IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 64

Originating Summons No 884 of 2016

Between

(1) BC Andaman Co Limited
(2) Legacy Resources Limited (Receivers Appointed)
(3) Ace United International Limited
(4) Legacy Resources (Thailand) Co Limited
(5) Murex Co Limited

… *Plaintiffs*

And

(1) Xie Ning Yun (a.k.a. Sia Leng Yuen)
(2) Lee Lye Wah Janice

… *Defendants*

JUDGMENT

[Arbitration] — [Anti-suit Injunction]

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BC Andaman Co Ltd and others
v
Xie Ning Yun and another

[2017] SGHC 64

High Court — Originating Summons No 884 of 2016
Quentin Loh J
17 October 2016

31 March 2017 Judgment reserved.

Quentin Loh J:

1 The five plaintiffs ("the Plaintiffs") seek a permanent anti-suit injunction to restrain the two defendants ("the Sias") from commencing or pursuing two proceedings before the Civil Court of Southern Bangkok, Thailand, *viz*, Reference Case Entry Nos Phor 1466/2557 ("the First Thai Proceedings") and Phor 1288/2559 ("the Second Thai Proceedings"), and from commencing any other proceedings in breach of an arbitration agreement between the Sias and the 1st to 4th plaintiffs.

2 Further, the Plaintiffs seek a declaration that all claims in connection with the Blue Canyon Country Club in Phuket, Thailand, have been dismissed with prejudice by the arbitral tribunal constituted to hear dispute No 076 of 2015 ("the Tribunal"), in the final award dated 14 July 2016 (Award No 077 of 2016) issued in respect of those proceedings ("the Final Award").

3 The Plaintiffs bring their applications pursuant to s 4(10) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("CLA") and paragraph 14 to the First Schedule of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA").

Entry into the joint venture

4 The 5th plaintiff, Murex Co Limited ("Murex"), is a Thai-incorporated company. It owns the Blue Canyon Country Club and various hotels, golf courses, and condominiums in Phuket, Thailand (collectively, "the Blue Canyon Project").

5 In 1998, the Sias invested in Murex through the 2nd plaintiff, their British Virgin Islands ("BVI") incorporated company, Legacy Resources Limited ("Legacy"). As part of the investment, Legacy was given the right to appoint two directors to the board of Murex. Legacy exercised this right by appointing the Sias to the board of Murex. The Sias remained directors of Murex up until the events that constituted the Alleged Coup (see [14]–[15] below).[1]

6 In 2002, the Sias entered into a joint venture ("JV") with Deutsche Bank AG ("Deutsche") to re-develop for profit the facilities and land of the Blue Canyon Project. The Sias and Deutsche established the 3rd plaintiff, BVI-incorporated Ace United International Limited ("Ace"), as the JV vehicle. The Sias held 37.4% of Ace through Legacy. Deutsche held the remaining 62.6% of Ace through its fund, RREEF Global Opportunities Fund II LLC ("RREEF").

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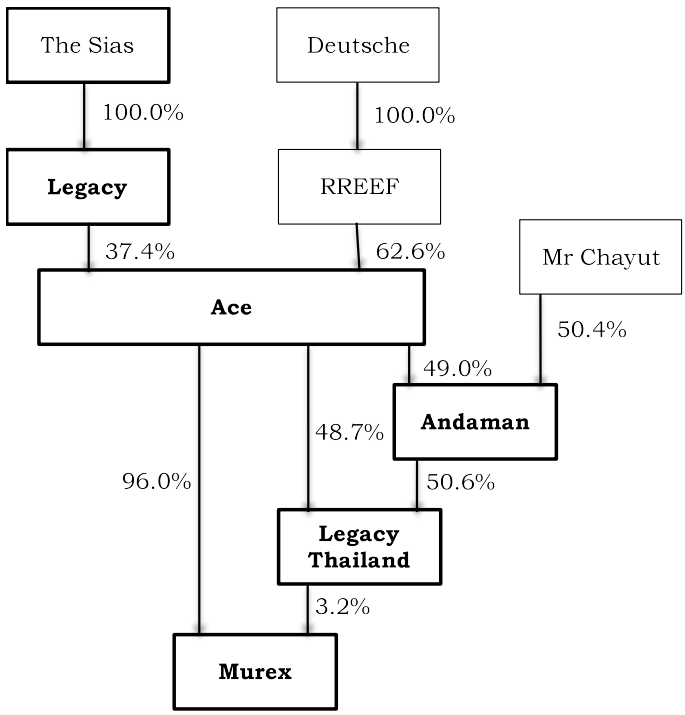
[1] 1.Gronow p 122

7 Ace holds 49% of the shares of the 1st plaintiff, Thai-incorporated BC Andaman Co Limited ("Andaman"). A Thai national, allegedly acting as a nominee, one Mr Chayut, holds another 50.4% of the shares (amounting to 505 shares) in Andaman.

8 Andaman and Ace, in turn, hold 50.6% and 48.7% respectively of the shares in the 4th plaintiff, Thai-incorporated Legacy Resources (Thailand) Co Limited ("Legacy Thailand"). Following the parties' entry into the JV, Legacy Thailand and Ace own respectively 3.2% and 96.0% of the shares in Murex.

9 The Plaintiffs helpfully produced the following diagram of the relevant companies ("the Blue Canyon Ownership Structure"):



10 On or around 14 December 2005, Ace ran into financial difficulties and took out a loan ("the Bridge Loan") from Deutsche for the purposes of the Blue Canyon Project. The Bridge Loan was secured, *inter alia*, by charges

over the Sias' shares in Legacy ("the Legacy Charge") and Legacy's shares in Ace ("the Ace Charge") (collectively, "the Share Charges").

11 On or around 29 September 2006, various entities in the scheme of the JV entered into an amended and restated shareholders' agreement ("the ARSHA") to govern their relationship in relation to the Blue Canyon Project. The ARSHA was signed by the Sias, Andaman, Legacy, Ace, Legacy Thailand, RREEF, and four other entities, *viz*, the BVI-incorporated Ancaster Enterprises Limited ("Ancaster"), as well as Thai-incorporated Canyon Capital Limited ("CC"), BC Golf Resort Management Ltd ("BCGRM"), and Blue Canyon Holdings (Thailand) Limited ("BCH").[2]

12 Although the ARSHA made reference to Murex, Murex was not a party to it.

13 The relevant clauses of the ARSHA are as follows:

(a) Clauses 3.1 and 3.2: that Legacy and RREEF be entitled to nominate directors to, *inter alia*, the boards of Andaman, Ace, Legacy Thailand, Ancaster, CC, and BCGRM;

(b) Clause 3.3: that the board of Murex comprise nine directors, of whom four are nominated by Ace and five are nominated by RREEF;

(c) Clause 6.1: that each of Legacy and RREEF has the right of first offer with respect to transfers by the other of its shares in Ace other than to affiliates of Legacy or RREEF ("the Pre-Emption Rights");

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[2] 1.Gronow p 29

(d) Clause 7.4: that each of Legacy and RREEF that desires to transfer its shares in Ace must procure that the other can transfer the other's shares in Ace on the same terms ("the Tag-Along Rights");

(e) Clause 11.1: that the ARSHA is governed by English law; and

(f) Clause 11.2: that "[a]ny dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in the English language in Singapore in accordance with the Arbitration rules … of the Singapore International Arbitration Centre" ("the Arbitration Agreement").

The Alleged Coup

14 On 9 August 2013, Deutsche assigned its interest in the Bridge Loan and the Share Charges to RREEF. On 19 February 2014, RREEF transferred its shares in Ace to its wholly-owned Macau-incorporated subsidiary True Colour Global Limited ("True Colour"). Two days later, RREEF assigned its interest in the Bridge Loan and the Share Charges to BVI-incorporated Prominent Investment Opportunity VI Limited ("Prominent"). Amidst these events Mr Chayut transferred his 505 shares in Andaman to another Thai national, one Mr Praphant.

15 By way of a letter dated 24 February 2014, Prominent demanded the immediate repayment of the Bridge Loan by Ace. When Ace failed to make the repayment, Prominent purported to enforce the Legacy Charge by appointing receivers in and over Legacy on 28 February 2014. The receivers then removed the Sias as directors of Legacy and of Ace, and procured the termination of the Sias' employment with Murex ("the Alleged Coup").

The proceedings between the parties

16 Broadly, the Sias alleged that the events that constituted the Alleged Coup were perpetuated by some or all of the parties mentioned in [11] above, including the Plaintiffs, to gain control of Legacy. In a bid to regain control of Legacy, the Sias commenced various proceedings in a number of jurisdictions, each time against some combination of these parties, including the Plaintiffs, and related persons and entities. These actions form the basis of the Plaintiffs' applications in this Originating Summons ("OS"). I set them out below.

