Peters Roger May v Pinder Lillian Gek Lian
[2006] SGHC 39

Case Number : Probate 73/2004, SIC 2630/2005, RA 191/2005

Decision Date : 06 March 2006

Tribunal/Court : High Court

Coram : V K Rajah J

Counsel Name(s) : Goh Kok Yeow (De Souza Tay and Goh) for the appellant; Deborah Barker SC and Vanessa Yeo (KhattarWong) for the respondent; Phua Siow Choon (Michael BB Ong and Co) for the beneficiaries; Foo Hui Min and Usha Chandradas (Inland Revenue Authority of Singapore) for the Commissioner of Estate Duties

Parties : Peters Roger May — Pinder Lillian Gek Lian

Civil Procedure – Stay of proceedings – Factors to consider when deciding whether to grant stay – Whether importance of physical availability of witnesses as factor to consider diminished if video linkage available

Civil Procedure – Stay of proceedings – Forum non conveniens – Appellant executor's ancillary application for determination whether notation should be endorsed on grant of probate that testator died domiciled in Singapore stayed by respondent on grounds of forum non conveniens – Appellant and respondent disagreeing on domicile of testator – Appellant appealing against stay of notation proceedings – Whether forum clearly or distinctly more appropriate than Singapore available – Factors relevant to determination of testator's domicile – Whether court should set aside stay of notation proceedings

Civil Procedure – Stay of proceedings – Lis pendens – Respondent asserting proceedings commenced in foreign jurisdiction for declaration as to testator's domicile – Whether appellant executor's ancillary application for determination whether notation should be endorsed on grant of probate that testator died domiciled in Singapore should be stayed

6 March 2006

V K Rajah J:

1 Dennis William Pinder ("Pinder") was a Titan of Singapore industry in the 1960s and 1970s. In 1975 he was convicted of several offences of criminal breach of trust. In imposing a custodial sentence on Pinder, the trial judge, Senior District Judge T S Sinnathuray observed:

> The success he made and the influence he had in the business community not only in Singapore but also abroad is reflected in the phenomenal achievement of Sime Darby over the years. There is no doubt that the Accused transformed Sime Darby from being a comparatively small United Kingdom company with South East Asian interests to one of the largest companies in the United Kingdom with world-wide interests. In the course of the trial I was told that the Sime Darby Group is now a conglomeration of 131 limited liability companies, consisting of subsidiaries, associated and managed companies, under the umbrella of Sime Darby Holdings Limited. I was also told that the Group employs 39,000 people in 20 different countries. … [I]t is indeed one of the most remarkable success stories that one is ever likely to hear about. No one can deny the Accused that credit.

2 Upon his release from imprisonment, Pinder publicly declared and repeatedly maintained that he was a Singapore citizen, that Singapore was his home and that he had "no intention of leaving". He led a quiet life thereafter attending to his private business interests and acting from time to time as a business consultant. Although he travelled frequently and extensively, he invariably returned to

Singapore.

3 In July 2003, while in England, he was diagnosed with deep vein thrombosis and was advised not to travel until he recovered. On 12 January 2004 he sent a fax to his family and friends stating:

> 1. We are … scheduled to leave London on Tuesday, 27th January, arriving Singapore the following evening.
>
> 2. *This will be a considerable relief, having been away for such an extended period!*
>
> [emphasis added]

Unfortunately, before he could return to Singapore, fate intervened. His health took an unexpected and sudden turn for the worse and he passed away in England on 22 January 2004.

4 This matter arises as a consequence of probate proceedings commenced by the appellant who is the executor ("the Executor") of the last will of Pinder. He filed an application for probate on 28 April 2004; on 4 August 2004 an order was made by Judicial Commissioner Andrew Ang (as he then was) granting probate to the Executor. That order, however, at the behest of the respondent, Pinder's widow, left unresolved the issue of Pinder's domicile. Subsequently, on 12 May 2005, the Executor filed an ancillary application pursuant to s 7 of the Probate and Administration Act (Cap 251, 2000 Rev Ed) ("PAA") for a determination whether a notation should be endorsed on the grant of probate that Pinder died domiciled in Singapore ("the notation proceedings"). Shortly thereafter, the respondent filed an application to stay the notation proceedings. An assistant registrar acceded to the respondent's application on 26 July 2005 and stayed the notation proceedings. The Executor appealed. I allowed the Executor's appeal and the respondent has now appealed against my decision.

The background

5 The Executor is the Senior Partner of an English law firm, Gordon Dadds Solicitors ("GDS"). He is an English solicitor of more than 30 years' standing and specialises in trusts, probate and associated matters. GDS prepared Pinder's last will dated 29 June 1984 ("the Will") and in accordance with his instructions, GDS maintained custody of the original will.

6 The Executor is not a beneficiary under the Will and is acting in a strictly professional capacity. The Executor asserts that his decision to prove the Will in Singapore was made only pursuant to thorough and extensive enquiries conducted with the assistance and recommendations of solicitors, both in Singapore and in Hong Kong. He determined that for the final 30 years of Pinder's life, Singapore represented the focal point of Pinder's personal, social, financial and business activities. Pinder had, the Executor maintains, made an irreversible decision in the 1970s to live permanently in Singapore. He had to that extent acquired a domicile of choice in Singapore, thereby renouncing his presumed and original English domicile. The Executor emphatically maintains that documents such as Pinder's passports, his personal tax submissions and newspaper reports articulating Pinder's actual intentions all served to fortify his conclusion that Pinder was domiciled in Singapore prior to his demise.

