IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 279

Suit No 50 of 2020

Between

Allenger, Shiona (trustee-in-bankruptcy of the estate of Pelletier, Richard Paul Joseph)

… *Plaintiff*

And

(1) Pelletier, Olga
(2) PDP Holdings Inc

… *Defendants*

JUDGMENT

[Civil Procedure] — [Jurisdiction] — [Inherent]
[Civil Procedure] — [Jurisdiction] — [Submission]
[Civil Procedure] — [Mareva injunctions]
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v
Pelletier, Olga and another

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Andrew Ang SJ
20 July, 9 September 2020

22 December 2020 Judgment reserved.

Andrew Ang SJ:

Introduction

1 The jurisdiction of the court refers to "its authority, however derived, to hear and determine a dispute that is brought before it": Re *Nalpon Zero Geraldo Mario* [2013] 3 SLR 258 ("*Nalpon Zero*"). In this case, the Defendants challenge both aspects of that fundamental authority: subject-matter jurisdiction and *in personam* jurisdiction. The dispute thus presents an occasion to clarify the contours of the two notions of subject-matter jurisdiction and *in personam* jurisdiction, as well as the interface between these two doctrines. This case also presents an apposite occasion in Singapore jurisprudence to consider the law on Mareva injunctions, specifically the jurisdictional requirements that must be satisfied before such injunctions may be granted.

Background facts

2 The Plaintiff is the trustee-in-bankruptcy of the estate of Mr Richard Paul Joseph Pelletier ("Mr Pelletier"). The first Defendant, Ms Olga Pelletier, is the wife of Mr Pelletier and the director of the second defendant, PDP Holdings Inc, a company incorporated in the Cayman Islands. At all material times, Mr Pelletier was and continues to be the sole shareholder of Richard Pelletier Holdings Inc ("RPHI"), a company incorporated in Alberta, Canada.

3 In 2014, pursuant to a share purchase agreement ("SPA"), MasTec Inc ("MasTec"), a company incorporated in Florida, acquired a Canadian company, Pacer Construction Holdings Corporation ("Pacer"), and its related entities from Mr Pelletier, RPHI and various other sellers ("Other Sellers"). It was alleged that Mr Pelletier was the founder and former CEO of Pacer, and also that RPHI owned 47.09% of the shares in Pacer at the time the SPA was entered into, the

remaining shares being owned by the Other Sellers. MasTec paid RPHI C$59,296,699.23 for its shares in Pacer.

4 After completion of the sale of Pacer to MasTec, it became apparent that Mr Pelletier had falsely represented the financial condition of Pacer and its related entities and that the purchase price for Pacer would have to be adjusted downwards substantially from what was provided for in the SPA. In addition, there was a breach of a representation in the SPA made jointly or severally by Mr Pelletier and RPHI, and severally (but not jointly) by the Other Sellers, that certain of Pacer's related entities would not require or were not reasonably likely to require additional funding from Pacer to maintain their current or planned operations (the "No Additional Funding Representation"). This led to MasTec and Pacer commencing arbitral proceedings against Mr Pelletier RPHI and the Other Sellers in 2016.

5 In 2019, three arbitral awards were granted against Mr Pelletier, RPHI, and the Other Sellers. The first and principal award pertained to liability, while the second and third awards were for interest and costs respectively.

6 The joint and several liability of Mr Pelletier and RPHI under these awards amounted to C$76,833,744.50. The Other Sellers having paid the amounts they were severally liable for, Mr Pelletier and RPHI remained liable to Pacer in the amount of C$33,556,822.50. The amount remains outstanding, save for a small amount of C$4,037.40.

7 Pacer then sought to enforce the arbitral awards through multiple applications in various jurisdictions. An application against Mr Pelletier was taken out in the courts of the Cayman Islands (the "Cayman courts") for

recognition of the principal award. An application against Mr Pelletier and RPHI was also taken out in the courts of Alberta for recognition and enforcement of all three awards. Applications were also taken in Alberta to bankrupt RPHI and also in the US District Court for the Southern District of California.

8 The efforts to enforce the awards against Mr Pelletier have not been successful because Mr Pelletier claims that he has no assets and is unable to repay his debt despite having received approximately C$59 million, through RPHI, for the sale of Pacer. Specifically, Mr Pelletier claims to have gifted a sum of between C$20 million and C$25 million to the first Defendant to fulfil a promise he made to split the proceeds with her if he sold Pacer (the "Olga Transfer"). This promise was purportedly made a decade prior to the present events.

9 The Plaintiff also alleges, based on its own investigations, that Mr Pelletier had subsequently engaged in further suspicious activities. It is alleged that in 2014, Mr Pelletier had incorporated PDP Corporation in the Cayman Islands, with himself as the sole shareholder and director. He also established a trust, STAR Trust, with Butterfield Bank (Cayman) Limited ("Butterfield Bank") as the original trustee. Mr Pelletier then transferred US$4 million to PDP Corporation. Once this was done, Mr Pelletier then transferred his shares in PDP Corporation to Butterfield Bank. It is claimed that PDP Corporation had utilised the US$4 million to purchase a condominium in Grand Cayman.

10 That was not the end of it. It is further alleged that Mr Pelletier had then incorporated the second Defendant in the Cayman Islands in August 2015, again with himself as the sole shareholder and director. In a single month, in

September 2015, Mr Pelletier then made a series of transfers from bank accounts in his name in Butterfield Bank to bank accounts held by the second Defendant (also with Butterfield Bank). These transfers totalled approximately US$15 million and included:

(a) C$12,798,522.71 transferred on 1 September 2015;

(b) US$4,735,074.03 transferred on 1 September 2015;

(c) US$264,925.97 transferred on 11 September 2015; and

(d) C$1,201,477.29 transferred on 15 September 2015.

11 The Olga Transfer, the transfers to PDP Corporation, and the transfers to the second Defendant (collectively, save for the transfer set out in [10(b)], the "Disputed Transfers") were made in circumstances where Mr Pelletier admits he had dissipated the proceeds from the sale of Pacer.

12 In August 2019, Pacer applied to the clerk of the Cayman courts to issue a bankruptcy notice against Mr Pelletier. This notice was issued, allowing Pacer to subsequently commence bankruptcy proceedings. In November 2019, the Grand Court of the Cayman Islands granted an interim bankruptcy order against Mr Pelletier. This order was made absolute in March 2020.

13 The Plaintiff, as the trustee-in-bankruptcy of the estate of Mr Pelletier, then commenced proceedings in the Cayman court in January 2020, seeking to set aside the Disputed Transfers that Mr Pelletier had made. The proceedings were made pursuant to s 107(1) of the Cayman Bankruptcy Law. On 8 January 2020, the Plaintiff also obtained a worldwide Mareva injunction against the Defendants, as well as against three other related entities (the "Cayman

worldwide injunction"). On 13 January 2020, the Cayman worldwide injunction was amended, allowing the Plaintiff to seek a similar order in Singapore.

14 On 14 January 2020, the Plaintiff then commenced the present Suit by filing a writ of summons. That writ was accompanied by three *ex parte* applications, namely:

(a) HC/SUM 212/2020, by which the Plaintiff sought an order for leave to serve the cause papers in the Suit on the Defendants out of jurisdiction and for the requirement for two prior attempts at personal service to be dispensed with (the "Leave Application");

(b) HC/SUM 213/2020, by which the Plaintiff sought a stay of all proceedings in the Suit save for (c) below (the "Stay Application");

(c) HC/SUM 203/2020, by which the Plaintiff sought a Mareva injunction in Singapore (the "Singapore Injunction") against the Defendants to prohibit them from removing from Singapore assets up to the value of CAN$20m (for the first Defendant) and CAN$20,586,000 (for the second Defendant). Those assets included two Singapore bank accounts with LGT Singapore and Global Precious Metals (the "LGT Account" and "GPM Account" respectively).

15 I heard the *ex parte* applications on 16 January 2020 and granted all three applications. The orders of court and cause papers were thereafter served on the Defendants, and the first Defendant filed her first affidavit on 6 February 2020 in compliance with the disclosure requirements of the Singapore Injunction.

16 On 21 February 2020, the Defendants filed HC/SUM 884/2020 seeking clarification of the Singapore Injunction (the "Clarification Application"). In the Defendants' view, this was necessitated by certain events, which I will elaborate upon further at [98]. I heard the Clarification Application on 20 April 2020 and dismissed it.

17 On 29 April 2020, the Defendants then filed HC/SUM 1859/2020, seeking leave to appeal against my decision in the Clarification Application (the "Leave to Appeal Application"). On 20 May 2020, the Plaintiff filed HC/SUM 2041/2020, seeking an order that the first Defendant, amongst other things, immediately transfer the sums which had been transferred to Priestleys, the Defendants' Cayman lawyers, back to Singapore for the same to be paid into court (the "Application to Restore Funds"). I heard the Application to Restore Funds on 19 June 2020, where the parties agreed to the following:

(a) that the Defendants were to provide the Plaintiff with evidence of payments made from the GPM account since the Singapore Injunction was served on 23 January 2020;

(b) that the funds paid from the GPM Account, which had been repatriated to the client account of Shook Lin & Bok LLP ("Shook Lin & Bok"), be subjected to the Singapore Injunction; and

(c) that the Defendants would not deal with the funds mentioned above without the Plaintiff's written agreement or an Order of Court until the discharge of variation of the Singapore Injunction.

In the proceedings referred to in [16] and [17] above, the Defendants were represented by Shook Lin & Bok.

18 The present application was filed on 9 June 2020. Under this application, in which Mr Harpreet Singh *SC* and Mr Jordan Tan appeared as instructed counsel, the Defendants seek the following orders:

(a) that the order granting the Leave Application be set aside;

(b) that the Singapore Injunction be discharged; and

(c) an order that the Stay Application be varied to allow the Defendants to apply for orders (a) and (b) above.

19 The Defendants make this application, challenging the jurisdiction of the Singapore court. In particular, they argue that the Singapore court has no subject-matter jurisdiction and/or that it does not have *in personam* jurisdiction over the Defendants. In the alternative, the Defendants ask that the Singapore Injunction be set aside as the requirements for granting a Mareva injunction have not been satisfied.

Whether the Singapore court has subject-matter jurisdiction

20 The subject-matter jurisdiction of the court refers to the court's authority over the subject matter of that general class of cases: *Harvey v Derrick* [1995] 1 NZLR 314 at 326. Subject-matter jurisdiction is a concept that is distinct from *in personam* jurisdiction. This was recognised in *Murakami Takako (executrix of the estate of Takashi Murakami Suroso, deceased) v Wiryadi Louise Maria and others* [2009] 1 SLR(R) 508 ("*Murakami Takako*") at [6] and [8], albeit in the context of the rule in *The British South Africa Company v The Companhia de Moçambique* [1893] AC 602 (the "*Moçambique* rule"), which I elaborate on at [54(b)] below. Similarly, this was underscored by the Court of Appeal in *Burgundy Global Exploration Corp v Transocean Offshore International*

Ventures Ltd and another appeal [2014] 3 SLR 381 at [80], drawing on Hoffmann J's observations in *Mackinnon v Donaldson, Lufkin and Jenrette Securities Corporation* [1986] Ch 482:

> Hoffmann J restated the distinction as follows: personal jurisdiction refers to the question of whether a person is amenable to the jurisdiction of the court in the sense that he is or can be brought before it. … Subject-matter jurisdiction … on the other hand refers to *what a court is permitted to do in terms of regulating the* ***conduct in another country*** *of someone over whom it has personal jurisdiction*. …
>
> [emphasis added in italics and bold italics]

21 In arguing that the Singapore court has no subject-matter jurisdiction in the present dispute, the Defendants have three main strings to their bow:

(a) that the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) (the "SCJA") does not grant the necessary jurisdiction over foreign legislation;

(b) that the adoption of the UNCITRAL Model Law on Cross-Border Insolvency (the "UNCITRAL Model Law") into Singapore law supports this contention; and

(c) that s 107(1) of the Cayman Bankruptcy Law does not confer jurisdiction upon the Singapore court.

22 While the Plaintiff disputes all three assertions above, it further raises the argument that the doctrine of modified universalism calls upon the Singapore court to exercise jurisdiction. I will address each of these arguments in turn.

Subject-matter jurisdiction generally under the Supreme Court of Judicature Act

23 The Singapore High Court is a creature of statute, constituted under the SCJA. Its jurisdiction is statutorily conferred and circumscribed by that very same constitutive statute: see *Nalpon Zero* ([1] *supra*) at [14] and [20]. Such jurisdiction-conferring provisions must therefore be satisfied before the court has legal basis upon which it may hear the case: *Indo Commercial Society (Pte) Ltd v Ebrahim and another* [1992] 2 SLR(R) 667 at [48] ("*Indo Commercial Society*"); *Ng Chye Huey and another v Public Prosecutor* [2007] 2 SLR(R) 106 at [17]; *Blenwel Agencies Pte Ltd v Tan Lee King* [2008] 2 SLR(R) 529 at [23]; *Law Society of Singapore v Top Ten Entertainment Pte Ltd* [2011] 2 SLR 1279 at [42]; Yeo Tiong Min, "Jurisdiction of the Singapore court" in Kevin YL Tan, ed, *The Singapore Legal System* (Singapore University Press, 2nd Ed, 1999) (Kevin YL Tan, Gen Ed) ("Yeo's Chapter") at pp 255–256.

24 The basis for the Singapore High Court's jurisdiction is found in ss 16 and 17 SCJA, which provide as follows:

> **Civil jurisdiction — general**
>
> 16.—(1) The High Court shall have jurisdiction to hear and try any action *in personam* where —
>
> (a) the defendant is served with a writ of summons or any other originating process —
>
> (i) in Singapore in the manner prescribed by Rules of Court or Family Justice Rules; or
>
> (ii) outside Singapore in the circumstances authorised by and in the manner prescribed by Rules of Court or Family Justice Rules; or
>
> (b) the defendant submits to the jurisdiction of the High Court.

> (2) Without prejudice to the generality of subsection (1), the High Court shall have such jurisdiction as is vested in it by any other written law.
>
> **Civil jurisdiction — specific**
>
> 17.—(1) Without prejudice to the generality of section 16, the civil jurisdiction of the High Court shall include —
>
> > (a) jurisdiction under any written law relating to divorce and matrimonial causes;
> >
> > (b) jurisdiction under any written law relating to matters of admiralty;
> >
> > (c) jurisdiction under any written law relating to bankruptcy or to companies;
> >
> > (d) jurisdiction to appoint and control guardians of (e) jurisdiction to appoint and control guardians and keepers of the persons and estates of idiots, mentally disordered persons and persons of unsound mind;
> >
> > (f) jurisdiction to grant probates of wills and testaments, letters of administration of the estates of deceased persons and to alter or revoke such grants; and
> >
> > (g) jurisdiction under the Mediation Act 2017 to record a mediated settlement agreement made in a mediation, in relation to a dispute for which no proceedings have been commenced in a court, as an order of court.
>
> (2) In this section, "mediated settlement agreement" and "mediation" have the same meanings as in the Mediation Act 2017."

25 The two questions we are concerned with at this point are (a) which provision of the SCJA deals with subject-matter jurisdiction; and (b) consequently, what the scope and nature of such subject-matter jurisdiction is, *ie*, whether it is generally unlimited or only exists when conferred by written law.

26 The Defendants initially advanced the argument that the provision pertinent to the *general* civil subject-matter jurisdiction was s 16(2) SCJA. They

argued that under this section, the words "any other *written law*" [emphasis added] refer only to Singapore Acts and Ordinances and not foreign legislation.[1] In their view, such an interpretation flows from two other separate pieces of legislation. First, from Art 93 of the Constitution of the Republic of Singapore, which provides that:

> The judicial power of Singapore shall be vested in a Supreme Court and in such subordinate courts as may be provided by any *written law* for the time being in force.
>
> [emphasis added]

27 Secondly, the Interpretation Act, which provides a definition of "written law" as follows:

> … the Constitution and all previous Constitutions having application to Singapore and all Acts, Ordinances and enactments by whatever name called and subsidiary legislation made thereunder *for the time being in force in Singapore*.
>
> [emphasis added]

28 The Defendants sought to bolster this argument by relying on the court's *specific* civil subject-matter jurisdiction under s 17(1)(c) SCJA. As the provision refers to "any *written law* relating to *bankruptcy or to companies*" [emphasis added], the Defendants argued that:[2]

> This provision *expressly* deals with the scope of the Singapore Court's jurisdiction on bankruptcy matters (the very same subject-matter being dealt with in the present case) and explicitly *limits* such jurisdiction to that conferred under "*written law*" (i.e. Singapore statutes).

