

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

[2024] SGHC(A) 7

Originating Application No 59 of 2023

In the matter of Order 18 Rule 29(1) Rules of Court 2021

Between

Luckin Coffee Inc

... Applicant

And

- (1) Interactive Digital Finance Limited
- (2) Tiah Thee Kian
- (3) Credit Suisse AG

... Respondents

In the matter of Originating Claim No 225 of 2023 (Registrar's Appeal No 206 of 2023)

Between

- (1) Interactive Digital Finance Limited
- (2) Tiah Thee Kian

... Claimants

And

- (1) Credit Suisse AG
- (2) Luckin Coffee Inc

... Defendants

JUDGMENT

[Civil Procedure — Appeals — Leave]

[Civil Procedure — Service — Leave for service out of jurisdiction]

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Luckin Coffee Inc
v
Interactive Digital Finance Ltd and others

[2024] SGHC(A) 7

Appellate Division of the High Court — Originating Application No 59 of 2023

Woo Bih Li JAD and Debbie Ong Siew Ling JAD
19 December 2023

5 March 2024

Woo Bih Li JAD (delivering the judgment of the court):

The parties and the action

1 Interactive Digital Finance Limited (“IDFL”) is incorporated in the British Virgin Islands. It is beneficially owned and controlled by Mr Tiah Thee Kian (“Mr Tiah”) who is a Malaysian citizen. IDFL neither carries on a business nor has a permanent establishment in Singapore. For convenience, we refer to IDFL and Mr Tiah collectively as the “Claimants” below.

2 Credit Suisse AG is a global investment bank which has a branch in Singapore (also referred to as “CS Singapore”). The Claimants hold accounts with CS Singapore through which investments were transacted.

3 Luckin Coffee Inc (“Luckin”) is incorporated in the Cayman Islands with its shares listed on NASDAQ in the USA.

4 HC/OC 225/2023 (“OC 225”) is an action filed in Singapore on 13 April 2023 by IDFL and Mr Tiah against Credit Suisse AG as the first defendant and Luckin as the second defendant.

5 As Luckin is located outside Singapore, the Claimants obtained leave from the court to serve the originating claim on Luckin in the Cayman Islands. Luckin then applied to set aside the leave granted. This application was contested by the Claimants and also by Credit Suisse AG. The application was dismissed by the Deputy Registrar (the “DR”) and Luckin’s appeal against this decision was dismissed by a judge of the General Division of the High Court (the “Judge”). Luckin is now applying for permission to appeal against the Judge’s decision. Accordingly, Luckin is the applicant (the “Applicant”) and IDFL and Mr Tiah are the first and second respondents respectively in the application. Credit Suisse AG is the third respondent.

6 The Claimants are claiming for losses sustained on investments made through the Claimants’ accounts in CS Singapore. These investments include:

(a) Derivatives based on Luckin’s shares called Daily Accrual Callable Notes and Tracker Certificates with Bonus. These are collectively known as the “Derivative Products”.

(b) Direct purchases of shares issued by Luckin.

(collectively, the “Luckin Investments”)

7 All Luckin Investments were held in the Claimants’ accounts with CS Singapore or a custodian account operated by CS Singapore.

8 The Claimants' claims are primarily for deceit and for negligence because of representations made by CS Singapore and Luckin. The representations have been referred to as:

- (a) the “CS Representations” (being representations made by CS Singapore);
- (b) the “LK Representations” (being representations made by Luckin); and
- (c) the “Schakel Representations” (being representations made by one Mr Schakel who was Luckin’s Chief Financial Officer and Chief Strategy Officer at the material time).

9 The Claimants allege that they relied on the CS and LK Representations to engage in the Luckin Investments, where they had invested in derivative products which used securities issued by Luckin (as a reference share) or directly purchased shares issued by Luckin. These investments were made through accounts maintained with CS Singapore. The Claimants allege that the representations were false and that there was fraud in Luckin's affairs, which was discovered from 2 April 2020.

10 As a result of the Schakel Representations made after 2 April 2020, IDFL purchased additional shares in Luckin. The Claimants continued to hold on to the Luckin Investments save for the sale of some shares which is not material for present purposes.

