IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 42

Civil Appeal No 18 of 2018

Between

Lakshmi Anil Salgaocar

… *Appellant*

And

Jhaveri Darsan Jitendra

… *Respondent*

In the matter of HC/OS 627/2017

In the matter of Section 4(1) of the Civil Law Act and Section 18(2) read with paragraphs 5 and 14 of the First Schedule of the Supreme Court of Judicature Act

And

In the matter of Orders 7 and 28 of the Rules of Court

Between

Lakshmi Anil Salgaocar

… *Plaintiff*

And

(1) Jhaveri Darsan Jitendra
(2) Million Dragon Wealth Ltd

… *Defendants*

JUDGMENT

[Civil Procedure] — [Injunctions] — [Anti-suit injunction]
[Conflict of Laws] — [Natural forum]
[Conflict of Laws] — [Restraint of foreign proceedings] — [Vexatious and oppressive conduct]
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v
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26 July 2019 Judgment reserved.

Steven Chong JA (delivering the judgment of the court):

Introduction

1 Forum selection is an extremely crucial process to any would-be litigant for a host of substantive, procedural, tactical and strategic reasons. While it is usually the prerogative of a litigant to decide on the forum in which to bring his claim, the common law has developed a set of principles and rules to curb forum shopping and to prevent abuse of process.

2 In this context, it should be recognised that in most situations, whatever is perceived to be advantageous to one litigant would almost invariably be viewed as disadvantageous to the opposing party. Therein lies the inherent tension in any forum selection exercise. Quite often, that tension is resolved by way of procedural orders such as a stay of proceedings and/or an anti-suit injunction.

3 Indeed, the present appeal before us involves applications made by the appellant for both such procedural orders. The court below dealt with an application for an anti-suit injunction against the continuation of proceedings in the British Virgin Islands ("the BVI") while the court in the BVI dealt with an application to stay the proceedings in favour of Singapore. Both applications were decided against the appellant at first instance.

4 However, it may be of some significance that the refusal of the stay application by the BVI court took place *after* the refusal of the court below to grant the anti-suit injunction *while* the appeal against that decision was pending hearing. The confluence and sequence of these two decisions have provoked the respondent to raise several interesting arguments to oppose this appeal against the refusal of the court below to grant the anti-suit injunction.

5 The respondent relies on, *inter alia*, the doctrine of issue estoppel and comity to resist this appeal. In essence, the respondent's case is that "*timing is everything*". Given that the BVI court in dismissing the stay application had already made a determination *prior* to the hearing of this appeal that the BVI is the natural forum for the resolution of the respondent's claim, the respondent suggests that this court should not, on account of issue estoppel and comity, allow the appeal because to do so would involve a contrary finding that Singapore instead of the BVI is the natural forum of the respondent's claim.

6 We should state at the outset that this is not the first occasion when a court has had to hear an application for an anti-suit injunction to restrain foreign proceedings *subsequent* to a refusal of that same foreign court to stay the foreign proceedings. However, this appears to be the first time in which it has been suggested that a decision not to stay proceedings can give rise to an issue estoppel in respect of a subsequent anti-suit injunction application in the

competing forum. In this judgment, we will examine the legitimacy of this novel argument.

The material background events

7 We begin with an explanation of the relevant parties and the material background events.

The parties

8 The respondent, Mr Jhaveri Darsan Jitendra, was a family friend of the appellant, Mdm Lakshmi Anil Salgaocar and her late husband, Mr Anil Vassudeva Salgaocar ("Mr Anil"). The respondent and Mr Anil had a longstanding business relationship which began in the late 1980s.[1]

9 The main dispute between the parties that is of relevance to the present proceedings concerns the ownership of a single share in a BVI-incorporated company, Million Dragon Wealth Ltd ("MDWL") ("the Share"). MDWL is in turn the sole shareholder of 22 other BVI-incorporated companies ("the Subsidiaries"). Each of the Subsidiaries own one unit in a condominium development in Singapore known as Newton Imperial.[2] The units are rented out, and the rental income is collected in Singapore by a Singapore law firm, Messrs Haridass Ho & Partners, and held in bank accounts in Singapore pursuant to an escrow agreement.[3]

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1 ROA Vol III (Part 1) p 40 para 4; ROA Vol IV (Part 6) p 140 para 17.

2 GD at [2].

3 ROA Vol III (Part 1) pp 187–189.

10 Prior to July 2014, the Share was registered in the name of the respondent's daughter, Ms Pooja Darsan Jhaveri ("Ms Pooja") who held the Share as the respondent's nominee. On 8 July 2014, Ms Pooja executed a memorandum transferring the Share to Mr Anil for the nominal sum of US$1 ("the 2014 share transfer").[4]

11 The basis of the 2014 share transfer is disputed between the parties. Briefly, Mr Anil's position is that the share transfer was executed in order for the respondent to return the 22 units in Newton Imperial to him, which he alleges was wrongfully conveyed to the Subsidiaries by the respondent. On this account, the transfer is said to constitute an admission by the respondent of an oral agreement between the respondent and Mr Anil which was concluded in 2003 ("the 2003 Agreement"). Under this agreement, the respondent allegedly agreed to hold on trust for Mr Anil the shares of various special purpose vehicles ("SPVs") which would be set up by Mr Anil.[5] The respondent, on the other hand, denies the existence of the 2003 Agreement. His position is that the 2014 share transfer effected a *sale* of the Share by the respondent to Mr Anil, and therefore evidences a different oral agreement allegedly concluded in 2014 between Mr Anil and himself ("the 2014 Agreement"). Under this agreement, it was allegedly agreed that the Share would be transferred to Mr Anil upon his payment of certain sums to the respondent equivalent to the amounts which the respondent had loaned to MDWL. On this account, the purpose of the 2014 Agreement was to allow Mr Anil to purchase the 22 units in Newton Imperial owned by the Subsidiaries in a manner that would be tax efficient.[6]

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4 GD at [3].

5 Appellant's case at paras 14, 15, 23.

6 ROA Vol III (Part 1) pp 42–43 paras 7–10.

12 In January 2016, Mr Anil passed away. The appellant was subsequently appointed as the administratrix of his estate.

Suit 821

Mr Anil's claims

13 In August 2015, Mr Anil commenced Suit No 821 of 2015 ("Suit 821") in Singapore against the respondent.

14 In Suit 821, Mr Anil claims that he had entered into the 2003 Agreement with the respondent following discussions in Hong Kong. It was allegedly agreed that:[7]

(a) Mr Anil would set up SPVs to conduct various businesses and to hold assets. He would provide all the funds for the acquisition of the SPVs' businesses and assets and would be the sole beneficial owner of all the shares issued in the SPVs.

(b) The respondent would be a shareholder and/or director of the SPVs and would hold the shares in the SPVs as Mr Anil's nominee on trust for him. He was to receive payment in consideration for this.

15 In Suit 821, Mr Anil claims that consistently with what was agreed under the 2003 Agreement, he had set up and funded a number of SPVs in the BVI and in Singapore.[8] He then used the trading profits generated by the SPVs to make various investments and asset acquisitions, including real estate

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7 Appellant's case at para 15; ROA Vol IV (Part 6) pp 132–134 para 2.

8 ROA Vol IV (Part 6) p 134 para 3.

developments in Singapore.[9] One of the ways in which he is said to have used the trading profits was to set up Great Newton Properties Pte Ltd ("Great Newton Properties") which was the developer of Newton Imperial.[10] It is claimed that the respondent committed various breaches of trust, by amongst others, causing Great Newton Properties to transfer 22 units in Newton Imperial to the Subsidiaries.[11]

16 On 14 May 2014, Mr Anil's solicitors sent a letter of demand to the respondent, demanding, amongst other things, that the respondent return the 22 units in Newton Imperial by instructing Ms Pooja to transfer the Share to Mr Anil.[12] It is claimed that in compliance with the said letter of demand, the 2014 share transfer was executed by Ms Pooja on the instructions of the respondent. The fact that the Share was transferred for a nominal consideration of US$1 on 8 July 2014 is relied on as an admission by the respondent of the existence of the 2003 Agreement and his obligations thereunder.[13]

17 The respondent however allegedly failed to comply with the rest of Mr Anil's demands in relation to other assets allegedly held on trust pursuant to the 2003 Agreement ("the 2003 trust assets"), and thus Mr Anil commenced Suit 821 against him in August 2015.[14] Following her appointment as the administratrix of the estate, the appellant has been substituted as the plaintiff in

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9 Appellant's case para 16; ROA Vol IV (Part 6) p 162 para 83.

10 Appellant's case para 16; ROA Vol IV (Part 6) p 167 para 99.

11 Appellant's case at para 18; ROA Vol IV (Part 6) pp 190–191 paras 167–169.

12 ROA Vol IV (Part 7) pp 113–115 paras 5–6.

13 Appellant's case at para 23; ROA Vol IV (Part 6) p 191 para 169.

14 ROA Vol IV (Part 6) p 194 para 173.

Suit 821, suing on behalf of the estate. The reliefs claimed by the estate in Suit 821 include the following:[15]

> (a) a declaration that the respondent holds the 2003 trust assets on trust for the estate and an order that the respondent convey the assets to the estate;
>
> (b) an account and inquiry of the 2003 trust assets and all traceable proceeds of the same;
>
> (c) a transfer of all the books and records of MDWL and profits earned from the rental of the 22 units in Newton Imperial as may be found due to the estate upon the taking of the account and inquiry in (b).

The respondent's defence in Suit 821

18 The respondent denies the existence of the 2003 Agreement. He claims that he was responsible for the development of Newton Imperial and not Mr Anil. He claims to have made a substantial sum of money through trading in precious gems and iron ore and that he had sought Mr Anil's counsel in relation to investments of his money. Eventually, various SPVs including Great Newton Properties were incorporated in Singapore allegedly for the purpose of investing his money in real estate in Singapore.[16]

19 As for the 2014 share transfer, the respondent stated in the first version of his defence dated 6 October 2015 that:[17]

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15 Appellant's case at para 25; ROA Vol IV (Part 6) p 199.

16 Appellant's second supplementary core bundle ("A2SCB") Vol II at Tab 9 pp 45–46.

17 ROA Vol IV (Part 1) p 237 para 134.

> Save that on or about 8 July 2014 [Ms Pooja] transferred the one issued share in [MDWL] to [Mr Anil], paragraph 169 of the Statement of Claim (Amendment No. 1) is denied. This was a *sale*, payment for which was due under a loan. [emphasis added]

Delay in proceedings due to Mr Anil's death

20 Following Mr Anil's passing in 2016, a dispute arose in the Family Justice Courts between the appellant and Mr Anil's daughter, Ms Chandana Anil Salgaocar ("Ms Chandana"), over the appointment of the administratrix of the estate. This in turn led to a temporary halt in the progress of Suit 821.[18]

21 By May 2017, the dispute concerning the administratrix of the estate was on the verge of resolution. On 15 May 2017, the appellant's solicitors wrote to the court, copying the respondent's solicitors, informing that the appellant and Ms Chandana had attended a mediation session and were "on the brink of a settlement", and that "there [was] a very high probability of a final resolution" It was further stated in the letter that:[19]

> 8. With the expected settlement, there will be a single administratrix, who will administer the affairs of the Estate, including the proceedings in Suit 821 and the present matters.
>
> 9. In our respectful view, this will address the concerns of the Plaintiffs in the present action [*ie*, the respondent and others], with respect to the progress and status of Suit 821 once and for all.

