IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 21

Suit No 664 of 2015
Registrar's Appeals No 269, 270 and 271 of 2016
Summons No 3671 of 2016

Between

TMT Co., Ltd

… *Appellant*

And

(1) The Royal Bank of Scotland PLC (Trading as RBS Greenwich Futures)
(2) The Royal Bank of Scotland PLC (Singapore Branch)
(3) Fred Goodwin
(4) Neena Birdee
(5) Marie Chang

… *Respondents*

JUDGMENT

[Conflict of Laws] – [Stay of court proceedings] – [Natural Forum]

[Arbitration] – [Stay of court proceedings]

TABLE OF CONTENTS

TMT Co Ltd
v
The Royal Bank of Scotland plc (trading as RBS Greenwich Futures) and others

[2017] SGHC 21

High Court — Suit No 664 of 2015 (Registrar's Appeals Nos 269, 270 and 271 of 2016 and Summons No 3671 of 2016)
Aedit Abdullah JC
9 September 2016

7 February 2017 Judgment reserved.

Aedit Abdullah JC:

Introduction

1 The primary question in the present Registrar's Appeals (the "Appeals") is whether a foreign settlement agreement bars Singapore proceedings. By way of background, the Plaintiff, TMT Co., Ltd, a Liberian company, active in Taiwan (the "Plaintiff"), had earlier claimed against the 1st Defendant, The Royal Bank of Scotland PLC, a British Bank (the "1st Defendant") in the English Commercial Court. Subsequently, a settlement agreement was reached between them in England.

2 The Plaintiff then started proceedings in Singapore against the 1st Defendant; the 1st Defendant's Singapore branch office, The Royal Bank of Scotland Plc (Singapore Branch) (the "2nd Defendant"); the 1st Defendant's

then Chief Executive Officer, Fred Goodwin (the "3rd Defendant") and two other employees, Ms Neena Birdee (the "4th Defendant") and Ms Marie Chang (the "5th Defendant") (collectively, "the Defendants").

3 The 1st, 2nd and 5th Defendants applied before the Assistant Registrar ("AR") for a stay of proceedings. The AR granted the stay. The Plaintiff appeals the AR's decision. After the AR rendered her decision, the 3rd Defendant filed an application to set aside the service of proceedings against him. This application forms the subject matter of Summons No 3671 of 2016 ("SUM 3671/2016").

4 For the reasons that I set out below, I dismiss the Appeals and find that the proceedings in Singapore against the Defendants should be stayed. In respect of SUM 3671/2016, I find that the service out of jurisdiction against the 3rd Defendant should be set aside.

Background

5 The Plaintiff, a Liberian Company, is part of a ship-owning group, owned or controlled by Mr Hsin Chi Su, a Taiwan resident. In May 2007, the Plaintiff and the 1st Defendant entered into a contractual relationship, through an agreement referred to as the FFA Account Agreement, under which the Plaintiff traded in forward freight agreements and options ("FFAs" and "FFA options" respectively). These trades were cleared by the 1st Defendant through the London Clearing House ("LCH"), of which the 1st Defendant was a Clearing Member.

6 In July 2007, the Plaintiff also opened a USD Call Deposit Account with the 1st Defendant to facilitate this trading and hold cash for margin

payments for such trades. Although this account was governed by a different agreement (the "Currency Account Agreement"), the parties accept that for the purposes of the present suit, the account operation of the USD Call Deposit Account would be governed by the FFA Account Agreement. The governing law of both the FFA Account Agreement and Currency Account Agreement is English law.

7 The trades carried out eventually resulted in losses for the Plaintiff, and debts were owed to the 1st Defendant. A dispute arose between the Plaintiff and the 1st Defendant as debts arising from the FFAs and FFA options were not paid. Eventually, in August 2010, the Plaintiff and its associates filed a claim in the English Commercial Court against the 1st Defendant, alleging, *inter alia*, (a) breach of contract in respect of the FFA Account Agreement, concerning information as to the requirements for margin; (b) negligence in respect of those matters; (c) breach of statutory duty concerning risk management, and other obligations; and (d) negligent misrepresentation in the account summaries (the "English proceedings"). It was alleged in the English proceedings that the margin requirements were greatly understated, with margin requirements being increased from USD 1.7 million to about USD 120 million; margin calls being increased from about USD 5.7 million to USD 55.5 million and the provision of various security to meet the margin requirements. Allegations were also made about assurances made by the 1st and 2nd Defendants' employees, the omission of variation margin in the analysis of the position relating to the FFA options, the use of incorrect account statements; and the imposition of trading restrictions. It was essentially alleged that the incorrect information provided by the 1st Defendant was relied upon by the Plaintiff to make trading decisions, leading to

substantial losses. The English proceedings was eventually settled by a settlement agreement dated 29 May 2012 (the "Settlement Agreement").

8 The key terms of the Settlement Agreement were as follows:

> 1. **TERMS OF SETTLEMENT**
>
> 1.1 In full and final settlement of all and any claims, counterclaims, causes or rights of action or proceedings of whatsoever nature and howsoever arising whether known or unknown that [the Plaintiff or its associates] have or may have against the Defendant or that the Defendant has or may have against any of the [Plaintiff or associates] arising from or in connection with the Proceedings and/ or the facts and matters as set out in the statements of case and witness statements served in the Proceedings (including any allegations no longer pursued in the proceedings_, the [Plaintiff] shall [arrange for the Defendant to receive a sum].

The Settlement Agreement also provided for English Law to apply (cl 13.1) and that the English Courts were to have exclusive jurisdiction (cl 13.2).

9 Subsequently, on 30 June 2015, the Plaintiff started Suit No 664 of 2015 (the "Singapore proceedings") against the 1st Defendant, its Singapore branch (the 2nd Defendant), Mr Fred Goodwin (the 3rd Defendant), who was the Chief Executive Officer up to November 2008; Ms Neena Birdee, a former employee of Royal Bank of Scotland ("RBS") Hong Kong (the 4th Defendant); and Ms Marie Chang, a former employee of the 2nd Defendant (the 5th Defendant). The 4th Defendant has not entered appearance thus far.

10 In the Singapore proceedings, the Plaintiff alleges that there were improper and erroneous margin requirements imposed by the 1st Defendant in respect of the Plaintiff's trades in FFAs and FFA options, and statements were issued with these erroneous requirements (the "Margin Call Claim"); various collateral and security provided by the Plaintiff to meet the margin calls had

been improperly and erroneously valued (the "Collateral / Security Valuation Claim"); moneys were diverted and instructions delayed by the 1st and/or 2nd Defendant from its USD Call Deposit Account (the "USD Call Deposit Account Claim"); that the 3rd, 4th and 5th Defendants had committed wrongful or fraudulent assistance in respect of wrongful and improper acts by the 1st and 2nd Defendants (the "Wrongful Assistance Claim"); and the Defendants had committed conspiracy to carry out the wrongful acts with the intention of causing loss to the Plaintiff (the "Conspiracy Claim").