11 As indicated above at [8], there is also a claim against both Credit Suisse AG and Luckin as joint tortfeasors for deceit under which the Claimants allege that Credit Suisse AG and Luckin acted under a common design to procure

investments in and/or based on Luckin’s shares via the LK Representations and CS Representations.

12 As mentioned, after the Claimants commenced an action in Singapore against Credit Suisse AG and Luckin, the Claimants subsequently obtained leave to serve the originating claim out of the jurisdiction on Luckin in the Cayman Islands *vide* HC/SUM 1197/2023 (“SUM 1197”) on 26 April 2023.

Luckin’s application to set aside the permission for Luckin to be served out of jurisdiction in SUM 1197

13 Subsequently, on 3 July 2023, Luckin filed HC/SUM 1973/2023 (“SUM 1973”) to seek the following reliefs:

- (a) a declaration that the Singapore courts have no jurisdiction against Luckin;
- (b) an order to set aside the leave granted to the Claimants to serve the Originating Claim on Luckin in the Cayman Islands;
- (c) further and/or in the alternative, an order that the Singapore action against Luckin be stayed because of a lack of jurisdiction by the Singapore courts; or
- (d) an order that the Singapore action against Luckin be stayed on the grounds of *forum non conveniens*.

14 The DR heard the application on 25 August 2023. He delivered his decision on 4 September 2023. We set out below the DR’s helpful summary of the relevant provisions in issue and the claims of the Claimants:

Under section 16(1)(a)(ii) of the Supreme Court of Judicature Act 1969, the General Division has jurisdiction to hear and try

an action in personam where the defendant is served with an originating claim outside Singapore in the circumstances authorised by and in the manner prescribed by the Rules of Court.

Under Order 8 Rule 1(1) of the Rules of Court 2021, an originating process may be served out of Singapore with the Court's approval if it can be shown that the Court has the jurisdiction or is the appropriate court to hear the action. Order 8 Rule 1(2) of the Rules of Court 2021 adds that to obtain the Court's approval, the claimant must apply to the Court by summons without notice and supported by affidavit, which must state (among other things) why the Court has the jurisdiction or is the appropriate court to hear the action.

Paragraph 63(2) of the Supreme Court Practice Directions 2021 ("SCPD 2021") states that, for the purposes of showing why the Court is the appropriate court to hear the action, the claimant should include in the supporting affidavit any relevant information showing that:

- (a) there is a good arguable case that there is sufficient nexus to Singapore;
- (b) Singapore is the forum conveniens; and
- (c) there is a serious question to be tried on the merits of the claim.

Paragraph 63(3) of the SCPD 2021 adds that for the purposes of showing that there is a good arguable case that there is sufficient nexus to Singapore, the claimant should "refer to any of the following non-exhaustive list of factors (as may be applicable) in the supporting affidavit". The description of the factors in paragraph 63(3)(a) to (t) of the SCPD 2021 as "non-exhaustive" signals that the requirement for there to be "a good arguable case that there is sufficient nexus to Singapore" may be satisfied even if a claim does not fall neatly within one of the factors enumerated in paragraph 63(3)(a) to (t) of the SCPD 2021.

The Claimants make the following claims against [Luckin]:

- (a) a claim for deceit against [Credit Suisse AG and Luckin] as joint tortfeasors by common design, based on one or more of the CS Representations and/or one or more of the LK Representations (the "joint tortfeasor [*sic*] claim");
- (b) a claim for deceit against [Luckin] based on one or more of the LK Representations;

(c) a claim for deceit against [Luckin] based on one or more of the Schakel Representations; and

(d) a claim for negligence against [Luckin] based on one or more of the Schakel Representations.

...

The Claimants rely on paragraph 63(3)(c), (f) and (p) of the SCPD 2021 to show that there is a good arguable case that there is sufficient nexus to Singapore.

Paragraph 63(3)(c) of the SCPD 2021 applies where “the claim is brought against a person duly served in or outside Singapore, and a person outside Singapore is a necessary or proper party to the claim”. This factor is relevant only to the joint tortfeasor claim....

...

Paragraph 63(3)(f)(i) of the SCPD 2021 applies where “the claim ... is founded on a tort ... which is constituted, at least in part, by an act or omission occurring in Singapore”.

Paragraph 63(3)(f)(ii) of the SCPD 2021 applies where “the claim ... is wholly or partly founded on ... damage suffered in Singapore caused by a tortious act or omission wherever occurring”.

