9. CONFLICT OF LAWS

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Introduction

9.1 For 2006, there were seven conflict of laws cases which will be examined in this review.

9.2 As in previous years, it is useful to note that conflict of laws cases sometimes relate to other areas of law. In these situations, this review will only examine those parts of the case that are relevant to the field of conflict of laws.

Stay of proceedings

9.3 There were three cases relating to stay of proceedings. The first was *Kuala Lumpur City Securities Sdn Bhd v Boston Asset Management Pte Ltd* [2006] SGHC 99. The facts of this case are somewhat convoluted but for the purposes of this review can be summarised as follows.

9.4 The plaintiff is a Malaysian securities firm based in Kuala Lumpur. The second defendant was the Chief Executive Officer and a director of the first defendant, a company incorporated in Singapore functioning as an asset management agent. The first defendant opened a trading account with the plaintiff which was guaranteed by the second defendant. Market volatility saw substantial losses being incurred by the defendants and the plaintiff wrote to the first defendant demanding payment of outstanding sums. When payment was not forthcoming, the plaintiff commenced proceedings against the first defendant. When no appearance was entered, the plaintiff applied for and obtained default judgment against the first defendant. Proceedings were also commenced against the second defendant and after a series of applications by the second defendant seeking extensions of time to file his defence, the plaintiff also obtained default judgment against the second defendant.

9.5 Both defendants applied to set aside the default judgments, for stay of proceedings and for stay of execution on the judgments. These applications were dismissed by the assistant registrar and the defendants appealed. In the High Court, the appeal was also dismissed by Lai Siu Chiu J.

9.6 With regards to the application for stay of proceedings, the first defendant contended, under the doctrine of *forum non conveniens*, that Malaysia was the more appropriate forum for the plaintiff's claim. Lai J held that since the first defendant had failed to discharge the burden of raising an arguable defence thereby allowing the court to set aside the default judgment, there was no necessity to consider this point. This must be correct. A stay application based on *forum non conveniens* would be, as a matter of principle, appropriate before judgment had been obtained or, in the case of a default judgment, if and after the judgment had been set aside.

9.7 The second defendant contended that the proceedings should be stayed on the basis of an exclusive jurisdiction clause in the guarantee in favour of the courts of Malaysia. Lai J also refused to stay the proceedings although the basis upon which it was made is not as clear. She could have dismissed the second defendant's application on the same basis as the first defendant's, *ie*, that the burden of raising an arguable defence had not been discharged. This position would have been justifiable since a stay application, whether based on *forum non conveniens* or a jurisdiction clause, is a jurisdictional matter.

9.8 However, Lai J did not take this approach. Instead, she seemed to consider the plaintiff's submissions that notwithstanding the exclusive jurisdiction clause, there were good grounds for allowing the proceedings in Singapore to continue.

9.9 It is useful to make a number of observations here. First, by considering the plaintiff's submissions, the starting point must be that where an exclusive jurisdiction clause exists, the court should order a stay unless, and this is the second point, there is strong cause for refusing the stay. It is not clear if Lai J was referring to the "strong cause" test when stating that "good grounds" were needed for allowing the proceedings in Singapore to continue. Since no authorities were cited in this part of the judgment, it is difficult to ascertain whether Lai J was following a clear line of authorities using the "strong cause" test or whether she was choosing a different approach. Thirdly, of the plaintiff's submissions, Lai J seems to focus on the

point that it had not been proved that Malaysian law did not materially differ from Singapore law. It is odd for the court to focus on this because even if it had been proved that there was a material difference, this would not necessarily have constituted strong cause to refuse the stay. If this analysis is correct, then the court should have ordered a stay since strong cause had not been shown (assuming that the court was adopting the traditional test of "strong cause"). This is not to say that the decision to refuse the stay was wrong. As part of the plaintiff's submissions, it was argued that the defendants had no arguable defence to the plaintiff's claims. As such, the court could have taken this to mean that the defendants did not genuinely desire trial in the contractually chosen forum thereby leading to the inference of the existence of exceptional circumstances leading to strong cause.