11 The 1st, 2nd and 5th Defendants resisted the Plaintiff's claims before the AR, seeking a stay of the Singapore proceedings on various grounds. The Plaintiff, the 1st and 2nd Defendants adduced expert opinions from Queen's Counsels on English law.

The Decision Below

12 The AR granted a stay of the proceedings in favour of the 1st, 2nd and 5th Defendants on 7 July 2016. In reaching this decision, the AR reasoned as follows:

> (a) The Plaintiff was prevented by the Settlement Agreement from making the Margin Call Claim. It was conceded by the Plaintiff's expert and counsel that the Margin Call Claim fell within that Agreement. In any event, the Margin Call Claim and the other claims were disputes arising out of or relating to the Settlement Agreement, which should be determined by an English court, pursuant to cl 13.2 of the Settlement Agreement.

(b) Since the Collateral / Security Valuation Claim, the USD Call Deposit Account Claim and the Conspiracy Claim fell within cl 20 of the FFA Account Agreement, stay should be granted in favour of arbitration.

(c) Stay could also be granted under cl 22 of the FFA Account Agreement as this was an exclusive jurisdiction clause in favour of England.

(d) In any event, England was the more appropriate forum for the dispute, as the connecting factors pointed to England, and stay should be granted in that jurisdiction's favour.

(e) As the proceedings against the 1st and 2nd Defendant should be stayed, a similar result (a point conceded by the Plaintiff's counsel before the AR) should follow in respect of the claim against the 5th Defendant.

The Application by the 3rd Defendant

13 SUM 3671/2016 was filed after the decision by the AR in respect of the 1st, 2nd and 5th Defendants. This was an application by the 3rd Defendant to set aside the service of proceedings against him. SUM 3671/2016 was heard by me, together with the Appeals.

The Plaintiff's Case

14 The Plaintiff obtained an expert opinion from Mr Raymond Cox QC, an English counsel, on the terms of the Settlement Agreement. Mr Cox was of the view that cl 1.1 of the Settlement Agreement did not cover claims not

raised in the English proceedings, or which were not connected to such claims, including through the affidavits or the pleadings. He reasoned that since what the parties intended must be ascertained by their intention at the time of the Settlement Agreement, what was compromised was only what was raised and contemplated in the English proceedings.

15 On this basis, the Plaintiff argues that the general release clause in the Settlement Agreement (cl 1.1) does not exclude claims which were never raised or do not have any connection to the claims raised in the English proceedings. In this vein, the Plaintiff argues that the Settlement Agreement in England does not bar the Singapore proceedings as the English proceedings were fundamentally different. The claims in the Singapore proceedings relate to fraud, conspiracy, diversion of funds, unauthorised use of moneys, and deliberate delay. None of these were raised in the English proceedings. In making this submission, however, the Plaintiff departs from their expert's opinion in respect of the categorisation of the claims: while Mr Cox accepts that some of the Plaintiff's claims are covered by the Settlement Agreement, the Plaintiff argues that the Singapore proceedings are entirely different from those in England.

16 In addition to the above, the Plaintiff makes the following arguments:

(a) Clause 1.1 was not intended as a "clean break" between parties to settle *all* claims arising out of their relationship. The presumed intention was only to settle claims in the English proceedings, concerning the misstatement of margin calls in 2008.

(b) The Arbitration Clause in the FFA Account Agreement did not bar the Singapore proceedings as it was inoperative and incapable of

being performed. In particular, contrary to the words of the Arbitration Clause, there was no relevant exchange, as the London Clearing House is not an exchange. Alternatively, there are strong policy reasons against granting a stay of proceedings.

(c) The arbitration rules governing the LCH Clearing Members are inapplicable because the Plaintiff (who is a non-clearing member) is unable to commence arbitration and/or participate in the arbitration process intended solely for Clearing Members.

(d) On a proper interpretation of the jurisdiction clause in the FFA Account Agreement, it is an asymmetrical non-exclusive jurisdiction clause which operates for the sole benefit of the 1st Defendant. In other words, the Plaintiff must submit to the jurisdiction of the English Courts if the 1st Defendant commenced proceedings there. Otherwise, each party is entitled to commence legal proceedings anywhere else.

(e) The Plaintiff's claims in the Singapore proceedings are more closely connected to Singapore, in view of the involvement of the 2nd Defendant and its representatives, as well as the fraud and conspiracy occurred in Singapore. Singapore is thus the natural forum.

(f) Time and costs would be saved if the proceedings against the Defendants were to continue together in Singapore, rather than the action against the 3rd Defendant stayed alone in favour of England.

1st, 2nd and 3rd Defendants' Case

17 These Defendants similarly obtained an expert opinion on English law on the effect of the Settlement Agreement from Mr Adam Tolley QC. He

concluded that the claims in the Singapore proceedings were all covered by the Settlement Agreement. Applying the usual approach in interpretation, the English Court would identify what a reasonable person with the parties' background knowledge would have understood the contract to require. Mr Tolley reasoned that the primary consideration was that a settlement agreement operating as a general release would have been intended to allow the parties to break cleanly of each other, with a full and final settlement, indicating that there should not be further issues arising out of the settled matter. Thus, it is *highly likely* that the Margin Call Claim and the Conspiracy Claim would be caught by the Settlement Agreement; it would be *likely* that the Collateral / Security Valuation Claim would also be so found, and it is more likely than not that the USD Call Deposit Account Claim is also covered.

18 Further, the 1st, 2nd and 3rd Defendants rely on 4 *alternative* lines of argument to argue for a stay of the Singapore proceedings:

(a) First, since the Plaintiff's claims had been settled by the Settlement Agreement, any dispute about the scope of that agreement should be determined by the English courts pursuant to the exclusive jurisdiction clause in the Settlement Agreement. Accordingly, the entirely of the Singapore proceedings should be stayed in favour of the English courts.

(b) Second, all the claims in the Singapore proceedings arise from or relate to the terms of the FFA Account Agreement. Accordingly, these claims are subject to the arbitration clause contained in the FFA Account Agreement, and thus should be stayed under s 6(1) of the International Arbitration Act (Cap 143A, 2002 Rev Ed) (the "IAA").

(c) Third, all the claims are subject to the exclusive jurisdiction of the English courts under Cl 22 of the FFA Account Agreement.