7 The respondent, on the other hand, affirms that Pinder had always been domiciled in England notwithstanding his very close connection with Singapore. Pinder was born and educated in England. After his first marriage in England, he was employed by Sime Darby in Malaya from 1953. He became managing director and chairman of the Sime Darby group in 1965. The respondent asserts that Pinder had at all material times an English passport in addition to his Singapore passport, stayed in London

regularly, owned property in London, married her in London and was even on the London electoral roll. It bears emphasis that the determination of Pinder's domicile one way or the other will in turn entail very significant financial consequences for the respondent. The respondent asserts that if Pinder was domiciled in England, as she believes, she stands a "very good chance" of recovering at least 50% of the estate on an application pursuant to the English Inheritance (Provision for Family and Dependants) Act 1975 (c 63) ("Inheritance Act"). As an application under the Inheritance Act can only be made in England, she claims that it is only appropriate that the determination of Pinder's domicile should also take place there. She acknowledges and accepts that under Singapore law she will be unable to maintain such a claim. In this context it is pertinent to note that under the terms of the Will the principal beneficiaries are Pinder's two sons and not the respondent.

8 It cannot be disputed that the Singapore courts are endowed with the jurisdiction to hear and decide both the probate (s 17(*f*) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed)) as well as the issue of Pinder's domicile. The jurisdiction of this court has been founded as of right. That this is indeed the position has been firmly and irrefutably pronounced in the order of Andrew Ang JC on 4 August 2004. This was made with the consent of the respondent *qua* caveator.

The assistant registrar's decision

9 It would be helpful at this juncture to set out the learned assistant registrar's grounds of the decision:

> The executors have stated they are relying primarily on documents and none of their witnesses who have filed affidavits are unable to travel to England. On the other hand, the witnesses that the widow will be calling are in England or can more conveniently go to England to testify. Some are unable to come to Singapore. These are factors pointing to England being the more appropriate forum. *The location of the witnesses is however not a major factor since video-linking facilities both in England and Singapore will enable witnesses to testify from remote locations in any case. It also has to be balanced against some expected delay in the conclusion of proceedings and wasted costs if the dispute were to be heard in England instead of Singapore where the proceedings are more advanced.*
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> The major factor in the present case is however that a conclusive determination on domicile in England will bind all relevant parties but the Singapore proceedings will not have a similar effect. The UK tax authorities have stated that they will not consider themselves bound by the decision of a Singapore court on domicile and should the matter proceed in Singapore, there will be a real possibility of further litigation on the same issue of domicile for the purposes of estate duty tax in UK. On the other hand, *the CED have confirmed that they will abide by the English court's decision on domicile without reservations. This is a significant factor pointing to ... England as the more appropriate forum, as it will avoid duplicity of actions*.
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> On the balance, I find that England is the more appropriate forum to hear the issue of domicile.
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> [emphasis added]

10 I pause to explain the reference to the Commissioner of Estate Duties ("the CED") made by the assistant registrar. This is a matter of importance as it appears that the alleged confirmation of the CED impressed the assistant registrar as *the* pivotal reason tilting the balance in favour of the stay.

11 The CED was joined in these proceedings by the Executor. The latter is concerned about

being placed on the horns of a dilemma, should it for instance be determined that Pinder was not domiciled in Singapore, but the CED on the other hand takes a contrary view. Such a predicament might expose the Executor to personal liability for payment of any estate duty assessed by the CED. The CED does not object to being made a party to the notation proceedings.

12 In the course of the appeal, the CED clarified his actual stance and vigorously emphasised that the assistant registrar had misunderstood his earlier submissions. The CED now states unequivocally that:

> 15. [I]t is CED's submission that the Learned AR Ms Joyce Low misinterpreted CED's position when she made her decision to stay the Singapore proceedings, based significantly on CED's agreement to abide by the ruling of the UK Courts. Our position was certainly not that we would defer blindly to the UK Courts. Rather, if a Singaporean Court examined the merits of the case and was inclined to rule, on the merits of the case, that the various court proceedings relating to Dennis Pinder's estate were better heard in the UK, then CED would abide by that decision, and not object to the proceedings moving to the UK.
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> …
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> 24. Based on the facts presented before us to date, we are able to offer our opinion that the proceedings in Singapore *should not be stayed*, for the following reasons:
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> (a) *Prima facie*, Dennis Pinder appears to have had more of a connection with Singapore based on the preponderence [sic] of objective documentary evidence furnished by his Executor Mr Roger May Peters, relating to the events of the last three years of Dennis Pinder's life. For example, in addition to holding Singaporean citizenship and a Singaporean passport, a number of letters and faxes from Pinder, in varying contexts, indicate that he was based in Singapore and intended to remain here permanently. Immigration and Customs Authority (ICA) records also prove that he had been largely resident in Singapore, save for the last year of his life.
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> (b) In particular, CED also found the fact that Dennis Pinder had expressed a wish for his body to be cremated and ashes to return to Singapore to be very persuasive. Indeed this wish was fulfilled and, his ashes were eventually brought back to Singapore.
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> (c) As far as the convenience of witnesses is concerned, it appears as though video link conferencing will have to be arranged for a number of the witnesses in any event. As such, it would be equally convenient to have the matter heard in Singapore as it would be in the UK.
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> 25. CED was directed by V. K Rajah J, on 12 January 2005 to attempt to obtain Dennis Pinder's application to be restored to the electoral rolls of Singapore on 28 February 2002. The Elections Department has informed us that they are unable to furnish us with a copy of the said application as it had been discarded when the new electoral register was certified in 2004. However, the Elections Department was able to confirm that Dennis Pinder did make such an application. Copies of our letter to the Elections Department dated 2 September 2005, and the Elections Departments' reply dated 5 September 2005 are at Pages 24-25 of CED's Bundle of Authorities.
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> 2 6 . *Based on the evidence exhibited to CED thus far, it appears highly likely to us, that Dennis Pinder was domiciled in Singapore till the date of his death and never abandoned this*