The BVI Proceedings

17 On or around 17 April 2014, the Sias commenced proceedings in the High Court of Justice of the BVI ("the BVI Proceedings") against 19 entities ("the BVI Defendants"):

(a) Murex;

(b) All nine parties to the ARSHA besides the Sias (*ie*, Andaman, Legacy, Ace, Legacy Thailand, RREEF, Ancaster, CC, BCGRM, and BCH) (see [11] above);

(c) Deutsche, Deutsche Asset Management (Hong Kong) Limited ("Deutsche HK"), an asset management division of Deutsche in Hong Kong, and Deutsche Bank AG London;

(d) True Colour and Prominent (see [14] above); and

(e) Blue Canyon Property Co Limited, Pacific Alliance Asia Opportunity Fund LP ("Pacific"), Delta Golf Opportunity Investment V Limited ("Delta"), and Thungkha Blue Canyon Co Limited ("Thungkha").

18 In the statement of claim filed in the BVI Proceedings ("the BVI SOC"), the Sias alleged that the BVI Defendants had conspired to perpetrate the events that constituted the Alleged Coup. This was done to enable RREEF to sell its shares in Ace free of Legacy's Pre-Emption Rights and Tag-Along Rights under the ARSHA, and to oust the Sias from the boards of Murex and the other companies within the Blue Canyon Ownership Structure, in order to exclude the Sias from further participation in the management and development of the Blue Canyon Project and from their share of the financial benefits thereunder.[3]

19 The specific allegations made by the Sias in the BVI Proceedings include the following:[4]

(a) that RREEF, Andaman, Legacy, Ace, and Legacy Thailand breached an understanding that the Bridge Loan was to be replaced by a loan from a Thai financial institution ("a Thai Loan") by obstructing the efforts of the Sias to replace the Bridge Loan with a Thai Loan;

(b) that Prominent as chargee breached its duty to the Sias to enforce its security under the Share Charges *bona fide* for the purpose of obtaining repayment of the Bridge Loan, by enforcing the Share Charges for the ulterior purpose of gaining control of Legacy; and

(c) that some or all of the BVI Defendants had conspired to defraud and injure the Sias by lawful or unlawful means by procuring the following:

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[3] 1.Gronow p 110

[4] 1.Gronow pp 110 – 113

(i) the sale of RREEF's shares in Ace free of Legacy's Pre-Emption Rights and Tag-Along Rights under the ARSHA;

(ii) the removal of the Sias as directors of Murex; and

(iii) the breaches by RREEF, Andaman, Legacy, Ace, and Legacy Thailand of the ARSHA.

20 On or around 4 November 2014, Legacy, Ace, True Colour, Prominent, Ancaster, Delta, Deutsche, Deutsche HK and RREEF ("the BVI Stay Applicants") applied to the BVI High Court to have the BVI Proceedings stayed. On 16 December 2014, Pacific also applied to the BVI High Court for a stay of the BVI Proceedings.

21 On 10 February 2015, the BVI High Court recorded a consent order ("the BVI Consent Order") between the Sias, the BVI Stay Applicants and Pacific. Thereunder, it was agreed that "[a]ll claims against the [BVI Stay Applicants] … be referred to arbitration under the rules of the Singapore International Arbitration Centre in accordance with the terms of clause 11.2 of the [ARSHA] …". The BVI Proceedings were then stayed as against the BVI Stay Applicants and Pacific. By consent, it was further ordered that the costs of Deutsche, Deutsche HK, and RREEF ("the Deutsche parties") in the BVI Proceedings ("the BVI Costs") were to be determined by the arbitral tribunal.[5]

22 I also note that the BVI Consent Order provides that the costs of, *inter alia*, Legacy and Ace are to be paid by the Sias, and that such costs are to be assessed if not agreed.[6] There is no evidence whether such costs were in fact agreed, assessed or paid.

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5 1.Gronow p 57

23 Although Andaman, Legacy Thailand, and Murex were named as defendants to the BVI Proceedings, they were not party to the BVI Consent Order. Counsel for the Plaintiffs, Mr Sarjit Singh Gill SC ("Mr Singh SC"), confirmed that no further steps have been taken in the BVI Proceedings.[7]

The First Thai Proceedings

24 On or around 31 July 2014, the Sias commenced the First Thai Proceedings in the Civil Court of Southern Bangkok. There were 12 defendants ("the First Thai Defendants"): Murex, Thungkha, Mr Praphant, various directors appointed by Deutsche and its related entities to the board of Murex ("the Deutsche Appointees"), and the Registrar of the Partnership and the Company Registration Office of the Bangkok Metropolis ("the Thai Registrar of Companies").[8] Andaman, Legacy, Ace, and Legacy Thailand were not parties to the First Thai Proceedings.

25 The Sias alleged in their statement of claim ("the First Thai SOC") that Deutsche and its related entities had wanted to sell their shares in Ace since 2013. However, the Sias did not agree to the sale. Accordingly, Deutsche and its related entities dishonestly and illegally removed the Sias by assigning the Bridge Loan and the Share Charges to Prominent, which by enforcing the security took control of Murex and removed the Sias as directors.[9]

26 The specific allegations made by the Sias in the First Thai Proceedings included the following:[10]

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6 1.Gronow p 57

7 Chua JC Minute 29/9/16 p 2

8 1.Gronow p 121

9 1.Gronow pp 124 – 125

(a) that it was wrongful to convene an extraordinary general meeting ("EOGM") of Murex to remove the Sias as directors when the legality of the enforcement of the Share Charge, which ostensibly gave Deutsche and its related entities control over Legacy, had not been decided by the BVI High Court;

(b) that it was wrongful to convene the EOGM without the approval and attendance of the Sias, who remained directors of Murex up until the time of their removal at the EOGM; and

(c) that the Deutsche Appointees, who were appointed directors of Murex after the Sias were removed, breached their duties to act in the best interests of Murex and the Sias (as persons interested in Murex) by managing the affairs of Murex with "a dishonest intention to take over the ownership and control of the [Sias]" and "an intention to dispose of or transfer the income of [Murex] through a dishonest and illegal method."

27 The reliefs sought by the Sias in the First Thai Proceedings included the following:[11]

(a) that Murex, Thungkha, Mr Praphant, and the Deutsche Appointees cease their actions and desist from managing the assets or any transactions of Murex;

(b) that the resolution of the EOGM removing the Sias' directorships in Murex be revoked; and

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10 1.Gronow pp 125 – 127

11 1.Gronow p 129

(c) that the Thai Registrar of Companies not register the removal of the Sias as the directors of Murex and the appointment of the Deutsche Appointees in their place.

28 On 28 July 2016, the First Thai Proceedings were adjourned for four months to enable the 1st Thai Defendants to be served.[12]

The SIAC Arbitration Proceedings

29 On 5 May 2015, the Sias commenced arbitration proceedings (ARB No 76 of 2015) in Singapore under the Rules of the Singapore International Arbitration Centre ("SIAC"). I shall refer to these proceedings as the "SIAC Arbitration Proceedings". The nine respondents thereto ("the SIAC Respondents") were the BVI Stay Applicants (*ie*, Legacy, Ace, True Colour, Prominent, Ancaster, Delta and the Deutsche parties) (see [20] above).

30 Andaman, Legacy Thailand, and Murex were not parties to the SIAC Arbitration Proceedings.

31 In the notice of arbitration which they filed in the SIAC Arbitration Proceedings, the Sias alleged that they were "the victims of an unlawful coup perpetrated in or around February 2014 by some or all of the [SIAC Respondents] to take control of Legacy". This "coup" was undertaken to facilitate the sale by RREEF of its shares in Ace.[13]

32 The specific allegations made by the Sias in the SIAC Arbitration Proceedings included the following:[14]

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12 P's Submissions [20]

13 1.Gronow p 143

(a) that the Deutsche parties breached an understanding that the Bridge Loan was to be replaced by a Thai Loan by obstructing the efforts of the Sias to replace the Bridge Loan with a Thai Loan;

(b) that Prominent as chargee breached its duty to the Sias to enforce its security under the Share Charges *bona fide* for the purpose of obtaining repayment of the Bridge Loan by enforcing the Share Charges for the ulterior purpose of gaining control of Legacy;

(c) that the Deutsche parties induced or conspired to induce the directors of Ace who had been appointed by RREEF to allow Ace to default when Prominent demanded repayment of the Bridge Loan, which led to Prominent enforcing the Share Charges, which in turn led to the removal of the Sias as directors with Legacy and with Ace as well as the termination of the Sias' employment with Murex;

(d) that RREEF breached its fiduciary duty as the JV partner of Legacy in perpetrating the events that constituted the Alleged Coup; and

(e) that RREEF and Ace breached the Pre-Emption Rights and Tag-Along Rights of Legacy under the ARSHA.

33 The reliefs sought by the Sias in the SIAC Arbitration Proceedings included the following declarations and orders:[15]

> (d) A declaration that the removal of the [Sias] from the boards of directors of Legacy and Ace and the termination of their employment with Murex on and/or

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14 1.Gronow p 145

15 1.Gronow pp 146 – 147

> after 28 February 2014 pursuant to or in consequence of Prominent's purported enforcement of the Share Charges was wrongful and invalid.
>
> (e) A declaration that any appointments to the boards of directors of Legacy, Ace, Murex and/or the other Thai Subsidiaries made on and/or after 28 February 2014 pursuant to or in consequence of Prominent's purported enforcement of the Share Charges were wrongful and invalid.
>
> (f) An order removing all directors appointed in the circumstances set out in [declaration (e)] above.
>
> …
>
> (h) An order for the rescission of all steps and transactions taken and made in consequence of Prominent's purported enforcement of the Share Charges and/or [to make] restitution of property transferred pursuant to such steps and transactions.