(d) Fourth, the Singapore proceedings should be stayed on the ground of *forum non conveniens* because England is a clearly more appropriate forum.

5th Defendants' Case

19 The 5th Defendant, who was not a party to the Settlement Agreement, argues primarily on the basis that stay should be granted on the grounds of *forum non conveniens*.

20 The 5th Defendant argues that in respect of the various claims made, the witnesses, the place of business of the 1st Defendant (which dealt with the Plaintiff the most), the transactions and events, the management of the account, the governing law, all pointed to England as the more appropriate forum. Further, she contends that there would be no breach of substantial justice if the trial was conducted in England. The 5th Defendant also highlights her limited role in dealing with the Plaintiff.

21 Additionally, the 5th Defendant contends that should the 1st and 2nd Defendants be successful in their application for stay, the action against the 5th Defendant should similarly be stayed, in the interests of case management, particularly given that the Settlement Agreement would likely bar proceedings against the 1st and 2nd Defendants' employees.

Decision

22 The Appeals are dismissed. In respect of SUM 3671/2016, the service out of jurisdiction against the 3rd Defendant should be set aside.

23 The Plaintiff's claim against the 1st and 2nd Defendants fall within the scope of the Settlement Agreement, properly construed, and thus should be stayed on the ground that there would otherwise be breach of that agreement. That would be sufficient to dispose of the Appeals. Additionally, the exclusive jurisdiction clause under the Settlement Agreement also required parties to litigate any dispute about that agreement in England. In light of these conclusions, the proceedings against the other Defendants should also be stayed as a matter of case management, as the cases against them are intrinsically linked to and dependent upon the case against the 1st and 2nd Defendants.

24 Of the other grounds relied upon, I find that the arbitration agreement under the FFA Account Agreement is inoperative. Nonetheless, England is the more appropriate forum and stay would have been granted on that ground as well. That would also mean that the service of the writ against the 3rd Defendant should also be set aside.

25 The 4th Defendant did not enter appearance, so is technically not before the Court, but I am satisfied that any proceedings against her should similarly be stayed.

Analysis

The Expert Opinions on English Law

26 As a preliminary point, I find it odd that the parties chose to prove English law as foreign law given the close connection between Singapore and English law, and the similarities of the two systems especially in relation to the construction of contracts. There are of course differences in various areas, but it would have been entirely appropriate for the parties to have submitted directly on the interpretation of the Settlement Agreement, and highlighted any differences in English law, if these were real and relevant. Be that as it may, when the parties came before me, expert opinions had already been obtained on the approach likely to be adopted by the English courts. Each side broadly adopted the conclusions of their respective experts.

The Scope of the Settlement Agreement

27 The 1st and 2nd Defendants' primary argument is that the Settlement Agreement covered the claims made in the Singapore proceedings, and thus prevented these from being made. The Plaintiff argues that the Settlement Agreement does not extend to the Singapore claims. It should be noted that the Plaintiff does not argue against the existence or validity of the Settlement Agreement. Thus, the only matter in dispute between the parties is the scope of that agreement.

Interpretive principles

28 The two experts as well as the submissions of the parties proceeded on the basis that normal contractual principles should apply.

29 Mr Tolley referred to various English cases such as *Chartbrook Ltd v Persimmon Homes Ltd* [2009] 1 AC 1101; *Arnold v Britton and others* [2015] AC 1619 ("*Arnold*"); and *Europa Plus SCA SIF and another v Anthracite Investments (Ireland) plc* [2016] EWHC 437 (Comm). He summarised the approach as one using the reference of a reasonable person, with the background knowledge available to the parties, would have understood what the parties meant by the language in the contract.

30 The Singapore approach is not substantively different. In the recent case of *Yap Son On v Ding Pei Zhen* [2016] SGCA 68, the Court of Appeal referred to various English authorities such as *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896, and *Arnold* (at [37]–[38]). The Court of Appeal emphasised the need to objectively ascertain the expressed intentions of the parties; the meaning to be given must be one which the expression is capable of bearing (at [40]; citing its earlier decision of *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [122]).

Construction of the Settlement Agreement

31 The issue of construction concern whether the Singapore claims are covered by the Settlement Agreement. The following claims are made in the Singapore proceedings (see above at [10] for the details of the claims):

(a) the Margin Call Claim;

(b) the Collateral / Security Valuation Claim;

(c) the USD Call Deposit Account Claim; and

(d) the Conspiracy Claim.

The 3rd, 4th and 5th Defendants are also said to have committed wrongful assistance to the 1st and 2nd Defendants. That claim would not be material in determining the scope of the Settlement Agreement as the 1st Defendant would not be the alleged assisting party.

32 There is no dispute between the experts on the Margin Call Claim: they both concluded that it would be governed by the Settlement Agreement. In the Appeals, while the Plaintiff did not agree with the characterisation of the claims, the Plaintiffs did not strongly pursue the Margin Call Claim in oral arguments. In my view, what has been described as the margin call claims, i.e. the erroneous setting of margin requirements and statements relating to these, clearly overlaps with the claims in the English proceedings, and are thus covered by the Settlement Agreement.

33 That leaves the controversy to be in respect of:

(a) Collateral / Security Valuation Claim;

(b) USD Call Deposit Account Claim; and

(c) Conspiracy Claim.

(1) The scope of the Settlement Agreement

34 The Plaintiff argues that the Settlement Agreement, through its release clause in cl 1.1, covered only maters raised in the English proceedings, whether through the pleadings, or witness statements. In other words, the release was not meant to cover matters not previously raised in those

proceedings or which had no connection to the matters raised. Referring to the opinion of Mr Cox, the Plaintiff argues that this conclusion was supported by a number of factors, including the relationship between the parties, which was wider than margin or option trading. It argues that the clause in the present case is not as broad or intended to be as broad as general releases in other cases. The Singapore claims include several that were not at all part of the English claims: there was for instance no claim in respect of collateral in the English proceedings. The English proceedings were focused on the misstatement of margin calls and the question of the collateral only came up in respect of determining whether any margin was owed. The 1st, 2nd and 3rd Defendants argue that the language is sufficiently broad and that there was clear intention to have a clean break. Mr Cox's interpretation requires the addition of words into cl 1.1 and ignores the phrase "whether known or unknown" in the clause, which includes within the Settlement Agreement claims not brought in the English proceedings.

35 The language of the Settlement Agreement is broad. I accept Mr Tolley's construction that the agreement covers the claims in the Singapore proceedings. The English cases do support his conclusion. Accordingly, I find that as a matter of English law, cl 1.1 operated as a very broad general release.