domicile of choice. The evidence submitted by the Respondent, Dennis Pinder's widow, appears to be largely comprised of oral testimony and conjecture. It is therefore, CED's opinion, on a purely objective assessment of the facts at hand, that Dennis Pinder is more intimately connected with Singapore than the UK.

27. CED maintains the position that we will abide by the decision of the Singaporean Courts and that we should prefer to remain impartial in this matter on the basis that we have no new or independent evidence with which to assist the Court. *However, upon examination of the objective facts presented before us, and further information disclosed after 12 August 2005, we are of the opinion that these proceedings are better heard in Singapore, due largely to Dennis Pinder's close connection with Singapore*.

[emphasis added]

As the learned assistant registrar's determination was apparently premised solely on the alleged "confirmation" of the CED, it plainly now cannot be upheld on that basis. However, as the appeal was being heard *de novo* I proceeded to re-examine the entire factual matrix. The CED's views, though persuasive, cannot *per se* conclusively determine the legal issue in controversy. That decision ultimately rests with the court.

General principles on domicile

13 All persons must have a domicile. On birth a person is affixed with a domicile of origin; the father's domicile if he is legitimate and born within the father's lifetime or the mother's domicile if he is illegitimate or born after the father's death. This domicile of origin prevails until a person acquires a new domicile of choice or dependence: see *Theobold on Wills* (Sweet & Maxwell, 16th Ed, 2001) at para 1-02.

14 A person cannot have more than one domicile at any particular point of time. The legal policy underpinning the concept of domicile is to ensure that there is a definite law of succession to connect that person with a particular legal system: *Sommerville v Lord Sommerville* (1801) 5 Ves 750 at 786; 31 ER 839 at 858; *Forbes v Forbes* (1854) Kay 341 at 353; 69 ER 145 at 150. The concept of domicile also plays a critical role in many legal systems in determining jurisdiction in matrimonial proceedings and family law related matters.

15 The party who alleges that a domicile has been changed bears the burden of sustaining the allegation. Typically, more cogent evidence is required to prove the change of a domicile of origin than of one domicile of choice to another: see *Theobold on Wills* ([13] *supra*) at para 1-03.

16 It is possible for a person to have more than one home, each one in a different country. The enquiry is then to focus on which of the residences is the "chief residence" or the primary residence; see *Udny v Udny* (1869) LR 1 Sc & Div 441 at 458, *Morgan v Cilento* [2004] EWHC 188; [2004] WTLR 457 at [11].

17 The issue of whether a domicile has been changed is to be determined in accordance with the law of the forum. That may not pose a critical problem here given that both Singapore and English law adopt a similar approach in determining this particular issue.

Stay of proceedings: forum non conveniens and the Spiliada principles

18 The Court of Appeal of Singapore has on several occasions emphasised that the principles

enunciated in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 ("the *Spiliada* principles") in relation to the stay of proceedings apropos *forum non conveniens* apply in Singapore: *Brinkerhoff Maritime Drilling Corp v PT Airfast Services Indonesia* [1992] 2 SLR 776; *Oriental Insurance Co Ltd v Bhavani Stores Pte Ltd* [1998] 1 SLR 253; *Eng Liat Kiang v Eng Bak Hern* [1995] 3 SLR 97. In *Oriental Insurance Co Ltd v Bhavani Stores Pte Ltd* at [10] and [13], the Court of Appeal declared:

> We were asked to reconsider the lower judge's decision not to grant a stay. The principles governing this matter are clear and established. The approach suggested by Lord Goff in *The Spiliada* [1987] 1 Lloyd's Rep 1 has since been approved and applied by the Court of Appeal in *Brinkerhoff Maritime Drilling Corp & Anor v PT Airfast Services Indonesia and another appeal* [1992] 2 SLR 776. We set out the relevant passages from the judgment of Lord Goff:
>
> > In my opinion, the burden resting on the defendant is not just to show that England is not the natural or appropriate forum for the trial, but to establish that there is another available forum which is clearly or distinctly more appropriate than the English forum. In this way, proper regard is paid to the fact that jurisdiction has been founded as of right …
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> > …
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> > Since the question is whether there exists some other forum which is clearly more appropriate for the trial of the action, the court will look first to see what factors there are which point in the direction of another forum … and these will include not only factors affecting convenience or expense (such as availability of witnesses), but also other factors such as the law governing the relevant transaction … and the places where the parties respectively reside or carry on business.
> >
> > …
> >
> > If the court concludes at that stage that there is no other available forum which is clearly more appropriate for the trial of the action, it will ordinarily refuse a stay …
> >
> > …
> >
> > If however the court concludes at that stage that there is some other available forum which prima facie is clearly more appropriate for the trial of the action, it will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should nevertheless not be granted.
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> …
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> More recently, in *Eng Liat Kiang v Eng Bak Hern* [1995] 3 SLR 97 at p 107 we affirmed our decision in the *Brinkerhoff* case. The judgment of the court was delivered by my brother judge LP Thean JA, who summarised the relevant principles as follows:
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> > A stay will only be granted on the ground of forum non conveniens, where the court is satisfied that there is some other available and appropriate forum for the trial of the action. The burden of proof rests on the defendant, and the burden is not just to show that Singapore is not the natural or appropriate forum but to establish that there is another available forum which is clearly or distinctly more appropriate than the Singapore forum. *The natural forum is that with which the action has the most real and substantial connection, and the court will consider what factors there are which point in that direction. If the court*