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1 Defendant's Written Submissions, para 34(c).

2 Defendant's Written Submissions, para 34(d).

29 There are two ways in which the Defendant's argument can be interpreted. The first is that the Singapore Court's subject-matter jurisdiction is limited to only causes of action founded upon Singapore Acts and Ordinances. The argument, interpreted thus, would exclude the Singapore court's subject-matter jurisdiction over *common law* causes of action, as well as over *foreign* causes of action. Such an argument would lead to extraordinary results and it is unlikely that the Defendants intended this to be their argument.

30 More likely, the Defendants intended the following interpretation: that the Singapore Court's subject-matter jurisdiction is limited only to causes of action founded upon Singapore law *generally* (as opposed to Cayman law in this case). In my view, however, this is inconsistent with the well-established position under common law that the courts *generally* have jurisdiction over foreign causes of action: see *Phrantzes v Argenti* [1960] 2 QB 19 ("*Phrantzes v Argenti*"). I will elaborate on both these points below.

31 There is another crucial point: the Defendants' arguments up to this point placed scant weight on s 16(1) SCJA. Indeed, at the first tranche of hearings before me, Mr Harpreet Singh *SC* remarked that this particular provision could be "skipped" over because the provision was concerned with *in personam* and not subject-matter jurisdiction of the court.[3] This was picked up by the Plaintiff, who then argued at the second tranche of hearings that s 16(1) SCJA was, in fact, concerned with *both in personam and* subject-matter jurisdiction. On the Plaintiff's reading, s 16(1) SCJA conferred *unlimited* subject matter jurisdiction, subject only to the requirements of s 16(1)(*a*) and

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[3] Transcript of 20 July, p 67, lines 22–26.

s 16(1)(*b*) SCJA. In making this argument, Plaintiff's counsel, Mr Danny Ong, placed great weight on several passages written by Professor Yeo in Yeo's Chapter ([23] *supra*); it is to these that I now turn in addressing the first key area of dispute between the parties, *ie*, the scope of s 16(1) SCJA and whether it deals with subject-matter jurisdiction.

Whether s 16(1) SCJA deals with subject-matter jurisdiction

32 In Yeo's Chapter on jurisdiction, Prof Yeo first sets out at least six different ways in which the word "jurisdiction" can be understood or has been employed. The learned author then deals with the jurisdiction of the Singapore High Court with reference to the then-current provisions of the Supreme Court of Judicature Act (Cap 322) (1993 Reprint) (the "1993 SCJA"), which provided as follows:

> 16.—(1) The High Court shall have jurisdiction to hear and try any action *in personam* where —
>
> (a) the defendant is served with a writ of summons or any other originating process —
>
> (i) in Singapore in the manner prescribed by Rules of Court or Family Justice Rules; or
>
> (ii) outside Singapore in the circumstances authorised by and in the manner prescribed by Rules of Court or Family Justice Rules; or
>
> (b) the defendant submits to the jurisdiction of the High Court.
>
> (2) Notwithstanding subsection (1), the High Court shall have no jurisdiction to hear and try any civil proceeding which comes within the jurisdiction of the Syariah Court constituted under the Administration of Muslim Law Act.
>
> (3) Without prejudice to the generality of subsection (1), the High Court shall have such jurisdiction as is vested in it by any other written law.

33 Section 16(2) of the 1993 SCJA was removed pursuant to the Administration of Muslim Law (Amendment) Act 1999 (Act 20 of 1999) ("1999 AMLA Amendments"). This was done to provide the High Court and the Syariah Court with concurrent jurisdiction over specified matters: *Haniszah bte Atan v Zainordin bin Mohd* [2016] SGHCF 5 at [6]. Consequently, the Administration of Muslim Law Act (Cap 3, 2009 Rev Ed) was also amended, while s 17A(1) SCJA was introduced. This is a point to which I will return at [56].

34 What is material at this juncture is the fact that ss 16(1) and 16(3) of the 1993 SCJA are identical with ss 16(1) and 16(2) SCJA respectively. Why this is crucial is because Prof Yeo then goes on to state that:

> This section [namely, s 16 of the 1993 SCJA], ***does not draw a clear line*** between subject matter jurisdiction and *in personam* jurisdiction. ***Section 16(1) refers to both***. Section 16(2) deals with subject matter jurisdiction. ***Section 16(3)*** *[now section 16(2)]* ***deals with both***.
>
> [emphasis in original in italics; emphasis added in bold italics and underline]

35 In making the statements underlined in the extract above, Prof Yeo relied on the case of *Emilia Shipping Inc v State Enterprises for Pulp and Paper Industries* [1991] 1 SLR(R) 411 ("*Emilia Shipping*"). Ironically, this case formed the basis of the Defendants' next argument.

36 Mr Jordan Tan (as second instructed counsel for the Defendants) was quick to point out that in *Emilia Shipping*, Chan Sek Keong J (as he then was) had stated at [23]:

> I find it difficult to follow Mohan Gopal's argument. *Section 16 is not concerned with jurisdiction in terms of subject matter, most of which is specified in s 17.* Section 16 concerns jurisdictional

> basis. The principle applicable in England is also jurisdictional basis, only that the basis is territorial dominion. The defendant has to be within the territory, albeit casually, before the English court can exercise its powers against him. In principle, there should be no difference between bringing the defendant into the jurisdiction in order that jurisdiction be acquired against him and bringing the defendant's property into the jurisdiction in order that jurisdiction be acquired against the defendant. In both cases the process is the service, the former within and the other without the jurisdiction. In the former the abuse is the inducement of the defendant to come into the jurisdiction by fraudulent means, in the other it may be the fraudulent or deceptive way in which the property is brought within the jurisdiction. As the court is ultimately the master of its own process, it is arguable that the court's inherent jurisdiction to prevent injustice or to prevent an abuse of the process of court is not affected by s 16: see O 92 r 4 which preserves (or attempts to preserve) the court's inherent jurisdiction. However, I do not intend to decide this point as I have not heard full or adequate arguments on it.
>
> [emphasis in italics]

37 *Emilia Shipping* therefore, at first blush, appears to be directly at odds with Prof Yeo's statement, in so far as that case expressly states that s 16 of the 1993 SCJA is "not concerned with jurisdiction in terms of subject matter". Mr Tan attempted an explanation for this – that Prof Yeo had referenced *Emilia Shipping* in order to make the point that certain aspects of s 16 SCJA had an *impact on* subject-matter jurisdiction as it "watered down" other subject-matter specific statutes.[4] This did not translate to s 16(1) SCJA itself *directly concerning* subject-matter jurisdiction.

38 Notwithstanding the ingenuity in this argument, I am unable to agree with the Defendant's reading of the case. The statement of Chan J must be seen in context bearing in mind the specific dispute considered in *Emilia Shipping*.

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4 Transcript of 9 September 2020, p 39 line 14 to p 40 line 11.

In that case, the plaintiff, Emilia Shipping Inc ("Emilia"), had discharged its cargo in Singapore after economic sanctions were imposed against Iraq as a result of the Gulf War. The defendant, State Enterprise for Pulp and Paper Industries ("State Enterprise") was the notify party of a cargo of wood pulp carried under bills of lading on board Emilia's vessel. Emilia then commenced Admiralty in Rem No 422 against State Enterprise for freight, back freight and expenses incurred in connection therewith. The cargo was then arrested, and Emilia obtained default judgment. The cargo was advertised for sale and bids were obtained although State Enterprise objected to the sale. State Enterprise then applied to set aside the arrest on the grounds that the court had no *in rem* admiralty jurisdiction to hear the case (see *The Ocean Jade* [1991] 1 SLR(R) 354).

39 Emilia then obtained leave to commence the *in personam* action and to serve the writ out of jurisdiction. State Enterprise did not respond, and Emilia applied *ex parte* for an order to sell the cargo to the highest bidder. State Enterprise then entered conditional appearance and obtained a stay of the *ex parte* order for the sale of the cargo. This was pending its application to set aside Emilia's *in personam* action and the court's orders granting Emilia leave to serve the writ out of jurisdiction. Counsel for the plaintiff contended that once the court is seised of jurisdiction it could not decline to exercise it, citing Mohan Gopal's article "The Original Civil Jurisdiction of the Singapore High Court – Some Issues" [1983] 2 MLJ lxiv ("Gopal's article").

40 In Gopal's article, the author embarked on an analysis of the changes in the Singapore court's jurisdiction at different points in history. This began from the "English past" pre-1964, to when Singapore became a part of the Federation of Malaysia, and finally to the jurisdiction post-1965 when Singapore separated

from Malaysia. Through this historical examination, the learned author sought to demonstrate that Singapore had initially adopted the general, unlimited jurisdiction of the English High Court and that this had changed when Singapore became part of the Malaysian federal system, with the existence of jurisdiction being subject to "pre-conditions" that required the dispute to have a specific link (or "contacts" as the author termed it) with the territory. The reason for this was to prevent any "potential for inter-state jurisdictional conflict": Gopal's article at p lxviii. The author then argued that these limitations were maintained when Singapore left the Malaysian federation and the Supreme Court of Judicature Act (Cap. 15, Act 24 of 1969) was enacted. The thrust of his argument was therefore as follows at p lxvii:

> *Conclusions regarding basis of jurisdiction:*
>
> It is clear that the basis of the original civil jurisdiction of the High Court changed completely in 1964. There has since been no return to the pre-1964 position. The change involved a rejection of the old English rule of unlimited general jurisdiction and the adoption of the more modern principle of a limited jurisdiction, with rational and reasonable connections between the defendant/cause of action and the state, as the touchstone of jurisdictional competence.

41 Flowing from this, the author then went on to deal with what he regarded as the "implications of the demise of unlimited general jurisdiction". One of these "implications" concerned the question whether the court was obliged to exercise jurisdiction if s 16 SCJA was satisfied. The author argued that it was, stating at p lxxi as follows:

> The language of section 16 is not clear: "The High Court shall have jurisdiction to try …" does not seem mandatory. On the other hand, the court was obliged till 1964 to exercise jurisdiction (following the English position). There is no basis to conclude that either the Malaysian or the Singaporean Acts altered this position. If an earlier court with sweeping, unlimited jurisdiction

> was compelled to act at the motion of plaintiffs, it is reasonable to say that a court with a narrower, limited jurisdiction would also be equally compelled to act if the plaint comes within the four corners of the statute.
>
> The general position therefore seems clear: it is mandatory that the Singapore High Court exercise jurisdiction in all matters falling within section 16. The next question is whether the English exception to this rule is effective here in view of the difference discussed earlier: can a Singapore court has such an "inherent discretion" to decline jurisdiction?
>
> …
>
> It is submitted that the common law "inherent discretion" does not survive the 1964 changes and that such unbridled discretion cannot be possessed by a court whose jurisdiction itself is limited. The Singapore court does not possess the inherent discretion to *decline* jurisdiction, or to refuse to entertain an action, if the facts of the case bring the matter within section 16.

42 It was this particular extract, specifically the issue whether the Singapore High Court has inherent discretion to *decline* jurisdiction, that was the subject of debate in *Emilia Shipping* ([35] *supra*). It was not, strictly speaking, whether s 16 SCJA concerned subject-matter jurisdiction.

43 Two further points must be emphasised from the analysis in Gopal's article. First, as seen from the extract above at [40], what the author was truly concerned with was the *bases* upon which jurisdiction could be established. Secondly, throughout the article, the author appears to have been dealing solely with *in personam* jurisdiction. The question of "jurisdictional competence" was answered with reference to connections between the defendant, cause of action and the state. There was never any mention of subject-matter jurisdiction.

44 The first sentence in [23] of *Emilia Shipping* therefore cannot be read *in vacuo*. When seen in context, it is clear that Chan J was simply referencing the

(now) trite proposition that one of the bases under s 16(1) SCJA must be satisfied before the High Court has *in personam* jurisdiction. The only specific meaning that should be ascribed to the phrase "not concerned with" is that s 16 SCJA is not concerned with *limiting* subject-matter jurisdiction. The prefatory words in s 16(2) SCJA "[w]ithout prejudice to the generality of subsection (1) …" confirm this.

45 In fact, the clear implication to be drawn from Gopal's article is that the only "limitations" to the court's previously unlimited jurisdiction are to be found in s 16 SCJA. In all other respects, the court's unlimited jurisdiction remains. To put it another way, s 16(1) SCJA *limits* the extent to which *in personam* jurisdiction can be exercised. Section 16(1) SCJA, however, places no such fetters on the exercise of subject-matter jurisdiction of the High Court (I will further expand on the issue of the scope of the court's subject-matter jurisdiction in the next section at [51] below). That is not to say that subject-matter jurisdiction is completely divorced from *in personam* jurisdiction and the limits imposed thereupon. It must be borne in mind that in jurisdictional proceedings, both aspects of jurisdiction must be satisfied for the court to be seised of the matter. The two heads of jurisdiction are in this sense intertwined. Accordingly, notwithstanding this *absence of limitation* to subject-matter jurisdiction within s 16(1), the High Court's subject-matter jurisdiction is only material and relevant *in so far as* in personam *jurisdiction exists*. They are *conjunctive* and *inseparable* requirements. One is expressly circumscribed in s 16(1), while the other is not. Seen in this light, Prof Yeo's statement that s 16(1) refers to both is perfectly explicable.

46 To complete the picture, I make a further observation as regards an even older edition of the SCJA and related (albeit vintage) jurisprudence. These

authorities are pertinent in two respects: first, the significance of *submission* to the Singapore High Court's jurisdiction, and second, the manner in which the SCJA has since evolved. I note that in stating that s 16 SCJA refers to both subject-matter jurisdiction and *in personam* jurisdiction, Prof Yeo also referred to *Indo Commercial Society* ([23] *supra*). In that case at [44], Hwang JC first referred to an unreported judgment dated 31 October 1986 where Wee Chong Jin CJ stated as follows:

> In my judgment the defendants by entering unconditional appearance have unequivocally agreed to the Singapore courts being the arbiter of any dispute arising out of the agency contract. The defendants, furthermore, by their application to the court for extension of time to file and serve their defence after their unconditional appearance before first applying to set aside the writ and service of the writ, have unequivocally submitted to the jurisdiction of the court.

47 Dealing with this quote by Wee CJ, Hwang JC stated as follows at [48]–[49]:

> 48 The learned Chief Justice apparently relied on submission to the jurisdiction as conferring jurisdiction on the court to hear this case. **With respect, submission to the jurisdiction does not of itself confer jurisdiction on the High Court unless one of the conditions in ss 16 or 17 of the Supreme Court of Judicature Act (Cap 322) are satisfied**. In this regard, the position in Singapore is different from that in England, where, under common law, the High Court will have jurisdiction to hear any action *in personam* where a defendant submits to its jurisdiction (see *Dicey and Morris*, [31] *supra* at p 299). **The jurisdiction of the High Court in Singapore, however, is founded on statute and the requirements of ss 16 or 17 (or some other written law) must first be satisfied before the court has jurisdiction to hear a case**. Submission to the jurisdiction is not one of the conditions mentioned in any written law in Singapore and therefore will not by itself confer jurisdiction on the High Court except in the circumstances envisaged in s 16(2) which provides:

> The High Court shall also have jurisdiction to try any civil proceedings where all the parties consent in writing to have the proceedings tried in Singapore.

49 The point I make is indirectly acknowledged by *Dicey and Morris* (at p 302) where it is stated:

> The principle of submission can give the court jurisdiction only to the extent of removing objections thereto which are purely personal to the party submitting, as, for example, that he has not been duly served with a writ. Submission cannot give the court jurisdiction to entertain an action or other proceeding which in itself lies beyond the competence or authority of the court.

[emphasis added in bold]

48 Hwang JC made the observations he did based on reference to the provisions of the Supreme Court of Judicature Act (Cap 322, 1985 Rev Ed) (the "1985 SCJA"). As the case was heard on 31 August 1992, that was the version of the Supreme Court of Judicature Act then in force. In that version, there was no provision for submission to jurisdiction. Instead, the 1985 SCJA provided as follows:

> **Civil jurisdiction — general**
>
> 16.—(1) The High Court shall have jurisdiction to hear and try all civil proceedings where —
>
> (*a*) the cause of action arose in Singapore;
>
> (*b*) the defendant or one of several defendants resides or has his place of business or has property in Singapore;
>
> (*c*) the facts on which the proceedings are based exist or are alleged to have occurred in Singapore; or
>
> (*d*) any land the ownership of which is disputed is situated within Singapore:
>
> Provided that the High Court shall have no jurisdiction to try any civil proceeding which comes within the jurisdiction of the Syariah Court constituted under the Administration of Muslim Law Act [Cap. 3].

