cases there".

19. As there is no evidence before the court from which to conclude that there was no dishonest intention behind the plaintiffs' non-disclosure, I proceeded, for purposes of assessing this appeal against summary judgment, on the assumption that there might have been some dishonest intention and that the allegation of fraud should be considered.

Whether the non-disclosure is material

20. I next dealt with whether the non-disclosure was material. The Defendant submitted that it was material, and if the Plaintiffs had adduced the information on the settlement payouts to the US District Court, the "outcome of the determination *might* have been different" [emphasis in original in italics]: *Facade Solution Pte Ltd v Mero Asia Pacific Pte Ltd* [2020] 2 SLR 1125 ("*Facade Solution*") at [35]. This is because the Plaintiffs had been partially recompensed pursuant to the Class Action settlement, which arose out of the very same investments that they premised their claims on against the Defendant. The Plaintiffs themselves recognized that double recovery was not permitted as they had, in particularizing their claim, set off the (unparticularised) "recovered returns" that they had already received.[52]

21. *Facade Solution* dealt with the setting aside of an adjudication determination on the grounds of fraud. At [35], the court held:

> Materiality is established if there is a real prospect that had the adjudicator known the truth, the outcome of the determination

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52 1st Affidavit of Panircelvan S/O Kaliannan, at [7(b)].

> *might* have been different. In other words, the facts must have been an *operative cause* in the issuance of the AD. It matters not what the claimant did or did not think was material at the relevant time. **What matters is that the court is satisfied that the false facts were *material* to the making of the original order based on the reasoning and arguments at the time the order in question was made.**
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> [emphasis in original in italics; emphasis added in bold]

In other words, the consideration of materiality in setting aside the adjudication determination was not whether the claimant or the defendant considered it material, but whether the non-disclosure was material to the adjudicator. By extension of the principle to this case, the issue was whether the non-disclosure was material to the US District Court in making its order.

22. The documents before the US District Court did not include information that there were payouts made to the Plaintiffs or the amount of payout for each Plaintiff. Consequently, the US District Court was not aware that some payouts had been received by the Plaintiffs. Such information could conceivably have been material to the US District Court, such that the outcome might have been different. I hence proceeded further with the analysis, on the basis that the non-disclosure was material.

Whether the fraud is extrinsic or intrinsic

23. I dealt next with whether the fraud was extrinsic or intrinsic.

24. In *Ong Han Nam v Borneo Ventures Pte Ltd* [2021] 1 SLR 1248 ("*Ong Han Nam*"), the Court of Appeal noted at [49] the distinction between extrinsic fraud and intrinsic fraud:

> (a) Extrinsic fraud refers to fraud taking place outside trial. This includes bribery of a solicitor, counsel, or a witness; collusion with a

representative party to the prejudice of beneficial interest; fraud going to the jurisdiction of the court; and perjury during discovery.

(b) Intrinsic fraud refers to fraud taking place within trial. This includes false statements made at the trial which were met by counter-statements by the other side, and adjudicated upon by the Court; fraud going to the merits of the judgment; and perjury at trial.

25. The Court in *Ong Han Nam*, citing *Hong Pian Tee v Les Placements Germain Gauthier Inc* [2002] SGCA 18 ("*Hong Pian Tee*") at [30], held at [49] that foreign judgments can only be challenged on the ground of intrinsic fraud if "fresh evidence has come to light which reasonable diligence on the part of the defendant would not have uncovered and the fresh evidence would have been likely to make a difference in the eventual result of the case".

26. In *Boxsentry*, the court observed at [103], citing D M Gordon, "Fraud or New Evidence as Grounds for Actions to Set Aside Judgments–I" (1961) 77 LQR 358 at p 366 and D M Gordon, "Fraud or New Evidence as Grounds for Actions to Set Aside Judgments–II" (1961) 77 LQR 533 at p 533, that the distinction between intrinsic and extrinsic fraud can be attributed to the history of English legal development. Traditionally, common law courts would only treat a judgment as void for fraud based on collusion and other extrinsic fraud, ignoring the evidence given at trial. The courts of equity, however, were more willing to examine whether judgments were obtained by false evidence.

