

# SGI Trust Jersey Ltd and Ors v Laurentius

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	Bailiff
<b>Judgment Date:</b>	24 June 2005
<b>Neutral Citation:</b>	[2005] JRC 86A
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<b>Court:</b>	Royal Court
<b>Date:</b>	24 June 2005

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## Text

[2005] JRC 86A

ROYAL COURT

(Samedi Division)

Before:

Sir Philip Bailhache, Bailiff, **and** Tibbo **and** Morgan.

(1) SGI Trust Jersey Limited

(2) Philip Cowan Sinel

(3) Landsome Group Inc

(4) SGI Holdings Limited

(5) SGI Trust Anguilla Limited

(6) Sinel Trust Anguilla Limited (In its own capacity and as trustee of the Gemstone A and B Trusts)

(7) Amber Investments Limited

Plaintiffs

and

- (1) Johan Hendrick Laurentius Bartolomeus Wijsmuller  
(2) Timothy Roderick Parker-Garner  
(3) Wysa Limited  
(4) Joseph Brice  
(5) Juan Alex Richardson  
(6) Tryon Limited  
(7) Barwys Trust Anguilla Limited  
Defendants

**Advocate A J Olsen for the plaintiffs**

**Advocate F B Robertson for the first, third and sixth defendants**

**Advocate P D James for the fourth, fifth and seventh defendants**

**The second defendant was not represented for the purposes of this hearing**

### **Authorities**

*Koonmen v Bender* (Jersey Unreported 2002/137).

[\*Spiliada Maritime Corporation v Consulex Limited\* \(1987\) AC 460](#) at 476.

*Societe Generale de Paris v Dreyfus Brothers* (1885) 29 Ch D 329 at 242:–

[\*Base Metal Trading Limited v Shamurin\* \(2005\) 1 WLR 1157](#).

[\*Boys v Chaplin\* \(1971\) AC 356](#)).

*Red Sea Insurance Co Limited v Bouygues* (1995) 1 AC 190.

**Application to set aside an order for leave to serve an order of justice out of the jurisdiction and an application to stay allegations made against two of the defendants on the grounds of “forum non conveniens”.**

Bailiff

### **DEPUTY**

- 1 This is an application by the fourth, fifth, sixth and seventh defendants (Mr Brice, Mr Richardson, Tryon and Barwys) to set aside the order for leave to serve an amended order of justice upon them out of the jurisdiction. Their application is supported by an application by the first and third defendants (Mr Wijsmuller and Wysa) to stay the allegations introduced by the amended order of justice against them on the ground of *forum non conveniens*, they both being resident in Jersey and therefore served with the amended order of justice as a

right.

## **The factual background**

### **(1) The Jersey business**

- 2 The second plaintiff (Mr Sinel) and Mr Wijismuller were, until recently, friends and business colleagues. They were the joint owners of the first plaintiff (SGI) a company carrying on business as a trust company in Jersey. Mr Sinel owns 60% and Mr Wijismuller 40%. Mr Wijismuller was the managing director. Mr Sinel concentrated on his associated legal practice. The second defendant (Mr Parker-Garner) was until recently the finance director of SGI. Wysa, a Jersey company, is wholly owned by Mr Wijismuller. Mr Sinel, Mr Wijismuller and Mr Parker-Garner all reside in Jersey.
- 3 A dispute has arisen between Mr Sinel and Mr Wijismuller. Mr Wijismuller and Mr Parker-Garner are no longer directors or employees of SGI. Mr Sinel alleges that Mr Wijismuller, aided and abetted by Mr Parker-Garner, is in the process of perpetrating a fraud on Mr Sinel and SGI.
- 4 On 27th April 2005 SGI and Mr Sinel as plaintiffs instituted proceedings by order of justice against the first three defendants namely Mr Wijismuller, Mr Parker-Garner and Wysa. The allegations related entirely to the Jersey business. In briefest summary the plaintiffs alleged against one or more of the defendants that:–

The order of justice contained various interim injunctions designed to restore to SGI its computer records and e-mail facilities as well as Mareva injunctions freezing various assets of the defendants.

