IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 230

Suit No 349 of 2016 (Summons No 2416 of 2016)

Between

Southern Realty (Malaya) Sdn Bhd

… *Plaintiff*

And

(1) Darren Chen Jia Fu @ Suryo Tan
(2) Hendra Ade Putra
(3) Christina Suryo

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure] — [Stay of Proceedings]
[Conflict of Laws] — [Natural Forum]

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v
Chen Jia Fu Darren (alias Tan Suryo) and others

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Valerie Thean JC
12 August 2016, 29 August 2016

17 October 2016

Valerie Thean JC:

Introduction

1 This suit concerns the beneficial ownership of shares in a Singapore-incorporated company, TriSuryo Garuda Nusa Pte Ltd ("TGN").

2 TGN was incorporated in order to hold shares in two Indonesian companies. The first defendant, Darren Chen Jia Fu @ Suryo Tan ("1st Defendant"), is the registered owner of one share in TGN. The third defendant, the 1st Defendant's wife, Christina Suryo ("3rd Defendant"), is the registered owner of the remaining 99 shares in TGN. By this suit, the plaintiff ("the Plaintiff"), a company incorporated under the laws of Malaysia[1], contends that the shares in TGN are held on trust for it.

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[1] Statement of Claim ("SOC") at para 1

3 The defendants sought a stay of proceedings in favour of Indonesia, on the ground of *forum non conveniens*. I granted the stay of proceedings with costs. The Plaintiff has appealed and I now furnish the grounds for my decision.

The facts

4 PT Pradiksi Gunatama ("PTPG") and PT Senabangun Anekapertiwi ("PTSA") are Indonesian companies in the business of palm oil cultivation.[2] Sometime in 2011 and 2012, PTPG and PTSA encountered operational and licensing issues relating to certain land titles for two palm oil plantations held by the companies.[3]

5 The 1st Defendant, who has extensive business interests in Indonesia, agreed to assist PTPG and PTSA to resolve the problems they faced in Indonesia.[4] As part of the business arrangement between the parties, it was agreed that 32% of the shares in PTPG and PTSA, comprising 5,200 shares in PTPG and 3,200 shares in PTSA[5] (collectively, the "Indonesian Shares"), would be transferred by two Malaysian companies, SKP Pradiksi (North) Sdn Bhd ("SKPP") and SKP Senabangun (South) Sdn Bhd ("SKPS"), to the 1st Defendant.[6] The Plaintiff has an indirect equity stake in SKPP and SKPS.[7]

6 The parties effected the share transfer in the following way:

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[2] SOC at para 7, 1st Defendant's affidavit dated 18/5/2016 ("D1 (18/5/2016)") at para 6

[3] D1 (18/5/2015) at paras 7-9; Low Kock Ching's affidavit dated 9 June 2016 ("Low (9/6/2016)") at para 6

[4] D1 (18/5/2015) at para 11; Low (9/6/2016) at paras 6-8

[5] D1 (18/5/2015) at paras 23-24

[6] D1 (18/5/2015) at para 16; Low (9/6/2016) at para 8

[7] SOC at para 2

(a) TGN was incorporated on 12 November 2012 in Singapore as a special purpose vehicle for holding the Indonesian Shares.[8]

(b) Corporate Finedge Pte Ltd ("Corporate Finedge"), a Singapore corporate secretarial firm, helped with the incorporation of TGN and was engaged to provide corporate secretarial services to TGN.[9] The initial directors of TGN were the 1st Defendant and one Florence Tan, a director of Corporate Finedge.