27. This distinction was first authoritatively examined by our Court of Appeal in *Hong Pian Tee*. The appellant there had submitted that where fraud was raised, the foreign judgment could no longer be conclusive, even if the defence of fraud had been investigated into by the foreign court and rejected (at

[10]). Furthermore, the appellant in that case argued that he was entitled to have the issue of fraud re-litigated in Singapore even if there was no fresh evidence (at [10]). The Court of Appeal examined two lines of authorities. The first line of authorities, starting with *Abouloff v Oppenheimer & Co* (1882) 10 QBD 295 ("*Abouloff*") seemed to say that so long as fraud is alleged, the defendant is thereby entitled to reopen the issue of fraud. In the second line of authorities, the Canadian courts declined to follow *Abouloff*. In *Jacobs v Beaver* (1908) 17 OLR 496 ("*Jacobs*"), Garrow JA of the Ontario Court of Appeal held that a court should only look into the merits of a foreign judgment if extrinsic fraud was alleged or if the defendant had discovered evidence of intrinsic fraud after the foreign judgment was passed. The Court of Appeal at [23] also noted that the Australian cases also seemed to be moving away from *Abouloff*.

28. The Court of Appeal in *Hong Pian Tee* held that it would adopt the approach taken by the Canadian-Australian cases. At [27] and [30], the court explained:

> 27 … In our judgment the approach adopted in *Abouloff* has less to commend itself as it would only encourage endless litigation. It is of paramount importance that there should be finality. Every losing party understandably would like to litigate the issue over again with the hope that a different tribunal would look at the fact situation differently. But that can never be a good reason for allowing a losing party to reopen issues. To liberally allow a party to do so would be to permit that party to have a second bite at the cherry, an eventuality which is generally abhorred by all civilised systems of law. Of course, we are conscious that the rule against reopening issues is not absolute. There are exceptions but they are subject to safeguards. …
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> …
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> 30 … It is consonant with the doctrine of comity of nations. It avoids any appearance that this court is sitting in an appellate capacity over a final decision of a foreign court. We, therefore, ruled that where an

> allegation of fraud had been considered and adjudicated upon by a competent foreign court, the foreign judgment may be challenged on the ground of fraud only where fresh evidence has come to light which reasonable diligence on the part of the defendant would not have uncovered and the fresh evidence would have been likely to make a difference in the eventual result of the case. …

29. The above brief survey of the history behind the adoption of the distinction between extrinsic and intrinsic fraud under Singapore law, indicates that the distinction is fundamentally underpinned by the principles of finality of litigation and the comity of nations, with safeguards built-in when engaging the exceptions. It is important not to lose sight of this when examining the technical differences between extrinsic and intrinsic fraud.

30. With this in mind, I turned to further examine the technical distinctions between the two forms of fraud. Examining the scenarios that have been characterised as extrinsic fraud and intrinsic fraud as set out at [24] above, one key differentiating characteristic, is whether the alleged fraud took place within a trial process, where the party alleging fraud may have discovered the fraud or traced the connection between the fraud and the judgment.

31. Where there is bribery of a solicitor, counsel or witness, or a collusion with a representative, or perjury during discovery, the alleged fraud occurs outside of a trial process. It may be harder for such fraud to have been discovered or its connection traced to a judgment. The safeguards set out in *Hong Pian Tee* at [30], have not been imposed in such situations of extrinsic fraud.

32. In contrast, where the alleged false statements were made during trial, or there was perjury at trial, the alleged fraud takes place during a trial where parties are engaged in an adversarial process, examining and disputing the other

parties' evidence. A party engaged in a trial would be in a relatively better position to discover such alleged fraud or trace its connection to the judgment. The safeguard sets out in *Hong Pian Tee* at [30], that allegations of such intrinsic fraud can only be brought if "fresh evidence has come to light which reasonable diligence on the part of the defendant would not have uncovered", would apply.