22 One day later, on 16 May 2017, the respondent commenced proceedings against the estate and MDWL in the BVI.[20] We shall refer to the BVI proceedings in this judgment as "BVI 83".

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18 ROA Vol III (Part 1) p 19 para 52

19 ROA Vol III (Part 1) pp 200–202.

20 ROA Vol III (Part 1) p 48.

BVI 83

23 In BVI 83, the respondent claims that he is the sole beneficial owner of the Share pursuant to the 2014 Agreement entered into between Mr Anil and himself.

24 The respondent claims that he extended an interest-free loan to MDWL ("the Loan") which was recorded in MDWL's accounts as a shareholder's loan in Ms Pooja's name. The Loan enabled the Subsidiaries of MDWL to each purchase one unit in Newton Imperial.[21] In April 2014, Mr Anil had contacted the respondent, expressing a desire to purchase the 22 units in Newton Imperial.[22] Subsequently, the 2014 Agreement was allegedly concluded over the telephone while the respondent was in Hong Kong and Mr Anil in India, to enable Mr Anil to purchase the units in a tax efficient manner.[23] According to the respondent, it was agreed that:[24]

(a) Legal ownership of the Share would be transferred to Mr Anil for a nominal consideration of US$1.

(b) Mr Anil would pay the respondent an amount equal to the outstanding balance of the Loan after deducting the sums in MDWL's DBS Bank account derived from rental income.[25] On payment of this sum, the beneficial interest in the Share would be transferred to Mr Anil.

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21 GD at [8]; ROA Vol III (Part 1) p 41 para 5.

22 ROA Vol III (Part 1) p 42 para 7.

23 GD at [8].

24 ROA Vol III (Part 1) p 44 para 12.

25 ROA Vol III (Part 1) p 43 at para 9.

25 The respondent claims that the Share was transferred by Ms Pooja on 8 July 2014 accordingly upon Mr Anil's payment of US$1. However, Mr Anil passed away (about 18 months later) before paying him what was allegedly due under the 2014 Agreement.[26] The respondent thus commenced BVI 83, seeking the following reliefs:[27]

(a) a declaration that he is the sole beneficial owner of the Share in MDWL;

(b) an order that he be entered as the sole registered shareholder in MDWL's register of members;

(c) an account of rental payments received since July 2014; and

(d) damages for breach of contract or in the alternative repayment of the Loan.

Anti-suit injunction application and the decision below

26 Approximately one month after BVI 83 was commenced by the respondent, in June 2017, the appellant filed Originating Summons No 627 of 2017 ("OS 627") in the Singapore High Court for an anti-suit injunction to restrain the respondent from proceeding in BVI 83.

27 As part of his submissions for OS 627, the respondent argued that Suit 821 had been automatically discontinued since December 2016. The

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[26] ROA Vol III (Part 1) pp 44–45.

[27] ROA Vol III (Part 1) pp 47–48.

respondent also filed Originating Summons No 1293 of 2017 ("OS 1293") to seek a declaration that Suit 821 had been deemed discontinued.[28]

28 On 1 December 2017, the High Court Judge ("the Judge") dismissed the appellant's application for an anti-suit injunction. In dismissing the application, the Judge found that Suit 821 had not been deemed discontinued. On 22 February 2018, the Judge delivered his decision for OS 1293. The Judge's finding that Suit 821 was not deemed discontinued is not an issue in the present appeal.

29 The appellant filed the present appeal against the Judge's dismissal of her application for an anti-suit injunction. The Judge's grounds of decision for OS 627 are reported at *Lakshmi Anil Salgaocar v Jhaveri Darsan Jitendra and another* [2018] SGHC 90 ("GD") and we shall provide in this section only a brief summary of his reasoning. In summary, the Judge was of the view that Singapore was not shown to be the clearly more appropriate forum for the dispute, and that there was insufficient evidence of vexation and oppression on the part of the respondent in commencing BVI 83.

30 The Judge found the BVI to be the natural forum for the respondent's claim in BVI 83. The relevant connecting factor, in his view, is the subject matter of BVI 83, *ie*, the Share. This factor pointed to the BVI being the natural forum given that the Share is in MDWL, a BVI-incorporated company, and ownership of the Share would be reflected on MDWL's register of members (GD at [55]).

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[28] GD at [28].

31 The Judge further found that the appellant had failed to establish that the BVI 83 proceedings were vexatious or oppressive. He found, amongst others, that the risk of inconsistent findings in Suit 821 and BVI 83 constituted an insufficient basis to restrain the respondent from proceeding with his claim in the BVI (GD at [61]).

32 We would note that central to the Judge's findings on natural forum and the lack of vexatious or oppressive conduct was his view that the main issues in BVI 83 and Suit 821 are different (GD at [49], [62]). The Judge found that the central issue in BVI 83 is whether the respondent and Mr Anil had concluded the 2014 Agreement *and that this is not an issue raised in Suit 821*, which concerned instead whether the respondent and Mr Anil had concluded the 2003 Agreement. In the circumstances, the Judge found that while the existence and effect of the 2003 Agreement may also be an issue in BVI 83, the key factual issue in BVI 83 (*ie*, the existence and effect of the 2014 Agreement) is absent from Suit 821 (GD at [49]).

33 Finally, while the Judge found in favour of the respondent on the issues of natural forum and vexation and oppression, the Judge did not place weight on the respondent's argument that an anti-suit injunction would deprive him of legitimate juridical advantages in proceeding in the BVI. The Judge was of the view that the respondent had not identified any legitimate juridical advantages associated with proceeding in the BVI that would materially weigh against the grant of an anti-suit injunction (GD at [65]). In addition, the appellant's indication that she is prepared to undertake to consent to judgment in the BVI on terms that are identical to the terms of any Singapore judgment that the respondent might obtain diminished any such difficulties or risks that the respondent might face as a result of having to commence separate (enforcement) proceedings in the BVI (GD at [66]).

34 Following the Judge's decision on OS 627, there were a number of developments in the BVI 83 proceedings which are relevant to the present appeal.

BVI stay application

35 Following its commencement in May 2017, there was a delay in the progress of BVI 83. The respondent explains that the delay was due to the fact that the estate remained unrepresented in the BVI.[29] About nine months after the commencement of BVI 83, sometime in February 2018, the appellant was granted letters of administration in the BVI. Thereafter, the respondent obtained leave from the BVI courts to serve BVI 83 out of jurisdiction in April 2018 and proceeded to effect service on the appellant in May 2018.[30]

36 On 10 July 2018, after the Judge had dismissed her application for an anti-suit injunction in December 2017, the appellant filed an application in BVI 83 for (a) setting aside the service out of jurisdiction; and (b) further or in the alternative, a declaration that the BVI court should not exercise its jurisdiction to hear the claim on the ground of *forum non conveniens*.[31] Justice Neville Adderley of the BVI High Court of Justice dismissed the appellant's stay application in February 2019 and issued his grounds of decision in April 2019.

37 Adderley J's grounds for dismissing the application were two-fold. First, he found that the appellant was precluded by the doctrine of issue estoppel from

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29 Respondent's case at pp 38–43.

30 4th Affidavit of Jhaveri Darsan Jitendra ("JDJ") dated 8 April 2019 at paras 7–8; JDJ-22.

31 4th Affidavit of JDJ dated 8 April 2019 at JDJ-23.

raising the same arguments she had raised in her application for an anti-suit injunction before the Singapore High Court, before the BVI courts to set aside the service out of jurisdiction.[32] Second, in any event, a stay of the BVI proceedings was not warranted on grounds of *forum non conveniens* because:

(a) Singapore is not an available forum given that as at the date of the BVI stay application, the Judge's denial of the anti-suit injunction stands.[33]

(b) The claim concerns the beneficial ownership of a share in a BVI-incorporated company.[34]

(c) BVI is the place of performance and/or breach since it is the place where the Share is located.[35]

(d) The governing law of the 2014 Agreement can be said to be BVI law since it has the closest connection to the 2014 Agreement. Alternatively, the governing law is at most inconclusive.[36]

(e) The location of witnesses and documents carry limited weight.[37]

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32 4th Affidavit of JDJ dated 8 April 2019 at JDJ-27 para 36.

33 4th Affidavit of JDJ dated 8 April 2019 at JDJ-27 paras 39, 58.

34 4th Affidavit of JDJ dated 8 April 2019 at JDJ-27 paras 48, 58.

35 4th Affidavit of JDJ dated 8 April 2019 at JDJ-27 paras 40–41, 58.

36 4th Affidavit of JDJ dated 8 April 2019 at JDJ-27 paras 52–53, 58.

37 4th Affidavit of JDJ dated 8 April 2019 at JDJ-27 paras 43–48.

(f) The Cambridgeshire factor is inapplicable because Suit 821 and BVI 83 are both in their early stages and both cases involve different issues which reduce the likelihood of conflicting judgments.[38]

The parties' cases on appeal

38 For the purposes of the present appeal, both the appellant and the respondent filed applications to adduce fresh evidence pertaining to matters that occurred *after* the Judge had rendered his decision. The fresh evidence concerned, *inter alia*, developments in the appellant's BVI stay application and the respondent's amendments to the pleadings in Suit 821 which occurred *after* the decision below was rendered.[39] At the appeal hearing, we allowed the parties' respective applications to adduce fresh evidence.[40]

39 We note in this regard that given the developments that arose after the Judge's decision, the focus of the parties' respective cases on appeal differed in some respects from that advanced before the Judge below.

The appellant's case on appeal

40 A key aspect of the appellant's case is that the Judge erred in finding that the issues in BVI 83 and Suit 821 are different and that any overlap is not substantial. Based on a proper characterisation of BVI 83 and Suit 821 as gleaned from the pleadings, both suits share a common factual matrix and similar issues fall to be determined in both. This in turn has implications on the

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38 4th Affidavit of JDJ dated 8 April 2019 at JDJ-27 para 54.

39 CA/SUM 39/2019 and CA/SUM 38/2019.

40 Minute sheet dated 2 May 2019.

assessment of the natural forum for the dispute and whether the respondent has acted in a vexatious or oppressive manner by proceeding in the BVI.