(c) When TGN was incorporated, the 1st Defendant was allotted 99 shares in TGN and the second defendant ("2nd Defendant"), the 3rd Defendant's cousin, was allotted one share.[10]

(d) On or around 1 February 2013, separate deeds for the sale and purchase of the 5,200 PTPG shares and the 3,200 PTSA shares were entered into between TGN on the one hand, and SKPP and SKPS on the other.[11]

7 The relationship between the various parties subsequently broke down:

(a) On 17 December 2015, the 1st Defendant removed Florence Tan from her position as director of TGN.[12]

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[8] D1 (18/5/2015) at para 19, p 62

[9] D1 (18/5/2015) at paras 18, 19

[10] D1 (18/5/2015) at para 19, p62

[11] D1 (18/5/2015) at paras 22–24, pp 127–131

[12] D1 (18/5/2015) at para 35

(b) Corporate Finedge was discharged from its duties and the 1st Defendant instructed a new corporate secretarial firm, Amicorp Singapore Pte Ltd, as a replacement.[13]

(c) On 18 December 2015, the 1st Defendant transferred 98 of his 99 TGN shares to the 2nd Defendant. On the same day, the 2nd Defendant transferred all his 99 TGN shares to the 3rd Defendant.[14]

Thus, the 1st Defendant became the registered owner of one TGN share whilst the 3rd Defendant became the registered owner of 99 TGN shares (collectively, the "Singapore Shares").

8 On 17 March 2016, SKPP and SKPS commenced HC/Suit No 252 of 2016 ("Suit 252") against TGN for breach of trust and the return of the Indonesian Shares. Subsequently, on 8 April 2016, the Plaintiff brought this suit against the defendants for the return of the Singapore Shares.

The parties' cases

9 The Plaintiff contends that TGN holds its 32% shareholding in PTPG and in PTSA on trust for SKPP and SKPS respectively, and the shares in TGN were held by the 1st Defendant and 3rd Defendant on trust for the Plaintiff. The Plaintiff claims that there was an oral agreement between SKPP, SKPS and the Plaintiff on the one hand, and the 1st Defendant on the other, that the PTPG and PTSA shares transferred to TGN would be held on trust for SKPP and SKPS respectively.[15] The Plaintiff joined the 2nd Defendant because of his

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[13] D1 (18/5/2015) at para 35

[14] Plaintiff's submissions dated 12 August 2016 ("Plaintiff's submissions") at paras 12.2 and 12.5

[15] SOC at para 10; Low (9/6/2016) at para 8

role in transferring his shares to the 3rd Defendant, as it contends that the 2nd Defendant was aware of and held his shares on trust. The 3rd Defendant is joined for dishonest assistance or knowing receipt.

10 According to the defendants, the parties had agreed that the 1st Defendant should have an equity stake in PTPG and PTSA to enable him to more fully assist the companies to solve their problems.[16] This would also align the 1st Defendant's interests with that of PTPG and PTSA and incentivise him to work harder to sort out the problems the companies were facing.[17] The 1st Defendant was not otherwise remunerated in cash for his work in helping PTPG and PTSA navigating out of the crisis that they were in.[18] TGN was incorporated as the 1st Defendant's vehicle because of this oral agreement, and thereafter, TGN entered into two deeds for the purchase of the Indonesian Shares from SKPP and SKPS, at a price of IDR 1m per share.[19] Consideration for the purchase, deemed as received by the deeds, was not paid. The defendants' case was that the transfers of the Indonesian Shares were *not* transfers on trust for the Plaintiff, SKPP or SKPS; instead, the intention of all parties was to transfer the beneficial interest in the said shares, through the vehicle of TGN, to the 1st Defendant *absolutely*.

11 The defendants also contended that the Plaintiff was the personal vehicle of one Bill Low/Low Boon Lai and effectively controlled SKPP and SKPS; thus success in this suit would obviate the need for Suit 252.

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[16] D1 (18/5/2015) at para 15

[17] D1 (18/5/2015) at paras 16-17

[18] D1 (18/5/2015) at para 16

[19] D1 (18/5/2015) at para 16

The stay application

12 In SUM 2416/2016, the defendants sought to stay the proceedings in this suit. The defendants' main grounds for submitting that Indonesia was the natural forum for the dispute were the following:

(a) the claim concerned the breach of an oral agreement entered into in Indonesia, for the purpose of and directly concerning Indonesian entities, and involving Indonesian assets[20];

(b) the oral agreement was governed by Indonesian law[21];

