Ram Parshotam Mittal *v* Portcullis Trustnet (Singapore) Pte Ltd and others [2014] SGHC 138

Case Number	: Suit No 785 of 2011/T (Summonses No 12 and 1378 of 2014)
Decision Date	: 16 July 2014
Tribunal/Court	: High Court
Coram	: Lee Kim Shin JC
Counsel Name(s)	: Lin Weiqi Wendy and Chong Wan Yee Monica (WongPartnership LLP) for the plaintiff; Hri Kumar Nair SC, Yeo Zhuquan Joseph and Harsharan Kaur Bhullar (Drew & Napier LLC) for the first, second and third defendants.
Parties	: Ram Parshotam Mittal — Portcullis Trustnet (Singapore) Pte Ltd and others

Conflict of Laws – Restraint of Foreign Proceedings

Civil Procedure – Stay of Proceedings

16 July 2014

Lee Kim Shin JC:

Introduction

1 On 26 May 2014, I heard two interlocutory applications which were but skirmishes in a protracted battle fought between two brothers over the ownership of a hotel in India. This dispute has spawned multiple legal proceedings in India, Singapore and Labuan over a period of more than 8 years.

2 Summons No 12 of 2014 was filed by the plaintiff ("the Plaintiff") in Suit 785 of 2011/T ("Suit 785") on 31 December 2013. This was an application for an anti-suit injunction to restrain the second defendant ("the 2nd Defendant") in Suit 785 from maintaining the prosecution of proceedings it had commenced in the High Court of Sabah and Sarawak at the Federal Territory of Labuan ("the ASI Application").

3 Summons No 1378 of 2014 was filed on 17 March 2014 and was an application by all three defendants in Suit 785 (collectively "the Defendants") to stay the proceedings in Singapore pending the determination of proceedings in Labuan ("the Limited Stay Application").

4 On 9 June 2014, I dismissed the ASI Application because Singapore was not the natural forum for the determination of the matters raised in the Labuan proceedings. I granted the Limited Stay Application in part and ordered that Suit 785 be stayed until 31 October 2014 with both parties being at liberty to apply. This was because (amongst other factors) a limited stay of Suit 785 would reduce the risk of conflicting judgments and would promote international comity. I also ordered that the Plaintiff pay costs to the Defendants for both applications, fixed at $8,000 plus reasonable disbursements.

5 The Plaintiff has since filed an appeal against my decision to grant the Limited Stay Application. I therefore set out the grounds of my decision. For completeness, these will include my reasons for dismissing the ASI Application.

Facts

Parties

6 The Plaintiff is an Indian national. The first defendant ("the 1st Defendant") is a Singapore-incorporated company and the 2nd Defendant is a Labuan-incorporated company. Both Defendants are part of the Portcullis Group and in the business of providing offshore corporate and trust services. The third defendant ("the 3rd Defendant") is the chairman and founder of the Portcullis Group.

Background to the dispute

The incorporation of Cardiff and Hillcrest

7 At the heart of Suit 785 lies a dispute between the Plaintiff and his brother, Ashok Mittal, over the beneficial ownership of an Indian company, Hotel Queen Road Pvt Ltd ("HQR"), a Labuan company, Cardiff Ltd ("Cardiff") and a Malaysian company, Hillcrest Realty Sdn Bhd ("Hillcrest").

8 HQR is the owner of a hotel named Hotel Indraprastha ("the Hotel") in New Delhi, India. It is the Plaintiff's case that until sometime in late 2009, he, through his wholly owned company, Moral Trading and Investment Ltd, had held 99.97% of the share capital of HQR. Around late 2002 or early 2003, the Plaintiff says that he decided to invest offshore funds into HQR for the upgrading and renovation of the Hotel. These offshore funds are said to comprise monies that Ashok Mittal held on trust for the Plaintiff in various accounts that Ashok Mittal managed and controlled.