9.10 The second case was *Peters Roger May v Pinder Lillian Gek Lian* [2006] 2 SLR 381. The appellant was the executor of the last will of the testator who had settled in Singapore, had become a citizen and, despite travelling extensively over the years, invariably returned to Singapore. On his last trip to England, due to a diagnosis of deep vein thrombosis, he was prevented from returning to Singapore as planned. Subsequently, his health took a turn for the worse and he unexpectedly passed away in England. Probate proceedings were commenced and an order granting probate was made with the respondent widow's consent. The order, however, left unresolved the issue of the testator's domicile. The appellant applied under s 7 of the Probate and Administration Act (Cap 251, 2000 Rev Ed) for a determination whether a notation should be endorsed on the grant of probate that the testator died domiciled in Singapore. The respondent applied to stay these proceedings. The assistant registrar granted the respondent's application and the executor appealed. In the High Court, V K Rajah J (as he then was) allowed the appeal.

9.11 With regards to the issue of *forum non conveniens*, Rajah J set out in detail the existing law according to the *locus classicus*, *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 ("*The Spiliada*") and as adopted by various cases in Singapore. What is useful is the court making explicit that the task before it was to "find that *forum* which is the more suitable for the ends of justice, and is preferable, because pursuit of the litigation in that *forum* is more likely to secure those ends" (at [21]). It was to this end that the two-stage test had been formulated.

9.12 Further, in applying this test, the court had to balance competing interests and weigh the factors under consideration according to the requirements of each factual matrix. Put another way, the same factors may be accorded different weightage by the courts in different situations.

9.13 It is not necessary to traverse the court's entire application of this test save to make four observations. First, Rajah J considered it highly relevant that the respondent had consented to the grant of probate to the executor and opined that she could not now contend that Singapore was not an appropriate forum to determine and notate the testator's domicile for the purposes of the grant of probate. It is not immediately clear why this is highly relevant. Acknowledging the forum's jurisdiction does not preclude one from contending that there is a clearly or distinctly more appropriate forum elsewhere. Indeed, this is what the respondent needs to show in the first stage of the two-stage test in *The Spiliada*. It is not necessary for one to show that Singapore was *not an appropriate forum*. However, one can feel intuitively drawn to the consideration as presented by Rajah J as it does seem capricious of the respondent. In fairness, the court did not consider this point conclusive and perhaps the inference here is that the respondent's evidential burden is simply a more onerous one to discharge.

9.14 Secondly, the court observed that even if the respondent's submission that the majority of relevant witnesses were in England (therefore making it a more convenient forum) was accurate, the availability of video-conferencing facilities warranted a pragmatic reassessment of the needs for the physical presence of witnesses. Put another way, the location of witnesses was no longer as important a connecting factor today as it might have been in the past.

9.15 Thirdly, the court dismissed the respondent's argument that there were competing proceedings to determine the testator's domicile in the English courts. This must be correct as the court found that these proceedings were commenced for the purpose of showing the existence of a competing jurisdiction.

9.16 Finally, it was submitted that the respondent would enjoy a legitimate juridical advantage in having the matter of domicile decided in England. Put another way, she would be deprived of this advantage should the proceedings not be stayed. The court correctly pointed out that the second stage of the test in *The Spiliada* only operates when the court is

minded to grant a stay (which in this case it was not) and at that point, it would be the party who is opposing the stay (in this case the appellant) whose legitimate juridical advantage would be considered. This submission was therefore not relevant.

9.17 The court did also address the issue of determining the testator's domicile. This will be dealt with in para 9.28 below.

9.18 The third case was *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2006] 2 SLR 850 (HC), [2007] 1 SLR 377 (CA). In this case, the respondent, a German national and Singapore permanent resident, was hired by the second appellant to market salvaged Tang dynasty artifacts. This initial oral arrangement was eventually replaced by a written employment agreement which contained a choice of law and jurisdiction clause, both pointing to Germany. The second appellant's business was subsequently transferred to the first appellant who terminated the respondent's services. The respondent commenced proceedings in Germany seeking damages for salary and expenses, and for a declaration that the termination was not effective. A consent judgment for a part of the sum was entered into and the German court deferred the hearing on the issue of termination to a later date.

9.19 The appellants commenced their own proceedings in Singapore, some nine months after the German proceedings, suing for conversion, breach of confidentiality, breach of fiduciary duty and deceit. The respondent applied for a stay of proceedings and succeeded in the High Court before Woo Bih Li J. The matter then came before the Court of Appeal.