(c) the only Singapore connections were that TGN was a Singapore company and that the 1st Defendant was a Singapore citizen[22], and these were purely incidental connections[23];

(d) parallel proceedings were ongoing in Indonesia and it would be more just and convenient for the matters relating to TGN's holding of shares in PTPG and PTSA to be dealt with compendiously in Indonesia[24];

(e) except for Florence Tan, the key witnesses were from Indonesia and Malaysia[25];

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[20] D1 (18/5/2015) at para 44

[21] D1 (18/5/2015) at para 44

[22] D1 (18/5/2015) at para 45

[23] 1st Defendant's affidavit dated 20/6/2016 ("D1 (20/6/2016)") at para 22(c)

[24] D1 (18/5/2015) at para 46

[25] D1 (20/6/2016) at para 22(d)-(e)

(f) the vast amount of documents adduced so far were in Indonesian, rather than English[26]; and

(g) the dispute gave rise to Indonesian public policy considerations regarding the holding of Indonesian company shares on trust and these were better determined by the Indonesian courts[27].

13 The Plaintiff resisted the stay on the following grounds:

(a) the subject matter of S 349/2016 was the shares in TGN, a Singapore incorporated company[28], and the steps taken for the purposes of incorporating TGN were taken in Singapore[29];

(b) the Indonesian courts do not have jurisdiction over the matter and do not recognise the concept of a "trust"[30];

(c) the 1st Defendant was resident in Singapore and the Plaintiff dealt exclusively with the 1st Defendant (rather than the 2nd or 3rd Defendants) in the events leading up to the present suit[31];

(d) the Plaintiff's witnesses (including representatives from Corporate Finedge) were ordinarily resident in Malaysia and/or Singapore[32];

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[26] D1 (20/6/2016) at para 22(f)

[27] Defendants submissions at paras 30-51

[28] Low (9/6/2016) at para 10

[29] Low (9/6/2016) at para 20

[30] Low (9/6/2016) at paras 30.1 and 30.2

[31] Low (9/6/2016) at paras 11 and 14

[32] Low (9/6/2016) at paras 15 and 16

(e) Indonesian courts could not compel a witness from a foreign jurisdiction to appear in the Indonesian courts[33];

(f) given that the Plaintiff's witnesses do not converse in Indonesian as their main language and the majority of the documents are in the English language, hearing the dispute in Indonesia would involve additional translation costs[34]; and

(g) the discussions in Indonesia regarding the parties' Indonesian business dealings were irrelevant to the present suit[35].

Principles for granting a stay

14 The principles for granting a stay of proceedings on the basis of *forum non conveniens* were summarised by the Court of Appeal in *CIMB Bank Bhd v Dresdner Kleinwort Ltd* [2008] 4 SLR(R) 543 at [26]. At the first stage, the critical question is whether there is *another available forum* which is clearly or distinctly *more appropriate* than Singapore. This, in turn, depends on which forum has the most *real and substantial connection* with the dispute. Considerations of convenience or expense, the governing law, and the places where the parties reside or carry on business come into play. In *JIO Minerals FZC and others v Mineral Enterprises Ltd* [2011] 1 SLR 391 at [42], the Court of Appeal endorsed the five non-exhaustive types of connections identified by the learned author of *Halsbury's Laws of Singapore* vol 6(2) (LexisNexis, 2009) at paras 75.091 – 75.095, which are: (a) personal connections, (b)

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[33] Low (9/6/2016) at para 30.3

[34] Low (9/6/2016) at paras 17 and 21

[35] Low (9/6/2016) at paras 26 and 27

connections to events and transactions, (c) governing law, (d) other proceedings and (e) shape of the litigation.

15 If there is another available forum that is more appropriate than Singapore, the second stage of the inquiry becomes relevant. The court must then ask whether justice nevertheless requires that a stay should *not* be granted.

Stage 1: Was Indonesia a more appropriate forum?