- (i) They had copied all the computer records of SGI with a view to using these for their own purposes and had failed to return copies following the termination of their appointment as directors and employees of SGI.
- (ii) They had taken control of SGI's e-mail account to the prejudice of SGI.
- (iii) They had procured the transfer of the trusteeship of two substantial trusts from SGI to another trust company in which Mr Wijismuller's brother had an interest.
- (iv) They had procured that Wysa overcharge SGI for some time in relation to the provision of computer services. Thus Mr Wijismuller, who owns Wysa, had benefited at the expense of SGI.

- 5 Amongst other relief, the plaintiffs sought an inquiry as to damages. The claims were based essentially on breaches of fiduciary duties owed by Mr Wijismuller and Mr Parker-Garner to SGI and by Mr Wijismuller to Mr Sinel arising out of their joint venture agreement.

## (2) The Anguillan business

- 6 Mr Sinel and Wijsmuller decided in about 2000 to expand their operations to Anguilla. They set up a parallel organisation to carry out trust and company administration business in that jurisdiction. The structure is quite complicated but I need to describe it. The top company in Anguilla is the third plaintiff (Landsome). Landsome is owned as to 60% by Surfside Trading Limited ("Surfside") and 40% by the sixth defendant ("Tryon"). Surfside is ultimately owned by Mr Sinel and Tryon is ultimately owned by Mr Wijsmuller. Accordingly the ownership percentages of the Anguillan business mirror those of the Jersey business. Landsome owns 100% of the fourth plaintiff (Holdings), which in turn owns 100% of the fifth plaintiff (SGIAL) and the sixth plaintiff (STAL). STAL and SGIAL were the main operational companies of the Anguillan business. STAL in turn owned (although there is now a dispute about this) 100% of the seventh plaintiff (AIA). All of the companies referred to in this paragraph are incorporated in Anguilla.
- 7 Mr Brice and Mr Richardson are both residents of Anguilla. They were the directors of most of the companies in the Anguillan business. Mr Richardson was employed full time as an executive director. Mr Brice was also an executive director but he was only employed part time. There were three additional staff of the Anguillan operation.
- 8 Following the difficulties which had arisen between Mr Sinel and Mr Wijsmuller in connection with the Jersey operation, Mr Sinel visited Anguilla in April. He had meetings with Mr Brice and Mr Richardson and a dispute arose as to whether they had resigned as directors of the various Anguillan companies. Accordingly Mr Sinel caused Surfside to institute an action before the Anguilla High Court ("the Surfside Action") and on 8<sup>th</sup> May the Anguilla High Court made an *ex parte* order that meetings of the shareholders of the various companies in the Anguillan group could be held on 10<sup>th</sup> May in Jersey for the purpose of removing the then directors (i.e. Mr Richardson, Mr Brice and Mr Wijsmuller (in the case of AIA)) and replacing them with new directors. The court also granted an injunction restraining the then directors from dealing with the assets of the various companies.
- 9 The envisaged shareholders meetings were held on 10<sup>th</sup> May in Jersey and Mr Sinel exercised his power as controlling shareholder to procure the passing of resolutions removing Mr Richardson, Mr Brice and Mr Wijsmuller as directors of any of the relevant companies and replacing them with Mr Sinel himself and Miss Taylor, an employee of SGI.
- 10 Mr Sinel alleges that, whilst in Anguilla, he discovered that, with the assistance of Mr Brice and Mr Richardson, Mr Wijsmuller was acting in relation to the Anguillan companies in much the same way as he was acting in relation to the Jersey companies. In particular he was seeking to procure a transfer to the seventh defendant (Barwys), a company wholly owned by Mr Wijsmuller, of certain key business of STAL including the Gemstone A and

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Gemstone B trusts.

11 Accordingly, on 19<sup>th</sup> May an application was made to me in chambers to amend the order of justice in order to bring in Landsome, Holdings, SGIL, STAL and AIA as third to seventh plaintiffs and Mr Brice, Mr Richardson, Tryon and Barwys as fourth to seventh defendants. All the new plaintiffs and all the new defendants are resident in Anguilla. The amended order of justice included a number of new allegations in relation to events in Anguilla. I shall refer to all of the new allegations brought in by the amended order of justice as “the Anguillan allegations”. I granted leave *ex-parte* for the order of justice to be amended and served out of the jurisdiction on Mr Brice, Mr Richardson, Tryon and Barwys in Anguilla.

