IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 32

Suit No 1060 of 2015
(Registrar's Appeal Nos 345 and 346 of 2019)
(Registrar's Appeal No 10 of 2020)
(Summons No 413 of 2020)

Between

1. First Global Funds Limited PCC
2. Weston International Asset Recovery Company Limited
3. Weston International Asset Recovery Corporation, Inc

… *Plaintiffs*

And

1. PT Bank JTrust Indonesia, TBK
   (formerly known as PT Bank Mutiara TBK)
2. J Trust Co, Ltd
3. Weston Capital Advisors, Inc

… *Defendants*

JUDGMENT

[Civil Procedure] — [Pleadings] — [Striking out]
[Civil Procedure] — [Pleadings] — [Amendment]
[Civil Procedure] — [Costs]
[Civil Procedure] — [Appeals] — [Leave]

First Global Funds Ltd PCC and others
v
PT Bank JTrust Indonesia, TBK and others

[2020] SGHC 32

High Court — Suit No 1060 of 2015 (Registrar's Appeal Nos 345, 346 of 2019, and 10 of 2020, Summons 413 of 2020)
Choo Han Teck J
8, 15 January, 3 February 2020

18 February 2020 Judgment reserved.

Choo Han Teck J:

1 The first, second and third plaintiffs (respectively, "FGF", "WIAR Limited" and "WIAR Corporation"; collectively, the "Plaintiffs") are companies established in the Republic of Mauritius. The first defendant ("PT Bank") is a bank which is incorporated and does business in Indonesia. The second defendant ("J Trust") is a company listed on the Tokyo Stock Exchange in Japan, where it has its principal place of business, and it owns 96.185% of the shares in PT Bank. Weston Capital Advisors, Inc ("WCAI") is a corporation established under the laws of Delaware in the United States. It was originally a plaintiff in Suit 1060 of 2015 ("Suit"), but has since been joined as the third defendant on the application of the Plaintiffs.

2 In the Suit, the primary claims in the statement of claim (dated 22 June 2018) are as follows:

(a) FGF claims that PT Bank and J Trust are, pursuant to a judgment issued by the Supreme Court of Mauritius on 29 May 2015 ("2015 Mauritian Judgment"), liable to it for the sum of US$4,563,581 plus statutory interest at 8% per annum. This claim is not pertinent for our present purposes.

(b) WIAR Limited claims that PT Bank and J Trust are, pursuant to the 2015 Mauritian Judgment, liable to it for the sum of US$8,176,821 plus statutory interest at 8% per annum. WIAR Limited further claims that it is entitled to penalty interest on the aforementioned sum calculated at 24.9% per annum. For context, this claim, referred to as the "WestLB Enforcement Claim", essentially seeks to enforce the 2015 Mauritian Judgment insofar as it concerns certain alleged repayment rights (the "WestLB Claim") that an entity, WestLB AG, had against PT Bank and which were assigned to WIAR Limited.

(c) WIAR Corporation claims that PT Bank and J Trust are, pursuant respectively to a judgment issued by the Supreme Court of Mauritius on 15 February 2013 and the 2015 Mauritian Judgment, liable to it for the sum of US$65,350,000, plus interest at 8% per annum and statutory interest at 8% per annum. WIAR Corporation further claims that it is entitled to penalty interest on the aforementioned sum calculated at 24.9% per annum.

(d) WCAI claims that PT Bank and J Trust are, pursuant respectively to another judgment issued by the Supreme Court of Mauritius on 15 February 2013 and the 2015 Mauritian Judgment, liable to it for the sum of US$18,292,131 plus interest at 8% per annum and statutory

interest at 8% per annum, less US$3,825,592.54 (on account of an alleged set-off) ("WCAI-related Claims").

WIAR Limited and WIAR Corporation's claims for penalty interest (referred to in [2(b)-(c)] above) are hereinafter referred to as the "Penalty Interest Claims".

3 As an alternative to the primary claims above, FGF also claims that PT Bank is liable to it in respect of certain unpaid share re-registration fees, share transfer fees and reimbursable expenses. The Plaintiffs and WCAI further claim that under Indonesian law, J Trust is a guarantor of all debts owing by PT Bank (the "Guarantee Claim").