34 On 12 October 2015, the SIAC Respondents applied to the Tribunal for security for costs. On 23 October 2015, the Sias submitted their response to the applications for security for costs. On 27 October 2015, the parties made their submissions on the applications for security for costs at a preliminary meeting.[16]

35 On 23 October 2015, the Deutsche parties also informed the Tribunal that they intended to address the issue of the BVI Costs (see [21] above). This was followed on 3 December 2015 by an application for payment of the BVI Costs. On 8 December 2015, the Sias issued their comments on the application.

36 On 24 December 2015, the Tribunal issued its decision on the applications for security for costs and for payment of the BVI Costs. The Tribunal made no order on the applications for security for costs, but, by

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[16] 1.Gronow p 164 – 165

majority, ordered the Sias to pay the Deutsche parties US$500,000 in respect of the BVI Costs. The Tribunal also granted the Deutsche parties liberty to revive their application for security for costs if the US$500,000 was not paid.[17] The Tribunal termed these orders "Procedural Order No 2".

37 By letter dated 11 January 2016, the Sias informed the Tribunal that they had decided to discontinue the SIAC Arbitration Proceedings "with immediate effect". The Sias stated that they had been "left with little choice given the manner in which [the] proceedings have been conducted and in particular Procedural Order No 2, and how it came to be made", and asserted that they had "lost all confidence in the fairness of the proceedings."[18]

38 On 13 January 2016, the Tribunal rejected the allegation that there had been a lack of fairness. The Tribunal also invited the Deutsche parties to comment on the Sias' request for an order of discontinuance of the proceedings.[19]

39 By letter dated 14 January 2016, the Deutsche parties denied that the proceedings had been unfair towards the Sias, and added that they would agree to the cessation of the SIAC Arbitration Proceedings on the following conditions:

> (a) that the Sias pay the costs that the Deutsche parties had incurred in the SIAC Arbitration Proceedings;

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17 1.Gronow p 167

18 1.Gronow p 168

19 1.Gronow p 168

(b) that the Sias pay the costs that the Deutsche parties had incurred in the BVI Proceedings, as determined by the Tribunal in its order on 24 December 2015; and

(c) that the Sias request the Tribunal to issue, by consent, a Final Award dismissing the Sias' claims with prejudice and incorporating points (a) and (b) above as necessary.

40 By letter dated 22 January 2016, the Sias noted that they had set out their position in their letter dated 11 January 2016, namely, that they sought an order from the Tribunal that the SIAC Arbitration Proceedings were "at an end". The Sias accepted that "whether the proceedings should be terminated 'with prejudice' was *a matter for the Tribunal*" [emphasis added]. As for the question of a costs order, the Sias acknowledged that "the usual course that follows the termination of proceedings is for a costs order to be made", and that "[t]he Tribunal should proceed to make the costs order that it deems fit." The Sias added that they were "amenable to further procedural directions from the Tribunal for the limited purpose of quantifying any costs."[20]

41 On 3 June 2016, following the filing by the parties of their submissions on costs, the Tribunal made a proposal to declare the proceedings closed in accordance with rule 28.1 of the Arbitration Rules of the SIAC (4th Ed, 1 July 2010), and invited the parties to comment on its proposal. By letters dated 6 June 2016, the parties agreed that the Tribunal could declare the proceedings closed. The Tribunal duly did so by a letter on the same day.

42 On 14 July 2016, the Tribunal issued its Final Award, dismissing the Sias' claims in the SIAC Arbitration Proceedings with prejudice,[21] and

[20] 1.Gronow p 169

ordering the Sias to pay the costs of the SIAC Arbitration Proceedings in the following amounts:

(a) S$39,578.14 as the administrative fees and expenses of the SIAC;

(b) S$182,794.55 as the fees and expenses of the Tribunal;

(c) US$410,867.51 to the Deutsche parties, and simple interest at the rate of 5.33% per annum on the sum from the date of the Final Award; and

(d) US$479,658.66 to Legacy, Ace, True Colour, Ancaster, Prominent, and Delta, with no interest on the sum.

The Second Thai Proceedings

43 On or around 21 June 2016, after the SIAC Arbitration Proceedings had been declared closed, but prior to the issue of the Final Award, the Sias commenced the Second Thai Proceedings in the Civil Court of Southern Bangkok against the following 11 defendants ("the 2nd Thai Defendants"):[22]

(a) The Plaintiffs;

(b) Mr Chayut and Mr Praphant;

(c) The Deutsche parties; and

(d) Allen & Overy (Thailand) Co Ltd ("A&O Thailand") (who had acted for the Deutsche parties in the SIAC Arbitration Proceedings).

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21 1.Gronow p 200

22 1.Patcharanon Bumroongsook p 57

44 The Sias alleged in their statement of claim ("the Second Thai SOC") that they beneficially owned 202 of the 505 shares in Andaman that were held by Mr Chayut (see [7] above), with the remaining 303 shares beneficially owned by Deutsche. Although all 505 shares were held in the name of Mr Chayut, such holding was only as a nominee for the benefit of the Sias and Deutsche.

45 The specific allegations made by the Sias in the Second Thai Proceedings include the following:[23]

(a) that Deutsche breached an agreement not to enforce the Share Charges by assigning the Bridge Loan and the Share Charges to Prominent, who then enforced the Share Charges;

(b) that the Deutsche parties acted with malicious intent in circumventing their agreement not to enforce the Share Charges in order to remove the Sias from the management and ownership of Legacy;

(c) that Deutsche wrongfully and illegally procured Mr Chayut to transfer all his 505 shares in Andaman to Mr Praphant, having done so knowing that 202 of the 505 shares were owned by the Sias; and

(d) that Mr Chayut breached his duty to hold the 202 shares belonging to the Sias by transferring the shares to Mr Praphant despite knowing that the Sias owned the 202 shares and had not authorised such a transfer.

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[23] 1.Patcharanon Bumroongsook pp 60 – 61

46 The Sias sought a declaration that the transfer of the 505 shares in Andaman was illegal and void, an order that the 2nd Thai Defendants jointly procure the re-transfer to them of 202 shares in Andaman, and an order that Andaman amend its share register to reflect their shareholding of 202 shares.[24]

47 In his submissions for this OS, Mr Singh SC confirmed that the Second Thai Proceedings had been adjourned for hearing on 15 December 2016.[25] Subsequently, however, in his submissions for further arguments before me in respect of a separate matter (see [117]-[118] below), Mr Singh SC informed the court that the Sias had discontinued the Second Thai Proceedings as against the Deutsche parties but had taken steps to serve the papers in the Second Thai Proceedings on Legacy and Ace on 14 February 2017.[26]

Originating Summons No 884 of 2016

48 On 31 August 2016, the Plaintiffs initiated the present proceedings by filing OS 884/2016 ("OS 884"). They seek the following reliefs:

> (a) a permanent anti-suit injunction to restrain the Sias from pursuing the First and Second Thai Proceedings, as well as any other proceedings in breach of the Arbitration Agreement; and
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> (b) a declaration that "all claims arising out of or in connection with the Blue Canyon Country Club in Phuket, Thailand … have been dismissed with prejudice by [the Tribunal]" in the Final Award.

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24 1.Gronow p 211

25 P's Submissions [27]

26 D's Submissions for Further Arguments in OS 840/2016 [19(e)(v)]

49 Concurrently, the Plaintiffs applied *ex parte* in Summons 4222/2016 for an interim anti-suit injunction, in similar terms to the permanent anti-suit injunction which they now seek, pending the hearing of OS 884. After hearings on 6 and 29 September 2016, Chua Lee Ming JC granted such an interim anti-suit injunction in favour of Legacy and Ace but declined to do the same for Andaman, Legacy Thailand, or Murex. Chua JC emphasised that Murex was not party to the ARSHA, the BVI Consent Order, or the SIAC Arbitration Proceedings.[27] As described by the Plaintiffs in their written submissions in OS 884, Chua JC was not convinced that the matters raised in the First Thai Proceedings in respect of Murex came within the scope of the Arbitration Agreement. Chua JC also doubted that the question of whether Mr Chayut held 202 shares on the Sias' behalf in the Second Thai Proceedings arose out of the ARSHA, because the ARSHA did not mention Mr Chayut.[28]

50 In their written submissions for OS 884, the Sias indicated that they would accept and abide by the decision of Chua JC and would discontinue the Second Thai Proceedings against Legacy and Ace. However, they continued to resist the grant of any anti-suit injunction in favour of Andaman and Legacy Thailand.

51 Before me, counsel for the Defendants, Mr Raymond Wong ("Mr Wong"), candidly accepted that Andaman and Legacy Thailand are parties to the ARSHA, and that the Arbitration Agreement is "clear", but stated that he had no instructions to concede or consent. Accordingly, he left the matter, in respect of Andaman and Legacy Thailand, to the court.