12 In order to set the scene I must summarise very briefly the nature of the Anguillan allegations. They are as follows:—

(i) Mr Wijismuller, Mr Brice and Mr Richardson in breach of their fiduciary duties and acting together in an unlawful conspiracy to damage STAL and/or AIA procured the declaration of a dividend by AIA in favour of STAL in the sum of \$723,818 but diverted this to an account in the name of Tryon from which payments were made for the benefit of Mr Wijismuller and Mr Brice.

(ii) Reserve Holdings Limited (“Reserve”) is an Anguillan company. At a board meeting attended by Mr Wijismuller, Mr Brice and Mr Richardson, Reserve agreed to lend £500,000 to Mr Wijismuller. It is alleged that the loan was in order to fund his dispute with the plaintiffs and that he breached the fiduciary duties which he owes to STAL and SGI by entering into a personal loan agreement with a client of STAL for the purpose of funding his dispute with the plaintiffs.

(iii) Landsome holds all the issued share capital of RR Insurance Company Limited (“RRI”) a captive insurance company. Mr Wijismuller asserts that RRI belongs to him and that Landsome holds the shares as nominee for him. Landsome seeks a declaration that it is the beneficial owner of RRI.

(iv) Mr Wijismuller and/or Mr Brice and/or Mr Richardson have procured that Wysa overcharge or falsely invoice STAL, Landsome, Holdings and AIA for computer services supplied in Anguilla.

(v) Mr Wijismuller, Mr Brice and Mr Richardson and Barwys have conspired to procure for themselves certain assets of STAL and the first three named persons have acted in breach of their fiduciary duties in doing so. This allegation centres upon STAL's trusteeship since the middle of 2003 of two trusts known as the Gemstone A Trust and the Gemstone B Trust. The principal beneficiary of the Gemstone A Trust is a Mr Koonmen and the principal beneficiaries of the Gemstone B Trust are a Mr Gareth Phillips and other former employees of a Japanese company called Blue Edged Technology. These trusts are very substantial and the fees derived therefrom form a substantial part of STAL's income. As mentioned earlier, it is alleged that on 26<sup>th</sup> April 2005 Mr Brice and Mr Richardson, purporting to act as directors of STAL,

caused STAL to resign as trustee of the Gemstone trusts in favour of Barwys. Barwys is owned by Mr Wijsmuller and Mr Brice and Mr Richardson are directors thereof together with Mr Wijsmuller.

(vi) Mr Brice, Mr Richardson, Mr Wijsmuller and Barwys have conspired in similar fashion to procure the transfer of the Registered Agency of fifteen companies from STAL to Barwys in April 2005 by notifying the Anguillan Companies Registry accordingly. Such action would reduce STAL's income at the expense of Barwys. It is said that Mr Brice and Mr Richardson acted in breach of their fiduciary duty towards STAL, that Mr Wijsmuller and Barwys knowingly assisted in such breaches and that Mr Wijsmuller acted in breach of his fiduciary contractual duties owed to Mr Sinel.

(vii) Finally it is alleged that, notwithstanding an agreement with Mr Sinel to effect an orderly handover, Mr Brice, on 6<sup>th</sup> May, issued an instruction to the Anguillan staff to stop work on SGIAL and STAL business. He also refused to sign cheques which were necessary for the ordinary business of the companies and refused to hand over control of the bank accounts to Mr Sinel. It is alleged that these instructions and refusals were intended to disable and destroy the business of STAL/SGIAL so as to remove it as a competitor to Barwys and/or Messrs Brice, Richardson and Wijsmuller, thus enabling them to appropriate its business for themselves.

- 13 The amended order of justice seeks various relief against the defendants including an inquiry as to damages. It contained various orders and injunctions designed to give interim protective relief.

### **(3) Events since the amended order of justice**

- 14 There have been two significant events since the amended order of justice was signed on 19<sup>th</sup> May:—

(i) The Surfside Action came back for hearing before the Anguilla High Court and on 27<sup>th</sup> May that court ordered *inter alia* that its order of 8<sup>th</sup> May directing the holding of the shareholders' meetings of the various Anguillan group companies be set aside and that the persons who were shown as directors of the various companies in the Anguillan Companies Registry before the meetings on 10<sup>th</sup> May should be restored; and that the various defendants in the action (including STAL and AIA) should take no further step or action whatsoever (without the written approval of Surfside) save for the purposes of giving effect to the first part of the order. The effect of the order was to restore Mr Brice and Mr Richardson (and where relevant Mr Wijsmuller) as directors of the various Anguillan companies (including the third to seventh plaintiffs) notwithstanding the fact that Mr Sinel is the 60% shareholder and has purported to remove them. That remains the position at present although Surfside intends to appeal against the order.