16 In determining whether Indonesia was the more appropriate forum for the determination of the dispute, I considered the following factors:

(a) whether Indonesia or Singapore had more connections to the assets, events and transactions related to the dispute;

(b) the applicable law and public policy;

(c) convenience and expense; and

(d) the ongoing proceedings in Indonesia.

17 I concluded that Indonesia was the more appropriate forum for the hearing of the dispute between the parties as it had more *real and substantial* connections with the dispute than Singapore did.

Assets, events and transactions

18 The dispute in the present case centred on the ownership of TGN shares. Given that TGN was a Singapore-incorporated company, the dispute thus centred on the ownership of *Singapore assets*. Further, as the Plaintiff pointed out, the events surrounding the incorporation of TGN (for example,

instructing Corporate Finedge, determining the share allocation and directorship of TGN) took place entirely in Singapore. These were therefore factors which connected the dispute to Singapore.

19 On the other hand, it was clear that the occasion for the incorporation of TGN arose because of the parties' business dealings *in Indonesia*. It was undisputed that the legal transfer of the PTPG and PTSA shares to the 1st Defendant took place pursuant to the parties' partnership in resolving the problems PTPG and PTSA faced in Indonesia. TGN was merely a special purpose vehicle set up to hold the PTPG and PTSA shares. Based on the affidavit evidence before me, it appeared that Singapore was chosen as the place of incorporation to minimise cost – it was not chosen because parties had any joint business dealings in, or any business connections to, Singapore.

20 In addition, TGN had no business activities of its own. The parties' substantive business dealings related entirely to assets and events in Indonesia. Indeed, it was noteworthy that TGN had no value apart from the Indonesian shares it held title to. It thus could be fairly said that while the TGN shares were, technically speaking, the assets in dispute, the real underlying assets of interest to the parties were the shares in the two Indonesian companies, PTPG and PTSA.

21 On balance, I found that while the disputed assets were technically Singapore assets, ***in substance***, the business dealings and the assets at the heart of the dispute were situated in Indonesia. Singapore was the location of choice for the incorporation of TGN – but this was not because the parties' business activities had any substantive connections to this jurisdiction. In my view, if one were to look at substance over form, Indonesia clearly had more real and substantial connections with the dispute than Singapore did. This

weighed strongly in favour of staying the action. I noted that there was some dispute as to whether the oral agreement relating to the transfer of the PTPG and PTSA shares was reached in Singapore or Indonesia. I was unable to make a finding on this based on the affidavit evidence before me. Nevertheless, in my view, whether the parties happened to orally agree to the transfer of the PTPG and PTSA shares or the trust in Singapore or Indonesia was not particularly significant to the inquiry.

Applicable law and public policy

Applicable law

22 The choice of law rules for trusts are drawn by analogy from contracts – the proper law of the trust is the law chosen by the trustee, or, in the absence of such choice, the system of law to which the trust has the closest connection (*Halsbury's Laws of Singapore* vol 6(2) (LexisNexis, 2016 Reissue) ("Halsbury's Conflict of Laws") at para 75.330). In *Pacific Recreation Pte Ltd v S Y Technology Inc and another appeal* [2008] 2 SLR(R) 491 ("*Pacific Recreation*") at [36], the Court of Appeal affirmed the approach to determining the governing law of a contract set out in *Overseas Union Insurance Ltd v Turegum Insurance Co* [2001] 2 SLR(R) 285 at [82]:

> There are three stages in determining the governing law of a contract. The first stage is to examine the contract itself to determine whether it *states expressly* what the governing law should be. In the absence of an express provision one moves to the second stage which is to see whether the *intention of the parties as to the governing law* can be inferred from the circumstances. If this cannot be done, the third stage is to determine with *which system of law the contract has its most close and real connection*. That system would be taken, objectively, as the governing or proper law of the contract. [emphasis added]

23 Further, insofar as the Plaintiff was claiming that the defendants were in breach of their equitable duties, the Court of Appeal in *Rickshaw Investments Ltd and another v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 at [81] held that:

> where equitable duties... arise from a factual matrix where the legal foundation is premised on an independent established category such as contract or tort, the appropriate principle in so far as the choice of law is concerned ought to be centred on the established category concerned.