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27 Chua JC Minute 6/9/16 p 3

28 P's Submissions [29]

However, Mr Wong maintained that a permanent anti-suit injunction should not be granted in favour of Murex.

The law on anti-suit injunctions

52 An anti-suit injunction is in origin an equitable injunction to restrain a party subject to the jurisdiction of the court of the forum from proceeding unjustly in a foreign court. The power is wide, and the injunction can be granted against a party properly before the court where it is appropriate to avoid injustice: Richard Fentiman, *International Commercial Litigation* (Oxford, 2nd Ed, 2015) ("*Fentiman*") at para 16.10 citing *Castanho v Brown & Root* [1981] AC 557 at 573; see also *Masri v Consolidated Contractors International (UK) Ltd (No 3)* [2009] QB 503 ("*Masri*") at [39]-[41].

53 Historically, this equitable relief was remedial in nature, *ie*, it was granted to protect a legal or equitable right. However, with the broad language of s 37 of the Senior Courts Act 1981 (c 54) (UK) (which s 4(10) of the CLA and paragraph 14 to the First Schedule of the SCJA broadly mirror), the courts have increasingly justified granting injunctions on the basis of preventing injustice or unconscionable conduct: see *Fentiman* at para 16.11. In the context of an anti-suit injunction, the respondent may act unconscionably in breaching the applicant's substantive rights, *viz*, to enforce a contractual jurisdiction or arbitration agreement, or procedural rights, *viz*, to be protected from abuse of process and vexatious or oppressive conduct: see *Fentiman* at para 16.39.

54 The principles which govern the grant of an anti-suit injunction are well-established. In *Bank of America National Trust and Savings Association v Djoni Widjaja* [1994] 2 SLR(R) 898 ("*Djoni Widjaja*) at [10]-[11] and *Koh Kay Yew v Inno-Pacific Holdings Ltd* [1997] 2 SLR(R) 148 ("*Koh Kay Yew*")

at [13]-[14], the Court of Appeal ("CA") endorsed Lord Goff's statement of the four basic principles in the Privy Council decision of *Société Nationale Industrielle Aerospatiale v Lee Kui Jak* [1987] AC 871. In *Halsbury's Laws of Singapore* vol 6(2) (LexisNexis, 2013) ("*Halsbury's*"), these principles are summarised at para 75.128 as follows:

> (a) the jurisdiction to grant an anti-suit injunction will be exercised only when required by the ends of justice;
>
> (b) the anti-suit injunction is directed against the party pursuing the foreign proceedings, and not against the foreign court or the foreign proceedings;
>
> (c) the anti-suit injunction will be issued only against a party amenable to the jurisdiction of the court, against whom the injunction will be an effective remedy; and
>
> (d) as a matter of international comity, because an anti-suit injunction indirectly affects foreign proceedings, the jurisdiction to grant it must be exercised with caution.

55 In relation to the consideration of comity (see [54(d)] above), I find the observations of Prof Fentiman apposite (see *Fentiman* at paras 16.33 and 16.34):

> … To answer the challenge that such relief is contrary to the principle of comity, it is necessary to show that the English court has a legitimate interest in the dispute. As Lord Goff expressed it, 'comity requires that the English forum should have a sufficient interest in, or connection with, the matter in question to justify the indirect interference with the foreign court which an anti-suit injunction entails. *This requirement may be alternatively described as a requirement that the court must have both personal and subject-matter jurisdiction to grant relief.*

> An English court has subject-matter jurisdiction – otherwise expressed as an interest in restraining foreign proceedings – in four situations.
>
> (i) Substantive proceedings are pending before the English court, and the injunction is ancillary to such proceedings
>
> (ii) *Substantive proceedings have been concluded before the English court, and an injunction is granted to protect an applicant's interests arising from those proceedings.*
>
> (iii) *The English court has exclusive jurisdiction in the substance of any dispute between the parties, for example by virtue of an exclusive jurisdiction agreement.*
>
> (iv) The English court has an 'overwhelming connection' with the dispute, as where all the elements in the dispute relate to England.
>
> [Emphasis added]

In sum, the principle of comity requires that the court of the forum have personal and subject matter jurisdiction to grant an anti-suit injunction. In respect of subject matter jurisdiction, I note that, in describing situations (ii) and (iii) in the passage which I have quoted above, Prof Fentiman focuses on proceedings before a court and agreements which confer exclusive jurisdiction on a court (see *Masri*). However, the principle of comity is also not violated when a court grants an anti-suit injunction to protect interests arising from proceedings before an arbitral tribunal whose seat is in the forum, or to enforce an arbitration agreement conferring jurisdiction on such a tribunal. In *Noble Assurance v Gerling-Konzern General Insurance* [2008] Lloyd's Rep IR 1 ("*Noble Assurance*"), an arbitral tribunal seated in London issued a partial award which contained several findings. The defendant then began proceedings in Vermont against the plaintiff and another party. The plaintiff applied for an anti-suit injunction to restrain the defendant from taking further steps in the Vermont action. Toulson LJ had no hesitation in finding that the English court had subject-matter jurisdiction to grant an anti-suit injunction on

the basis of the defendant's oppressive conduct in attempting to relitigate the arbitral tribunal's findings in the Vermont action: see *Noble Assurance* at [87] and [95]-[97].

56 Having identified the overarching principles which govern the grant of an anti-suit injunction, I now turn to the more specific factors which are relevant to the grant of such relief. In *Morgan Stanley Asia (Singapore) Pte (formerly known as Morgan Stanley Dean Witter Asia (Singapore) Pte) and others v Hong Leong Finance Ltd* [2013] 3 SLR 409 ("*Morgan Stanley*"), Belinda Ang J identified five such factors at [26] as follows:

> (a) whether the defendant is amenable to the jurisdiction of the Singapore court (see also [54(c)] above);
>
> (b) whether Singapore is the natural forum for the resolution of the dispute between the parties;
>
> (c) whether the foreign proceedings are vexatious or oppressive to the plaintiff if they are allowed to continue;
>
> (d) whether an anti-suit injunction would cause any injustice to the defendant by depriving the defendant of legitimate juridical advantages sought in the foreign proceedings; and
>
> (e) whether the commencement of the foreign proceedings is in breach of any agreement between the parties.

Belinda Ang J nevertheless cautioned that these factors are not independent of each other, and emphasised that the factors must be looked at in the round. I respectfully agree with these comments, and that the five factors identified by Belinda Ang J are relevant to the grant of an anti-suit injunction.

My decision

57 I note at the outset that the Sias are nationals of, and resident in, Singapore.[29] They are thus amenable to the jurisdiction of the Singapore courts. Therefore, an injunction will be an effective remedy against them. However, this is but one factor to be taken into consideration.

Legacy and Ace

58 Mr Wong conceded that Legacy and Ace are entitled to the permanent anti-suit injunctions that they seek.

59 Legacy and Ace were parties to the BVI Proceedings, the BVI Consent Order, and the SIAC Arbitration Proceedings, the last of which culminated in the Final Award, which dismissed the Sias' claims in the arbitration with prejudice (see [42] above). To recapitulate, the SIAC Arbitration Proceedings were commenced on 5 May 2015. On 11 January 2016, the Sias elected to discontinue those proceedings "with immediate effect", and subsequently accepted that "whether the proceedings should be terminated 'with prejudice' was a matter for the Tribunal". On 6 June 2016, the Tribunal declared the proceedings closed. On or about 21 June 2016, the Sias filed the Second Thai Proceedings. On 14 July 2016, the Tribunal issued the Final Award.

60 In my view, the conduct of the Sias, in commencing the Second Thai Proceedings against Legacy and Ace almost immediately after the SIAC Arbitration Proceedings had been declared closed (albeit before the Tribunal rendered its Final Award), was unconscionable and justified the grant of an anti-suit injunction to Legacy and Ace. This was vexatious and oppressive

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[29] 1.Gronow p 153

conduct which violated the procedural rights of Legacy and Ace (see [53] above). The Sias were simply re-litigating in Thailand the merits of a dispute which they had initiated, as they were bound to do (see [62] below), but refused to pursue in Singapore. Their conduct was akin to that of the customer of the bank in *Djoni Widjaja* who, having commenced proceedings in Singapore against the bank alleging that the bank had failed to repay a sum of money on maturity, applied for leave to discontinue the Singapore proceedings and belatedly instituted proceedings in Indonesia against the bank. The CA considered the conduct of the customer in the circumstances of that case to be vexatious and oppressive, and granted the bank an anti-suit injunction.

61 I note that, in *Djoni Widjaja*, the customer had sought to discontinue proceedings in Singapore which were far advanced (see *Djoni Widjaja* at [20]); whereas, in this case, the SIAC Arbitration Proceedings were discontinued at an early stage. However, I find that the Sias' conduct, particularly their acceptance after they had discontinued the SIAC Arbitration Proceedings that "whether the proceedings should be terminated 'with prejudice' was a matter for the Tribunal", was revealing, and suggested the following:

> (a) the reasons proffered by the Sias to the Tribunal for discontinuing the SIAC Arbitration Proceedings, *viz*, that they had lost all confidence in the fairness of the proceedings and were dissatisfied with the manner in which the proceedings were conducted, were bare allegations without any supporting reasons or evidence and therefore without any foundation; and

(b) the likely reason for the Sias' reluctance to proceed further with the arbitration was their having to make payment as a result of the Tribunal's order for costs of the BVI Proceedings.