9 To this end, the Plaintiff alleges that sometime in early 2003, he met the 3rd Defendant at the 1st Defendant's office in Singapore for advice on setting up a corporate structure to route the offshore funds to HQR. The parties agreed on an arrangement which involved setting up two special purpose vehicles, namely, Cardiff and Hillcrest. Hillcrest is a wholly-owned subsidiary of Cardiff. Cardiff's share capital comprises a single ordinary share.

10 The ownership of this single share is the subject of a fierce dispute between the Plaintiff and Ashok Mittal as ownership of Cardiff is crucial to the ownership and control of the Hotel.

11 Under this corporate structure, the offshore funds were to be transferred into Cardiff's bank account. Cardiff was to then transfer the funds to Hillcrest's bank account, after which Hillcrest was to remit the funds to HQR in India. The fund transfers to Cardiff and from Cardiff to Hillcrest were to occur by way of shareholder loans. However, the fund transfer from Hillcrest to HQR was to occur through the subscription of redeemable preference shares in HQR.

12 Pursuant to this corporate structure, in April and June 2003, a sum of approximately US$6,000,000 ("the Disputed Sum") was remitted into Cardiff's bank account. Cardiff then remitted the Disputed Sum to Hillcrest, which in turn utilised the Disputed Sum to subscribe for redeemable preference shares in HQR.

13 It is not disputed that the single share in Cardiff was initially held by Portcullis Trust (Labuan) Sdn Bhd ("PTLSB") until it was transferred to the 2nd Defendant on 19 March 2004. The Plaintiff's case in Suit 785 is that the sole share in Cardiff is held on trust for him, first by PTLSB and later by the 2nd Defendant, therefore making him the sole beneficial owner of both Cardiff and Hillcrest.

14 Conversely, the Defendants' case is that the sole share in Cardiff is being held on trust for both

the Plaintiff and Ashok Mittal. In this regard, they plead that the Plaintiff and Ashok Mittal had entered into a written service agreement ("the Service Agreement") with PTLSB on or around 11 March 2003 for the provision of corporate and secretarial services and that both the Plaintiff and Ashok Mittal were identified as principals in the Service Agreement. The Service Agreement was later assigned to the 2nd Defendant sometime in early 2004. I should also point out that although the Plaintiff admits to entering into a written agreement with a Portcullis entity, he denies that this was the Service Agreement as pleaded by the Defendants.

The Indian Proceedings

15 Sometime in May 2005, the board of Hillcrest, acting on Ashok Mittal's instructions, passed resolutions to appoint attorneys to bring actions against HQR for the non-payment of dividends to Hillcrest as a redeemable preference shareholder. Subsequently, the board of Hillcrest passed another resolution dated 2 June 2005, to call for an extraordinary general meeting ("EOGM") of HQR to remove the Plaintiff and his wife as directors of HQR.

16 This led to the first of various legal proceedings between the Plaintiff and Ashok Mittal. On 22 July 2005, the Plaintiff commenced Civil Suit No 992 of 2005 ("Suit 992") in India to invalidate the said resolutions and to prevent Hillcrest from convening the EOGM or from exercising voting rights in HQR. By an interim order dated 3 August 2005, the High Court of Delhi allowed Hillcrest to conduct the EOGM. On 4 August 2005, a shareholder resolution was passed at the EOGM to remove the Plaintiff and his wife as directors of HQR. However, pursuant to an interlocutory application by the Plaintiff in Suit 992, the High Court of Delhi made an order on 12 August 2005 restraining Hillcrest from giving effect to the shareholder resolution until Suit 992 was determined ("the 12 August 2005 Order").

17 Hillcrest commenced Civil Suit No 1832 of 2008 ("Suit 1832") on 30 August 2008 to seek a declaration that HQR had been converted to a public limited company in 2002. In or around January 2009, following various interlocutory applications in both Suit 1832 and Suit 992 , the High Court of Delhi lifted the injunction granted on 12 August 2005. By doing so, it gave effect to the 4 August 2005 shareholder resolution removing the Plaintiff and his wife as directors of HQR. Ashok Mittal's son, Vikram Mittal, and Ashok Mittal's brother-in-law, JK Gupta, were appointed as directors of HQR in place of the Plaintiff and his wife. Ashok Mittal, who was already a director of HQR at that time, was appointed chairman of HQR. Subsequently, as a result of a share issue in HQR, Ashok Mittal acquired substantial voting rights in HQR.

