(2025) 37 SAcLJ 609
(Published on e-First 8 July 2025)

Case Note

THE SINGAPORE COURTS' APPROACH TO THE LIFTING OF *FORUM NON CONVENIENS* STAYS

Xitrans Finance Ltd v Rappo, Tania [2023] SGCA 22

When would a claimant, whose claim has been stayed on the ground of *forum non conveniens* ("FNC"), be able to lift the stay? In a rare application made directly to the Singapore Court of Appeal ("CA") to lift a FNC stay, the court in *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 ("*Xitrans*") was confronted squarely with such a question. This case note explores the Singapore courts' approach to the lifting of FNC stays and considers some important comments made by the CA in *Xitrans*.

PEH Aik Hin[1]
Partner, Allen & Gledhill LLP.

I. Introduction

1 Usually, a defendant who succeeds in obtaining a *forum non conveniens* ("FNC") stay in the Singapore courts would effectively bring the legal proceedings in question to a close. To be clear, the proceedings are not *dismissed* or *discontinued*, but are only *suspended*.[2] However, for all intents and purposes, the *effect* of the stay is that the claimant can no longer pursue its claims against the defendant in the Singapore courts. The parties would then ordinarily have to proceed to have their dispute determined in the appropriate foreign forum. However, just as the court has the discretion to grant the FNC stay, the court also has a discretion to *lift* the stay in certain exceptional circumstances.

2 While it is rare in practice for a claimant, who has started proceedings in the foreign forum (following a FNC stay), to return to

1 The author is grateful to Ms Abigail Fernandez, Associate at Allen & Gledhill LLP, for her invaluable comments and suggestions on an earlier version of this note. All errors are the author's alone.

2 See *Rotary Engineering Ltd v Kioumji & Eslim Law Firm* [2017] 1 SLR 907 at [24]. In the author's experience, the case file in the court system is effectively concluded and the court no longer actively manages the case.

the Singapore courts to lift the FNC stay, such a scenario arose in *Xitrans Finance Ltd v Rappo, Tania*[3] ("*Xitrans*"). Interestingly, the claimant in *Xitrans* did not seek to lift the *full* FNC stay, but sought only a *partial* lifting of the FNC stay, so as to allow *some* of its claims to be adjudicated in Singapore. To date, this appears to be the only local decision where an application to lift a FNC stay had been made to the Court of Appeal ("CA"). This case note explores the Singapore courts' approach to the lifting of FNC stays and considers some of the important comments made by the CA in *Xitrans*.

II. Facts

3 *Xitrans* is the latest case in a long-running dispute in the Singapore courts between Dmitry Rybolovlev ("Mr Rybolovlev"), a Russian magnate, and Yves Charles Edgar Bouvier ("Mr Bouvier"), a Swiss businessman in the international art scene. The dispute has given rise to no less than three CA decisions, including the latest in *Xitrans*.[4]

4 The claimants in *Xitrans* were two British Virgin Islands companies, Accent Delight International Ltd ("Accent") and Xitrans Finance Ltd ("Xitrans"). Both are owned by the family trusts of Mr Rybolovlev. The first and second defendants were Mr Bouvier and a Hong Kong company called MEI Invest Limited controlled by Mr Bouvier (collectively, the "Bouvier parties"). The third defendant was Tania Rappo ("Ms Rappo"), who had introduced Mr Bouvier to Mr Rybolovlev.

5 The dispute amongst the parties stemmed from Mr Rybolovlev's acquisitions (through Accent or Xitrans) of 38 art pieces which took place over the course of a decade starting sometime in 2002, for which Mr Bouvier was involved. These art pieces were no ordinary artworks, but masterpieces by highly renowned artists, including Vincent van Gogh, Pablo Picasso, Henri Matisse, Claude Monet and Leonardo da Vinci.[5]

6 A key dispute amongst the parties was Mr Bouvier's role in the artwork transactions. The claimants claimed that Mr Bouvier was acting as their agent and was only entitled to charge a commission. They alleged, however, that Mr Bouvier had inflated the prices of the artworks and had

3 [2023] SGCA 22.

4 See *Bouvier, Yves Charles Edgar v Accent Delight International Ltd* [2015] 5 SLR 558; *Rappo, Tania v Accent Delight International Ltd* [2017] 2 SLR 265; and *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22.

5 *Bouvier, Yves Charles Edgar v Accent Delight International Ltd* [2015] 5 SLR 558 at [9]; *Rappo, Tania v Accent Delight International Ltd* [2017] 2 SLR 265 at [13]; *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [3] and [9].