62 In sum, having sued Legacy and Ace in the BVI, consented to a stay of the BVI Proceedings in favour of arbitration, and begun the SIAC Arbitration Proceedings against, *inter alia*, Legacy and Ace, the Sias discontinued the SIAC Arbitration Proceedings on spurious grounds and initiated proceedings against Legacy and Ace in yet another forum under the 2nd Thai Proceedings. In my judgment, this was plainly vexatious and oppressive conduct. I thus grant Legacy and Ace the permanent anti-suit injunctions which they seek. I also note that such injunctions could be granted on another ground, *viz*, to protect the substantive contractual rights of Legacy and Ace to enforce the arbitration agreements in the ARSHA and the BVI Consent Order. The analysis in [64]-[68] below applies to Legacy and Ace; and, moreover, with greater force, because Legacy and Ace, unlike Andaman and Legacy Thailand, were party to the arbitration agreement in the BVI Consent Order (see [21] above).

63 I now turn to the applications brought by the remaining plaintiffs. For reasons that will become apparent, I treat the cases of Andaman and Legacy Thailand separately from that of Murex.

Andaman and Legacy Thailand

64 Andaman and Legacy Thailand are parties to the ARSHA. The disputes between them and the Sias clearly fall within the ambit of the Arbitration Agreement. However, Andaman and Legacy Thailand were not added as parties to the SIAC Arbitration Proceedings (see [30] above) by the

Sias. Yet, the Sias now bring the Second Thai Proceedings against Andaman and Legacy Thailand.

65 A court will readily grant an anti-suit injunction to restrain proceedings brought in breach of an arbitration agreement. In *Morgan Stanley,* Belinda Ang J, having identified the breach of an agreement as a relevant factor to the grant of an anti-suit injunction (see [56(e)] above), noted that "the general rule is that the [jurisdiction] clause ought to be enforced as between the parties unless there are *strong reasons* not to do so" [emphasis added]: see *Morgan Stanley* at [29]. Here, the anti-suit injunction protects the substantive right of the applicant to have its disputes resolved in the contractually-chosen forum (see [53] above). In *Maldives Airports Co Ltd and another v GMR Malé International Airport Pte Ltd* [2013] 2 SLR 449, the CA reaffirmed these principles at [42]:

> … [T]he right to have disputes resolved before a contractually chosen court or pursuant to an arbitration agreement could also rightfully be protected by way of an anti-suit injunction, whether on a final or an interim basis: *National Westminster Bank plc v Utrecht-America Finance Company* [2001] 3 All ER 733 at [29]–[35]. The justification for the grant of an anti-suit injunction in these cases was clearly articulated by Millett LJ (as he then was) in *Aggeliki Charis Compania Maritima SA v Pagnan SpA (The Angelic Grace)* [1995] 1 Lloyd's Rep 87 at 96 as follows:
>
> > In my judgment, where an injunction is sought to restrain a party from proceeding in a foreign Court in breach of an arbitration agreement governed by English law, the English Court need feel no diffidence in granting the injunction, provided that it is sought promptly and before the foreign proceedings are too far advanced. I see no difference in principle between an injunction to restrain proceedings in breach of an arbitration clause and one to restrain proceedings in breach of an exclusive jurisdiction clause as in *Continental Bank N.A. v Aeakos Compania Naviera S.A.* [1994] 1 W.L.R. 588. *The justification for the grant of the injunction in either case is that* ***without it the plaintiff will be deprived of its contractual rights***

> ***in a situation in which damages are manifestly an inadequate remedy.*** The jurisdiction is, of course, discretionary and is not exercised as a matter of course, but good reason needs to be shown why it should not be exercised in any given case.
>
> [Emphasis in original]

66 In my view, the Second Thai Proceedings as against Andaman and Legacy Thailand are clearly in breach of the Arbitration Agreement, which mandates that "[a]ny dispute arising out of or in connection with [the ARSHA] … be referred to and finally resolved by arbitration … in Singapore" (see [13(f)] above). The Sias alleged in the Second Thai SOC that the ARSHA had been designed to enable the Sias to hold shares in Murex through a chain of related entities including Andaman and Legacy Thailand, and for the Sias to be appointed as directors of a number of these related companies including Andaman and Legacy Thailand. Through the events that constituted the Alleged Coup, which culminated in the transfer of 202 shares in Andaman from Mr Chayut to Mr Praphant, the Sias "lost their power of management and were removed from all the related companies on a permanent basis."[30]

67 It is evident from the reliefs claimed by the Sias in the Second Thai Proceedings (see [46] above), that they brought the Second Thai Proceedings to reverse the effect of the events that constituted the Alleged Coup. The foundation for the Sias' grievances is their shareholding entitlements based on the ARSHA. In substance, therefore, the Sias' complaints in relation to Andaman and Legacy Thailand in the Second Thai Proceedings are disputes arising out of or in connection with the ARSHA, and are properly to be submitted to arbitration in Singapore in accordance with the Arbitration Agreement.

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[30] 1.Gronow pp 207–209

68 In this case, there are no "strong reasons" why the Arbitration Agreement should not be enforced (see [65] above). Thus, on this ground alone, Andaman and Legacy Thailand are entitled to an anti-suit injunction to protect their substantive contractual right, as set out in the Arbitration Agreement, to have their disputes with the Sias referred to SIAC arbitration in Singapore.

69 Furthermore, I am fortified in this conclusion by the interconnectedness of Andaman, Legacy, Ace, and Legacy Thailand in the Blue Canyon Ownership Structure. Andaman and Legacy Thailand are an inextricable link between the upstream entities of Legacy and Ace, and the downstream entity of Murex, which holds the land and the assets of the Blue Canyon Project.

70 The Sias sued Andaman, Legacy, Ace, and Legacy Thailand in the BVI Proceedings. Although Andaman and Legacy Thailand (unlike Legacy and Ace) were not BVI Stay Applicants, no further steps have been taken against them in the BVI Proceedings after those proceedings were stayed as against Legacy and Ace (see [23] above).

71 The Sias then commenced the SIAC Arbitration Proceedings against Legacy and Ace, but did not include Andaman and Legacy Thailand as respondents thereto. Having allowed the SIAC Arbitration Proceedings to be dismissed with prejudice and with adverse orders as to costs as against themselves (see [42] above), they now launch the Second Thai Proceedings; this time against not only Legacy and Ace but also Andaman and Legacy Thailand.

72 The Sias depose that "the focus of the Second Thai Proceedings is on the misconduct of Mr Chayut and Mr Praphant, as well as the advice rendered by…A&O Thailand", and that "the Second Thai Proceedings is based upon the Sias' interest in their own shares in BC Andaman."[31] They had included Legacy, Ace, and Legacy Thailand as defendants to the Second Thai Proceedings to "present [their] claim in context and also to enable the Thai Court to perform a full investigation."[32]

73 The Sias add in their written submissions that Andaman and Legacy Thailand "are both incorporated in Thailand, and are resident in Thailand". Accordingly, Andaman and Legacy Thailand should apply not to the Singapore court but to the Thai court to enforce the Arbitration Agreement.[33]

74 However, the Sias' complaints in the Second Thai Proceedings are substantially the same as those that they made in the BVI Proceedings and the SIAC Arbitration Proceedings. The essence of their claims in all these proceedings springs from the same factual substratum: the Alleged Coup. The only exception, which has never been raised before, is a claim that Mr Chayut held 202 of his 505 shares in Andaman as the nominee of the Sias.

75 Where substantially the same claims are pursued against related defendants, the ends of justice are, as a general rule, best served by a single composite trial within which all the claims can be determined: see, *eg*, *Donohue v Armco Inc & Others* [2002] 1 All ER 749; *Halsbury's* at para 75.135; *Fentiman* at para 16.46.

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31 1.Xie [17]

32 1.Xie [18]

33 D's Submissions [9]

76 In my view, it cannot be open to the Sias to selectively proceed against different combinations of Andaman, Legacy, Ace, and Legacy Thailand before different tribunals, and to put up different penumbral claims for varying reliefs that emanate from one set of umbral facts. All four plaintiffs are clearly connected to the Blue Canyon Project. Tellingly, the Sias have offered no explanation, in their evidence or their submissions, for their omission to join Andaman and Legacy Thailand as respondents to the SIAC Arbitration Proceedings.

77 Although no further steps have been taken in the BVI Proceedings (see [23] above), Andaman and Legacy Thailand will clearly suffer grave prejudice if the anti-suit injunction is not granted in relation to the Second Thai Proceedings. They would have to defend their actions yet again, before another tribunal, under a governing law that was contrary to what they had agreed upon. They would also likely have to incur the expense of instructing another set of lawyers. In contrast, any prejudice that the Sias would suffer if the anti-suit injunction is granted would be self-inflicted since they chose not to proceed with the SIAC Arbitration Proceedings despite having agreed to do so in the ARSHA and before the BVI High Court.