> *concludes at that stage that there is no other available forum which is clearly more appropriate for the trial of the action, it will ordinarily refuse a stay*. If, however, the court concludes at that stage that there is some other available forum which prima facie is clearly more appropriate for the trial of the action it will ordinarily grant a stay, unless there are circumstances by reason of which justice requires that a stay should nevertheless be refused. The court in this respect will consider all the circumstances of the case.
>
> [emphasis added]

19 It ought to be noted that, in the final analysis, the real issue is not one of convenience *per se* but of appropriateness. In evaluating competing considerations the acid test simply is which is the more appropriate forum to hear the matter. In reviewing and summarising the current legal position in Singapore apropos the concept of *forum non conveniens*, two learned commentators, Prof Tan Yock Lin and Mr Francis Xavier observe in their paper, "The Conflict of Laws in Singapore 2001–2005" (paper presented at the Singapore Academy of Law Conference 2006) at pp 3–4:

> One of the most far-reaching developments in the subject is undoubtedly the barely 20-year old doctrine of natural forum. The reception and articulation of that doctrine in *The Spiliada* was bold and innovative. Borrowed from Scots law, it went beyond its origin to recognise and implement a new notion of comity. A notable feature therefore was its rejection of comparative evaluations of the justice in competing legal jurisdictions. Choosing instead to concentrate on the interests of the parties and the ends of justice, it accepted that only for the sake of substantial justice should comparative evaluations be undertaken and one country's laws preferred to another's. Any less rigorous approach would be a breach of comity. *The concretisation of this overarching consideration gave therefore pre-eminence to convenience of trial and application of law and, departing from the earlier cases, ignored juridical advantages unless the plaintiff would be deprived of substantial justice*. As all know, the Australian High Court was to strike a different balance, one that gave the Australian courts jurisdiction unless they are clearly an inappropriate forum.
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> As a small nation committed to non-alignment engagement, we are not at all surprised that our courts accepted the more international doctrine propounded by the House of Lords in *The Spiliada*. … [T]he remarks of Chao Hick Tin JA in *PT Hutan Domas Raya v Yue Xiu Enterprise (Holdings) Ltd*, namely, that whether the process contemplated by Lord Goff in *The Spiliada* is a two-stage process or a one-stage process, telescoping two into one, does not really matter. As his Honour explained:
>
> > The ultimate question remains the same: where should the case be suitably tried having regard to the interest of the parties and the ends of justice? The mere fact that the plaintiff [has] a personal or juridical advantage in proceedings in Singapore [is] not decisive. The court [has] also to consider the interests of all the parties and the ends of justice.
> >
> > [emphasis added]

20 I agree with their insightful observations. A court has to take into account an entire multitude of factors in balancing the competing interests. The weightage accorded to a particular factor varies in different cases and the ultimate appraisal ought to reflect the exigencies dictated by the factual matrix. Copious citations of precedents and *dicta* are usually of little assistance and may in reality serve to cloud rather than elucidate the applicable principles. One must also remember that "[d]omicile and residence and place of incident are not always decisive" (*per* Lord Templeman in *Spiliada Maritime Corporation v Cansulex Ltd* ([18] *supra*) at 465).

21 In granting a stay application the court must be persuaded that compelling reasons have been advanced precipitating the conclusion that the interests of the parties seeking justice can be more appropriately secured in some other jurisdiction. As Lord Sumner aptly put it in *Société du Gaz de Paris v Société Anonyme de Navigation "Les Armateurs Français"* 1926 SLT 33 at 37:

> The object under the words "*forum non conveniens*" is to find that *forum* which is the more suitable for the ends of justice, and is preferable, because pursuit of the litigation in that *forum* is more likely to secure those ends.

22 In applying the *Spiliada* principles, the following abbreviated approach can be adopted:

(a) The stay applicant must satisfy the court that there is another available forum which is clearly or distinctly more appropriate than Singapore as a forum. (In determining whether the other forum is clearly more appropriate, the court will review factors such as the factual connection(s) between the dispute and the competing jurisdiction; the likely parties to the proceedings; convenience or expense (such as the accessibility of witnesses); the law governing the relevant transaction; the places where the parties respectively reside or carry on business, *etc*. This is a non-exhaustive list that embraces an inclusive and cumulative approach). If the court concludes that there is no other proposed or competing forum which is clearly or distinctly more appropriate for the trial of the action, it will ordinarily refuse a stay and the judicial enquiry proceeds no further;

(b) If the court concludes that there is some other available forum which is clearly more appropriate for the trial of the action, it will ordinarily grant a stay unless the interests of justice dictate otherwise.