"on-sold" the artworks at a profit. This was disputed by Mr Bouvier, who contended that he was acting as an independent seller (through MEI Invest or his other associated companies) at all times and was transacting at arm's length with the claimants. He was therefore entitled to "on-sell" the artworks to the claimants at a profit.

7 On 12 March 2015, the claimants commenced Suit No 236 of 2015 ("Suit") against the Bouvier parties and Ms Rappo. In the Suit, the claimants alleged, amongst others, that Mr Bouvier had breached his fiduciary duties as their agent and committed the tort of deceit. They also alleged that MEI Invest and Ms Rappo were liable for dishonest assistance and knowing receipt.[6] At the same time, the claimants applied (and obtained) simultaneously worldwide Mareva injunctions against the defendants.[7] These injunctions were eventually set aside by the CA in *Bouvier, Yves Charles Edgar v Accent Delight International Ltd*[8] ("Mareva Judgment") for, amongst others, an abuse of the court's process. The Mareva Judgment was the *first* of the three CA decisions.

8 In April 2015, the defendants also applied for a stay of the proceedings on the basis, amongst others, that Switzerland was the more appropriate forum.[9] These applications were dismissed by the High Court at first instance, but on appeal, the FNC stay was granted by the CA ("FNC Appeal"). For a number of reasons set out in *Rappo, Tania v Accent Delight International Ltd*[10] ("Stay Judgment"), the CA found that Switzerland was clearly the more appropriate forum for the parties' dispute. The Stay Judgment was the *second* of the three CA decisions.[11]

9 Following the FNC stay, the claimants pursued their claims in Switzerland. On 8 March 2017, the claimants filed a criminal complaint with the Public Prosecutor's Office in Bern against Mr Bouvier, Ms Rappo and others in respect of the 38 acquisitions of artworks ("Swiss Criminal Proceedings").[12] The claimants asserted their civil claims against Mr Bouvier and Ms Rappo in such Swiss Criminal Proceedings pursuant to Art 119(2)(b) of the Swiss Code of Criminal Procedure. The CA noted that under Swiss law, one who has suffered harm as a result of an alleged

---

6 *Rappo, Tania v Accent Delight International Ltd* [2017] 2 SLR 265 at [34].
7 *Bouvier, Yves Charles Edgar v Accent Delight International Ltd* [2015] 5 SLR 558 at [29]; *Rappo, Tania v Accent Delight International Ltd* [2017] 2 SLR 265 at [34].
8 *Bouvier, Yves Charles Edgar v Accent Delight International Ltd* [2015] 5 SLR 558 at [108], [130] and [134].
9 *Rappo, Tania v Accent Delight International Ltd* [2017] 2 SLR 265 at [35].
10 [2017] 2 SLR 265.
11 *Rappo, Tania v Accent Delight International Ltd* [2017] 2 SLR 265 at [74], [80]–[82], [89], [96], [104], [108] and [112].
12 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [20].

criminal offence could obtain civil compensation by attaching their civil action to the criminal proceedings.[13]

10 The criminal complaint was eventually transferred to the Public Prosecutor's Office in Geneva in September 2017. A supplementary criminal complaint was subsequently filed on 16 October 2019 by the claimants against Mr Bouvier, MEI Invest and Ms Rappo.[14] After investigating the criminal complaints, the Swiss Public Prosecutor ("Swiss PP") informed the parties on 14 December 2020 that the Swiss Criminal Proceedings would be discontinued. On 15 September 2021, the Swiss PP issued a "Dismissal Order" which formally discontinued the Swiss Criminal Proceedings. On 27 September 2021, the claimants appealed against the Dismissal Order to the Geneva Court of Appeal ("Geneva CA").[15]

11 On 26 July 2022, the Geneva CA ruled that: (a) there was no denial of justice or unjustified delay by the Swiss PP in the Swiss Criminal Proceedings; (b) the conditions for dismissal were not met and the investigation should continue; and (c) that said, some of the transactions complained of occurred outside the 15-year limitation period for the investigation of criminal offences under Swiss law – for such transactions, the investigation could not be continued. The Dismissal Order was thus annulled in respect of the offences which fell within the 15-year limitation period.[16]

