IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 182

Suit No 676 of 2017

(Summons Nos 2384 of 2018 and 2622 of 2019)

Between

Carlo Giuseppe Civelli

… *Plaintiff*

And

Philippe Emanuel Mulacek

… *Defendant*

Suit No 1159 of 2017

(Summons No 2036 of 2018)

Between

(1) Carlo Giuseppe Civelli
(2) Aster Capital S.A. (LTD) Panama

… *Plaintiffs*

And

Philippe Emanuel Mulacek

… *Defendant*

JUDGMENT

[Civil Procedure] — [Extension of Time]
[Conflict of Laws] — [Natural Forum]
[Conflict of Laws] — [Restraint of Foreign Proceedings] — [Comity]

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v
Mulacek, Philippe Emanuel and another matter

[2019] SGHC 182

High Court — Suit Nos 676 of 2017 (Summons Nos 2384 of 2018 and 2622 of 2019) and 1159 of 2017 (Summons No 2036 of 2018)

Valerie Thean J
27-29 May 2019

14 August 2019 Judgment reserved.

Valerie Thean J:

Introduction

1 The plaintiff, Carlo Giuseppe Civelli, first brought Suit No 676 of 2017 ("Suit 676/2017") against the defendant, Philippe Emanuel Mulacek, for the return of a sum of money loaned. Five months later, he commenced Suit 1159 of 2017 ("Suit 1159/2017") against Mr Mulacek which claimed relief for a loan of shares. Both these suits were commenced in Singapore. He followed on three days later with a claim against Mr Mulacek in Texas, for breach of contract, breach of trust, breach of fiduciary duty, negligence, and conspiracy. He then served the Writ of Summons and Statement of Claim relating to the Singapore proceedings by way of substituted service on Mr Mulacek in Texas, and followed on, subsequently, to serve the papers relating to the Texas proceedings,

again by substituted service in Texas.[1]

2 In response to being served with the Texas writ, Mr Mulacek, who had earlier filed a Defence and Counterclaim in Suit 676/2017, filed an application for an anti-suit injunction ("ASI") in Suit 1159/2017 to restrain Mr Civelli from pursuing his action in Texas ("the ASI application"). Mr Civelli then applied to seek a stay of Mr Mulacek's counterclaim in Suit 676/2017, on the basis of *forum non conveniens* ("the FNC application"), with an undertaking that he would discontinue both suits should Mr Mulacek's ASI application be dismissed. After Mr Mulacek pointed out that the application for stay was not filed within time, Mr Civelli applied for an extension of time to apply for a stay.

3 For reasons that follow, I dismiss Mr Mulacek's application for an ASI to restrain the Texas proceedings. Subject to Mr Civelli fulfilling his undertaking to discontinue both suits, I grant Mr Civelli's applications for an extension of time to apply for a stay of Mr Mulacek's counterclaim, and for a stay of the same.

Background

Parties and relevant transactions

4 Mr Civelli is a Swiss citizen. Notwithstanding prior averment of residence in Singapore, he more recently describes himself as resident in Monaco.[2] Mr Mulacek is a US citizen and considers himself a resident of Singapore.[3] The two men began their business relationship sometime in or

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1 Notes of Evidence ("NE") (27 May 2019) at p 14 at line 16 to p 15 at line 22.

2 Bundle 6 at paras 9 and 15; Bundle 1, Tab 1 at para 1.

3 Bundle 3 at para 61(1).

around 2002.[4] Mr Civelli was at the time the founder of Clarion Finanz AG ("Clarion Finanz"), a Swiss incorporated company providing asset management services.[5] Mr Mulacek was then the Chief Executive Officer of InterOil Corporation ("InterOil"),[6] a Canada incorporated fossil fuel company with a primary focus on the gas fields of Papua New Guinea.[7]

5 According to Mr Civelli, Mr Mulacek approached him in the hope of garnering his support in providing funds to finance InterOil drilling operations.[8] Mr Civelli subsequently invested in equity, debt and drilling funds raised by InterOil.[9]

6 Mr Mulacek denies that he had first approached Mr Civelli, and says instead that in 2002, Mr Civelli had suggested to him an arrangement ("the Asset Management Agreement") under which Mr Civelli would manage the assets of Mr Mulacek and his family members ("the Beneficiaries"),[10] comprising InterOil shares and cash in various currencies ("the Assets").[11] There were a total of nine beneficiaries (including Mr Mulacek himself). After agreeing to this arrangement, the Beneficiaries wired various shares in InterOil and cash over the course of 2002 to 2014 for Mr Civelli to manage.[12]

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4 Bundle 1, Tab 2 at p 1; Bundle B at para 26.

5 Bundle 6 at para 11.

6 Bundle B at para 27.

7 Bundle 1, Tab 2 at para 3; Bundle 2 at para 5.

8 Bundle 1, Tab 3 at para 7.

9 Bundle 1, Tab 3 at para 8.

10 Bundle 1, Tab 2 at paras 2; Bundle B at para 26.

11 Bundle B at para 26.

12 Bundle B at para 26.

7 Mr Civelli denies the existence of the Asset Management Agreement,[13] and further denies that the Beneficiaries wired any monies and InterOil shares between 2002 and 2014 pursuant to the purported Asset Management Agreement.[14] Rather, he contends that Mr Mulacek's cousin, Mr Gerard Jacquin, was introduced to him by Mr Mulacek and became a client of Clarion Finanz. Mr Jacquin was the beneficial owner of Puzemi Properties Inc ("Puzemi"), a Panama company; Mr Jacquin also held assets in the accounts of Aton Select Fund Ltd ("Aton"), incorporated in Mauritius.[15] Mr Civelli's case is that instructions for Puzemi and Aton came from Mr Mulacek, whose directions he simply followed. It is common ground that Aton and Puzemi held cash and InterOil stock belonging to the Beneficiaries, although Mr Civelli contends that he only discovered the identity of the Beneficiaries after the commencement of proceedings against Mr Mulacek. [16]

8 In 2003 and 2005, InterOil entered into two Indirect Participating Interest ("IPI") Agreements (collectively "the IPI Agreements"). The first was with PNG Drilling Ventures Limited ("PNGDV") ("PNGDV IPI Agreement"), while the second was with various investors ("the 2005 IPI Agreement").[17] The purpose of the IPI agreements was to fund InterOil's drilling operations in Papua New Guinea.[18] Subsequently, Mr Civelli used some of the Assets to purchase IPIs in InterOil.[19] Mr Civelli contends that this was done pursuant to

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13 Bundle 1, Tab 3 at para 11.

14 Bundle 1, Tab 3 at para 15.

15 Bundle 1, Tab 3, paras 9 and 10.

16 Bundle R, Tab 5 at para 19.

17 Bundle 1, Tab 2 at para 12.

18 Bundle 1, Tab 2 at paras 11 and 13.

19 Bundle 1, Tab 2 at para 14; Bundle D at 46.

Mr Mulacek's instructions.[20]

9 In or around 2006, Mr Civelli incorporated Pacific LNG Operations Limited ("Pac BVI") in the British Virgin Islands. Mr Civelli was the substantial shareholder and controller of Pac BVI. Subsequently, in or around 2007, Pac BVI invested in a company called PNG LNG, Inc ("PNG LNG"). Mr Civelli and Mr Mulacek agreed that the costs incurred by Pac BVI and profits made in connection with PNG LNG were to be split equally between them.[21]

10 Several events took place in Singapore in 2009. Mr Civelli incorporated Clarion Finance Pte Ltd ("Clarion SG") in Singapore.[22] In or around August 2009, Mr Civelli incorporated Pacific LNG Operations Pte Ltd ("Pac SG") in order to hire staff in Singapore for a joint venture in Papua New Guinea between InterOil and Pac BVI.[23] Mr Mulacek proceeded to interview and hire staff for Pac SG.[24] Further, two additional companies, in the form of AirLNG (S) Pte Ltd in Singapore, and AirLNG Ltd in Malaysia (collectively, "AirLNG") was incorporated by Mr Civelli in 2011 for the purchase and use of an aircraft.[25] This aircraft was used to ferry employees and potential investors to Papua New Guinea in the pursuit of their joint venture.[26] The office expenses of Pac SG and the aircraft expenses of AirLNG were to be borne equally by Mr Civelli and Mr

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20 Bundle D at para 46.

21 Bundle 1, Tab 3 at paras 21 to 23.

22 Bundle 3 at para 10; Bundle 6 at para 11.

23 Bundle 1, Tab 3 at para 25; Bundle B at para 27.

24 Bundle 1, Tab 3 at para 27.

25 Bundle 1, Tab 3 at paras 29 to 30.

26 Notes of Evidence ("NE") (27 May 2019) at p 107 at lines 5-10.

Mulacek.[27]

11 Suit 676/2017 arises from, Mr Civelli contends, Mr Mulacek's request around September 2009 in Singapore for a cash loan ("the Cash Loan") in order to pay his legal fees arising from a lawsuit against him, *Todd Peters et al v Phil Mulacek et al* (the "Texas Lawsuit").[28] In total, Mr Civelli claims to have lent Mr Mulacek a total of US$3,691,250, with US$1,691,250 being disbursed to a Bank of New York, New York, USA bank account ("BNY Bank Account") and US$2m to a Wells Fargo, California, USA bank account belonging to a company controlled by Mr Mulacek, Petroleum Independent & Exploration Corporation ("PIE Corp").[29]

12 Mr Mulacek, while admitting that Mr Civelli did effect two transfers that amounted to a total of US$3,691,250, disagrees with Mr Civelli's account of events. Mr Mulacek contends that the first loan of US$1,691,250 was a loan of a portion of the Assets that rightfully belonged to the Beneficiaries, rather than Mr Civelli's own funds.[30] In any event, on 30 December 2009, concurrently with the disbursement of US$1,691,250, Mr Mulacek asserts that PIE Corp had transferred 226,361 InterOil shares to Pac BVI ("the Dec 2009 Stock Transfer").[31] This was effected to refund in full the disbursement of US$1,691,250 , and to cover any additional cash advances from the Assets that Mr Mulacek may request Mr Civelli to provide.[32] The Dec 2009 Stock Transfer

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27 Bundle 1, Tab 3 at paras 26 and 30.