33. The Plaintiffs submitted that the fraud alleged by the Defendant was intrinsic fraud, as the US Judgement was issued on the back of the Motion for Summary Judgment, to which the Defendant had every opportunity to respond but chose to ignore.

34. The Defendant submitted that the Plaintiffs' non-disclosure of the settlement payouts amounted to extrinsic fraud. The Defendant relies on *Boxsentry*, in which the court held at [104] that:

> Boxsentry's fraud allegation was premised on Eleven's failure to give full and frank disclosure of the background facts to the Berlin Regional Court. This was purportedly done so that the Berlin default judgment could be obtained unfairly against Boxsentry. It appeared to be an allegation of extrinsic and not intrinsic fraud since it was an allegation that Eleven fraudulently sought to mislead the Berlin Court.

35. The Defendant alleged that the Plaintiffs here also failed to give full and frank disclosure to the US District Court. However, there is an important point of distinction between the present case and the facts in *Boxsentry*. Specifically, *Boxsentry* concerned a default judgment. In a case of default judgment, it is trite law that the applying party has the duty of full and frank disclosure so that the court can arrive at a fair and just outcome, especially when the opposing party is entirely absent from the proceedings and may not even be aware of the suit. The failure to provide full and frank disclosure is a ground to set aside a default judgment.

36. In *Hong Pian Tee*, the court at [21] cited the Ontario Court of Appeal's decision in *Woodruff v McLennan* (1887) 14 OAR 242 ("*Woodruff*") to elaborate on the types of situations that the Canadian courts regarded as extrinsic fraud:

> … the defendant had never been served with process, that the suit had been undefended without defendant's default, that the defendant had been fraudulently persuaded by plaintiff to let judgment go by default … or some fraud to defendant's prejudice committed or allowed in the proceedings of the other court.

37. Thus, the examples of extrinsic fraud that the court in *Hong Pian Tee* cited, relying on *Woodruff,* also involved suits which are undefended. Similarly, the Hong Kong decision referred to by the Defendant, *Alan Chung Wah Tang & Kan Lap Kee v Chung Chun Keung & Joint Group Investment Limited & Vicfont Company Limited* [2021] HKCFI 369 also involved an application for default judgment.

38. In contrast, the present case did not involve a default judgment or an undefended suit. Counsel for the Defendant accepted that different considerations apply to a summary judgment application. Typically, in a summary judgment application, the plaintiff does not have the same duty of full and frank disclosure as compared to a default of appearance application, since the Defendant would be expected to be present and assisting the court in understanding his side of the story. The Defendant's Counsel, however, submitted that the present case is nevertheless akin to a default judgment because his client was not responding.

39. However, the Defendant had responded earlier in the US Action. He was well aware of the Plaintiffs' case against him. He entered an appearance before the US District Court, filed his Answer to the Amended Complaint on 10 August

2017 and a Motion to Dismiss the Complaint on 18 September 2017 for lack of personal jurisdiction and improper venue.

40. The Defendant also emailed the US District Court to seek an extension of time to file his response to the Motion for Summary Judgment. On 2 October 2018, the Defendant emailed the US District Court to ask for an extension of time for three months. The US District Court asked him to file a motion to extend time. Not only did the Defendant fail to do so, he did not respond to the Motion for Summary Judgment in any manner. He simply dis-engaged from the US Action, unilaterally.

41. Despite the fact that he did not file a motion to extend time for three months, the US District Court waited for more than three months. It was only four months later that the US District Court issued the US Judgment. As far as the US District Court was concerned, the Defendant had contested in the US Action and there were opportunities for him to continue to do so, including on the point of damages. But the Defendant simply chose not to respond.

42. Therefore, the fact that the US District Court was not aware of the particulars of the settlement payouts, cannot be casted as the Plaintiffs' fault alone. The Defendant is equally at fault, if not more at fault, for unilaterally disengaging from the proceedings and failing to present his defence to the US District Court.