36 Clause 1.1 of the Settlement Agreement reads, with appropriate breaks:

> In full and final settlement of
>
> all and any
>
> claims, counterclaims, causes or rights of action or proceedings
>
> of whatsoever nature and howsoever arising
>
> whether known or unknown

> [that any of Claimants or associated persons have or may have against the Defendant or that the Defendant has or may have against the Claimants]
>
> arising from or in connection with
>
> the Proceedings and / or
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> the facts and matters as set out in
>
> the statements of case and
>
> witness statements served in the Proceedings
>
> (including any allegations no longer pursued in the Proceedings),
>
> […]

37 The Recital to the Settlement Agreement defined "Proceedings" as the proceedings under Claim No 2010 Folio 1018 in the Commercial Court of the High Court, Queen's Bench Division. The Recital also contained the following:

> The Parties have agreed to settle all claims between them on the terms set out in this Agreement.

38 Even on a first reading, several phrases above clearly point to the broad effect of the Settlement Agreement:

(a) "full and final settlement";

(b) claims, etc. or proceedings of "whatsoever nature";

(c) "known or unknown";

(d) covered all possible parties connected with the Claimants; and

(e) claims they had or may have had.

39 All of these pointed to a broad effect being given under English law to the clause and the Settlement Agreement as a whole. Full and final settlement, all and any claims, known or unknown, arising from or in connection with the proceedings and matters set out in the statements of case and witness statements, including matters no longer pursued in the proceedings – these are words of very wide import.

40 The Plaintiff argues that the wording of cl 1.1 is not broad, as compared to the cases relied upon by the Defendants and Mr Tolley. It is true that both *Tchenguiz & Ors v Grant Thornton UK LLP & Ors* [2016] EWHC 865 (Comm) ("*Tchenguiz*") and *Khanty-Mansiysk Recoveries Ltd v Forsters LLP* [2016] EWHC 583 (Comm) ("*Khanty-Mansiysk*") involved more broadly worded clauses.

41 *Khanty-Mansiysk* involved clauses with phrases expanding the ambit such as (at [13]):

> "whether in existence now or coming into existence at some point in the future";
>
> "whether or not in the contemplation of the Parties"
>
> "suspected or unsuspected"

In *Tchenguiz*, reference was also made to present or future claims (at [25]).

42 While there are differences in the language used, I do not find that the clauses in *Khanty-Mansiysk* and *Tchenguiz* are significantly different from that in the present case. The overall effect is similar. In referring to claims arising in future, which are claims not in the contemplation of the parties, whether or not suspected, the parties, as found by the Court in *Khanty-Mansiysk* at [38]–[40], were giving very wide effect to their settlement.

43 What does distinguish the clause in the present case from those in *Tchenguiz* and *Khanty-Mansiysk*, is the reference to matters raised in the pleadings and witness statements. The Plaintiff essentially argues that this reference operates to restrict or circumscribe the ambit of the release. The Defendants instead focus on the initial part of the clause and contend that a broad general release was intended.

44 In my view, the reference to the matters contained in the statement of case and witness statement could not be taken to limit the scope of the settlement to only matters covered in the documents. The phrase in question refers not just to these documents, but to claims arising from or in connection with the proceedings as well as the statements of case and the witness statements:

> [Claims] arising from or in connection with the Proceedings **and / or** the facts and matters as set out in the statements of case and witness statements served in the Proceedings … (emphasis in bold added)

The use of "and / or" suggests that the reference was intended to enlarge and enhance the scope of the agreement rather than restrict it.

45 Taking the clause as a whole, the settlement is of wide purport, and covers all disputes connected to the claims originally made, meaning all disputes that were made as well as disputes that could have been raised by the Plaintiff arising out of the relationship between the parties. The clause refers to claims "arising from or in connection with the Proceedings", and importantly, "the facts and matters set out in the statements of case and witness statements". Such facts and matters would include the whole of the

relationship between the parties and matters leading up to the entry into that relationship, as well as matters surrounding that relationship. The English statement of claim raised:

> (a) The legal and commercial relationship between the parties, including the entry into the agreements;
>
> (b) security being given for the various transactions;
>
> (c) the steps required of the 1st Defendant in monitoring information received from exchanges and clearing houses, as well as the 1st Defendant's obligations in ensuring accuracy in the statements; and
>
> (d) breaches by the 1st Defendant in doing so;

I would have considered the defence filed by the 1st Defendant in the English proceedings a relevant statement of the case as well, but there does not appear to be anything in the defence and counterclaim which goes beyond the ambit of the English statement of claim. There is also similarly nothing in the reply which would expand the ambit.

46 The witness statements in the English proceedings, from Mr Su as well as the English solicitor, Mr O'Keefe, similarly covered the entry into the relationship between the parties, including the opening of accounts, the Plaintiff's objectives in entering into the contractual relationship with the 1st Defendant, the execution of trades, issuing of statements and provision of information, the raising of margin in 2008, and the aftermath, including the demands made by the 1st Defendant. Expert reports were also tendered through these statements looking into the trading arrangements, calculation of margin

and reporting of information. For its part, the 1st Defendant had a witness statement detailing its version of events, starting from the entry into the relationship, the trading and clearance of such trades, the margining required, the giving of statements and the obtaining of security. Even though some of the statements were given in respect of injunction applications, these statements would nevertheless be part of the material within the clause, which refers to statements in the proceedings.

47 The coverage in the claim and witness statements included the *whole* of the relationship between the Plaintiff and the 1st Defendant, that is, the commercial relationship that they entered into, centred on the trades in the contracts and options, the financing of these transactions and the security that needed to be given. In turn, the use of the phrase "arising from or in connection with…" in cl 1.1 allows matters to be brought within the coverage of the Settlement Agreement even if it may otherwise be only indirectly linked to the statements of case or the witness statements. It is clear therefore that the Settlement Agreement covers the whole of the relationship between the Plaintiff and the 1st Defendant that arose in respect of the trades carried out by the Plaintiff through the 1st Defendant.

48 Having said that, the Settlement Agreement is not all-encompassing to bar every conceivable claim against the 1st Defendant. The Settlement Agreement would not cover matters such as, for instance, defamation that was committed by any officer of the 1st Defendant against any officer of the Plaintiff, or any physical injury caused by any assault or other physical torts committed by any officer of the Defendant against the Plaintiff's employees.

49 Furthermore, it is important to note that the clause is not limited to claims specifically raised in the statement of claim or factual allegations raised in the witness statements. The language used is "arising from or in *connection* with" the proceedings, and "the *facts* and matters set out in the statements of case and witness statements" (emphasis added in italics). Accordingly, the clause captures not only positive assertions, but also the facts describing the position of and relationship between the parties.