9.20 Before looking at the Court of Appeal's analysis of *forum non conveniens* and its application to this case, it is useful to make one preliminary observation. Despite the existence of a jurisdiction clause in favour of the German courts, there is no mention of this in the Court of Appeal's judgment presumably because arguments relating to a stay based on the jurisdiction clause were not advanced. There was discussion by Woo J in the High Court but that revolved around whether the jurisdiction clause in question was exclusive. The learned judge concluded that it was not exclusive and that the respondent had to proceed on his stay application on the basis of *forum non conveniens*. While the High Court's approach in determining the nature of the jurisdiction clause can be critiqued (see Adrian Briggs, "A Map or a Maze: Jurisdiction and Choice of Law in the Court of Appeal"

(2007) 11 SYBIL (forthcoming) for an insightful discussion), this finding was not faulted and was not brought to the Court of Appeal's attention.

9.21 The Court of Appeal, after considering the law and principles governing *forum non conveniens*, proceeded to the first stage of the test in *The Spiliada* (*supra* para 9.11) where it considered four factors.

9.22 The first group of factors, referred to as general connecting factors, revolved around jurisdictional connections of the parties involved and the location and compellability of relevant witnesses. The court concluded that these general connecting factors pointed towards Singapore. It is significant to note here the approach the court took with regards to the location and compellability of the witnesses. They opined that the importance of the location and the compellability of the witnesses depended on whether the main disputes revolved around questions of fact. Where they did, then the location of the witnesses took on a greater weight as the judge needed to be able to assess the witness's credibility. The next step then was for the court to determine the significance of questions of fact in the Singapore proceedings and this involved looking at the nature of the causes of action pleaded. Doing so, the court concluded that each cause of action was dependent upon the determination of factual issues and that there would be considerable reliance on witnesses' testimony. As such, the court attached significant weight to the location of the witnesses, *ie*, Singapore.

9.23 At one level, this approach makes sense. However, one notes that in the High Court, Woo J did not consider this point persuasive. One also wonders how this sits with Rajah J's observation in *Peters Roger May v Pinder Lillian Gek Lian* (*supra* para 9.10), that the availability of video-conferencing facilities meant that the location of witnesses was no longer as important a connecting factor today as it might have been in the past. While the possibility of video conferencing was argued by the respondent, this was not addressed by the Court of Appeal. Perhaps, this can be explained by the court considering it significant that the witnesses were compellable to testify in the Singapore proceedings whereas they might not have been in the German proceedings. This connection seems hard to make and perhaps the position can be clarified at some later opportunity.

9.24 The second factor was to identify the jurisdiction in which the torts occurred. This was based on the principle enunciated in *Cordoba Shipping Co Ltd v National State Bank, Elizabeth, New Jersey (The Albaforth)* [1984] 2 Lloyd's Rep 91 that where the substance of an alleged tort is committed

within a jurisdiction, there is a strong presumption that that jurisdiction is the natural forum to determine that matter. The court cited this with approval and opined that this was a strong factor pointing to Singapore as the natural forum.

9.25 The third factor that the court took into account was the law that would govern the issues before the court. This involved a lengthy discussion on choice of law rules which will be discussed in paras 9.29–9.36 below. For our purposes here, it is sufficient to note the court's conclusion that Singapore law governed the tortious claims in conversion and deceit, and that German law governed the claims in breach of confidentiality and breach of fiduciary duty. As such, the court opined that the third factor was a neutral factor.

9.26 The final factor was the effect of concurrent proceedings in Germany. The court acknowledged that there was an overlap of facts and issues between the German and Singapore proceedings and that this gave rise to the possibility of conflicting judgments. However, the court went on to opine that this was not decisive. On balance, the court concluded that the burden of showing that there was a clearly more appropriate forum elsewhere had not been discharged. As such, the first stage of the test in *The Spiliada* (*supra* para 9.11) had not been satisfied.

9.27 This case is useful in that it shows clearly that not only the weighting of factors at the first stage is relative within the same case but it is also relative across cases and that one should look into the entire factual matrix to determine the weight that should be attributed to any proposed connecting factor.

