Datuk Hamzah bin Mohd Noor v Tunku Ibrahim Ismail Ibni Sultan Iskandar Al-Haj [2001] SGHC 281

Case Number : Suit 792/2000

Decision Date : 27 September 2001

Tribunal/Court : High Court

Coram : MPH Rubin J

Counsel Name(s) : Andre Arul (Arul, Chew & Partners) for the appellant/appellant; R Raj Singam and Gopinath Pillai (Drew & Napier LLC) for the respondent

Parties : Datuk Hamzah bin Mohd Noor — Tunku Ibrahim Ismail Ibni Sultan Iskandar Al-Haj

Conflict of Laws – Natural forum – Stay of proceedings – Whether foreign court a more appropriate forum – Place where underlying transaction and cause of action arose – Location of witnesses – Residence of disputing parties – Governing law and jurisdiction agreements – Backlog of cases in courts in foreign jurisdiction – Whether respondent member of royal family in foreign jurisdiction relevant – Sch 1 para 9 Supreme Court of Judicature Act (Cap 322, 1999 Ed)

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Introduction

In a writ filed in the High Court of the Republic of Singapore, the plaintiff Datuk Captain Hamzah bin Mohd Noor, apparently a much-decorated businessman, resident in Malaysia, claims against Tunku Ibrahim Ismail Ibni Sultan Iskandar Al-Haj, the Crown Prince of Johor, Malaysia, a sum well in excess of US$8m allegedly for services rendered, loans and advances made and amounts expended by the plaintiff for and at the request of the defendant. From the statement of claim filed, it would appear that whatever agreements reached between the plaintiff and the defendant were all verbal.

The defendant after entering appearance in this suit applied to the court to stay proceedings on grounds of forum non conveniens. This contention by him was that the appropriate forum to try the plaintiff`s claim was either Malaysia or Indonesia and never Singapore. The defendant prevailed before the learned assistant registrar. The plaintiff`s appeal and further arguments before me were not successful for the reasons which follow.

Tour d`horizon

Before I set out the reasons for my decision, it would, perhaps be useful to state briefly the background facts as can be gathered from the plaintiff`s statement of claim and from the affidavits filed by parties in these proceedings.

The plaintiff is a former Harbour Master in the State of Johor. He got along famously with the Johor Royal Household, at least until recently. His services and friendship did not go unnoticed and due recognition was given to him when he was conferred Johor`s third highest honour award of ***Setia Makhota Johor*** by His Royal Highness the Sultan of Johor on his birthday honour lists in 1984. When the Sultan of Johor became the King of Malaysia (`the ***Yang Dipertuan Agung*** `), the plaintiff was further honoured in 1987 by the King with Malaysia`s First Class Honour Award of ***Panglima Setia Diraja*** , an award which entitled him to the title ***Datuk*** . He states his residential address as 2A Jalan SS3/2, Taman Sentosa, Petaling Jaya, Selangor, Malaysia.

The defendant is the eldest son of the Sultan of Johor and bears the royal title ***Tunku Mahkota Johor*** or TMJ. He is next in line and the heir to the throne of the State of Johor. He resides in a palace in Johor Bahru, Malaysia, known as the Istana Pasir Pelangi.

In the statement of claim, the plaintiff alleges that the defendant, besides being a prince, is also a businessman and an investor in various commercial ventures for gain and profit. He claims that he was the defendant`s personally appointed and acknowledged representative in a number of commercial projects, ventures and investments in return for remuneration and payment of expenses to him. Quite a few projects were listed by him in this regard, chief amongst them was an oil and gas project in Indonesia which he calls the `Petrogas Project`. More shall be heard on this later.

The plaintiff`s statement of claim is an extremely long and rambling 119-page (408 paragraphs) document. He sets out in it rather laboriously the various services rendered by him to the defendant from about September 1994; the promises made by the defendant and the sums disbursed by him for and at the request of the defendant. The breakdown of the plaintiff`s claim is as follows:

> *1. The sum of US$805,000.00 being the salary or remuneration due from the Defendant to the Plaintiff for work done and services rendered by the Plaintiff to the Defendant pursuant to the contract for service between the Plaintiff and the Defendant at the rate of US$35,000.00 per month for 23 months from September 1994 to July 1996.*
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> *2. The sum of RM450,000.00 being the balance allowances due from the Defendant to the Plaintiff as agreed to by the Defendant and incorporated into the contract for service at the rate of RM10,000.00 per month for 45 months from January 1996 to September 1999.*
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> *3. The sum of US$5,000,000.00 being the lump sum money due from the Defendant to the Plaintiff as agreed to by the Defendant and incorporated into the contract for service.*
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> *4. The sum of US$1,000,000.00 being the lump sum money due from the Defendant to the Plaintiff as agreed by the Defendant and incorporated into the contract for service.*
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> *5. The sum of US$900,000.00 being the additional lump sum money due from the Defendant to the Plaintiff as agreed to by the Defendant and incorporated into the contract for service.*
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> *6. The sum of RM832,542.16 and the sum of US$140,966.00 being monies advanced by the Plaintiff on the Defendant`s behalf and on the Defendant`s instructions pertaining to the Petrogas Project and the Defendant`s various other matters and investments.*
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> *7. The sum of RM8,905.00 being the reimbursable expenses incurred by the Plaintiff in the performance of his duties for the Defendant with the Defendant`s authority and permission.*
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> *8. The sum of US$200,000.00 extended by the Plaintiff to the Defendant as a personal loan on or about 5 April 1995.*

9. The sum of US$220,000.00 extended by the Plaintiff to the Defendant as a personal loan on 16 June 1995.

The total amount of the claim is for US$8,300,966 and RM1,301,447.16.

The pleaded facts and the affidavits filed by the parties suggest that sometime in November 1994, the plaintiff introduced the Petrogas Project to the defendant at the latter`s office at Mados Sdn Bhd, situated at Jalan Pasir Pelangi, Johor Bahru and subsequently arranged for the defendant to meet one Praptono Tjitrohupojo (`Praptono`), an Indonesian national, who is the president director and majority shareholder of an Indonesian corporation known as PT Usaha Putra Indonesia Petrogas (`UPG`). The upshot was UPG was given four technical assistance contracts (`TAC`) to explore, develop, produce and sell the oil and gas from four different oil and gas concessions in Indonesia which collectively constituted the Petrogas Project and in this regard the defendant agreed to and caused to be provided loans amounting to US$26.5m to the subsidiaries of UPG. In all this, the plaintiff claims that he acted as the defendant`s representative. The plaintiff further claims that a considerable amount of work was done by him for the defendant in relation to the defendant`s intended participation and subsequent involvement in the ventures mentioned.

The plaintiff maintains that he actively participated in and attended several meetings relating to the defendant`s affairs including one held in the meeting room of the Raffles Marina Singapore, on 27 November 1994, for the finalisation of negotiations between the defendant and UPG, which culminated in the execution of the first of the four loan agreements. The details provided by the plaintiff in his statement of claim as to works carried out by him allegedly for and on behalf of the defendant and the personages he met are too long to be entered upon here. Suffice it, if it is said he made a number of trips to Singapore for meetings in connection with his purported brief. He claims that the defendant almost entirely depended on the team comprising the plaintiff, one of the defendant`s then legal advisors, Mr Andre Arul (who is curiously the current counsel for the plaintiff) and a few others to oversee the legal, economic and financial aspects of the transaction.

The plaintiff also recounts in his statement of claim the pivotal role he played in the negotiations leading up to the finalisation of the four loan agreements mentioned. He sets out in detail the negotiations he conducted, all of them on behalf of and upon the instructions of the defendant, with various overseas financial institutions, advisers and investors including Prince Jefri of Brunei who in the result provided funds totalling US$45m in two tranches for the Petrogas Project. He mentioned that he also had to represent the defendant in negotiations with a number of energy corporations in many countries and arranged to incorporate five offshore companies in the British Virgin Islands, collectively known as `Crown BVI` and two other companies in Malaysia, known as Crown Energy Holding Sdn Bhd (`Crown Malaysia`) and Luxury Marketing Sdn Bhd (`LMSB`) to safeguard the defendant`s interests in Petrogas Project as well as others. In addition, the plaintiff also met people at the highest levels of government and industry in Malaysia as well as in Indonesia. Prominent personalities he had met in this regard included Dato Seri Anwar, the former Deputy Prime Minister of Malaysia as well as General Try Sutrisno, the then Vice President of the Republic of Indonesia.