41 The *common* issues that arise for determination in both suits, according to the appellant, include (a) the existence of the 2003 Agreement and the 2014 Agreement; and (b) relatedly, whether the estate or the respondent is the beneficial owner of the Share in MDWL.[41] That identical issues fall to be determined in both sets of proceedings is said to be apparent from the fact that the respondent relies on the 2014 Agreement both to advance his claim in BVI 83 on his ownership of the Share, and as part of his defence to the claims advanced by the estate in Suit 821.[42]

42 On this note, counsel for the appellant, Mr Davinder Singh SC, placed emphasis on the amendments to the defence filed by the respondent *after* the Judge's decision. He argued that the latest version of the defence, *ie*, Defence (Amendment No 3), put beyond doubt that the respondent's defence to the 2003 Agreement has always been premised on the 2014 Agreement.[43] The relevant portion of Defence (Amendment No 3) which Mr Singh relied on reads:[44]

> 134. Save that on or about 8 July 2014, [Ms Pooja] transferred the one issued share in [MDWL] to [Mr Anil] pursuant to *an oral agreement between [the respondent] and [Mr Anil] that was concluded in or around early June 2014* (under which [Mr Anil] agreed to purchase the 22 Newton Imperial units referred to therein for consideration), paragraph 169 of the Statement of Claim is denied. This was a *sale*, payment for which was due through [Mr Anil's] repayment of a shareholder's loan owed to [the respondent's] nominee, [Ms Pooja]. The beneficial

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41 Appellant's case at paras 47–59.

42 Appellant's case at para 50.

43 Appellant's skeletal submissions at para 4.

44 A2SCB Vol II at p 76 para 134.

> ownership of the share in [MDWL] is presently the subject of BVI proceedings. [emphasis added]

43 Mr Singh argued that Defence (Amendment No 3) merely clarified the respondent's position which was already apparent in the first version of his defence. In particular, the amendments made clear that the alleged "sale [of the Share], payment for which was due under the loan" referred to in the first version of the respondent's defence (see above at [19]), was in fact a reference to the 2014 Agreement, which is the very foundation of the respondent's claims in BVI 83.[45] On this basis, it was argued that the 2014 Agreement was put into issue in Suit 821 right from the outset by the respondent. Before us, Mr Singh acknowledged, however, that the point on the true nature of the respondent's defence in Suit 821 was not argued in the same manner before the Judge below.

44 A second central tenet of the appellant's case is that Singapore is the natural forum for the determination of the overlapping issues raised in Suit 821 and BVI 83. It was argued that because the substance of the dispute between the parties concerns the 22 units in Newton Imperial, the dispute is governed by Singapore law, since Singapore is the location of the immovable property and the rental proceeds.[46] Further, various third-party witnesses who can be compelled to produce documents and give evidence are located in Singapore, including witnesses who can give evidence in relation to the development of Newton Imperial.[47]

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45 Appellant's skeletal submissions at para 15.

46 Appellant's case at paras 60–62; Appellant's skeletal submissions at para 29.

47 Appellant's case at paras 63–69; Appellant's skeletal submissions at paras 30–32.

45 Thirdly, it was argued that on a proper characterisation of the nature of the claims in Suit 821 and BVI 83, it is clear that the respondent had commenced parallel proceedings in the BVI to vex and/or oppress the estate.[48]

The respondent's case on appeal

46 In response to the arguments raised by the appellant on the overlap of the proceedings in Singapore and the BVI, the respondent argued that there was no reason to prefer the estate's version of events, as opposed to his version, which is that the 2014 Agreement is independent of the 2003 Agreement as the latter did not exist. BVI 83 is not a parallel proceeding to Suit 821 giving rise to *lis alibi pendens* but rather an independent proceeding.[49] The respondent highlighted in this regard that even if the estate's claim in Suit 821 fails, he would still have to sue separately to establish the 2014 Agreement.[50]

47 The respondent also submitted that the Judge was correct in finding that Singapore is not the clearly more appropriate forum for the dispute in BVI 83 since the dispute concerns the legal and beneficial ownership of the Share in a BVI-incorporated company. The applicable law regarding title to shares is the *lex situs*, in this case the BVI.[51] The BVI is also the place where the primary remedy sought by the respondent in BVI 83, *ie*, registration as the sole shareholder in MDWL's share register, is to be enforced.[52] As for the appellant's allegations on vexatious and oppressive conduct, the respondent argued that the

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48 Appellant's case at paras 89–109.

49 Respondent's case at paras 56–58.

50 Respondent's case at para 62.

51 Respondent's case at para 25.

52 Respondent's case at paras 43–46.

allegations were unfounded and that his commencement of proceedings in the BVI was a legitimate exercise of his right to sue in a forum of his choice.[53]

48 In addition, at the hearing before us, counsel for the respondent, Mr Toby Landau QC, placed significant emphasis on the decision of the BVI court not to stay BVI 83. Two main submissions were made in respect of this development. First, it was argued that comity requires this court not to issue the anti-suit injunction given the BVI court's decision to assume jurisdiction. Second, it was argued that an issue estoppel operates in respect of the issue of the natural forum for the dispute since this issue was argued before and decided by the BVI court.[54]

Legal principles applicable to anti-suit injunctions

49 The legal principles that govern anti-suit injunctions are relatively well-established and uncontroversial. It will suffice, for present purposes, to refer to the general principles which were set out in the landmark decision of the Privy Council in *Société Nationale Industrielle Aero-Spatiale v Lee Kui Jak and another* [1987] 1 AC 871 ("*Aerospatiale*")[55] which include the following (see *Aerospatiale* at 892) :

> (a) The jurisdiction is to be exercised when the "ends of justice" require it.

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53 Respondent's case at paras 73–76, 86–95.

54 Respondent's skeletal submissions at paras 13–20, 21–28.

55 Respondent's bundle of authorities ("RBOA") Vol II at Tab 12.

(b) Where the court decides to grant an anti-suit injunction, its order is directed not against the foreign court but against the parties so proceeding or threatening to proceed.

(c) An injunction will only be issued to restrain a party who is amenable to the jurisdiction of the court, against whom an injunction will be an effective remedy.

(d) Since such an order indirectly affects the foreign court, the jurisdiction is one which must be exercised with caution.

We would highlight at this point that the present appeal has raised questions arising from the interactions between (b) and (d), given the issues raised in the context of comity.

50 In terms of the specific factors relevant to the court's determination of whether to grant an anti-suit injunction, the following five factors have been identified in our case law (see *John Reginald Stott Kirkham and others v Trane US Inc and others* [2009] 4 SLR(R) 428[56] ("*Trane*") at [28]–[29]):

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

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

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

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56 Appellant's Bundle of Authorities ("ABOA") Vol 1 Tab 11.

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

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

51 In the present appeal, the first factor (whether the defendant is amenable to the jurisdiction of the Singapore court) and the last factor (whether the institution of foreign proceedings is in breach of any agreement between the parties) are not in issue. As for the fourth factor, *ie*, the injustice to the defendant from being deprived of legitimate advantages in the foreign forum, as we have explained above, the Judge did not place weight on this factor (see above at [33]). As the respondent did not suggest in the present appeal that the Judge's findings on the fourth factor were incorrect, we accept the Judge's findings and proceed on the basis that a grant of the injunction will not deprive the respondent of any legitimate juridical advantage in the BVI.

Issues before this court

52 In the circumstances, the issues that arise for our determination in the present appeal are:

(a) the natural forum for the dispute;

(b) whether the pursuit of the BVI proceedings by the respondent is vexatious or oppressive; and

(c) whether this court is precluded from granting the anti-suit injunction on grounds of comity and/or issue estoppel as a result of the BVI court's decision not to stay its proceedings.

Issue 1: The natural forum for the dispute

Legal principles in the determination of natural forum

53 It is trite that the natural forum is the forum with which the dispute has the most real and substantial connection (*Sun Jin Engineering Pte Ltd v Hwang Jae Woo* [2011] 2 SLR 196[57] at [47]). In an application for an anti-suit injunction, Singapore must be shown by the applicant to be "clearly the more appropriate forum" (*Trane* at [33]). In *JIO Minerals FZC and others v Mineral Enterprises Ltd* [2011] 1 SLR 391[58] ("*JIO Minerals*"), this court listed five connecting factors relevant in the identification of the natural forum for the dispute (at [42], citing with approval *Halsbury's Laws of Singapore* vol 6(2) (LexisNexis, 2009) at paras 75.091 to 75.095), namely:

(a) the personal connections of the parties;

(b) the connections to relevant events and transactions;

(c) the governing law of the dispute;

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

(e) the overall shape of the litigation.

54 We have nevertheless cautioned against a mechanical application of the above factors and emphasised that greater weight should be ascribed to the factors likely to be *material* to a fair determination of the dispute. As this court

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57 ABOA Vol II Tab 19.

58 ABOA Vol I Tab 10.

stated in *Rappo, Tania v Accent Delight International Ltd and another and another appeal* [2017] 2 SLR 265[59] at [70]–[71]:

> 70 We think it is appropriate here to emphasise that it is the *quality* of the connecting factors that is crucial in this analysis, rather than the quantity of factors on each side of the scale. … [T]he search is for those incidences (or connections) that have the *most relevant and substantial associations* with the dispute.
>
> 71 … The court should always be astute to determine those incidences that are likely to be material to the fair determination of the dispute, and to ascribe greater weight to those incidences over others, as the case may require.
>
> [emphasis in the original]

Thus, ultimately, the exercise of identifying the natural forum is not a mechanical numbers game. Instead the entire multitude of factors should be taken into account in balancing the competing interests (*Trane* at [34]).

Connecting factors

Governing law

55 While both parties made submissions on the law governing the dispute, on the facts of the present case, we find the applicable law to the dispute to be of limited utility and relevance. To begin with, there was no suggestion by either party that the BVI or Singapore court would apply different principles that would affect the outcome of the dispute, particularly since both Singapore and the BVI are common law jurisdictions. We also observe that the key issues in dispute between the parties are factual and not legal in nature since both parties' cases are dependent on the factual question of whether or which of the oral

[59] ABOA Vol II Tab 15.

agreements were concluded. The governing law is of limited relevance for this reason as well.