28 Bundle D at para 20.

29 Bundle D at paras 21 to 24.

30 Bundle 1, Tab 2 at para 23.

31 Bundle 1, Tab 2 at para 23(a).

32 Bundle 1, Tab 2 at para 26

also fully covered the second disbursement of US$2m by Mr Civelli.[33]

13 Suit 1159/2017 arises, Mr Civelli contends, from Mr Mulacek's request in Singapore for a loan of InterOil shares that were beneficially owned by Mr Civelli in order to resolve the Texas lawsuit.[34] Mr Civelli further asserts that the parties orally agreed that the shares would be kept in the trust account of a law firm based in Texas, namely Dale A Dossey & Associates, and that the shares could be used or liquidated if required for the Texas Lawsuit, with the shares or their equivalent value being returned on demand once the lawsuit was concluded ("the Share Loan Agreement").[35] This is denied by Mr Mulacek.[36]

14 On 3 September 2009, Mr Dale A Dossey ("Mr Dossey") emailed Mr Civelli, asking for 700,000 InterOil shares to be transferred to a JPMorgan Chase Bank, N.A. (the "Chase Bank") account. The Chase Bank account was located in The Woodlands, Texas.[37] On 4 September 2009 and 27 October 2009, Mr Mulacek caused Aster Capital S.A. (LTD) Panama ("Aster Panama") to transfer 600,000 and 45,000 InterOil shares to the Chase Bank account.[38] While Mr Mulacek admits that he did receive 645,000 shares for the purposes of settling the Texas Lawsuit, he claims that he had requested that Mr Civelli loan shares from the Assets and not shares personally belonging to Mr Civelli in order to settle the Texas Lawsuit.[39]

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33 Bundle 1, Tab 2 at para 27.

34 Bundle D at para 13.

35 Bundle D at paras 13 and 16.

36 Bundle A, Tab 2 at para 25.

37 Bundle 6, Tab 15 at para 45.

38 Bundle D at para 15.

39 Bundle A, Tab 2 at para 24.

15 It is common ground that the surplus of 105,899 InterOil shares was returned to Mr Civelli on or around 15 August 2011.[40] Mr Civelli claims that between 18 November 2009 and 10 December 2013, Mr Mulacek instructed Mr Dossey, without Mr Civelli's knowledge, to carry out a series of transfers. Mr Civelli avers there were at least five transfers, four of which resulted in 527,396 Shares being transferred to Aster Capital Inc, a company incorporated in Brunei ("Aster Brunei"). While the Aster Brunei name bore a close resemblance to that of Mr Civelli's Aster Panama, this company was controlled by Mr Mulacek or his family members. The five transactions are as follows:[41]

(a) On or about 18 November 2009, 45,000 InterOil shares were transferred from the Chase Bank account to another Chase Bank account.

(b) On or about 24 December 2009, 900,000 InterOil shares were transferred from the first Chase Bank account to a Deutsche Bank Account ("the Deutsche Account"), located in Los Angeles, California. Of these 900,000 shares, 527,396 purportedly belonged to Mr Civelli. The Deutsche Account belonged to PIE Group LLC ("PIE Group"), a Delaware company beneficially owned by the Defendant.

(c) On or about 13 August 2010, 2,503,508 InterOil shares were transferred from the Deutsche Account to a JPMorgan Chase Securities LLC ("Chase Securities") account ("the Chase Securities account"), located in Los Angeles, California. This account was owned by PIE Group. Mr Civelli's 527,396 shares were included in this transfer.

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40 Bundle D at para 16.

41 Bundle A, Tab 1 at para 13; Bundle D at paras 17 to18.

(d) On or about 21 December 2010, Mr Civelli's 527,396 shares were transferred from the Chase Securities account to another Chase Securities account ("the second Chase Securities account"). This account was located in Los Angeles, California and in the name of PIE Group.

(e) On or about 10 December 2013, Mr Civelli's 527,396 shares were transferred from the second Chase Securities account to a Bank of New York Mellon account, pursuant to Mr Mulacek's authorisation.[42] This account was in the name of Aster Brunei.

16 In the result, and because InterOil has been acquired by Exxon Mobil, the relief sought in Suit 1159/2017 is an account of the proceeds of sale of 539,101 shares and a declaration that Mr Mulacek holds these proceeds as trustee for Mr Civelli and/or Aster Panama.[43] Mr Mulacek denies this, stating instead that around the time when the surplus shares were returned to Mr Civelli, Mr Mulacek came to believe that Mr Civelli had been embezzling the Assets. He therefore transferred the remaining 539,101 shares to the Beneficiaries rather than returning them to Mr Civelli.[44]

17 In 2012, according to Mr Mulacek, following Mr Civelli's use of the funds from the sale of InterOil shares to purchase IPIs, the IPIs were subsequently converted to direct registered licenses in a petroleum retention license located in an area in Papua New Guinea known as "PRL-15". The

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42 NE (28 May 2019) at p 104 at lines 28-31.

43 Bundle A, Tab 1, para 21.

44 Bundle A, Tab 2 at paras 28 and 29.

Beneficiaries would have been the beneficial owners of a percentage of the total registered license interest in PRL-15.[45]

18 It is common ground that on 27 February 2014, Mr Civelli sold the Beneficiaries' interest in PRL-15 to Oil Search Limited ("Oil Search"). In this judgment, I refer to the sale as "the Oil Search Sale", and the agreement as "the Oil Search Sale Agreement".[46] Mr Mulacek claims that the Beneficiaries were hence entitled to approximately US$545,084,300.[47] Mr Civelli denies that this is the appropriate sum.[48] According to Mr Mulacek, of this sum, approximately US$431,916,318 was disbursed to the Beneficiaries over the course of 2014 to 2015 through certain complex arrangements that took the form of loans and equity investments in companies controlled by the Beneficiaries ("the Complex Arrangements"). Mr Mulacek details 11 components of the Complex Arrangements:[49]

> (a) A USD Promissory Note issued on 3 April 2014, under which Pacific World Energy ("PWE"), a company incorporated in the British Virgin Islands which Mr Civelli controls, loaned US$35m to PIE Holdings LP ("PIE Holdings"), a Nevada limited partnership that the Beneficiaries control, with a maturity date of 3 April 2024 ("US$35m PN"). PIE Holdings had an address in The Woodlands, Texas.[50]

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45 Bundle 1, Tab 2 at paras 16 to17.

46 Bundle 1, Tab 2 at para 17; Bundle 1, Tab 3 at para 38.

47 Bundle 1, Tab 2 at para 17.

48 Bundle 1, Tab 3 at para 39.

49 Bundle 1, Tab 2 at para 19.

50 Bundle B, Tab 29 at p 196.

(b) A SGD Promissory Note issued on 3 April 2014, under which PWE loaned S$31.6m to Pacific Brunei Ltd ("Pac Brunei"), an international business company incorporated under the laws of Brunei Darussalam, with a maturity date of 3 April 2024 ("S$31.6m PN"). At the time, the Beneficiaries owned 100% of the issued and outstanding shares of Pac Brunei.

(c) A USD Promissory Note issued on 22 August 2014 under which PWE loaned a further US$40m to PIE Holdings with a maturity date of 21 August 2024 ("US$40m PN").

(d) A Membership Interests Sale and Purchase Agreement between PWE and Mr Mulacek dated 24 September 2014 ("PIE MISPA") under which PWE acquired from Mr Mulacek 25% of the membership interest in PIE Investments LLC, a Texas limited liability company wholly owned by Mr Mulacek ("PIE Investments"), for a total consideration of US$100m payable in two instalments of US$50m each. Mr Civelli and Mr Mulacek had, between April 2014 and September 2016, orally agreed that Mr Civelli would purchase an additional 25% membership interest in PIE Investments for another US$100m. Mr Civelli reneged on this obligation.

(e) An Amended and Restated Subscription Agreement between Pac Brunei and PWE dated 20 October 2014 under which PWE agreed to subscribe for 600,000 shares in Pac Brunei in two tranches, with the first tranche of 300,000 shares issued in exchange for S$63,175,000 and the second tranche of 300,000 shares issued in exchange for €38,675,000 ("Subscription Agreement No 1").

(f) Another Subscription Agreement between Pac Brunei and PWE dated 23 July 2015 under which PWE agreed to subscribe for 120,000 shares in Pac Brunei for a total subscription price of S$110,400,000 in two equal tranches of S$55,200,000 each ("Subscription Agreement No 2").

(g) Prior to entering into Subscription Agreement No 1, Mr Civelli had orally agreed on various occasions in Singapore between April 2014 and 19 October 2014 to cause PWE to transfer to the Beneficiaries all shares PWE acquired in Pac Brunei under Subscription Agreement No 1 and Subscription Agreement No 2. This was to cause all of the subscription monies paid by PWE into Pac Brunei to be solely retained by the Beneficiaries. Mr Civelli purportedly reneged on this oral agreement to cause PWE to transfer its Pac Brunei shares to the Beneficiaries.

(h) Sometime between mid-2014 to late 2015, Mr Civelli caused Aton, which was in Mr Mulacek's view controlled by the Plaintiff, to issue 11,475,263 shares of a new class of Series Class 2 Shares ("the Aton Class 2 Shares") to a Beneficiary ("First Beneficiary") and 76,399,454 Aton Class 2 Shares to another Beneficiary ("the Second Beneficiary"). Mr Civelli subsequently caused Select to redeem shares for a payment of approximately US$120m to the First and Second Beneficiaries.

(i) The Pacific LNG Assignment Agreement dated 23 October 2015 where Pac BVI, Priorat Partners LP, a Cayman Islands limited partnership in which Mr Civelli or a company controlled by Mr Civelli was a general partner ("Priorat"), and Mr Civelli assigned to Asian Gas

Partners Limited, a company incorporated in the British Virgin Islands and beneficially owned by the Second Beneficiary ("AGPL"), a minimum of 7.6% of all future amounts payable under the Oil Search Sale Agreement and a portion of the IPI percentage in certain other fields operated by InterOil.