50 It may be that there are other ways of describing such a wide purport. Both the cases of *Tchenguiz* and *Khanty-Mansiysk* perhaps illustrate these alternatives. However, the fact that the Settlement Agreement in the present case phrased matters differently does not diminish the effect of the plain words used.

51 This conclusion is reinforced by the background giving rise to the Settlement Agreement. The Plaintiff argues that a number of claims were not made in the English proceedings, including allegations relating to the collateral. But the release clause does not require that a claim must have been raised expressly. The wide ambit and operation of the release clause, as noted above, covers matters arising out of the relationship and interaction between the parties as well as connected to that relationship. That would thus encompass claims in relation to the accounts opened by the Plaintiff with the 1st Defendant, the operation and any misuse of such accounts by both parties, and any abuse or misuse of the relationship between the parties. Accordingly, the Settlement Agreement would encompass all of the Plaintiff's' claims in the Singapore proceedings against the 1st Defendant, including the collateral issue.

52 Aside from the general language used, the claims in Singapore do coincide with those made in England:

(a) First, the Margin Call Claim overlaps with the claims made in the English proceedings, raising issues about the margin requirements, assurances made by the 1st Defendant and the provision of security. In the Singapore proceedings, even though the Plaintiff additionally argues that the misstatement of information was intentional, an allegation which was not raised in the English proceedings, the claim is still founded on the same factual basis. I thus accept Mr Tolley's opinion that an English court would highly likely conclude that the Margin Call Claim would be covered by the Settlement Agreement.

(b) Second, in the Collateral / Security Valuation Claim, since the issues concerning valuation would affect the margin requirements; it would be connected to the previous English claims in respect of the 1st Defendant's breach of duties in relation to the margins and collateral.

(c) Third, the USD Call Deposit Claim concerns funds held by the Plaintiff with the 1st Defendant. As noted by Mr Tolley, there is no immediately obvious overlap with the claims made in the English proceedings. However, the deposit account was used or intended to facilitate the Plaintiff's trading, and would be covered by the broad language used in cl 1.1.

(d) Fourth, as regards the Conspiracy Claim and fraudulent misrepresentation in Singapore, this was founded on facts relied upon in the English proceedings, and would similarly be covered by the same broad language.

53 The position of the 2nd Defendant would be tied to that of the 1st Defendant and covered by the Settlement Agreement: it is not a separate legal entity. It exist only as the local branch of the 1st Defendant. Registration in Singapore may be required for some purposes, but any such registration would not detract from its unity with the 1st Defendant. The Plaintiff has also not put forward any substantial argument why the 2nd Defendant should be treated separately from the 1st.

54 Accordingly, I accept the opinion of Mr Tolley in preference to that of Mr Cox, and find that the Settlement Agreement covers the claims in the present case. In general, I prefer the opinion of Mr Tolley, giving the opinion for the 1st, 2nd and 3rd Defendants, as being more in accord with the plain words used and more in line with the commercial purpose of the Settlement Agreement.

55 As the claims in the Singapore proceedings are covered by the Settlement Agreement, a stay should be granted in favour of the parties to the agreement, namely the Plaintiff and the 1st Defendant. Since the 2nd Defendant is just a branch office of the 1st Defendant, it should similarly have a stay granted in its favour. The 3rd Defendant is sued in his capacity as a former officer of the 1st Defendant; he should thus be entitled to the coverage of a stay in favour of his former employer. The employment relationship also decides the issue in relation to the 4th and 5th Defendants. And thus, the Wrongful Assistance Claim is to be similarly stayed.

(2) Approach in Singapore

56 Thus far, I have considered the position as a matter of English law. But in addition, as a matter of general principle, as a judge in a Singapore court, I

am of the view that the Plaintiff's basic contention that the Settlement Agreement could only be in respect of the disputes that were alive in the claims made, as gleaned by the specific averments and allegations in the case and witness statements, takes a very narrow and impractical approach. Where a claim is compromised between the parties, the inherent probabilities would generally be that the parties would have intended to have all disputes arising out of that very subject matter between them, resolved once and for all. Narrow language can constrict and point to a different conclusion, but I do not find that the language of cl 1.1 is so narrow.

The Exclusive Jurisdiction Clause under the Settlement Agreement

57 The 1st to 3rd Defendants further argue that even if there is any doubt about the scope of the Settlement Agreement, the present application concerns a dispute covered by the exclusive jurisdiction clause (cl 13.2) under the Settlement Agreement (the "Exclusive Jurisdiction Clause"). It is trite law that the question of whether a dispute falls under an exclusive jurisdiction clause is determined by the proper law of that jurisdictional agreement.

58 In the present case, the proper law is thus English law (see above at [8]). Again, as in the context of interpretation of contracts highlighted above at [26], I am not satisfied that there is any significant difference in the approach adopted in this regard between English law and Singapore law.

59 Here, the Exclusive Jurisdiction Clause refers to disputes "which may arise out of or in any way relate" to the Settlement Agreement. A natural interpretation of the plain words is that the clause is concerned with disputes or issues about the interpretation of the Settlement Agreement, or connected with it.

The proper scope of the Exclusive Jurisdiction Clause

60 In my view, the Exclusive Jurisdiction Clause covers all disputes between the parties in relation to the construction, ambit and width of the Settlement Agreement. It would be natural to assume in the face of the agreement and the jurisdiction clause, that any jurisdiction clause would be intended to be given wide import, with all disputes being heard in the same court. A similar point is made by Professor Adrian Briggs, *Private International Law in English Courts* (Oxford University Press, 2014) at para 4.422:

> … [T]he material scope of an agreement on jurisdiction will be determined by using ordinary rules of contractual construction, applied with something of a twist. The court will be strongly predisposed to give a broad interpretation to the words which have been sued to define the material scope of the clause: they will find it almost incomprehensible that businessmen would have wanted, and that rational draftsmen would have provided for, some aspects of a dispute to be subject to the jurisdiction of a named court while others, liable to arise out of substantially the same facts, would be free to be brought before a court elsewhere.

