IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC(A) 31

Appellate Division / Civil Appeal No 3 of 2024

Between

(1) Ari Investment Limited
(2) Asian Infrastructure Limited

… *Appellants*

And

(1) Accelera Precious Timber and Strategic Agriculture Limited
(2) Dennis Kam Thai Leong
(3) Tan E-Lin, Eileen

… *Respondents*

In the matter of Suit No 1229 of 2020

Between

(1) Ari Investment Limited
(2) Asian Infrastructure Limited

… *Plaintiffs*

And

(1) Accelera Precious Timber and Strategic Agriculture Limited
(2) Perfect Earth Management Pte. Ltd.
(3) Dennis Kam Thai Leong
(4) Tan E-Lin, Eileen

… *Defendants*

Version No 1: 08 Oct 2024 (11:51 hrs)

GROUNDS OF DECISION

[Res Judicata — Extended doctrine of res judicata]

TABLE OF CONTENTS

Version No 1: 08 Oct 2024 (11:51 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Ari Investment Ltd and another
v
Accelera Precious Timber and Strategic Agriculture Ltd and others

[2024] SGHC(A) 31

Appellate Division of the High Court — Civil Appeal No 3 of 2024
Woo Bih Li JAD, See Kee Oon JAD and Philip Jeyaretnam J
5 August 2024

8 October 2024

Woo Bih Li JAD (delivering the grounds of decision of the court):

1 The appellants alleged that Choo Han Teck J, a Judge of the General Division of the High Court (the "Judge"), had erred in applying the extended principle of *res judicata* to dismiss their claim in HC/S 1229/2020 (see *Ari Investments Ltd and another v Accelera Precious Timber and Strategic Agriculture Ltd and others* [2023] SGHC 295 (the "Judgment")). They denied that they had sufficient information to have raised certain issues in an earlier suit commenced by the second appellant against the second respondent.

2 Having considered the parties' submissions in the appeal, we agreed with the Judge's assessment of the evidence and his decision to dismiss the appellants' suit. We accordingly dismissed the appeal. Our reasons are set out below.

Facts

The parties

3 The first appellant, Ari Investment Limited ("ARI"), and the second appellant, Asian Infrastructure Limited ("AIL"), were companies incorporated in Hong Kong. Mr Malcolm Chang ("Mr Chang") was a director and shareholder of ARI and AIL. Mr Tin Jiing Soon ("Mr Tin") assisted Mr Chang with matters relating to ARI and AIL.

4 The first respondent, Accelera Precious Timber and Strategic Agriculture Limited ("APTSA") was a company incorporated in the Cayman Islands. APTSA owned a majority stake in PT Aceh Rubber Industries ("PT ARI"), a company incorporated in Indonesia which owned and operated a rubber processing plant in Indonesia. Mr Yeo Siang Cher ("Mr Yeo") was the managing director of PT ARI.

5 The second respondent, Mr Dennis Kam Thai Leong ("Mr Kam"), was a director and one of the shareholders of APTSA, and also the chairman of the board of directors of PT ARI.

6 The third respondent, Ms Tan E-Lin, Eileen ("Ms Tan"), was also a director and one of the shareholders of APTSA. She was also a director of PT ARI from around 17 June 2012 to around 15 December 2018.

Background to the dispute

7 The background to the dispute is stated in the Judgment and the parties' respective cases filed in this appeal. Only a summary of the salient points is set out below.

Version No 1: 08 Oct 2024 (11:51 hrs)

8 In September 2013 and March 2014, Mr Chang agreed with Mr Kam for AIL to extend to Perfect Earth Management Pte Ltd ("PEM"), a company incorporated in Singapore, two loans as working capital of PT ARI. The first loan agreement was entered into on 23 September 2013 for a sum of US$500,000. The second loan agreement was entered into on 11 March 2014 for a sum of US$650,000 (the "Loans" and the "Loan Agreements"). Mr Kam gave personal guarantees to AIL for both loans (the "Personal Guarantees"). According to the respondents, the Loan Agreements were made between AIL and PEM because Mr Chang wished to make the Loans to a company incorporated in Singapore (*ie*, PEM) instead of PT ARI.