(j) The PNGDV IPI Assignment Agreement dated 23 October 2015 between Mr Civelli, PNGDV, Aton and AGPL under which Aton and Mr Civelli assigned to AGPL at least 6.23% of all future amounts payable under the Oil Search Sale Agreement and a portion of the IPI percentage in other fields operated by InterOil.

(k) Sometime between August 2014 and November 2015, Mr Civelli orally agreed with Mr Mulacek to assign the US$40m PN to the Second Beneficiary to enable the ownership of the US$40m PN to remain with the Beneficiaries. The plaintiff purportedly reneged on this obligation to assign the US$40m PN.

19 Mr Mulacek contends that Mr Civelli has, to date, refused to pay the remainder of the Beneficiaries' share of the Oil Search Payment.[51] Mr Mulacek's counterclaim is hence premised on the recovery of the outstanding sum of approximately US$114m, on the basis that Mr Civelli had breached his fiduciary duty in failing to ensure that the Complex Arrangements were completed.[52]

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51 Bundle 1, Tab 2 at para 20.

52 Bundle 1, Tab 2 at paras 20 and 32; Defendant's Written Submissions at para 31; Bundle 3 at para 56.

20 Mr Civelli denies that this sum is owed. Indeed he contends that Mr Mulacek owes him and/or Pac BVI monies by virtue of Mr Civelli's investment in the PIE Entities and Pac Brunei.[53] Mr Civelli's account is that between 2014 and 2015, it was Mr Mulacek who induced him to make investments into entities that he controlled.[54] Further, in or around March or April 2014, in a meeting that took place at Zurich, Mr Mulacek promised Mr Civelli that if the latter made distributions of the sale proceeds from the Oil Search Sale by way of loans or investments, they would engage in a review of their various business transactions and determine the amounts that were owed to Mr Civelli and his companies. By the end of this process, Mr Mulacek and Mr Civelli would "settle up" their business relationship by way of a final settlement, with Mr Civelli and his companies being made whole for the cash calls, costs, expenses, loans, investments and cost sharing agreements ("the settling up promise").[55]

21 Mr Civelli's position is that at the time of the Oil Search Sale in March 2014, Pac BVI was owed substantial sums. These include:[56]

(a) Costs and expenses in relation to PNG LNG, Pac SG and AirLNG, which amounted to approximately US$92.7m. This was in addition to the sum of US$4m for the aircraft which was owned by AirLNG and was in Mr Mualcek's possession.

(b) Drilling and completion costs of approximately US$35.2m in relation to PRL-15. It must also be noted that Mr Civelli is now also

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53 Bundle 1, Tab 3 at para 56 and para 58.

54 Bundle 1, Tab 3 at para 52.

55 Bundle 6, Tab 15 at para 27.

56 Bundle 6, Tab 15 at para 25; pp 123-125.

claiming for an additional US$6m from Mr Mulacek for drilling and completion costs paid after the Oil Search Sale.

(c) A 20% net profit interest in the IPIs purchased using the funds of Mr Jacquin's Aton account and Puzemi, which is a net value of approximately US$60m. Pac LNG had provided funds and cross guarantees in this regard.

(d) Approximately US$22.8m for 76.7% of the 20% net profit interest paid to Polygon PNG LP in connection with the purchase of Priorat.

(e) Unpaid loans in the amount of at least US$9m, which includes the Cash Loan that Mr Civelli provided to Mr Mulacek.

(f) Approximately US$37m owed to Mr Civelli by Mr Mulacek due to the latter's transfer of Mr Civelli's InterOil shares.

22 Mr Mulacek's settling up promise was purportedly repeated multiple times afterwards: in a meeting with Mr Civelli in Singapore in October 2015; in a meeting with Mr Civelli in Singapore in August 2016; in a meeting between Mr Mulacek, Mr Civelli and their respective attorneys in September 2016. The settling-up promise was also repeated by Mr Mulacek's attorney in a meeting with Mr Civelli and his attorney in February 2017.[57] Mr Mulacek denies Mr Civelli's claims regarding the issue of settling up in their entirety.[58]

23 On or about 14 September 2016, Mr Civelli met Mr Mulacek in

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57 Bundle 6, Tab 15 at para 27.

58 Bundle R, Tab 5 at para 25.

Singapore. At that meeting, Mr Civelli made a demand for the return of both the Cash Loan and the shares.[59] Mr Mulacek failed to do so.

The litigation in Singapore and Texas

24 On 25 July 2017, Mr Civelli commenced Suit 676/2017 for the Cash Loan of US$3,691,250. Thereafter, on 8 December 2017, Mr Civelli, together with Aster Panama, also commenced Suit 1159/2017 for an account of the proceeds of the sale of the 539,101 InterOil shares. Three days later, on 11 December 2017, Mr Civelli, together with the second plaintiff in Suit 1159/2017, Aster Panama, commenced a separate set of proceedings against Chase Securities, Chase Bank, Mr Mulacek, Mr Jacquin and Aster Brunei in Texas ("the Texas proceedings").[60] Mr Civelli is the sole beneficial owner and director of Aster Panama, which is incorporated in Panama. The claims against Mr Jacquin and Aster Brunei were later withdrawn. The Texas proceedings contained a wider range of claims for breach of the Share Loan Agreement, breach of trust and fiduciary duties, negligence on the part of Chase Securities and Chase Bank, fraudulent transfer of shares, conversion and theft of shares, and conspiracy. Mr Civelli sought, amongst other remedies, damages not less than US$37,608,609 in the Texas proceedings.[61] At this stage, Mr Mulacek had not yet been served with any of the writs.

25 On 15 December 2017, Mr Civelli filed his Statement of Claim (Amendment No. 1) in Suit 676/2017.[62] Leave having been obtained to serve

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59 Bundle 1, Tab 1 at para 8; Bundle R, Tab 15 at para 64.

60 Bundle D at p 113.

61 Bundle D, Tab 11 at para 71.

62 Bundle 2 at para 18.

the writ and Statement of Claim for both Suit 676/2017 and 1159/2017 by substituted service, Mr Mulacek was served in Texas on 27 December 2017.[63]

26 Mr Mulacek proceeded to file his Defence and Counterclaim in Suit 676/2017 on 6 February 2018,[64] before later filing an amended version of the same on 28 February 2018 and serving it on 1 March 2018.[65] Pursuant to the court's approval on 12 March 2018, Mr Civelli was given until 5 April 2018 to file his Reply and Defence to Counterclaim. Mr Civelli's Reply and Defence to Counterclaim in Suit 676/2017 was later filed on 5 April 2018.[66]

27 Following several unsuccessful attempts to serve Mr Mulacek on and after 28 February 2018, Mr Civelli served Mr Mulacek with the papers for the Texas proceedings by way of substituted service in Texas on 6 April 2018.[67] He also followed on with a request for further and better particulars of Mr Mulacek's Defence and Counterclaim in Suit 676/2017 on 26 April 2018. On 27 April 2018, Mr Mulacek filed Summons No 2036 of 2018 ("Summons 2036/2018") in Suit 1159/2017, seeking an ASI to restrain Mr Civelli from taking further steps in the Texas proceedings.[68]

28 *Forum non conveniens* was alluded to for the first time by Mr Civelli on 15 May 2018, where a reservation for the same was made in a letter sent by his solicitors on an exchange of further and better particulars. On 22 May 2018, Mr

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63 Bundle B at para 51.

64 Bundle 3 at para 32.

65 Bundle 3, Tab 14 at p 235.

66 Bundle 1, Tab 3.

67 Bundle D at para 79.

68 Bundle A, Tab 7

Civelli then filed a notice of change of solicitors and Summons No 2384 of 2018 ("Summons 2384/2018") to stay Mr Mulacek's Counterclaim in Suit 676/2017 on the basis of *forum non conveniens*.[69] In his affidavit filed in support of the summons on the same day, he supplied an undertaking that he would discontinue his actions in both Suit 676/2017 and Suit 1159/2017 should Mr Mulacek's ASI application be dismissed.[70]

29 On 13 July 2018, Mr Civelli filed his First Amended Complaint in the Texas proceedings, joining as four additional parties, four of the beneficiaries who are relatives of Mr Mulacek ("the Four Beneficiaries").[71] These were Michelle Mulacek Vinson, Pierre Mulacek, Mauricette Mulacek, and Ronald Mulacek.[72] In his First Amended Complaint, Mr Civelli also added 2 new claims, that of promissory estoppel against Mr Mulacek and the Four Beneficiaries, as well as common law fraud against Mr Mulacek.[73] These 2 new claims stemmed from the settling-up promise.[74] The quantum of damages Mr Civelli is seeking in the Texas proceedings was also adjusted. He is now claiming approximately US$450m from the defendants in those proceedings.

30 On 8 August 2018, Mr Mulacek's application for an ASI (Summons 2036/2018) and Mr Civelli's FNC application for a stay of Mr Mulacek's counterclaim in Suit 676/2017 (Summons 2384/2018) came on for hearing. Mid-way through the hearing, counsel for Mr Mulacek at the time requested an

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69 Bundle 1, Tab 7.

70 Bundle 2 at para 45.

71 Bundle 6, Tab 15.

72 Bundle 3, Tab 24 at pp 352-359.

73 Bundle 6, Tab 15, pp 323-325.

74 NE (28 May 2019) at p 129 at lines 10-11.

adjournment to first file notices for arbitration in Singapore. His submission was that this was important to his application for the ASI. The applications were adjourned with costs ordered in Mr Civelli's favour.

31 Subsequently, Mr Mulacek instructed fresh counsel and decided not to pursue arbitration. He explained that the SIAC may not permit consolidation of all the claims, creating a risk that five sets of arbitrators would make inconsistent findings.[75] In Texas, he withdrew his motion to compel arbitration on 3 October 2018.[76] His motion thereafter to dismiss the First Amended Complaint was denied on 11 October 2018.[77] In Singapore, he sought and obtained leave from an assistant registrar to amend his summons for ASI to add an additional prayer (prayer 2) for an injunction limited to the second phase of the Texas proceedings on 26 October 2018.