12 The outcome of the Geneva CA's decision was that while the Swiss Criminal Proceedings were resumed, eight out of 38 artwork transactions were time-barred and could no longer be investigated. This also meant that the civil claims arising from these transactions could not be pursued in the Swiss Criminal Proceedings. These claims were referred to by the CA as the "Discontinued Claims", and formed the subject matter of the application in *Xitrans*.[17] As Xitrans was the purchaser for all these transactions, only Xitrans was involved in the application to the CA.[18] Xitrans nonetheless contended that it was entitled to pursue the Discontinued Claims in Switzerland in independent Swiss *civil* proceedings. However, Xitrans took issue with the fact that in subsequent correspondence between the parties after the Geneva CA's decision, the

13 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [20].
14 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [21].
15 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [21]–[22].
16 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [24].
17 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [9] and [26].
18 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [9].

defendants were unwilling to accept this position and had reserved their rights to raise time bar challenges.[19]

13 In the premises, Xitrans argued that there were unique and exceptional circumstances which justified a lifting of the FNC stay in respect of the Discontinued Claims. In this regard, Xitrans raised two arguments before the CA:[20]

> (a) First, Xitrans argued that the defendants had reneged on certain written and oral undertakings that they had given previously in the FNC Appeal to submit, in the widest possible sense, to the claimants' claims being determined on the merits by the Swiss courts (collectively, the "Undertakings"). Because the defendants clearly intended to raise time bar or other procedural objections to the Discontinued Claims in Switzerland such that they should not be determined on their substantive merits, Xitrans argued that the defendants had resiled from the Undertakings. For the defendants to abide by the Undertakings, there should not be any time bar challenges against the claimants' claims in Switzerland ("First Argument").
>
> (b) Second, Xitrans argued that during the time of the FNC Appeal, it had thought that the claimants' claims in Switzerland would have been determined within a reasonable time. However, with hindsight, this was "overly optimistic", given that a number of years had since passed without significant progress in Switzerland. Xitrans therefore argued, as a secondary ground, that the length of time elapsed and absence of significant progress in Switzerland should be an additional factor in support of lifting the stay ("Second Argument").

III. Singapore Court of Appeal's decision

14 Xitrans' application for a partial lifting of the FNC stay was *dismissed* by the CA. In addressing the two arguments raised by Xitrans, the court made a number of notable comments.

15 As will be elaborated upon below, these comments shed further light on the Singapore courts' approach to the applications for lifting of a FNC stay (which appears rare in practice[21]), including some of the relevant factors that the court may take into account. Where applicable,

---

19 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [26]–[30] and [33].

20 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [34]–[36] and [46].

21 Based on reported local cases, it appears that prior to *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22, such application has only been made (and was successful)

(cont'd on the next page)

this note will also refer to some relevant cases in other common law jurisdictions.[22]

IV. Commentary on Court of Appeal's key findings and observations

A. Basis for lifting forum non conveniens *stay: there must be departure from basis upon which stay was originally granted*

16 The CA first reaffirmed that the basis for lifting a FNC stay was that set out in *Rotary Engineering Ltd v Kioumji & Eslim Law Firm*[23] ("*Rotary Engineering*"), and as endorsed in its Stay Judgment.[24]

17 *Rotary Engineering* did *not* involve an application to lift a FNC stay but concerned an appeal in relation to whether a FNC stay should even be granted in the first place. The High Court below had refused the defendants' application for a FNC stay in favour of the courts of Saudi Arabia. On appeal, the CA *reversed* the decision. One argument the court had to consider was the second plaintiff's concern that he could face difficulties pursuing his claim in Saudi Arabia because of an alleged danger of arrest in relation to a complaint of forgery made against him by one of the defendants.

18 In addressing this concern, the CA first, having regard to two English decisions on the *nature* of a stay (*ie*, *Rofa Sport Management AG v DHL International (UK) Ltd*[25] and *The Alexandros T*[26]), noted that a stay was only "suspensory", and was conceptually different from a dismissal or discontinuance. Accordingly, a court in granting a stay "remain[ed] seised of the proceedings and may in principle lift the stay at a later date".[27]

19 It was in this context that the CA proceeded to make the *obiter* observation that a FNC stay may accordingly be lifted in "exceptional circumstances" as follows:[28]

---

on one occasion in *Baridhi Shipping Lines Ltd v Sea Consortium Pte Ltd* [2002] 2 SLR(R) 269 (see further n 39 below).

22 See paras 16–48 below.

23 [2017] 1 SLR 907 at [24]–[25].

24 *Rappo, Tania v Accent Delight International Ltd* [2017] 2 SLR 265 at [101]; *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [45].