Paragraph 63(3)(p) of the SCPD 2021 applies where “the claim is founded on a cause of action arising in Singapore”.

15 The main arguments advanced by the parties in SUM 1973 were based very much on the specific facts of the case. This can be seen from the following summary of the parties’ arguments before the DR below.

(a) *Luckin’s submissions:* Before the DR, Luckin argued that there was no sufficient nexus with Singapore under any of the factors provided for under paras 63(3)(c), (f) or (p) of the SCPD 2021. More specifically, concerning the claim of joint tortfeasorship, Luckin also argued that there was no common design between Credit Suisse AG and Luckin to deceive the Claimants as alleged which would satisfy para 63(3)(f) of the SCPD 2021 or raise a serious question to be tried. Any representation made was made outside Singapore, *ie*, in New York, where Luckin’s

shares are listed. New York is the place of the tort. The representations were received by the Claimants outside Singapore. It did not agree that reliance on the representations occurred in Singapore. The only connection with Singapore was the location in which the Claimants' accounts were opened, which they argue was fortuitous. While CS Singapore was located in Singapore, the Claimants and Luckin were based outside Singapore and bore no personal connections with Singapore. While it may be correct for the Claimants to sue Credit Suisse AG, any claim against Luckin should be made in New York and not Singapore. The Deposit Agreement for the American Depository Shares offered for sale by Luckin states that it is governed by New York law. The fact that Credit Suisse AG filed a contribution notice against Luckin was insufficient to drag Luckin into the jurisdiction of Singapore.

(b) *Claimants' Submissions*: The Claimants submitted that the requirement of a sufficient nexus had been made out via paras 63(3)(c), (f) and (p) of the SCPD 2021.

(i) Under para 63(3)(c) of the SCPD 2021, the Claimants argued that Credit Suisse AG is a person duly served in Singapore and Luckin is a necessary or proper party for three reasons. First, there is no dispute that Credit Suisse AG was duly served in Singapore. Second, Luckin is a necessary and proper party to the joint tortfeasor claim. An investigation must be conducted into the alleged common design between Credit Suisse AG and Luckin. This would require an order of discovery against and the cross-examination of both defendants. Third, Credit Suisse AG issued a contribution notice against Luckin in

respect of claims made against Credit Suisse AG by the Claimants.

(ii) Under para 63(3)(f) of the SCPD 2021, the Claimants argued that both limbs of this paragraph are made out to establish sufficient jurisdictional nexus to Singapore. Concerning the first limb under para 63(3)(f)(i), the Claimants argued that the LK Representations were made in Singapore because CS Singapore communicated them to the Claimants in Singapore. In any event, based on Luckin's Defence, the LK Representations were made in China and not New York. The Schakel Representations were also made in China.

Furthermore, another aspect of the tort was the Claimants' reliance on the various representations. The reliance was in Singapore as the investments were made through the accounts opened with CS Singapore. The torts of deceit and negligence were constituted in Singapore because reliance occurred in Singapore. This was relevant for para 63(3)(p) of the SCPD 2021.

Concerning the second limb under para 63(3)(f)(ii), the damage was suffered in Singapore as the Luckin Investments were held in accounts opened with CS Singapore. The damage occurred when the investments were made through these accounts.

(iii) On the requirement that Singapore is the more appropriate forum to determine the action, the Claimants argued that Singapore is the more appropriate forum compared to New York. It was undesirable to have one set of proceedings in

Singapore against Credit Suisse AG and one set in New York against Luckin.

(c) *Credit Suisse AG's submissions*: Credit Suisse AG aligned itself with the Claimants' position that OC 225 should be heard in Singapore. It submitted that the factual matrix underpinning the claims against both Luckin and Credit Suisse AG are inextricably linked, given that the alleged CS Representations, which form the basis of the claims against CS Singapore, are closely connected to the LK Representations and Schakel Representations. Furthermore, the same loss is claimed concerning all the claims, whether those claims are formulated against Luckin or Credit Suisse AG individually or both. Given the inextricable link between the Claimant's claims against Luckin and Credit Suisse AG, Credit Suisse AG filed a contribution notice against Luckin on 13 July 2023.