18 During the course of the Indian proceedings and sometime in April 2007, Vikram Mittal wrote several letters to Cardiff, claiming that he had loaned Cardiff the Disputed Sum and had assigned the benefit of the loan to an entity called Bamberg Management Inc ("Bamberg"). On 22 October 2009, a Cardiff board resolution was passed by the single vote of Ashok Mittal to amend Cardiff's accounts to reflect the Disputed Sum as being a loan from Bamberg.

19 On 5 May 2010, the Plaintiff and various other parties filed a company petition ("the CP") before the Company Law Board in India, against, *inter alia*, HQR, Ashok Mittal, Vikram Mittal, Hillcrest, Cardiff and the 1st and 2nd Defendants. In the CP, the Plaintiff challenged the propriety of the share issue by HQR, the ownership of the Disputed Sum and alleged other acts of oppression by the respondents to the CP.

20 These various Indian proceedings are still pending. The issues to be decided by the Indian courts include:

(a) whether the Hillcrest board resolutions appointing the attorneys were valid;

(b) whether the Plaintiff is the sole beneficial owner of Cardiff and Hillcrest;

(c) whether the 1st and the 2nd Defendants were the Plaintiff's trustees;

(d) whether the 1st Defendant, the 2nd Defendant, Cardiff and Hillcrest colluded with Ashok Mittal to the Plaintiff's detriment; and

(e) the true owner of the Disputed Sum.

The Singapore Proceedings

21 On 3 November 2011, the Plaintiff commenced Suit 785 in Singapore. The original defendants named in Suit 785 were the 1st Defendant, the 2nd Defendant, Cardiff and Hillcrest. Against them the Plaintiff sought declarations to the effect that:

(a) that he is the sole and ultimate beneficial owner of Cardiff and Hillcrest; and

(b) that the Hillcrest board resolutions appointing the attorneys (see [15] above) and the Cardiff board resolution of 22 October 2009 (see [18] above) were null and void.

22 He also sought orders to restrain the attorneys appointed by Hillcrest from acting and to require the named defendants to take all necessary steps to undo the effects of the Cardiff board resolution of 22 October 2009.

23 In February 2012, the following interlocutory applications were filed in Singapore:

(a) Summons No 529 of 2012/D ("Summons 529"): This was an application by the 1st Defendant to stay the proceedings in Suit 785 on the ground that Singapore was not the proper forum for the determination of the dispute;

(b) Summons No 533 of 2012/H ("Summons 533"): This was application by the 1st Defendant to strike out the Plaintiff's statement of claim on the ground that it was an abuse of process given the overlap with the Indian proceedings (see [20] and [21] above); and

(c) Summons No 840 of 2012/V ("Summons 840"). This was an application by the 2nd Defendant to set aside the writ and service of the writ on it, or in the alternative to stay Suit 785, on the ground that the Singapore courts did not have jurisdiction over the 2nd Defendant in respect of the subject matter of the suit and the reliefs claimed.

24 On 11 June 2012, an assistant registrar allowed Summons No 529 and ordered that Suit 785 be stayed. The assistant registrar also allowed Summons 840 and set aside service of the writ on the 2nd Defendant. No order was made on Summons 533. The Plaintiff appealed against the assistant registrar's orders.

25 Before the registrar's appeal was heard, the Plaintiff filed Summons 4586 of 2012/D ("Summons 4586") to substantially amend his statement of claim. The proposed amendments first sought to remove Cardiff and Hillcrest as defendants and to join the 3rd Defendant in their place. Next, the amendments sought to alter the nature of the cause of action pleaded by the Plaintiff. Under his original statement of claim, the Plaintiff had claimed against the 1st and 2nd Defendants for breaches of their respective duties as his trustees in the control and management of Cardiff and Hillcrest. He now averred that through his meetings with the 3rd Defendant at the 1st Defendant's offices in

Singapore, he was effectively entering into an agreement with the 1st Defendant. He alleged that the terms of this agreement were, among other things, that the 1st Defendant would set up and manage Cardiff and Hillcrest for the Plaintiff, that the 1st Defendant would only act on the Plaintiff's instructions in the management of these entities and would ensure that the other Portcullis entities likewise did so; and that the 1st Defendant would exercise reasonable care and skill throughout. The Plaintiff pleaded in the alternative that the as a result of their meetings, the 3rd Defendant owed him a duty of care in tort, in identical terms to those of the agreement which he alleged.