Choice of law

9.28 There were two cases relating to choice of law, both of which were also considered above. In *Peters Roger May v Pinder Lillian Gek Lian* (*supra* para 9.10), the question revolved around a stay of proceedings application to determine the natural forum for determining the testator's domicile (see paras 9.10–9.17 above). While the court deliberately did not determine the issue of the testator's domicile (leaving it instead for the notation proceedings), it did make some comments regarding choice of law and domicile which in the interests of completeness will be briefly mentioned here. First, a person obtains a domicile of origin on birth which prevails until

a domicile of choice or dependence is obtained. Secondly, a person cannot have more than one domicile at any one time. Thirdly, the person alleging a change in domicile bears the burden of proving the allegation and the burden required to prove a change of domicile of origin is higher than to prove a change of domicile of choice. Finally, whether a domicile has been changed is determined according to the law of the forum.

9.29 *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* (*supra* para 9.18) provides more weighty observations relating to choice of law. Choice of law considerations relating to the issues in the Singapore proceedings were a group of factors the court took into account in the context of a stay application. Indeed, the court acknowledged that choice of law considerations could be significant factors in determining what was the natural forum as it was generally more efficient and effective for a court to apply the law of its own jurisdiction to the substantive issues at hand.

9.30 As a starting point, the court addressed the question as to whether it was proper for the appellants to sue in tort and equity as opposed to contract. The suggestion, of course, was that since the respondent's actions complained of arose out of the contract, then the appellants should have framed the action in contract. Alternatively, since the tort actions did arise out of the contractual relationship of employment, despite framing the causes of action in tort, the chosen governing law of the contract should nonetheless apply. The Court of Appeal considered this and opined that in the absence of bad faith, it was entirely appropriate for the appellants to frame the cause of action in a way most advantageous to them and that the presence of a contractual relationship did not preclude a tortious duty of care.

9.31 Having said that, the court went on to look at the choice of law considerations for actions in both tort and equity. On the former, the court traced the genesis and development of the "double actionability" rule. It noted that the starting point was that a tort had to be actionable by the *lex fori* and *lex loci delicti*. A flexible exception to the "double actionability" rule was subsequently introduced which gave the court the freedom to allow for the operation of a law other than the *lex fori* and *lex loci delicti*. These statements are unremarkable and represent the law as accepted in Singapore by *Parno v SC Marine Pte Ltd* [1999] 4 SLR 579.

9.32 What is significant is the court's discussion of whether this flexible exception should be applied to a tort that is committed entirely in Singapore, *ie*, a local tort. The traditional position was that in the case of a local tort, the law that governs would be that of the *lex fori*. As the court concluded that both the torts of conversion and deceit had occurred in Singapore, this would mean that Singapore law, as the *lex fori*, applied.

9.33 However, the court opined that the flexible exception should also apply to a local tort. Put another way, it is possible to conceive of a tort happening by chance in Singapore and with no other connection to Singapore whatsoever. In this instance, *inter alia*, one can see the wisdom and value of having the flexibility to apply the law of the jurisdiction that was most connected to the substance of that tort. Applying this analysis to the facts, the court nonetheless concluded that there was no scope for a flexible exception to apply.

9.34 This part of the decision which extends the exception to local torts is a significant step which the Singapore courts have taken and is applauded by Briggs (*supra* para 9.20). He does go on to argue that the court should have used the flexible exception to apply the contractual choice of German law as the *lex causae* because the torts in question arose out of the employment relationship from a contract that was governed by German law.

9.35 With regards to choice of law pertaining to the actions in equity, the court drew extensively from the leading expert in the Commonwealth on this topic: see Yeo Tiong Min, *Choice of Law for Equitable Doctrines* (Oxford University Press, 2004). The court opined that since equitable obligations arose from different bases and the concept of equity was not a separate and distinct category in itself, one had to examine the nature of the equitable obligation in question, within its own factual matrix, to determine the *lex causae*. Where an equitable obligation was premised on an established legal category like contract or tort, then the choice of law should be based on that respective established category. Having said that, the court left open the possibility of future developments resulting in equitable obligations constituting a separate established category with its own choice of law rules. Applying this to the facts, the court concluded that the equitable actions arose out of the employment agreement and, as such, the appropriate choice of law rule to apply to these actions would be the law governing the contract, *ie*, German law.