(ii) Mr Koonmen and Mr Philipps have begun proceedings (the Trustee Action) before the Anguilla High Court for an order that, if it has not already resigned as trustee of the Gemstone trusts, STAL be removed as trustee. On 27<sup>th</sup> May that court made an interim order that neither STAL nor Barwys nor any person or entity under their control should deal with the assets of the Gemstone A or B trust, and that neither STAL nor Barwys nor any person or entity under their control should draw on or deal with the bank accounts set out in the first schedule or any other bank accounts containing assets of the Gemstone trusts. The order also provided that in due course a proper person be appointed as receiver of the assets of the Gemstone trusts.

- 15 In fairness to the defendants I should make it clear that they deny the allegations made by Mr Sinel in relation to both the Jersey and Anguillan businesses. In particular they assert that the decision to transfer the Gemstone trusts from STAL to Barwys was made in the interests of the beneficiaries. Mr Brice has exhibited the affidavits of Mr Koonmen and Mr Phillips sworn in support of the Trustee Action in which both those gentlemen assert in forceful terms that they formed a very unfavourable view of Mr Sinel during the *Koonmen v Bender* litigation, that they consider he conducted that litigation in a way which generated maximum legal fees, and that they have grave concerns about his competence and integrity. They are adamant that they do not wish any company in which Mr Sinel is actively involved to be a trustee of their trusts.
- 16 It is no part of my role in the present application to resolve these matters. Suffice it to say that none of the parties contended that the pleading does not raise serious issues to be tried.

### The applicable principles

- 17 In ( *Koonmen v Bender* Jersey Unreported) [2002] 137 the Court of Appeal confirmed that the principles to be applied in Jersey on the subject of *forum non conveniens* are those classically expressed in the speech of Lord Goff in [\*Spiliada Maritime Corporation v Consulex Limited\* \(1987\) AC 460](#) at 476:–

***“The basic principle is that a stay will only be granted on the ground of forum non conveniens where the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action, i.e. in which the case may be tried more suitably for the interests of all the parties and the ends of justice.”***

Lord Goff went on to say at 478 that another way of describing the appropriate forum was ‘the natural forum’ which was “that with which the action had the most real and substantial connection.”

- 18 As Lord Goff made clear, the question of the appropriate forum may arise in two different situations. The first is where the defendant resides out the jurisdiction and seeks to set



aside an order giving leave to serve him out of the jurisdiction. In this connection Lord Goff quoted with approval the dicta of Pearson J in *Societe Generale de Paris v Dreyfus Brothers* (1885) 29 Ch D 329 at 242:—

***“It becomes a very serious question ..... whether this court ought to put a foreigner, who owes no allegiance here, to the inconvenience and annoyance of being brought to contest his rights in this country, and I for one say, most distinctly, that I think this court to be exceedingly careful before it allows a writ to be served out of the jurisdiction.”***

Lord Goff went on to say at 481:—

***“The effect is, not merely that the burden of proof rests on the plaintiff to persuade the court that England is the appropriate forum for the trial of the action, but that he has to show that this is clearly so.”***

19 The second situation is where a defendant resides within the jurisdiction and is served as a right but contends that the proceedings should be stayed on the grounds that some other jurisdiction is the appropriate forum. Technically this is the principle of ‘*forum non conveniens*’. The principles to be applied in determining what is the appropriate forum will be the same as in cases of service out of the jurisdiction but in this second category, the burden rests upon the defendant.