56 On this note, we agree with the observations made by the learned authors of *Dicey, Morris & Collins on the Conflict of Laws* vol 1 (Lord Collins of Mapesbury gen ed) (Sweet & Maxwell, 15th Ed, 2012) at para 12–034 that:

> If the legal issues are straightforward, or if the competing fora have domestic laws which are substantially similar, the identity of the governing law will be a factor of rather little significance. But if the legal issues are complex, or the legal systems very different, the general principle that a court applies its own law more reliably than does a foreign court will help to point to the more appropriate forum …

57 Likewise, Prof Yeo Tiong Min SC made the following observations on the relevance of the governing law of the dispute, with which we would agree (see *Halsbury's Laws of Singapore - Conflict of Laws* vol 6(2) (LexisNexis Singapore, 2016) ("*Halsbury's Laws of Singapore*") at para 75.093):

> …
>
> (2) Within the common law system, there is usually little difficulty in one forum applying the law of another. Thus, the governing law factor becomes a more weighty one if it would involve [the] court having to apply unfamiliar systems of law.
>
> (3) The nature of the dispute is always important: it is obviously a more weighty factor in a dispute which turns on questions of interpretation of the law than one which merely involves the application of the law.
>
> …

58 Thus, we did not find the governing law to be of relevance in the identification of the natural forum for the dispute in the present case. Taking the relevant connecting factors into account, we find, on a proper characterisation of the dispute in BVI 83 viewed holistically against the background factual

matrix, that Singapore is the natural forum for the dispute for reasons which we will elaborate below.

Parallel proceedings in Singapore and the BVI

59 The existence of related or parallel proceedings elsewhere (*ie,* a *lis alibi pendens*) has been recognised as a valid factor in the identification of the natural forum for the dispute. The weight to be placed on concurrent proceedings in the local and foreign court is dependent on factors including the degree to which both proceedings have advanced and the degree of overlap in both proceedings. We find the following excerpt from *Halsbury's Laws of Singapore* to be particularly useful (at para 75.094):

> The weight to be given to the fact of existence of parallel proceedings will depend on the circumstances. The degree to which the respective proceedings have advanced is an important consideration; … The degree of overlap of issues and parties is another consideration. However, little or no weight will be given to [the] fact that there are foreign proceedings if they are commenced for strategic reasons to bolster the case of a clearly more appropriate forum elsewhere.
>
> Where there has been or is litigation involving very complex facts which call for highly specialised expert evidence, and such expertise has been built up in a particular jurisdiction, that could be a very important indication of the prima facie natural forum. This factor, discussed in *The Spiliada*, came to be known as the *Cambridgeshire* factor …, is recognised as a highly exceptional factor and has rarely been applied since then.
>
> The risk of conflicting judgments arising from concurrent proceedings is another factor to consider, but it is not decisive and will need to be weighed with other factors. If it is a straight competition between proceedings in the forum and proceedings elsewhere, this factor should carry no weight, because the only question before the court is whether it should exercise its own jurisdiction and it has no control over foreign proceedings. Of course, ideally the trial should be held at only one of the competing fora, but trial in either forum alone will obviate the risk. However, the problem usually arises in the context of complex litigation involving multiple issues and/or multiple litigants.

60 In the present case, the comparative degree to which the BVI proceedings and Singapore proceedings have advanced was largely a neutral factor since there was no substantial difference in the progress of both proceedings. Nonetheless, on a strict comparison, we note that as the trial dates have been tentatively set for Suit 821,[60] the Singapore proceedings are at a more advanced stage than BVI 83, where jurisdictional issues are still being sorted out since the appellant intends (as at the date of the hearing of this appeal) to file an application for leave to appeal against Adderley J's refusal to stay the proceedings.[61] The Cambridgeshire factor was also largely irrelevant since the dispute does not involve highly technical and complex facts and evidence, in respect of which expertise has been built up in any particular jurisdiction.

61 We therefore turn to the factor which we find to be the most relevant in the present appeal, *ie*, the degree of overlap in the BVI and Singapore proceedings. It will be recalled that the Judge came to the view that the factual issues in BVI 83 and Suit 821 are not identical (see above at [32]). The Judge observed that the fact that neither party is seeking any relief in relation to the Share or the 22 units in Newton Imperial in Suit 821 is an indication that the issues in Suit 821 and BVI 83 do not overlap. In addition, in his view, the proceedings do not overlap because the 2014 Agreement is not of key importance to Suit 821 and similarly, the 2003 Agreement is not the focus of BVI 83 (GD at [49] and [62]). While the Judge was correct that the reliefs sought in BVI 83 and Suit 821 are not identical since the Share claimed in BVI 83 is not claimed by either party in Suit 821, we would respectfully disagree with his

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60 Appellant's skeletal submissions at para 35.

61 Affidavit of Lakshmi Anil Salgaocar ("LAS") dated 29 April 2019 for CA/SUM 39/ 2019 at para 29.

conclusion that as a result, the issue of whether the 2014 Agreement exists is not before the Singapore court in Suit 821.

62 We note at the outset that the Judge was likely influenced in his findings by the manner in which the parties had framed their respective cases before him and the state of events then. As we have alluded to above, the earlier version of the defence filed by the respondent in Suit 821 which was before the Judge contained no *express* mention of the 2014 Agreement (see [19] above). In addition, in the proceedings below, the appellant's case was that the 2014 Agreement was not raised in the respondent's pleadings for Suit 821 and had been raised for the first time by him in the anti-suit injunction proceedings. It was stated in the appellant's written reply submissions below that:[62]

> [T]his **June 2014 Agreement is <u>not</u> averred in the <u>Defence in Suit 821.</u>** [emphasis in the original]

And further that:[63]

> [W]e submit that [the respondent's] allegations in BVI 83 are so fundamentally inconsistent with the position he has taken in the Singapore proceedings, that it can only be characterised as a frivolous claim brought only to harass and oppress the Estate. This is abject bad faith.

63 On the other hand, on appeal, the appellant's case is that the amended version of the defence filed after the Judge's decision makes it clear beyond peradventure that the respondent's defence to the 2003 Agreement in Suit 821 is and was all along based on his assertions in respect of the 2014 Agreement (see [42] above). The appellant's case is in fact that the 2014 Agreement is a

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62 ROA Vol IV (Part 2) p 9 para 10.

63 ROA Vol IV (Part 2) p 10 para 16.

central issue in Suit 821 as it has been put into issue by the respondent in his pleadings.[64]

64 From an examination of the latest version of the pleadings in Suit 821, we are unable to agree with the Judge that the existence and effect of the 2014 Agreement is not an issue before the Singapore court in Suit 821. First, the mere fact that the Share is not specifically claimed by either party in Suit 821 does not mean that the 2014 Agreement is not in issue. As the Judge observed, it would make no sense for Mr Anil to have made a claim in Suit 821 for the ownership of the Share since Mr Anil's own case was that he was *already* the legal and beneficial owner of the Share (see GD at [6]). As for the fact that the respondent has not advanced a counterclaim for the Share in Suit 821 and instead commenced proceedings in the BVI, it does not follow that the existence and effect of the 2014 Agreement is not an issue before the Singapore court.

65 One of the key inquiries in determining the existence of *lis alibi pendens* is whether there are same or similar issues arising from the same factual matrix which are before both courts. We observed in *Virsagi Management (S) Pte Ltd v Welltech Construction Pte Ltd and another appeal* [2013] 4 SLR 1097 ("*Virsagi*") (at [47]) that while the nature of the reliefs sought in both set of proceedings is relevant to the analysis, the court ought not to hold that similar issues are brought before both the local and foreign court by focusing merely on the reliefs sought. The converse is also true in that the fact that different reliefs are sought before the local and foreign court does not necessarily mean that the issues that arise for determination by both courts are different. In fact, in cases where the plaintiff sues the defendant in Singapore and the defendant

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64 Appellant's skeletal submissions at paras 17–18.

sues the plaintiff abroad (what we termed in *Virsagi* as a "reversed parties" situation) as opposed to the situation where the same plaintiff sues the same defendant in Singapore and abroad (what we termed in *Virsagi* as a "common plaintiff" situation), the fact that different reliefs are sought in both jurisdictions is usually not remarkable and certainly not necessarily an indication that both proceedings involve different issues.

66 In this case, notwithstanding that the reliefs sought by both parties in the BVI and in Singapore are different, it is clear from a review of the pleadings for Suit 821 and BVI 83 that similar issues arise for determination in both proceedings. In our view, it is clear that the issue of the ownership of the Share is engaged in both proceedings. The pleadings filed by the parties in Suit 821 and BVI 83 discloses only two (alternative) possibilities as to why the Share was transferred by Ms Pooja to Mr Anil in 2014:

> (a) On the estate's case in Suit 821, the Share was transferred in response to a letter of demand sent by Mr Anil's solicitors to the respondent, for the return of the 22 units which were said to have been transferred by the respondent to the Subsidiaries in breach of trust under the 2003 Agreement. The 2014 share transfer is thus relied on by the estate in Suit 821 as an admission by the respondent of the existence and effect of the 2003 Agreement.
>
> (b) On the respondent's claim in BVI 83 *and* his defence to Suit 821, the Share was transferred pursuant to the alleged sale and purchase arrangement under the 2014 Agreement.

67 The estate's claims and the respondent's claims in both suits are therefore binary in nature. Proof of one party's case would disprove the other's.

The respondent disputed that this was so, and argued that the 2003 Agreement and 2014 Agreement are not mutually exclusive for the following reasons:

> (a) Even if the 2003 Agreement is proved, Mr Anil could still have agreed to pay consideration to the respondent to acquire the 22 units in Newton Imperial, pursuant to the 2014 Agreement. This is because the 2003 Agreement, even if proven, would make Mr Anil the beneficial owner of only the *shares* in the SPVs which he claimed were subject to an oral trust. He would not have been the legal or beneficial owner of the 22 units.[65]
>
> (b) Even if the 2003 Agreement is not proved, it does not follow that a finding on the 2014 Agreement would be made. The respondent would still have to sue separately to establish and enforce the 2014 Agreement.[66]

68 Based on a review of the pleadings, we disagree with the respondent's suggestion that he can continue to assert the 2014 Agreement even if the 2003 Agreement is established. If the Singapore court finds that the 2003 Agreement is proved by the estate, it would mean that the estate's version that the Share was transferred in 2014 by the respondent to return the 22 units would be accepted.[67] In the circumstances, it is unclear to us how the respondent could still separately establish that the Share was transferred pursuant to the alleged sale and purchase arrangement in the 2014 Agreement. In other words, since there are only two possibilities for the 2014 share transfer, a rejection of one

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65 Respondent's skeletal submissions at paras 29–33.

66 Respondent's skeletal submissions at para 34.

67 ROA Vol IV (Part 6) pp 190–191.

version would necessarily entail acceptance of the other. In our view, there is simply no middle ground.

69 Our view that the 2003 Agreement and 2014 Agreement are mutually exclusive is further buttressed by the appellant's undertaking to abide by the Singapore court's decision in the BVI (see above at [33]). Specifically, Mr Singh confirmed during the hearing before us that if the estate fails to prove the 2003 Agreement in Singapore, it would have no defence to the respondent's claim on the 2014 Agreement and that the Share in MDWL would correspondingly have to be transferred back to Ms Pooja.