9.36 Although one could disagree with the conclusions of the court *vis-à-vis* the *lex causae* of the various causes of action, it is submitted that its approach to the choice of law problem is correct and this case represents a significant development in the area of choice of law in tortious and equitable actions in Singapore law.

Foreign judgments

9.37 There were two cases relating to foreign judgments. The first was *Westacre Investments Inc v Yugoimport SDPR* [2007] 1 SLR 501. This case involved the registration in Singapore of an English judgment obtained by a common law action on an arbitration award. Judgment was entered in 1998. Some six years later, the judgment creditor, Westacre, registered the English judgment in Singapore pursuant to the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) ("RECJA"). When given notice of the registration, the judgment debtor applied to set aside the registration. The application to set aside the registration was dismissed although the assistant registrar restricted the execution of the judgment to garnishee proceedings. The judgment debtor appealed.

9.38 Counsel for the judgement debtor submitted arguments that broadly fell into two categories. The first category related to arguments that the English judgment was time-barred or limited such that registration was not possible. The second category addressed the question as to whether it was just and convenient to register the English judgment in Singapore.

9.39 On the first category of arguments, the court made it clear that whether a judgment was time-barred from registration was to be determined by the Singapore law on limitations and not English law. The court further noted that s 3(1) of the RECJA provided for a 12-month period within which a judgment could be registered. Therefore, the judgment could not *prima facie* be registered. However, it did provide for older judgments to be registered if the judgment creditor could show that it was "just and convenient" to register the judgment despite the delay.

9.40 In determining whether it was just and convenient, the court opined that the judgment creditor must show more than that the judgment debtor would not suffer prejudice from registration. A good reason for the delay must be given. On this, the court drew assistance from cases relating to leave to issue a writ of execution out of time. It drew an analogy between these

cases and the present case because both were applications to enable a judgment creditor to take steps towards the enforcement of a judgment out of time. From these cases, the court adopted the position that in deciding whether it was just and convenient to register a judgment out of time, the court would consider the reason for the judgment creditor's delay and the prejudice an extension of time might have on the judgment debtor.

9.41 The judgment creditor's reasons for the delay were that they had been deceived by the judgment debtor about its financial condition and that political instability in Yugoslavia made it impracticable to initiate recovery. The court did not seem to accept these reasons as sufficient.

9.42 The court went on to consider the effect of registration, presumably to determine the potential prejudice caused to the judgment debtor. It noted that when a judgment was registered, s 3(3)(*a*) of the RECJA provided for it to have the same force and effect as if it had been obtained upon the date of registration. This meant that whereas leave was required for the issue of a writ of execution on the judgment in England, no leave was required for that to be issued in Singapore upon registration because the six-year period had not elapsed. The court considered this to be a prejudice to the judgment debtor. The court acknowledged that while some prejudice was inevitable to the judgment debtor whenever a judgment was registered under the RECJA, where registration created easier access to enforcement through writs of execution the prejudice must be taken into account in deciding whether registration should be allowed. This must be correct. Taking into account the six-year limitation in England and the 12-month registration period in Singapore, this type of situation would ordinarily not arise. However, when it does, it is prudent for the courts to take this into account.

9.43 The court went on to consider whether any restrictions could be imposed upon the manner of execution of the registration of the English judgment. It opined that the court did not have any power, whether by way of s 3(3)(*b*) of the RECJA or O 92 rr 4 and 5 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed), to impose any such restrictions. If a judgment deserved to be registered, it should be registered with full effect and this itself resulted in a clear prejudice to the judgment debtor that further militated against registration.

9.44 The second case was *Lee Pauline Bradnam v Lee Thien Terh George* [2006] SGHC 84. The parties' marriage broke down and the defendant, resident in Singapore, commenced divorce proceedings in Australia where

the plaintiff lives with her children. A child support agreement was entered into as part of the ancillary matters and registered as an order of court in the Family Court of Australia in Melbourne. This child support agreement was to have been registered at a child support agency but its registration was declined by the agency. The defendant subsequently breached the order of court and the plaintiff sought to register the order in Singapore under the RECJA.