9 PEM was subsequently unable to pay back the Loans in full to AIL, and Mr Kam was unable to do so as well.

10 In September 2015, the parties made an alternative arrangement to resolve the problem: ARI and AIL entered into an agreement with APTSA, PT ARI and PEM to restructure the debt (the "Agreement"). Under this Agreement, ARI would inject US$750,000 into APTSA in exchange for acquiring 70% equity in APTSA. These funds were supposedly to be used for PT ARI's operations. The Agreement provides at cl 5(e) that PEM would have no further liability. According to cl 5(d) of the Agreement, AIL would novate the existing US$1m loan with interest to ARI and ARI would be liable for the loan and interest thereon. The Personal Guarantees given by Mr Kam would be dissolved.

11 Pursuant to the Agreement, ARI paid a total of US$320,000 (through an associated company) to APTSA on 3 September, 30 September and 2 December 2015. Payments stopped thereafter.

Version No 1: 08 Oct 2024 (11:51 hrs)

12 Around late 2016 to early 2017, Mr Yeo handed to Mr Chang and Mr Tin an unsigned tax notice for the 2013 Financial Year ("FY") in respect of PT ARI, which is henceforth referred to as the "Unofficial Tax Notice". There was purportedly a signed copy of the Unofficial Tax Notice but this was not disclosed by Mr Kam or Mr Yeo to ARI or AIL until May 2023 well after a second suit was filed in December 2020, as elaborated below at [23].

13 On 10 February 2017, ARI wrote to APTSA purporting to terminate the Agreement.

14 On 2 May 2017, AIL commenced HC/S 397/2017 (the "First Suit") against Mr Kam to claim under the Personal Guarantees for the outstanding sums owed by PEM to AIL. Mr Kam pleaded the Agreement to deny liability. AIL's Reply alleged that the Agreement had been rescinded. AIL further alleged misrepresentation by Mr Kam and breaches of warranties so as to disentitle Mr Kam from relying on the Agreement. There was no allegation then on misrepresentation or breaches concerned with tax issues.

15 On 22 September 2017, ARI wrote to APTSA giving notice of rescission of the Agreement and seeking recovery of the payment of US$320,000 on the basis of various allegations, which included that APTSA had made misrepresentations and committed breaches of warranties about tax issues (the "22 September 2017 Letter").

16 On 3 October 2017, APTSA sent a holding response to ARI.

17 On 13 December 2017, AIL filed HC/SUM 5680/2017 ("SUM 5680") in the First Suit to seek specific discovery of documents, including documents relating to claims by tax authorities vis-à-vis PT ARI. On 12 February 2018,

Version No 1: 08 Oct 2024 (11:51 hrs)

SUM 5680 was dismissed because there was no allegation in the pleadings about tax issues. There was no appeal by AIL.

18 On 25 May 2018, AIL filed HC/SUM 2425/2018 ("SUM 2425") to amend its Reply in the First Suit to include an allegation about misrepresentation with respect to PT ARI's tax issues. On 16 July 2018, an Assistant Registrar ("AR") asked AIL for particulars of that misrepresentation. AIL was content to rely on only a breach of a contractual provision. SUM 2425 was dismissed. Again, there was no appeal by AIL.

19 By way of a shareholders' resolution passed on 30 April 2019, PT ARI was placed under liquidation on 2 May 2019.

20 The trial of the First Suit was heard between 14 to 17 May and 21 to 23 May 2019. On 10 December 2019, Dedar Singh Gill JC (as he then was) allowed AIL's claim on the Personal Guarantees but dismissed the claim on misrepresentation or breaches of warranties (*Asian Infrastructure Ltd v Kam Thai Leong Dennis* [2019] SGHC 288).