> (2) The High Court shall also have jurisdiction to try any civil proceedings where all the parties consent in writing to have the proceedings tried in Singapore.
>
> (3) Without prejudice to the generality of subsection (1), the High Court shall have such jurisdiction as is vested in it by any other written law.

49 It was only in the 1993 SCJA that the proviso as to submission to jurisdiction was introduced. It is therefore clear that Hwang JC's objections to Wee CJ's reliance on submission as a basis for jurisdiction have been met by statutory amendment. That said, the observations in *Indo Commercial Society* that the court's jurisdiction is founded on statute, and that the requirements in ss 16 and 17 SCJA must be satisfied, remain good law as I observed above at [23].

50 There is a separate gloss to the discussion above: as may be seen from the excerpt of the 1985 SCJA reproduced at [48] above, the Singapore High Court under s 16 had "jurisdiction to hear and try *all civil proceedings*". This was amended in 1993 to reflect "jurisdiction to hear and try any action *in personam*". This amendment had significant implications on the scope of subject-matter jurisdiction under the SCJA, which I discuss in the next section.

The scope of subject-matter jurisdiction under the SCJA

51 The question is whether the subject-matter jurisdiction under ss 16 and 17(1) SCJA encompasses the present situation involving a foreign bankruptcy statute. The wording under s 16(1) SCJA suggests that the subject-matter jurisdiction granted to the High Court is *unlimited*. I alluded to this earlier (see [45] above). In this regard, I agree with the observations made by Prof Yeo at Yeo's Chapter ([23] *supra*) at pp 251 and 257 that:

> ***(3) Subject Matter Jurisdiction***
>
> …
>
> The term *unlimited jurisdiction* is usually applied in this sense to mean that the jurisdiction of the court is not confined to specific subject matter, so that it is able to try any subject matter not expressly shown to be excluded. This is often contrasted with the idea of *limited jurisdiction*, which is confined only to the subject matter spelt out the in law creating the courts. …
>
> …
>
> **Original Civil Jurisdiction of the High Court**
>
> *Subject Matter Jurisdiction*
>
> ***The unlimited nature of the subject matter jurisdiction of the High Court of England is retained in the High Court of Singapore in the statute***. Section 16 provides that the court shall have jurisdiction to try *any* action *in personam*, provided section 16(1)(a) or 16(1)(b) are satisfied. It is not confined to any specific subject matter. The sub-provisions deal only with jurisdiction over persons.
>
> [emphasis added in bold italics]

52 Nevertheless, this unlimited subject-matter jurisdiction, specifically conferred under s 16(1) SCJA, can still be qualified. As Prof Yeo notes in Yeo's Chapter at p 257:

> The common law position of the English High Court is that it has no jurisdiction to hear disputes over title to foreign land, except in equity where the jurisdiction is taken *in personam* where there is privity of contract or personal equitable obligation, and actions in the administration of estates. ***Section 16 does not expressly state that the jurisdiction of the Singapore High Court is so limited. However, the statute must be interpreted in accordance with the principles of international law***, and clearer words are probably necessary to abrogate this long established principle of international law. Indeed, a recent Singapore Court of Appeal has implicitly accepted that the rule of exclusion in respect of foreign land applies in Singapore [citing the case of *Eng Liat Kiang v Eng Bak Hern* [1995] 3 SLR 97]
>
> [emphasis added in bold italics]

53 Prof Yeo's observations are corroborated by an examination of the legislative history of the SCJA. As noted above at [50], the phrasing of the s 16 SCJA was changed from "jurisdiction to try all civil proceedings" to "jurisdiction to hear and try any action *in personam*" in 1993. The rationale behind this amendment, according to the then-Minister for Law, Dr S Jayakumar, was so that the jurisdiction of the High Court of Singapore would be brought in line with that of the English High Court of Judicature (*Parliamentary Debates Singapore: Official Report* (12 April 1993) vol 61 at columns 94 and 95). As the English High Court possesses unlimited subject-matter jurisdiction (a point Prof Yeo also notes in the extract above at [51]), the Singapore High Court's jurisdiction would now similarly be unlimited. This is a key difference between the 1985 SCJA and the 1993 SCJA.

54 It follows, from legislative intent as reflected in the amendments, that the limits to the general rule of unqualified subject-matter jurisdiction are a matter of common law, not statute. There are three broad categories of exceptions under common law, referred to also as areas of non-justiciability:

> (a) It is well-established that disputes involving foreign revenue laws are deemed as non-justiciable for the reason that they are "an extension of sovereign power which imposed the taxes, and that an assertion of sovereign authority by one State within the territory of another, … is (treaty or convention apart) contrary to all concepts of independent sovereignties": *Relfo Ltd (in liquidation) v Bhimji Velji Jadva Varsani* [2008] 4 SLR(R) 657 at [53], citing *Government of India, Ministry of Finance (Revenue Division) v Taylor and another* [1955] 1 AC 491 at 511.

(b) Similarly, areas such as foreign penal, land and public laws have been regarded as beyond the High Court's jurisdiction. It has indeed been regarded as a long-standing rule of the common law – under the *Moçambique* rule – that the Singapore court does not have subject-matter jurisdiction over disputes concerning foreign immovable property: see *Murakami Takako* ([20] *supra*) at [9].

(c) In some jurisdictions, foreign intellectual property rights are deemed non-justiciable as a matter of subject-matter jurisdiction: see *Tyburn Productions Ltd v Conan Doyle* [1991] Ch 75; *Potter v Broken Hill Pty Co Ltd* (1906) 3 CLR 479. This area of law is still developing, but the UK Supreme Court has expressed caution (and rightly so) over whether foreign intellectual property rights would be justiciable before the UK courts: see *Lucasfilm Limited and others v Ainsworth and another* [2011] UKSC 39. This is because such issues, in particular patent rights, may involve sensitive subject matter that may be of great interest or commercial significance to the foreign state in which the intellectual property was created/invented/first registered.

55 In sum, the position is that: the Singapore court has *unlimited* subject-matter jurisdiction, *unless or until* prohibited either by legislation or case law. This interpretation is, in fact, borne out on a plain and ordinary reading of s 16(1) SCJA itself. I disagree with the Defendants' contention[5] that the Singapore court can only be seised of jurisdiction where such is conferred by some "written law". Not only would requiring such an enabling statute fly in the face of the wording of s 16(1) SCJA, it raises the question why the common

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5 Defendant's Written Submissions para 36.

law exceptions were necessary in the first place. In other words, the Defendants' argument erodes the fundamental dichotomy between a rule and an exception. Another problem is this: if we accept the Defendant's argument that subject-matter jurisdiction is incrementally developed over time, does that mean the courts are precluded from being seised of jurisdiction over such matters until the legislature acts, even where such matters are linked to our jurisdiction? That cannot be.

56 In this connection, I note that the Defendants had rightly argued that ss 16(2) and 17 SCJA involved questions of subject-matter jurisdiction. Section 16(2) SCJA deals with both *in personam* and subject-matter jurisdiction. Section 17 deals in greater particularity with various aspects of jurisdiction, including over subject-matter, person, things and causes: Yeo's Chapter ([23] *supra*) at p 256. Neither ss 16(2) nor 17(1)(c), however, serve to *limit* the subject-matter jurisdiction granted under s 16(1) SCJA. Sections 16(2) and 17(1) make clear that the provisions contained therein are without prejudice to the generality of ss 16(1) and 16 respectively.

57 The untenability of the Defendants' position is apparent when one contrasts the language of ss 16(2) and 17(1) with that of s 17A(1) SCJA. As mentioned above at [33], the s 17A(1) SCJA was introduced to delineate the respective jurisdictions of the High Court and the Syariah Court. Section 17A(1) SCJA thus explicitly states:

> Notwithstanding sections 16 and 17, the *High Court shall have no jurisdiction to hear and try any civil proceedings* involving matters which come within the jurisdiction of the Syariah Court under section 35(2)(a), (b) or (c) of the Administration of Muslim Law Act (Cap. 3) in which all the parties are Muslims or where the parties were married under the provisions of the Muslim law.

[emphasis added in italics]

58 This is an example of a *limiting* provision. In contrast, like s 16(1) SCJA, both ss 16(2) and 17(1) utilise the permissive language of "shall have jurisdiction", and merely spell out with greater specificity instances in which the court has jurisdiction.

59 Accordingly, I find that as a starting point, the Singapore High Court does have general subject-matter jurisdiction by virtue of s 16(1) SCJA; and its specific subject-matter jurisdiction is in no way circumscribed by s 17(1) SCJA.

Subject-matter jurisdiction in the present dispute

60 The next step is to inquire whether there is any reason peculiar to the present subject-matter, *ie*, foreign insolvency laws, in respect of which the court should or should not be seised of jurisdiction. This takes me to the three arguments raised by parties noted above at [21]–[22].

The UNCITRAL Model Law on Cross-Border Insolvency

61 The Defendants first point to the developments leading up to the adoption of the UNCITRAL Model Law as showing that the Singapore court does not have jurisdiction to render assistance in aid of *foreign bankruptcy proceedings*. In order to reach their conclusion, the Defendants' argument runs as follows:

(a) Under the UNCITRAL Model Law, as partially adopted by Singapore *via* s 354B of the Companies Act (Cap 50, 2006 Rev Ed) ("Companies Act"), a plaintiff is able to apply for an injunction in Singapore *if* this was in the context of *corporate insolvency*.

(b) The same legislative developments, however, have not occurred in relation to *bankruptcy law*. The relevant provisions under the UNCITRAL Model Law do not apply to the *personal bankruptcy* of individuals, which is the case at hand.

(c) The Singapore court can thus only have subject-matter jurisdiction if legislative amendments, similar to s 354B of the Companies Act, were made in relation to matters of personal bankruptcy. This is further bolstered by the fact that such legislative deliberations turn on "myriad factors including the question of reciprocity by the foreign state in recognising Singapore proceedings all of which are outside the purview of the [court]".

62 To provide context, the UNCITRAL Model Law was introduced into Singapore by way of the 2017 amendments to the Companies Act. Under these amendments, s 354B of the Companies Act was enacted. This section provides that the UNCITRAL Model Law as set out in the Tenth Schedule to the Companies Act has force of law in Singapore. The UNCITRAL Model Law generally applies where "assistance is sought in Singapore by a foreign court or a foreign representative in connection with a foreign proceeding": Art 1(1)(a) UNCITRAL Model Law. A "foreign representative" is then defined as being a representative appointed by a foreign court to control or supervise the affairs of a debtor: Art 2(1) UNCITRAL Model Law.

63 The preamble to the UNCITRAL Model Law itself clearly states its purpose to "provide effect mechanisms for dealing with cases of cross-border insolvency"; and to promote the objectives, *inter alia*, of "greater legal certainty for trade and investment" (UNCITRAL Model Law Preamble (*b*)) and

"facilitation of the rescue of financially troubled businesses" (UNCITRAL Model Law Preamble (*e*)). This purpose behind the introduction of the UNCITRAL Model Law is also evident from the speech by Mr Edwin Tong at the second reading of the bill to amend the Companies Act (*Parliamentary Debates Singapore: Official Report* (10 March 2017) vol 94 (Edwin Tong Chun Fai, Member of Parliament for Marine Parade GRC). In Mr Tong's speech, he stated as follows:

> *The adverse run-on effects of the insolvency and collapse of a company cannot be underestimated*. It is not just the closure of a business, but also the loss of jobs and livelihoods for many… The threat of the loss of jobs in this industry as well as others, is thus a real issue, close to the hearts of many Singaporeans. There are also other stakeholders whose interests we need to consider, such as financial institutions with loan exposures to distressed companies. The rehabilitation of such companies in financial trouble is therefore not just about crunching numbers, generating business or increasing profits. There is a wider social interest at stake.
>
> *It is in this context and backdrop that this Bill has been introduced*, and it is aimed at several key objectives.
>
> First, it seeks to set up a more *conducive legal framework with a view to ultimately saving businesses, preserving values and jobs*. Second, it aims to *make our insolvency and restructuring laws more robust, more rescue-friendly, but at the same time, nimble and nuanced enough to balance and protect the competing interests of relevant parties*. Third, I would suggest that this is also timely for the reasons the Senior Minister of State has mentioned. Since the last amendment to these regimes, *the way we do business now is very different; there are a lot of cross-border aspects of the business*, and many companies are located in several parts of the world. …
>
> There had been a slew of enhancements to the regime, and as a practitioner in this area, I can say that it has broadly been welcomed by insolvency practitioners from the finance industry, from banks, from the companies. I wish to focus on five of those amendments which Senior Minister of State has mentioned.
>
> [emphasis added]

64 One of the amendments Mr Tong then went on to refer to was the adoption of the UNCITRAL Model Law. The Defendant thus correctly points out that the UNCITRAL Model Law was introduced into Singapore in aid of corporate insolvencies.

65 That, however, is as far as I can agree with the Defendants. The logical result of the Defendants' argument would be that *prior* to the introduction of the UNCITRAL Model Law, the Singapore court did not have subject-matter jurisdiction to render assistance in aid of foreign corporate insolvencies. That simply cannot be the case.

66 The existence of such jurisdiction was amply demonstrated in a decision pre-dating the introduction of the UNCITRAL Model Law, *Beluga Chartering GmbH (in liquidation) and others v Beluga Projects (Singapore) Pte Ltd (in liquidation) and another (deugro (Singapore) Pte Ltd, non-party)* [2014] 2 SLR 815 ("*Beluga Chartering*"). *Beluga Chartering* concerned a German-incorporated company, Beluga Chartering GmbH (in liquidation), that was initially wound-up in Germany, with a German liquidator appointed. The company was subsequently wound-up in Singapore, with a set of Singapore liquidators appointed. The company's wholly owned subsidiaries, which were incorporated in Singapore (the "Subsidiaries") brought a claim against Beluga Chartering GmbH (in liquidation) for agency work performed for the latter and obtained judgment in default. Beluga Chartering GmbH (in liquidation)'s only asset in Singapore was owed by the non-party deugro (Singapore) Pte Ltd to Beluga Chartering GmbH (in liquidation) (the "deugro Asset"). The Singapore liquidators thus filed an application to ascertain whether they were entitled to remit the deugro Asset to Germany, that being the seat of the principal

liquidation, notwithstanding the existence of the Subsidiaries' unsatisfied judgment debt.

67 What is relevant for present purposes is the Court of Appeal's discussion of the common law ancillary liquidation doctrine at [56]–[60] as follows:

> 56 The common law ancillary liquidation doctrine was described in these terms by Vaughan Williams J in *In re English, Scottish, and Australian Chartered Bank* [1893] 3 Ch 385 ("*English, Scottish, and Australian Chartered Bank*") at 394:
>
> > … one must bear in mind the principles upon which liquidations are conducted, in different countries and in different Courts, of one concern. One knows that where there is a liquidation of one concern the general principle is - ascertain what is the domicil of the company in liquidation; let the Court of the country of domicil act as the principal Court to govern the liquidation; and let the other Courts act as ancillary, as far as they can, to the principal liquidation. …
>
> 57 The doctrine does not mandate any single course of action and could encompass a broad range of orders that would assist the principal liquidation: see Lloyd Tamlyn, "Ancillary Winding Up" in *Cross Border Insolvency* (Richard Sheldon QC gen ed) (Bloomsbury Professional, 3rd Ed, 2012) ("*Cross Border Insolvency*") ch 7 at para 7.16.
>
> 58 We agreed with the Judge … that the ***ancillary liquidation doctrine is a part of the Singapore common law and that the court has a power under this doctrine to order the local liquidator to remit assets that are gathered in locally to the principal place of liquidation***. Indeed, this holding was not disputed by the parties on appeal. We were satisfied that the ancillary liquidation doctrine is historically entrenched as part of the common law in a number of jurisdictions: see *In re Commercial Bank of South Australia* (1886) 33 Ch D 174 at 178; *English, Scottish, and Australian Chartered Bank* at 394; *Re Alfred Shaw & Co Ltd ex parte Mackenzie* (1897) 8 QLJ 93 at 96; *Re National Benefit Assurance Co* [1927] 3 DLR 289. The existence of this common law doctrine was also endorsed by Sir Richard Scott VC in *In re Bank of Credit and Commerce International SA (No 10)* [1997] Ch 213 ("*Re BCCI*") and more recently by both the majority and minority of the House of Lords in *In re HIH Casualty and General Insurance Ltd* [2008] 1 WLR 852 ("*Re HIH Insurance*").