As a result of Prince Jefri not willing to pour in further funds (the expected inflow was US$230m), the Petrogas Project reportedly floundered. On 31 July 1995, the defendant caused to be assigned to Crown Malaysia all of the defendant`s debt of US$26.5m from UPG and all his rights, powers, privileges, options and obligations under each of the four loan agreements executed between the defendant, UPG and Praptono. Following the collapse of the Petrogas Project, since about 31 July 1995, the plaintiff, on behalf of the defendant, had been seeking the return of the loans extended to

the Petrogas group of companies in the sum of US$26.5m plus interest in accordance with the terms of the respective loan agreements made between the defendant, UPG and Praptono. However, as of 5 October 1999, the plaintiff ceased to act any further on behalf of the defendant owing to the defendant`s failure to pay any of the plaintiff`s salary, the balance of his allowance, reimbursement of his costs and expenses incurred on the defendant`s behalf, the plaintiff`s personal loans to the defendant and other monetary commitments made by the defendant to him.

The plaintiff also sketches out in the statement of claim some other services rendered by him to the defendant in connection with the defendant`s various projects and undertakings. These include matters relating to some 27 parcels of land belonging to the defendant and hosts of other projects which require no further amplification at this stage.

As could be observed from the final segment of the plaintiff`s statement of claim (pages 117 and 118), his claims appear to comprise, in the main, nine items besides his consequential claims for damages, costs and interests.

As regards the first claim for US$805,000 allegedly for salary or remuneration at the rate of US$35,000 a month from September 1994 to July 1996, the plaintiff alleges at para 271 of the statement of claim that on or about 10 December 1994, the defendant met the plaintiff and Praptono at `The Last Chukka` (which according to counsel is situated at Istana Pasir Pelangi, Johor Bahru) and confirmed that he would be paid a monthly salary of US$35,000 a month by the defendant personally. As regards the second claim for RM450,000 the plaintiff states at para 342 of the statement of claim that on 2 June 1995, during a car ride from the Seletar Airport to Istana Pasir Pelangi, Johor Bahru, the defendant told the plaintiff that the latter would be paid a monthly allowance to meet his outgoings and expenses incurred in Malaysia in relation to the Petrogas Project and this was further confirmed when the defendant later arrived at Istana Pasir Pelangi where he instructed one Ungku Yusoff in this regard.

As concerns the third claim for a lump sum payment of US$5m, the plaintiff says at para 346 of the statement of claim that the defendant also during the same car ride on 2 June 1995, from Seletar to Johor Bahru mentioned in the preceding paragraph, said that he would pay the plaintiff an additional sum of US$5m for his efforts in relation to the Petrogas Project. In respect of the fourth claim for a further lump sum of US$1m, the plaintiff avers at paras 349 and 350 of the statement of claim that this sum was promised to him in recognition of the plaintiff`s efforts concerning the Petrogas Project. This promise, he says, was made to him by the defendant in the latter`s office at Johor Bahru in the presence of one Mr Salleh and one of the defendant`s personal secretaries, Ms Halimah binti Ahmad.

As regards his fifth claim for a sum of US$900,000, the plaintiff mentions in para 352 of the statement of claim that on 28 April 1995, the defendant also verbally promised to pay him an additional sum of US$900,000 since the defendant had fallen behind in his contractual payments to the plaintiff. Dealing with his sixth claim for two sums of RM832,542.16 and US$140,966, being moneys allegedly advanced by the plaintiff on behalf of the defendant upon the latter`s instructions in connection with the Petrogas Project, the plaintiff itemises them in paras 358 to 376 of the statement of claim. With regard to his seventh claim for a sum of RM8,905, the plaintiff mentions in para 378 of the statement of claim, that this was an outstanding sum payable for some air tickets, bought in the performance of his duties for the defendant. As respects his eighth claim for US$200,000 the plaintiff states at paras 387 to 389 of the statement of claim that this was a personal loan extended by him to the defendant at the latter`s Mados office in Johor Bahru and the whole sum in cash was handed at that office to one Ms Tan who received the said sum on behalf of the defendant.

The ninth claim by him is for US$220,000. In this regard, the plaintiff in paras 397 to 407 of his

statement of claim states that he paid this sum to UPG in Jakarta upon the express request of the defendant and the defendant has failed so far to return the said sum to him.

As regards evidence to be adduced in relation to the current dispute, the plaintiff does not seem to agree with the list of potential witnesses provided by the defendant in para 18 of his affidavit where the defendant has named altogether 11 witnesses: six Malaysian residents (excluding himself and the plaintiff), three Indonesian residents, one Singapore resident and one from Scotland. The plaintiff for his part adds another 28 to his list: (excluding himself and the defendant, both of them from Malaysia), three from Brunei Darussalam, four from Canada, one from New Zealand, eleven from Singapore, eight from the United States and one from the United Kingdom.