The respondent must show that England is clearly the more appropriate forum for the proceedings

Application of the Spiliada principles

23 It is a highly relevant consideration that the respondent consented to the grant of probate to the Executor on 4 August 2004. The grant was made in accordance with Singapore law under the PAA. Given such an unqualified acceptance of this court's jurisdiction at that juncture, the respondent cannot now turn around and conceivably contend that Singapore is not an (as opposed to "the") appropriate forum to determine and notate Pinder's domicile for the purposes of the grant of probate pursuant to s 7 of the PAA. The jurisdiction of the Singapore courts has *ab initio* been founded as of right in this matter.

24 It is beyond peradventure that Pinder maintained a close, real and substantial connection with Singapore for more than half his lifetime. The voluminous documentary evidence that has been adduced more than amply illustrates this. Singapore had invariably constituted the focal point for Pinder's personal, financial and business activities since he became the chairman of Sime Darby in 1965; on 7 March 1972, he significantly assumed Singapore citizenship.

25 I also note that the CED quite rightly takes the view that Pinder appears *prima facie* to have sustained more of a connection with Singapore than England based on the preponderance of objective facts as well as documentary evidence furnished by his Executor. For example, in addition to his claim to Singaporean citizenship and a Singaporean passport, numerous letters and faxes emanating from Pinder in a myriad of situations demonstrate that he was based and rooted in Singapore. Immigration and Customs Authority records also prove that he had been resident mainly in Singapore, save for the

last year of his life, when he was unwell and unable to return. The fact that Pinder's ashes were returned to Singapore also lends some tangential support to his acknowledgement of Singapore as home (although the respondent alleges in this regard that this was her decision alone).

26 Upon closer scrutiny, it is apparent that the respondent's grounds as set out in her application cannot support her contention that England is "clearly and distinctly more appropriate" as a forum. I shall deal with each of the grounds raised in the respondent's application *seriatim*:

(a) **The Will was made in England in accordance with English law**

The Will has already been proved in Singapore. It has been recognised as valid and effective under the Wills Act (Cap 352, 1996 Rev Ed). A testator's domicile is not determined by the place where a will is prepared or the identity of those involved in preparing the will. The place where a will is made and the law pursuant to which it is made do not establish or even begin to point towards the domicile of a testator. After all, even a declaration of domicile in a will is legally irrelevant as this issue will in the final analysis be determined by the court taking into account the entire matrix: see *In re Annesley* [1926] Ch 692.

(b) **The Executor is an English solicitor residing in England**

This is entirely irrelevant. Indeed it can be credibly argued that on the contrary this a point in favour of the matter being heard in Singapore as the Executor, an English national, has acknowledged the jurisdiction of this court. Paradoxically it is the respondent, a Singaporean domiciled in Singapore, who is painstakingly but implausibly contending that the domicile issue be determined in England.

(c) **The deceased was born, married, divorced, re-married and died in England and was residing there at the time of his death**

Pinder died just four days short of his 80th birthday. There is compelling evidence that he abandoned his English domicile of origin and acquired a Singapore domicile of choice by March 1972. There is no clear evidence on record that he ever abandoned or even harboured any intention of renouncing his Singapore domicile so as to re-acquire an English domicile. In any event, the respondent's claim that Pinder never abandoned his alleged English domicile or origin does not (subject to any further evidence being adduced) appear to be correct. The fact that Pinder died in England is legally irrelevant as his demise was sudden and unexpected. Indeed, he was scheduled to return to Singapore five days later on 27 January 2004 and had repeatedly expressed with what anticipation and relief he was looking forward to returning to Singapore. According to *Theobold on Wills* ([13] *supra*) at para 1-07, it is settled law that:

> A person compelled to go abroad for the sake of his health for the last few months of his life would probably not acquire a foreign domicile.

The legal position will be *a fortiori* if an illness supervenes while a person is abroad when death ensues. The final residence, particularly, if it is not freely chosen, is not to be inexorably equated with the domicile of preference or choice.

(d) **The deceased had property in England, close and significant links with England and had expressed the intention to retire there**

Pinder was always very careful to ensure that he did not own significant assets in England in his

name as this would expose his estate to inheritance tax. Other than some bank accounts and bonds, the properties he maintained in England were owned by or held through offshore companies incorporated in Hong Kong such as Whitehall Court Limited, which upon aggregation amounted to less than the inheritance tax threshold. Pinder was a chartered accountant, the former chairman of Sime Darby and for many years, prior to his demise, the business and financial adviser to Mr Lee Thor Seng ("Mr Lee") and his family. He was a savvy businessman, fully conversant with financial and tax issues and understood both the impact and the ramifications that being deemed resident or domiciled in England incurred. Interestingly, the respondent has herself acknowledged that:

> [Pinder] travelled extensively during his lifetime but always visited England several times a year. His visits were curtailed only by a desire to avoid becoming a UK resident and so liable to English income and Capital Gains Tax.

The respondent in a letter to the UK Capital Tax Office sent after Pinder's demise also accepted that Pinder "spent a considerable amount of his life living in Singapore. But travelled frequently around the world and regularly back to the UK". There is no doubt that though Pinder travelled frequently, visiting Germany and the UK regularly, he invariably returned to Singapore, mindful never to exceed the UK deemed taxed residence that 91 days of residence in England per year entailed.