> 59 This doctrine was recognised as part of the law of Singapore by Murison CJ in the early Straits Settlements case of *Re Lee Wah Bank Ltd* [1926] MC 5. The case involved the question of whether the court should direct that sums owed to a bank incorporated in Hong Kong be transferred to the liquidators in Saigon or liquidators in Hong Kong. Murison CJ cited the general principle laid down by Vaughan Williams J in *English, Scottish, and Australian Chartered Bank* which we have referred to above (at [56]) and held that as the domicile of the bank was Hong Kong, the funds should be paid to the Hong Kong liquidator. Similarly, in *RBG Resources* ([28] *supra*), Woo J accepted that the common law ancillary liquidation doctrine applied in Singapore, and directed that the Singapore liquidators were at liberty to transmit the Singapore assets of RBG to the English liquidators.
>
> 60 ***There is thus ample authority for the proposition that the common law ancillary liquidation doctrine continues to exist alongside the statutory insolvency regime where no other statutory provision has been made***. This was described by Scott VC in *Re BCCI* (at 246C–D) as a proposition that rested on an "accretion of judicial decisions", and we saw nothing in the Act to exclude the operation of the doctrine to a non-registrable foreign company.
>
> [emphasis added in bold emphasis]

68 The extract above from *Beluga Chartering* makes several points clear. First, the ancillary liquidation doctrine encompasses a wide range of powers allowing the Singapore court to render assistance. This was alongside the power to grant recognition of the title of the foreign liquidator and recognition of the foreign liquidation proceedings: *Beluga Chartering* at [86]–[99]. The crucial point is that these powers are in relation to foreign insolvency proceedings, indicating that the court does have subject-matter jurisdiction.

69 Secondly, and more crucially, such powers were long-established as part of Singapore's common law even before the adoption of the UNCITRAL Model Law. It thus cannot be said that the UNCITRAL Model Law conferred such jurisdiction on the Singapore court in respect of foreign liquidation proceedings.

As the Plaintiff rightly notes, it was a jurisdiction that the Singapore court already had.

70 What then was the utility of introducing the UNCITRAL Model Law? To answer this, I refer once again to Mr Tong's speech where he stated as follows:

> … The Model Law was designed, not to make insolvency laws in different countries uniform, but to supplement existing laws.
>
> …
>
> Currently, the provisions in the Companies Act do not assist in the facilitation of cross-border insolvencies. Take the example of a company which wants to enter into a scheme of arrangement, but has subsidiaries in other jurisdictions, where the real value resides. It would be no use for the holding company to apply for a scheme and a moratorium in Singapore, but to have creditors take action against his other assets located in other jurisdictions. In fact, this was an issue which came up in a recent High Court decision in Pacific Andes case.
>
> This is where the UNCITRAL Model Law comes in to supplement our insolvency laws. Under this framework, a foreign insolvency practitioner can apply to the Singapore Court for recognition of insolvency or restructuring proceedings in another country. When recognition is granted, the Court then has a range of options from which to grant relief.

71 The phrase of "supplement existing laws" where the "Companies Act [does] not assist in the facilitation of cross-border insolvencies" indicates that a lacuna previously existed under our insolvency regime. That lacuna, however, was not in relation to the court's subject-matter jurisdiction, as evident from Re *Pacific Andes Resources Development Ltd and other matters* [2018] 5 SLR 125 ("*Pacific Andes*"), the same decision referred to by Mr Tong.

72 In *Pacific Andes*, Pacific Andes Resources Development Ltd ("PARD"), Parkmond Group Limited ("PGL"), Pacific Andes Enterprises (BVI) Limited

("PAE") and Pacific Andes Food (Hong Kong) Limited ("PAF") each filed applications under s 210(10) of the Companies act for moratoria against proceedings brought or to be brought against them by their creditors, both in Singapore and elsewhere. The court allowed the applications and granted two sets of orders, the "PARD orders" in relation to PARD, and the "Obligor Orders" in relation to PGL, PAE and PAF. Both sets of orders provided that the moratoria were as regards "actions or proceedings in Singapore or elsewhere". A question thus arose as to whether the court had powers under s 210(10) of the Companies Act to restrain the commencement or continuation of proceedings elsewhere by creditors within and subject to the jurisdiction of the court. The court held that s 210(10) could not be construed as conferring extra-territorial jurisdiction. This was because "a scheme of arrangement is territorial in nature and therefore the protective relief that s 210(10) offers to facilitate a scheme ought to also be territorial": *Pacific Andes* at [18]. Crucially, the court then went on to consider a counter argument raised by counsel, at [19]:

> Secondly, it was argued that the moratoria, while expressed as restraining proceedings elsewhere, would only apply to creditors within jurisdiction. It was pointed out that the PARD Orders and the Obligors Orders had specific carve outs to exclude creditors who were out of jurisdiction. The argument appeared to be that the moratoria would only enjoin the creditors who were within jurisdiction and participating in the Applications from commencing proceedings outside Singapore. In substance, the argument was that the court was in substance exercising *in personam* jurisdiction and not any extra-territorial jurisdiction over these creditors. I have difficulty with this argument. The court has subject matter jurisdiction by reason of s 210 so long as the applicant is a "company" within the definition provided in s 210(11). In exercising subject matter jurisdiction over the scheme, creditors who are within the jurisdiction or participating in the scheme and whose debts are legitimately subject to the scheme would be subject to the *in personam* jurisdiction of the court. The court, having subject matter jurisdiction over the scheme and *in personam* jurisdiction over these creditors, is then able to exercise its powers to restrain such creditors only within the

> limits of s 210(10). And, for the reasons expressed earlier, s 210(10) does not have the reach that the Applicants contend for.

73 It is apparent from the extract above that the court did, in fact, possess subject-matter jurisdiction over the scheme proposed in *Pacific Andes*. It also had *in personam* jurisdiction over creditors who participated in the scheme, and whose debts were legitimately subject to the scheme. I have no reason to doubt the reasoning of Kannan Ramesh JC (as he then was) as to the *powers* that the court has under s 210(10) of the Companies Act. I note, however, that Ramesh JC noted that "[t]he court has subject matter jurisdiction *by reason* of s 210 [of the Companies Act]" [emphasis added]. In my view, Ramesh JC was not suggesting that subject-matter jurisdiction was *statutorily conferred* by the Companies Act. The Companies Act simply *clarified or affirmed* that the Singapore High Court had subject-matter jurisdiction in the specific context of schemes of arrangement under the Companies Act. This would be in line with the pre-existing unlimited subject-matter jurisdiction pursuant to s 16 SCJA (see [34], [45] and [55] above). This point is further bolstered by the fact that the common law ancillary liquidation doctrine is well-entrenched and exists beyond s 210 of the Companies Act.

74 The only limiting factor was that s 210(10) did not confer the power, or the extra-territorial jurisdiction, to restrain the commencement or continuation of proceedings elsewhere. This harks back to the distinction in the definitions drawn in *Indo Commercial Society* ([23] *supra*), between the authority of a court to hear a case (*ie*, jurisdiction) and the power of the court to grant particular reliefs claimed.

75 It was this power, or extra-territorial jurisdiction, conferred under the

Companies Act that was sought to be expanded through the introduction of the UNCITRAL Model Law. Subject-matter jurisdiction, or the existence thereof, was never the target of the amendments; the courts always had such subject-matter jurisdiction in relation to foreign insolvency proceedings, as explained above at [65]–[69].

76 The Defendant has thus failed to even demonstrate that the UNCITRAL Model Law conferred *subject-matter jurisdiction* that did not already exist.

77 Accordingly, the Defendant's argument in this regard again suffers from the same fundamental misconception of law. As stated above at [55], the Singapore court does not require *enabling* legislation in order to have jurisdiction in any particular subject-matter. Such subject-matter jurisdiction already exists by virtue of s 16(1) SCJA. The Defendant has not pointed to any particular article or provision within the UNCITRAL Model Law or elsewhere that indicates otherwise.

Section 107(1) of the Cayman Bankruptcy Law

78 Having decided as above, it is not strictly necessary for me to deal with this issue of s 107(1) of the Cayman Bankruptcy Law, as well as the doctrine of modified universalism. For completeness, however, I set out the arguments of parties and also my views on the matter.

79 The Defendants argue that s 107(1) of the Cayman Bankruptcy Law does not serve to confer subject-matter jurisdiction on the Singapore court to hear the matter for several reasons:

(a) First, only Singapore legislation can confer subject-matter jurisdiction upon the Singapore court.

(b) Secondly, the Plaintiff's own Cayman Law expert Mr Henderson QC, accepts this in the expert report that he provided because he states at paragraph 14 that:

> "… As in the case of most statutes, the [Cayman Bankruptcy] Law says nothing about whether and in what circumstances a foreign court may exercise its jurisdiction to decide a matter by applying a rule or enforcing a remedy set out in the [Cayman Bankruptcy] Law. That is a question of private international law and must be decided by the foreign court in accordance with its own view of private international law principles."

(c) Thirdly, the jurisdictional provisions under the Cayman Bankruptcy Law themselves only seek to confer jurisdiction on the Cayman courts and not to any foreign courts.

80 I agree with the Defendants in this respect. A foreign legislation such as s 107(1) of the Cayman Bankruptcy Law cannot be the basis upon which the Singapore court's subject-matter jurisdiction is founded. Such jurisdiction must be grounded in Singapore legislation, in this case s 16(1) SCJA as stated above at [23]–[59].

81 This was not a point that the Plaintiff dealt with head-on at the hearing before me. Instead, the Plaintiff argued that the Singapore court is no stranger to adjudicating on matters relating foreign law, and that its powers are not limited simply because a claim or rule arose under a foreign statute.[6] Heavy reliance was placed on the English decision of *Phrantzes v Argenti* ([29] *supra*).

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6 Plaintiff's Written Submissions at paras 27–28.

82 In *Phrantzes v Argenti*, the plaintiff was a Greek national who had recently married in England. Having done so, she brought proceedings against her father, the defendant, seeking a declaration that he was obligated under Article 1495 of the Greek Civil Code to provide her with a dowry. Such a dowry was property granted to the husband and was constituted by a contract entered into with the husband by a notarial deed. Should a bride's father fail to provide a dowry, the bride had a cause of action in the Greek courts to obtain an order requiring him to conclude a dowry contract with the groom. Counsel for the defendant mounted the argument, which Lord Parker CJ recorded as follows at 31–32:

> … it is said on behalf of the defendant that even if what is sought to be enforced here is a proprietary right, which is denied, it will not be enforced unless it comes within one or other of the definite rules enumerated by Dicey, e.g., in regard to infants, marriage, succession or bankruptcy. To go outside those rules would lay the way open to the enforcement of a number of rights which it is said these courts have never enforced. For example, the English courts will not enforce the duty under a foreign system of law of a parent to maintain his child or vice versa, …

83 This argument, however, was rejected by Lord Parker CJ, who stated at 33–34 that:

> Indeed, if this were the only point in the case I would hold that this was a right which could be enforced here. As Cardozo J. said in *Loucks. v Standard Oil Co. of New York* [(1918) 224 NY 99, 110,111]: "If aid is to be withheld here, it must be because the cause of action in its nature offends our sense of justice or menaces the public welfare. … Our own scheme of legislation may be different. We may even have no legislation on the subject. That is not enough to show that public policy forbids us to enforce the foreign right. A right of action is property. If a foreign statute gives the right, the mere fact that we do not give a like right is no reason for refusing to help the plaintiff in getting what belongs to him. We are not so provincial as to say that every solution of a problem is wrong because we deal with it otherwise at home. Similarity of legislation has indeed this

> importance: its presence shows beyond question that the foreign statute does not offend the local policy. But its absence does not prove the contrary. It is not to be exalted into an indispensable condition. … The sovereign in its discretion may refuse its aid to the foreign right. … From this it has been an easy step to the conclusion that a like freedom of choice has been confided to the courts. But that, of course, is a false view. … The courts are not free to refuse to enforce a foreign right at the pleasure of the judges, to suit the individual notion of expediency or fairness. They do not close their doors unless help would violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal."

84 As a starting point, Lord Parker CJ thus regarded the English courts as having subject-matter jurisdiction, notwithstanding the fact that the claim was based on Greek legislation. This, in essence, was the reason for the Plaintiff's reliance on the case: that the *mere fact* that the cause of action arises under a foreign legislation is no bar to it being adjudicated in Singapore.[7] That surely must be correct. Going beyond this, in my view, *Phrantzes v Argenti* also demonstrates the point I made earlier at [55] that: the courts have unlimited subject-matter jurisdiction, unless or until that is precluded by some legislation or case law. That position is codified in Singapore by way of s 16(1) SCJA, retaining the general unlimited jurisdiction of the Singapore court: Yeo's Chapter ([23] *supra*) at p 257.

85 It should be noted that ultimately, in *Phrantzes v Argenti*, Lord Parker CJ held that the Plaintiff was not entitled to the relief sought. This was because the right provided to the plaintiff was for an order requiring the father to instruct a notary public to draw up the contract in accordance with the directions of the court. In order to provide such directions, however, the court necessarily had to

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7 Plaintiff's Written Submissions para 33.

exercise a considerable amount of discretion that would appropriately have been the remit of the domestic Greek courts. On that basis, Lord Parker CJ declined to exercise jurisdiction over the matter at 34–35 as follows:

> Before the order can be made the court must inquire into the extent of the father's fortune and that of his daughter. The court must further consider the respective social position of the father and son-in-law, that is their positions in the Greek or other community where each is living, and decide what is the appropriate amount of dowry. It must decide, if the point is raised, whether the daughter has committed a fault within article 1497. It will often have to decide in all the circumstances what the dowry is to consist of, how much of it shall be land, how much movables, whether any part of it is to consist of the usufruct from property and, if so, for how long it is to be granted, whether the use of a house free of rent is to be provided, and, in addition, what are to be the terms as to ownership of the dowry whether movable or land… ***All these inquiries and decisions are essentially matters for the domestic courts, and matters largely for the discretion of those courts and not our courts***. … Here it seems to me that ***the considerations which I have enumerated above, taken as a whole, must involve a very large measure of discretion, and that it would be quite wrong for our courts to claim jurisdiction in the matter***.
>
> [emphasis added in bold italics]

86 Additionally, English law did not provide for the relief sought by the plaintiff, to the extent that the English remedies did not "harmonise with the right according to its nature and extent as fixed by the foreign law": *Phrantzes v Argenti* at 35.

87 These were extremely valid concerns before Lord Parker CJ, and once again emphasise the fact that certain matters have been regarded as non-justiciable (see above at [53]). The Defendants, however, have not demonstrated how rendering assistance in foreign avoidance claims violates any fundamental sense of justice, offends any public policy or involves such a large measure of discretion such that the court should decline to exercise jurisdiction in this

instance. Further, unlike the situation in *Phrantzes v Argenti*, the power to set aside disputed disposal of assets in the context of bankruptcies is a familiar remedy available in Singapore.

The principle of modified universalism

88 The Plaintiff's next argument was that the principle of modified universalism calls upon the Singapore court to hear claims involving foreign insolvency proceedings.[8]

89 Modified universalism refers to the idea of "domestic courts acknowledging the effects and status of foreign insolvency proceedings in the place of a company's incorporation [and] carries with it a further principle: that the courts will actively assist the foreign insolvency proceeding": Richard Sheldon QC, Cross-Border Insolvency (4th Ed, Bloomsbury) at 6.11. This principle has been recognised and endorsed by the Singapore court in *Beluga Chartering* ([66] *supra*) at [99], Re *Opti-Medix Ltd (in liquidation) and another matter* [2016] 4 SLR 312 at [17], Re *Taisoo Suk (as foreign representative of Hanjin Shipping Co Ltd*) [2016] 5 SLR 787 ("Re *Taisoo Suk*") at [15]–[18], Re *Gulf Pacific Shipping Ltd (in creditors' voluntary liquidation) and others* [2016] SGHC 287 at [10] and *Heince Tombak Simanjuntak and others v Paulus Tannos and others* [2019] SGHC 216 ("*Heince Tombak*") at [21]–[22].