4 On 17 June 2019, the Plaintiffs filed Summons No 3017 of 2019 (the "Amendment Application") to apply for leave to amend the statement of claim as follows:

(a) In respect of the Guarantee Claim against J Trust, the Plaintiffs sought to expand it to include three underlying claims (including the WestLB Claim) against PT Bank, as well as clarify that the Guarantee Claim also arises by virtue of J Trust's acquisition (and not merely ownership) of PT Bank.

(b) In respect of the WCAI-related Claims, the Plaintiffs sought to reflect WCAI's change in status from plaintiff to third defendant (which PT Bank and J Trust did not object to), and make various clarifications to the substantive claims involved.

5 PT Bank and J Trust countered with Summons No 4229 of 2019 (the "Striking Out Application"), in which they applied to strike out from the

statement of claim the Guarantee Claim, the WestLB Enforcement Claim, the WCAI-related Claims, and the Penalty Interest Claims. The Amendment and Striking Out Applications were heard before the same assistant registrar ("AR"). The AR dismissed the former application, save for the amendments to which PT Bank and J Trust did not object (see [4(b)] above), and allowed the latter application. The AR also ordered that the Plaintiffs pay PT Bank and J Trust:

(a) the costs of the applications fixed at S$26,000 (plus reasonable disbursements to be taxed, if not agreed); and

(b) the costs of the struck-out claims, fixed at S$4,500 in favour of PT Bank, and S$19,500 in favour of J Trust (including S$15,000 in respect of the Guarantee Claim), save that the costs of the WCAI-related Claims are to be addressed at the conclusion of trial.

6 On 8 January 2020, I heard the following three appeals arising from the AR's decisions:

(a) Registrar's Appeal No 345 of 2019 ("RA 345/2019") is the Plaintiffs' appeal against the AR's decision in the Amendment Application;

(b) Registrar's Appeal No 346 of 2019 ("RA 346/2019") is the Plaintiffs' appeal against the AR's decision in the Striking Out Application; and

(c) Registrar's Appeal No 10 of 2020 ("RA 10/2020") is J Trust's appeal against the AR's decision on costs for the Amendment and Striking Out Applications.

7 I dismissed both RAs 345/2019 and 346/2019. As to RA 10/2020, I ordered that costs here and below be reserved to the trial judge. I now give reasons for my decisions. I begin by dealing with RAs 345/2019 and 346/2019 together. First, in respect of the Guarantee Claim, I rejected the Plaintiffs' Amendment Application and allowed PT Bank and J Trust's Striking Out Application. The crux of the Guarantee Claim is that J Trust, as the controlling shareholder of PT Bank, is under an obligation to guarantee all debts that PT Bank owes. According to the Plaintiffs' pleadings, this obligation is imposed by three Indonesian laws – *Lembaga Penjamin Simpanan* Regulation No. 1/LPS/2014, *Otoritas Jasa Keuangan* Regulation No. 56/POJK.03/2016 and Law No. 24 of 2004 of the Republic of Indonesia. In his submissions, Mr Suang Wijaya, counsel for the Plaintiffs, referred to two further Indonesian laws – Law No. 40 of 2007 of the Republic of Indonesia, and *Otoritas Jasa Keuangan* Regulation No. 27/POJK.03/2016.

8 In support of their claim, the Plaintiffs relied on a report by their Indonesian law expert, Mr Tony Budidjaja. Mr Wijaya submitted that a plausible interpretation of the said report is that the Guarantee Claim has been made out. Mr Yam Wern-Jhien, counsel for PT Bank and J Trust, submitted that Mr Budidjaja's report did not contain any conclusion to that effect. Mr Yam also referred to a report by PT Bank and J Trust's own Indonesian law expert, Mr Andi Yusuf Kadir, to support his submission that the Guarantee Claim cannot be maintained against J Trust under Indonesian law because the three underlying claims against PT Bank are time-barred in any event.