(e) **England is the more appropriate forum from the viewpoint of convenience, *etc***

The probate proceedings in Singapore commenced in April 2004. The proceedings in Singapore are fairly advanced and probate has been granted to the Executor. The respondent's attempts to locate a subsequent will by Pinder have come to naught. The notation of the domicile of Pinder on the Singapore grant of probate is a fairly straightforward ancillary matter that can be expeditiously resolved in Singapore. The emphasis placed by the respondent on England being a more convenient forum for the numerous allegedly relevant witnesses is entirely misconceived; her witnesses hail from various countries with some of the critical evidence coming from Singapore citizens living in Singapore (including the respondent herself and William Cutts) or persons working and living in Singapore (Paul Jeffreys), while several others reside in Australia (the Nevilles), some in Germany, and others in the UK. The CED has quite correctly surmised and submitted:

> 24. ...
>
> (c) As far as the convenience of witnesses is concerned, it appears as though video link conferencing will have to be arranged for a number of the witnesses in any event. As such, it would be equally convenient to have the matter heard in Singapore as it would be in the UK.
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> ...
>
> 26. ... The evidence submitted by the Respondent, Dennis Pinder's widow, appears to be largely comprised of oral testimony and conjecture. It is therefore, CED's opinion, on a purely objective assessment of the facts at hand, that Dennis Pinder is more intimately connected with Singapore than the UK.

The easy and ready availability of video link nowadays warrants an altogether different, more measured and pragmatic re-assessment of the need for the physical presence of foreign

witnesses in stay proceedings. Geographical proximity and physical convenience are no longer compelling factors nudging a decision on *forum non conveniens* towards the most "witness convenient" jurisdiction from the viewpoint of physical access. Historically, the availability and convenience of witnesses was a relevant factor as it had a bearing on the costs of preparing and/or presenting a case and, most crucially, in ensuring that all the relevant evidence was adduced before the adjudicating court. The advent of technology however has fortunately engendered affordable costs of video-linked evidence with unprecedented clarity and life-like verisimilitude, so that the importance of this last factor recedes very much into the background both in terms of relevance and importance. In other words, the availability and accessibility of video links coupled with its relative affordability have diminished the significance of the "physical convenience" of witnesses as a yardstick in assessing the appropriateness of a forum. I myself have on several occasions experienced the use of video links to hear testimony and to assess witnesses. As long as the court is satisfied that a witness is not being prompted, cross-examination can take place as readily and easily as in a courtroom; see also my observations in *Cheong Ghim Fah v Murugian s/o Rangasamy* [2004] 1 SLR 628 at [39]. I also find it heartening that my preferred approach in endorsing the convenience, affordability and reliability of video-linked evidence is amply supported by some observations made in the very recent House of Lords decision in *Polanski v Condé Nast Publications Ltd* [2005] 1 WLR 637. Lord Nicholls of Birkenhead observed at [14]:

> Improvements in technology enable Mr Polanski's evidence to be tested as adequately if given by VCF [video conferencing] as it could be if given in court. Eady J, an experienced judge, said that cross-examination takes place "as naturally and freely as when a witness is present in the court room". Thomas LJ … said that in his recent experience as a trial judge, giving evidence by VCF is a "readily acceptable alternative" to giving evidence in person and an "entirely satisfactory means of giving evidence" if there is sufficient reason for departing from the normal rule that witnesses give evidence in person before the court: [2004] 1 WLR 387, 402.

And *per* Lord Slynn of Hadley at [45]:

> As between the parties, if all other questions of policy are ignored, it seems that the use of video link could be efficient and fair and contribute to the economic disposal of the litigation. If indeed there is any disadvantage it may be to the person asking for video link evidence and *it is not established that the defendants would be adversely affected by the use of video link evidence*. [emphasis added]

27 The respondent has not advanced any arguments, cogent or otherwise, why adducing evidence by video link in this case would be in any way inconvenient, unsuitable or prejudicial. If sufficient reason is given why the actual physical presence of foreign witnesses cannot be effected, a court should lean in favour of permitting video-linked evidence in lieu of the normal rule of physical testimony. Sufficient reason ought to be a relatively low threshold to overcome and should be assessed with a liberal and pragmatic latitude. If a witness is not normally resident within a jurisdiction, that may itself afford a sufficient reason with a view to minimising costs. On the other hand, if for instance the evidence of an important foreign witness cannot be voluntarily obtained by video link, this could tip the balance in favour of hearing the matter in the foreign jurisdiction where the witness resides so the witness can be compelled to give evidence there. Even then, the importance of that witness personally giving evidence as a factor may not be critical if deposition taking is available. The relative gravity of this factor must invariably be weighed and measured against the nature and relevance of the proposed evidence.

28 It is clear in the circumstances of this case that there is no other jurisdiction which is clearly or distinctly more appropriate than Singapore to adjudicate on Pinder's domicile. Pinder had, to all intents and purposes, the closest, most tangible and substantial connection with Singapore:

(a) **Spent significant time in Singapore**

It is evident that while Pinder travelled extensively during his lifetime and visited England regularly, his visits were arranged with an overarching aim to avoid becoming a UK resident, which in turn would have exposed him to English income and capital gains tax. Pinder used primarily his Singapore passport for his travels – even to enter into the UK – although he had a UK passport. This is most telling. Pinder had consistently filed his income tax returns in Singapore, even in 2003 when he was away from Singapore.