90 This principle of assistance also applies as much to personal bankruptcies as to corporate insolvencies, as recognised by Aedit Abdullah J in *Heince Tombak* at [21].

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8 Plaintiff's Written Submission

91 That said, as the Plaintiff candidly acknowledges, the principle of modified universalism only operates as a *broad statement of principle*. This was explicitly recognised in *Beluga Chartering*, where the Court of Appeal stated at [99] as follows:

> … ***Whether and how the Singapore court will render assistance to foreign winding-up proceedings through the regulation of its own proceedings will depend on the particular circumstances before it***. Assistance might, for example, take the form of a stay of a claim if Singapore is not the *forum conveniens*; or staying an execution or attachment; or exercising a discretion against granting a garnishee order absolute; or refusing leave to serve process out of the jurisdiction; or winding up the company in Singapore. We would observe, however, that the commencement of legal proceedings against a defendant foreign company or an attempt to levy execution against its assets is not precluded by the mere fact that insolvency proceedings have been commenced against the company in another jurisdiction.
>
> [emphasis added in bold italics]

92 The existence and adoption of the principle in Singapore's insolvency and bankruptcy laws hence only serves as a general indication that the courts will be less inclined to find that it has no subject-matter jurisdiction. Logically, the existence of such subject-matter jurisdiction is a distinct, and indeed anterior, question that must be answered. The court would be getting ahead of itself by utilising the principle of modified universalism to *find* such subject-matter jurisdiction. This issue is, in any event, moot in the present case given my findings in the preceding sections of this Judgment.

Whether the Defendants have submitted to the Singapore court's jurisdiction

93 As its primary line of argument on *in personam* jurisdiction, the Plaintiff argues that the Defendants have submitted to the Singapore Court's jurisdiction for the following reasons:

(a) The Defendants did not object to the Court's jurisdiction for about four and a half months from the time when they were served with the Singapore injunction until the setting-aside application.

(b) The Defendants invoked the Singapore court's jurisdiction on multiple occasions.

(c) The application to vary the injunction in this case should uniquely be taken as submission to the court's jurisdiction as the Defendants specifically *chose* the Singapore court and made the application without a concurrent jurisdictional challenge.

94 The Defendants have met the Plaintiff's arguments head-on, and argue that they have *not* submitted to the court's jurisdiction because:

(a) They expressly reserved their right to challenge the Singapore court's jurisdiction.[9] The burden is thus on the Plaintiff to demonstrate how the Defendants can be considered as having submitted to the Singapore court's jurisdiction.[10]

(b) Apart from mere silence or inaction being insufficient to amount to submission,[11] there were good reasons for the delay in filing the jurisdictional objections.[12]

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9 Defendant's Written Submissions, paras 59–60.

10 Defendant's Written Submissions, para 61.

11 Defendant's Written Submissions, para 64.

12 Defendant's Written Submissions, para 65.

(c) In any case, the period of delay was within the time limits of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("Rules of Court") for mounting a jurisdictional challenge as the Suit had been stayed by the Plaintiff's own application.[13]

(d) The Defendants cannot be taken to have submitted to the jurisdiction of the Singapore court based on the lack of any objection raised before the Cayman courts.[14]

(e) The application to vary the injunction did not amount to submission as it was consistent with the Defendant's earlier reservation of rights.

(f) The Plaintiff would not suffer any prejudice should the Defendants be allowed to pursue the jurisdictional challenge.[15]

95 The principles on submission to jurisdiction have been well-canvassed by the Court of Appeal in *Zoom Communications Ltd v Broadcast Solutions Pte Ltd* [2014] 4 SLR 500 ("*Zoom Communications*") and *Shanghai Turbo Enterprises Ltd v Liu Ming* [2019] 1 SLR 779 ("*Shanghai Turbo*"). The general principles may be summarised thus:

(a) Whether a party is taken to have submitted to the court's jurisdiction is a question of fact in each case: *Zoom Communications* at [32]; *Shanghai Turbo* at [32].

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13 Defendant's Written Submissions, paras 66–70.

14 Defendant's Written Submissions, para 71.

15 Defendant's Written Submissions, para 78.

(b) A defendant is taken to submit to jurisdiction when he takes a step in the proceedings that is incompatible with the position that the Singapore court has no jurisdiction. This test has been succinctly summarised as follows:

(i) Such submission may be inferred through a "step that is 'only necessary or only useful' if: (a) any objection to the existence of the local court's jurisdiction has been waived; or (b) no such objection has ever been entertained at all": *Zoom Communications* at [43]; see also *Shanghai Turbo* at [44] and *Dicey, Morris and Collins on the Conflict of Laws* (Lord Collins of Mapesbury gen ed) (Sweet & Maxwell, 15th Ed, 2012) at paras 11-129 to 11-130.

(ii) Phrased differently, a party's conduct only amounts to a submission where it "cannot be explained, except on the assumption that the party in question accepts that the court should be given jurisdiction": *Shanghai Turbo* at [37], citing *Global Multimedia International Ltd v Ara Media Services* [2007] 1 All ER (Comm) 1160 at [27].

(c) Consequently, any conduct amounting to submission must be clear and unequivocal: *Zoom Communications* at [44]; *Shanghai Turbo* at [37]–[38].

96 Having heard parties' submissions on the matter, I find that the Defendants had indeed submitted to the court's jurisdiction, for two cumulative reasons: the failure of the Defendants to file a formal jurisdictional challenge until 9 June 2020, coupled with the steps they have taken in these proceedings.

The Defendants' failure to file a prompt jurisdictional challenge

97 I note at the outset that the Defendants had reserved their position to challenge the court's jurisdiction. This was done extremely early in the proceedings, in the first Defendant's first affidavit filed on 6 February 2020.[16] It was thus clear that by this point in time, the Defendants were aware that it was open to them to object to the court's jurisdiction, should they choose to do so. This objection, however, did not materialise for nearly four and a half months, when the present jurisdictional challenge was filed on 9 June 2020.

98 The Defendants explain that there were "good reasons" for this delay, and it was not that they had sat on their hands for the entire period. They claim that at the time, they needed funds for their Singapore lawyers' advice and representation. As a result, the first defendant directed a funds transfer to the Defendants' solicitors, Shook Lin & Bok. This transfer was objected to by the Plaintiff, who alleged that it was an improper transfer in breach of the Singapore Injunction. The Defendants thus claim that they were "left with no choice" but to file the Clarification Application. The Clarification Application was only heard on 20 April 2020. In May 2020, the Defendants thus sought counsel's advice and filed the present application to challenge the Singapore court's jurisdiction.

99 This account of impecuniosity and a rush to secure funding for the sole purpose of challenging the Singapore court's jurisdiction suffers from several defects. First, if the Defendants truly had in mind the aim of challenging the Singapore court's jurisdiction, the natural course of action would have been to

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16 1st Affidavit of Olga Pelletier at Joint Bundle Tab 10, para 7.

apply to discharge the Singapore Injunction on the ground that the court lacked jurisdiction. There was simply no need to take the roundabout route of filing the Clarification Application, purportedly to obtain funds, so that they could then commence the present application.

100 Secondly, as was rightly pointed out by Mr Ong, the Plaintiff had consented to the payment of US$20,000 to the Defendants' solicitors on 3 March 2020. Such funds would have been sufficient for the Defendants to bring a jurisdictional challenge before the courts slightly over a month after filing the first Defendant's 6 February 2020 affidavit.

101 Thirdly, having personally heard the Clarification Application, I did not believe that the Defendants simply had no access to other funds for their expenses. Indeed, as I held at the Clarification Application, it appeared that apart from the Singapore assets subject to the Singapore Injunction, there were also trust assets outside of Singapore that could be used for the Defendants' needs despite the first Defendant's protestation that this was subject to the discretion of the trustee *whom she herself appointed*. At that time, as I had also considered the possibility that such assets might be subject to the Cayman Injunction, I had provided the Defendants an opportunity to address me on that. Unfortunately, they did not provide any information. My observations in this regard have since been proven to be correct. In the present application, the Plaintiff has exhibited a document indicating that the Defendants had, on 25 May 2020, obtained substantial funds from the Pelletier Family Trust.[17] While this was after the hearing on 20 April 2020, it brings into question the Defendants' assertion of

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17 4th Affidavit of Margot MacInnis, para 16 and exhibit MM-34.

insufficient funding to meet expenses. When seen in totality, the Defendants' account of events is far from the *cri de coeur* that they make it out to be.

102 The Defendants also argue, in this connection, that they should not be taken to have submitted to the court's jurisdiction because the present application was within the time limit under the Rules of Court. Specifically, O 12 r 7(1) of the Rules of Court provides as follows:

> **Dispute as to jurisdiction, etc.**
>
> 7.—(1) A defendant who wishes to dispute the jurisdiction of the Court in the proceedings by reason of any such irregularity as is mentioned in Rule 6 or on any other ground shall enter an appearance and within the time limited for serving a defence apply to the Court for –
>
> (*a*) an order setting aside the writ or service of the writ on him;
>
> (*b*) an order declaring that the writ has not been duly served on him;
>
> (*c*) the discharge of any order giving leave to serve the writ on him out of the jurisdiction;
>
> (*d*) the discharge of any order extending the validity of the writ for the purpose of service;
>
> (*e*) the protection or release of any property of the defendant seized or threatened with seizure in the proceedings;
>
> (*f*) the discharge of any order made to prevent any dealing with any property of the defendant;
>
> (*g*) a declaration that in the circumstances of the case the Court has no jurisdiction over the defendant in respect of the subject-matter of the claim or the relief or remedy sought in the action; or
>
> (*h*) such other relief as may be appropriate.

103 The relevant sub-provisions are (*a*), (*c*), (*f*) and (*g*), which are all applications that the Defendants presently seek. In this regard, the Defendants

argue that the timelines for the relevant applications have been extended by virtue of the stay granted in the Stay Application (as canvassed above at [14(b)]). As a result, the present applications do not fall afoul of O 12 r 7(1) of the Rules of Court.

104 This argument misses the point. Order 12 r 7(1) stipulates the time limits for challenging the court's jurisdiction; its effect is to disallow challenges made beyond such limits, unless an extension has been granted: *Singapore Civil Procedure 2020* vol 1 (Chua Lee Ming gen ed) (Sweet & Maxwell, 2020) ("*Singapore Civil Procedure*") at para 12/7/4. Contrary to the Defendants' submission, O 12 r 7(1) does not have the added effect of *negating* any submission to jurisdiction simply because challenges are subsequently brought within the time limits. It is accordingly irrelevant *vis-à-vis* the issue of submission.

105 Assuming, for the sake of argument, that O 12 r 7 of the Rules of Court is relevant, the Defendants' argument – that the timelines for the relevant applications have been extended by virtue of the stay granted (see [103] above) – still would gain no traction. The order granted pursuant to the Stay Application expressly stated that the Plaintiff's action was stayed *save for* "the application for injunction prohibiting disposal of assets against the [Defendants], *and service out of jurisdiction on the [Defendants]*" [emphasis added].[18] If the application for leave to serve out of jurisdiction was not stayed, there is no reason why the timeline for any potential challenge to the grant thereof would be extended. The fact that the timelines for defence had been extended is

[18] HC/ORC 429/2020 granted in HC/SUM 213/2020.

irrelevant and does not, in any way, grant a right to extension of time to object to the grant of leave for service out of jurisdiction.

Steps taken by the Defendants in the proceedings

106 Further, and importantly, the policy underlying O 12 r 7 of the Rules of Court is to ensure that a defendant should not be regarded as having submitted to jurisdiction simply because he entered appearance, *inter alia*, to contest that jurisdiction or seek a stay of proceedings: *Singapore Civil Procedure* at para 12/7/1. It is for that very policy that, as stated in *Singapore Civil Procedure* at para 12/7/3(3):

> If a defendant chooses to make an application under r.7(1) he should not meanwhile serve a defence or take any step inconsistent with his stand that the court has no jurisdiction. …

107 The central question is whether the Defendants had taken a step or steps inconsistent with objecting to the court's jurisdiction. On balance, I find that the Defendants had taken such steps that were inconsistent with their reservation or challenge to jurisdiction.

108 First, the Defendants' failure to raise a formal challenge constituted more than mere inaction. I have alluded to this above. The Defendants had reserved their own rights to challenge the court's jurisdiction, but failed to exercise the rights in prompt fashion and (as explained) have not offered any good reason why they did not do so. Thus, in my view, there is no other explanation than that they had accepted the court's jurisdiction at the time.

109 Beyond their inaction, the Defendants had, in fact, taken an active step in the proceedings, through the Clarification Application. Through that

application, the Defendants had sought the court's determination on, *inter alia*, (a) the appropriate limit of the first Defendant's living expenses; (b) whether the Defendants were at liberty to utilise the Singapore assets to pay for legal representation in other jurisdiction; (c) whether the first Defendant could pay for the legal expenses of other parties; and (d) whether the first Defendant could be permitted to pay any future sums of money due to various third parties from funds in her Singapore bank account. The variations sought were wide-ranging and encompassed various issues but the inference to be drawn is clear: they all spoke to an acceptance that the Singapore Injunction would remain in place and that the Defendants were only trying to determine the limits that they could work around. These are acts evincing, in these circumstances, acceptance of the court's jurisdiction.

110 The Defendants point to the case of *Shanghai Turbo* ([95] *supra*) in support of their case. In *Shanghai Turbo*, the plaintiff sued the defendant for breach of a service agreement, obtaining leave to serve out of jurisdiction on the defendant in China. The plaintiff also sought, and was granted, two injunctions, one against the defendant and another against two non-parties. The non-parties filed a summons to vary the injunction granted against them, in which the defendant participated, arguing for the injunction to be varied despite not being a party. An issue thus arose as to whether the defendant had submitted to the court's jurisdiction despite his express reservation of rights. The Court of Appeal held that he had submitted to jurisdiction. This was because the application to vary the injunction brought by the non-parties was, in substance, an application for an injunction against the plaintiff; and the defendant had participated in this despite not being compelled to do so (*Shanghai Turbo* at [33]). Crucially, the court thus concluded that the defendant's conduct was not

merely defensive and amounted to an invocation of the court's jurisdiction (*Shanghai Turbo* at [42]).

111 With respect, *Shanghai Turbo* does not support the Defendants' case here. While that case makes clear that a clearly offensive step in the proceedings will usually be construed as invoking the court's jurisdiction, that does not mean that that such step is *essential* for a finding of submission to jurisdiction. The principal inquiry still remains as that set out above in [95(b)(i)]–[95(b)(ii)], as well as the scrutiny of *any steps* taken by the Defendant, as explained at [107] above.

112 Relevant, also, is the Application to Restore Funds (see [17] above). This application would not be in and of itself dispositive. But in context, it is clear that the actions of the parties pursuant to that application buttress my finding that the Defendants have submitted to the court's jurisdiction. It must be remembered that in the Application to Restore Funds, the parties *agreed* that the Defendants were to, *inter alia*, provide the Plaintiff with evidence of payments made from the GPM account since the Singapore Injunction was served on 23 January 2020. These matters pertaining to the GPM account, and the parties' agreement in regard thereto, are *substantive matters* that are at the heart of the Singapore Injunction, which was issued in exercise of this court's jurisdiction. One would have expected the Defendants to have adopted an entirely different course of action if they intended to challenge the court's jurisdiction; they would not have substantively participated in the Application to Restore Funds, or even if they did, they ought not to have given their *agreement* to facilitate the Plaintiff's investigation of funds *falling within the scope of the Singapore Injunction*. Their conduct speaks to their having submitted to the court's jurisdiction.

113 In my view, the various steps earlier taken by the Defendants in these proceedings collectively indicate that this challenge to jurisdiction was a much-belated afterthought, after they had already submitted to the court's jurisdiction. This is perhaps best illustrated by the fact that immediately following the Clarification Application, the Defendants' first recourse was still not to challenge the court's jurisdiction. Instead, as mentioned above at [16], they filed the Leave to Appeal Application. That, if anything, was the clearest indication that the Defendants submitted to the court's jurisdiction, the exercise of which they sought to invoke. In their submissions, the Defendants note that they will be withdrawing the Leave to Appeal Application, indicating that the Singapore Injunction "will stand, or fall" depending on my finding here. In this vein, they have also written to the Plaintiff's solicitors on 13 July 2020, indicating the same. This belated *volte-face* does not assist them for the Defendants have now been hoisted by their own petard and have submitted to the court's jurisdiction.