(d) Credit Suisse AG also argued that Singapore is a more appropriate forum than New York to hear the claims. New York would not be able to hear claims against Credit Suisse AG because of the exclusive jurisdiction agreement, which bound the Claimants to commence claims against Credit Suisse AG in Singapore. Furthermore, there were other important connecting factors pointing to Singapore, such as the location of potential witnesses and the place from which the CS Representations were given.

16 Having heard the parties' submissions, the DR dismissed SUM 1973 on 4 September 2023. He was of the view that there is a good arguable case that there is sufficient nexus to Singapore under paras 63(3)(c), (f) and (p) of the SCPD 2021. The DR decided that any tort of deceit or negligence would be

constituted when reliance on the relevant representations took place in Singapore by the investments made by the Claimants or by holding onto the investments already made. Damage was suffered in Singapore when there was a fall in the value of the investments. Regarding *forum non conveniens*, the DR observed that Luckin pointed only to New York as the more appropriate forum than Singapore. He was satisfied that Singapore is the *forum conveniens* of the dispute. This is because whether the Claimants can succeed in the claims against Luckin for deceit and negligence falls to be determined under Singapore law, and Credit Suisse AG’s witnesses are based in Singapore. The location of the Claimants’ and Luckin’s witnesses and the location of documents are neutral factors. The DR also made the following observations:

While [Luckin’s] securities are listed on NASDAQ in New York, [Luckin] must have appreciated that it would have attracted investors from around the world. I do not regard [Luckin’s] unilateral submission to the jurisdiction of the New York courts as determinative of the matter.

Given the relationship between the Claimants’ claims against the [Defendants] (in particular, the overlapping damage suffered), there are clear juridical advantages in having the claims against [Luckin] tried in Singapore together with the claims against [Credit Suisse AG].

The subsequent appeal to the General Division of the High Court

17 Luckin then appealed to a judge of the General Division of the High Court (“the Judge”) *vide* HC/RA 206/2023 (“RA 206”). The appeal was heard on 21 November 2023. The Judge dismissed the appeal, finding that he was in “broad agreement” with the DR’s decision:

I agree with the Claimants that there is a good arguable case that there is sufficient nexus to Singapore because their claims against [Luckin] for deceit and/or negligence fall within:

- SCPD paragraph 63(3)(f)(i) – Reliance on the LK Representations and the Schakel Representations took place in Singapore where the transactions were effected.

- SCPD, paragraph 63(3)(f)(ii) – Damage was suffered in Singapore where the accounts through which the transactions were effected were held.
- SCPD, paragraph 63(3)(p) – The causes of action arose in Singapore.

It is not necessary for this purpose to consider the claim based on joint tortfeasorship by common design.

Given my finding that there is a good arguable case of sufficient nexus to Singapore based on SCPD, paragraphs 63(3)(f) and (p), it is unnecessary to separately consider whether there are serious questions to be tried on the merits of the claims for deceit and negligence.

As for the issue of *forum conveniens*, I agree with the Claimants and [Credit Suisse AG] that Singapore is the proper forum. As the place of the torts was Singapore, it is also *prima facie* the natural forum. Further, the claim against [Credit Suisse AG] is subject to the exclusive jurisdiction of Singapore. I agree that given the overlap between the claims against [Credit Suisse AG] and [Luckin], and [Credit Suisse AG's] claim against [Luckin] for contribution, fragmentation should be avoided as far as possible.

18 Concerning whether Credit Suisse AG's claim for contribution against Luckin could satisfy para 63(3)(q) of the SCPD, the Judge considered that the expression "in respect of a liability enforceable by proceedings in Singapore" means "the liability faced by the party seeking indemnity or contribution".

Luckin's case on seeking permission to appeal

19 Luckin now seeks permission to appeal against the decision of the Judge on the grounds that it raises the following three questions:

- (a) *Question of general principle decided for the first time*: Whether a foreign issuer of shares is subject to the Singapore courts' jurisdiction where an investor has purchased shares and/or derivative products based on that foreign issuer's shares through an investment account in Singapore ("Question 1").

(b) *Question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage:* Whether a foreign company listed on a foreign stock exchange is subject to the Singapore courts’ jurisdiction where an investor has purchased derivative products based on that listed company’s shares (which products the listed company had no involvement in preparing and/or marketing) through a bank account in Singapore (“Question 2”).