20 The positions were concisely summarised by Rook JA in *Koonmen*. In relation to applications to set aside leave to serve outside the jurisdiction he said at para 34:—

***“In summary, it is for the plaintiff to show that the courts of Jersey clearly constitute the appropriate forum in the interests of justice.”***

In relation to applications by a resident defendant to stay proceedings he said at para 56:—

***“In the context of an application for a stay, the burden is on the defendants seeking such stay, and it is for those defendants to show that there is an alternative forum which is clearly and distinctly the more convenient forum for the resolution of the dispute.”***

21 I should add that, in both situations, there is a second stage to the process where, if the court has concluded that another jurisdiction is the more appropriate jurisdiction, it may still decide to allow the proceedings to continue if there are circumstances by reason of which justice requires that this should be so. In such enquiry the court will consider all the circumstances of the case, including circumstances which go beyond those taken into account when considering connecting factors with other jurisdictions. An example may be where it is established objectively by cogent evidence that the plaintiff will not obtain justice in a foreign jurisdiction. No arguments have been addressed on this second limb and I therefore concentrate on determining the appropriate forum.



- 22 In this case the fourth to seventh defendants have all been served out of the jurisdiction and therefore fall within the first situation described above. The burden therefore falls upon the plaintiffs in relation to those defendants. However the first and third defendants (Mr Wijsmuller and Wysa) are resident in Jersey and therefore fall within the second situation described above. In their case the burden lies upon them to show that Anguilla is clearly and distinctly the more convenient forum for the resolution of the dispute.
- 23 I propose to consider the Anguillan defendants first. All of the defendants represented by Mr James fall within this category as it does the sixth defendant (Tryon) represented by Mr Robertson. In general Mr Robertson endorsed Mr James' argument but he raised one additional point with which I must first deal.
- 24 When considering an application to set aside leave to serve out of the jurisdiction, three issues may arise:—
- (i) Does the court have jurisdiction under one or more of the limbs of Rule 7 of the Service of Process (Jersey) Rules 1994?
  - (ii) Is there a serious issue to be tried in respect of each cause of action?
  - (iii) Is Jersey clearly the appropriate forum for the trial of the action?
- 25 The relevant limb relied upon in this case is Rule 7(c) of the 1994 Rules which allows service out of the jurisdiction where:—

***“The claim is brought against a person duly served within or out of the jurisdiction and a person out of the jurisdiction is a necessary or proper party thereto.”***

Mr Robertson correctly pointed out that the allegations in the original order of justice were made by Jersey plaintiffs against Jersey defendants in respect of Jersey events. The Anguillan defendants, who were only brought in by the amended order of justice, were not necessary or proper parties to the allegations in the original order of justice. But the fact is that the Anguillan allegations contain a number of allegations against Mr Wijsmuller and, to a lesser extent, Wysa. Those allegations are brought against Mr Wijsmuller and Wysa as of right because they are resident in Jersey. The Anguillan defendants are necessary or proper parties to those allegations. Rule 7(c) is therefore satisfied.

- 26 The defendants did not raise any point on whether there was a serious issue to be tried and I therefore turn to consider the question of the appropriate forum.

### **The plaintiffs' contentions**

27 Mr Olsen mounted a forceful argument which I would summarise briefly as follows:–

(i) Whilst he accepted that a number of factors, when viewed in isolation, could be said to point towards Anguilla, the Court had to see the wood for the trees. This was at heart a dispute between Mr Sinel and Mr Wijsmuller arising from the breakdown of their joint venture. They were the controllers of the various Anguillan companies and they resided in Jersey. Furthermore, although Mr Brice and Mr Richardson lived in Anguilla, they were ancillary players to Mr Wijsmuller. What underlay the proceedings were steps taken by Mr Wijsmuller to prejudice the companies which he jointly owned with Mr Sinel and benefit new companies which he owned or from which he could expect to derive a benefit. The fact that some of these activities took place in Jersey and some in Anguilla was irrelevant. The matter should be resolved by one court which would hear all the evidence dealing with all the allegations and reach a determination. The natural forum for the resolution of this dispute was Jersey where both Mr Sinel and Mr Wijsmuller resided and where the greater part of the business activities were undertaken.

(ii) If the Anguillan allegations were hived off and heard in Anguilla there would be two parallel substantive proceedings in separate jurisdictions in circumstances where the same issues of fact and law would need to be determined. There was the additional risk of inconsistent verdicts.

(iii) As to the governing law of the tort of conspiracy, he submitted that this was essentially a conspiracy by Mr Wijsmuller with others and that the system of law with which it had the closest connection was Jersey and not Anguilla. There would therefore be no need for expert evidence of Anguillan law. He accepted that there would be the need for such evidence in relation to breach of fiduciary duty but this was unlikely to be contentious and could probably be given by affidavit.