Restraint of breach of the Exclusive Jurisdiction Clause

61 If the Exclusive Jurisdiction Clause applies, then the next question is what the response should be. The law on this was laid down by the Court of Appeal in G*olden Shore Transportation Pte Ltd v UCO Bank and another appeal* [2004] 1 SLR(R) 6 ("*Golden Shore*"): such a clause would be given effect to. Generally, proceedings brought in Singapore in contravention of an exclusive jurisdiction clause would be stayed, unless exceptional circumstances are shown. In *Golden Shore*, the Court of Appeal stated at [33]:

> 33 It is settled law that where a party seeks to bring an action in a Singapore court in breach of an exclusive jurisdiction clause, he must show exceptional circumstances

> amounting to "strong cause" why the court should exercise its discretion in his favour and assist him in breaching his promise to bring the action in the contractual forum: see *The Jian He* [1999] 3 SLR(R) 432. The burden to show such strong cause obviously rests with the plaintiff, because *prima facie* he should be held to his contractual commitment. The factors which a court will take into account in determining whether there is a "strong cause" were elaborated in *The El Amria* [1981] 2 Lloyd's Rep 119 and adopted by this court in *Amerco Timbers Pte Ltd v Chatsworth Timber Corp Pte Ltd* [1977–1978] SLR(R) 112. They are:
>
> (a) In what country the evidence on the issues of fact is situated or more readily available, and the effect of that on the relative convenience and expense of trial as between the Singapore and foreign courts.
>
> (b) Whether the law of the foreign court applies and, if so, whether it differs from Singapore law in any material respects.
>
> (c) With what country either party is connected and, if so, how closely.
>
> (d) Whether the defendants genuinely desire trial in the foreign country, or are only seeking procedural advantages.
>
> (e) Whether the plaintiffs would be prejudiced by having to sue in the foreign court because they would:
>
> (i) be deprived of security for their claim;
>
> (ii) be unable to enforce any judgment obtained;
>
> (iii) be faced with a time-bar not applicable here; or
>
> (iv) for political, racial, religious or other reasons be unlikely to get a fair trial.

Here, in contrast, the Plaintiff could not show such circumstances. Nothing was raised in the evidence to support disregarding the Exclusive Jurisdiction Clause. The proceedings in Singapore should thus be stayed on this ground.

The Arbitration Clause

62 The further alternative argument advanced by the 1st to 3rd Defendants is that a stay of the present proceedings should be granted as the dispute is

covered by the arbitration clause contained in the FFA. However, I disagree with these Defendants on this ground.

63 In *Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals* [2016] 1 SLR 373 ("*Tomolugen*"), the Court of Appeal laid down the criteria of review for stay under the IAA at [63]:

> … In our judgment, a court hearing such a stay application should grant a stay in favour of arbitration if the applicant is able to establish a *prima facie* case that:
>
> (a) there is a valid arbitration agreement between the parties to the court proceedings;
>
> (b) the dispute in the court proceedings (or any part thereof) falls within the scope of the arbitration agreement; and
>
> (c) the arbitration agreement is not null and void, inoperative or incapable of being performed.

The Defendants would thus have to show that *prima facie* the arbitration clause existed and covered the dispute.

64 The Plaintiff's main point, citing its expert, Mr Cox, is that the clause cannot apply as it contemplates there being a relevant exchange, and there is in fact no relevant exchange. I agree with that. The arbitration clause in question does not on its face apply to the present dispute, or conceivably to most, if not all, possible disputes between the parties in this case. Thus, it fails on the second criteria of review laid down in *Tomolugen*. It may be also that the clause fails the third criteria, as it is inoperative or incapable of being performed. I do not think that the precise criteria matters here.

65 Cl 20 of the FFA Account Agreement, reads:

> 20. Arbitration

> Any dispute arising from or relating to these terms or any Contract made hereunder shall, unless resolved between us, be referred to arbitration under the arbitration rules of the relevant exchange or any other organisation as the relevant exchange may direct and both parties agree to, such agreement not to be unreasonable withheld, before either of us resort to the jurisdiction of the Court.

The difficulty is apparent from the plain words. Clause 20 clearly contemplates that there be an exchange. There are only two ways the arbitration can be carried out and both of which require the involvement of an exchange. The first way is for it to be conducted under the arbitration rules of the relevant exchange. The second way is for the relevant exchange to choose another organisation's arbitration rules with the parties' agreement. Thus, it is clear that the existence of an exchange was required for a dispute to be under the scope of the arbitration agreement. No exchange was however involved in the present matters. The trades were carried out through a clearing house, which is a different type of organisation.

66 The Defendants relied on Mr Tolley's opinion that the English courts would not limit cl 20 to only situations where an exchange is involved. He would have read the clause as referring to either an exchange, or in the alternative a clearing house. However, this requires a significant rewriting of the clause as it actually stands to "the rules of an exchange and / or its clearing house".

67 The justification for this was that it would otherwise be unattractive for some claims to be arbitrated while others are not. But the response to that argument is that is what the parties bargained for, and the Courts would be slow to override the plain words in the parties' agreement. Further, I am unable to conclude on the evidence before me that there is any absurdity to

this interpretation or that the parties intended to give an expanded meaning to the word "exchange". The Defendants further argue that if there was any issue about the arbitration clause, this should be left to the arbitral tribunal, citing *Tomolugen*. However, based on my conclusions above, since the requisite threshold for a stay is not crossed, the question of leaving the matter to the arbitral tribunal does not even arise.

68 Mr Tolley's opinion also raises the argument that the English courts would focus on the provision for arbitration, treating the rest of the clause as the relevant mechanism, which could be modified or adapted to address the situation at hand. I could not agree with this conclusion about the approach of the English courts. Certainly, whether under English or Singapore law, party autonomy in selecting arbitration or other dispute resolution mechanisms would be encouraged and supported, but additionally, neither English nor Singapore courts would readily rewrite the agreements entered into between parties, especially in a commercial agreement between commercial entities, which presumably would have been scrutinised by legal advisors. If there were any slips despite such scrutiny, the parties would have to live with the consequences.

69 That disposes of the Defendant's reliance on cl 20 of the FFA Account Agreement. The other arguments made in relation to the requirements of s 6 IAA can be considered very briefly. I agree with the Defendant's submission that there was no wavier of the arbitration clause through the English proceedings. In any case, the Plaintiff does not raise this argument. What the Plaintiff argues however, is that there are strong public policy reasons against a stay, as the issues raised in the Singapore proceedings touch on the integrity of the financial sector of Singapore and the conduct of a major financial centre

in England. I disagree because neither of these reasons is a public policy reason that is sufficiently strong to stay arbitration. The mere allegation of abuse or conduct involving a financial institution, even a large one, cannot be grounds to deny arbitration if that is what the parties agreed. In other words, such disputes cannot be non-arbitrable merely because it tangentially engage such concerns. The evidential threshold is also significant, on which I find that the allegations raised by the Plaintiff do not cross.