26 Finally, the Plaintiff abandoned his claim for the reliefs set out at [21] - [22] above. He instead claimed damages on the basis that the Defendants was in breach of contract, breach of trust or breach of a duty of care, by recognising Ashok Mittal as a beneficial owner of Cardiff and Hillcrest or by preferring Ashok Mittal's interests. In his affidavit filed in support of Summons 4586, the Plaintiff also deposed that he would take steps to remove the 1st and 2nd Defendants from the CP in India.

27 The appeals against the assistant registrar's orders were heard together with Summons 4586 by Tay Yong Kwang J on 8 November 2012. Tay J allowed the Plaintiff's application to amend his statement of claim. On the basis of the amended statement of claim, the stay on Suit 785 ordered by the assistant registrar was lifted. Since then, various other interlocutory applications have been filed in Suit 785. I need not elaborate upon them at this juncture.

Labuan Proceedings

28 In early 2013, the dispute spilled into Labuan, with the first salvo being fired by Bamberg.

29 On 21 February 2013, Bamberg's solicitors sent a letter of demand to Cardiff for repayment of the Disputed Sum. At that time, Cardiff's board comprised the Plaintiff, Ashok Mittal and CorpDirect. CorpDirect was a corporate director which comprised representatives of the 2nd Defendant. According to the Defendants, a board meeting of Cardiff was called by CorpDirect but both the Plaintiff and Ashok Mittal refused to attend. As a result, Cardiff was unable to reply to Bamberg's letter.

30 On 3 July 2013, Bamberg sued Cardiff in Labuan for repayment of the Disputed Sum ("the Bamberg Action"). According to the Defendants, CorpDirect called for a board meeting to appoint lawyers to defend the Bamberg Action. The Plaintiff did not attend this board meeting and Ashok Mittal attended by teleconference. At the board meeting, CorpDirect voted in favour of appointing lawyers whilst Ashok Mittal voted against it. Because of the impasse, CorpDirect exercised its casting vote and passed the board resolution to appoint lawyers to act for Cardiff. Cardiff entered an appearance in the Bamberg Action on 29 July 2013. The Defendants claim that Ashok Mittal was unhappy with CorpDirect's decision to defend the Bamberg Action. He accused CorpDirect of having an interest in the resolution given the 2nd Defendant's involvement in the Singapore proceedings.

31 On 26 March 2013, the Plaintiff filed Summons 1595 of 2013 ("Summons 1595") in Suit 785 for the production of various documents referred to in the joint defence of the 1st and 2nd Defendants. The 1st and 2nd Defendants opposed the application on the basis that such disclosure was precluded by s 149 of the Labuan Companies Act 1990 (Act 441) ("the Labuan Companies Act") unless sanctioned by the Singapore court.

32 Section 149(1) of the Labuan Companies Act is a secrecy provision and it prohibits the disclosure of information relating to the business and affairs of a Labuan company unless an exception applies. Section 149(4) of the Labuan Companies Act in turn sets out the exceptions to s 149(1). It reads:

(4) The provisions of subsection (1) shall not apply –

(a) when lawfully required to make such disclosure by any Court or under the provisions of any law being enforced by the Authority;

(b) for the purpose of the performance of the Authority's supervisory functions as may be provided for under any written law;

(c) when lawfully required pursuant to section 22 of the Labuan Business Activity Tax Act 1990; or

(d) when duly authorised by the Labuan company or the foreign Labuan company.