(iv) He accepted that the validity of any appointment of a new trustee of the Gemstone trusts would have to be determined by the Anguillan courts in view of the exclusive jurisdiction clause but he submitted that this was not the key issue. The real issue was whether Mr Wijsmuller, aided and abetted by Mr Brice and Mr Richardson, had acted in breach of duty or as part of a conspiracy in undertaking the action of transferring clients from STAL to Barwys. These actions were all part of the overall conspiracy.

(v) He accepted that the Surfside proceedings raised the same allegations as the Anguillan allegations in the amended order of justice but pointed out that no substantive relief was sought in the Surfside proceedings; it was only sought in the Jersey proceedings. The Surfside proceedings were ancillary to the Jersey proceedings and were necessary simply to deal with certain matters such as the identity of the directors of the various Anguillan companies, preservation of the assets in Anguilla etc.

(vi) The proceedings in Jersey and Anguilla were being co-ordinated and managed by lawyers in Jersey and London and Jersey would therefore be more convenient

than Anguilla, which was a considerable distance away.

(vii) A substantial part of the assets of the underlying structures were held in Jersey rather than Anguilla.

28 In the circumstances Mr Olsen submitted that Jersey was the forum with which the proceedings had the most real and substantial connection and it was therefore the appropriate forum for all matters to be resolved.

## Decision

29 I have carefully considered Mr Olsen's written and oral submissions but I have come to the clear conclusion that Anguilla is the appropriate forum for trial of the Anguillan allegations. My reasons are essentially those put forward by Mr James but I would summarise them as follows:—

(i) Although it is not entirely correct — for example some of the Anguillan allegations involve Mr Wijsmuller, a Jersey resident — it is not wholly inaccurate to say of the Anguillan allegations that they are brought by Anguillan plaintiffs against Anguillan defendants in respect of actions carried out in Anguilla. That alone suggests that this Court should think very carefully before assuming jurisdiction.

(ii) Certainly, apart from Mr Wijsmuller (and possibly Wysa to the extent that it is claimed against) the defendants to the Anguillan allegations are all resident and domiciled in Anguilla. Mr Brice and Mr Richardson are permanent residents of Anguilla and have no connection with Jersey. Tryon and Barwys are Anguillan companies although I accept that they are both ultimately owned by Mr Wijsmuller who is resident in Jersey.

(iii) The acts complained of essentially took place in Anguilla. Thus, it is alleged that Mr Brice and Mr Wijsmuller procured and then diverted the AIA dividend; that Mr Brice and Mr Richardson, as directors of STAL, caused STAL to resign as trustee of Gemstone trusts in favour of Barwys; that Mr Brice and Mr Richardson caused the transfer of the Registered Agency of the fifteen companies; that Mr Brice issued an instruction to the Anguillan staff of STAL and SGIAL to stop work and additionally refused to sign cheques which were necessary for the ordinary operations of those companies and refused to hand over control of the bank accounts to Mr Sinel.

(iv) The Gemstone trusts are expressed to be governed by the law of Anguilla. Furthermore there is an exclusive jurisdiction clause in those trusts in favour of the Anguillan courts. It follows that the validity of any purported retirement and appointment of Barwys as trustee in place of STAL must be determined by the Anguilla High Court applying Anguillan law. I accept that the amended order of justice does not actually ask for relief from this Court in respect of the purported appointment of Barwys but the pleading makes it clear that the plaintiffs allege that the

appointment was invalid either because Mr Brice and Mr Richardson were no longer the directors of STAL at the material time or because they were acting in breach of their fiduciary duties because of their intention to benefit Barwys. It seems to me inevitable that the validity of the purported retirement and appointment will be an important aspect of the plaintiffs' claim in respect of the Anguillan allegations; in particular questions of whether Mr Brice and Mr Richardson were acting in good faith will be significant. Similarly the validity of the transfer of the Registered Agency of the fifteen companies will fall to be determined under the law of Anguilla and would most naturally and conveniently be dealt with the Anguilla High Court.