9 I agree with Mr Yam and I do not see how any of the Indonesian laws mentioned above had created any guarantee obligation. There was little explanation by the Plaintiffs as to the nature of a guarantee under Indonesian

law, whether such a guarantee is founded in contract, statute or otherwise. In fact, Mr Kadir's report was more elucidating on this issue than Mr Budidjaja's. Mr Kadir gave evidence that under Indonesian law, a guarantee is "ancillary to and dependent on the debtor's primary obligation to perform". Even accepting that the Indonesian laws mentioned apply to J Trust, none of them purports to impose a guarantee obligation on one party, which is secondary to an identified primary obligation owed by another.

10 Importantly, the question of whether the various Indonesian laws created a guarantee obligation was put squarely to Mr Budidjaja in his report. Although he concluded that J Trust is bound by the said laws, there was no mention of any guarantee obligation. This is unsurprising as the cited laws merely relate to, *inter alia*:

(a) a requirement that an investor in an Indonesian commercial bank comply with Indonesian banking laws relating to the ownership of, and holding of a controlling stake in, such a bank;

(b) a commitment to tender for convertible bonds;

(c) a requirement that an Indonesian commercial bank submit a statement from its shareholders stating their willingness to take "personal responsibility" for certain negligent and/or unlawful acts;

(d) exceptions to the general rule that a company's shareholder will not be personally liable (beyond the value of its shares) for the company's losses or agreements the company has entered into; and

(e) a "commitment to [undertake] necessary actions" including the provision of liquidity.

11 Even though the prospects would be as bleak, the Plaintiffs' claim might have been a little tenable had they, for example, simply pleaded that J Trust was personally liable under the Indonesian laws cited, *ie,* Law No. 24 of 2004 and 40 of 2007 of the Republic of Indonesia. Instead, they chose to plead specifically that J Trust owed a guarantee obligation. For the reasons above, I found the Guarantee Claim to be legally unsustainable. That being the case, it is unnecessary to deal individually with the three underlying claims that the Plaintiffs sought to introduce.

12 I now turn to the WCAI-related Claims. As mentioned earlier, WCAI was originally a plaintiff in the Suit. However, during the course of the Suit, a United States court (pursuant to separate legal proceedings) ordered the transfer of shares in WCAI to PT Bank. Subsequently, according to PT Bank and J Trust, WCAI discharged its then-counsel Eugene Thuraisingam LLP, and appointed NLC Law Asia LLC in its place. NLC Law Asia LLC was allegedly then authorised by WCAI to file a Notice of Change of Solicitors ("NOC"), as well as a Notice of Discontinuance ("NOD") in respect of the WCAI-related claims in the Suit, which it proceeded to do.

13 On 15 August 2018, the Plaintiffs filed Summons No 3741 of 2018 ("SUM 3741"), initially seeking to dispute WCAI's ownership and NLC Law Asia LLC's authority to file the NOC and NOD, and to set aside the same. The Plaintiffs also applied for leave for Mr Sheik Mohammad Jabir Udhin, the purported director of WCAI, to intervene. At the hearing of SUM 3741, however, the Plaintiffs amended their application to request for leave to join WCAI as the third defendant to the Suit, which application the court granted.

14 Returning to RAs 345/2019 and 346/2019, Mr Yam submitted that the NOC and NOD filed by WCAI remained in effect, and therefore, the WCAI-related Claims against PT Bank and J Trust were no longer in issue. He further submitted that the Plaintiffs had no standing to pursue the said claims on behalf of WCAI. Mr Wijaya's response relied on the court's order in SUM 3741. According to Mr Wijaya, the court in SUM 3741 was reluctant to decide the complex issue of WCAI's ownership at an interlocutory stage. Instead, Mr Wijaya submitted that the court had allowed the joinder of WCAI as a defendant with the intention that the Plaintiffs could still pursue the WCAI-related Claims and have them adjudicated upon in the Suit, and that WCAI would be bound by any eventual judgment. Mr Yam denied this insofar as the WCAI-related Claims were concerned.