70 For the foregoing reasons, we find that the Judge erred in finding that the 2014 Agreement is not of key importance in Suit 821 and thus that the issues before the courts in the BVI and in Singapore are different. This was due in part to the arguments which were advanced by the appellant below (see [62]–[63] above). We agree with the Judge, however, that the fact that there are parallel proceedings in the BVI and in Singapore which gives rise to the risk of inconsistent findings, while relevant, is insufficient on its own to justify the grant of the anti-suit injunction (see GD at [61]). The question that remains to be considered is whether there are other factors which point to Singapore being "clearly the more appropriate forum" for the dispute. On an examination of the other relevant connecting factors, we find that Singapore is the natural forum for the dispute.

Location of witnesses

71 In so far as the location of witnesses is concerned, the Judge was of the view that the fact that several potential witnesses are in Singapore was not material given that (a) the location of witnesses carries little weight where the

forum allows for evidence to be taken by video link; and (b) it was not immediately clear how relevant the evidence of the potential witnesses would be to BVI 83 (GD at [53]).

72 We agree that the availability of information and communication technology such as the possibility of video-link evidence makes the physical location of witnesses less significant since witnesses would not be required to travel to the forum country. However, the more important consideration which the Judge did not appear to have considered is the issue of the compellability of witnesses.

73 The location and the compellability of witnesses as a factor in the determination of the natural forum takes on a greater significance where the main dispute between the parties is largely factual in nature, such as in the present case (*Rickshaw Investments Ltd and another v Nicolai Baron von Uexkull* ("*Rickshaw Investments*")[68] [2007] 1 SLR(R) 377 at [19]). In our judgment, the Judge placed insufficient weight on the fact that while several key witnesses residing in Singapore are clearly compellable to testify or produce documents in the Singapore proceedings, it is unclear if they are likewise compellable in the BVI. This is particularly material since these key witnesses are third-party witnesses over which the appellant has no control (see [74] below). We note in this regard that no evidence was adduced to show that the BVI evidentiary rules permit a foreign witness (residing in Singapore) to be compelled to give evidence in BVI proceedings. The expert evidence on BVI law relied on by the respondent in the proceedings below did not specifically address witness compellability and instead only referred to the taking of

[68] ABOA Vol II Tab 16.

evidence via video-link.[69] In *JIO Minerals*, the party resisting an application to stay Singapore proceedings in favour of Indonesian proceedings submitted, in relation to the issue of witness compellability, that the applicants for the stay had not shown that witnesses resident in Indonesia were compellable in Indonesia. This court found that although it would have been preferable to have had expert evidence on whether witnesses resident in Indonesia could be compelled to testify in an Indonesian court, it was more likely that they would testify there than if the dispute was heard in Singapore since the Singapore court could not compel a foreign witness to testify in Singapore proceedings (see *JIO Minerals* at [71]–[74]). The situation in the present case is different since it is the compellability of Singapore-resident witnesses in a foreign court which is at issue. However, the same principle applies in that while there is no clear evidence on the compellability of foreign witnesses (in this case, those resident in Singapore) in the BVI proceedings, what is clear is that these witnesses are clearly compellable in Singapore.

74 We also disagree with the Judge's view that the relevance of potential third-party witnesses who are resident in Singapore is unclear. It appears to us that this view was largely influenced by the Judge's holding that the 2014 Agreement was not put in issue in Suit 821. The appellant has identified a number of witnesses located in Singapore and has sufficiently explained how their evidence is likely to be material to a determination of the dispute. These include:

(a) First, witnesses who will give evidence concerning the development of Newton Imperial. This includes the architect and main

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69 ROA Vol III (Part 2) p 48.

contractor for the project. Their evidence would be relevant to the question of whether it was Mr Anil or the respondent who funded and spearheaded the construction and development of Newton Imperial. This is likely to be relevant in the court's consideration of whether the 2003 Agreement exists, and by the same token the non-existence of the 2014 Agreement.

(b) Second, Mr Anil's Singapore lawyers at the material time from Haridass Ho & Partners who are likely to give evidence relating to alleged assurances made by the respondent in response to the letter of demand sent in 2014 and the escrow agreement for the rental payments.[70]

75 In addition, the respondent claims that the Loan he allegedly made to MDWL was deposited into MDWL's DBS Bank account in Singapore. If true, the relevant documentary records will be in the possession of DBS Bank in Singapore and can be obtained from the bank through an application for discovery against a non-party.[71]

76 It seems to us that the appellant has sufficiently demonstrated that the evidence of the witnesses in Singapore is "at least arguably relevant" (*JIO Minerals* at [67]). In stark contrast, the respondent has not identified any witness located in the BVI whose testimony would be of any relevance to the issues in BVI 83.

77 For completeness, we note that the residence of the parties themselves is a neutral factor. Neither the appellant nor the respondent are resident in

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70 ROA Vol III (Part 1) p 29; ROA Vol IV (Part 6) pp 188–189 paras 158–161.

71 Appellant's case para 69; ROA Vol III (Part 1) p 41.

Singapore or the BVI. Both of them are Indian nationals who are resident in India and Hong Kong respectively (GD at [52]).

78 In the circumstances, we find that the location of witnesses is a factor pointing towards Singapore as the natural forum.

The subject matter of the dispute

79 The Judge stated that he did not attribute significant weight to the fact that the 22 units in Newton Imperial are located in Singapore and that the rental income they generate is also collected in Singapore (GD at [54]). He was of the view that (a) the dispute in BVI 83 concerns the ownership of the Share in MDWL and not the 22 units in Newton Imperial; and (b) relatedly, the fact that MDWL is a BVI-incorporated company pointed to the BVI being the natural forum for the dispute (GD at [54]–[55]).

80 Although what is contested by the parties in BVI 83 is strictly speaking the legal and beneficial ownership over the Share, the Share is, as the appellant puts it, "of consequence and of interest only because of the 22 [u]nits".[72] The reason for the 2014 share transfer, be it on the respondent's or the estate's case, is inextricably linked to both parties' interest in the 22 units in Newton Imperial that are held by the Subsidiaries. On the respondent's own case, the 2014 share transfer was purportedly executed to sell the 22 units in Newton Imperial to Mr Anil for a consideration. On the estate's case, the 2014 share transfer was executed by the respondent to return the 22 units in Newton Imperial to Mr Anil. In addition, there was no suggestion that MDWL and the Subsidiaries had other assets or business activity beyond the 22 units in Newton Imperial. Thus, the

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[72] Appellant's case at para 61.

real substance of the dispute between the parties is, in truth, the ownership of immovable property and rental proceeds located in Singapore.

81 In our view, the fact that the disputed Share is in a BVI-incorporated company is neither critical nor even material. Although the respondent seeks in BVI 83 for an order that he be entered as the sole registered shareholder in MDWL's register of members and a declaration that he is the sole beneficial owner of the Share, these reliefs are sought not as an end in themselves but as means to an end. The Share is of interest to the parties because of the assets held by MDWL through its Subsidiaries, *ie*, the 22 units in Newton Imperial which are located in Singapore.

82 The respondent sought to rely on the decision of the Judge in applications related to Suit 821 for the removal of caveats. In brief, shortly prior to commencing Suit 821, Mr Anil had lodged caveats against several properties registered in the names of the respondent and his wife or in companies that the respondent controlled. The registered proprietors commenced proceedings by way of Originating Summonses Nos 727 and 945 of 2015 ("OS 727" and "OS 945") to remove the caveats. The Judge's decision on the caveat removal applications is reported at *Jhaveri Darsan Jitendra and others v Salgaocar Anil Vassudeva and others* [2018] 5 SLR 689 ("*Jhaveri Darsan Jitendra*"). In summary, the Judge allowed the caveats to be lifted, finding that Mr Anil did not have a caveatable interest in the properties since his claim in Suit 821 is premised on his beneficial interest in the *shares* in the relevant SPVs which the respondent allegedly held on trust for him. It was not his case that the 2003 Agreement provided for the SPVs' *assets* to be held on trust for him (*Jhaveri Darsan Jitendra* at [31]). In addition, the principle of separate legal personality implied that even if one owned the shares in a company, one did not own its assets (*Jhaveri Darsan Jitendra* at [34]). On appeal, we affirmed the Judge's

decision to lift the caveats.[73] On this basis, the respondent submitted that this court has acknowledged that the estate's claim in Suit 821 does not extend to a proprietary interest in the assets of the SPVs. He argues that for similar reasons, it would be inaccurate to say that the substance of the dispute in BVI 83 is over the ownership of the 22 units in Newton Imperial and not the Share.[74]

83 We disagree. The issue considered by the Judge and by this court (on appeal) in OS 727 and OS 945 was whether Mr Anil had a *caveatable interest* in the properties by virtue of his claims in Suit 821. It is understandable that in that context, the specific nature of the relief claimed was of central importance. On the other hand, in the present context, the court is seeking to determine the forum that has the *most real and substantive connection with the dispute*, to identify the natural forum for the resolution of the same. In this latter context, it is important for the court to look beyond the reliefs sought by the parties to consider the real nature and substance of the parties' dispute.

84 Leaving aside the fact that the 22 units in Newton Imperial are held by the 22 BVI-incorporated Subsidiaries of MDWL, the dispute has little or no connection with the BVI beyond the place of incorporation.

Connection to events and transactions

85 Finally, we note that in his decision not to stay BVI 83, Adderley J had found that the "place of performance/breach" is a relevant connecting factor pointing to the BVI being the natural forum for the dispute. The breach referred to by Adderley J was the "breach in failing to rectify the register of the defendant

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73 4th Affidavit of JDJ dated 8 April 2019 at JDJ–28.

74 Respondent's skeletal submissions paras 5, 54.

companies [*ie*, MDWL]".[75] However, given that this factor assumes that the respondent's claim is made out, we are of the view that limited weight should be placed on it. In addition, as the nub of the respondent's claim is that the Share was transferred without Mr Anil having paid the agreed consideration under the 2014 Agreement, it could equally be argued that the "place of performance/breach" is the place where payment is due and not the location where the Share is registered. In our judgment, on the facts of the present case, the place of performance/breach does not point to any one jurisdiction being the clearly more appropriate forum for the dispute and is therefore of limited relevance in identifying the natural forum.

86 In addition, that the *place of enforcement of judgment* is the BVI (since the relief sought by the respondent is an order that he be entered as the sole registered shareholder in MDWL's register of members) is unlikely to have any material significance given (a) the purpose of the alleged 2014 Agreement was to sell 22 units in Newton Imperial located in Singapore; and (b) the appellant's undertaking that she will, in any event, abide by the decision of the Singapore courts in the BVI.

87 Finally, we should add that the place of contracting is also not material as it is the respondent's case that the 2014 Agreement was concluded orally over the telephone while he was in Hong Kong and Mr Anil in India.

Issue 2: Vexatious or oppressive conduct

88 The Judge was of the view that the appellant had failed to establish that the respondent had commenced BVI 83 in bad faith because, amongst others,

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75 4th Affidavit of JDJ dated 8 April 2019 at JDJ-27 paras 40–41.