(v) As to the applicable law of the main allegations, the two principal causes of action are breach of fiduciary duty by directors and the tort of conspiracy. There are ancillary claims of knowing assistance etc but these will clearly follow the main causes of action. As to the former, the case of [\*Base Metal Trading Limited v Shamurin\* \(2005\) 1 WLR 1157](#) decided that, under English principles of private international law, any action for breach of fiduciary duty of a director is governed by the law of the place of the company's incorporation regardless of where the breach of duty was committed or the loss was incurred. Jersey law generally applies English principles of private international law. In this case the allegations of breach of fiduciary duty as directors, whether against Mr Brice or Mr Richardson or Mr Wijsmuller, will be governed by the law of Anguilla as being the place of incorporation of the relevant companies.

(vi) Determination of the law which governs a claim in tort is more complicated. The general rule (see [\*Boys v Chaplin\* \(1971\) AC 356](#)) is that there is double action-ability. In other words, the *lex fori* is applied but the acts complained of must also be actionable under the *lex loci delictu* i.e. the place where the acts were done. I have already stated that the vast majority of the acts which relate to the Anguillan allegations took place in Anguilla and accordingly, if the tort of conspiracy were to be tried in Jersey, it would be necessary for there to be expert evidence of Anguillan law. Conversely, if these allegations were to be tried in Anguilla, the *lex fori* and the *lex loci delictu* would be the same (i.e. the law of Anguilla) and the position would be much more convenient and straightforward. I was referred briefly to a possible exception as stated in [\*Red Sea Insurance Co Limited v Bouygues\* \(1995\) 1 AC 190](#) per Lord Slynn at 206 where it is said: "that exceptionally a particular issue between the parties to litigation in tort may be governed by the law of the country which, with respect to that issue, has the most significant relationship with the occurrence and with the parties." Mr James submitted that, even if that exception were held to apply, Anguilla was the jurisdiction with which the occurrence and the parties had the closest connection in relation to the Anguillan allegations so that expert evidence of the law of Anguilla would still be needed if the case were tried in Jersey. I agree.

(vii) The loss and damage suffered by the Anguillan plaintiffs was suffered in Anguilla. STAL and SGIAL are trust companies carrying on business in Anguilla and any loss or damage caused to them or AIA arose there.

(viii) It is not known at this stage who would necessarily be witnesses in any trial. It would seem from the material presently before the Court that the plaintiffs' witnesses would include Mr Sinel and the three members of staff of STAL. They all live and work

in Anguilla which points to that as being the most suitable jurisdiction. Mr Sinel resides in Jersey but he travels frequently to Anguilla on business and I see no great difficulty or inconvenience in his attending a trial in Anguilla.

(ix) The defendants' witnesses would undoubtedly include Mr Brice and Mr Richardson who both live and work in Anguilla. They may wish to call Mr Koonmen, who lives in Japan and Hawaii and Mr Philips, who lives in Japan. For those two witnesses I do not think there is any difference between Anguilla and Jersey as places of trial. Mr Wijsmuller resides in Jersey but, like Mr Sinel, he travels frequently to Anguilla on business and I see no hardship for him in attending a trial in Anguilla.

(x) There is the additional important factor that there is litigation in Anguilla.

(a) Surfside, which is owned by Mr Sinel, has begun proceedings in Anguilla. The statement of claim essentially replicates the Anguillian allegations in the amended order of justice. Orders have been made in those proceedings which undoubtedly have had an impact on the present proceedings. Thus the Anguilla High Court has made orders concerning the identity of the directors of the Anguillian plaintiff companies. Initially it held that shareholders' meetings could be held, which resulted in Mr Sinel and his colleague Miss Taylor becoming directors. Subsequently it set this order aside and held that, for the time being, Mr Brice and Mr Richardson remained as directors. The ultimate identity of the directors must undoubtedly fall for decision by the Anguilla High Court and will have an impact on these proceedings. It is true that in the Surfside proceedings, no substantive relief is sought against the defendants in terms of damages. But it seems to me inherently undesirable that this Court should consider whether various acts carried out in Anguilla (e.g. the transfer of fifteen companies) give rise to substantive relief against the defendants whereas the Anguilla High Court is the only court which can determine whether such acts are valid. In addition, there is a risk of conflicting decisions regarding the assets of the companies. Indeed that has already occurred with both the Anguilla High Court and this Court making worldwide orders in respect of assets of certain of the companies and trusts. It seems far more appropriate that the substantive matters in relation to the Anguillian allegation should all be resolved by the Anguilla High Court, with this Court acting in aid to the extent that assets in Jersey need protection.