21 Mr Kam filed an appeal against the decision in the First Suit. On 31 August 2020, the Court of Appeal (the "CA") allowed his appeal on the basis that he had been discharged from liability under the Agreement when the Agreement had been entered into (*Kam Thai Leong Dennis v Asian Infrastructure Ltd* [2020] SGCA 87 ("*Asian Infrastructure Ltd* (CA)")). The CA did not address the prior allegations about misrepresentation or breaches of warranties as there was no cross-appeal by AIL (see *Asian Infrastructure Ltd* (CA) at [11]).

Version No 1: 08 Oct 2024 (11:51 hrs)

22 The appellants alleged that they had subsequently obtained various tax documents pertaining to PT ARI from a Singapore business associate based in Indonesia referred to as "Mr Wafa". These documents were in excess of 120 pages. It was not clear when Mr Wafa obtained and passed the documents to Mr Chang.

23 On 23 December 2020, the appellants commenced HC/S 1229/2020 (the "Second Suit") against APTSA, PEM, Mr Kam and Ms Tan. The Second Suit was premised on the Agreement (instead of the Loan Agreements) and alleged misrepresentation and breaches of the Agreement, including non-disclosure of tax issues. These tax issues appeared to refer to outstanding tax matters and/or outstanding taxes in respect of PT ARI for the financial years of 2013, 2014 and 2015 arising from the fact that PT ARI had not complied with or had committed multiple breaches of the Indonesian Tax Code. In the Second Suit, the appellants claimed $1m and US$320,000.

24 On 1 April 2021, the respondents (*ie*, APTSA, PEM, Mr Kam and Ms Tan) filed HC/SUM 1510/2021 to strike out the claims in the Second Suit. On 10 August 2021, an AR struck out all claims in the Second Suit "save for the [appellants'] claims on the Tax Issue and the Winding Up Issue" Hence, the Second Suit against PEM was dismissed because PEM was not involved in the remaining issues. Both the appellants and the respondents filed appeals against the AR's decision. On 11 October 2021, Valerie Thean J dismissed the appeals in HC/RA 234/2021 ("RA 234") and HC/RA 235/2021 ("RA 235"). She was of the view that matters pertaining to the non-disclosure of tax issues and another issue pertaining to the winding up of PT ARI should be dealt with at trial.

Version No 1: 08 Oct 2024 (11:51 hrs)

25 The appellants said that in about May 2023, about three months before the trial of the Second Suit, they had learned of a signed version of the Unofficial Tax Notice (the "Signed Version") through a disclosure made by Mr Kam. They had previously only seen the Unofficial Tax Notice, *ie*, the unsigned version.

26 The trial of the Second Suit was heard by the Judge between 21 and 23 August 2023. On 17 October 2023, he issued the Judgment in which he dismissed the claims on the tax issues and the winding up issue. The basis of the decision on the tax issues was the principle of *res judicata*, *ie*, these issues should have been raised in the First Suit.

27 The appeal from the Judge's decision concerned only the tax issues and the finding that the principle of *res judicata* applied. The focus of the parties' cases was on the liability of Mr Kam.

Decision below

28 The Judge decided that tax issues and their implications on the appellants' claim in the Second Suit had been within the appellants' knowledge at the time the First Suit had been before the court. Therefore, AIL, being the plaintiff in the First Suit, should have raised and argued the tax issues then. This was for the following reasons:

(a) Mr Chang had acknowledged in his affidavit dated 9 June 2021 that Mr Yeo had informed him of the Unofficial Tax Notice in the last quarter of 2016.

(b) Although Mr Chang had claimed that the Unofficial Tax Notice was not conclusive on the existence of PT ARI's tax issues, ARI had nevertheless gone ahead and sent a letter to APTSA on 22 September

Version No 1: 08 Oct 2024 (11:51 hrs)

2017 alleging that PT ARI had committed breaches of the Indonesian tax code for FY 2013 and that they would not have entered into the Agreement otherwise (*ie*, the 22 September 2017 Letter). This showed that ARI had taken the view that APTSA had breached the Agreement because of the tax issues.