Whether the Singapore court has *in personam* jurisdiction over the defendants: *forum non conveniens*

114 As a result of the Defendants' submission to the Singapore court's jurisdiction, the courts have *in personam* jurisdiction over the Defendants under s 16(1)(*b*) SCJA. There however remains a further issue in relation to *in personam* jurisdiction: that of the proper forum. Where a foreign defendant is sued in Singapore, the issue of proper forum arises at two different stages of the proceedings. The first stage is when the plaintiff applies for leave to serve the defendant out of jurisdiction under O 11 r 1 of the Rules of Court. To obtain such leave, three requirements must be satisfied, namely that:

(a) the plaintiff's claim comes within one of the heads of claim in O 11 r 1 of the Rules of Court;

(b) the plaintiff's claim has a sufficient degree of merit; and

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

These requirements are well-established and endorsed in various decisions including *Zoom Communications* ([95] *supra*) at [26], *Siemens AG v Holdrich Investment Ltd* [2010] 3 SLR 1007 ("*Siemens AG*") and *PT Gunung Madu Plantations v Muhammad Jimmy Goh Mashun* [2018] 4 SLR 1420 ("*PT Gunung*") at [29].

115 At the second stage, after a foreign defendant has been served with the originating process, the issue of a proper forum arises again should that defendant seek a stay of proceedings on the ground of improper forum, albeit if the issue was dealt with in the first stage (in an application for service out of jurisdiction), there may not strictly be a need to rehash the issue in the second stage. This is subject of course to any fresh points raised by the foreign defendant, given that as a matter of practicality, applications under the first stage are often heard *ex parte*.

116 It is generally accepted that the same test applies at both of these stages, namely, the two-stage test enunciated in *Spiliada Maritime Corporation v Cansulex Ltd (The Spiliada)* [1987] AC 460 (the "*Spiliada* test"). Under the *Spiliada* test the court will first determine whether, *prima facie*, there is some other available forum that is clearly or distinctly more appropriate for the case to be tried in. If the court concludes that that there is, the court will deny leave to serve outside jurisdiction or (as the case may be) grant a stay unless there are circumstances by reason of which the justice of the case requires that a stay should nonetheless not be granted: *Rappo, Tania v Accent Delight International Ltd and another and another appeal* [2017] 2 SLR 265 at [68]–[69]; *Rickshaw*

Investments Ltd v Nicolai Baron von Uexkull [2007] 1 SLR(R) 377; *Best Soar Ltd v Praxis Energy Agents Pte Ltd* [2018] 3 SLR 423 at [15].

117 The rare common ground between the parties to this hearing is that Singapore is *forum non conveniens* in respect of the Plaintiff's claim under s 107(1) of the Cayman Bankruptcy Act.[19] This was rightly, in my view, conceded by the Plaintiff early in the proceedings where in support of the Singapore Injunction, it stated as follows:

> In the present case, the Plaintiff acknowledges that the Cayman Court is the more appropriate forum for its avoidance claim to be tried. Nevertheless, the Plaintiff seeks leave to serve the Defendants out of jurisdiction on the ground that the present case is a proper one for service out, as it would otherwise be deprived of substantial justice if leave is not granted.

118 Under stage one of the *Spiliada* test, the Cayman Islands thus constitute the other forum that is more appropriate for the case to be tried, as per the Plaintiff's concession. It is at this point that the parties' arguments diverge.

119 The Defendants argue that as a result of such concession, the Plaintiff is unable to satisfy the requirements in *Zoom Communications* ([95] *supra*). Interpreting the language used by the Plaintiff as an application of the *Spiliada* test, the Defendants argue that stage two of the *Spiliada* test does not apply in the context of a Mareva injunction so as to confer jurisdiction on the court. In any event, there is no substantial injustice to the Plaintiff that would result from having the case heard in the Cayman courts.

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[19] Plaintiff's Written Submissions para 82; Defendant's Written Submissions para 45–46, 54–55.

120 On the other hand, the Plaintiff contends that in cases such as the present, where the court's jurisdiction is invoked to obtain a Mareva injunction in aid of foreign proceedings, the *forum conveniens* requirement should not apply as it is "inherently ill-suited" to such situations.[20] The fact that the Mareva injunction is to support foreign proceedings must of necessity mean that the foreign court, rather than the Singapore court, is *forum conveniens*.

121 There are thus two issues for me to deal with at this juncture, where Singapore is *forum non conveniens*:

(a) Whether the *forum conveniens* requirement may be dispensed with where a Mareva injunction is sought in aid of foreign proceedings; and

(b) Assuming the first issue is answered in the negative, whether stage two of the *Spiliada* test applies nevertheless so as to enable the Singapore court to assume jurisdiction in the interests of justice.

122 Before moving to these issues, I observe the unique circumstances at present, given my finding that the Defendants have *submitted* to the court's jurisdiction by way of the steps (or lack thereof) they have taken in these proceedings (see [93]–[113] above). On its face, this situation presents an anomaly in so far as, on the one hand, the Defendants have submitted to the court's jurisdiction (implying that the court has *in personam* jurisdiction), whereas on the other, the parties agree that Singapore is *prima facie* not the natural forum (suggesting that the court should decline to exercise jurisdiction).

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20 Plaintiff's Written Submissions para 97.

123 In my view, this is no insurmountable hurdle. First, the apparent contradiction arises from the interface between *my findings* (on submission) and the parties' arguments on *forum non conveniens*; the Defendants have maintained a consistent position (*ie*, submission is absent, *and* Singapore is not the natural forum). Secondly, there is a fine but real distinction between the existence of jurisdiction and the court's willingness to exercise this jurisdiction (I elaborate below at [158]). Thirdly, and flowing from the second point, notwithstanding the submission of a party to the court's jurisdiction, the court may *proprio motu* refuse to exercise its jurisdiction if the issue of natural forum arises and the court is not satisfied that Singapore is the natural forum. *This arises from considerations of comity* that undergird the doctrine of *forum non conveniens* as a principle of private international law. Consider the situation where parties submit to the Singapore court's jurisdiction to determine a dispute which is clearly and indisputably connected to a foreign jurisdiction, and the justice of the case does not warrant resolution of the same in the Singapore court. In such cases, it would run against the tenor of international comity, and indeed the basal notion of reaching a fair and just resolution to the dispute, for the Singapore court to insist on exercising its jurisdiction in the face of a separate forum in which it would be clearly more suitable and just to hear the dispute. Accordingly, even though I have found for the Plaintiff on the issue of submission, the *forum non conveniens* issue merits serious consideration.

Whether the* forum conveniens *requirement may be dispensed with

124 The Mareva injunction, termed after the eponymous case of *Mareva Compania Naviera SA v International Bulkcarriers SA; The Mareva* [1980] 1 All ER 213, seeks to restrain a defendant from dissipating his assets to frustrate the enforcement of a plaintiff's claim. It is a "potent tool" that has become

"firmly entrenched in our legal system": *Bi Xiaoqiong (in her personal capacity and as trustee of the Xiao Qiong Bi Trust and the Alisa Wu Irrevocable Trust) v China Medical Technologies, Inc (in liquidation) and another* [2019] 2 SLR 595 ("*Bi Xiaoqiong*") at [1].

125 Despite its drastic effects, it should not be forgotten that the Mareva injunction remains, at its very core, ancillary to a main substantive cause of action. Its role is entirely supportive in function to that main action. Owing to this ancillary nature, the court's jurisdiction to grant a Mareva is thus less clear when the justiciability of the main action is brought into question.

126 In *Multi-Code Electronics Industries (M) Bhd and another v Toh Chun Toh Gordon and others* [2009] 1 SLR(R) 1000 ("*Multi-Code*"), the plaintiffs had commenced an action in Malaysia against the five defendants over disputes concerning several escrow and share agreements. The plaintiffs also managed to obtain a worldwide Mareva injunction in Malaysia against the first and fourth defendants. The plaintiffs then commenced an action in Singapore against the first, third and fourth defendant seeking almost identical relief as that in the Malaysian action, and also obtained a Mareva injunction preventing them from disposing of their Singapore assets. The first, third and fourth defendants applied for the Singapore proceedings to be stayed, *inter alia*, on the ground of *forum non conveniens*. They also applied for the discharge of the Mareva injunctions against them.

127 Chan Seng Onn J found, on balance, that Malaysia was clearly the more appropriate forum as the dispute had much more to do with Malaysia. A stay of the Singapore proceedings was thus granted on the ground of *forum non conveniens*. Concurrently, Chan J also held that the court could maintain the

Mareva injunction in aid of foreign proceedings under s 4(10) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("CLA") notwithstanding that the Singapore proceedings were stayed, stating at [112] as follows:

> In conclusion, *a stay of proceedings would not remove this court's residual jurisdiction to hear the plaintiffs' cause of action*, for instance, if the stay were to be subsequently lifted for whatever reason. Nor could it mean that a cause of action which was initially justiciable was no longer justiciable merely because of a stay order that merely suspended the Singapore proceedings. It did not mean the end of proceedings in Singapore as a striking out would. When an action has been struck out, that puts the Singapore action at an end. Under those circumstances, I can accept the proposition that a Mareva injunction, which has to be an ancillary to a substantive action, could no longer continue. But implicit in a stay of proceedings is the fact that the plaintiffs' action still subsists. Such a stay could potentially be lifted, for example, where the Malaysian judgment could not be registered and enforced in Singapore because the restrictions on registration in s 3 of the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264) applied.
>
> [emphasis added]

128 I acknowledge that in *Multi-Code*, the *in personam* jurisdiction over the defendants was never in doubt. The first and third defendants were Singapore citizens resident in Singapore and the fourth defendant was a company registered in Singapore: *Multi-Code* at [57]. Nevertheless, Chan J made clear that the court must first have *in personam* jurisdiction over a defendant before it can consider granting a Mareva injunction pursuant to s 4(10) of the CLA. In fact, Chan J specifically stated that the existence of *in personam* jurisdiction was a *pre-requisite* to the grant of the Mareva injunction (see *Multi-Code* at [85] and [99]). At [85] of his judgment, the learned judge specifically stated as follows:

> In my judgment, s 4(10) of the CLA conferred a general power on the court to grant Mareva relief, even though the Singapore action was stayed and the continuation of the Mareva relief

> against the assets in Singapore and the defendants was in a sense in support of ***foreign court proceedings*** which were continuing. This was, however, provided that certain jurisdictional pre-requisites were met, namely: (a) the court ought in the first place to have clear *in personam* jurisdiction over the defendants for the Singapore action that was brought; and (b) the "stayed" action had not been struck out because there was a reasonable accrued cause of action under Singapore law and the other reasons under O 18 r 19 for striking out did not apply, and the writ had also not been set aside on the basis that the court had no jurisdiction to hear or try the matter. Once these preliminary jurisdictional criteria were satisfied, the court's jurisdiction to grant Mareva relief would then materialise.
>
> [emphasis in original]

129 A situation more analogous to the present facts arose in *PT Gunung* ([114] *supra*), where the plaintiff company commenced an action against the defendant, an ex-employee, alleging that the latter had breached several duties owed as director and employee. The plaintiff purported to serve the writ of summons on the defendant in Indonesia, subsequently obtaining a judgment in default of appearance against the defendant and a garnishee order to show cause in respect of the defendant's three bank accounts in Singapore. When the defendant came to learn of the garnishee orders, he filed various applications in Singapore seeking, *inter alia*, an order that the court had no jurisdiction over him. In response, the plaintiff filed an application for a Mareva injunction in respect of the Defendant's assets in Singapore. At the hearing before Woo Bih Li J, the plaintiff did not attempt to argue that Singapore was the *forum conveniens* when compared to Indonesia; and neither did it argue that it would be deprived of substantial justice if it was allowed to continue with the action in Singapore: *PT Gunung* at [31], [34] and [41]. The question thus arose whether the court had jurisdiction or power to grant a Mareva injunction in aid of foreign proceedings notwithstanding that Singapore was not the *forum conveniens*.

130 Woo J held that the court had no power in those circumstances. The decision in *Multi-Code* ([126] *supra*) was affirmed for the proposition that the court must first have *in personam* jurisdiction against a defendant before the power under s 4(10) of the CLA could be invoked: *PT Gunung* at [46]. Woo J's observations at [49]–[50] are apposite in this regard:

> It seems to me that the Plaintiff had conflated two questions similar to those mentioned by Lord Mustill in *Mercedes-Benz v Leiduck* [1996] 1 AC 284 ("*Mercedes-Benz*") at 297-198. The first question was whether the court has *in personam* jurisdiction over the Defendant. The second question is concerned with a different kind of jurisdiction, or more accurately, a power (as Lord Mustill put it), namely, whether the Court has a power to grant [a Mareva injunction] to restrain the Defendant from disposing of his assets in Singapore pending the conclusion of foreign court proceedings. Therefore, **it is only if the court has *in personam* jurisdiction over the Defendant (*ie*, if the first question is answered positively), that the second question arises**. It is in the context of the second question that s 4(10) CLA becomes relevant and it was the second question that the Court of Appeal in *Swift-Fortune* has so far left open.
>
> The Plaintiff was attempting to telescope s 4(10) of the CLA into s 16(2) of the SCJA 2007. But s 4(10) CLA does not found *in personam* jurisdiction over any defendant. **It only confers a *power* on the court once *in personam* jurisdiction is founded against the defendant**. Those two concepts must be kept distinct. As Chan Sek Keong J observed in *Muhd Munir v Noor Hidah* [1990] 2 SLR(R) 348 at [19]:
>
> > The jurisdiction of a court is its authority, however derived, to hear and determine a dispute that is brought before it. The powers of the court constitute its capacity to give effect to its determination by making or granting the orders or relief sought by the successful party to the dispute.
>
> [emphasis added in bold; emphasis in original in italics]

131 While recognising the holdings in *PT Gunung*, the Plaintiff argued that parties there had not in fact contended or suggested that the requirement of *forum conveniens* was inapplicable or should not be read into O 11 r 2(2) of the Rules of Court as a pre-requisite for the grant of service out when the plaintiff

applied for Mareva relief in support of foreign proceedings. Woo J thus did not have the benefit of full arguments on this point.

132 Even so, in my view, that is not a sufficient basis to depart from *PT Gunung*. In fact, it would appear that Woo J had specifically directed his mind to the interplay between a Mareva injunction and the *forum conveniens* requirement, making the following observations at [61]–[63]:

> Even where an application for service of process out of jurisdiction is included with an application for an MI, the requirement of *forum conveniens* may be overlooked as it is not expressly stated in the ROC 2014. While O 11 r 2(2) does state that no leave is to be granted unless the case is a proper one for service out of jurisdiction, its terms do not expressly state that Singapore must be the *forum conveniens*. The requirement of *forum conveniens* was pronounced by the courts, as mentioned above.
>
> The risk of a judge overlooking the requirement of *forum conveniens* for an application for leave to serve out of jurisdiction is greater when the application for an MI is not combined with an application for service out of jurisdiction as the latter may be heard separately by a Registrar.
>
> This case therefore highlights the importance of a judge hearing an application for an MI against a foreign defendant to bear in mind the *forum conveniens* requirement for an application for leave to serve an originating process out of jurisdiction on a foreign defendant, whether or not the application for such an MI is combined with an application for leave to serve out of jurisdiction. If the Plaintiff is unlikely to satisfy the requirement of *forum conveniens* and leave to serve out of jurisdiction is unlikely to be granted, then an MI should not be granted even on an *ex parte* basis.