The Plaintiff's trust claims arose from the 1st Defendant's alleged *oral agreement* to hold the TGN shares on trust for it. The proper law of this alleged oral contract was thus the governing law of the dispute.

24 The approach to determining the applicable law governing the dispute at this *interlocutory stage* was discussed in *Bunge SA and another v Indian Bank* [2015] SGHC 330. The High Court held at [49]:

> In a stay application which is made at an interlocutory stage with only the pleadings and minimal affidavit evidence as background, it is appropriate for the court at this stage to form a *provisional view of the governing law*... If the identity of the applicable law *cannot be ascertained* even on a provisional basis on the pleaded case and the interlocutory evidence adduced, the court may treat the issue of the applicable law as a *neutral factor* in the first stage of the *Spiliada* test... [emphasis added in italics]

Thus, the question was whether it was possible to reach a *provisional view* on the governing law of the alleged trust and oral agreement between the parties.

25 In this case, there was no suggestion of any *express agreement* as to the governing law of the oral contract. I then considered whether the intentions of the parties as to the governing law could be *inferred.* I decided that it could not. First, while the Plaintiff argued that the parties could not have chosen Indonesian law as it did not recognise the concept of a trust, it was not clear on the evidence that the parties were aware of Indonesian law on the same. Indeed, Article 6 within each of the two deeds of sale and purchase signed by TGN and SKPP/SKPS contained an exclusive jurisdiction clause in favour of the District Court of South Jakarta, which would raise a query as to whether the players in the transaction (who were also the main actors behind the deeds) may have assumed Indonesian law as the *lex fori* would apply to the larger transaction as a whole. Second, while Singapore was chosen as the place of TGN's incorporation, this was because "there were certain advantages, including tax efficiencies, in [the 1st Defendant] holding the shares in PTPG and PTSA through a Singapore company"[36]. No preference for Singapore's *system of law* was expressed by the parties based on the affidavit evidence. There was thus no basis to draw any inference about the intentions of the parties as to the governing law of the trust or contract.

26 The main issue then, was which system of law the contract and trust had the most close and real connection with, in light of the surrounding circumstances. As held in *Pacific Recreation* at [48], this "is a pragmatic exercise acknowledging that parties do not always have a governing law in mind when they enter into contracts. Equal weight ought to be placed on all

[36] D1 (18/5/2015) at para 18

factors, even those which would not, under the second stage, have been strongly inferential of any intention as to the governing law."

27 Here the trust assets, being shares of a Singapore company, were situated in Singapore. Nevertheless, TGN had no business operations of its own. The sole purpose of its incorporation was to be the legal vehicle through which the 1st Defendant could hold the Indonesian Shares. The Indonesian Shares were the true *raison d'être* for this dispute, and the oral agreement to be tested in this suit was in substance a part of the parties' larger Indonesian business ventures. For these reasons my provisional view, without having the benefit of the full facts as tested in cross-examination, was that Indonesian law had a closer connection to the dispute.

Public policy considerations

28 The defendants submitted that the dispute inevitably raised considerations of Indonesian public policy. This was because the defendants were relying on the defence that any agreement to create a trust over the TGN shares was contrary to Indonesian public policy prohibiting the holding of Indonesian company shares on behalf of another. The defendants' submission was that a trust over TGN's shares would effectively enable the PTPG and PTSA shares to be held on trust for the Plaintiff, which would be an illegal arrangement under Indonesian law. The defendants submitted that these public policy considerations were better dealt with by the Indonesian courts.