(c) Mr Chang gave evidence that he had known that PT ARI had faced tax issues on multiple occasions during the trial in the First Suit, long before the appellants claimed to have had obtained the incriminating tax notices from Mr Wafa.

29 The Judge also decided that there were no special reasons for the appellants to circumvent the *res judicata* rule. This was because the appellants made only a half-hearted effort to amend their pleadings to include the tax issues: they did not provide any particulars in support of their application to amend their pleadings notwithstanding the AR's direction that particulars be given.

The parties' cases

The appellants' case

30 The appellants submitted that they had been unable to obtain documents pertaining to tax issues in the First Suit despite their best efforts. Instead, the respondents had chosen to conceal the significance of tax issues as potential liabilities. The appellants further submitted that the Unofficial Tax Notice was of dubious purpose and provenance and they had accordingly elected not to rely on it to support their case on misrepresentation. In this connection, they claimed that their 22 September 2017 Letter contained only an allegation, and did not reflect their knowledge or constitute credible evidence, that PT ARI had faced

Version No 1: 08 Oct 2024 (11:51 hrs)

tax issues. The significance of the foregoing was that the appellants had been unable to particularise their claim to include tax issues; and the Judge had hence erred in finding that they had made only a half-hearted attempt to amend their pleadings. The appellants also explained that SUM 5680 failed and they "could not have appealed" that decision as they had lacked evidence in relation to tax issues and such an appeal would have been "frivolous and/or scandalous". Similarly, SUM 2425 failed because they had insufficient evidence to amend their Reply in the First Suit to include tax issues.

31 Next, the appellants submitted that the Judge had further erred in finding that Mr Kam had not been obliged to disclose the inculpatory tax documents in the First Suit. Mr Kam was obliged under O 24 r 1 of the Rules of Court 2014 ("ROC 2014") to disclose tax documents since they would have adversely affected his case in the First Suit and they were directly relevant. Alternatively, the appellants argued that the Judge should have exercised his discretion and applied equitable principles to order inspection of the documents relating to tax issues and allowed their claims. Mr Kam's reliance on the ROC 2014 to "get away with concealing prejudicial evidence" constituted an injustice and abuse of process. The respondents' failure to come to court with clean hands – because they had concealed tax documents in the First Suit; adduced the Signed Version only three months before the trial in the Second Suit although they had it since the First Suit; and failed to disclose tax documents in PT ARI's factory – should also mean that they should have been denied the defence of *res judicata*.

32 Finally, the appellants argued that the Judge had failed to consider that applying the principles of *res judicata* to the Second Suit would be repugnant to public policy.

Version No 1: 08 Oct 2024 (11:51 hrs)

The respondents' case

33 The respondents argued that the appellants had possessed sufficient knowledge to raise tax issues in the First Suit but had chosen not to do so. In particular, the respondents noted that AIL had applied for specific discovery of various documents in SUM 5680, including those relating to tax issues, which application had been dismissed and no appeal had been brought by the appellants. Further, AIL's application in SUM 2425 had also failed and the appellants did not appeal that decision. The respondents also highlighted that Mr Chang and Mr Tin had been closely involved in the management of PT ARI after the Agreement had been signed. The respondents objected to the appellants' allegation that they had failed to provide full and complete records of PT ARI's tax affairs prior to the Agreement.

34 The respondents also argued that Mr Kam had not breached his discovery obligations in the First Suit. Further, the court had no equitable powers in relation to discovery in excess of the powers granted by the ROC 2014. They highlighted that tax issues had not been raised in the First Suit and therefore Mr Kam had not been obliged to disclose any documents related to tax issues then.