78 For this and the reasons set out above, I grant Andaman, Legacy, Ace, and Legacy Thailand the permanent anti-suit injunctions which they seek. The Sias are henceforth enjoined from pursuing the Second Thai Proceedings or from commencing any other fresh proceedings against Andaman, Legacy, Ace, and Legacy Thailand in respect of the issues and disputes comprised in the BVI Proceedings, the SIAC Arbitration Proceedings, and the Second Thai Proceedings. It need hardly be said that this anti-suit injunction granted does not operate against or interfere with the jurisdiction of the Thai courts. Rather, it operates only *in personam* as against the Sias, who are citizens of and

resident in Singapore and who are thereby especially amenable to the jurisdiction of this court.

79 I pause to add that should the Sias attempt to join Andaman and Legacy Thailand as parties to the SIAC Arbitration Proceedings now, they may meet an objection in the vein of those raised in *Parakou Shipping Pte Ltd v Jinhui Shipping and Transportation Ltd* [2011] 2 HKLRD 1 ("*Parakou*") (see [92]–[96] below), and/or on the grounds of oppression, vexation, or abuse of process. However, this issue does not arise before me. Hence, I will not express any concluded view on it.

Murex

The Plaintiffs' submissions

80 I now turn to the arguments in respect of Murex. The Plaintiffs submit that the First Thai Proceedings are but a collateral attack on the Final Award, in which the Tribunal dismissed the Sias' claims in the SIAC Arbitration Proceedings "with prejudice". They contend that the Sias "now return to the First Thai Proceedings to resurrect the very same claims that have been dismissed". They claim that the First Thai Proceedings are simply an attempt to nullify the result, or render more difficult the enforcement, of the Final Award. Such conduct is vexatious, oppressive, and/or unconscionable.[34]

81 The Plaintiffs submit further that the subject matter of the Second Thai Proceedings falls within the Arbitration Agreement, and that the Second Thai Proceedings are again a collateral attack on the Final Award:

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[34] P's Submissions [67] and [70]

(a) First, the Second Thai Proceedings relate to the events that constituted the Alleged Coup in respect of the Blue Canyon Project, which formed the subject matter of the BVI Proceedings that gave rise to the BVI Consent Order.[35] The only issue raised by the Sias in the Second Thai Proceedings which was not raised in the earlier proceedings is whether Mr Chayut holds the 202 shares in Andaman on behalf of the Sias or of Ace. This comes squarely within the Arbitration Agreement. Yet, the Sias seek the same reliefs that they claimed in the BVI Proceedings and the SIAC Arbitration Proceedings: a restoration of the rights of ownership and management in Murex.

(b) Secondly, the issue of the beneficial ownership of 202 of the shares in Andaman held by Mr Chayut is raised belatedly and opportunistically by the Sias in an attempt to re-litigate issues that have been decided in the SIAC Arbitration Proceedings. The beneficial ownership of Mr Chayut's 202 shares in Andaman was never raised or featured in any of the earlier proceedings and is being raised for the first time in the Second Thai Proceedings. This is accordingly not a *bona fide* issue or dispute. The Sias did not dispute that Ace was the complete owner of Murex in the BVI Proceedings, the First Thai Proceedings, and the SIAC Arbitration Proceedings. Only after the SIAC Arbitration Proceedings had been declared closed (albeit before the Tribunal issued its Final Award) did the Sias raise the issue of the ownership of the 202 shares in Andaman, for the first time, in the Second Thai Proceedings.

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[35] P's Submissions [55]

(c) Finally, Murex, which is at the bottom of the corporate structure comprising, *inter alia*, all five of the Plaintiffs, should not be used to re-open the proceedings between the Plaintiffs and the Sias in the Thai courts. Murex is not a substantive party, and is simply a company to hold the land for the Blue Canyon Project. The concern in the Second Thai Proceedings is not Murex *per se*, but Andaman's shares in Murex. And Andaman is clearly party to the ARSHA.

82 The Plaintiffs add that Murex, even if not a party to the SIAC Arbitration Proceedings, is nevertheless a "privy" of Andaman, Legacy, Ace, and Legacy Thailand, who were parties to the ARSHA and the SIAC Arbitration Proceedings commenced thereunder.[36] Murex was named as a defendant in the BVI Proceedings that were commenced by the Sias, and was, as stated in the BVI SOC, "the key company holding Blue Canyon's land".[37] Accordingly, it was entitled to invoke the Final Award made in favour of Andaman, Legacy, Ace, and Legacy Thailand in the SIAC Arbitration Proceedings to resist claims against it by the Sias.[38]

83 The Plaintiffs explain that the termination of the Sias' employment with Murex was merely the culmination of the events that constituted the Alleged Coup. The Sias had complained of these events before the BVI High Court and at the SIAC Arbitration Proceedings. The effect of the Thai court granting the relief sought by the Sias and reinstating their employment with Murex would negate the effect of the exercise of the Share Charges and allow them to circumvent their obligation to refer the dispute to arbitration.

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36 P's Submissions [71]

37 1.Gronow p 77

38 1.Gronow [44]

84 The Plaintiffs submit, finally, that any relief sought against Murex in the First and Second Thai Proceedings may be obtained through the SIAC Arbitration Proceedings instead.[39] Since Singapore is the seat of the arbitration for the SIAC Arbitration Proceedings, any challenge to the Final Award should be brought before the Singapore court, rather than the Thai court.

The Sias' submissions

85 The Sias point out that Murex is party to neither the ARSHA nor the BVI Consent Order. Hence, they are not bound to refer their claims against Murex to arbitration.

86 The Sias add that Murex is incorporated in Thailand, and all the acts and omissions complained of by the Sias in relation to Murex took place in Thailand. Thailand is thus the most appropriate jurisdiction to try the Sias' claim against Murex. This is particularly since Thai law restricts the ownership of land by foreigners, which necessitated involving a Thai national, Mr Chayut, to hold a majority stake in Andaman. Accordingly, the Sias can commence actions against Murex, Mr Chayut, and Mr Praphant (as the transferee of the shares in Andaman) only in Thailand, and then only under Thai law.

87 The Sias accept that they could have invited Murex to arbitrate at the SIAC Arbitration Proceedings. However, they submit that all the parties to the ARSHA were bound to apply English law in the arbitration because the ARSHA is governed by English law. Murex would not have been bound by English law because there is no choice-of-law agreement between Murex and the Sias. Indeed, Murex is a Thai company that owns land in Thailand. Any

[39] P's Submissions [75]

dispute concerning Murex would have been governed by Thai law. Accordingly, Thailand is the proper forum for their dispute with Murex to be heard.

88 Nevertheless, the Sias concede that it was a mistake to have brought the First and Second Thai Proceedings against Andaman, Legacy, Ace, and Legacy Thailand. They undertake to redress the mistake by discontinuing both of these proceedings.

Privity of interest

89 I turn first to the question of whether Murex can avail itself of the Arbitration Agreement, and/or of the Final Award.

90 It is not disputed that Murex is not a party to the ARSHA and did not sign the ARSHA. Although named as a defendant in the BVI Proceedings, Murex was not a party to the BVI Consent Order. Murex did not apply together with the BVI Stay Applicants (*ie*, Legacy, Ace, True Colour, Prominent, Ancaster, Delta and the Deutsche parties) for the stay that gave rise to the BVI Consent Order, which then directed the parties to it to refer their disputes to arbitration before the Tribunal (see [20]–[23] above).

91 I turn now to Murex's submission that it is a "privy" of Andaman, Legacy, Ace, and Legacy Thailand, who were parties to the ARSHA and the SIAC Arbitration Proceedings commenced thereunder, and is consequently entitled to invoke the Final Award made in favour of Andaman, Legacy, Ace, and Legacy Thailand in those proceedings to resist claims against it by the Sias (see [82]–[83] above). In support of these contentions, Murex cites the decision of the High Court of Hong Kong ("the Hong Kong HC") in *Parakou*.

92 In *Parakou*, a wholly-owned subsidiary of the Jinhui group, Galsworthy, alleged that Parakou had entered into and then repudiated a charterparty with it. Parakou denied entering into a charterparty with Galsworthy, the disponent owners, but with the registered owner; alternatively, Parakou alleged that it had been misled into believing that Galsworthy was the registered owner of the vessel. Pursuant to the arbitration clause in the putative charterparty, arbitration proceedings were commenced in London. The arbitral tribunal found that Parakou had entered into the charterparty, or had in any event ratified it knowing that the contract was with Galsworthy as disponent owner. Parakou then brought proceedings in Hong Kong seeking an indemnity against the holding company of the Jinhui group (*ie*, JSTL) and three of its other wholly-owned subsidiaries (*ie*, GSI, JMI, and GIL). Parakou alleged that it had been induced by one of more of the defendants' misrepresentations to enter into the charterparty.