33 On 21 May 2013, Ashok Mittal applied to intervene in Summons 1595 by way of Summons No 2628 of 2013 ("Summons 2628"). He contended that the Singapore court did not have jurisdiction to grant orders relating to the Labuan Companies Act. Summons 2628 was dismissed, first by an assistant registrar on 25 June 2013 and then by Woo Bih Li J, hearing the registrar's appeal on 19 August 2013.

34 As an initial response to Ashok Mittal's application to intervene in Summons 1595, the Defendants filed an application in the Labuan court for leave to disclose the documents pursuant to s 149 of the Labuan Companies Act ("the Section 149 Application"). On 13 August 2013, Cardiff held a board meeting to appoint lawyers to act in the Section 149 Application. This board meeting ended in an impasse as the Plaintiff and Ashok Mittal could not come to a consensus about, amongst other things, whether the meeting could proceed without a chairman and CorpDirect could not, in this instance, exercise a casting vote. Cardiff was thus left unrepresented in the Section 149 Application. Pursuant to an application filed on 2 September 2013, Ashok Mittal was granted leave to intervene in the Section 149 Application on 11 October 2013. An interim order preventing disclosure of the documents was also made on the same day. On 25 February 2014, the Defendants applied to vary this interim order. As of 26 May 2014, the Labuan court had not come to a decision on this application.

35 On 15 August 2013, the 2nd Defendant took out an ex-parte application in the Labuan court for directions on:

(a) whether the 2nd Defendant should commence an action against the Plaintiff and Ashok Mittal to determine the beneficial ownership of Cardiff and Hillcrest;

(b) the steps the 2nd Defendant should take to discharge itself as trustee, and its representatives from their duties as nominee directors of Cardiff and Hillcrest; and

(c) whether the 2nd Defendant should, through CorpDirect, cause Cardiff to commence interpleader proceedings in the Bamberg Action, given the competing claims on the Disputed Sum;

36 On 3 September 2013, the Labuan court authorised and directed the 2nd Defendant to commence an application under the Malaysian Trustee Act 1949 (Act 208) ("the Malaysian Trustee Act") against the Plaintiff and Ashok Mittal ("the Trustee Act Application") and through CorpDirect to cause Cardiff to commence interpleader proceedings against the Plaintiff, Ashok Mittal and Bamberg ("the Interpleader Application").

37 On 18 December 2013, Cardiff also filed an application for a stay of the Bamberg Action pending

the determination of the Interpleader Application.

38 On 24 December 2013, Ashok Mittal commenced Suit No LBN-22NCvC-11/12-2013 against the Plaintiff and the Defendants in Labuan ("Ashok Mittal's Labuan Action"). Ashok Mittal sought declarations to the effect that:

(a) the 2nd Defendant holds the single share in Cardiff on trust for both the Plaintiff and Ashok Mittal;

(b) Bamberg is the lender of the Disputed Sum and that the 22 October 2009 resolution passed by Cardiff is valid (see [18] above);

(c) the Defendants had acted properly in passing the Hillcrest and Cardiff board resolutions; and

(d) the Plaintiff is in breach of s149 of the Labuan Companies Act.

39 In December 2013, Ashok Mittal applied for an *ex-parte* order to restrain the Plaintiff from prosecuting or assisting in the prosecution of Suit 785. On 13 January 2014, the Labuan court allowed Ashok Mittal's application and granted an anti-suit injunction pending its determination at an *inter-partes* hearing in January ("Ashok Mittal's ASI"). On 5 February 2014, the Labuan court affirmed Ashok Mittal's ASI after the Plaintiff did not enter an appearance and also directed that the Defendants apply to the Singapore Court for a limited stay of Suit 785 pending the disposal of Ashok Mittal's Labuan Action. On 25 February 2014, the Defendants applied to vary Ashok Mittal's ASI to sanction the conduct of their defence in Suit 785.