35 Finally, the respondents submitted that the appellants' submission that the extended doctrine of *res judicata* should not have applied since the First and Second Suits concerned different contracts and the parties in both suits acted in different capacities was baseless. The extended doctrine of *res judicata* was not concerned with causes of action, subject matter or parties' capacities, and instead addressed whether certain issues ought to have been, but were not, raised at an earlier stage in proceedings such that subsequent litigation of those issues amounted to an abuse of process.

Version No 1: 08 Oct 2024 (11:51 hrs)

Issues to be determined

36 The central issue in the appeal was whether the Judge had rightly applied the extended doctrine of *res judicata* to preclude the appellants from raising tax issues in the Second Suit. This issue turned on the following questions raised by the appellants:

(a) whether the appellants had been aware of tax issues at the time of the First Suit; and

(b) whether Mr Kam had been obliged to disclose inculpatory tax documents in the First Suit.

37 In relation to this second question, the appellants contended that Mr Kam's non-disclosure meant that the respondents came to court with unclean hands and that it would be repugnant to public policy to preclude the appellants from pursuing the Second Suit. We deal with these points under that second heading.

38 Once we have given our reasons in respect of these two questions, we address the question of whether the appellants were precluded from raising tax issues in the Second Suit.

Whether the appellants had been aware of tax issues at the time of the First Suit

39 At the heart of the appeal lies the extended *res judicata* doctrine. This principle is aimed at preventing abuse of process, and achieves this purpose by "not [being] confined to the issues which the court is actually asked to decide, but … [instead] issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of

Version No 1: 08 Oct 2024 (11:51 hrs)

the process of the court to allow a new proceeding to be started in respect of them" (*Ching Mun Fong (executrix of the estate of Tan Geok Tee, deceased) v Liu Cho Chit and another appeal* [2000] 1 SLR(R) 53 at [23], citing *Greenhalgh v Mallard* [1947] 2 All ER 255 at 257. See also *Goh Nellie v Goh Lian Teck and others* [2007] 1 SLR(R) 453 at [41], [51]–[56]; *Lee Hiok Tng (in her personal capacity) v Lee Hiok Tng and another (executors and trustees of the estate of Lee Wee Nam, deceased) and others* [2001] 1 SLR(R) 771 at [24]–[25]).

40 We also note at this juncture that there is a distinction between the principle of *res judicata* and the principle of abuse of process which is often referred to as the extended doctrine of *res judicata*. The principle of *res judicata* comprises cause of action estoppel and issue estoppel, and is a rule of substantive law. Abuse of process, however, may not require the identification of an additional element such as a collateral attack on a previous decision, and instead requires a broad merits-based inquiry which takes into account all the facts of the case (see *Lim Geok Lin Andy v Yap Jin Meng Bryan and another appeal* [2017] 2 SLR 760 ("*Andy Lim*") at [37] which cited the observations of Lord Bingham of Cornhill in *Johnson v Gore Wood & Co (a firm*) [2002] 2 AC 1 at 31 with approval).

41 The doctrine relied on by the respondents is the extended doctrine of *res judicata* or abuse of process.

42 We agreed with the Judge that the appellants had been aware of tax issues at the time of the First Suit. This was the main question in this appeal. Central to this query was the undisputed evidence that Mr Chang and Mr Tin had received the Unofficial Tax Notice. The appellants suggested that this

Version No 1: 08 Oct 2024 (11:51 hrs)

evidence had not been enough to raise tax issues in the First Suit. Two different reasons were suggested for this and we address each in turn.

43 First, the appellants argued that they had been unable to verify the authenticity of the Unofficial Tax Notice. However, this was not a document received from an unknown third party. It was received from Mr Yeo, who was running PT ARI, and Mr Kam never disputed its authenticity. Furthermore, ARI had relied on the Unofficial Tax Notice to make allegations about misrepresentation on tax issues in the 22 September 2017 Letter, and this fact was confirmed by the appellants on appeal. The fact that ARI found the Unofficial Tax Notice to provide sufficient basis to rescind the Agreement militated against the argument that the appellants did not have sufficient information to raise tax issues before the trial of the First Suit commenced.