Defendant`s application

The defendant`s application to court is based on para 9 of the First Schedule to the Supreme Court of Judicature Act (Cap 322, 1999 Ed) which reads:

> *Stay of proceedings*
>
> *9. Power to dismiss or stay proceedings where the matter in question is res judicata between the parties, or where by reason of multiplicity of proceedings in any court or courts or by reason of a court in Singapore not being the appropriate forum the proceedings ought not to be continued.*

The submission by the defendant that given the entire spectrum, background and character of the dealings between the contestants, Singapore is not the appropriate forum to litigate the dispute at hand. This argument was accepted as valid by the learned assistant registrar. In the appeal before me, counsel for the plaintiff endeavoured to persuade me that on the basis of the evidence placed before the court by the plaintiff, Singapore is the natural and the most appropriate forum for the present action to be tried. A synopsis of his arguments is as follows:

> *(a) Witnesses: The main witnesses for the present proceedings are the plaintiff, the defendant, Salleh and Praptono (the first three being Malaysian residents and the last being an Indonesian resident). Other witnesses are reluctant to testify in Malaysia but are willing to testify in Singapore (para 41 of appellant`s submission).*
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> *(b) Events: The major events pertaining to the plaintiff`s claim did not occur only in Malaysia but in Singapore as well. Main bulk of the plaintiff`s claim against the defendant is for the sum of US$5,000,000 which the defendant agreed to pay to the plaintiff during a car ride between Seletar airport to Istana Pasir Pelangi in Johor (paras 43 and 44 of the submission).*
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> *(c) Governing law of the loan agreements: Several of the drafts of the Master Agreements stipulated that the law of England to be the governing law for the same. The arbitration clauses too provided for the UNCITRAL Rules in Singapore to apply (paras 45 and 46 of the submission).*
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> *(d) Assets of parties: The defendant has not provided any details to support his*

contention that he has substantial assets in Malaysia. On the contrary, the plaintiff has evidence that the defendant has substantial assets in Singapore (para 49 of the submission).

(e) Excessive delay in Malaysia: There is a huge backlog of cases in the Malaysian Courts and there is likely to be an inordinate delay in the prosecution of the plaintiff`s claim (para 59 of the submission).

(f) The defendant`s privileged position in Malaysia: The defendant is the Crown Prince of Johor. He may ascend the Johor Throne before the conclusion of the trial and in the result he will be granted immunity against any proceedings in Malaysia (para 62 of the submission).

When asked to state where the agreement relating to the subject matter of the claim was concluded, plaintiff`s counsel invited the court`s attention to para 346 of the statement of claim which states that the promise by the defendant to pay the plaintiff the sum under reference was made during a car ride from the Singapore Seletar Airport to Istana Pasir Pelangi, Johor. Plaintiff`s counsel also confirmed that the plaintiff`s various claims in the statement of claim are founded on oral agreements and variations of the said oral agreements between the plaintiff and the defendant. Interestingly, counsel for the plaintiff conceded that there is in existence a draft agreement (exh TMJ-7 in the affidavit of the defendant filed on 23 April 2000) prepared in relation to this matter by him, which is signed by the plaintiff but not by the defendant. I shall revert to this draft later in these grounds.

Counsel for the defendant in his submission underscored the aspect that both the contestants featured in this case are Malaysian residents and the other principal figure Praptono is an Indonesian. The draft agreement in relation to the subject matter prepared by plaintiff`s counsel, signed by the plaintiff and forwarded to the defendant for execution but not signed by him, clearly stipulates that the governing law of the agreement between the parties is Malaysia and the parties shall submit to the jurisdiction of the courts in Malaysia (see cl 10 of the draft contract in the exh TMJ-7 referred to). To dispel any doubt as to the course to be adopted by the defendant, his counsel also reaffirmed his client`s intention that he would submit to the jurisdiction of the courts in Malaysia. Counsel further invited the attention of the court to a significant feature that the four loan agreements which form the backdrop to the plaintiff`s claim and alleged agreement for services in relation to them concern matters outside Singapore. After further highlighting the fact that Praptono has also filed a claim against the defendant in Malaysia as respects Praptono`s purported claims against the defendant, he urged the court to rule that Singapore is decidedly not the most appropriate forum to try the dispute between that parties and suggested Malaysia as being the most appropriate forum, if not Indonesia.