40 On 20 May 2014, the Labuan court dismissed the Section 149 Application on the ground that s 149(4) of the Labuan Companies Act was not a vehicle for a party to obtain leave from the Labuan court to disclose confidential information about the affairs of a Labuan company. The Labuan court therefore held that the Section 149 Application was misconceived. As of 26 May 2014, being date I heard the ASI and Limited Stay Applications, the Labuan court had not delivered its judgment on the Defendants' application to vary Ashok Mittal's ASI.

The applications before this Court

41 In the ASI Application, the Plaintiff prayed for orders that the 2nd Defendant be restrained from maintaining or prosecuting the Trustee Act Application and the Interpleader Application in Labuan.

42 In the Limited Stay Application, the Defendants prayed for Suit 785 to be stayed pending the determination of all four sets of proceedings in Labuan, namely, the Trustee Act Application, the Interpleader Application, the Bamberg Action and Ashok Mittal's Labuan Action.

43 I turn to consider each application in turn.

My decision

The ASI Application

44 The principles governing the grant of an anti-suit injunction are settled. A condition precedent to the granting of an anti-suit injunction is that Singapore must be the natural forum for the determination of the dispute in the foreign proceedings, based on the principles enunciated in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460: see *Koh Kay Yew v Inno-Pacific Holdings Ltd*

[1997] 2 SLR(R) 148 at [18]; *John Reginald Stott Kirkham and others v Trane US Inc and others* [2009] 4 SLR(R) 428 ("*John Reginald Stott Kirkham*") at [33]. In the case before me, this required the Plaintiff to prove that Singapore *was clearly the more appropriate forum* for the determination of the Trustee Act Application and the Interpleader Application: *John Reginald Stott Kirkham* at [33].

45 On the facts, I was not satisfied that the Plaintiff had discharged this burden. The Trustee Act Application had been made under the Malaysian Trustee Act to determine the beneficial ownership of Cardiff and Hillcrest. These were a Labuan and a Malaysian company respectively. The 2nd Defendant, which itself was a Labuan company, had also prayed for a discharge of its duties as trustee. The aforementioned issues quite clearly raised questions of Labuan and Malaysian law. More pertinently, the reliefs claimed could not be granted by the Singapore courts. I therefore did not see how the Plaintiff could even begin to contend that Singapore was clearly the more appropriate forum for the determination of the Trustee Act Application.

46 This was likewise the case for the Interpleader Application. As noted earlier, the Interpleader Application is related to the Bamberg Action that was commenced in Labuan. The core issue therein is the ownership of the Disputed Sum, which was paid into a Labuan company's (*ie*, Cardiff's) bank account. It also bears noting that the parties who claim to have paid the Disputed Sum are the Plaintiff, an Indian national, and Bamberg, a British Virgin Islands company. Given the pre-dominance of these foreign elements, it was clear to me that Singapore was not the most appropriate forum for the determination of the Interpleader Application.

47 To advance her case, counsel for the Plaintiff, Ms Wendy Lin ("Ms Lin"), placed much reliance on the fact that Tay J had previously dismissed an application by the Defendants for a permanent stay of Suit 785 on the ground of *forum non conveniens* (see [27] above). According to Ms Lin, this meant that there could be no doubt that Singapore was the natural forum for the determination of the matters raised in the Trustee Act Application and the Interpleader Application.

48 I did not agree with Ms Lin's submission. For a start, it glossed over the fact that a permanent stay of Suit 785 had been ordered by the assistant registrar based on the Plaintiff's original statement of claim. The stay was then lifted by Tay J after he gave the Plaintiff leave to amend his statement of claim. As is evident from [25] – [26] above, the Plaintiff's claim, in its present incarnation, is fundamentally different from what he originally pleaded. The Plaintiff's claim is now premised on there being a contract entered into with the 1st Defendant in Singapore or there being a duty of care owed by the 3rd Defendant (who is resident in Singapore) to the Plaintiff. The Plaintiff also now claims damages against the Defendants and not the declaratory reliefs and orders he sought against Hillcrest and Cardiff. Put simply, it was because the foreign elements were removed and the Singapore-based ones added that Suit 785 was allowed to continue in Singapore. As mentioned, the Trustee Act Application and the Interpleader Application do not share a similar nexus with Singapore. If anything, they bear a closer semblance to the Plaintiff's original statement of claim (which was stayed in Singapore).