Suit 821 had not reached an advanced stage at the time BVI 83 was commenced, and the factual issues in BVI 83 and Suit 821 were in any event not identical (GD at [60] and [62]). Having considered the nature of the claims brought by the respondent in BVI 83 and the circumstances in which the proceedings in the BVI were commenced, we are unable to agree with the Judge that the respondent has not acted in a vexatious or oppressive manner in pursuing BVI 83.

Timing of the commencement of BVI 83

89 The timing of the commencement of BVI 83 suggests that it was brought by the respondent in bad faith. There are, in our judgment, two aspects in relation to the timing of the commencement of BVI 83 which are particularly significant.

90 First, there was a significant gap between the time when the respondent's cause of action accrued and the time BVI 83 was commenced. The respondent's main claim in BVI 83 is that Mr Anil failed to pay what was due to him under the 2014 Agreement as consideration for the transfer of the Share. However, it is undisputed that the Share was transferred by Ms Pooja to Mr Anil in July 2014. Yet, BVI 83 was only commenced in May 2017, almost three years after the transfer of the Share and 20 months after Suit 821 was commenced. This delay is particularly glaring given the amount at stake (*ie*, more than US$41m). No reasonable explanation was provided by the respondent to account for the delay.

91 At the hearing before us, Mr Landau, in seeking to proffer an explanation for the delay in the commencement of BVI 83, referred to the fact that at the time BVI 83 was commenced, the progress of Suit 821 had been stalled for quite some time. However, on the respondent's own case, the claims

under Suit 821 and BVI 83 are independent of each other and thus the status of Suit 821 should not affect the timing of the respondent's commencement of BVI 83.

92 Second, BVI 83 was commenced at a time when the estate was almost ready to take over the conduct of Suit 821. It will be recalled that following Mr Anil's death, the progress in Suit 821 was stalled due to the dispute over the rightful administratrix to represent his estate. As mentioned above, (see [21]), the respondent's lawyers were copied on a letter dated 15 May 2017 sent by the appellant's solicitors to the court stating that the issue of representation for the purposes of Suit 821 was "on the brink of a settlement". It was no coincidence that BVI 83 was commenced *one day after* this letter was copied to the respondent.

93 Thus, the fact that the Share was transferred to Mr Anil in 2014 but the respondent only commenced BVI 83 on 16 May 2017, one day after he was informed of the likely progress of the proceedings in Suit 821, suggests that the respondent had commenced the proceedings in the BVI in bad faith.

Failure to advance counterclaim

94 In the light of the manner in which the parties' respective pleadings have been framed, we find that the issues raised in BVI 83 do overlap with those raised in Suit 821. The respondent could and should have advanced a counterclaim for the legal and beneficial interest in the Share in Suit 821 but had not done so and instead commenced proceedings in BVI 83 for tactical reasons. In this regard, we note that the respondent had in fact attempted to amend his pleadings to Suit 821 to introduce a counterclaim (which was rejected by the Judge as it did not disclose a cause of action and/or was time barred), but

conspicuously omitted to mount any claim for the Share in his abortive counterclaim.[76]

95 Given the overlap in the facts and issues in BVI 83 and Suit 821, there was no legitimate reason for the respondent to have commenced BVI 83 instead of filing a counterclaim in Suit 821. As the Judge found, the respondent had not identified any legitimate juridical advantages associated with proceeding in the BVI. Further, since the appellant has indicated that she is prepared to undertake, should the anti-suit injunction be granted, to consent to judgment in the BVI on terms that are identical to the terms of any Singapore judgment that the respondent might obtain, there can be no legitimate reason for the respondent's preference to have his claim over the Share heard in the BVI rather than to advance a counterclaim here (see [33] above).[77]

96 Further, at the hearing before us, Mr Landau accepted that Suit 821 will likely take place before BVI 83 and that the findings in Suit 821 (particularly, on the existence of the 2003 Agreement) may give rise to issue estoppel-based arguments in the BVI. In the circumstances, we see no reason why the respondent should be allowed to continue pursuing the BVI proceedings in tandem with the Singapore proceedings. The existence of parallel proceedings on the same matter in two jurisdictions inevitably gives rise to a risk of inconsistent judgments. It also unnecessarily entails the incurring of additional costs, time, and effort for both parties.

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76 Appellant's skeletal submissions at para 25; Affidavit of LAS dated 29 April 2019 for CA/SUM 39/ 2019 at LAS-1.

77 ROA IV (Part 2) para 98.

97 Mr Landau's only response was that the respondent has the right to seek legal recourse in the judicial system of his choice.[78] That may well be so but given the specific factual matrix in the present case, we find that the respondent's exercise of that right was made in bad faith, in order to duplicate the proceedings to vex and oppress the estate.

Issue 3: The significance of the BVI decision

98 For the foregoing reasons, we find that the requirements for an anti-suit injunction that Singapore is the clearly more appropriate forum and that the pursuit of foreign proceedings is vexatious or oppressive have been established. At the hearing before us, Mr Landau argued that even if Singapore is determined to be the natural forum for the respondent's claim and the pursuit of BVI 83 is found to be vexatious or oppressive, this court is nevertheless precluded from granting the anti-suit injunction by principles of comity and the doctrine of issue estoppel in the light of the intervening decision of the BVI court not to stay its proceedings.

Issue estoppel

99 We disagree with the respondent's submission that where the foreign court has declined to stay its proceedings, an issue estoppel operates to preclude the court hearing the anti-suit injunction application from considering the merits of the application. In order for an issue estoppel to arise, there must be identity of subject matter in the two proceedings (see *Lee Tat Development Pte Ltd v Management Corporation of Strata Title Plan No 301* [2005] 3 SLR(R) 157 at [15]). It has been consistently recognised that the test for anti-suit injunctions

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78 Respondent's skeletal submissions at para 44.

differs from that for stay applications on *forum non conveniens* grounds. In respect of anti-suit injunctions, an additional requirement of vexatious or oppressive conduct on the defendant's part applies (see *Aerospatiale* at 895–896 as discussed below at [109]).

100 The respondent relied on the case of *Desert Sun Loan Corp v Hill* [1996] 2 All ER 847 ("*Desert Sun*") for the proposition that an issue estoppel can arise from a judgment of a foreign court on interlocutory matters.[79] In that case, the plaintiff bank commenced proceedings in Arizona against a limited partnership and its partners for the amount due under a promissory note. By the time the proceedings were commenced, the defendant partner had already left the US and moved to England. The preliminary question before the Arizona court, which it answered in the affirmative, was whether the defendant had voluntarily submitted to the jurisdiction of the Arizona court given that a US attorney purportedly acting for him had entered an appearance on his behalf. The plaintiff eventually obtained judgment against the defendant before the Arizona courts, which it sought to enforce against the defendant in England. Before the English courts, one of the questions that arose was whether the defendant was estopped from arguing that the Arizona court did not have jurisdiction to render the judgment because the US attorney was not authorised. The English Court of Appeal held that an issue estoppel could arise from interlocutory judgments of a foreign court provided certain requirements were met (at 858h–858j). On the facts of that case however, it found that the judgment of the Arizona court did not give rise to an issue estoppel as it was not sufficiently clear from that judgment if the issue relating to the authority of the US attorney to act on his

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[79] Respondent's supplemental bundle of authorities at Tab 2; Respondent's skeletal submissions at para 22.

behalf had been specifically identified and decided against the defendant in the Arizona court (at 860g–860h).

101 We accept that issue estoppel can in principle arise in respect of foreign decisions on interlocutory matters. In our judgment, however, the case is not helpful to the respondent. In *Desert Sun*, the relevant issue before the English Court of Appeal was whether a decision of the Arizona courts to assume jurisdiction over the defendant could give rise to an issue estoppel on the specific question of jurisdiction of the Arizona courts in enforcement proceedings in England. There was thus arguably identity in the subject matter of both proceedings (though the court went on to find that it was unclear that the factual issue before the English court had in fact been decided by the Arizona court). It was in that context that the English Court of Appeal expressed its view that an issue estoppel could arise from a foreign judgment on an interlocutory issue, if the relevant conditions are met.

102 Before us, Mr Landau was unable to point us to any authorities for the more precise position which he was advancing in the present appeal, *ie*, that a stay decision by a court of one jurisdiction can give rise to an issue estoppel in respect of a subsequent anti-suit injunction application in the competing forum. We note that the case law shows that it is in fact not uncommon for an anti-suit injunction application to be brought by one party after its bid to stay the foreign proceedings has failed. In our view, it is no coincidence that in none of the cases was the matter disposed of by way of the doctrine of issue estoppel. This will become apparent when we examine the issue of comity in the next section of this judgment.

103 More importantly, we are of the view that the doctrine of issue estoppel cannot apply in the manner suggested by the respondent because it would lead

to arbitrary outcomes. If issue estoppel applies in the manner advanced by the respondent, the court that is second in time would effectively always be precluded from considering the application before it, though the application is strictly speaking different from that which was considered by the foreign court. This cannot be legally correct and is not supported by the case law. To suggest otherwise would effectively mean that the outcome of any such applications would be dependent on the scheduling of the hearings by the courts over which the parties would have no control whatsoever.

104 At the hearing before us, Mr Landau sought to clarify that his argument on issue estoppel was not that this court could no longer grant the anti-suit injunction given the decision of the BVI court to assume jurisdiction, but that the appellant could no longer re-litigate the specific issue of the natural forum since this issue was raised before and decided by the BVI court in the stay application. While this distinction may appear relevant at first blush, we find that ultimately, the distinction drawn is artificial. Whether the reliance on issue estoppel is to preclude the granting of the anti-suit injunction, or that the doctrine has the effect of preventing the applicant of the anti-suit injunction from re-litigating the specific issue of natural forum, the practical effect of accepting either argument is the same. On either argument, where the foreign court has declined to stay its proceedings on *forum non conveniens* grounds, the subsequent court considering the anti-suit injunction application must necessarily decline to issue the injunction because of the prior decision of the foreign court (including the foreign court's findings on the natural forum for the dispute).

105 For the foregoing reasons, we hold that the fact that a foreign court has declined to stay its proceedings does not give rise to an issue estoppel which precludes the losing party in the stay application from bringing an anti-suit

injunction application before the Singapore courts and from advancing arguments on the natural forum in that subsequent application. It may, however, have a bearing on consideration of comity.

Comity

106 The final issue raised in this appeal is whether consideration of comity prevents this court from allowing the appeal and granting the anti-suit injunction in the light of the intervening decision of the BVI court not to stay its proceedings, which was rendered while the present appeal was pending.

107 In our judgment, where the foreign court has declined to stay its proceedings, comity principles do not generally preclude the domestic court from granting the injunction if it finds that (a) it is clearly the more appropriate forum for the dispute; *and* (b) the defendant in the application has acted in a vexatious or oppressive manner in commencing the foreign proceedings.