93 In the Hong Kong HC, Reyes J, at [102], adopted the following definition of privity of interest laid down by the Hong Kong Court of Appeal ("the Hong Kong CA") in *China North Industries Investment Ltd v Chum* [2010] 5 HKLRD 1: "[t]he required commonality is a direct interest in the subject matter of the litigation, a parallel or corresponding interest in that subject matter and not simply a financial interest in the result of the action". Reyes J then held that JSTL was "privy to" the London arbitration. Central to his finding were (i) the similarity of issues in the London and Hong Kong proceedings; and (ii) the fact that JSTL and Galsworthy were alter egos of each other. JSTL thus had "a direct interest in the outcome of the Arbitration", and was consequently a privy of Galsworthy in the London arbitration proceedings.

94 Reyes J explained at [116]–[118]:

> … [A]pplying the definition of "privity of interest" mentioned above, [JSTL, GSI, JMI, and GIL] must be regarded as Galsworthy's privies.
>
> *In particular, JSTL is the 100% owner of GSI, JMI, GIL and Galsworthy*. All the latter companies (JSTL, GSI, JMI, GIL and Galsworthy) may be regarded as alter egos of each other.
>
> Further, the latter companies shared a direct interest in the outcome of the Arbitration, if only in the sense that it must have been in the interest of the shipping side of the Jinhui group (headed by JSTL) to establish the existence of a charterparty between Parakou and Galsworthy.
>
> [Emphasis added]

95 Reyes J struck out Parakou's claim as an abuse of process, explaining that the Hong Kong action if allowed to proceed "would effectively be an attempt to obtain a different outcome from that reached by the Arbitrators" and "would only be conducive to more uncertainty rather than to a final resolution of the dispute between Parakou and the Jinhui group": *Parakou* at [126].

96 With respect, I agree with the decision in *Parakou*. I note that *Parakou* was subsequently approved by the Hong Kong CA in *King's City Holdings Ltd v De Monsa Investments Ltd* [2013] 4 HKC 450, albeit on a different point. *Parakou* has also been well received in academic circles (see, *eg*, David AR Williams QC and Mark Tushingham, "The Application of the *Henderson v Henderson* Rule in International Arbitration" (2014) 26 SAcLJ 1036 at para 30; Bernard Hanotiau, "Non-signatories, Groups of Companies and Groups of Contracts in Selected Asian Countries: A Case Law Analysis" (2015) 32(6) J of Int'l Arb 571 at 598).

97 However, it should be noted that, in *Parakou*, it was undisputed that JSTL owned 100% of the shares in Galsworthy. All the other non-parties seeking to invoke the arbitration award (GSI, JMI, and GIL) were also wholly-

owned by JSTL. Moreover, Galsworthy, JSTL, GSI, JMI, and GIL all operated in such a manner as to suggest that they were *alter egos* of the others. It was thus logical, as well as consistent with commercial sense, to find that JSTL and the other non-parties had "a parallel or corresponding interest" with Galsworthy.

98 In contrast, Murex is owned, directly and indirectly, by a number of individuals and entities (see [4]–[9] above). These include not only Andaman, Legacy, Ace, and Legacy Thailand but also Mr Chayut (or his successor-in-title, Mr Praphant). Neither Mr Chayut nor Mr Praphant is a party to the ARSHA, the BVI Proceedings, or the SIAC Arbitration Proceedings. Further, it is unclear whether Mr Chayut (or Mr Praphant) holds 202 of his 505 shares in Andaman on behalf of the Sias. Before me, Murex did not deny this uncertainty, and submitted only that this is a question for the Tribunal, rather than the Thai court, to answer. I thus struggle to conclude that Murex enjoys sufficient privity of interest with Andaman, Legacy, Ace, and Legacy Thailand in the SIAC Arbitration Proceedings to entitle it to invoke the Final Award to resist a claim against it by the Sias. Such caution is warranted particularly in light of the recent comment by the CA that "allowing non-parties to an arbitration agreement to avail themselves of the right to arbitration under the agreement would, on its face, conflict with the doctrine of [contractual] privity": *Rals International Pte Ltd v Cassa di Risparmio di Parma e Piacenza SpA* [2016] 5 SLR 455 at [55].

Justice and comity

99 Murex submitted that the Sias should offer to submit their dispute with Murex to arbitration, citing *Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals* [2016] 1 SLR 373 ("*Tomolugen*").[40] Murex

explained that the Sias' dispute with it is intertwined with the Sias' dispute with Andaman, Legacy, Ace, and Legacy Thailand, on matters that fall within the scope of the ARSHA and the Consent Order.

100 In *Tomolugen*, a minority shareholder brought proceedings in the Singapore High Court against the seller-shareholder from whom it had acquired its shares, as well as other entities related to the seller-shareholder. The share sale agreement contained an arbitration clause for arbitration at the SIAC. On appeal, the CA held that the seller was entitled to a mandatory stay of the proceedings in favour of arbitration under the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("IAA"). However, the other related entities who were not party to the arbitration clause also sought a stay of the court proceedings against them as a matter of case management pending the resolution of the arbitration.

101 The CA directed the minority shareholder to "consider whether it is willing to offer to arbitrate" its claim with the non-parties: see *Tomolugen* at [190(d)]. If the minority shareholder did so, and the non-parties declined the invitation to arbitrate, there would be strong grounds to conclude that it would be an abuse of process for the non-parties to seek to re-litigate, in a broad sense, their dispute with the minority shareholder in court after the conclusion of the arbitration between the minority shareholder and the seller. The CA then stayed the litigation both against the seller and the non-parties, regardless of whether the non-parties agreed to arbitrate their dispute with the minority shareholder, subject to certain provisos: *Tomolugen* at [191(b)].

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[40] P's Submissions [75] – [76]

102 In my view, Murex's submissions here did not advance its case for an anti-suit injunction. *Tomolugen* involved a temporary stay of litigation pending the conclusion of arbitration proceedings. Judicial case management does not extend to shutting out a plaintiff's claim in its entirety: see *Tomolugen* at [187] citing *Reichhold Norway ASA v Goldman Sachs International* [1999] CLC 486 ("*Reichhold*") at 491. A case management stay only affects the plaintiff's choice of the sequence in which he pursues proceedings against different defendants, and involves no more on the part of the court in which the proceedings are brought than declining to hear the proceedings before it until some other time. The cases cited by Murex, *Parakou* and *Tomolugen* (and the related case of *Reichhold*), are limited to a court controlling proceedings before it in order to facilitate arbitration. Neither goes as far as to countenance taking action with the effect of restraining proceedings before a foreign court.

103 What Murex is seeking is an anti-suit injunction permanently enjoining the Sias from pursuing their claims in relation to the termination of their employment with Murex and the transfer of 202 shares in Andaman. This is far more intrusive than a case management stay; it deprives the plaintiff of his very right to sue a defendant in the forum of his choice, and involves the court in which the proceedings are brought making an order with a palpable effect on foreign proceedings. In *Tomolugen*, the CA observed at [187] that "a plaintiff's right to sue whoever he wants and where he wants is a fundamental one". Justice and comity demand that the discretion to grant an anti-suit injunction be exercised with caution (see [54(a)] and [54(d)] above).

104 Since an anti-suit injunction is granted to meet the ends of justice, the interests of both parties must be considered. Even if the bringing of the foreign proceedings is *prima facie* vexatious or oppressive, an anti-suit injunction will

not be granted if it would nevertheless be unjust to enjoin the respondent from pursuing the foreign proceedings. This involves balancing the injustice to the applicant of denying the anti-suit injunction against the injustice to the respondent of granting the anti-suit injunction. All relevant factors must be considered, including but not limited to the natural and proper forum for the dispute to be heard: *Koh Kay Yew* at [19].

105 In the case of Murex, the facts point to Thailand being the natural forum – and probably the only forum – to hear the disputes between the Sias and Murex for the following reasons:

(a) Murex is a Thai company holding land and assets in Thailand;

(b) Murex is not a party to the ARSHA and is thus not bound by English law, by which the ARSHA is governed; despite submitting that the Sias could and should offer to arbitrate their dispute with it in Singapore, Murex did not undertake to be bound by any such decision in any event; and

(c) Thai law would apply to Murex and its ownership of the land and developments thereon in the Blue Canyon Project; Thai law, which is the *lex situs*, has its unique characteristics in relation to the ownership of land, and this directly impinges on (i) the issues surrounding the 50.4% ownership of Andaman by Mr Chayut or his successor, Mr Praphant, or whether they held their shares on trust for anyone; and (ii) the effect of Thai law on any such arrangements.

106 I have also noted that Murex did not challenge the Sias' allegation that the sole purpose of Mr Chayut's inclusion as the majority shareholder of Andaman was to "ensure that [Andaman] would be identified as a Thai entity"

in order to "facilitate [Andaman]'s conduct of business in Thailand without legal constraints."[41] Neither did Murex challenge the bringing of the Second Thai Proceedings against Mr Chayut (and Mr Praphant).

107 For these reasons, in my view, granting an anti-suit injunction to Murex would not advance the ends of justice. Moreover, since Murex was not party to the arbitration proceedings or the arbitration agreement, nor is Singapore the natural forum, granting an anti-suit injunction to Murex would violate the principle of comity (see [55] above). Therefore, I decline to grant a permanent anti-suit injunction in favour of Murex against the Sias.