49 As Singapore was not the natural forum for the determination of the Trustee Act Application and the Interpleader Application, it was not necessary to consider whether the taking out of these applications were vexatious or oppressive so as to justify an anti-suit injunction being granted.

50 I therefore dismissed the ASI Application.

The Limited Stay Application

51 I come to the Limited Stay Application. The court's power to grant a limited stay of proceedings

derives from s 18 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("the SCJA"), read with Paragraph 9 of the First Schedule. The relevant provisions read:

> **Powers of High Court**
>
> **18**.—(1) The High Court shall have such powers as are vested in it by any written law for the time being in force in Singapore.
>
> (2) Without prejudice to the generality of subsection (1), the High Court shall have the powers set out in the First Schedule.
>
> …
>
> FIRST SCHEDULE
>
> …
>
> **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.
>
> …
>
> [emphasis added in italics]

52 In *Chan Chin Cheung v Chan Fatt Cheung and others* [2010] 1 SLR 1192 ("*Chan Chin Cheung*"), the Court of Appeal held that there is no need to apply the principles of *forum non conveniens* in their strict rigour when deciding whether to grant a limited stay. The Court explained (at [47]):

> Under s 18 of [the SCJA] and para 9 of the First Schedule thereto, or alternatively under the inherent jurisdiction of the court, *the court has the full discretion, for sufficient reasons, to stay any proceedings before it until whatever appropriate conditions are met*…In short, the point we would underscore is that for the court to make the limited stay order, *there is really no need to traverse the principles governing forum non conveniens*.
>
> [emphasis added in italics]

The case law has instead suggested that the discretion to grant a limited stay entails the court taking a commonsensical and practical approach, bearing in mind considerations such as multiplicity in proceedings, the risk of conflicting judgments, international comity and fairness to the parties: *Chan Chin Cheung* at [44] – [46]; *RBS Coutts Bank Ltd v Brunner Hans-Peter* [2010] SGHC 342 ("*RBS Coutts Bank Ltd*") at [28].

53 Parties also relied on the decision of the Federal Court of Australia in *Sterling Pharmaceuticals Pty Limited v The Boots Company (Australia) Pty Limited* (1992) 34 FCR 287 ("*Sterling*"). There, Lockhart J set out at 291 the following list of non-exhaustive factors which were relevant to the granting of a limited stay:

- Which proceeding was commenced first.

- Whether the termination of one proceeding is likely to have a material effect on the other.

- The public interest.

- The undesirability of two courts competing to see which of them determines common facts first.

- Consideration of circumstances relating to witnesses.

- Whether work done on pleadings, particulars, discovery, interrogatories and preparation might be wasted.

- The undesirability of substantial waste of time and effort if it becomes a common practice to bring actions in two courts involving substantially the same issues.

- How far advanced the proceedings are in each court.

- The law should strive against permitting multiplicity of proceedings in relation to similar issues.

- Generally balancing the advantages and disadvantages to each party.

The above list in *Sterling* was endorsed in *RBS Coutts Bank Ltd* at [26]. I found the factors in *Sterling* to be a useful guide in deciding whether to grant a limited stay. I was, however, also mindful that these factors were not to be applied mechanically. The case did not turn on how many of the factors in *Sterling* are present in a "tick the boxes" approach. Rather, keeping with the commonsensical and practical approach suggested at [52] above, the weight to be attached to each factor, and therefore the ultimate exercise of the court's discretion to grant a limited stay, will depend on the facts and nuances of each case.

54 Returning to the case before me, I found that the following factors militated strongly in favour of granting a limited stay. First, there was a real risk of conflicting judgments if both the Singapore and Labuan proceedings were to proceed concurrently. Granted, there was no complete identity between the Singapore and Labuan proceedings (especially given the Plaintiff's amendments to his statement of claim). Neverthless, it was plain to me and also not disputed by the parties, that there was substantial overlap between them. Both proceedings would have traversed issues such as the beneficial ownership of Hillcrest and Cardiff, the ownership of the Disputed Sum and the validity of the Service Agreement. Counsel for the Defendants, Mr Hri Kumar Nair SC ("Mr Nair") submitted that if the Singapore and Labuan courts reached different conclusions on these issues, it would have placed the Defendants in an impossible position as trustees. I agreed.