9.45 While the provisions of the RECJA have been extended to judgments of the Family Court of Australia, the question facing the court was whether an order for periodic maintenance fell within the definition of a judgment in the RECJA.

9.46 The difficulty was that for a judgment to be registrable, it had to be final and conclusive, and for a sum of money that was payable. The court considered the nature of a maintenance order and opined that it did not satisfy this definition. First, unless the maintenance order was for a lump sum either payable immediately or over a period of time, a periodic maintenance order was characterised by having amounts due payable periodically and in the future. Secondly, a maintenance order could be varied to take into account changing needs of the children or the financial situation of the parties. The court noted that the RECJA only allowed for the court to have control over the registered judgment in so far as it related to execution. In other words, the Singapore court would have no power of variation. Further, even if the order were varied by the originating court, there was no facility within the RECJA to then cancel or revoke the earlier registered order.

9.47 While not wrong, it is submitted that the first argument is not as persuasive as it may initially seem. While judgments are usually for a sum that is immediately payable, why should orders for determined sums which are payable periodically be that different? The court seemed willing to entertain the idea that a lump sum payable over time is acceptable. It is a small leap from here to the idea of smaller lump sums payable over time. The concern here should be certainty of the sum payable and not the period/manner of payment. The latter relates to matters of execution and, as the court acknowledged in *Lee Pauline Bradnam v Lee Thien Terh George*, is well within the ambit of its powers under the RECJA.

9.48 The second reason is more persuasive and should by itself carry the day. It is clear that the court was influenced by the existence of the Maintenance Orders (Reciprocal Enforcement) Act (Cap 169, 1985 Rev Ed)

("MO(RE)A"). Under that Act, the court does have the power to vary and revoke foreign maintenance orders that are registered in Singapore. Contrasted with the provisions of the RECJA, the conclusion of the court that maintenance orders are not registrable under the RECJA must surely be correct.

9.49 For the sake of completeness, it is important to note that while the decision is correct, the circumstances of this case seem unfortunate. By way of *obiter*, the court opined that since the child support agreement was not registrable with the Australian child support agency, the plaintiff could not register the maintenance order under the MO(RE)A. It is not clear why this is so. The provisions of the MO(RE)A do not seem to require a maintenance order to be registered with a child support agency. By itself, the order should be registrable under s 6 of the MO(RE)A. But assuming that the court is correct here, then this plaintiff is left without a remedy.

Interlocutory proceedings

9.50 There were two cases relating to interlocutory proceedings. Both involved applications for Mareva injunctions in relation to foreign arbitral proceedings. Because these cases are materially the same, save for one distinguishing factor, it is useful to discuss them together. The first case was *Swift-Fortune Ltd v Magnifica Marine SA* [2006] 2 SLR 323 (HC), [2007] 1 SLR 629 (CA) ("*Swift-Fortune*"). This case involved a memorandum of agreement for the sale of a vessel which provided for any dispute to be referred to arbitration in London. On the day before completion, the plaintiff sought and obtained a Mareva injunction to preserve assets pending arbitral proceedings in London. The defendant applied for, *inter alia*, a discharge of the Mareva injunction. The issue before the court was whether it could order a Mareva injunction to support foreign arbitral proceedings. In the High Court, Judith Prakash J answered this question in the negative.

9.51 This same question was faced by the court in *Front Carriers Ltd v Atlantic & Orient Shipping Corp* [2006] 3 SLR 854 ("*Front Carriers*"). In this case, the plaintiff commenced arbitration proceedings in London for breach of a time charter and also applied for a Mareva injunction in Singapore under the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("IAA"). The defendant applied to set aside the Mareva injunction on the grounds that the High Court had no jurisdiction to order the Mareva injunction in support of the arbitration proceedings in London and that the plaintiff had

not met the requirements for the grant of a Mareva injunction. In the High Court, Belinda Ang Saw Ean J answered the question of jurisdiction in the affirmative. In other words, the High Court could order a Mareva injunction in support of foreign arbitral proceedings. The Mareva injunction was, nonetheless, discharged as the court held that the plaintiff did not meet the requirements of showing that there was a real risk of dissipation of the assets within the jurisdiction.