Conclusion

108 I therefore grant Andaman, Legacy, Ace, and Legacy Thailand the permanent anti-suit injunctions they seek. The Sias are henceforth enjoined from pursuing the Second Thai Proceedings or from commencing any other fresh proceedings against Andaman, Legacy, Ace, and Legacy Thailand in respect of the issue and disputes comprised in the BVI Proceedings, the SIAC Arbitration Proceedings, and the Second Thai Proceedings.

109 For the reasons set out above, I decline to grant a permanent anti-suit injunction in similar terms in favour of Murex against the Sias. However, nothing I say here should prevent Murex from raising any of its possible defences before the Thai Courts.

110 The Plaintiffs also sought a declaration that all claims in connection with the Blue Canyon Country Club in Phuket, Thailand, had been dismissed with prejudice by the Tribunal in the Final Award (see [2] above). However, I

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[41] 1.Gronow p 208

decline to grant such a declaration. Such a declaration would be too broad: the Tribunal had only dismissed with prejudice the claims made by the Sias against the SIAC Respondents in the SIAC Arbitration Proceedings. The breadth of the declaration which the Plaintiffs sought can be contrasted with that which Toulson LJ considered would be appropriate in *Noble Assurance*, at [101]:

> … It would be perfectly proper for this court to make *summary declaratory judgments as to the interpretation, scope and validity of the award*. In effect, I have already done so in this judgment after hearing due argument on both sides. I have concluded that the arbitrators found that there was coverage for OPL under the Gerling contract by reason of endorsement 18, regardless of the certificate policy, as well as by reason of the certificate policy. I have found that it was open to Gerling to advance assertions of misrepresentation and non-disclosure by way of defence in the arbitration and that Gerling ought to have done so if it wished to rely on such matters. *Such conclusions could properly be put into the form of a declaratory judgment*.
>
> [Emphasis added]

Moreover, in my view, granting the Plaintiffs the declaratory relief which they seek would be unnecessary. I note that, in *Noble Assurance*, Toulson LJ granted declaratory relief instead of an anti-suit injunction, on the basis, *inter alia*, that the proceedings in the foreign court were significantly advanced: see *Noble Assurance* at [100]. However, I have granted permanent anti-suit injunctions to all the Plaintiffs except Murex. Thus, I decline to grant the declaration sought.

111 I will hear parties on costs.

Postscript

112 This judgment, though ready for handing down in early January 2017, was held back as I was informed that there were three Originating Summonses fixed for hearing before me which involved the same arbitration and parties:

(a) OS 764/2016 ("OS 764"), taken out by the Deutsche parties against the Sias for leave to enforce the Final Award as a judgment together with an order for interest at 5.33% per annum and costs pursuant to s 19 of the IAA and O 69A and O 42 r 12 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("Rules of Court");

(b) OS 840/2016 ("OS 840"), taken out by the Sias against the SIAC Respondents to set aside certain portions of the Final Award, *viz*,

(i) the decision that the Sias' claims and the SIAC Arbitration Proceedings be dismissed with prejudice (para 182(a) of the Final Award);

(ii) the decision that the Sias bear the costs of the SIAC Arbitration Proceedings, consisting of the SIAC administrative fees and expenses amounting to S$39,578.14 and the Tribunal's fees and expenses amounting to S$182,794.55 (para 182(b) of the Final Award);

(iii) the award of costs to the Deutsche parties in the amount of US$410,867.51 (para 182(c) of the Final Award);

(iv) the award of interest to the Deutsche parties at 5.33% per annum from the date of the award until the date of payment (para 182(d) of the Final Award); and

(v) the award of costs to Legacy, True Colour, Ace, Ancaster, Prominent and Delta in the sum of US$479,658.66 (para 182(e) of the Final Award);

and that costs be paid by the SIAC Respondents to the Sias; and

(c) OS 944/2016 ("OS 944"), taken out by Legacy, True Colour, Ace, Ancaster, Prominent and Delta against the Sias to enforce the Final Award against the Sias in the same manner as a judgment, that the Sias be at liberty to apply to set aside the order granting leave to enforce the Final Award within 14 days after service of the order upon them pursuant to O 69A r 6 of the Rules of Court and that the costs be fixed and paid by the Sias to the plaintiffs in OS 944.

113 Summons 5557/2016 taken out under OS 764 and Summons 5558/2016 taken out under OS 840 were fixed for hearing on 16 January 2017. At the hearing before me, parties had settled the orders they required and accordingly consent orders were entered. Basically, the Sias had reached or were close to reaching a settlement with the Deutsche parties.

114 The parties appeared before me for substantive argument on OS 764, OS 840 and OS 944 on 14 February 2017. I was informed that the Sias had reached a settlement with the Deutsche parties:

(a) In respect of OS 840, pursuant to Summons 621/2017 taken out under OS 840, a consent order was entered for leave to be granted to the Sias to discontinue OS 840 against the Deutsche parties with no order as to costs.

(b) In respect of OS 764, pursuant to Summons 622/2017 taken out under OS 764, leave was granted for Summons 4042/2016, an earlier application under OS 764, to be discontinued, and OS 764 itself was discontinued. I was given to understand that the BVI Costs had been paid to the Deutsche parties.

115 What remained in dispute were OS 840 and OS 944 with the remaining parties. Mr Wong then applied for an adjournment for these outstanding matters for the Sias to put into evidence an opinion from a Thai lawyer opining on issues relating to the illegality of the Project and the prohibition in Thai law against landowning by a foreign entity. As the ARSHA was governed by English law, I raised the issue of what the English position on illegality is after the Supreme Court decision in *Patel v Mirza* [2016] UKSC 42 ("*Patel*"). Neither counsel was prepared to make submissions on this recent decision. However, Mr Singh SC resisted any adjournment and submitted that this was yet another attempt by the Sias to delay matters. After hearing submissions, I refused an adjournment as the issue of illegality had arisen as early as June 2016 and the Sias had not put forward any legitimate excuse for not obtaining an opinion on Thai law earlier. I then proceeded to hear submissions on the substantive matters.

116 During the course of oral submissions, I expressed some doubts over the power of the Tribunal, absent agreement of the parties, to dismiss the Sias' claim with prejudice. I noted that the Tribunal had made this order before the Sias had even filed their statement of claim in the SIAC Arbitration Proceedings. Mr Singh SC submitted that the tribunal had the power to do so under s 12(5)(a) of the IAA read with O 21 r 3(1) of the Rules of Court, and that to hold otherwise would enable forum shopping: a claimant who was dissatisfied with his tribunal could discontinue the arbitral proceedings with

impunity and commence subsequent proceedings before a new tribunal. Mr Wong could not cite any relevant authorities and said that the textbooks were silent on this point. After hearing the submissions, I dismissed the Sias' application in OS 840 to set aside specified portions of the Final Award and awarded costs to the defendants in OS 840 (such costs to be taxed if not agreed). I also granted leave to enforce the Final Award in OS 944. I felt there was a strong element of abuse of process on the part of the Sias.

117 On 20 February 2017, the Sias wrote to the court to request for further arguments. I acceded to the request, but also asked the parties to address me on (a) the meaning of "remedy or relief" in s 12(5)(a) of the IAA, especially in light of *Litton v Litton* 3 Ch D 793, (b) passages in D Rhidian Thomas, *Default Powers of Arbitrators* (LLP, 1996) at pp 44 – 55, 112 – 113, and 130 – 133, (c) a passage from Robert Merkin and Louis Flannery, *Arbitration Act 1996* (Informa, 4th Ed, 2008) at pp 99 – 101 and (d) the effect of *Patel* on the issue of illegality.

118 At the further hearing on 20 March 2017, the Sias could not offer any new argument except that, having failed on all fronts, they were now bringing up the issue of illegality as they had nothing to lose. I pointed out this was not a reason for their delay in obtaining an opinion on illegality under Thai law. Mr Singh SC maintained that the position in Singapore was governed by s 12(5)(a) of the IAA which empowered the Tribunal to dismiss the Sias' claims with prejudice. Notably, Mr Wong conceded that point; he also did not wish to address the illegality point any further as he had no legal opinion on Thai law. As there was no new reason for the delay in obtaining an opinion on Thai law, and in view of the position taken by counsel on the points which I had raised, it would best be left to a subsequent tribunal, if there was one, or a court, to decide whether an arbitral tribunal has the power, absent agreement,

to dismiss a claim with prejudice before a statement of claim is filed, after hearing full arguments. In the result, I was not persuaded to change my mind on the orders which I had issued in OS 840 and OS 944. Nor was I persuaded to change my mind on the appropriate orders in this OS, where the grant of a permanent anti-suit injunction to the 1st to 4th plaintiffs was justified by the clearly oppressive and vexatious conduct of the Sias.

Quentin Loh
Judge

Sarjit Singh Gill, SC, Probin Dass, Charles Lim, and Jamal Siddique (Shook Lin & Bok LLP) for the plaintiffs;
Raymond Wong (Wong Thomas & Leong) for the Sias.