55 If the Labuan proceedings were to be concluded first, I was satisfied that the risk of conflicting judgments would have been reduced at the very least. In that situation, the Singapore court would have had the benefit of the findings of the Labuan court, although it would not be bound by such findings. The Labuan court, in turn, would also have had the benefit of receiving evidence from Ashok Mittal and Bamberg's representatives. Neither Ashok Mittal nor Bamberg is a party to Suit 785. Further, the complications pertaining to the disclosure of confidential information would also not arise in Labuan.

56 In my view, it was also pertinent that the Labuan court would decide on matters which it clearly had jurisdiction over. The Plaintiff's refusal to enter an appearance in Labuan did not detract

from this. Moreover, while the Plaintiff can refuse to participate in the Labuan proceedings for practical or any other reasons, the Defendants are in a different position as they carry on business in Labuan (and their representatives frequently travel there).

57 Finally, I accepted the Defendants' explanation that the Limited Stay Application was precipitated by Ashok Mittal's ASI application being granted in Labuan (see [39] above). In an affidavit filed in support of the Limited Stay Application, the 2nd Defendant's representative, Foo Chee Thong ("Mr Foo"), deposed that the Labuan court had ordered and directed that the Defendants apply to stay the Singapore proceedings, pending the determination of Ashok Mittal's Labuan Action. This order of the Labuan Court was exhibited in Mr Foo's affidavit. Mr Foo's evidence was significant in two ways. First, international comity required some weight be given to the Labuan court's directions. Second, it contradicted Ms Lin's suggestion that the Limited Stay Application was filed for the extraneous purpose of stifling Suit 785.

58 Conversely, I did not think that the following, as argued by Ms Lin, were strong factors against the granting of a limited stay. The first was that Suit 785 had been commenced before the Labuan proceedings. It is pertinent to note in this regard that in *Yap Shirley Kathreyn v Tan Peng Quee* [2011] SGHC 5, a limited stay of the Singapore proceedings was granted even though the foreign proceedings were commenced later. The second was that the Singapore proceedings are relatively more advanced than those in Labuan. I gave this factor little weight as Suit 785 itself was not at an advanced stage, with discovery not as yet ordered.

59 Ms Lin also submitted that a limited stay would have the effect of a permanent one as it would force the Plaintiff to enter an appearance in Labuan. This was not persuasive for the simple reason that the Plaintiff would be free to continue with Suit 785 after the Labuan proceedings are concluded in the event that a limited stay is granted. In that scenario, the Singapore court would also not be bound by the findings of the Labuan court. The Plaintiff could therefore ventilate the same issues raised in Labuan before the Singapore court.

60 In his affidavit dated 31 December 2013, filed in support of the ASI Application, the Plaintiff stated his belief that the Trustee Act Application and the Interpleader Application were filed for the purpose of derailing Suit 785. At the hearing on 26 May 2014, Ms Lin also intimated that the Plaintiff did not wish to participate in the Labuan proceedings.

61 I did not appreciate the position taken by the Plaintiff. He is an experienced businessman who had voluntarily chosen to invest in a Labuan trust structure. It may be his prerogative not to participate in the Labuan proceedings, but he cannot complain if the Labuan court decides against his interests on matters which have been properly placed before it.

62 I did consider, however, that real prejudice could be suffered by the Plaintiff if Suit 785 is stayed for a long time and the Labuan proceedings do not move, or move very slowly. Although Mr Nair intimated to me that the Labuan court was looking at hearing dates in September this year, I was not minded to grant a stay of Suit 785 until the Labuan proceedings are concluded. Instead I ordered that Suit 785 be stayed until 31 October 2014. Both parties were also given liberty to apply.

Conclusion

63 For these reasons, I made the orders set out at [4] above.