9.52 At first blush, these cases seem to be in conflict. Both Prakash J and Ang J had turned their minds to the same question and came to different conclusions. The Court of Appeal in *Swift-Fortune* was faced with the task of resolving these conflicting decisions.

9.53 As Ang J in *Front Carriers* had based part of her decision on the application of s 12(7) of the IAA, the Court of Appeal in *Swift-Fortune* began by applying established principles of statutory interpretation to give effect to the intention of Parliament. It acknowledged that the objective of the IAA was to promote international arbitration in Singapore. The court then looked at the history of the enactment of s 12(7) to determine its true meaning. It concluded that s 12(7) did enable the court to grant interim measures to assist international arbitrations. The question was whether the powers in s 12(7) extended to all international arbitrations or was limited to Singapore international arbitrations. Without going into every detail of the court's interpretive process, it is sufficient to say that the court considered, *inter alia*, the legislative history of the provision, placement of the provision within the IAA, concerns of legislating extraterritorially and issues of interfering with foreign arbitration proceedings. Based on these considerations, the court opined that s 12(7) was intended to only apply to Singapore international arbitrations. As such, it did not give power to the Singapore courts to grant a Mareva injunction to assist foreign arbitral proceedings.

9.54 However, this was not to say that Ang J's decision was incorrect. The learned judge had gone on to consider the court's powers under s 4(10) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("CLA") and concluded that it also conferred a general power on the court to grant a Mareva injunction in support of foreign arbitral proceedings. The Court of Appeal considered this alternative ground and noted that the application of s 4(10) of the CLA was subject to the principles laid down in the case of *Siskina v Distos Compania Naviera SA* [1979] AC 210 ("*Siskina*").

9.55 These principles were considered by the Court of Appeal in *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd* [2006] 1 SLR 112 ("*Karaha*"). (This case was reviewed by the author in the previous year: see Joel Lee, "Conflict of Laws" (2005) 6 SAL Ann Rev 144 at paras 8.47–8.61.) In that case, the court held that in order to grant a Mareva injunction, the court also had to have jurisdiction over a substantive claim against the defendant. Ang J in *Front Carriers* had distinguished *Karaha* on the ground that the court there was not asked to grant a Mareva injunction in support of foreign arbitral proceedings. This seems a difficult distinction to defend and the Court of Appeal in *Swift-Fortune* acknowledged this. Fortunately, the decision in *Front Carriers* was justified because in that case, unlike *Karaha*, there was a substantive claim over which the court had jurisdiction. This also forms the basis of reconciliation between *Front Carriers* and *Swift-Fortune*. In *Swift-Fortune*, there was no substantive claim over which the court had jurisdiction.

9.56 The position, therefore, seems to be that, according to Ang J in *Front Carriers*, s 4(10) of the CLA does allow the court to grant a Mareva injunction in support of foreign arbitral proceedings subject to the principles laid down in *Siskina*.

9.57 The Court of Appeal in *Swift-Fortune* was clear that since the appeal before it was not an appeal from Ang J's decision in *Front Carriers*, it did not wish to make any comment that might be interpreted as approving or disapproving Ang J's extension of the scope of s 4(10) of the CLA to foreign arbitrations. The court, however, did wonder, when juxtaposed with the powers in s 12(7) of the IAA, whether s 4(10) of the Civil Law Act could have a broader area of application. The answer to this question was wisely left to another time.

9.58 At the end of the day, this dyad of *Front Carriers* and *Swift-Fortune* provides some noteworthy points in the law relating to Mareva injunctions in Singapore. Firstly, s 12(7) of the IAA cannot be used to issue a Mareva injunction in support of foreign arbitral proceedings, only international arbitrations in Singapore. Secondly, s 4(10) of the CLA can be used to grant a Mareva injunction where the plaintiff has a cause of action against the defendant which is justiciable in the Singapore courts. Thirdly, a Mareva injunction may be granted under s 4(10) of the CLA to support foreign arbitral proceedings.

9.59 Since the court in *Karaha* (*supra* para 9.55) had explicitly left open the question of whether it had jurisdiction to grant a Mareva injunction in support of foreign court proceedings, the question remains unclear as to whether s 4(10) of the CLA can be similarly extended. It is also unclear if the position now established by *Front Carriers* will remain good law in future.