44 Second, the appellants suggested that, in any event, the contents of the Unofficial Tax Notice did not disclose any tax issue. Hence, the appellants only knew enough to make such an allegation after receiving more documents from Mr Wafa.

45 The appellants relied on observations made by Thean J when she dismissed RA 234 and RA 235 (see [24] above). Thean J said at [21]:

> In any event, ARI's 22 September 2017 Letter did not specify the amount of PT ARI's tax liabilities, and merely stated that ARI faced "unlimited exposure to tax liabilities" as a result of the non-disclosure of these tax breaches which "may have a looming impact on the tax assessment period for the respective years of 2014 and 2015". Further, ARI's 22 September 2017 Letter only refers to PT ARI's tax breaches in 2013, and is thus consistent with the plaintiff's position that they did not know the extent of PT ARI's tax liabilities (which is based on alleged tax breaches over several years) at the time of S 397/2017. I therefore accept that neither the Unofficial Tax Notice nor ARI's

Version No 1: 08 Oct 2024 (11:51 hrs)

> 22 September 2017 Letter shows that the plaintiffs had sufficient knowledge of the Tax Issue to raise it in S 397/2017.

46 We rejected the appellants' submission because Thean J's observations had been made in the context of a striking out application and to explain her decision to dismiss the respondents' appeal and affirm the AR's decision not to strike out the Statement of Claim in respect of tax issues. The observations were made so that there would be a trial of such issues. These observations were not conclusive findings that, on a balance of probabilities, AIL could not have raised any tax issues in the First Suit. Thean J herself also noted that the legitimacy of the Unofficial Tax Notice and the parties' knowledge of the tax notices were issues which ought to be resolved at trial.

47 In any event, the appellants' position that the contents of the Unofficial Tax Notice did not disclose any tax issue was contradicted by their position on the importance of the Signed Version. In the appeal, the appellants had initially argued that the Signed Version had been unequivocal evidence that PT ARI had breached the Indonesian tax code. However, after the respondents submitted that there was no material difference between the Unofficial Tax Notice and the Signed Version, the appellants shifted their position. While they did not agree that there was no material difference between the contents of the Unofficial Tax Notice and the contents of the Signed Version, they argued that the Unofficial Tax Notice was only three pages, unlike the more than 120 pages they had received from Mr Wafa. However, the Signed Version was only a few pages too. Moreover, crucially, the appellants' counsel conceded at the hearing of the appeal that the Unofficial Tax Notice (already) disclosed tax issues. He said that the Unofficial Tax Notice disclosed breaches of the Agreement by the other side. The consequence of that was that AIL did not need the Signed Version to raise tax issues in the First Suit if there was no concern about the authenticity

Version No 1: 08 Oct 2024 (11:51 hrs)

of the Unofficial Tax Notice. The implication of this was that, had AIL specifically mentioned the Unofficial Tax Notice, it might well have been successful in its applications to amend its Reply and obtain discovery of documents concerning tax issues.

48 The appellants also submitted that they could not have gotten documents relating to tax issues since they had not managed PT ARI and Mr Chang and Mr Tin had not been directors of PT ARI. However, the CA found that Mr Chang and Mr Tin had been closely involved in the management of PT ARI (*Asian Infrastructure Ltd* (CA) at [33]). This suggested that they could have pressed for information had they really wanted to. In any event, there was not much objective evidence provided by the appellants about their supposed efforts to obtain the relevant documents. The Unofficial Tax Notice alone could and should have been used as a start to amend AIL's Reply and to seek discovery of documents.