29 It was common ground between the parties' Indonesian law experts that Article 33 of Indonesian Law No 25 of 2007 on Investment ("Article 33") prohibited the making of an agreement and/or statement that the ownership of the shares of a limited liability company in Indonesia is for and on behalf of another party. Any such agreement or statement would be null and void under

Indonesian law.[37] The purpose of such a prohibition was to avoid the situation where a company was formally owned by one person, but was in substance owned by another.[38] The parties, however, disagreed as to whether Article 33 applied to shares in a *foreign company* such as TGN. While the Plaintiff's expert was of the view that the Indonesian courts may apply Article 33 to shares in a *foreign company*,[39] the defendants' expert took the contrary view that the prohibition had no application to TGN shares as these were not shares of an *Indonesian* company.[40]

30 Assuming *Indonesian law applied* to the present dispute, the defendants' illegality defence would inevitably raise questions of whether (a) Article 33 or any other Indonesian law provision *directly* prohibited shares in foreign companies from being held on behalf of another, or (b) whether the policy behind Article 33 would be undermined if a special purpose vehicle holding Indonesian company shares was itself held on trust for another (hence, creating an indirect trust structure over the Indonesian shares).

31 In such circumstances, where questions of public policy of a foreign country are directly in play, this was a strong factor in favour of a stay. In *Eng Liat Kiang v Eng Bak Hern* [1995] 2 SLR(R) 851 ("*Eng Liat Kiang*"), the appellant commenced an action claiming that the respondent held certain Malaysian company shares (among other assets) on trust for him. The respondent successfully obtained a stay of the action on the ground of *forum*

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[37] Expert Report of M Yahya Harahap at paras 58-59, found in affidavit of M Yahya Harahap dated 30 June 2016; Affidavit of Rahayu Ningsih Hoed dated 30 June 2016, at p6, 9

[38] Affidavit of Rahayu Ningsih Hoed dated 30 June 2016, at p9

[39] Affidavit of Rahayu Ningsih Hoed dated 30 June 2016, at p12

[40] Expert Report of M Yahya Harahap at para 59, found in affidavit of M Yahya Harahap dated 30 June 2016

non conveniens. One of the respondent's arguments was that should the appellant's trust claim in respect of the Malaysian shares be true, the appellant would have been in breach of Malaysian company law and also in breach of the listing requirements of the Kuala Lumpur Stock Exchange ("KLSE"). This argument weighed strongly with the Court of Appeal, which stated, at [31]: "An issue of Malaysian public policy is best left to be determined by the Malaysian court". At [32] the Court of Appeal explained further:

> In response, the appellant submitted that as the Malaysian Companies Act and the KLSE listing requirements were both codified, there would be no difficulty for a Singapore court to adjudicate whether a breach has been committed. To examine the provisions of the Malaysian Companies Act and the KLSE listing requirements and determine whether or not the appellant has committed a breach or breaches is not an insuperable problem to the court here. *But the difficulty is that having done that, the court then has to decide whether it is against public policy to enforce the trust, and* ***the public policy is that in Malaysia, and that issue the court in Singapore cannot determine***.
>
> [emphasis added in italics and bold italics]

32 It is important to note that preceding this analysis in *Eng Liat Kiang* was the Court of Appeal's finding that the ***governing law was Malaysian law*** (at [30]). The above Malaysian public policy considerations were therefore *directly relevant* to the enforceability of the alleged trust under Malaysian law.

33 I should, for completeness, consider the converse situation, where Singapore law governs. If *Singapore law* were the applicable law, the question was then whether *Indonesian public policy considerations* were relevant to determining the enforceability of the trust arrangement under *Singapore law*.

34 In such circumstances, Indonesian public policy considerations regarding the holding of Indonesian company shares on trust would, nonetheless, still be pertinent, because it is part of *Singapore's public policy*

and desire for international comity to respect the public policy of foreign and friendly states. In *Peh Teck Quee v Bayerische Landesbank Girozentrale* [1999] 3 SLR(R) 842, the Court of Appeal affirmed that the Singapore courts would not enforce contracts where "the parties contemplate performance of acts which are illegal by the laws of a friendly country, whether or not it is the contractually stipulated place of performance" (at [53]). The underlying principle is that, as stated at [45]:

> … the courts will treat a contract governed by its own law as void where the parties' intention and object contemplated thereby jeopardises relations between its government and another friendly government

35 Thus, if Singapore law governs this transaction, it follows as a matter of Singapore law that it remains critical to determine the scope of Indonesian public policy concerns. The Indonesian courts are better placed to decide this issue.