32 On 2 November 2018, Mr Mulacek filed his Answer and Counterclaim to Mr Civelli's Amended Complaint in the Texas proceedings. He contended that Singapore is the proper forum for adjudicating Mr Civelli's claims.[78] On 3 November 2018, he followed on with a motion to stay the Texas proceedings in favour of Singapore.[79] This was dismissed on 4 January 2019 by the Texas court on the basis that Chase Securities was not amenable to the jurisdiction of the Singapore court, and did not consent to jurisdiction in Singapore.[80] Judge Atlas

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75 Bundle O, paras 10 to 15.

76 Bundle R, para 17.

77 Bundle R, para 18.

78 Bundle S, Tab 11 at para 13.

79 Bundle S at para 30.

80 Bundle S at p 321.

also clarified that she is not adopting a phased approach.[81] Mr Mulacek therefore subsequently confirmed on affidavit that he would not pursue the alternative prayer in the amended summons for a limited injunction for the second phase of the Texas proceedings.[82]

33 On 20 May 2019, Mr Civelli filed his First Supplemental Complaint in the Texas proceedings, adding a ninth claim premised upon the breach of oral agreements by Mr Mulacek.[83] This too, relates to the settling-up claim.[84] On the same day, Mr Mulacek, similarly, amended his Counterclaim, which now is premised on breach of contract, breach of fiduciary duty, conversion and theft of shares; and disgorgement of fees and gains.[85] The Texas District Court has set a docket call date of 8 April 2020.[86]

34 On 24 May 2019, after fresh written submissions filed on 23 May 2019 pointed out that the application for a stay was out of time, Mr Civelli filed Summons No 2622 of 2019, seeking an extension of time to apply for his stay application.[87]

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81 Bundle S at pp 321 and 322.

82 Bundle S at para 7.

83 Bundle W, Tab 1, at p 7.

84 NE (28 May 2019) at p 126 at lines 17-20.

85 Bundle W, Tab 2, at pp 39-43.

86 Bundle V at p 102.

87 Affidavit of Ho Wei Wen, Daryl dated 24 May 2019 at para 8.

Context and issues

The application for an ASI

35 In *John Reginald Stott Kirkham v Trane US Inc* [2009] 4 SLR(R) 428 ("*Kirkham*"), the Court of Appeal advised, at [25], that the court's discretion to grant an ASI should be "exercised with caution", because it involves the jurisdiction of a foreign court. The following elements should be considered in determining whether an ASI ought to be granted (see [28]-[29]):

(a) whether the defendants are amenable to the jurisdiction of the Singapore court;

(b) the natural forum for resolution of the dispute between the parties;

(c) the alleged vexation or oppression to the plaintiffs if the foreign proceedings are to continue;

(d) the alleged injustice to the defendants as an injunction would deprive the defendants of the advantages sought in the foreign proceedings; and

(e) whether the institution of the foreign proceedings is in breach of any agreement between the parties.

36 Mr Mulacek, in advancing his application, argues that Singapore is the natural forum for the dispute between Mr Civelli and Mr Mulacek;[88] and that

[88] Defendant's Written Submissions at paras 113 to 155.

Mr Civelli has acted vexatiously and oppressively against Mr Mulacek in pursuing parallel proceedings in Texas.[89]

37 Mr Civelli, in contrast, argues that the ASI application should be dismissed because Texas is clearly a more appropriate forum than Singapore to determine the claims in the Texas proceedings. He argues that it would be unjust to deprive him of the legitimate juridical advantages that the forum offers. These include a wider discovery regime, the possibility of exemplary damages, and additional statutory causes of action. He is committed to pursuing his claims in Texas, which in his view are not vexatious or oppressive claims.[90] He points out that, as stated in *Koh Kay Yew v Inno-Pacific Holdings Ltd* [1997] 2 SLR(R) 148 ("*Koh Kay Yew*") at [25] and affirmed by the Court of Appeal in *Kirkham* at [46], it "must be only in the clearest of circumstances that the foreign proceedings are vexatious or oppressive" before an ASI would be granted.

The application for a stay

38 The two-part test found in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 ("*Spiliada*") governs the principles for granting a stay of proceedings on the basis of *forum non conveniens*. These principles were summarised by the Court of Appeal in *CIMB Bank Bhd v Dresdner Kleinwort Ltd* [2008] 4 SLR(R) 543 at [26]. At the first stage, the defendant must establish that there is another available forum which is clearly or distinctly more appropriate than Singapore. This, in turn, would depend upon which forum has the most real and substantial connection with the dispute. Considerations of convenience or expense, the governing law, and the places where the parties

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89 Defendant's Written Submissions at paras 1 to 4 and 156 to 172.

90 Plaintiff's Written Submissions at paras 57 to 112.

reside or carry on business come into play. The queries to be posed at the first stage were most recently summarised by the Court of Appeal in *Lakshmi Anil Salgaocar v Jhaveri Darsan Jitendra* [2019] SGCA 42 ("*Lakshmi*") at [54] as follows:

(a) the personal connections of the parties;

(b) the connections to relevant events and transactions;

(c) the governing law of the dispute,

(d) the existence of other proceedings elsewhere (*ie*, *lis alibi pendens*); and

(e) the overall shape of the litigation.

39 If there is another available forum that is more appropriate than Singapore, the second stage of the inquiry is then to ask whether any reasons of justice militate against a stay of the proceedings in Singapore.

40 In a case such as the present, where there are connecting factors in Singapore and in Texas, the Court of Appeal's caution given in *Rappo, Tania v Accent Delight International Ltd* [2017] 2 SLR 265 ("*Rappo, Tania*") not to apply the five-fold framework in a mechanistic manner is apt (see [70] and [71]). Courts are reminded to look to the quality, rather than the quantity, of connecting factors on each side of the scale. Lord Sumner's summation in *La Société du Gaz de Paris v La Société Anonyme de Navigation "Les Armateurs Français"* (1926) Sess Cas (HL) 13 at 22, cited with approval in *Rappo, Tania* at [72] by the Court of Appeal, is instructive:

> The object, under the words '*forum non conveniens*' is to find that forum which is the more suitable for the ends of justice,

> and is preferable because pursuit of the litigation in that forum is more likely to secure those ends.

41 Mr Civelli seeks to stay Mr Mulacek's counterclaim in Suit 676/2017 on the basis that Texas is clearly a more appropriate forum to litigate the issues raised in Mr Mulacek's counterclaim, and contends that Mr Mulacek would not suffer any injustice if his counterclaim were stayed.[91]

42 Mr Mulacek's position is that Singapore is the appropriate forum, and further, the FNC application is fatally flawed for three reasons. First, Mr Civelli may not seek to stay Mr Mulacek's counterclaim while maintaining his own claims in the Singapore proceedings. Secondly, the application was filed out of time, without any application for an extension of time. Thirdly, Mr Civelli has waived his right to apply for a stay.[92]

The application for an extension of time

43 Under O 12 r 7(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"), Mr Civelli's FNC application was filed out of time.[93]

44 Mr Civelli's view is that allowing the extension of time would not cause Mr Mulacek to suffer any prejudice, and that any alleged prejudice arises from Mr Mulacek's change in position.[94]

45 Mr Mulacek argues that an extension should not be allowed, because the FNC application is not viable; Mr Civelli has failed to justify his failure to abide

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91 Plaintiff's Written Submissions at paras 218 to 259.

92 Defendant's Written Submissions at paras 53 to 90.

93 NE (27 May 2019) at p 65 at lines 20 to 31.

94 NE (28 May 2019) at p 75 at lines 4 to 9.

by the timelines set out in the ROC and its timing of the FNC application was part of Mr Civelli's litigation strategy; and that Mr Mulacek has been prejudiced by this delay, as the Texas proceedings have advanced more quickly than the Singapore proceedings as a result.[95]

Relationship between the issues

46 The issues presented by the applications have a degree of commonality. The question of natural forum serves as the primary issue of both the ASI and FNC applications. The issue of any juridical advantage offered by the foreign venue, found in the second stage of the FNC analysis, is also featured within the ASI analysis. The issue of oppression in any ASI analysis follows after the *Spiliada* analysis is answered. The starting point of analysis must be, therefore, the issue of natural forum. While Mr Mulacek bears the burden of proof in his ASI application, Mr Civelli bears the burden of proof on his FNC application. And because the issue of merits is key to any application for an extension of time, the last application follows closely upon the heels of the second.

Decision

47 I hold that Texas is the *forum conveniens* for the various disputes between parties. In approaching the issue, I recognise that multiplicity of litigation, with its attendant risk of inconsistent findings, is undesirable. For that reason, in the present case, the *forum conveniens* must be the forum that is best placed to deal with the whole of the various claims and counterclaims between parties. Mr Civelli's responsibility for bringing the multiple actions must be considered and dealt with in the context of that finding.

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95 NE (27 May 2019) at pp 63-66.

Context for natural forum analysis

48 The subject matter of the ASI and FNC applications are overlapping but each is sited within a slightly different context. The ASI application seeks to restrain Mr Civelli from pursuing his claim in Texas. The FNC application concerns proceedings here.

49 I have set out the various facts pleaded and asserted at some length earlier in this judgment, in order to analyse the claims in Singapore and Texas. The conclusion I draw from the exercise is that the initial claim for the return of cash pursuant to a demand in Singapore has evolved, after Mr Mulacek served his counterclaim to that initial claim, into a complex series of claims involving many jurisdictions and parties. Mr Civelli's present claim in the Texas proceedings is one that encompasses and is wider than his claims in Suit 676/2017 and 1159/2017, including claims for breach of contract, breach of fiduciary duties, negligence, fraudulent transfers of shares, conversion, conspiracy, promissory estoppel, and common law fraud. Mr Mulacek's counterclaim in the local proceedings, on the other hand, is substantially similar to his counterclaim in the Texas suit. It is premised on the recovery of approximately US$114m following the Complex Arrangements arising out of the breach of fiduciary duties. The claims and counterclaims share a common factual matrix.

Governing law

50 I start with the issue of the governing law of the various disputes between parties. This was relevant in the present case as the disputed issues were not solely factual, but also legal: see *Lakshmi* at [55], where the converse applied.