133 To further bolster their argument, the Plaintiff cited an article written by the Defendants' own instructing counsel, Mr Probin Dass, "*Singapore – Mareva Injunctions in Aid of Foreign Court Proceedings*" (published 12 March 2019 on conventuslaw.com/report/Singapore-mareva-injunctions-in-aid-of-foreign/). Commenting on *PT Gunung* ([114] *supra*), Mr Dass writes that:

> The problem is that, in such cases, the plaintiff is asking the Singapore court for a Mareva injunction specifically in support of foreign court proceedings. The plaintiff is therefore expressly saying that he believes the foreign court is the forum conveniens. However, by saying this, he will find it impossible to obtain leave to serve the originating process on the foreign defendant in the first place. The pre-requisite of in personam jurisdiction over the defendant may never be satisfied if the defendant is outside the jurisdiction and the Mareva injunction is sought in support of foreign court proceedings.
>
> As highlighted by Woo J in PT Gunung Madu, the requirement of forum conveniens is not expressly spelled out in O 11 but is based on a judicial interpretation of O 11 r 2(2), which is a general requirement that leave to serve out of the jurisdiction should only be made where the court is satisfied that the case is a "proper one" for service out of Singapore. It should not be too difficult for a court to pronounce that where a plaintiff is seeking a Mareva injunction against a foreign defendant and in support of foreign court proceedings, "the case is a proper one for service out of Singapore" without the need for the plaintiff to show that Singapore is the forum conveniens. To require a plaintiff to show that Singapore is the forum conveniens in circumstances where he has commenced the foreign court proceedings and wants to pursue such proceedings to judgment, would make it impossible for a plaintiff to obtain a Mareva injunction in support of such foreign court proceedings.
>
> This is a significant and unnecessary limitation on the Singapore court' powers under section 4(10) of the Civil Law Act. However, it is within the power of the courts to remove this limitation if an appropriate opportunity arises. …

134 Preliminarily, I concur with the observations made by Woo J in *PT Gunung* at [30] that the legal basis for the *forum conveniens* requirement (as above at [114(c)]) appears to be O 11 r 2(2) of the Rules of Court. With due respect to Mr Dass, however, I am unable to agree that the open texture in the expression "proper one for service out of jurisdiction" facilitates doing away with the *forum conveniens* requirement. First, to do so would fly in the face of the weight of authorities that have long accepted the *forum conveniens* requirement as necessary for service out of jurisdiction, and as having its provenance in the expression "proper one for service out of jurisdiction".

135 Secondly, *as the law presently stands*, the argument here conflates and impermissibly "telescopes" s 4(10) of the CLA into the requirements for service out of jurisdiction, borrowing the terms used by Woo J (*PT Gunung* at [50]). Logically, the need to establish *in personam* jurisdiction is anterior to any question involving a grant of Mareva injunction. It would be putting the cart before the horse to modify the requirements for *in personam* jurisdiction in order to accommodate a subsequent application for a Mareva injunction.

136 Faced with the weight of the authorities, the Plaintiff submitted that the requirement in O 11 r 2(2) of the Rules of Court that "the case is a proper one for service out of Singapore" requires re-interpretation where the Singapore court's jurisdiction is invoked for the purpose of obtaining ancillary relief in support of foreign proceedings. A number of points were raised in support of this, which are worth canvassing in detail.

137 First, the Plaintiff pointed out that the commonly accepted understanding that Singapore must be *forum conveniens* traditionally utilised in accordance with the *Spiliada* test is not found in the language of O 11 r 2(2) of the Rules of Court but has its origins in pronouncements by the courts. Indeed, as was noted in *Spiliada* itself at 480–481, in the context of applications for service *ex juris* under Order 11:

> … statutory authority has specified the particular circumstances in which that power may be exercised, but *leaves it to the court to decide* whether to exercise its discretionary power in a particular case, while providing that leave shall not be granted 'unless it shall be made sufficiently to appear to the court that the case is a proper one for service out of jurisdiction…

138 Secondly, it was argued that the requirement that the case must be a "proper one" for service out of Singapore had never been considered or

interpreted by the Court of Appeal in the context of a case where the jurisdiction of the Singapore Court had been invoked for the purposes of obtaining Mareva relief in support of foreign proceedings. For instance, *Siemens AG* ([114] *supra*), where the Court of Appeal accepted that the third requirement for leave for service out of jurisdiction was that Singapore must be *forum conveniens*, was not a case involving Mareva relief in support of foreign proceedings. I note that *Zoom Communications* ([95] *supra*) was also not such a case.

139 Thirdly, as a matter of principle, the court's circumspect approach for service out of jurisdiction is partly due to the traditional notion that a foreigner having nothing to do with the local jurisdiction should not be inconvenienced by having to defend his rights in a foreign country. Reference was made to *Ocean Steamship Co Ltd v Queensland State Wheat Board* [1941] 1 KB 402 at 417, which states as follows:

> I should have been little disposed to regard this as a case in which the Court should exercise its discretion in their favour or, in the words of Order XI., r. 4, as a proper case for service out of the jurisdiction. It should never be forgotten that the jurisdiction which the Legislature has permitted our courts to assume over persons who are physically outside their jurisdiction and are often the subjects of foreign states must always be exercised with discrimination and with scrupulous fairness to the defendant. … [It is] always a very serious question whether "a foreigner who owes no allegiance here" should be put to "the inconvenience and annoyance of being brought to contest his rights in this country.

140 In the Plaintiff's view, these considerations play a lesser role in today's interconnected and borderless world (referring to *Multi-Code* ([126] *supra*) at [117]). This was particularly so where the need for Mareva relief in Singapore was precisely because the Defendants had made a concerted effort to disperse their assets across various jurisdictions.

141 Lastly, it was submitted that the *Spiliada* test was developed to constrain judicial discretion in the context of selection between competing jurisdictions. Such constraint was necessary in the interests of comity between jurisdictions: *Amin Rasheed Shipping Corporation v Kuwait Insurance Co* [1984] 1 AC 50 at 65. In circumstances such as the present, where the court's jurisdiction was invoked in aid and support of foreign proceedings, comity instead would dictate a more permissive approach allowing the court to deal with situations such as international fraud (relying on observations made in *Multi-Code* at [154]).

142 Having considered the submissions and authorities at great length, I find these arguments advanced by the Plaintiff to be eminently persuasive. I would have been inclined to adopt its submission that the requirement for *forum conveniens* would not be necessary in situations such as the present, in particular where transnational fraud is alleged and the principles of territoriality are, as it were, being exploited by the alleged fraudster. The obstacle to that, however, is that the change advocated for by the Plaintiff is one that is directly at odds with the observations of the Court of Appeal in *Bi Xiaoqiong* ([124] *supra*).

143 In *Bi Xiaoqiong*, the liquidator of China Medical Technologies, Inc and CMED Technologies Ltd (the "Companies") commenced proceedings in Hong Kong and Singapore against several members of the former management. The principal allegation was that as much as US$521.8m has been fraudulently misappropriated by these members of the former management. Two separate suits were commenced in Hong Kong in August 2013 and December 2016. On 11 December 2017, the Hong Kong High Court also granted the Companies a worldwide Mareva injunction. On 13 December 2017, the Companies commenced Suit No 1180 of 2017 ("Suit 1180") in the High Court of Singapore and also applied by way of Summons No 5689 of 2017 ("SUM 5689") for a

series of Mareva injunctions, to prevent the dissipation of assets in Singapore only. On 20 February 2018, the Companies applied to stay Suit 1180, save for proceedings in SUM 5689, pending the final determination of the Hong Kong suits. The Judge in the High Court heard both applications together, granting the Mareva injunction and allowing the application to stay Suit 1180. The appellant appealed the Judge's decision on the grant of the Mareva injunction arguing, *inter alia*, that it was a pre-requisite to the exercise of the court's power to grant interlocutory relief that the plaintiff have a cause of action that could terminate in a judgment in Singapore. Consequently, once a case was stayed, the court did not have the power to grant interlocutory relief.

144 The Court of Appeal rejected this argument, holding that the court retained a residual jurisdiction over the underlying cause of action such that a Mareva injunction could be granted even where a stay of that action was sought (at [104]). It was also critical that the temporary nature of a stay implied the possibility that the matter would be revived and fully dealt with, indicating that the action "remain[ed] on the court's record, and [was] alive though asleep" (at [107]). A further reason for the Court of Appeal's finding was that the Mareva injunction, regardless of how it was used, was premised on, and in support of, proceedings *in Singapore* (at [112]–[114]). This was also made clear in the observations at [118] as follows:

> 118 For completeness, we also address a submission raised by Mr Hee at the appeal hearing. The main thrust of this submission was as follows: an action *must* terminate in a final judgment in Singapore in order to support the jurisdiction of the court to grant a Mareva injunction, and that *if there is even a possibility that it may not* so terminate, then the injunction would cease to be treated as an *interlocutory* injunction, and therefore the court had no power to grant it. We did not accept this submission. The Mareva injunction is inherently an interlocutory injunction, and its character is not altered by whether final judgment is or is not obtained here. Its

> interlocutory nature is derived from the fact that it is sought not as the main or substantive claim in and of itself, but only as ancillary relief to a separate substantive claim. The respondents' substantive claims against the appellant appear by endorsement on the writ served on her. Their application for a Mareva injunction was made in support of these claims and, therefore, was unarguably for interlocutory relief.

145 I am cognisant that *Bi Xiaoqiong*, like *Multi-Code* ([126] *supra*), involved a situation where the court already had *in personam* jurisdiction over the defendants. Nevertheless, the Court of Appeal made clear that the court should not grant a free-standing injunction in situations where the plaintiff has no intention, or indeed is unable, to pursue an action in Singapore. The natural implication of this was that the Singapore court would first have to have *in personam* jurisdiction over a defendant *before* it could even grant a Mareva injunction. This was observed by the Court of Appeal at [119] as follows:

> 119 While we did not agree that the intention of a plaintiff could change the interlocutory nature of a Mareva injunction, we considered that Mr Hee's submission, slightly recast, had some force. As noted earlier, the ***Singapore court cannot exercise any power to issue an injunction unless it has jurisdiction over a defendant***. Under our law, the court has jurisdiction over all defendants who have been served with a writ. Every writ carries an endorsement of claim that explicitly purports to seek certain relief from the Singapore court. It is therefore arguable that any power of the court must, implicitly, be exercised for the purpose of preserving and protecting the jurisdiction that the court has over the defendant. Thus, in the usual case, a Mareva injunction is granted to enable the court to safeguard assets to protect the integrity of the jurisdiction it has taken over a defendant so that if the plaintiff's claim is proved, that jurisdiction will not be rendered toothless. Where, as here, it appears from the plaintiff's application to stay its own action, that the plaintiff does not in the end intend to seek relief from the Singapore court, it may be argued that the plaintiff is seeking that the Singapore court takes jurisdiction over the defendant for a collateral purpose: this purpose being to safeguard assets in Singapore in order to safeguard the exercise of the jurisdiction of a foreign court rather than to safeguard the exercise of the Singapore court's own jurisdiction. *There is nothing in s 4(10) of the CLA to suggest that it ever contemplated*

> *that the Singapore court could take jurisdiction over a party, not intending to ultimately exhaust that jurisdiction in a manner that terminates in a judgment here, but as a means of securing and safeguarding the exercise of jurisdiction by a foreign court.* ***In that situation, therefore the court should not exercise its power to grant an interlocutory injunction****.*
>
> [emphasis added in italics and bold italics]

146 These pronouncements in *Bi Xiaoqiong* therefore make clear that before any inquiry on injunction can be undertaken, the Singapore court must already possess jurisdiction over the defendant. As a consequence, Singapore would already need to be *forum conveniens* before a Mareva injunction can be granted.

147 By virtue of the holding in *Bi Xiaoqiong*, I do not accept the Plaintiff's submission that in situations where Singapore is not *forum conveniens*, that requirement should be dispensed with to allow a Mareva injunction sought in aid of foreign proceedings. For completeness, I would note that the situation in the present case is not one in which a free-standing injunction was granted. There is a Singapore action for the injunction to latch on to, as analysed below at [160]–[162]. This Singapore action is distinct from the Plaintiff's claim under s 107(1) of the Cayman Bankruptcy Act, for which Singapore is not the natural forum – this is critical to my eventual conclusion and must be borne in mind.

Several observations

148 Notwithstanding my conclusion above that the *forum conveniens* requirement remains a part of Singapore law, I pause to make several observations here. The ancillary, supportive, function of a Mareva injunction (as noted above at [125]) by very definition mandates the existence of a main action in which substantive rights are vindicated. Where jurisdiction already exists as of right, but the action is merely stayed, no issue arises because the

action remains justiciable and able to ground a Mareva injunction.

149 As in this case, difficulties with the *forum conveniens* requirement arise where jurisdiction can only be established by leave of court allowing service out of jurisdiction. An anticipated or putative cause of action cannot be the basis for a Mareva injunction. Such difficulties may also arise where Singapore is not the natural forum even though a theoretical action falls within one of the heads of O 11 r 1 of the Rules of Court. In such cases, leave to serve out of jurisdiction would still not be granted and there would be no basis for a Mareva injunction.

150 In my view, the concerns raised by Mr Ong and Mr Dass (in his article) are extremely valid, from a practical point of view. The gridlock caused by the *forum conveniens* requirement has the potential to create a legal quandary for which the present state of the law proffers no elegant solution. As pithily put by Lord Nicholls of Birkenhead in his dissent in *Mercedes Benz AG v Leiduck* [1996] 1 AC 284 at 305:

> The first defendant's argument comes to this: his assets are in Hong Kong, so the Monaco court cannot reach them; he is in Monaco, so the Hong Kong court cannot reach him. That cannot be right. That is not acceptable today. A person operating internationally cannot so easily defeat the judicial process. There is not a black hole into which a defendant can escape out of sight and become unreachable.

151 This state of the law becomes more untenable when one considers that it may be allowing more instances of cross-border fraud and easy dissipation of assets to occur today. I have alluded to this in my observations above on the "exploitation" of the principle of territoriality by perpetrators of international frauds. These observations were also made by Prof Yeo in his paper "Private International Law: Law Reform in Miscellaneous Matters", presented for consideration of the Law Reform Division of the Attorney-General's Chambers

("Recommendations for Reform"). Advocating for reform of the jurisdictional rules to allow the courts to assume jurisdiction in instances where the substantive cause of action was not heard in Singapore, Prof Yeo stated at paragraph 49 as follows:

> The common law position is that it is proper to support litigation abroad. The problems discussed above arise because of technical limitations of jurisdictional rules. It is consistent with developments in the concept of the natural forum that in cases where the Singapore court would have heard the case but for the fact that another forum is more appropriate (whether the action is commenced by service within or outside the jurisdiction), the Singapore court is justified in acting to protect the plaintiff's claim to interlocutory protection from potential dissipation of the defendant's assets. Moreover, in an era where cross-border fraud is rampant, the Singapore court should be seen to be doing its part to fight this malaise. The problem is not a serious one where interlocutory relief is available in the foreign court hearing the case, and the defendant has assets in that jurisdiction, but it can be very serious if the defendant has no assets in the natural forum, and substantial assets in Singapore which the orders of the foreign court for some reason or other cannot or will not reach.

152 There is therefore, in my view, much force in the argument to allow the courts power to grant Mareva injunctions even where the substantive dispute may not be heard Singapore. This path forward is not an untrodden one. In fact, as recognised by Woo J in *PT Gunung* ([114] *supra*) at [55]–[56], at least two options are available:

> 55 In Australia, the courts are prepared to grant relief by way of a freezing order against a defendant who is outside of their territorial jurisdiction in aid of foreign proceedings on the basis of the courts' inherent jurisdiction, see: James J Spigelman, "Freezing Orders in International Commercial Litigation" (2010) 22 SAcLJ 490 at 497–501. There, the freezing order is not regarded as a species of injunction.
>
> 56 In the United Kingdom, primary and secondary legislation have been passed to address the situation, see: Civil Jurisdiction and Judgments Act 1982 (c 27) (UK), s 25, Civil

> Jurisdiction and Judgments Act 1982 (Interim Relief) Order 1997 (SI 1977/302) (UK).

153 Additionally, a move in this direction would bring us in line with s 12A of the International Arbitration Act (Cap 143, 2002 Rev Ed) where judicial remedies may be sought in aid of foreign arbitrations: *PT Gunung* at [60]; see also Recommendations for Reform at paragraph 41. It would make little sense if the courts are less equipped than arbitral tribunals to prevent injustices occasioned by international fraud.

154 That said, I accept that the court is, at present, bound by the weight of authorities such as *Bi Xiaoqiong* ([124] *supra*). Such change can come about only by amendment to legislation (as Woo J also recognised in *PT Gunung* at [51]), or by the Court of Appeal if it deems fit.

Whether stage two of the **Spiliada** *test can nevertheless confer jurisdiction*

155 Having found that, in the present state of the law, the *forum conveniens* requirement is still necessary, I deal now with the question whether the second stage of the *Spiliada* test can confer jurisdiction (or more precisely, warrant an exercise of jurisdiction), notwithstanding that Singapore is *forum non conveniens*.