Convenience and expense

36 I considered the documentary evidence. The Plaintiff asserted that the majority of the documents were in English,[41] whilst the defendants submitted that the documents relating to the PTPG and PTSA shares were in Indonesian. Based on the limited evidence before me, I found an equal mix of documents in both English and Indonesian. Documents relating to the incorporation of TGN were in English, but the documents relating to the Indonesian companies PTPG and PTSA were mostly in Indonesian. The language of the documentary evidence thus did not weigh significantly in either direction.

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[41] Plaintiff's submissions at para 35.41

37 The place of residence, and the languages which the witnesses were conversant in, did not weigh strongly in favour of either Singapore or Indonesia as well. The 1st Defendant was Singaporean, the 2nd and 3rd Defendants were Indonesian, and the Plaintiff's main witnesses seemed to come from Malaysia generally. While the Plaintiff has argued that most of its witnesses cannot conversely fluently in Indonesian, the 1st Defendant and the Plaintiff's main witnesses travelled to and conducted business in Indonesia regularly. On the whole, therefore, I found no basis to conclude that they would be greatly inconvenienced by having the matter heard before the Indonesian courts, a jurisdiction they must be intimately familiar with.

38 The Plaintiff raised concerns as to the compellability of Florence Tan, the Corporate Finedge representative involved in the incorporation and management of TGN. While Indonesian courts could not compel a witness living abroad, the evidence before me did not suggest that Florence Tan was or would be an unwilling witness. To the contrary, when the defendants' solicitors wrote to her asking her about the events surrounding the incorporation of TGN, she was ready to provide her version of events (as seen from her email to them dated 21 April 2016).[42]

Proceedings in Indonesia

39 Finally, I considered the relevance of the fact that there were related proceedings in Indonesia, as follows:

(a) TGN had commenced proceedings in Indonesia against SKPP and SKPS for breaching the share purchase deeds relating to the 5,200 PTPG and 3,200 PTSA shares;[43] and

[42] D1 (20/6/2016) at p29

(b) There were proceedings between the directors and shareholders of PTPG and PTSA which arose from disagreements over the management and control of the two companies.[44]

40 None of these proceedings related *directly* to the ownership of shares in TGN, which was the subject matter of S 349/2016. Therefore, strictly speaking, there were no parallel proceedings and there was no risk of conflicting judgments. Regardless of whether the Indonesian courts find that the *PTPG and PTSA shares* were held on trust (or some equivalent construct) by TGN, the question whether the *TGN shares* were held on trust by the defendants for the Plaintiff was a separate legal question.

41 Nevertheless, I found that the *underlying factual inquiry* which the courts would have to embark on in TGN's claim against SKPP and SKPS (see [39(a)] above), as well as in this suit, was ultimately *one and the same*: did the parties intend for the 1st Defendant to hold the PTPG and PTSA shares on trust for the Plaintiff and/or its related companies, or did the parties intend to transfer the PTPG and PTSA shares to the 1st Defendant outright? It bears noting that the incorporation of TGN and the transfer of the PTPG and PTSA shares to TGN were all part of the ***same transaction***. These events all arose out of the collaboration between the 1st Defendant and the Plaintiff (or its related companies) to solve the problems which PTPG and PTSA were facing in Indonesia. TGN was incorporated as part of these business dealings for the sole purpose of holding the PTPG and PTSA shares. In the circumstances, it would be far more just and convenient for the issues relating to the ownership

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[43] D1 (18/5/2016) at para 46

[44] D1 (18/5/2016) at para 32

of the PTPG and PTSA shares, as well as the TGN shares, to be heard together in Indonesia.

42 In my judgment, there was a real risk that the Indonesian and Singapore courts may reach contrasting *findings of fact* on material issues, for example, whether the intention was to transfer the PTPG and PTSA shares outright or on trust to the 1st Defendant. In *Chan Chin Cheung v Chan Fatt Cheung and others* [2010] 1 SLR 1192 (see [44]-[46]), the Court of Appeal held that although the causes of action in Singapore and Malaysia were different, the trial courts would have to traverse much the same ground. In the result the High Court's order for a stay pending outcome of the Malaysian proceedings promoted international comity.