51 Mr Mulacek argues that the substantive dispute between him and Mr Civelli centres on the precise nature of their relationship, with the critical issue being whether Mr Civelli was truly a fiduciary managing InterOil shares that were beneficially owned by Mr Mulacek and the other Beneficiaries.[96] The governing law of Mr Mulacek and Mr Civelli's relationship, Mr Mulacek says, is hence crucial.[97] While Mr Mulacek and Mr Civelli's business relationship began in Zurich in 2002, the relevant phase of their relationship began and continued in Singapore. Emphasis was placed on the fact that Mr Mulacek and Mr Civelli purportedly shifted the "centre of gravity" for their joint operations to Singapore from 2009.[98] Moreover, the nature of both Mr Mulacek and Mr Civelli's claims are more closely connected to Singapore than to Texas.[99] It is hence Mr Mulacek's position that the governing law of the parties' dispute is Singapore law.

52 Mr Civelli, on the other hand, argues that the relationship between him and Mr Mulacek is only relevant insofar as Mr Mulacek's counterclaim concerning the breach of fiduciary duty with regard to the Complex Arrangements is considered.[100] The other claims, such as Mr Civelli's settling-up claim, his claim for the return of monies in Suit 676/2017, and his claim under the Share Loan Agreement, are not defined by the relationship between Mr Civelli and Mr Mulacek.[101] Mr Civelli contends, that even if there were a

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96 Defendant's Written Submissions at para 114.

97 NE (27 May 2019) at p 87 at lines 17-20.

98 Defendant's Written Submissions at para 124.

99 Defendant's Written Submissions at paras 132 to 145.

100 NE (28 May 2019) at p 94 at lines 22-23.

101 NE (28 May 2019) at p 95 at lines 28-31.

fiduciary relationship between Mr Civelli and Mr Mulacek, it, like the other claims in this case,[102] would be governed by Texas law.[103]

Mr Civelli's claims in the Texas proceedings

53 Mr Civelli's claim in Texas is the subject matter of the ASI application. This comprises nine claims. The first six arise out of the Share Loan Agreement, being:

(a) breach of the Share Loan Agreement by Mr Mulacek;

(b) breach of trust and fiduciary duties by Mr Mulacek, Chase Securities and Chase Bank;

(c) negligence on the part of Chase Securities and Chase Bank;

(d) fraudulent transfer of shares to Aster Brunei against Mr Mulacek, and the Four Beneficiaries;

(e) conversion and theft of shares against Mr Mulacek and the Four Beneficiaries; and

(f) conspiracy against Mulacek, the Four Beneficiaries, Chase Securities, Chase Bank.

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102 NE (28 May 2019) at p 105 at lines 16-19; Defendant's Written Submissions at paras 120 to 132.

103 NE (28 May 2019) at p 96 at lines 13-16; p 130 at lines 27-29.

The remaining three claims, summarised by parties as the "Settling Up Claims", are for promissory estoppel, common law fraud, and breach of an oral agreement and include the Cash Loan Agreement.[104]

54 I deal with these claims in turn.

(1) The Share Loan Agreement

55 Mr Civelli's claim for breach of the Share Loan Agreement is contractual in nature.[105] The starting point would be to look for a jurisdiction clause in the contract. In its absence, I must consider the intention of the parties. If that is not clear, I must look to the system of law with which the contract has its closest and most real connection. This is "an objective analysis undertaken from the perspective of a reasonable person in the position of the parties at the time of the contract" (see *Rappo, Tania* at [80]).

56 The Share Loan Agreement was an oral agreement. There is no express governing law clause. Parties did not discuss a governing law, and their intention is not readily discernible from their conduct. The issue, then is which system of law has its closest connection. While the contract was concluded in Singapore and the demand for the return of the shares was made in Singapore, there are other elements in the surrounding context that point outwards. As the Court of Appeal noted in *Pacific Recreation Pte Ltd v S Y Technology Inc and another appeal* [2008] 2 SLR(R) 491 at [43]:

> However, the place of contracting is generally not important in determining the governing law of a contract, except, perhaps, where the contract is to be performed in that country: *Chatenay*

104 Plaintiff's Written Submissions at para 40.

105 Bundle 6, Tab 15 at para 75.

> *v The Brazilian Submarine Telegraph Company, Limited* [1891] 1 QB 79.

57 The background to Mr Mulacek's request, Mr Civelli maintains, was a Texas lawsuit. Its place of performance, on Mr Civelli's claim, was to be Texas. After parties' agreement, the shares were initially transferred to the trust account of Dale A Dossey & Associates, which were based in Texas.[106] Mr Mulacek's defence has elements of Swiss and other international elements, but do not weigh the case more closely to Singapore rather than Texas. The governing law for the Share Loan Agreement is therefore likely to be Texas rather than Singapore law.

(2) Claim for breach of trust and fiduciary duties

58 Turning then to Mr Civelli's claim against Mr Mulacek, Chase Securities and Chase Bank for breach of trust and fiduciary duties, the determination of the governing law would be dependent on the Share Loan Agreement. As the Court of Appeal noted in *Rickshaw Investments Ltd and another v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 ("*Rickshaw*") at [83], where an alleged breach of fiduciary duty has its root source in a contractual agreement between the parties, the governing choice of law rules ought to be based on those governing that particular contract.

59 Mr Civelli's claim concerns Mr Mulacek's repeated transfer of his shares, culminating in the transfer to the Bank of New York Mellon account, and his subsequent refusal to return his InterOil shares. These shares were initially transferred pursuant to the Share Loan Agreement. Because the governing law for the Share Loan Agreement is likely Texas law, as seen above

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106 Plaintiff's Written Submissions at para 72.

at [57], Mr Civelli's claim for breach of trust and fiduciary duties should likely be governed by Texas law.

(3) Tortious claims for negligence, conversion and conspiracy

60 The governing law for a tortious claim is usually dependent on the place the tort occurred. As the Court of Appeal in *Rickshaw* noted at [39] and [40], where the substance of an alleged tort is committed within a certain jurisdiction, this would be a weighty factor pointing in favour of that jurisdiction being the natural forum. In order to determine the place where a tort occurred, the court is to apply the "substance of the tort" test by examining the series of events constituting the elements of the tort to determine where, in substance, the cause of action arose (see *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte ltd and another* [2014] 1 SLR 860 ("*EFT Holdings*") at [53].

61 According to Mr Civelli, his negligence claim against Chase Bank and Chase Securities is premised on their acting contrary to industry practice and their own internal policies by transferring shares from the second Chase Securities Account to Aster Brunei's Bank of New York Mellon account despite Aster Brunei having no right to the Shares.[107] Their duty of care stemmed from their US legal obligations with respect to the "special account".[108] According to Mr Civelli's US law expert, retired US District Court Judge Michael H Schneider, the US Financial Industry Regulatory Authority's "know your customer" rules require banks to use reasonable diligence in regard to the opening and maintenance of every account;[109] in this regard, Chase Bank and

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107 Plaintiff's Written Submissions at para 134(b).

108 Plaintiff's Written Submissions at para 134(c).

109 Bundle G, MHS-2, at paras 32 to 33.

Chase Securities had allegedly failed to do so. The Chase Securities Account was located in California.

62 Regarding Mr Civelli's claim in conversion, the substance of the conversion occurred in the United States. The five transfers of InterOil shares took place in the US.

63 Regarding Mr Civelli's claim in conspiracy, in determining the substance of the tort of conspiracy, the court must consider the "identity, importance and location of the conspirators, the locations where any agreements or combinations took place, the nature and places of the concerted acts or means, the location of the plaintiff and the places where the plaintiff suffered losses" (see *EFT Holdings* at [53]).

64 In the present case, the purported conspirators are Mr Mulacek, the Beneficiaries, Chase Bank and Chase Securities. Mr Mulacek and the Four Beneficiaries sued in the Texas proceedings are US citizens that are resident in Texas (see above at [29]). Chase Bank and Chase Securities have their principal places of business in Ohio and New York respectively, and according to Mr Civelli, may be served through their counsel in Texas.[110] Any agreement that would have taken place between them would have likely been in Texas or elsewhere within the United States. The loss that Mr Civelli initially suffered would have also been in Texas, when his shares were first transferred out of the Chase Bank account in The Woodlands, Texas.

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110 Bundle 6, Tab 15 at paras 5 to 6.

(4) Statutory claims

65 Mr Civelli's fraudulent transfer claim against Mr Mulacek and the Four Beneficiaries is premised on the Texas Uniform Fraudulent Transfer Act, Tex. Bus. & Com. Code §§ 24.005(a)(1) and 24.005(a)(2). This purported fraudulent transfer took place within the US, starting with the Chase Bank account in Texas. He has also sued for theft of the shares under the Texas Civil Practice and Remedies Code § 134.001.

(5) Settling up claims

66 Mr Civelli's remaining claims concern the settling-up arrangements, which comprise claims in promissory estoppel, common law fraud, and breach of an oral agreement.

67 While the Cash Loan Agreement is part of this component, the facts that are relevant to Mr Civelli's claims in this regard have little connection to Singapore, save for some miscellaneous expenses arising from the operation of Pac SG and AirLNG which were incorporated in Singapore. The crux of Mr Civelli's settling-up claim is premised on his position that, in reliance of Mr Mulacek's promise that they would settle-up the amounts owed to Mr Civelli, he proceeded to loan large sums of money to a number of companies under the Complex Arrangements.

68 While the parties disagree on certain specifics of the Complex Arrangements,[111] in both of their accounts, they agree that Mr Civelli did transfer monies to companies including PIE Holdings (a Nevada limited partnership

[111] Bundle 6, Tab 15 at paras 26 to 38.

with an address in Texas), Pac Brunei (a company incorporated under the laws of Brunei Darussalam) and PIE Investments (a Texas limited liability company). I therefore hold that the settling-up claim would more likely be governed by Texas rather than Singapore law.