Decision

It would appear from the arguments presented before me that the plaintiff`s principal reason for choosing to proceed against the defendant in Singapore and not Malaysia is due to his apprehension that the defendant may have an overwhelming advantage over him in Malaysia by virtue of his princely status. The other reason pressed before me was that the courts in Malaysia are unable to dispose of the cases expeditiously as there is a substantial backlog of cases there. The question that needs to be answered here is whether the foregoing grievances justify this court in holding Singapore as the most appropriate forum. The principles of law applicable in this regard are set out by the House

of Lords in England in **Spiliada Maritime Corp v Cansulex, The Spiliada** [1987] AC 460[1986] 3 All ER 843.

In ***The Spiliada*** the House of Lords was primarily concerned with issues relating to the granting of leave under O 11 r 1(1) of the Rules of the Supreme Court 1970 to serve proceedings out of the jurisdiction. All the same, the Law Lords held in that case that the principles governing the granting of such leave were the same as those applicable to a stay of English proceedings. Lord Goff of Chievely who delivered the main speech, restated the law on this matter which is succinctly encapsulated in the third cumulative supplement to ***Dicey & Morris on Conflict of Laws*** (11th Ed) at paras 393-395 as follows:

> *(a) 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, ie in which the case may be tried more suitably for the interest of all the parties and the ends of justice;*
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> *(b) the legal burden of proof is on the defendant, but the evidential burden will rest on the party who asserts the existence of a relevant factor;*
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> *(c) the burden is on the defendant to show both that England is not the natural or appropriate forum, and also that there is another available forum which is clearly or distinctly more appropriate than the English forum;*
>
> *(d) the court will look to see what factors there are which point to the direction of another forum, as being the forum with which the action has the most real and substantial connection, eg factors affecting convenience or expense (such as availability of witnesses), the law governing the transaction, and the places where the parties reside or carry on business;*
>
> *(e) if at that stage the court concludes that there is no other available forum which is clearly more appropriate it will ordinarily refuse a stay;*
>
> *(f) if there is another forum which prima facie is clearly more appropriate the court will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should not be granted, and, in this inquiry the court will consider all the circumstances of the case. But the mere fact that the plaintiff has a legitimate, personal or juridical advantage in proceeding in England is not decisive; regard must be had to the interests of all the parties and the ends of justice.*

The principles stated in ***The Spiliada*** (supra) have been approved and consistently applied in our jurisdiction (see **Brinkerhoff Maritime Drilling Corp v PT Airfast Services Indonesia** [1992] 2 SLR 776 and **Oriental Insurance Co v Bhavani Stores** [1998] 1 SLR 253).

In ***Oriental Insurance Co v Bhavani Stores*** (supra) it was held:

> *The principles governing an application to stay proceedings were clear and established. If a court concluded that there was some other available forum which prima facie was clearly more appropriate for the trial of the action, it*

> *would ordinarily grant a stay unless there were circumstances by reason of which justice required that a stay should nevertheless not be granted. However, the mere fact that a plaintiff had such a legitimate advantage for proceeding in Singapore was not decisive and the interests of all the parties and the ends of justice had to be taken into consideration.*

Earlier, in **The Vishva Apurva** [1992] 2 SLR 175 , the Singapore Court of Appeal held that:

> *In exercising its discretion, the court should take into account all the circumstances of the case, in particular, the country where the evidence is most readily available, whether the foreign law applies and whether it is different from the local law in any material aspects, which country the parties are connected with, and how closely, whether the defendants genuinely desire trial in the foreign country or are only seeking procedural advantages, and whether the plaintiffs would be prejudiced by having to sue in the foreign court.*

Reviewing all the learning referred to, it would appear that the focus of all of the cases cited revolves around the following aspects:

(1) the place where the underlying transaction and cause of action arose;

(2) the location of the witnesses who would testify to the facts;

(3) the residence of the parties to the action; and

(4) the law governing the dispute.

As to where the transaction and the cause of action arose, the plaintiff`s claim is at its weakest. His claim that the alleged promise was made to him during a car ride from the Singapore Seletar Airport to the defendant`s Malaysian residence in Johor is far from conclusive. Although the plaintiff did assert that the alleged agreement was made while they were still on Singapore soil, I find it difficult to accept that two highly placed Malaysian dignitaries on a car ride from Singapore to the palace of one of the contestants would have even contemplated at that point in time that the agreement, if any, between them will have the Singapore umbrella. Probabilities do not favour the conclusion that they would have intended at that stage to apply Singapore laws or to subject themselves to the jurisdiction of Singapore courts.