Conclusion on stage 1

43 To conclude, at the first stage of the two-stage inquiry, I found that Indonesia was clearly and distinctly the more appropriate forum for the trial of the dispute over the ownership of TGN shares. True it may be that TGN was a Singapore incorporated company. But the underlying assets, events and wider transaction were rooted in Indonesia; further, this suit could not be considered independently of Indonesian public policy considerations and proceedings that are live in that jurisdiction.

Stage 2: Does justice nevertheless require a stay?

44 At the second stage, it is for the Plaintiff to show circumstances by reason of which justice nevertheless justified refusing the stay.

45 The Plaintiff submitted that (a) it may not get a remedy in Indonesia because the Indonesian courts would not recognise a trust over the TGN

shares, and (b) the Indonesian courts may refuse to exercise jurisdiction over the dispute. In the light of my view that issues of illegality under Indonesian law and Indonesian public policy ought properly to be dealt with in Indonesia, it followed, then, that I did not think these arguments relevant under Stage 2.

46 In any event, the Plaintiff's concerns related to the disadvantages that the Plaintiff would face if *Indonesian law* were the ***applicable law***, and not if Indonesia was the ***forum*** of litigation. If the dispute was heard before the Singapore courts, *but Indonesia law applied*, the Plaintiff would have to overcome the disadvantages identified; conversely, if the Indonesian courts were to hear the dispute and come to the conclusion that Singapore law applied, the courts there would be compelled to give effect to the respect that Singapore law accords to the laws of friendly foreign states. The Plaintiff's complaint therefore related to the disadvantages they would face if *Indonesian law* applied; it did not relate to any injustice they would face if the *Indonesian courts* heard the matter. Disadvantages which parties may face from a particular substantive law applying do not form a premise to refuse a stay in the interest of justice under the second stage of the *forum non conveniens* inquiry.

47 Notwithstanding the above, this suit is, in my judgment, very closely intertwined with Suit 252. Both suits require decision on the existence of the oral agreement contended by the Defendants, the trusts contended by the Plaintiff, the applicable governing law and whether the arrangements are affected by Article 33 of the Indonesian Investment Law. Both suits ought to be tried together. If Suit 252 is not stayed in favour of Indonesia, Stage 2 of the test, in my opinion, should then result in the same outcome for this suit. It was for this reason that when counsel first argued this application on 12 August 2016, I asked parties to return for a decision only after the then

pending application for leave to appeal in Suit 252 had been decided. Leave to appeal was subsequently granted on a point of law of importance regarding trust arrangements involving trust property situated in a foreign jurisdiction which prohibits trusts. I then recalled parties for decision on 29 August 2016.

Conclusion

48 For the above reasons, a stay of proceedings was granted pending the outcome of the actions in Indonesia. Parties were given liberty to apply, and costs were awarded to the defendants in the sum of $10,000 (inclusive of disbursements).

49 I should explain in closing the limited form of the stay given. I ordered a stay of proceedings pending the outcome of the actions in Indonesia as TGN is a Singapore company, and an order for the transfer of its shares may be required after the Indonesian cases have been dealt with. This approach was consonant with my view that although it was not clear whether the proceedings in Singapore and Indonesia could require different judgments, the material findings of fact were the same. Such an order allows parties to return to the Singapore suit if necessary, after the relevant material findings of fact had been made by the Indonesian courts. Similar terms accompanied the stay in *Chan Chin Cheung*, where the court granted a stay to avoid inconsistent findings of fact between courts in two jurisdictions.

Valerie Thean
Judicial Commissioner

Chew Ming Hsien Rebecca and Chew Xiang (Rajah & Tann Singapore LLP) for the applicant in SUM 2416/2016;
Lim Tong Chuan and Joel Wee (Tan Peng Chin LLC) for the respondent in SUM 2416/2016.