Mr Mulacek's Singapore counterclaim against Mr Civelli

69 I turn, then, to Mr Mulacek's counterclaim, which is the subject of the FNC application, and the central focus of Mr Mulacek's case for a Singapore connection. Mr Mulacek contends that while the parties' business relationship began in 2002, in Zurich, the parties later shifted the "centre of gravity" of their operations to Singapore.[112] Reliance was placed on three events: first, the incorporation of Pac LNG for the purposes of hiring staff in Singapore; secondly, the incorporation of AirLNG in connection with the acquisition of a private jet; and thirdly the shift of Mr Civelli's asset management operation from Switzerland to Singapore, with the incorporation of Clarion SG in 2009[113] and the voluntary liquidation of Swiss-incorporated Clarion Finanz in 2011.[114] Mr Civelli's response on the last point is that Clarion SG was just one of many companies bearing the "Clarion" name.[115] In support of this point on the shift of the "centre of gravity", Mr Mulacek relies on the Court of Appeal's decision in *Rappo, Tania*. Mr Mulacek also emphasises that five of the agreements making up the Complex Arrangements are governed by Singapore law and reflect arbitration in Singapore in accordance with the Arbitration Rules of the

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112 Defendant's Written Submissions at para 124.

113 Bundle 3 at para 10.

114 Defendant's Written Submissions at para 27.

115 Bundle 6 at para 11.

Singapore International Arbitration Centre ("SIAC").[116]

70 In *Rappo, Tania*, Mr Rybolovlev, through two offshore vehicles, commenced proceedings in Monaco and Singapore against the applicants, Mr Bouvier and Mrs Rappo. While Mr Rybolovlev alleged that Mr Bouvier breached fiduciary duties owed to him by dishonestly inflating the sale prices of artworks, Mr Bouvier claimed that he was an independent seller of artworks. The Court of Appeal held that the governing law of the parties' relationship was Swiss law. This was because parties' relationship originated in Geneva sometime in 2002 or 2003, when they had entered into an oral agreement for Mr Bouvier to assist Mr Rybolovlev in procuring a collection of valuable artworks (see *Rappo, Tania* at [77]); both men were based in Switzerland at the time of the oral agreement (see *Rappo, Tania* at [78]); the four written agreements that governed the purchase of specific artworks, which followed shortly after the oral agreement, contained an express choice of Swiss law and also provided for the exclusive jurisdiction of the Swiss courts (see *Rappo, Tania* at [78]). While the parties subsequently transacted only on the basis of invoices after the initial four written agreements, the court found that the later "course of dealing was on the same basis as that reflected in the four written agreements", and that there was nothing to suggest otherwise (see *Rappo, Tania* at [79]).

71 The Court of Appeal considered a similar argument to that raised by Mr Mulacek, whether the governing law of the parties' relationship changed. It concluded at [85], that:

> [while] there was undoubtedly an intention on the part of the parties to change the *locus* of the artworks in question towards the end of 2008…this [did] not entail the conclusion that the

116 Bundle B at para 91.

> parties also intended to change the *governing law* of their relationship. In our judgment, the course of dealing that underlay all the transactions in question remained rooted in what had transpired in the years between sometime in 2002 or 2003 (when Mr Bouvier and Mr Rybolovlev entered into their oral agreement) and late 2008. [emphasis in original].

72 In the present case, it is common ground that the parties' business relationship began in Zurich, in or around 2002. The Asset Management Agreement is alleged to have been entered into then. Out of a total of 16 transfers of InterOil shares and funds between 2002 and 2012,[117] ten of them were initiated by either Michelle Vinson Mulacek or Mauricette Mulacek, both of whom are citizens of the United States who are resident in Texas.[118] As for the performance of Mr Civelli's fiduciary duties, the Complex Arrangements, which are key to Mr Mulacek's counterclaim, do not evince connecting factors that point towards Singapore. The governing law and arbitration agreement clauses in the Complex Arrangements are of limited usefulness. It is common ground that these clauses would not bind Mr Civelli and Mr Mulacek; the companies that entered into the complex arrangements are not parties to Suit 676/2017 or Suit 1159/2017.[119] They also do not unequivocally point towards Singapore. On Mr Mulacek's case, out of the 11 Complex Arrangements pleaded, five of them have Singapore governing law clauses.[120] Of these five, four have already been concluded.[121] At the same time, there are three Complex

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117 Bundle 1, Tab 2 at para 9.

118 Bundle D, Tab 24.

119 Bundle 3 at para 56; NE (28 May 2019) at p 123 at lines 3-4.

120 Defendant's Written Submissions at p 68.

121 Bundle 1, Tab 2 at para 19(4) to 19(10).

Arrangements with Texas governing law clauses, two of which have been concluded.[122]

73 On the other hand, the transactions that took place in the Complex Arrangements do evince a degree of connection to Texas. The US$35m PN saw PWE loan US$35m to PIE Holdings, a Nevada limited partnership that had an address in The Woodlands, Texas (see above at [18(a)]).[123] PIE Holdings was also involved in the US$40m PN under which PWE loaned a further USD40m to PIE Holdings (see above at [18(c)]). In addition, a central part of Mr Mulacek's counterclaim is centred on Mr Civelli's failure to purchase an additional 25% of membership interest in PIE Investments, which is a Texas limited liability company.

74 Was there a shift in the "centre of gravity" to Singapore, such that the governing law of the parties' relationship would be fairly regarded as Singapore law? In my view, there is insufficient evidence of any intention to ground their relationship and transactions in Singapore law. Mr Civelli's incorporation of Clarion SG, even with the voluntary liquidation thereafter of Clarion Finanz in 2011, without more, is insufficient to demonstrate a shift in the "centre of gravity" to Singapore. Nor would the use of Singapore as a base, for a time, to facilitate business interests in Papua New Guinea. Those business needs have further evolved with time, and include connections to multiple other jurisdictions.

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122 Defendant's Written Submissions at p 68.

123 Bundle B, Tab 29 at p 196.

75 In the present case, the court must look to the context of parties' relationship as a whole, its origins and evolution. The period of time, post 2009, where both parties dealt with each other in Singapore must be viewed in the context of that entirety. It is not uncommon for individuals who have an international portfolio of assets to work from Singapore, for reasons of time-zone, geographical location, infrastructure and ease of transport. It is closer to Papua New Guinea than Europe, and a competitive venue for global finance and fund management services. Looking at the genesis of the alleged trust, its settlor and beneficiaries, its assets, and its performance through the Complex Arrangements, there is greater connection to Texas than to Singapore.

Personal connections of parties and witnesses

76 Both parties, in this case, made great effort to pin down each other's residence in a country strategic to their case. The Court of Appeal has, however, made clear at [71] of *Rappo, Tania* that this is of minor significance in the case of affluent parties such as Mr Civelli and Mr Mulacek, who have multiple residencies and business operations in many countries.

77 The personal connections of the key witnesses are of greater importance. As made clear by the Court of Appeal in *Rickshaw* at [17] and [19], where there are multiple disputes on issues of fact – and the present case is one such case – the location and the compellability of the witnesses assumes greater importance.

78 The Four Beneficiaries play a central role in both Mr Mulacek and Mr Civelli's claims; Mr Mulacek's counterclaim hinges on Mr Civelli having breached his duties to them while Mr Civelli's claim in the Texas proceedings concerns the Four Beneficiaries as parties. They are US citizens and residents

of Texas.[124] Of the remaining beneficiaries, Mr Christian Vinson and Mr Jacquin are French citizens, with Mr Christian Vinson having a residence in Texas.[125] Ms Monique Jacquin is deceased and there are no details provided for the last beneficiary (the offspring and heirs of Mr Jacquin, Michelle Vinson Mulacek, Mr Mulacek and Pierre Mulacek).

79 The majority of the Beneficiaries are more easily compellable in Texas rather than in Singapore. While Mr Mulacek has stated that the Beneficiaries have confirmed their amenability to the Singapore courts by virtue of their submitting letters to Mr Mulacek promising to do so,[126] this does not amount to compellability in the event that they change their minds. In contrast, under the laws that would apply in Texas, specifically Rule 45(c) of the Federal Rules of Civil Procedure, subpoenas may be served on a witness to command him to attend a trial, hearing, or deposition so long as the location is: (a) within 100 miles from where the person resides, is employed, or regularly transacts business in person; or (b) within the state where the person resides, is employed, or regularly transacts business in person, if the person (i) is a party or a party's officer; or (ii) is commanded to attend a trial and would not incur substantial expense.[127]

80 Chase Bank and Chase Securities remain key parties. The principal places of business for Chase Securities and Chase Bank are New York and Columbus, Ohio respectively.[128] Their motion to dismiss the claims against them

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124 Plaintiff's written submissions at para 141.

125 Bundle D at para 91.

126 NE (27 May 2019) at p 132 at lines 22-24; Bundle 3 at pp 340-345.

127 Bundle J, Tab 142 at p 1847.

128 Bundle 6 at p 293.

was denied on 26 June 2018. Their employees are likely to be necessary witnesses. Documentary evidence by both parties regarding the share transfers and related transactions will be necessary, and US banking regulations will apply.

81 Mr Mulacek is of the view that there are two key witnesses who are resident in Singapore; Mr Benjamin Yan Eng Ng ("Mr Yan") and Henry Aldorf ("Mr Aldorf"). According to Mr Mulacek, Mr Yan and Mr Aldorf were employed by Mr Civelli, and were involved in the PNGDV and IPI investments, and the activities of Pac BVI respectively.[129] It is, however, difficult to see the relevance of Mr Yan and Mr Aldorf to the present proceedings given their relatively circumscribed roles. Mr Yan and Mr Aldorf have both sworn affidavits stating that they do not possess any relevant knowledge concerning Mr Civelli's transfer of the 645,000 shares to Mr Mulacek or the management of any assets for the Beneficiaries.[130]

Multiplicity of proceedings

82 Viewing the case holistically, it is clear that the disputes between parties are more closely connected to Texas than to Singapore. It is on this premise that I come to the issue of the multiplicity of proceedings at hand.

83 The law frowns upon a multiplicity of proceedings. As stated by the Court of Appeal in *Virsagi Management (S) Pte Ltd v Welltech Construction Pte Ltd and another* [2013] 4 SLR 1097 at [32], citing *Koh Kay Yew* at [22], allowing two actions in two jurisdictions to proceed concurrently runs the risk

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129 Bundle 3 at para 11.