43. Furthermore, when the Defendant's appeal was subsequently considered by the US Court of Appeal, the court noted in its judgment that "[the] Defendant also challenges the district court's grant of summary judgment on all counts in

favour of Plaintiffs. We review the challenges by the defendant *de novo* ...".[53] In other words, the US Court of Appeal assessed the summary judgment on its merits and did not treat it as a default judgment application.

44. If the distinction between intrinsic fraud and extrinsic fraud is made on whether the fraud goes to the merits of the judgment as opposed to going to the jurisdiction of the court (*Boxsentry* at [102]), then the Plaintiffs' alleged non-disclosure of the settlement payouts would be considered intrinsic fraud. This is because the alleged fraud pertained to the quantum of damages that should have been awarded to the Plaintiffs, which goes towards the merits of the judgment, as opposed to the jurisdiction of the court.

45. If the distinction between intrinsic fraud and extrinsic fraud is made on whether the fraud took place within a trial (*Boxsentry* at [103]), then the Defendant's allegation would still be an allegation of intrinsic fraud. While the parties had not reached the trial stage, what was in motion here was a summary process whereby parties were engaged in an adversarial process and were expected to present their evidence to the court. There was in effect, a summary trial. This is in stark contrast to the situations of default judgment and undefended suits that were described as extrinsic fraud in *Boxsentry* and *Woodruff*. The alleged fraud here would clearly be more akin to taking place in a trial (intrinsic fraud) rather than taking place outside of a trial (extrinsic fraud). The circumstances were also such that the Defendant could reasonably have discovered the alleged fraud or traced its connection to the judgment.

46. Bearing the above in mind, I took the view that the alleged fraud here, assuming that there was fraud, could only be characterised as intrinsic fraud.

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[53] 1PB at p113.

47. As held in *Ong Han Nam*, foreign judgments can only be challenged on the ground of intrinsic fraud if "fresh evidence has come to light which reasonable diligence on the part of the defendant would not have uncovered and the fresh evidence would have been likely to make a difference in the eventual result of the case" (at [49]). In this case, it could not be said that the particulars of the settlement payout constituted "fresh evidence" that "has come to light which reasonable diligence on the part of the defendant would not have uncovered". I concluded as such for the following reasons:

(a) The existence of the settlement sum was something that the Defendant knew of at the time of the US Action. The Defendant and his spouse had by then received partial payouts from the Class Action, amounting to $4,945.34.[54] Counsel for the Defendant accepted that the Defendant knew that the Plaintiffs were also part of the Class Action so he would know that they had received some monies.

(b) It was also clear from the Defendant's court documents that he was aware of this. In the Defendant's Motion in Support of Motion to Dismiss, he said that the NDD assets were liquidated and all monetary proceeds were distributed to the Plaintiffs between March to April 2017. The Defendant further alleged that the Plaintiffs had omitted this fact in their case complaint filing.[55] The Defendant also said that the NDD hotel room units were already liquidated and all monetary proceeds were paid to the plaintiffs since March or April 2017.[56]

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54 1PB at p176.

55 Defendant's Motion in Support of Motion to Dismiss at [21]; 1PB at p193.

56 Defendant's Position Statement at [15]; 1PB at p149.

(c) The Defendant's position was that he did not know exactly how much the Plaintiffs received in their payouts. But he did know that they had received some payouts. Despite knowing this, the Defendant never raised to the US District Court any complaint that some payouts would have been received by the Plaintiffs.

48. The circumstances of this case brought the principles of finality of litigation and comity of nation, that were identified in *Hong Pian Tee*, to the fore. The alleged fraud was something that the Defendant knew of but chose not to present to the US District Court. The US District Court made their rulings without the information that the Defendant was in possession of because the Defendant, though initially engaged, inexplicably chose to walk away from the US Action.

49. For all the above reasons, I found no ground to refuse enforcement of the US Judgment on the basis of the Defendant's allegation of fraud.