49 By virtue of the foregoing, the appellants had sufficient basis, in terms of authenticity and content of the Unofficial Tax Notice, to raise some tax issues in the First Suit. In fact, we noted that they had attempted to do so in SUM 4540 and SUM 2425 but, for reasons unknown to us, they had not referred the court then to the Unofficial Tax Notice as well as the 22 September 2017 Letter. As mentioned, AIL had applied to amend the Reply in the First Suit to raise tax issues. The pertinent proposed amendment alleged that Mr Kam had represented and warranted that, "PT ARI did not have any subsisting or contingent tax liabilities in Indonesia" and that this representation was untrue and the warranty was broken because, "PT ARI had various tax liabilities to Indonesian authorities". However, the application was disallowed because of the lack of particulars, which particulars were not provided despite the AR's

Version No 1: 08 Oct 2024 (11:51 hrs)

indication that they were needed. In fact, AIL had some particulars as shown by the 22 September 2017 Letter. Consequently, it was their own fault (as the Judge observed at [26] of the Judgment) that they did not succeed in their amendment application. In the circumstances, we agreed with the Judge's finding that the attempts to include tax issues in the First Suit had been half-hearted. The appellants were therefore precluded from raising tax issues in the Second Suit. This evidence being sufficient to establish the appellants' knowledge of the tax issues, it was unnecessary for us to deal with Mr Chang's evidence about tax issues during the trial of the First Suit.

Whether Mr Kam had been obliged to disclose inculpatory tax documents in the First Suit

50 We agreed with the Judge that there was no requirement for Mr Kam to disclose documents pertaining to tax issues in the First Suit, since no tax issue had been pleaded there.

51 The appellants did not take issue with the Judge's finding that AIL did not plead PT ARI's failure to disclose to the appellants that there had been outstanding tax matters in the First Suit. The appellants appeared to recognise this in their submissions on appeal. Instead, they attempted to sidestep the omission by arguing that the possibility of tax issues justifying rescission of the Agreement had been sufficient to oblige Mr Kam to disclose tax documents pertaining to the tax issues. In our view, it was not for a party to alert its opponent to a matter which might help its opponent to raise a new issue that was not yet pleaded. In this instance, it was not enough for the appellants to say that the validity of the Agreement had been in issue in the First Suit. Nothing in all the parties' pleadings in the First Suit raised *any tax issue* for the rescission of the Agreement (see [57] below for what was, in fact, raised in relation to the

Version No 1: 08 Oct 2024 (11:51 hrs)

Agreement in the First Suit). This was all the more puzzling given that the non-disclosure of tax issues had been raised in the 22 September 2017 Letter as a ground for rescission.

52 We further noted that, given that AIL's application in the First Suit to seek specific discovery of documents pertaining to tax issues (*ie*, SUM 5680) had been dismissed, the appellants' contention in this appeal that Mr Kam had nonetheless been obliged to disclose the aforesaid documents was contrary to that decision.

53 Furthermore, the appellants have misconstrued O 24 r 1 of the ROC 2014. Their submission – that the Judge should not have interpreted O 24 r 1 of the ROC 2014 to mean that discovery was limited to the parties' pleadings in the First Suit, and instead the bounds of relevance should be determined with reference to the representations made by Mr Kam preceding the Agreement – was without merit. The pleadings determine the issues which in turn determine the scope of the parties' discovery obligations.

54 Since Mr Kam had not been obliged to disclose documents relating to any tax issue in the First Suit, the appellants' submissions concerning equity and public policy which followed from his alleged non-disclosure were hence also without merit. Otherwise, considerations of equity and public policy would have circumvented the rules on discovery.

55 Given our conclusions concerning Mr Kam's discovery obligations in light of the pleadings in the First Suit, we found no merit in the appellants' contentions that, by virtue of "unclean hands" or by reference to public policy, the extended doctrine of *res judicata* ought not to be applied against them.