(c) *Question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage:* Whether the filing of a contribution notice amounts to a sufficient nexus to establish jurisdiction over a foreign defendant in Singapore, and whether para 63(3)(q) of the SCPD 2021 refers to the liability faced by the party seeking indemnity or contribution when it refers to “a liability enforceable by proceedings in Singapore” (“Question 3”).

Our decision

20 In seeking permission to appeal, it is trite that the three grounds upon which such permission may be granted are: (a) a *prima facie* error of law; (b) a question of general principle decided for the first time; or (c) a question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage: *Lee Kuan Yew v Tang Liang Hong and another* [1997] 2 SLR(R) 862 at [16].

21 Questions 1 and 2 are substantially the same and may be considered together. It is evident from how the questions are framed that they are framed widely without regard to the specific facts of the case at hand. The questions, as framed, are too broad and may not be answered without regard to the specific facts. The Judge had applied established principles concerning the service out

of jurisdiction to the specific facts of the case. Matters of application of established principles do not raise a question of general principle: *Lin Jianwei v Tung Yu-Lien Margaret and another* [2021] 2 SLR 683 at [86]. In effect, what Luckin is adverting to is that a foreign issuer of shares listed on a foreign stock exchange can *never* be subject to the Singapore courts' jurisdiction for a tort in respect of an investment by a claimant in derivative products which used such shares as a reference share or in respect of the direct purchase of such shares, regardless of the facts of the case. Yet, Luckin never couched its case so widely in the courts below.

22 Luckin's emphasis on its status as the issuer of foreign shares has no bearing on the analysis of whether Singapore is *forum conveniens*. As Credit Suisse AG highlights, the claims against Luckin are for its alleged misrepresentation based on the LK Representations and the Schakel Representations. Any liability of Luckin would originate from these representations, not from its issuance of shares. This is a case concerning claims for misrepresentation. The more specific question is whether there are sufficient factors connecting these misrepresentation claims to Singapore which would warrant the case being heard here. The legal principles on the connecting factors for a claim of misrepresentation (*ie*, concerning the question of where reliance, damage and cause of action have occurred in a jurisdiction) are well established. Significantly, Luckin does not allege that the DR or the Judge made *prima facie* errors of law or fact in the application of these principles.

23 Addressing Question 3, the second part pertains to para 63(3)(q) of the SCPD 2021. We reiterate that this applies where "the claim is for a contribution or an indemnity in respect of a liability enforceable by proceedings in Singapore". While the Claimants had alluded to the contribution notice by

Credit Suisse AG against Luckin, this was raised in the context of an argument on para 63(3)(c), not para 63(3)(q).

24 It was Credit Suisse AG who argued before the DR that it would have been entitled to rely on para 63(3)(q) to bring Luckin into OC 225, if necessary. In the appeal before the Judge, Luckin had apparently argued that para 63(3)(q) pertained to Luckin's liability, which was not enforceable by proceedings in Singapore, as opposed to the liability of Credit Suisse AG to the Claimants. The Judge was of the view that the provision refers to the liability faced by the party seeking indemnity or contribution, *ie*, the liability faced by Credit Suisse AG to the Claimants.

25 However, the meaning of para 63(3)(q) of the SCPD 2021 is not material in the present circumstances as the Claimants did not rely on that provision in seeking leave to serve the originating claim on Luckin outside Singapore. Furthermore, para 63(3)(q) was not in any case essential to the Judge's decision since he was of the view that there was a good arguable case of a sufficient nexus to Singapore under paras 63(3)(f) and (p) of the SCPD 2021.

26 The first part of Question 3 is not accurately framed since the Claimants did not suggest that the mere filing of a contribution notice by Credit Suisse AG necessarily amounts to a sufficient nexus with Singapore.

Conclusion and costs

27 In the circumstances, we dismiss Luckin's application in OA 59 for permission to appeal against the decision of the Judge in RA 206.

28 We order that Luckin is to pay the costs of the application fixed at \$7,000, inclusive of disbursements, to the Claimants collectively, and also to

Credit Suisse AG individually. The usual consequential orders apply. Any security for costs provided by Luckin is to be shared equally between the Claimants on the one hand and Credit Suisse AG on the other hand.

Woo Bih Li
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

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