Natural Justice Issue

50. Issue 2 related to the Defendant asserted that there was a breach of natural justice. The Defendant submitted that he had never received the Request for Admissions. Further, the US Court relied on the Defendant's Deemed Admissions to grant the US Judgment instead of the positions taken and documents submitted by the Defendant.

51. The Defendant pointed out that the certificate of service filed by the Plaintiffs in respect of the Request for Admissions shows that it was sent to the wrong address, namely "350, Hougang Ave 7, instead of "350, Hougang Ave 7, *#06-651*" [emphasis added]. In other words, the unit number was omitted. The

Defendant also submitted that he did not receive the Motion to Compel Discovery dated 19 April 2018 because he had moved house by then.

52. The Defendant said that after he failed to respond to the Plaintiff's Request for Admissions, the US District Court deemed the Defendant to have admitted to the same and relied on the Deemed Admissions as the sole basis to grant the US Summary Judgment.

53. The Plaintiffs asserted that the Defendant would have received the documents served, including the Request for Admissions, at his Singnet Email Address which the Defendant had used in his correspondence with the US District Court. The Defendant's position was that he did not receive the emails purportedly enclosing the Request for Admissions and the Discovery Order.

54. It was clear from the evidence that the Defendant has consistently used his email to correspond with the US District Court:

(a) On 19 April 2018, the US District Court directed the Clerk to email a copy of the disclosure orders to the defendant at his Singnet Email Address.[57]

(b) From 17 to 19 September 2017, the Defendant exchanged several emails with the US District Court, using his Singnet Email Address, stating that he would not be attending the telephone conference call because he has filed his Motion to Dismiss.[58]

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57 1PB at p243.

58 3PB at pp881-884.

(c) On 6th October 2017, the Defendant emailed US District Court, using his Singnet Email Address, and stated that "there was no case for [him] to answer".[59]

55. The Defendant further submitted that Rule 5 of the US Federal Rules of Civil Procedure states that service by email is permitted only if the recipient consented to it in writing. There was no evidence that the Defendant did so.

56. However, the issue before this court was not whether the Plaintiffs had complied with all the procedural requirements of service in the United States, but whether there were any breaches of natural justice. In *Paulus Tannos v Heince Tombak Simanjuntak and others and another appeal* [2020] SGCA 85, the Court of Appeal held at [28] that the question is whether, having been given notice, the litigant has the opportunity of substantially presenting his case before the court. At [42], the court noted that the heart of natural justice lies in the concepts of notice and of the opportunity to be heard.

57. In this case, the Defendant was given sufficient notice of the state of proceedings in the action before the US District Court. He was engaged in email correspondence with the US District Court at different stages of the proceedings.

58. The Defendant had also received the Plaintiffs' key documents that he was expected to respond to. Counsel for the Defendant accepted that the Defendant had received the Plaintiffs' Motion for Summary Judgment and the Supplement. Even if the Defendant's case about his receipt of the Plaintiffs' Request of Admissions was taken at its highest, that is assuming that it is true

[59] 1PB at p220.

that the Defendant had not received the Plaintiffs' Request for Admissions by email or otherwise, the Defendant's email to the US District Court dated 1 October 2018 indicated that he had received the relevant documents and affidavits relating to the Plaintiffs' Motion for Summary Judgment. He stated in his email:[60]

> Only on 31st Sept 2018 evening time that I received two bundles of court documents with the latest dated 26th Sept 2018 under headings Supplement to Plaintiffs [Motion] for [Summary Judgment] and that Plaintiffs do not oppose any reasonable extension requested by defendant.
>
> Please allow at least 45 days from 1st Oct to file my official hard copy reply as it will take some 3 weeks or 21 days to reach USA by registered air mail.
>
> Please inform Judge of my sincere request. If I can finish on time the reply, I will send a soft copy by email to you first…

59. At that point in time, the Defendant still had an opportunity to properly defend against the Plaintiffs' Motion for Summary Judgment and raise the issues pertaining to the Deemed Admissions. However, he failed to do so and chose instead to disengage from the proceedings. Indeed, the Defendant had not just one, but several opportunities to present his defence in the US Action, but he failed to do so on each occasion.