156 As stated above at [116], it is generally accepted that the same two-stage *Spiliada* test applies to (a) leave applications for service outside of jurisdiction; and (b) applications to stay proceedings. The question whether the second stage of the *Spilida* test applies to leave applications for service outside of jurisdiction was left open in *Oro Negro Drilling Pte Ltd and others v Integradora de Servicios Petroleros Oro Negro SAPI de CV and others and another appeal*

(Jesus Angel Guerra Mendez, non-party) [2020] 1 SLR 226, where the Court of Appeal stated at [80(d)] as follows:

> In the event that Singapore was not the more appropriate forum, **it was an open question whether the second stage of the *Spiliada* test was applicable in the context of leave applications for service outside jurisdiction** (*ie*, whether the Singapore court can nevertheless grant leave for service out if the plaintiff can show that substantial justice cannot be done in the otherwise appropriate forum). … However, given our determination that Singapore was clearly the more appropriate forum in this case, and since this point was not argued before us, it was not necessary for us to express any view on it.

157 In *Konamaneni v Rolls Royce Industrial Power (India) Ltd* [2002] 1 WLR 1269, the minority shareholders in a company incorporated in India brought a derivative action on its behalf against two English companies. These shareholders essentially alleged that the English companies had bribed the Indian company's managing director in order to procure specific favours. Although the claim was therefore that they were victims of fraud, they argued that there would be no remedy since the Indian company was in effect controlled by the wrongdoers. The shareholders sought and obtained permission to serve the proceedings out of jurisdiction on the Indian company. The defendants then applied to set aside that order on the ground that the court had no jurisdiction and for a stay of proceedings on the ground of *forum non conveniens*. Collins J found that India was the more appropriate forum in that case. However, he went on to consider the issue whether there was substantial injustice, stating at [175]–[176] as follows:

> 175 … the burden is on the claimants to show that England is clearly the more appropriate forum, and if they do not discharge that burden, that is the end of the matter and there is no room (as there is in the case of staying actions) for the English court to retain jurisdiction if the claimant shows that it would be unjust for him to be deprived of a remedy on the

> ground that … "substantial justice cannot be done in the appropriate forum".
>
> 176 … in the context of service out of jurisdiction there is only room for such an argument if the injustice in what would otherwise be the appropriate forum is such that it cannot be regarded as an "available forum". In such a case it might be argued that England is clearly the more appropriate forum, because there is no effective alternative. …

158 I agree with the observations made by Collin J in the extract above. The inquiry that the court undertakes at the stage of the stay application is quite distinct from the inquiry for leave for service outside jurisdiction. In applications for stay on the grounds of *forum non conveniens*, the defendant accepts the court's jurisdiction, but is asking the court to exercise its discretion to decline exercise of jurisdiction. Similar to my observations above at [134], however, in an application for leave for service outside of jurisdiction, the court is concerned with the logically anterior question whether it even has jurisdiction in the first place (see *Zoom Communications* ([95] *supra*) at [32]). It would be difficult to see how the court can have such broad discretion to allow a party to litigate in Singapore when its jurisdiction has yet to be established. That is why an argument on injustice still has to be targeted towards the issue as to where the appropriate forum lies.

159 In any case, after conceding that Singapore was not *forum conveniens*, the Plaintiff has not put forth further arguments as to why substantial injustice would result if it were not allowed to litigate its claim under s 107(1) of the Cayman Bankruptcy Act in Singapore. The issue here is thus largely academic, and I see no basis to find in favour of the Plaintiff in this regard. That, of course, does not render Singapore *forum non conveniens* as regards the *entirety* of the Plaintiff's claim. As alluded to at [147], the analysis above on *forum non conveniens* is restricted to the Plaintiff's claim under s 107(1) of the Cayman

Bankruptcy Act. The court will decline to exercise its jurisdiction as regards this aspect of the claim, but not in regard to the Plaintiff's claim grounded in *Singapore* legislation, which I consider in the next section.

Whether the Singapore injunction should have been granted

160 The final argument that the Defendants raise is that the Singapore Injunction should not have been granted as the Plaintiff had no intention of pursuing an action in Singapore and merely wanted a free-standing injunction. I agree with the Defendants that the law is clear in this regard. A collateral or ulterior purpose in seeking a Mareva injunction is sufficient to deny a plaintiff such relief; this is so even where the plaintiff establishes a good arguable case and a real risk of dissipation of assets: *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2018] 2 SLR 159 at [98]–[102]; *Bi Xiaoqiong* ([124] *supra*) at [118]–[120].

161 As stated above at [147], however, I find that the injunction sought in this case was not a free-standing one. The basis for the Defendants' argument here is that at the time that the injunction was sought, it was *primarily* in support of the Cayman proceedings that were already under way at the time. This is made clear from the first affidavit of Margot MacInnis's, one of the appointed agents of Plaintiff. In this affidavit, Ms MacInnis stated that the "key purpose" for the suit was to "obtain the urgent ancillary reliefs herein in support and aid of the Cayman Avoidance Proceedings".[21] It was reiterated at multiple points

21 1st Affidavit of Margot MacInnis dated 20 Jan 2020 at para 86.

that the suit was filed for the "purpose" or "primary purpose" or "key purpose" of supporting the Cayman proceedings.[22]

162 I accept that if that had remained the *only* purpose for which the suit was brought, then the injunction should not have been granted. That, however, is not the case here. At the latest tranche of the hearings, the Plaintiff clarified that the claims asserted in the Writ of Summons were also premised on s 73B of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) ("CLPA"), which provides that:

> **Voluntary conveyances to defraud creditors voidable**
>
> **73B.**—(1) Except as provided in this section, every conveyance of property, made whether before or after 12th November 1993, with intent to defraud credits, shall be voidable, at the instance of any person thereby prejudiced.
>
> …

163 It appears that this is indeed an applicable provision for the Plaintiff to bring its claim under. The Plaintiff has constantly maintained that certain conveyances, gifts or transfers of property from Mr Pelletier to the Defendants should be set aside on the basis that they had been wrongfully conveyed.[23] I make this observation, of course, without going fully into the merits of this claim, which is more appropriately done at trial.

164 The Defendants raise two objections in relation to the CLPA claim. First, they argue that this claim had not been sufficiently pleaded and therefore should

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22 Plaintiff's Written Submissions dated 16 Jan 2020 at paras 21, 38, 70.

23 Endorsement of Claim dated 14 Jan 2020.

not be allowed.[24] In the Endorsement of Claim, annexed to the Writ of Summons, the Plaintiff had stated that:

> This is a claim by the Trustee-in-bankruptcy of the estate of Richard Paul Joseph Pelletier ("Mr Pelletier"), appointed by order of the Grand Court of the Cayman Islands (in cause number FSD 193 of 2019) issued on 8 November 2019, against the 1st and 2nd Defendants to avoid or set-aside certain transactions pursuant to section 107(1) of the Bankruptcy Law (1997 Revision) of the Cayman Islands, **and/or such other relief(s) as may be available under applicable law**, including but not limited to the following transactions:-
>
> (i) transfer of Can$20,000,000.00 from, or on behalf of, Mr Pelletier to Olga Pelletier on or around 27 June 2014;
>
> (ii) transfer of US$4,735,074.03 from Mr Pelletier to PDP Holdings Inc. on or around 1 September 2015;
>
> (iii) transfer of Can$12,798,522.71 from Mr Pelletier to PDP Holdings Inc. on or around 1 September 2015;
>
> (iv) transfer of US$264,925.97 from Mr Pelletier to PDP Holdings Inc, on or around 11 September 2015; and
>
> (v) transfer of Can$1,201,477.29 from Mr Pelletier to PDP Holdings Inc. on or around 15 September 2015;
>
> in respect of which the Plaintiff claims:-
>
> a. Declarations that the above conveyances, gifts or transfers of property from, or on behalf of, Mr Pelletier, are void against the Plaintiff as the Trustee-in-bankruptcy of the estate of Mr Pelletier pursuant to section 107(1) of the Bankruptcy Law (1997 Revision) of the Cayman Islands and/or were wrongfully conveyed to the Defendants and are liable to be avoided;
>
> b. Interest;
>
> c. Costs; and
>
> d. Such further and/or other relief as this Honourable Court deems fit.

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[24] Transcript of 9 September 2020 p 15

[emphasis added in bold underline]

165 It might have been better if the Plaintiff had expressly stated a Singapore cause of action in addition to the claim under s 107 of the Cayman Bankruptcy Law. It is also difficult to fathom why counsel had not taken out an application to amend the Endorsement of Claim earlier. In my view, however, that is not fatal to their case as the emphasised words in the extract above are sufficiently broad to encompass the claim under s 73B of the CLPA. While Mr Singh did not dispute this, he noted that "speaking from [his] experience", a claim based on a statutory cause of action required the statute to be expressly pleaded. It is quite unnecessary for a level of specificity to be mandated in all situations where a statute is relied upon. The circumstances and the facts leading up to the present dispute are reasonably clear in this case and should be adequate basis for the Defendants to formulate their responses.

166 Mr Singh further argues that the words "applicable law" should be construed using a conflict of laws analysis to determine "the applicable law". In his submission, since there are no connecting factors with Singapore, the applicable law cannot be Singapore; therefore, the claim under s 73B of the CLPA, being a Singapore claim does not fall within "the applicable law". This, however, is an unnecessarily strained reading of the terms in the Endorsement of Claim. In my view, the words "under applicable law" of a claim brought in Singapore are just simply that – the applicable law is Singapore law.

167 It would have avoided argument if the Plaintiff had specified the CLPA claim within the Endorsement of Claim. That, however, is not strictly necessary. Endorsements of Claim need only contain a "concise statement of the nature of the claim made", such that the defendant is informed of the nature of the suit and the reasons for the legal action: *Singapore Civil Procedure* at para 6/2/1.

This point is made even clearer when one looks at the requirements for pleadings, provided in *Singapore Civil Procedure* at para 18/7/8 as follows:

> **Pleading facts to enable plaintiff to sue on a statute**—Where the plaintiff's cause of action or title to sue, depends on a statute, he must plead all facts necessary to bring him within that statute …

168 This therefore indicates that it is not necessary for a statute to be expressly invoked in *pleadings*, much less in an endorsement of claim.

169 Further, given the nascent stage of the proceedings for this dispute, it suffices that the claim has now been stated. This is in line with the recent Court of Appeal decision of *Ma Hongjin v SCP Holdings Pte Ltd* [2020] SGCA 106 ("*Ma Hongjin*"), where the court permitted the appellant to raise her arguments notwithstanding the fact that they had previously not been pleaded. In doing so, the court noted that the respondent had not been caught by surprise and that the respondent was also unable to particularise any prejudice that it suffered as a result of the failure to plead the arguments: *Ma Hongjin* at [35]; see also *Fan Ren Ray and others v Toh Fong Peng and others* [2020] SGCA 117 at [12]. The following observations of the Court of Appeal (*Ma Hongjin* at [35]) also bear repeating:

> … The purpose of pleadings is to ensure that each party was aware of the respective arguments against it and that neither was therefore taken by surprise (see the decision of this court in *Liberty Sky Investments Ltd v Aesthetic Medical Partners Pte Ltd and other appeals and another matter* [2020] 1 SLR 606 at [15]–[16]). … Given the circumstances, we were of the view that this was a scenario where the appellant should be permitted to raise her arguments on consideration notwithstanding the fact that they might have been unpleaded as the respondent could be adequately compensated with costs (see the decisions of this court in *OMG Holdings Pte Ltd v Pos Ad Sdn Bhd* [2012] 4 SLR 231 at [18] and *Sun Jin Engineering Pte Ltd v Hwang Jae Woo* [2011] 2 SLR 196 at [20]).

170 The second objection raised was that the Plaintiff did not have any standing to bring the claim under s 73B of the CLPA, as a "person thereby prejudiced" referred specifically to a "creditor or a contingent creditor".[25] A trustee, such as the Plaintiff, therefore did not have standing to bring the claim.

171 This specific issue of *locus standi* under s 73B of the CLPA was considered in *Wong Ser Wan v Ng Bok Eng Holdings Pte Ltd and another* [2004] 4 SLR(R) 464 ("*Wong Ser Wan*"). The defendant in that case submitted that once a debtor had been made bankrupt, any challenge mounted against any disposition of property by that debtor had to be taken by the trustee-in-bankruptcy. Judith Prakash J (as she then was) reviewed a series of English cases before concluding at [22]–[23] that:

> 22 The cases discussed above are all cases that arose from the application of the Elizabethan Statute. We now have different legislation and thus the position is not necessarily the same now as it was previously. As I have said, the Elizabethan Statute does not state who is entitled to institute proceedings under it. Section 73B of our Act (echoing s 172 of the English Act) is, however, explicit on the issue. Anyone who has been prejudiced by a fraudulent conveyance can institute proceedings to avoid it. The drafters of the section must have been aware that the English courts had limited the rights of individual creditors to invoke the Elizabethan Statute once the debtor became a bankrupt. Yet, when they enunciated in s 73B who was able to invoke the statutory protection, they did not differentiate between the situation of a bankrupt debtor and the situation of a non-bankrupt debtor. On the face of the statute, the rights of the creditor to avoid a fraudulent transfer are not affected by the status of the debtor. There is no ambiguity in the language. There is no provision in any other statute, including the Bankruptcy Act, that vests the power to avoid a fraudulent conveyance solely in the trustee in bankruptcy. *I do not see any good reason why the courts should write a limitation into the statute which is not specifically provided for. There would, in my view, be no danger to the general body of creditors*

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25 Transcript of 20 July 2020, p 15 lines 9–15.

> *from allowing one of the creditors to take such action because, if the action succeeds, the property that is recovered or its proceeds must go to the estate of the bankrupt to be distributed by the trustee in bankruptcy and cannot be retained by the creditor who started the action.*
>
> 23 I am therefore of the view that as long as an individual creditor does not seek to keep the fruits of his action for himself alone, he is entitled to commence action under s 73B notwithstanding that the debtor who executed the alleged fraudulent conveyance has since been made a bankrupt. It is my view therefore that Mdm Wong was entitled to bring this action in her own name.
>
> [emphasis added]

172 Prakash J therefore held that in addition to the trustee-in-bankruptcy, an individual creditor *also* had standing to bring such a claim. The upshot of this is that as a starting point, a trustee-in-bankruptcy *always* has *locus standi* to bring a claim under s 73B of the CLPA. This is underscored by the eventual holding in *Wong Ser Wan*, where the plaintiff there was granted leave to bring an action in her own name precisely because the former trustee-in-bankruptcy had done nothing to commence such proceedings.

173 This position must surely be correct. Mr Singh's suggestion that only an individual creditor can bring the claim would take things from the sublime to the ridiculous, resulting in an incredible outcome that is divorced from reality. As I noted in the course of the hearing,[26] it is usually more appropriate for a trustee, who acts on behalf of the creditors who have an interest, to bring the claim on their behalf. This is infinitely sensible and avoids the problem, noted in *Wong Ser Wan* at [23], of an individual creditor seeking to keep the fruits of the litigation to himself.

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26 Transcript of 20 July 2020, p 15 lines 21–26.

174 Based on the foregoing, I find that the Plaintiff is not seeking a free-standing Mareva injunction; the Plaintiff has a substantive claim under s 73B of the CLPA. As regards this claim, I see no reason to find that Singapore is *forum non conveniens*. The Defendants have not made any persuasive arguments to this effect. Accordingly, the claim under the CLPA is sufficient to tether the present dispute to Singapore, and there is no reason for the court to refrain from exercising its validly founded jurisdiction.

175 Accordingly, I find that the Singapore Injunction was properly granted. The court possesses the requisite subject-matter jurisdiction and *in personam* jurisdiction, and there is a substantive dispute in Singapore to which the Singapore Injunction is ancillary.

Conclusion

176 I therefore dismiss the Defendants' application. If the parties wish to submit on costs, they are to inform the court within seven days from the date of this Judgment, and thereafter file submissions on costs limited to 15 pages each (inclusive of annexes) within 14 days from the date of this Judgment. Otherwise, I order costs of the application to be costs in the cause. Costs in the cause, in my view, would be a just outcome in the present case given the attendant concerns of parallel proceedings.

Andrew Ang
Senior Judge

Ong Tun Wei Danny, Bethel Chan Ruiyi, Yam Wern Jhien and Chen Lixin (Rajah & Tann LLP) for the plaintiff;
Probin Stephan Dass, Liew Zhi Hao and Yong Khung Mun, Aloysious (Shook Lin & Bok LLP), Harpreet Singh Nehal SC, Jordan Tan and Victor Leong (Audent Chambers LLC) (instructed) for the defendants.