(b) **Flat at Whitehall Court, London and Singapore properties**

The Executor asserts that Pinder did not directly own any immovable properties in the UK. The flat at 74 Whitehall Court (which was sold in 1994, to a company owned by Mr Lee) and another flat at 89 Whitehall Court, were both owned by Whitehall Court Ltd, a Hong Kong company that Pinder controlled from Singapore. On the other hand, since the early 1970s, Pinder owned immovable properties in Singapore in his own name (jointly with the respondent). Pinder and the respondent owned 28 Victoria Park Road, which they sold in 1993. They utilised the sale proceeds to purchase 128 Yuk Tong Avenue. This was extensively renovated and was completed only in 2001/2002. There is no evidence whatsoever of any intention by Pinder to sell 128 Yuk Tong Avenue. This property remained vacant while Pinder occupied a penthouse in Leonie Towers, owned by Mr Lee, for about ten years.

(c) **Club memberships**

Pinder was a member of the British Club and the Automobile Association in Singapore. This neutralises the alleged importance of the English club memberships as a connecting factor.

(d) **London electoral roll**

This is a neutral point and does not have any profound implications. Both Pinder and the respondent remained on the electoral roll in London. The respondent is a Singapore citizen, living in Singapore. It appears that any person who is a citizen of a Commonwealth country (for instance, Singapore) who has a residential address in an English electoral district is eligible to be registered on the relevant electoral roll. The London electoral roll differs from the Register of Electors in Singapore under the Parliamentary Elections Act (Cap 218, 2001 Rev Ed) ("PEA"). The PEA mandates that only adult Singapore citizens ordinarily resident in Singapore are eligible to vote. The respondent has conveniently overlooked the importance of Pinder having become a Singapore citizen by registration on 7 March 1972, while he was the chairman of Sime Darby. At that point in time, he had already been based in Singapore for some 12 to 13 years. While issues of nationality and domicile do not invariably converge, they often coincide. Interestingly, Pinder applied to be restored to the Register of Electors after being removed from it when he failed to vote in the 2001 General Elections. His request was duly acceded to.

29 Where was Pinder's acknowledged home? Pinder's meticulous and careful personality comes across clearly in his letters and correspondence. He consciously used language that pointed to Singapore as his home (*eg*, "absence from Singapore", "away from Singapore", "back to Singapore", "considerable relief, having been away [from Singapore] for such an extended period"). A highly

pertinent piece of documentary evidence that lends credibility and support to the Executor's position comes in the form of a card sent by the Pinders informing friends of their move to their Yuk Tong Avenue house in 1993:

> Lillian and Dennis [Pinder] are pleased to let you know
> the address of our *new permanent home*. This is:-
>
> 128 YUK TONG AVENUE
> SINGAPORE 2159
> Telephone (65) 466 0929
>
> We take up residence on Friday 24th September, 1993
> and ask you to address communications which will arrive
> on or after that date to our new address.
>
> Lillian and Dennis

[emphasis added]

If the court concludes that there is no other available forum which is clearly more appropriate for the trial of the action, it will ordinarily refuse a stay

30 The respondent has not adduced persuasive evidence that an English court is clearly or distinctly more appropriate to determine the domicile issue in lieu of this court.

31 The main thrust of the respondent's argument after the CED had clarified his position is that the "convenience of witnesses" is crucial. Such an argument is also not particularly persuasive when one considers that the actual probative value of the testimony of the respondent's witnesses, who assert that Pinder informed them that he intended to retire in England, has to be painstakingly and thoroughly scrutinised and evaluated. In *Re Eu Keng Chee, decd* [1961] MLJ 210 at 212, Buttrose J rightly opined:

> I turn now to deal very briefly with the statutory declaration in support of the plaintiffs' contention that the deceased had adopted a domicile of choice in Hong Kong by 1954. An examination of the authorities indicates that very little reliance can be placed upon declarations of intention especially if they are oral. To say that declarations as to domicile are "the lowest species of evidence" is probably an exaggeration. The correct attitude, I think, has been summed up by Lord Buckmaster in ***Ross* v. *Ross*** **[**[1930] AC 1] at pages 6 and 7 as follows:-
>
> > Declarations as to intention are rightly regarded in determining the question of a change of domicile, but they must be examined by considering the person to whom, the purpose for which, and the circumstances in which they are made and they must further be fortified and carried into effect by conduct and action consistent with the declared intention.

The value of oral testimony that does not dovetail or find any congruence with objective facts will usually be accorded little, if any, weight.

The issue of lis alibi pendens

32 The respondent also relies on the argument that she has already commenced proceedings in the English Chancery Division for a declaration that Pinder was domiciled in England and Wales.