60. The US District Court even emailed the Defendant to inform him that he could put in a motion to seek an extension of time to file his reply. However, the Defendant made the conscious decision not to partake in the US District Court proceedings after 2 October 2018. In the judgment of the US District Court, the court stated that it granted the summary judgment after considering "that the Court deems the matters in the Plaintiffs' Request for Admission admitted and

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60 1st Affidavit of Ee Hoong Liang, at p 112.

in light of [the Defendant's] failure to respond to the motion for summary judgment".[61] In other words, contrary to the Defendant's submission, the summary judgment in the US District Court was not entered solely on the Deemed Admissions. It was also because the Defendant decided not to participate.

61. In such circumstances, it cannot be said that there was a breach of natural justice.

62. The Defendant also argued that when he appealed against the US Summary Judgment, he filed and submitted a sworn declaration on 28 February 2019 with over 200 documents that directly contradicted the Deemed Admissions. However, the US Court of Appeal did not consider the new evidence he adduced but affirmed the reliance on his Deemed Admissions, which deprived him of the opportunity to present his case.

63. However, the mere fact that the US Court of Appeal did not agree with the Defendant's position about the new evidence he sought to adduce, does not mean that there was a breach of natural justice. The fact remains that Defendant had the opportunity to be heard by the US Court of Appeal.

64. The Defendant further submitted, relying on *BRS v BRQ* [2021] 1 SLR 390 at [90], that the fair hearing rule requires a tribunal to consider all important issues. The Defendant argued that the US Court of Appeal did not do so, and merely treated the Defendant's "deemed admissions" as the only evidence required to dismiss his appeal. However, the US Court of Appeal did consider this but rejected it on the ground that "the answer and

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[61] 1PB at p101.

> motion to dismiss were unsworn [and] they were not evidence that the district court could consider in ruling on the motion for summary judgment."[62]

65. As highlighted above, the US Court of Appeal stated in its judgment that it reviewed the district court's grant of summary judgment de novo. In concluding its judgment, the US Court of Appeal observed:[63]

> Defendant already had an opportunity to defend against the motion but failed to avail himself of that opportunity. Instead, he decided to stop participating in the district court's litigation, including not responding to the motion for summary judgment. His "buyer's remorse" regarding that decision is not a basis for reversal.

66. These observations were equally applicable to the appeal before this court. In view of the above considerations, I found no ground to refuse enforcement of the US Judgment on the basis of a breach of natural justice.

Quantum of damages claimed

67. While the Defendant disputed the exact amount that the Plaintiffs should be allowed to claim, in particular, whether their claim should be offset by the payouts received under the Class Action, I found the *dicta* of the Court of Appeal in *Hong Pian Tee* at [30], that this court should not be sitting in an appellate capacity over a final decision of a foreign court, apposite. Where the defendant is unable to cross the fraud or breach of natural justice threshold, it would not be appropriate for this court to sit in an appellate capacity to moderate the judgment given by the foreign court. This was particularly so in this case, since the Defendant was aware that the Plaintiffs had received some amount of

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62 1PB at p142.

63 1PB at p144.

payouts from the Class Action, but did not raise it to the attention of the US District Court. As the US Court of Appeal pointedly observed, the Defendant did not challenge the damages amount.[64]

Conclusion

68. For the reasons given above, I dismissed the appeal. I awarded costs of $12,000 the Plaintiffs, plus reasonable disbursements, which are to be agreed or taxed.

Kwek Mean Luck
Judge of the High Court

Sim Chong, Senthil Dayalan (Sim Chong LLC) for the plaintiffs;
Tang Shangwei, Jolyn Khoo (WongPartnership LLP) for the defendant.

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64 1PB at p108.