(b) Similar considerations apply in respect of the Trustee Action. It seems to me inherently undesirable that the Anguilla High Court should decide all questions of who is the trustee of the Gemstone trusts and whether an appointment and retirement by STAL was effective, but that this Court should decide all financial consequences which might flow from any such decision. Furthermore the same evidence might have to be heard twice as the good faith or otherwise of the directors of STAL and the motives with which they acted would be relevant both to issue of the validity of their actions and that of whether they are liable to the plaintiffs. Far better that the Anguilla High Court should determine all matters which relate in any way to the trusteeship of the Gemstone trusts and whether directors of STAL were or were not acting properly in connection with such



trusts.

30 All of these reasons convince me that Anguilla is the natural and appropriate forum for resolution of the Anguillan allegations against the Anguillan defendants. It is the forum with which the Anguillan allegations have the most real and substantial connection. I have of course considered Mr Olsen's submissions. I accept that the dispute between Mr Sinel and Mr Wijsmuller underlies what has occurred. But Mr Sinel and Mr Wijsmuller chose to set up their joint venture in two separate places. There is a real business with staff and activities carried out in each location. The actions allegedly taken by Mr Wijsmuller to thwart Mr Sinel vary as between the two jurisdictions. In Jersey he is said to have carried out certain actions with the assistance of Mr Parker-Garner designed to devalue and damage SGI (and thereby Mr Sinel). In Anguilla he is said to have carried out quite different actions with the assistance of quite different people (Mr Brice and Mr Richardson) designed to devalue and damage the Anguillan plaintiff companies. I see nothing inherently undesirable or unsatisfactory in concluding that these two separate sets of actions should be dealt with by separate courts located in the respective jurisdictions. I do not agree with Mr Olsen that the same issues of law and fact will need to be determined. On the contrary, the facts underlying the Anguillan allegations are different from those which form the basis of the Jersey allegations. They can in my judgment be most conveniently tried separately, the Jersey allegations having the closest connection with Jersey and the Anguillan allegations having the closest connection with Anguilla. Nor do I think it inherently unsatisfactory that there is the possibility of the two courts reaching different conclusions as to liability. They will be assessing quite different actions with different people. Furthermore, given the strong connection between the Anguillan allegations and Anguilla (for the reasons which I have set out above) I consider there is a risk of this Court being thought to have over-reached itself if it were to claim the right to resolve the Anguillan allegations and to compel all the Anguillan parties to submit to the jurisdiction of this Court in connection with those allegations. I think that is particularly so where the Anguilla High Court is already seized of a number of matters and where, if this Court were to decide to retain jurisdiction over the Anguillan allegations, there would be an increasing risk of conflict and consistency between the two courts.

31 I turn next to the application by Mr Wijsmuller and Wysa that the Anguillan allegations against them be stayed on the grounds that they should be dealt with by the Anguilla High Court. Here the burden rests firmly upon them but, for the reasons set out in relation to the application by the Anguillan defendants, I am satisfied that the Anguilla High Court is clearly and distinctly the more appropriate forum for the resolution of the Anguillan allegations against them. I consider that the interests of justice require that the Anguillan allegations against all the defendants (whether resident in Jersey or Anguilla) be tried by the Anguilla High Court and that the Jersey allegations (i.e. those contained in the original order of justice) be resolved by this Court in Jersey. Mr Wijsmuller and Wysa have therefore satisfied the burden upon them.

32 I therefore set aside the order for service out of the jurisdiction against the Anguillan defendants (Mr Brice, Mr Richardson, Tryon and Barwys) and I order a stay of the Anguillan

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allegations (i.e. those allegations introduced by the amended order of justice) against the first and third defendants (Mr Wijsmuller and Wysa).

- 33 The order of justice contained various protective injunctions designed to preserve assets located in Jersey as well as in Anguilla pending trial or further order. During the course of the hearing Mr James accepted that, if he were to be successful in his application, it would be reasonable for the plaintiffs to seek suitable replacement injunctions to protect the Jersey situated assets of Anguillan entities pending resolution by the Anguilla High Court. This judgment is being supplied to the parties in draft and accordingly I stand ready to hear any application by the plaintiffs for substitute protective orders to take effect forthwith upon the formal making of my order to set aside service and stay the Anguillan allegations, so ensuring that there is no lacuna during which assets in Jersey are unprotected.