Yap Shirley Kathreyn *v* Tan Peng Quee
[2011] SGHC 5

Case Number	: Suit No 43 of 2010 (Registrar's Appeal No 242 of 2010) and (Summons No 804 of 2010)
Decision Date	: 11 January 2011
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Sankaran Karthikeyan and Bhargavan Sujatha (Toh Tan LLP) for the plaintiff; Deborah Barker SC and Ang Keng Ling (Khattar Wong) for the defendant.
Parties	: Yap Shirley Kathreyn — Tan Peng Quee

Conflict of laws

11 January 2011

Choo Han Teck J:

1 The Assistant Registrar (the "AR") granted the defendant's application for a temporary stay of proceedings in Suit No 43 of 2010 ("Suit 43") pending the resolution of an action in the Malaysia courts. The plaintiff appealed against that decision in Registrar's Appeal No 242 of 2010 (the "Stay Appeal"). At the hearing of this appeal before me, the plaintiff also applied for an anti-suit injunction in Summons No 804 of 2010 to restrain the defendant from commencing any suit in Malaysia or in any forum until the final determination of the Singapore proceedings in Suit 43. After hearing counsel, I dismissed both the Stay Appeal and the Anti-Suit Injunction. The plaintiff has appealed against my decision.

2 The disputes between the parties here and in Malaysia concerned a partnership known as the Eres Tu No 2 Stable (the "ET 2 Partnership"). The ET 2 Partnership was registered with the Malayan Racing Association ("MRA") on 28 June 1998 and de-registered on 29 March 2005. MRA is the controlling body of horse racing in the Turf Clubs in Malaysia and Singapore. The parties intended to buy horses and enter them for races through the ET 2 Partnership. There were three partners in the ET 2 Partnership, namely, the plaintiff, the defendant and one Malcolm Thwaites ("Malcolm").

3 At the time when the ET 2 Partnership was formed, the plaintiff and Malcolm were in a relationship and were staying together. Their relationship ended in 2006. The plaintiff was in dispute with Malcolm over various matters an as a result, Malcolm commenced action against the plaintiff in Kuala Lumpur High Court on 31 July 2009. The Malaysia proceedings between Malcolm and the plaintiff relate to various properties and transactions including the accounts and winnings of the ET 2 Partnership as well as another horse racing partnership (in which the defendant was not a partner). The plaintiff counterclaimed for the return of a sum of US$910,000 allegedly loaned to Malcolm by her for the purchase of a horse.

4 The defendant allegedly learnt from Malcolm that the plaintiff had not fully accounted to him for his share of the ET 2 Partnership earnings. The defendant then sent the plaintiff a letter of demand on 13 January 2010 seeking an account of the income generated by ET 2 Partnership and payment of the sums RM443,653.00 and S$531,172.00. On 21 January 2010, the plaintiff commenced proceedings in Singapore against the defendant seeking payment of RM543,660.00 and S$1,123,513.60 and an

accounting of the monies earned by the ET 2 Partnership, *viz* Suit No 43 of 2010. Shortly after, the defendant commenced proceedings against the plaintiff in Kuala Lumpur High Court on 25 January 2010. On 11 February 2010, the defendant filed an application in Singapore for a stay of the proceedings in Suit No 43 of 2010. The plaintiff filed the Anti-Suit Application on 5 March 2010. The defendant's application for a stay was heard by the AR on 7 June 2010, and she granted a stay pending the resolution of the suits in Malaysia. The plaintiff appealed against this decision. After hearing the Stay Appeal and the Anti-Suit Application, I dismissed both.

5 In the defendant's application for stay, the defendant sought *inter alia* the following reliefs:

(1) that all further proceedings in the plaintiff's action against the defendant be stayed on the ground of *forum non conveniens* and/or *lis alibi pendens*;

(2) alternatively, that all further proceedings in the plaintiff's action against the defendant be stayed pending and until the final determination and resolution of the proceedings in Malaysia, *viz*, the Malaysia proceedings between Malcolm and the plaintiff, and the Malaysia proceedings between the defendant and the plaintiff.

The AR granted prayer 2 above, which was a grant of a stay of proceedings pending the final determination of the Malaysia proceedings. She declined to grant prayer 1. As the plaintiff had not filed a cross-appeal, the issue before me regarding the Stay Appeal was whether the court should exercise its discretion to grant a temporary stay of Suit No 42 of 2010 pending the actions in Malaysia.

6 In my view, this was not a case on *lis alibi penden* since it did not involve the same parties and the same issues. While the proceedings between the plaintiff and the defendant in Malaysia involve the same issues regarding the account of earnings of ET 2 Partnership, the prayer sought by the defendant included a stay pending the Malaysia proceedings between Malcolm and the plaintiff. Malcolm was not a named party in this Singapore suit. *Lis alibi penden* pinciples would therefore not apply. The issues engaged here were more that of *forum non conveniens*.

7 The grant of a limited stay order pending the conclusion of other proceedings did not strictly require the application of *forum non conveniens* principles because under s 18 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) and para 9 of the First Schedule, or alternatively, under the inherent jurisdiction of the court, the court has the full discretion to stay any proceedings before it until whatever appropriate conditions are met. See *Chan Chin Cheung v Chan Fatt Cheung* [2010] 1 SLR 1192 ("*Chan Chin Cheung*") at [47]. Notwithstanding this, I had considered the principles of *forum non conveniens* (as the Court of Appeal did in *Chan Chin Cheung*) as I thought that they were useful in deciding whether or not to exercise my discretion to grant the stay.

8 The principles of *forum non conveniens* are well established. The defendant must satisfy the court that there is some other available and more appropriate for trial of the action. See *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460. The facts of this present case show that Malaysia was the more natural forum:

(a) ET 2 Partnership was formed in Malaysia under the rules of the Malayan Racing Association hence the more appropriate law to be applied should be that of Malaysia's; and

(b) Most of the witnesses to be called reside in Malaysia since 70% of the races concerned were held in Malaysia and the earnings of the ET 2 Partnership were deposited in bank accounts in Malaysia. Particularly Malcolm and the plaintiff herself reside in Malaysia.

Furthermore, it was clear to me that the Malaysian suits were inextricably linked to this Singapore action. The subject matter of the suit in Malaysia and Singapore between the plaintiff and defendant was the same, that is, the account of the earnings of ET 2 Partnership. Also, as between Malcolm and the plaintiff, at least one aspect of the action was also on the account and distribution of the ET 2 Partnership's earnings. This will inevitably overlap with the issue in the Singapore action in Suit 43. In allowing a temporary stay of the Singapore proceedings pending the resolution of the proceedings in Malaysia, I had in mind the practical considerations relating to international comity and the prevention of the duplicity of proceedings; see *Chan Chin Cheung* at [46]. The plaintiff is free to return to the Singapore court for trial of this action after the conclusion of the Malaysia proceedings and the Singapore court, though not bound by the Malaysian courts, would have the benefit of the findings by the Malaysia court; and that is likely to narrow the issues and length of the trial here.

9 In the Anti-Suit Application, the plaintiff asked *inter alia* that the defendant be restrained from commencing any suit in Malaysia or any other forum until the final determination of the Singapore proceedings. Following my decision to stay the Singapore proceedings, the logical consequence is that there is no reason for such a restrain. The application was therefore dismissed.

10 Costs ought to follow the event in this case, and awarded to the defendant fixed at $8,000, excluding reasonable disbursements, for both the Stay Appeal and the Anti-Suit Application jointly. Liberty to apply.