Legal principles

108 It has long been recognised that since an anti-suit injunction indirectly affects the foreign court, the jurisdiction is one which must be exercised with caution and considerations of comity do weigh into the court's determination of whether the injunction should be granted.

109 In fact, comity is said to be the reason for the distinction in the legal requirements between an anti-suit injunction and a stay. In the landmark case of *Aerospatiale,* the Privy Council departed from the approach in *Castanho v Brown & Root (UK) Ltd* [1981] AC 557 which equated the applicable principles in anti-suit injunctions with those for stay applications. Lord Goff explained that where an anti-suit injunction application is brought before the English courts,

the injunction cannot be granted on the sole ground that England is the natural forum for the dispute. This is because such an approach suggested that an anti-suit injunction could be granted simply when the English court differed from the foreign court in its view on the natural forum for the dispute, which would be inconsistent with comity. Thus in *Aerospatiale,* it was held that an anti-suit injunction would only be granted where England is the natural forum for the dispute *and* the pursuit of foreign proceedings is vexatious or oppressive (at 895–896).

110 While the relevance of comity is undisputed, the precise scope of the principle is less clear. In *Airbus Industrie GIE v Patel and others* [1999] 1 AC 119 ("*Airbus Industrie*"),[80] Lord Goff highlighted that two different approaches may be discerned from the case law as to the circumstances in which an anti-suit injunction may be granted (at 136G–137B).

111 Under the first approach known as the "stricter" approach, comity requires that an anti-suit injunction be granted only in exceptional circumstances for example (a) to protect its own jurisdiction; or (b) to prevent evasion of the forum's public policies (see *Airbus Industrie* at 136H). Under the second approach, which Lord Goff termed the "laxer standard" and which we shall refer to as "the conventional approach", an anti-suit injunction may be granted as long as the pursuit of foreign proceedings is vexatious or oppressive or would otherwise cause inequitable hardship. While the effect of the injunction on the foreign court will be a factor relevant in considering whether the injunction should be granted, the court will require evidence that comity is likely to be impaired (*Airbus Industrie* at 137A–137B).

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[80] RBOA Vol 1 Tab 2.

112 The relevant facts in *Airbus Industrie* were as follows. The plaintiffs in the main action who were residents of England had commenced proceedings in Texas against the manufacturers of an aircraft in relation to an air crash which took place at Bangalore airport. The defendants sought to restrain the plaintiffs from proceeding in Texas on the basis that the natural forum for the suit was India. As the courts of India could not grant effective injunctive relief against the plaintiffs because the plaintiffs were not amenable to the jurisdiction of the Indian courts, the defendants brought an anti-suit injunction application in the English courts. The House of Lords declined to issue the anti-suit injunction on the basis that it did not have a sufficient interest in or connection with the dispute in question and that the grant of the injunction would thus be inconsistent with comity. Lord Goff set out the following general principle (at 138G):

> … As a general rule, before an anti-suit injunction can properly be granted by an English court to restrain a person from pursuing proceedings in a foreign jurisdiction *in cases of the kind under consideration* in the present case, comity requires that the English forum should have a sufficient interest in, or connection with, the matter in question to justify the indirect interference with the foreign court which an anti-suit injunction entails. [emphasis added]

Lord Goff expressed the view that this general principle was closer to the stricter approach but at the same time maintained the overarching consideration that an injunction can be granted where the ends of justice require (at 139H–140B). Thus, Lord Goff suggested that the requirement for the domestic court to have a sufficient interest in or connection with the dispute was an approach which balanced the principles recognised under both the stricter and conventional approach.

113 From a review of the relevant legal authorities, we find that most cases, like *Airbus Industrie*, in fact adopt an approach that falls in between the stricter approach and conventional approach as described by Lord Goff. In particular,

the cases suggest that the grant of an anti-suit injunction is not merely confined to situations where there is a need for the domestic court to protect its own jurisdiction or prevent evasion of public policies (pursuant to the stricter approach). At the same time, it is recognised that an anti-suit injunction cannot always be granted so long as the pursuit of foreign proceedings is vexatious or oppressive (pursuant to the conventional approach). Specifically, there is a common recognition in the case law that where the domestic court has a sufficiently close connection with the dispute (such as where it is the natural forum) and the pursuit of the foreign proceedings is found to be unconscionable, the grant of the injunction is less likely to infringe principles of comity.

114 We turn first to examine the two anti-suit injunction decisions which were issued by the English courts in relation to the Laker Airways litigation to illustrate how comity considerations can be treated differently under different factual matrices notwithstanding similarities in the genesis of the proceedings. The cases arose out of an anti-trust suit commenced by Laker Airways in the US against the British Airways Board and British Caledonian Airways. The liquidator of Laker Airways alleged a conspiracy among major airlines to force Laker Airways out of the market for transatlantic flights by predatory pricing. In the first case, *British Airways Board v Laker Airways Ltd* [1985] AC 58 ("*British Airways Board*"), the House of Lords held that British Airways and British Caledonian Airways were not entitled to an injunction as the British airline companies failed to show that Laker Airways had acted unconscionably in instituting proceedings in the US. This is because the two airlines had, in obtaining an air transport licence to operate on routes between the UK and the US, voluntarily submitted themselves to a regulatory regime which subjected them to US antitrust laws (at 84). On the other hand, in the second case, *Midland*

Bank plc v Laker Airways Ltd [1986] QB 689 ("*Midland Bank*"),[81] the English Court of Appeal granted an English bank an anti-suit injunction to restrain Laker Airways from proceeding against it in the US. As the bank had no presence in the US and its connection to Laker Airways arose out of banking transactions in England which were governed by English law, the proceedings brought against the bank in the US were found to be unconscionable (at 699–700).

115 Although the principle of comity was not specifically discussed in both cases, Lord Goff expressed the view in *Airbus Industrie* that the English court's decision to grant the injunction in *Midland Bank* and not in *British Airways Board* could be said to be consistent with principles of comity (at 138):

> At all events it is striking that, in *Midland Bank Plc v Laker Airways Ltd*, the injunction was granted in circumstances where the relevant transaction was overwhelmingly English in character. It can therefore be said that, on this basis, the decision was consistent with comity, though the point was not articulated in the judgments because it did not arise for consideration; and, by parity of reasoning, it can be said that the grant of an injunction at the suit of British Airways and British Caledonian to restrain Laker from proceeding against them in the United States could not be justified in this way.

116 Similarly, as we have earlier mentioned (see [109] above), in *Aerospatiale* the Privy Council held that in order not to violate the principles of comity, an anti-suit injunction would only be granted where the court considering the anti-suit injunction application is the natural forum for the dispute *and* the pursuit of foreign proceedings is vexatious or oppressive. On the facts, the Privy Council found that Brunei was the natural forum for the dispute and that it would be oppressive for the plaintiffs to continue the Texas proceedings because of the serious injustice to the defendant in not being able

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[81] ASBOA Vol I Tab 7.

to claim in those proceedings indemnity or contribution from a third party (at 902E–902G). Thus although the Texas courts had declined to stay its proceedings, the Privy Council granted the anti-suit injunction.

117 The *Airbus Industrie*, *Aerospatiale* and Laker Airways cases suggest that where the court before which the application for an anti-suit injunction is brought has a sufficient connection to the dispute and the defendant in the application has acted in a vexatious or oppressive manner in commencing the foreign proceeding, the grant of the anti-suit injunction would not, in the absence of exceptional circumstances, violate principles of comity because of the interrelations between the three factors. We find the following extract from *The Anti-Suit Injunction* (Thomas Raphael, Oxford University Press, 2008) ("*The Anti-Suit Injunction*") to be useful in explaining the connections between the legal requirements for an anti-suit injunction (at para 4.31):

> The modern purpose of the concepts of vexation and oppression is to set a high threshold for the grant of an anti-suit injunction, and to discourage the court from granting the potentially exorbitant remedy of an injunction whenever it might seem at first sight 'just and convenient' to do so. From this perspective, the criteria of vexation or oppression are part of the defences of comity. Vexation and comity are connected, albeit distinct; thus comity requires that an injunction will not in general be granted in alternative forum cases unless England is the natural forum for the injunction; but equally, the foreign litigation is unlikely to be vexatious unless the foreign forum is a less natural forum than England.

118 At the hearing before us, Mr Landau referred us to a number of cases for the proposition that it is generally for the court in which proceedings are brought to determine whether it is the natural forum for the dispute, and that it would be a breach of comity for another court to arrogate determination of that question to itself where that first court has already determined that it is the natural forum. On this basis, he submitted that where a foreign court has declined to stay its

proceedings, the local court should not grant an anti-suit injunction save in the most exceptional of circumstances.

119 First, in *Amchem Products Inc v British Columbia (Workers' Compensation Board)* [1993] 1 RCS 897 ("*Amchem*"),[82] the plaintiff workers (who were mostly residents of British Columbia) commenced action in Texas against the defendant asbestos companies (which were incorporated in the US and which carried on business in Texas) for injury suffered from exposure to asbestos. The defendants applied for a stay before the Texas court on grounds of *forum non conveniens*, which was dismissed by the Texas court. Thereafter, the defendants applied before the Canadian courts for an anti-suit injunction against the plaintiffs. The Supreme Court of Canada overturned the decision of the Court of Appeal for British Columbia and dismissed the application for the injunction. It expressed the view that comity requires that where the foreign court has declined to stay its proceedings, an anti-suit injunction should only be granted where (a) the foreign court assumed jurisdiction on a basis that is inconsistent with principles relating to *forum non conveniens*; and (b) the ends of justice require the injunction to be granted (at 932).

120 Second, in *Barclays Bank plc v Homan and others* [1993] BCLC 680 ("*Barclays Bank*"),[83] proceedings were brought in respect of a company incorporated in England, Maxwell Communications Corp plc ("MCC"), which was in administration in London and faced bankruptcy proceedings in the US. MCC's principal assets were in the US. Barclays Bank was a creditor which received a repayment of US$30m shortly before MCC went into administration

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82 Appellant's second supplemental bundle of authorities ("A2SBOA") Tab 1.

83 A2SBOA Tab 3.

in London and the bankruptcy proceedings in the US were commenced. It sought an injunction before the English courts to prevent the administrators from challenging the payment as a preference in the US courts, on the ground that the proper forum for dealing with the matter was the UK. Hoffmann J, in declining to issue the anti-suit injunction, explained that "both comity and common sense suggest that the foreign judge is usually the best person to decide whether in his own court he should accept or decline jurisdiction, stay proceedings or allow them to continue" and thus "there must be a good reason why the decision to stop the foreign proceedings should be made [in the domestic court] rather than [the foreign court]" (at 687).