130 Bundle E at paras 10 to 13; Bundle F at paras 8 to 12.

that "the same issue be litigated twice", with a possibility of having "two different results, each conflicting with the other".

84 In *Amchem Products Incorporated v British Columbia (Workers' Compensation Board)* [1993] 1 SCR 897 ("*Amchem*"), the Canadian Supreme Court dealt with an application for an ASI where litigation was pending in both Texas and Canada. In similar vein to our case, the Texas court had ruled that it was the *forum conveniens,* and no appeal was allowed from that decision in Texas until after trial of the action. Sopinka J stated the following at [53]:

> If, applying the principles relating to forum non conveniens outlined above, the foreign court could reasonably have concluded that there was no alternative forum that was clearly more appropriate, the domestic court should respect that decision and the application should be dismissed. When there is a genuine disagreement between the courts of our country and another, the courts of this country should not arrogate to themselves the decision for both jurisdictions. In most cases it will appear from the decision of the foreign court whether it acted on principle similar to those that obtain here, but, if not, then the domestic court must consider whether the result is consistent with those principles.

85 *Amchem* was cited by the High Court in *The "Reecon Wolf"* [2012] 2 SLR 289 (at [51]) where Belinda Ang Saw Ean J also spoke of the "manifest concern for international comity in *forum non conveniens* principles" (at [21]). In that case, proceedings were pending both in Singapore and Malaysia. In the course of an appeal from an assistant registrar, the Malaysian courts dismissed a stay application pending before them. Taking this into account, the learned judge allowed the appeal, explaining at [24]:

> Multiplicity of proceedings here and abroad in respect of the same controversy and parties is a concern. The possibility of friction caused by conflicting decisions from different jurisdictions has found expression in judicial acknowledgment of the concept of comity, and in the judicial exercise of discretionary powers. This brings me to *The Abidin Daver* [[1984] AC 398 at [18]]. In that case, there were concurrent

> proceedings in England and Turkey and the court had to decide whether to stay the English proceedings. Lord Diplock was concerned that if concurrent proceedings were allowed to continue in England and Turkey, there might well be "an unseemly race to be the first to obtain judgment", and opined that "comity demands that such a situation should not be permitted to occur as between court of two civilised and friendly states" (at 344). In short, the risk of inconsistent judgments can be avoided if one court gives way to the other in the interest of international comity. A similar risk of inconsistent findings and conflicting decisions also arises where there are two related or parallel actions, one here and abroad and the court is asked to stay one of the actions. To illustrate, in *Chan Chin Cheung* [[2010] 1 SLR 1192] at [16]], there were parallel proceedings in Singapore and Malaysia and the Singapore proceedings were stayed in the interest of international comity.

86 Mr Mulacek emphasises that a determination by a foreign court to exercise its jurisdiction does not bind the Singapore court's ability to issue an ASI.[131] Mr Mulacek contends that the Texas decision should be accorded less weight because the court made a crucial error in concluding that Chase Securities were not amenable to the jurisdiction of the Singapore courts, in that Chase Securities could still be joined and served out of jurisdiction.

87 I do not agree that the Texas court acted in error. In the present case, the Texas court, in considering the issue of *forum conveniens*, had regard to principles similar to that of Singapore law. Judge Atlas, in stating her principal reason that Chase Securities was not amenable to the jurisdiction of the Singapore court, could have been speaking broadly. Before her, both Chase Bank and Chase Securities opposed Mr Mulacek's stay application in Texas. Chase Bank has a branch in Singapore that may be served process; Chase Securities does not.[132] Whilst Chase Securities may be served out of jurisdiction,

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131 NE (29 May 2019) at p 96 at lines 17 to 21.

132 Bundle R, Tab 7 at pp 227-228.

it would likely remain resistant to the jurisdiction of the Singapore courts. If joined by Mr Civelli in the lawsuit in Singapore as Mr Mulacek suggests, both Chase Bank and Chase Securities may apply for a stay on the ground of *forum non conveniens*.

88 On the wider issue of the ability of the court to come to a different conclusion from a foreign court, I would agree with Mr Mulacek. Recently in *Lakshmi* at [129], the Court of Appeal held that it would not be invariably a breach of comity for a domestic court to grant an ASI if it finds that, first, it is clearly the more appropriate forum for the dispute *and* secondly, the defendant in the application has acted in a vexatious or oppressive manner in commencing the foreign proceedings. In the present case, however, it is *Texas* that would be the more appropriate forum for the dispute. The first requirement identified in *Lakshmi* is therefore not met on the facts.

89 I am of the view that a single jurisdiction should deal with the myriad of issues concerning the dispute between Mr Civelli and Mr Mulacek, in order to avoid the risk of conflicting decisions and findings of fact. The Singapore dispute is a subset of the Texas one. The present case is therefore the converse of the situation referred to at [122] of *Lakshmi*, where the foreign proceedings pertain to one specific issue in a broader claim. Fragmentation would likely result if the ASI is granted or if a stay is not ordered. The Court of Appeal in *Vinmar Overseas (Singapore) Pte Ltd v PTT International Trading Pte Ltd* [2018] 2 SLR 1271 was concerned with the issue of fragmentation even in the context of an exclusive jurisdiction clause, stating at [139]:

> In our restatement of the law, we have not discussed a case where the grant of a stay would lead to the fragmentation of a dispute across multiple jurisdictions because the dispute involves multiple parties, some of whom are not parties to the jurisdiction clause. In such cases, the *risk of duplicative*

> *proceedings, inconsistent findings and incentivising a rush to judgment may well establish strong cause to refuse a stay…*[i]t is sufficient for our immediate purposes to observe that the concern arising from such fragmentation of legal proceedings is legitimate… [emphasis added]

Considering that the connecting factors have a closer connection with Texas, the claims ought to be tried in a single set of proceedings in Texas. As such, there is no reason in the present case for me to grant an ASI.

Oppression

90 It is in this context that I deal with Mr Mulacek's contentions of oppression. He makes a larger point that the multiplicity arose solely out of Mr Civelli's decision to first sue in Singapore, before moving on to commence a larger action in Texas.[133] Mr Mulacek has sought to frame Mr Civelli's act of commencing multiple proceedings as part of a litigation strategy that is abusive of the court process.[134]

91 Mr Civelli's explanation is that following a change of solicitors, he decided that Texas was the proper jurisdiction in which to bring his claims.[135]

92 It is clear that sustaining action in two jurisdictions in the same subject matter is inappropriate conduct on the part of a plaintiff. The gravamen of Mr Mulacek's complaint is that Mr Civelli has instituted actions in both Singapore and Texas. In *Kirkham* at [47], the Court of Appeal listed examples of oppression or vexation. These included bad faith in the institution of the foreign

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133 NE (29 May 2019) at p 102 at lines 1-8.

134 NE (27 May 2019) at p 18 at lines 5-11.

135 NE (28 May 2019) at p 13 at lines 8- 15.

proceedings; commencing the foreign proceedings for no good reason; commencing proceedings that are bound to fail; and extreme inconvenience caused by the foreign proceedings. In the present case, as events unfolded, it is the *Singapore* proceedings that have been commenced without sufficient reason, and which have generated unnecessary costs. The issue of *forum conveniens* is central to the remedy to be applied. The Court of Appeal's guidance in *Rappo, Tania* at [67] on the sensible approach to take in deciding cumulative jurisdictional objections based on forum election and *forum non conveniens* is apt:

> However, we think it would be prudent, as a matter of general practice, for a court in such a situation to first decide whether Singapore is *forum non conveniens*. If it considers that Singapore is not the appropriate forum, it should order a stay and that would be the end of the matter; there would be no need in such circumstances to embark on a further inquiry as to whether the foreign proceedings are *lis alibi pendens*. It is only if the court finds that the alternative forum is not clearly or distinctly more appropriate than Singapore for the determination of the dispute that it would then have to put the plaintiff to an election between forums. This approach would not only be resource-saving, but also more consonant with logic and principle in that there is simply no need to put the plaintiff to an election if Singapore turns out not to be an appropriate forum for the hearing of the matter in the first place. Accordingly, this is the approach which we adopt in the present appeals.

93 Mr Civelli's conduct therefore is not a reason to deny his request for a stay in Singapore if Texas is the natural forum for the disputes. As I have found that Texas is the natural forum, the issue is, rather, how any oppressive conduct should be dealt with in the context of the application for a stay of Mr Mulacek's counterclaim. I deal with this below.

Reasons of justice against a stay

94 The second stage of the test in *Spiliada* test requires the court to consider

whether there are circumstances by reason of justice why it should exercise its jurisdiction even if it is not the *prima facie* natural forum. Mr Mulacek did not raise any particular juridical advantages he would lose if denied trial of the matter in Singapore. Mr Mulacek argued that the juridical advantages that Mr Civelli raised in his favour in the Texas action were tactical pressures used unfairly. It follows from my finding that Texas is the natural forum that these are legitimate juridical advantages. Mr Mulacek's wider point is that the Texas proceedings are oppressive in the light of the Singapore proceedings. Fundamental to his case, therefore, is his argument that Mr Civelli's FNC application must fail because of three fatal flaws. I turn then to discuss each of these flaws.

Whether 'three fatal flaws' prevent a stay

Mr Civelli's maintenance of his claims

95 The first argument is that Mr Civelli cannot seek to stay Mr Mulacek's counterclaim while maintaining his claims in the Singapore proceedings. Further, Mr Mulacek contends that it is not open to Mr Civelli, as a plaintiff, to attempt to stay Mr Mulacek's counterclaim. Order 15, r 2 ROC allows any defendant to bring a counterclaim, and therefore, any plaintiff who brings suit must expect that a defendant may bring a counterclaim in response (see *Balkan Bank v Taher and others (no 2)* [1995] 1 WLR 1067 at 1072).

96 A defendant has the right to bring a counterclaim notwithstanding that Singapore may not be the clearly more appropriate forum (see *Metal Scrap Trading Corporation Ltd v Kate Shipping Co Ltd* [1990] 1 WLR 115). This does not, however, affect the court's ability to stay a counterclaim on the basis of *forum non conveniens*.