15 It appears clear to me upon reading the minutes of the hearing of SUM 3741 before Coomaraswamy J that counsel for the Plaintiffs had applied for WCAI to be joined as a defendant and the court granted the application. What is also clear to all but the Plaintiffs, is that after a party has been joined as a defendant, the statement of claim must be amended to plead the claim against the new defendant. It is patently obvious that a defendant must know what he is defending, and how he is to do so. That is impossible if he does not know what claim is made against him.

16 At the time of the hearing of the present appeals, however, the Plaintiffs had not amended the pleadings to state their claim against WCAI. The affidavit of Mr Udhin (dated 17 June 2019) states that the Plaintiffs are unable to litigate the issue of WCAI's ownership in the Suit because the relevant circumstances post-date the issuance of the writ. Even so, the Plaintiffs were at liberty at all material times post the issuance of the writ in this Suit to file a fresh action in

respect of the said issue, and seek consolidation of that action with this Suit. Yet, there was no indication that the Plaintiffs had done so, or intended to do so. The Plaintiffs failed to show any other basis for having WCAI as a defendant to the Suit, there being no claims by the Plaintiffs against it. As it stands, the Plaintiffs have no *locus standi* to pursue the claims, if any, that WCAI might have when it was a plaintiff. I am therefore of the view that the Plaintiffs' pursuit of the WCAI-related Claims are legally unsustainable on the face of the pleadings, and that the said claims were properly struck out by the AR below.

17 Next, I turn to the WestLB Enforcement Claim. The claim seeks to enforce the 2015 Mauritian Judgment, which was issued in respect of the WestLB Claim in favour of WIAR Limited against PT Bank and J Trust. In submissions, Mr Yam highlighted that another judgment had already been issued earlier by the Supreme Court of Indonesia in respect of the same claim on 19 November 2014 ("2014 Indonesian Judgment") in favour of PT Bank against WestLB AG and its successors and assigns (*ie,* WIAR Limited). Relying on the High Court decision in *Humpuss Sea Transport Pte Ltd (in compulsory liquidation) v PT Humpuss Intermoda Transportasi TBK and another* [2016] 5 SLR 1322 ("*Humpuss*"), Mr Yam submitted that the two judgments were in conflict in respect of the WestLB Claim, and that the earlier one should be recognised to the exclusion of the other. Mr Wijaya submitted that Singapore law on this issue is not settled, and that this uncertainty means that there is a possibility that the court may disagree with Mr Yam, which in turn means that the Plaintiffs' claims are legally sustainable.

18 I agree with the position taken by the High Court in *Humpuss* (at [73]) — namely that a foreign judgment will not generally be given effect if it conflicts with an earlier foreign judgment recognised under the private

international law of the forum. In fact, in Summons No 5284 of 2017, the AR hearing the application had already found that WIAR Limited was estopped from suing PT Bank in respect of the WestLB Claim as the 2014 Indonesian Judgment was a final and conclusive judgment on the merits. This decision was upheld by the High Court on appeal. I therefore found the WestLB Enforcement Claim to be legally unsustainable as against PT Bank.

19 As to J Trust, there was some confusion as to what WIAR Limited was claiming against it, and what its defence was. Besides the WestLB Enforcement Claim, WIAR Limited also sought to amend the pleadings to claim that J Trust guaranteed PT Bank's liability for the underlying WestLB Claim (*ie,* this is part of the Guarantee Claim discussed above). J Trust's defence was that since PT Bank is not liable for the underlying WestLB Claim in light of the 2014 Indonesian Judgment, there is therefore nothing for J Trust to guarantee. Counsel for WIAR Limited, Mr Wijaya, submitted that this argument relating to the Guarantee Claim fails because J Trust was not a party to the earlier 2014 Indonesian Judgment, and therefore cannot rely on it to invoke the doctrine of *res judicata*. The parties were arguing at cross-purposes in that J Trust's defence only addressed the Guarantee Claim, and Mr Wijaya's submission on the inapplicability of *res judicata* went to the WestLB Enforcement Claim, rather than the Guarantee Claim.