Exclusive jurisdiction clause under the FFA Account Agreement

70 I turn now to consider the alternative argument advanced by the 1st to 3rd Defendants that all the claims in the Singapore proceedings are subject to the exclusive jurisdiction of the English courts under the FFA Account Agreement.

71 The basis for this is found in cl 22, which reads:

> Subject to term 20 [the arbitration clause] above, disputes arising from these terms or from any Contract *shall*, for our benefit, be subject to the jurisdiction of the English courts to which both parties hereby irrevocably submit, provided however that we *shall not be prevented* from bringing an action in the courts of *any other competent jurisdiction.*
>
> [emphasis added]

72 Clause 22 appears to be a unilateral or asymmetrical exclusive jurisdiction clause: that is, the Plaintiff is bound to commence proceedings for claims under the FFA Account Agreement in England, and both parties submit to that jurisdiction, but the 1st Defendant may bring such an action in any other court (the question of submission to jurisdiction in such an event apparently being left open).

73 The Plaintiff argues that the clause is not an exclusive jurisdiction clause, citing the decision in *Perella Weinberg Partners UK LLP and another v Codere SA* [2016] EWHC 1182 (Comm) ("*Perella Weinberg*"). The English High Court in that case concluded that the clause in question there was not an asymmetric exclusive jurisdiction clause. However, the clause considered in *Perella Weinberg* is materially different from cl 20 as it provided that "[the defendant] agrees for the benefit of [the plaintiff] that the courts of England will have *non-exclusive jurisdiction* to settle any dispute which may arise in connection with this engagement" (emphasis added). The clause thus expressly stated that the English courts would have non-exclusive jurisdiction which was crucial in the decision of the court (see *Perella Weinberg* at [27] and [36]). That is a far cry from the present clause.

74 It should be noted that the Plaintiff does not argue in the present case that an asymmetric jurisdiction clause is unenforceable, though there is some reference to this in the Plaintiff's affidavits. In any event, such an argument would probably not have succeeded. As noted in *Mauritius Commercial Bank Limited v Hestia Holdings Limited and another* [2013] EWHC 1328 at [42], there is no reason why such an asymmetric clause should not be enforceable if it was entered into freely between the parties; the court would hold the parties to the bargain they entered into.

75 The Plaintiff does not seem to take the position that the disputes are not covered by the clause. Instead, its argument is that the clause does not impose an obligation binding upon the Plaintiff in respect of the disputes. This could not be correct: the clause is part of the contract entered into between the parties, the effect of which is the parties' irrevocable submission to the jurisdiction of the English courts.

76 I note that the Plaintiff's affidavit also referred to cl 22 falling away if cl 20 is invalid and unenforceable, but this was not pursued in argument. Had this been a live point, I would have agreed with the Defendants that there is nothing in the clauses that compels this conclusion.

Singapore not the more appropriate forum

77 Where proceedings in Singapore are sought to be stayed in favour of proceedings abroad, or where service out of jurisdiction is sought to be set aside, the Court has to be determine which forum is the more appropriate one. This is governed by the English case of *Spiliada Maritime Corp v Cansulex Ltd (The Spiliada)* [1987] AC 460 ("*Spiliada*"), as applied by the Court of Appeal in *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 ("*Rickshaw Investments*") (at [12] – [14]) as a two-stage test. At the first stage, the question is whether there is some other forum which is more appropriate, considering where factors demonstrating a real and substantial connection point to. At the second stage, once a forum is determined, the court considers if there are any reasons indicating that stay should or should not be granted for reasons of justice.

78 Here, what actually was sought was leave to serve out of the jurisdiction. This was obtained by the Plaintiff in respect of the 1st, 3rd and 4th defendants. In such a case, the burden lies on the Plaintiff to show that Singapore is a more appropriate forum (*Oriental Insurance Co Ltd v Bhavani Stores Pte Ltd* [1997] 3 SLR(R) 363 at [16]; affirmed recently by the Court of Appeal in *Zoom Communications Ltd v Broadcast Solutions Pte Ltd* [2014] 4 SLR 500 ("*Zoom Communications*") at [71]). Service on the 2nd and 5th Defendants was as of the Plaintiff's right within the jurisdiction, and the burden thus lies on the Defendant to show that some other forum, i.e. England,

is the more appropriate forum (*Zoom Communications* at [72]). It would seem that in light of the mixed factual situation, neither party relies on the burden of proof in this case. I am of the view that in a mixed situation, the Court can if one claim is clearly primary or dominant, look to that claim, and apply the appropriate burden. Here, the primary claim would have been against the 1st Defendant, and the burden ought to have been on the Plaintiff.

79 But even aside from consideration of the burden alone, I am of the view that England is the more appropriate forum. The various factors here point towards England. Relevant connecting factors include personal connections, connections to events, the governing law, the presence of other proceedings and the shape of the litigation: *JIO Minerals FZC and others v Mineral Enterprises Ltd* [2011] 1 SLR 391 at [42].

(1) Location of evidence and events

80 The primary factor pointing to Singapore being the more appropriate forum is the presence and activity of the 2nd Defendant. The Plaintiff has no direct connection to Singapore, being a Liberian company with activities in Taiwan. The 1st Defendant has its place of business in England. The 5th Defendant is in Singapore, but given her smaller role as compared to the 1st and 2nd Defendants, her position is really tied to theirs. While the Plaintiff placed great store on the presence of witnesses and occurrence of events in Singapore, I am satisfied that the primary witnesses would be in England, and that most of the relevant events occurred there. England is thus the jurisdiction where the witnesses and evidence is likely to be found.

81 I do not accept the Plaintiff's arguments that it is the 2nd Defendant's activities that are material here. The claims made in the present proceedings

relate to the calls made on the margins, valuation of collateral, and diversion of funds. These activities relate to maters in England. The USD call deposit account was set up there. Negotiations as to the collateral took place there. Monitoring occurred from London. Clearance was carried out by the 1st Defendant's team located there. The parties here disagreed on the identity of the person on the Plaintiff's side who directed the trading strategy: the Plaintiff pointed to a Ms Chen acting through Singapore, while the Defendants say it was either Mr Lee in London, or Mr Su in Taiwan. This question may need to be resolved at trial, but in any event, the source of the instructions is very unlikely to outweigh the other matters pointing towards England.

82 In comparison, the activities of the various employees of the 2nd Defendant were not significant. While margin calls were sent out by the 2nd Defendant in Singapore, this was again secondary to the other activities in London. The Conspiracy Claim concerned margin requirements, valuation and remittance, all in relation to England. I accept the Defendants' argument that the role of the 2nd Defendant's employees was primarily in communication or facilitating matters. The actual financial and trading transactions took place in London. I do not accept the Plaintiff's contentions that the relevant witnesses are in Singapore. The Plaintiff argues that the relevant witnesses are from the 2nd Defendant, who interacted with an officer of their company. However, the Plaintiff's arguments are not substantiated – these employees of the bank do not seem to have played any significant independent role: even if any of them are material witnesses, they are secondary to the witnesses in England.