As to the residential status of the parties to the action it has never been in dispute that both the plaintiff and the defendant are Malaysian residents. As to the law governing the dispute, the plaintiff`s claim is that it has always been the parties` intention that the applicable law to any dispute resolution would be that of Singapore. In this regard the plaintiff strives to draw support from the reported perceptions and understandings of Praptono. Paragraph 13 of Praptono`s affidavit of 18 April 2001 relied on by plaintiff`s counsel in this respect reads as follows:

> *I aver that at all times, it was contemplated between the Plaintiff, the Defendant and I that any disputes arising out of the Petrogas Project would be adjudged in Singapore and nowhere else. It was also my understanding that all further contractual matters, including as regards the arrangements between the Defendant and the Plaintiff herein, between the Defendant and Andre Arul and between the Defendant and Don were also to be resolved in Singapore other than any jurisdiction in precedence over Malaysia or Indonesia.*

As regards the foregoing assertion, if what Praptono alleges were to be true and accurate, why then in the draft agreement (admittedly prepared in 1995 by the plaintiff`s present counsel on the instructions of the plaintiff and forwarded to the defendant for his signature by the plaintiff on 3 June 1998, that too having already been signed by the plaintiff) is there a clause unequivocally stipulating that the agreement between the plaintiff and the defendant ***shall be governed by and construed in all respects in accordance with the laws of Malaysia and the parties shall submit to the jurisdiction of the Courts of the States of Malaysia in all matters connected with the obligations and liabilities of the parties under the agreement referred to*** . This document clearly belies the plaintiff`s present stand and indeed weakens the very foundation of the plaintiff`s present endeavours. The damage control attempted by his counsel by an explanation that this document was yet to be signed, was found by me to be hopelessly inadequate.

The next aspect pursued by plaintiff`s counsel was that (1) the plaintiff stands in a rather vulnerable position in Malaysia, since the defendant by virtue of his birth and being the Crown Prince of Johor could overwhelm the plaintiff; (2) the defendant might well ascend the throne of Johor in the near future and in such an event the proceedings, if any, instituted in Malaysia, would have to be transferred to a special court under Malaysian laws.

It may be hindsight but it is not unreasonable for one to suppose that a well-connected and well-informed businessman of the plaintiff`s ilk would not have addressed himself to the pitfalls and disadvantages of hitching himself with the `royals` before embarking on a substantial venture such as the one under scrutiny. In my determination, the submission that the plaintiff would be overwhelmed in Malaysia, does not accord with the legal and legislative frameworks in Malaysia where a citizen of Malaysia such as the plaintiff, can indeed bring proceedings against the Rulers there (see **Faridah Begum bte Abdullah v Sultan Haji Ahmad Shah Al Mustain Billah Ibni Almarhum Sultan Abu Bakar Ri`Ayatuddin Al Mu`Adzam Shah** [1996] 1 MLJ 617 at 622C-D). As to the backlog of cases in the courts of Malaysia, this factor alone in my view cannot justify my favouring Singapore as the most appropriate forum. In any event, the intention of the parties from the outset as can be gathered from the draft agreement adverted to, appears to be that Malaysia is the most appropriate forum. The reason attempted by the plaintiff that many foreign witnesses required for the trial favour Singapore to Malaysia is not satisfactorily made out. In this regard, even Praptono himself appeared to have elected to commence proceedings against the defendant in Malaysia, although the significance of those proceedings was downplayed by his counsel as no more than a protective writ.

Having reviewed the evidence available, I am of the view that a conversation held during a brief car ride from Seletar to Johor is hardly significant to justify the conclusion that the oral agreement referred to was made in Singapore. On the other hand, the background facts pleaded by the plaintiff warrant a conclusion to the contrary. In this regard para 15 of the statement of claim points to the determination that whatever agreements entered into had their source and origin at the office of the defendant in Malaysia. As to the location of witnesses, here again as regards the services rendered by the plaintiff and the alleged promises made by the defendant, the core evidence is to be adduced by the principal contestants. They are both resident and located in Malaysia. The others, if required, in my view, will not be too inconvenienced if the hearing is held in Singapore or Malaysia. The reason offered by the plaintiff in para 21 of his affidavit filed on 20 March 2001 that it would be more convenient for the witnesses to travel to Singapore is not sufficiently weighty enough to disqualify an otherwise appropriate forum, which is Malaysia.

Having regard to all the evidence placed before me and considering all the learning referred to during the hearing of the registrar`s appeal as well as during further arguments, I was satisfied that Malaysia

has the closest connection to the issue at hand and is the most appropriate forum. In the premises, I dismissed the plaintiff`s appeal with costs and against my order the plaintiff now appeals.

Outcome:

Appeal dismissed.