Version No 1: 08 Oct 2024 (11:51 hrs)

Whether the appellants were precluded from raising tax issues in the Second Suit

56 We agreed with the Judge that the appellants were precluded from raising tax issues in the Second Suit.

57 The appellants' argument that the contracts, capacities of parties and remedies in the First Suit were distinct from those in the Second Suit and hence the principle of *res judicata* did not apply was not valid. The appellants' submission that the Agreement had never been the subject of the First Suit and thus the two actions were different was not accurate. In the First Suit, AIL had sued on the Loan Agreements but Mr Kam raised the Agreement in his Defence. AIL thereafter asserted in its Reply that the Agreement had been rescinded because of misrepresentation and breaches of warranties. Hence, misrepresentation and breaches of warranties in the Agreement had been raised by AIL in the First Suit. While AIL was not at that time claiming damages under the Agreement in its Statement of Claim, it was alleging that the Agreement had been rescinded because of Mr Kam's misrepresentation and breaches. Furthermore, when AIL applied to amend its Reply in the First Suit by way of SUM 2425, its draft amended Reply mentioned damages flowing from the misrepresentations in the Agreement and the supporting affidavit of Mr Tin stated that AIL was seeking damages for misrepresentation and breaches. However, during the hearing of SUM 2425 on 16 July 2018, AIL's counsel said that it was not seeking any remedy from the rescission of the Agreement. Thereafter, in the Second Suit, the appellants sought damages under the Agreement for misrepresentation and breaches in respect of tax issues.

58 The crucial question then is whether the appellants were rightly precluded from doing so in the Second Suit under the extended doctrine of *res*

Version No 1: 08 Oct 2024 (11:51 hrs)

judicata, *ie*, AIL should have made that claim in the First Suit. Although ARI was not a party in the First Suit, both the appellants were controlled by Mr Chang. Furthermore, AIL did attempt to raise tax issues in the First Suit but failed. In *Andy Lim* at [43], the court noted that the defence of abuse of process may be successfully invoked where the same defendant is sued twice by different plaintiffs on identical issues which have already been determined in the earlier action. Here, although the tax issues have not already been determined in the First Suit, the point is that they should have been raised for determination then. The fact that PT ARI was not a party to the First Suit does not preclude the raising of the defence under the extended doctrine of *res judicata* against the appellants in the Second Suit. On the particular facts of the case before this court, the appellants were rightly precluded from raising tax issues in the Second Suit. Critical to this finding is the 22 September 2017 Letter which not only showed that tax issues were in play but also that they were factually entwined with other aspects of misrepresentation and breach that were relied on in the First Suit. Endorsing a situation where the appellants proceeded first without pleading the known tax issues and then proceeded a second time on the basis of those tax issues would mean in substance that the respondents were vexed twice concerning the same overall set of facts. This is precisely the mischief that the extended doctrine of *res judicata* addresses. Moreover, allowing the appellants to raise tax issues in the Second Suit would be tantamount to circumventing the previous decision in the First Suit to refuse an amendment to the Reply. It bears repeating that the appellants had particulars, as shown by the 22 September 2017 Letter, that they had not put forward to support their application to amend.

Version No 1: 08 Oct 2024 (11:51 hrs)

Conclusion

59 For the foregoing reasons, we saw no reason to interfere with the Judge's finding that any issue relating to PT ARI's failure to disclose to the appellants outstanding tax matters should have been raised in the First Suit. We therefore dismissed the appeal.

60 We also ordered that costs be awarded to the respondents, fixed at $40,000 (all-in). The usual consequential orders applied.

Woo Bih Li
Judge of the Appellate Division

See Kee Oon
Judge of the Appellate Division

Philip Jeyaretnam
Judge of the High Court

Probin Stephan Dass, Gerard Vincent Nicholas, Abiramee Ghandhidass, Hillary Cheah Si-Min and Ng Jun Jie Justin (DennisMathiew) for the appellants;
Tham Wei Chern and Samuel Ang Rong En (Fullerton Law Chambers LLC) for the respondents.

Version No 1: 08 Oct 2024 (11:51 hrs)