83 Given that the activities and events were centred in England, the evidence and witnesses are primarily centred there as well. These are significant pointers for England being more appropriate. It is true that the

physical location of witnesses is perhaps less important than it may have been in the past, but testimony by videoconference is always at least a little less satisfactory for the judge and counsel than live testimony.

84 The Plaintiff also raises the fact that a number of the English witnesses identified by the Defendants did not feature in the English proceedings. The Plaintiff's argument would seem to be that these witnesses are really an afterthought, and not material to the determination of the case. I do not accept this argument: the fact that these witnesses were previously not part of the English proceedings does not mean that they cannot be material in a properly run and properly prepared case on the claims made now.

85 The Defendants also point to the Plaintiff's previous invocation of the English jurisdiction. However, this does not take the Defendants very far: the fact that a party may have previously started proceedings in another court does not point towards the jurisdiction of that court in a *Spiliada* analysis. This is in line with the fact that waiver or estoppel would not be operative in this context.

86 I also give less weight to the argument that opinion evidence would probably be obtained from English experts in view of the location of the LCH in London. The location of expert evidence is more readily portable, and would thus not be a significant factor in this analysis.

(2) The governing law

87 The governing law is English law. However, this factor is perhaps not a significant factor pointing towards English courts as the more appropriate forum. The claims relating to breach of contract concerned the FFA Account

and Current Account Agreements, both of which were governed by English law. The fiduciary duties arising under the contractual relationship would probably fall to be determined under English law as well given that the underlying relationship was founded on English contracts and the actions in question took place in England: this may be an intricate question, and need not be determined conclusively here. As for the tortious claims, it is also not necessary to recount in detail the double actionability rule, but it suffices to note that the allegations of the Plaintiff relate to the instructions of the 3rd Defendant, who was in England, and such instructions would primarily have been centred in London too.

(3) Conclusion as to the *forum non conveniens*

88 I accept that the centre of gravity of the various matters relevant to the claims made is England. The Singapore connecting factors are much more tenuous in comparison.

The position of the other Defendants

89 The discussion above leads to the conclusion that the proceedings against the 5th Defendant should be stayed as well, at the very least as a matter of prudent case management. The primary substantive claim is against the 1st and 2nd Defendants. Since I have found that the Settlement Agreement applies to this claim, and proceedings should be taken up, if at all, in the English Courts, the action against the 5th Defendant, and also the 4th Defendant, should be pursued there as well. In addition, the arguments made by the 5th Defendant in respect of *forum non conveniens* also point to England as the appropriate forum.

Claims against Goodwin

90 In SUM 3671/2016, the 3rd Defendant argues that leave should not have been granted to serve him out of the jurisdiction. The requirements for leave to serve out of jurisdiction are that a good arguable case is shown that the case falls within one of the heads under O 11 r 1, that there is a serious issue to be tried, and the Court's discretion ought to be exercised in favour of service on the grounds of *forum non conveniens*.

91 In this setting aside application, the 3rd Defendant makes three cumulative arguments: (1) Singapore is not the appropriate forum (2), that there is no serious issue to be tried and (3) that there was material non-disclosure.

92 I find the first argument to be most decisive. For the reasons raised in respect of the stay proceedings, the leave to serve the 3rd Defendant should also be set aside. Even if the Court were to only stay the Singapore proceedings in favour of arbitration, the 3rd Defendant should not be sued separately in Singapore. Similarly if the claims should be stayed under the FFA Account Agreement or *forum non conveniens*, the claims against the 3rd Defendant should be heard in England.

93 As for the non-disclosure, the 3rd Defendant argues that the Plaintiff failed to inform the Court that the relationship between the Plaintiff and the 1st Defendant is subject to an Exclusive Jurisdiction Clause, and that there is an overlap between the Singapore proceedings and the Settlement Agreement *vis-à-vis* previous proceedings in England. The Plaintiff argues however, that there was no need to disclose the Settlement Agreement because there was no application to stay then, and the Plaintiff could not have been aware that any

such application would be made. It thus argues that the existence of the Settlement Agreement would not assist the Court in its determination then.

94 I agree with the 3rd Defendant that these were relevant facts which should have been brought to the attention of the Court as it considered the exercise of its discretion to allow service out of jurisdiction. While the Plaintiff's position may be that the Settlement Agreement did not govern the Singapore proceedings, the existence of the Settlement Agreement should have been made known to the Court for it to consider. It is true that the 3rd Defendant was not a direct party to the Settlement Agreement, but there should have been consideration whether the benefit of that agreement would have inured to his benefit. Nonetheless, such non-disclosure does not necessarily lead to the setting aside of an order granted. The Court needs to consider whether the circumstances in the end do merit setting aside. Here, the primary failing of the Plaintiff's application is that Singapore is not the appropriate forum, that being reason enough for setting aside.

95 For the reasons found in respect of the *forum non conveniens* argument, I am satisfied that the service out of jurisdiction on him should be set aside on *forum non conveniens* grounds. However, I did not find that it was shown on the evidence that there was no serious issue to be tried.

Miscellaneous

96 There is another issue about the USD Call Deposit Account Claim, if the conclusion was reached that it was not governed by the FFA Account Agreement. In my view, this claim would nevertheless be governed by the Currency Account Agreement, which similarly contains a very clear exclusive jurisdiction clause. For the same reasons as discussed above at [61], no

exceptional reasons have been made out why the Plaintiff should be permitted to act in breach of that clause.

97 There would also be an interesting point as to whether the 2nd Defendant should be sued separately from the 1st Defendant, since there is really no separate identity, though the 2nd Defendant is registered to carry on business as a bank in Singapore. This point may however require further consideration on another day in another forum.

Orders

98 Accordingly, I dismiss the Appeals and set aside the service out of jurisdiction in respect of the 3rd Defendant. Cost directions will be given separately.

Aedit Abdullah
Judicial Commissioner

Deborah Evaline Barker SC, Ushan Premaratne and Shen Peishi, Priscilla (Khattarwong LLP) for the plaintiff;
Kristy Tan, Melissa Mak and Leong Yi-Ming (Allen & Gledhill LLP) for the first, second and third defendants;
The fourth defendant is unrepresented;
Melissa Marie Tan Shu Ling and Sonia Chan (JLC Advisors LLP) for the fifth defendant;