20 Importantly, Mr Wijaya's submission seems to conflate the issue of the recognition of a foreign judgment with that of *res judicata*. As explained in *Humpuss* (at [65]), "Recognition of a foreign judgment is a necessary prerequisite for it to be *res judicata*..." The pertinent rule relating to the recognition of the 2015 Mauritian Judgment has already been stated at [18] above. Given that the 2015 Mauritian Judgment concerns the very same

WestLB Claim as the 2014 Indonesian Judgment, the two are plainly in conflict and the earlier is to be recognised to the exclusion of the other. I thus considered the WestLB Enforcement Claim to also be legally unsustainable against J Trust.

21 Finally, I also upheld the AR's decision to strike out WIAR Limited and WIAR Corporation's Penalty Interest Claims. Having already found the former's WestLB Enforcement Claim to be legally unsustainable, its claim for penalty interest in respect of the same cannot succeed.

22 As to WIAR Corporation's Penalty Interest Claim, the Plaintiffs alleged in its pleadings that the basis for it was to be found in the constitution of WIAR Limited. However, the Plaintiffs offered little by way of explanation as to how PT Bank and J Trust purportedly became bound by WIAR Limited's constitution. Indeed, when questioned precisely on this issue by the defendants in a request for further and better particulars, the Plaintiffs' perplexing reply was that PT Bank had executed various share transfer forms to acquire shares in FGF, and it had thereby agreed to be bound by FGF's constitution. Suffice to say, this did not address the said issue at all. At the hearing before the AR below, and again at the hearing before me, counsel for the Plaintiffs still had no answer. I thus found the Penalty Interest Claim by WIAR Corporation against PT Bank and J Trust to be without any basis in fact and in law.

23 Turning to RA 10/2020, J Trust appealed against the AR's decision to fix its costs of the struck-out Guarantee Claim at S$15,000 (which sum was to be paid by the Plaintiffs). Mr Yam submitted that such costs be fixed at S$50,000 instead. In my view, the trial judge should be given the flexibility of deciding the appropriate costs order when the full case is heard. I therefore

varied the AR's order (see [5] above) such that costs here and below are reserved to the trial judge.

24 Subsequent to the above, the Plaintiffs filed Summons No 413 of 2020 for leave to appeal my decision in RA 345/2019 on the basis that it involved a *prima facie* case of error, a question of general principle decided for the first time, and/or a question of importance regarding which further argument and a decision of a higher tribunal would be to the public advantage. Specifically, Mr Wijaya argued that this court had erred in:

(a) disallowing the introduction of the three underlying debts into the Guarantee Claim on the basis that they are time-barred;

(b) disallowing the clarification set out in [4(a)], as the Plaintiffs have consistently taken the position that there is no pleaded distinction between J Trust's ownership of shares in PT Bank, and its acquisition of the same; and

(c) deciding that the court's order in SUM 3741 meant that the WCAI-related Claims are no longer in issue, and disallowing the Plaintiffs from pursuing the same.

25 In response, Mr Yam submitted that the Plaintiffs had failed to even explain how my decision in RA 345/2019 involved an error or a question of the nature described in [24] above. Given that as a threshold issue, the Indonesian laws relied upon disclose no guarantee obligation, Mr Wijaya's first two points can easily be disposed of. More generally, Mr Wijaya essentially repeated the same arguments that were raised at the hearing of RA 345/2019, without identifying how any of the grounds in [24] above are made out. In fairness, the

Plaintiffs did not have the benefit of reading my grounds of decision in RAs 345/2019 and 346/2019 above at the time of the hearing of Summons No 413 of 2020. I am not satisfied that the threshold for granting leave to appeal has been met. As such, I dismiss the application. I will hear parties on the issue of costs arising from this application at a later date.

- Sgd -
Choo Han Teck
Judge

Suang Wijaya, Hamza Malik, and Lock Zhi Yong (Eugene Thuraisingam LLP) for the first, second and third plaintiffs;
Yam Wern-Jhien, Ong Tun Wei Danny and Bethel Chan (Rajah & Tann Singapore LLP) for the first and second defendants, and mentioning for the third defendant;
Clara Tung Yi Lin (instructed) watching brief for Linklaters Singapore Pte Ltd.