33 It is relevant to note that as of 26 July 2005, the date of the hearing before the assistant registrar, this "claim" had not even been served on the Executor and/or Pinder's sons. Indeed the English claim was only served on the Executor on 3 August 2005. As Lord Goff of Chieveley incisively observed in *De Dampierre v De Dampierre* [1988] AC 92 at 108:

> However, the existence of such proceedings may, depending on the circumstances, be relevant to the inquiry. *Sometimes, they may be of no relevance at all, for example, if one party has commenced the proceedings for the purpose of demonstrating the existence of a competing jurisdiction, or the proceedings have not passed beyond the stage of the initiating process*. [emphasis added]

34 The respondent's claim was not served (indeed no notice thereof was even given) until after the Executor's notation proceedings were served on her. It is clear that the purported English proceedings "were commenced … for the purpose of demonstrating the existence of a competing jurisdiction" and that such proceedings "have not passed beyond the stage of the initiating process". There is no genuine issue of *lis pendens*.

35 Mr Hugh Elder, the Executor's solicitor in the English claim, persuasively and quite correctly contends:

> A great deal of work has been done, and costs incurred, in preparing for the application in Singapore for the determination of the deceased's domicile. If the Executor's appeal succeeds … substantial duplication of costs in litigating the same issues in both London and Singapore will be avoided. Such duplication would not be to the benefit of any party, especially as Singaporean law is essentially based on English law, and the legal principles on which domicile is established are the same.

Legitimate personal and juridical advantage

36 The respondent's English solicitor, Mr Patrick Hamlin, claims that the respondent would enjoy a legitimate juridical advantage in having the matter of domicile decided in England. This, even if correct, is quite irrelevant and rather inappropriate. Is the respondent suggesting that an English court might be more inclined to lean in favour of finding an English domicile notwithstanding the objective evidence?

37 It is clear law that it is only in the event of the second stage of the *Spiliada* principles, *ie*, if the court is minded to grant a stay of proceedings because the defendant has shown that the foreign court is clearly and distinctly the more appropriate forum for the determination of the proceedings, that this issue becomes relevant at all. If this stage is reached, the plaintiff will then have the legal burden of persuading the court why it should refuse a stay. He can do so by showing that he might be deprived of a legitimate personal and juridical advantage that he has in the Singapore courts if the matter is stayed in favour of proceedings in a foreign court. This is clearly not the position here.

Conclusion

38 In concluding that a stay of the notation proceedings is not justified, I have refrained from determining that Pinder was in point of fact actually domiciled in Singapore. That issue remains to be determined in the notation proceedings, only after all the relevant evidence has been adduced, appraised and assessed; the court will be able to determine this issue with finality after the proposed oral testimony has been subjected to the anvil of cross-examination. Declarations of intention by the deceased, allegedly to third parties, must be carefully scrutinised and analysed. The context in which

they were given is crucial in according them the appropriate weightage and import. Declarations which can be objectively corroborated by a deceased's subsequent conduct will usually be accorded significance.

39 I do however conclude that a Singapore court has not only the jurisdiction as of right to determine the issue of domicile but that it is also the most appropriate forum in the circumstances. The issue of "convenience" of witnesses as a determining factor in assessing the appropriate forum must now be carefully weighed against the availability of video links. Technology now permits real time evidence to be conveniently given by witnesses in foreign jurisdictions both conveniently and without any apparent prejudice to the opposing party. In any event, all things considered, the convenience of witnesses is by no means the be all and the end all in assessing the appropriateness of a particular jurisdiction (*per* Lord Goff of Chieveley in *Spiliada Maritime Corporation v Cansulex Ltd* ([18] *supra*) at 474):

> *For the question is not one of convenience, but of the suitability or appropriateness of the relevant jurisdiction. … [I]t is important not to allow it to mislead us into thinking that the question at issue is one of "mere practical convenience*." Such a suggestion was emphatically rejected by Lord Kinnear in *Sim v. Robinow*, 19 R. 665, 668, and by Lord Dunedin, Lord Shaw of Dunfermline and Lord Sumner in the *Société du Gaz* case, 1926 S.C. (H.L.) 13, 18, 19, and 22 respectively. Lord Dunedin, with reference to the expressions forum non competens and forum non conveniens, said at p. 18:
>
> > In my view, 'competent' is just as bad a translation for 'competens' as 'convenient' is for 'conveniens.' The proper translation for these Latin words, so far as this plea is concerned, is 'appropriate.'
>
> Lord Sumner referred to a phrase by Lord Cowan in *Clements v. Macaulay* (1866) 4 Macph. 583, 594, viz. "more convenient and preferable for securing the ends of justice," …
>
> [emphasis added]

40 Even if a party can show a legitimate juridicial advantage in having a matter heard in another jurisdiction, this alone is not the decisive factor in assessing the appropriate forum. In this case, assuming *arguendo* that the deceased was indeed domiciled in England, I see no particular inconvenience or disadvantage impairing the respondent should the domicile issue be determined in Singapore. Her application for relief under the Inheritance Act and the determination of Pinder's domicile are separate and distinct issues and should not be conflated.

41 The principles to be applied in determining Pinder's domicile are the same whether the matter is determined in Singapore or England. Notwithstanding, the respondent appears to be labouring under the misguided impression that a Singapore court might be less inclined to view her contentions sympathetically in contradistinction to an English court. This is perplexing. This issue will have to be determined on the basis of principle rather than emotion or sympathy in either jurisdiction. In the ultimate analysis, all the relevant evidence will have to be carefully scrutinised and appraised, and a mature assessment made solely on the basis of principle and reason. Judicial imperatives are not to be compromised on the altar of expediency or on the basis of sympathy. The reasons preferred and professed by the respondent for a stay of the notation proceedings are far from adequate.