121 The third case which Mr Landau relied on was the case of *Deutsche Bank AG and another v Highland Crusader Offshore Partners LP and others* [2010] 1 WLR 1023 ("*Deutsche Bank"*).[84] In that case, the plaintiff in the anti-suit injunction application ("Deutsche Bank") was a German bank with its principal place of business in Germany and an office in London. The first to third defendants ("Highland") were a group of companies operating as a major US hedge fund. The dispute between the parties concerned repurchase contracts which provided for English governing law and the non-exclusive jurisdiction of the English courts. Highland filed proceedings against Deutsche Bank in Texas alleging that Deutsche Bank induced Highland to buy a portfolio of securities by fraudulent or negligent misrepresentation. Shortly thereafter, Deutsche Bank sued Highland in London claiming sums which were due under the contracts. Deutsche Bank's application for a stay was rejected by the Texas courts. It then applied for an anti-suit injunction before the English courts to restrain Highland from continuing the Texas proceedings. In dismissing the application for the

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84 A2SBOA Tab 5

anti-suit injunction, the English Court of Appeal set out the general principles applicable in such applications (at [50]). Mr Landau relied on principles four and five:

> (4) If the English court considers England to be the natural forum and can see no legitimate personal or juridical advantage in the claimant in the foreign proceedings being allowed to pursue them, it does not automatically follow that an anti-suit injunction should be granted. For that would be to overlook the important restraining influence of considerations of comity. (5) An anti-suit injunction always requires caution because by definition it involves interference with the process or potential process of a foreign court. … [T]he principle of comity requires the court to recognise that, in deciding questions of weight to be attached to different factors, different judges operating under different legal systems with different legal policies may legitimately arrive at different answers, without occasioning a breach of customary international law or manifest injustice, and that in such circumstances it is not for an English court to arrogate to itself the decision how a foreign court should determine the matter. The stronger the connection of the foreign court with the parties and the subject matter of the dispute, the stronger the argument against intervention.

122 While we agree with the principle that it is generally for the court in which proceedings are brought to determine whether it is the natural forum for the dispute, we are of the view that this principle does not apply with equal force where a defendant has deliberately carved out a specific issue from a pending suit and commenced proceedings in a foreign jurisdiction in respect of this issue. In such circumstances, it cannot be said that the foreign court is necessarily in a better position to determine if it is the natural forum for the dispute, having regard to the overall dispute between the parties. We note that this is a point which was recognised in *Barclays Bank*. In that case, the Court of Appeal affirmed Hoffmann J's decision but framed the relevant principles somewhat differently from Hoffmann J as follows (at 701, *per* Glidewell LJ):

> (i) If the only issue is whether an English or a foreign court is the more appropriate forum for the trial of an action, that question should normally be decided by the foreign court on the

> principle of forum non conveniens, and the English court should not seek to interfere with that decision. (ii) However if, exceptionally, the English court concludes that the pursuit of the action in the foreign court would be vexatious and oppressive and that the English court is the natural forum, ie the more appropriate forum for the trial of the action, it can properly grant an injunction preventing the plaintiff from pursuing his action in the foreign court. (iii) In deciding whether the action in the foreign court is vexatious and oppressive, account must be taken of the possible injustice to the defendant if the injunction be not granted, and the possible injustice to the plaintiff if it is. In other words, the English court must seek to strike a balance.

123 Significantly, Glidewell LJ also suggested that the principle stated by Hoffmann J that it is the foreign judge who is usually the best person to decide whether to accept jurisdiction in his court *only applies* in circumstances where the foreign proceedings are *not vexatious or oppressive* (at 703):

> Mr Merriman for Barclays Bank argues that in his judgment Hoffmann J was at fault in the following respects. (I) In the passages I have quoted, the learned judge said that the 'normal assumption' was that it was for the foreign judge to decide whether to accept jurisdiction in his court rather than for an English judge to decide that he should not. *But when Hoffmann J said this, he had already made it clear that in an exceptional case where the foreign proceedings were vexatious or oppressive, an injunction could properly be granted.* Thus his reference to the normal assumption can only be read as a reference to the principle to which I have already referred, ie that *where the foreign proceedings are not vexatious or oppressive*, it is prima facie for the foreign court to decide whether or not it is the appropriate forum for the decision of the suit before it. In this respect, I agree with Hoffmann J. [emphasis added]

We agree with the observations of Glidewell LJ.

124 In addition, we note that the refusal of the anti-suit injunction in the *Amchem*, *Barclays Bank* and *Deutsche Bank* cases can be explained by the fact that the respective courts in those cases found that they were not the clearly

more appropriate forum for the dispute. Thus, the pursuit of the foreign proceedings was not deemed to be vexatious or oppressive.

125 In *Amchem*, the Supreme Court of Canada held that the trial judge should not have granted the injunction given that both the US and British Columbia could equally be said to be the natural forum and neither was a clearly more appropriate forum than the other (at 935). In this regard, it also found that the Texas court's decision not to stay its proceedings could be said to have been reasonably concluded given that all of the asbestos companies had some connection with Texas (and no connections to British Columbia) and the acts which were the foundation of the claim also took place outside of Canada, in the US (at 935). Further, the court found that the continuation of the Texas proceedings would not deprive the defendant of legitimate juridical advantages in British Columbia (at 936).

126 Similarly, in *Barclays Bank*, the English Court of Appeal agreed with Hoffmann J that the presence of substantial creditors, assets and funds derived from assets in the US, coupled with the absence of any challenge to the US bankruptcy proceedings, sufficed to explain the assumption of jurisdiction by the US court and militate against the conduct being regarded as unconscionable according to English notions (at 705–706).

127 As for *Deutsche Bank*, the English Court of Appeal found that the decision by the Texas court to assume jurisdiction was reasonable because Highland had strong connections with Texas and their complaints related to financial agreements negotiated and executed by them in Texas (at [119]). The dispute between the parties arose under a standard form contract governed by English law and with an English non-exclusive jurisdiction clause, but "there [was] relatively little else to connect the dispute with England (at [120]).

128 Thus, while we acknowledge that the cases relied on by Mr Landau do appear to lean closer towards the stricter approach outlined by Lord Goff in *Airbus Industrie*, they do not go so far as to advance the proposition put forward by the respondent in the present appeal.

129 Therefore, we hold that even where the foreign court has declined to stay its proceedings, it would not invariably be a breach of comity for the domestic court to grant an anti-suit injunction if it finds that (a) it is clearly the more appropriate forum for the dispute; *and* (b) the defendant in the application has acted in a vexatious or oppressive manner in commencing the foreign proceedings.

130 Finally, we note that this approach is consistent with that adopted in a number of local decisions. In *AQN v AQO* [2015] 2 SLR 523,[85] the parties executed a prenuptial agreement in New York which stated that if the parties divorced, neither shall receive maintenance from the other or any distribution from the other party's property. The wife filed a writ of divorce and sought ancillary relief in Singapore. Subsequently, the husband commenced proceedings in New York for an order that the wife be restrained from alleged breaches of the terms of the prenuptial agreement. Choo Han Teck J found that the US proceedings were vexatious and oppressive and that an anti-suit injunction should be granted to meet the ends of justice. This was notwithstanding the wife's unsuccessful attempt to stay the US proceedings on grounds of *forum non conveniens* (at [27]–[29]).

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[85] A2SBOA Tab 2.

131 Further, this court emphasised in the recent case of *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] 1 SLR 732[86] at [89] and [97] that comity has greater relevance where the application for an anti-suit injunction is taken out at a late stage of the proceedings especially where the foreign court had already issued a judgment. Not only would such delays entail a significant wastage of judicial time and costs, an injunction would have the effect of precluding other foreign courts of their prerogative to recognise the judgment in question and might even interfere with the execution of the judgment in the country of the court which pronounced the judgment and where the judgment can be expected to be obeyed.

Application to present case

132 In the light of our findings that Singapore is the natural forum for the dispute and that the respondent has acted in a vexatious and oppressive manner in pursuing BVI 83, the grant of the anti-suit injunction would not breach comity.

133 On the facts of the present case, there are also additional reasons why the principle of comity should not operate in the manner advanced by the respondent.

134 First, as a matter of principle, we are of the view that an intervening decision by a foreign court not to stay its proceedings which is rendered while an appeal against a lower court's refusal to grant the anti-suit injunction is pending, should not on its own change the outcome of the appeal. Comity should not make such a critical difference in such circumstances. To allow comity to

86 A2SBOA Tab 10.

operate in such a manner would mean that the outcome of the appeal would be dependent on the scheduling of the cases in the two courts, *ie*, whether the appeal against the refusal of the anti-suit injunction, or the application to stay the foreign action is heard first. The overarching consideration in an anti-suit injunction application is whether the ends of justice require that the injunction be granted and for this reason, the determination should not be dependent on the scheduling of cases.

135 We also note that in the BVI stay proceedings, Adderley J was aware and had in fact referred to the fact that the Judge's decision was currently on appeal in Singapore.[87] It was thus within the contemplation of Adderley J that his decision might eventually be at variance with our decision and we do not think that Adderley J had intended for his decision to be determinative of the outcome of the present appeal (through the operation of comity). Further, it would appear from Adderley J's decision that the decision of the Judge below had an impact of his own assessment that the BVI was the natural forum for the respondent's claim. As was discussed at [66]–[70] above, the Judge's assessment of the natural forum was premised on the erroneous understanding that the 2014 Agreement is not of key importance in Suit 821.

136 In conclusion, we find that on the facts of the present case, comity principles do not mandate the refusal of the anti-suit injunction.

Conclusion

137 For these reasons, we allow the appeal and grant the anti-suit injunction against the respondent.

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87 4th Affidavit of JDJ dated 8 April 2019 at JDJ-27 paras 23, 31.

138 After taking into account the parties' respective costs schedules and the novelty of the arguments raised by the respondent, we order the respondent to pay the appellant the costs of the appeal and the two applications for leave to adduce fresh evidence in the appeal, namely CA/SUM 38/2019 and CA/SUM 39/2019, fixed at $60,000 inclusive of disbursements. The respondent shall also bear the costs below fixed at $36,300 inclusive of disbursements. The usual consequential orders will apply.

Steven Chong	Belinda Ang Saw Ean	Woo Bih Li
Judge of Appeal	Judge	Judge

Davinder Singh SC, Jaikanth Shankar, Jaspreet Singh Sachdev and Gerald Paul Seah (Davinder Singh Chambers LLC) (Instructed Counsel), Kanapathi Pillai Nirumalan and Liew Teck Huat (Niru & Co LLC) for the appellant;
Toby Landau QC and Tham Lijing (Essex Court Chambers Duxton Singapore Group Practice) (Instructed Counsel), Ramesh Kumar s/o Ramasamy, Koh Zhen-Xi Benjamin, Leong Yi-Ming and Lim Min Li Amanda (Allen & Gledhill LLP) for the respondent.