97 Mr Mulacek makes a wider point, and a valid one. This is that a plaintiff who has commenced multiple proceedings should in general be made to face up to the situation he has chosen to create. As Mustill LJ puts the point in *HM Attorney-General v Arthur Andersen & Co (United Kingdom) and others* [1989] ECC 224 at [13]: "Having put his hand to the plough he should continue to the end of the furrow." The same judgment nevertheless also recognises that fairness and common sense could on occasion require a stay. Mr Civelli's answer lies in his undertaking to discontinue both suits if the court were to dismiss the ASI. In that way, once the ASI is dismissed, Suits 676/2017 and 1159/2017 would be discontinued and the only remaining issue would be to stay Mr Mulacek's counterclaim. In view of my finding on the *forum conveniens* for the parties' disputes, save for the question of costs, this is the most practicable resolution to the multiple lawsuits.

Mr Civelli's application being out of time

98 The second fatal flaw contended is that Mr Civelli had filed his application out of time without an application for an extension of time. Mr Civelli subsequently took out an application for an extension of time and I deal with that below. I deal, at this juncture, with the reliance placed on a number of English decisions, including *Ledra Fisheries Ltd & others v Turner & others* [2003] EWHC 1049 (Ch) at [19], *The Insurance Company of the State of Pennsylvania v Equitas Insurance Limited* [2013] EWHC 3713 (Comm) at [31] and *Excalibur Ventures LLC v Texas Keystone Inc & ors* [2012] All ER (Comm) 933 at [77] for the proposition that where a plaintiff seeking a stay must be refused but for the limited exception where proceedings were started purely to protect the claimant's limitation period.

99 On a consideration of the cases, I agree with counsel for Mr Civelli that

the particular application of the three authorities to the case at hand is not apposite. These cases concerned Rule 11.5 of the UK Civil Procedure Rules 1998 (SI 1998 No 3132) (UK), under which a defendant, having filed an acknowledgement of service and failing to make an application for a stay within 14 days, was treated as having submitted to jurisdiction. The local equivalent of the jurisdictional stay provision is O 12, rr 7(1) and (6) ROC. Order 12, r 7(6) stipulates that unless the defendant makes an application within the time limited for serving a defence in accordance with O 12, r 7(1), an appearance, if not withdrawn by leave of court under O 21, r 1, is treated as a submission by the defendant to jurisdiction. *Forum non conveniens*, however, is the subject of O 12, r 7(2) and not O 12, r 7(1). While r 7(2) specifies that such an application should be filed within the time limited for serving a defence, r 7(6) does not apply to r 7(2). The flaw, so to speak, is not fatal because an application for an extension of time may be sought.

100 This is made clear by *Chan Chin Cheung v Chan Fatt Cheung and others* [2010] 1 SLR 1192, where the Court of Appeal held, at [15], that the timeline in O 12, r 7(2) is not absolute and could be extended using O 3, r 4. At [22], Chao Hick Tin JA made clear the distinction and its rationale:

> The appellant relies on several cases to argue that an extension of time under O 3 r 4, even if permissible, cannot "cure" the fact that the respondents had already taken steps in the proceedings and submitted to the jurisdiction of the Singapore courts. With respect, this argument is off the mark because whether a litigant has *submitted* to the jurisdiction of the court if relevant only to an application for a stay under O 12 r 7(1), where the litigant is taking the position that the court has *no jurisdiction* to hear the case. In contrast, where the litigant applies for a stay under O12 r 7(2) on the ground of *forum non conveniens*, he in fact *accepts the court's jurisdiction* and is not to be treated as disputing it (see *The Jian He* [[1999] 3 SLR(R) 432] at [44], and GP Selvam, *Singapore Civil Procedure 2007* (Sweet & Maxwell, 2007) at para 12/7/4). The respondents have undoubtedly participated in the Singapore proceedings by filing their Defence. Although this would be a step in the

> proceeding that might disentitle them from contesting jurisdiction under O 12 r 7(1), this does not mean that they are barred from applying for a stay on the ground of *forum non conveniens*. [emphasis in original]

101 This principle was reiterated in *Sun Jin Engineering Pte Ltd v Hwang Jae Woo* [2011] 2 SLR 196 ("*Sun Jin Engineering*"). In that case, a month and three weeks after the time for filing of the defence, the appellant applied for – and obtained - a stay of proceedings on the ground of *forum non conveniens*. The respondent's argument that the appellant had taken steps in the proceedings was dismissed by the Court of Appeal, which highlighted again at [16] and [17] the distinction between O, 12 r 7(1) and O, 12 r 7(2).

Waiver

102 It is in this context that I consider Mr Civelli's argument that Mr Mulacek has waived his right to apply for a stay of the counterclaim, which is premised upon *Shanghai Turbo Enterprises Ltd v Liu Ming* [2019] 1 SLR 779 ("*Shanghai Turbo*"). In that case, the Court of Appeal held that the defendant's participation in the suit was not merely defensive, but amounted to an invocation of the court's jurisdiction and an implied acceptance that the court had jurisdiction (at [33] and [42]). The defendant in *Shanghai Turbo* did not confine himself to applying to set aside service of jurisdiction and discharging the various injunctions against him. Instead, he went further to participate in the non-parties' application for an interim injunction to restrain the plaintiff company from, *inter alia*, diluting the shareholding of any shareholding. The defendant's participation included presenting submissions and offering to give an undertaking as to damages.

103 In *Sun Jin Engineering*, the Court of Appeal left the possibility open at [46] that a "lengthy delay" in making a stay application "may be treated as a

waiver of any objections which might have been raised". Mr Civelli filed his Reply and Defence to Counterclaim on 5 April 2018, before commencing Summons 2384/2018 on 22 May 2018. Mr Civelli points out that his delay was less than that seen in *Sun Jin*, which had been approximately 7 weeks. Order 12, r 7(2) requires that a defendant contending for the Singapore court to refrain from assuming jurisdiction apply to Court for a stay within the time limited for serving a defence (in this case, 5 April 2018). Mr Mulacek was hence out of time by approximately six and a half weeks.

104 In my judgment, the length of delay cannot be determinative. Even a cursory glance of the facts of the case in *Sun Jin Engineering* and those of the present one will reveal that substantially more has happened in these proceedings. Mr Civelli has taken significantly more steps in Singapore. But both *Chan Chin Cheung* and *Sun Jin Engineering* make clear that the taking of steps is not sufficient. The question must be answered by the looking at the competing interests of parties and the justice of the case as a whole. Viewing the nature, quality and context of the steps taken in perspective, I do not think it can be said that Mr Civelli waived his rights to a stay.

Application for extension of time

105 It is clear from my foregoing views that the merits of the stay application weigh in Mr Civelli's favour. The key question is therefore summarised by the Court of Appeal's query in *Sun Jin Engineering*, at [44]: "is the [party]'s procedural default so egregious that the imposition of a sanction by way of an appropriate costs order would not suffice to register the court's disapproval?"

106 The guidance of *Sun Jin Engineering*, at [30], in cases where the court is asked to extend an interlocutory timeline, is that the factual matrix of the case

is paramount. Further, in balancing the parties' competing interests, the court must consider the issue of prejudice. The key prejudice that Mr Mulacek says he suffered due to Mr Civelli's late application for a stay, is that there has been a "slowing down" of proceedings in Singapore, which allowed for the Texas proceedings to pull ahead, resulting in an easier case for Mr Civelli to stay Mr Mulacek's counterclaim.[136] There is, however, a need for Mr Mulacek to demonstrate that he was prejudiced *specifically* by Mr Civelli's six and a half week delay in bringing the application for a stay, which would be the date that Mr Civelli formally raised the matter for the first time. This he has not done. There is no indication that this period of delay radically changed the state of affairs of the Texas proceedings. Any delay after 8 August 2018 was occasioned only by Mr Mulacek's application for an adjournment for the stay and ASI applications. As may be surmised from the costs order made, the application would likely have weighed against him at the first adjournment, but for the plea to consider new arbitration matters that had yet to be raised, on the argument that a dismissal of his ASI would prejudice the *status quo*. Subsequently, the stay in favour of arbitration was not raised. Nor was prayer 2 for which the summons was amended in October 2018, because Judge Atlas clarified subsequently that its premise was flawed. I recount these facts solely as an illustration of the complexity of the litigation between Mr Civelli and Mr Mulacek, which gives, in my view, an important perspective to the various omissions that each party has complained of against the other. As events unfolded, the effect of the adjournment and amendment of the summons was to allow Mr Mulacek to press ahead with his stay application in Texas in November 2018 with the matter still open for the Texas court's decision in January 2019.

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136 NE (27 May 2019) at p 70 at lines 14-17.

107 Coming then to Mr Mulacek's late adoption of the objection, the rationale for any requirement for an extension of time is to obviate use of judicial resources to consider an application that has no merit. This matter having been partially argued before me on 8 August 2018, the object for arguing against an extension in this regard may have been overtaken by events. Having said that, the rules of court are foundational to procedural justice. They frame the expectations of parties and aid good order in litigation. The onus was on Mr Civelli to have applied in a timely manner for a stay, or at least to have applied for an extension of time by the time he applied for the stay at the latest. And on either application, the onus was on him to furnish good reason. His application for a stay was late, his application for an extension of time later still, and no sufficient explanation has been given for either omission.

Conclusion

108 Multiplicity of litigation, and Mr Civelli's responsibility for its existence, lay at the heart of Mr Mulacek's arguments. Having decided that the *forum conveniens* for the various disputes between parties is Texas, I consider that the appropriate way to deal with the multiplicity at hand is to dismiss Mr Mulacek's application for an ASI, and, subject to Mr Civelli fulfilling his undertaking, grant Mr Civelli's application for a stay of Mr Mulacek's counterclaim, and for an extension of time to apply for the same. I shall hear counsel on costs, at which time they may wish to revisit my comments on Mr Civelli's conduct.

Valerie Thean
Judge

Cavinder Bull, SC, Woo Shu Yan, Tay Hong Zhi, Gerald and Ho Wei Wen, Daryl (Drew & Napier LLC) for the plaintiffs;
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