25 [1989] 1 WLR 902 at 911.

26 [2014] Bus LR 873 at [81]–[83].

27 *Rotary Engineering Ltd v Kioumji & Eslim Law Firm* [2017] 1 SLR 907 at [24].

28 *Rotary Engineering Ltd v Kioumji & Eslim Law Firm* [2017] 1 SLR 907 at [24].

> … in the *exceptional circumstance* where a *premise* on which the stay was granted turns out to have been *mistaken*, the court may be persuaded to *exercise its discretion* to lift the stay. An example will illustrate the point: the court might assume that another jurisdiction is available, but it might later turn out that that other jurisdiction is not willing to take jurisdiction for some reason. In such a case, it would be open to the plaintiff to come back and seek the lifting of the stay. [emphasis added]

20 However, the CA cautioned that this discretion should not be lightly exercised:[29]

> … the discretion to lift the stay would only be exercised in *exceptional circumstances* which *strike at the very basis on which the stay was granted*. Put bluntly, the court's persisting discretion to lift the stay should not be *misconstrued as a standing invitation* to litigants to re-agitate settled issues in the event that they later encounter mere setbacks or inconveniences in prosecuting their claims. [emphasis added]

21 Noting that the forgery complaint had already been withdrawn and there was no clear evidence that investigations were still ongoing in Saudi Arabia, the CA dismissed the second plaintiff's concern, and remarked that it would (in any event) be "open to the plaintiffs to return to us and seek the lifting of the stay" if "their optimism turned out to be *misplaced*"[30] [emphasis added].

22 As alluded to above,[31] an application to lift a FNC stay arose squarely in *Xitrans* for the CA's decision. In *Xitrans*, the court explained that the "primary" issue in the case of lifting of a FNC stay was to determine "whether there has been a *departure* from the very basis upon which the Stay was ordered"[32] [emphasis added]. The court emphasised that it was "only" in such circumstances that it would consider "revisiting" a stay.[33] The court also reiterated that whether a stay should be lifted was "ultimately [a] matter of discretion".[34] What this means is that the court would be able to take into account any other factors which may weigh against the lifting of a stay.[35]

23 The CA's holding and emphasis on a very *limited* basis that a FNC stay can be revisited in *Xitrans* is consistent with its earlier observation in *Rotary Engineering* that the court's discretion to lift the stay should

29 *Rotary Engineering Ltd v Kioumji & Eslim Law Firm* [2017] 1 SLR 907 at [25].
30 *Rotary Engineering Ltd v Kioumji & Eslim Law Firm* [2017] 1 SLR 907 at [25].
31 See paras 1–2 above.
32 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [46].
33 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [46].
34 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [47].
35 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [47].

not be misconstrued as a "standing invitation" for litigants to return to the Singapore courts, in the event that they later encounter some mere setbacks or inconveniences in prosecuting their claims in the foreign jurisdiction. Such a strict position is to be welcomed. First, it prevents a claimant from having a "second bite at the cherry" and being "trigger-happy" in reinvoking the Singapore courts' jurisdiction, without first making a *real* effort to litigate in the natural forum and giving the foreign court a full opportunity to consider jurisdiction of the matter. Second, it avoids parties relitigating matters that are already "settled".[36] It would be untenable if the discretion could be easily invoked, for instance, if there has been an immaterial change in the parties' circumstances, or if the claimant had encountered some practical obstacle in pursuing the action in the natural foreign forum (such as challenges in securing appropriate local counsel).

24 It does, however, leave open a *narrow* basis for a claimant to have recourse to the Singapore courts in legitimate cases where the claimant could be denied a proper adjudication of its claims on the merits in the foreign court, such as if the foreign court is unwilling to take jurisdiction of the matter for some reason. This is fair, given that, after all, at the first stage of the well-established two-stage FNC test in *Spiliada Maritime Corporation v Cansulex Ltd*[37] ("*Spiliada* Test"), the court is only engaged in a *prima facie* determination of whether there is some other available forum that is more appropriate for the trial of the case, and it could turn out subsequently *on the facts* that the premise for such *prima facie* determination was "mistaken or unduly optimistic".[38] What is clear, however, is that the foreign court must first be given a proper opportunity to make a "full and final determination" on whether it has jurisdiction over the parties' dispute, before the claimant can seek to reinvoke the Singapore courts' jurisdiction.[39]

25 As will be made clear below, although not expressly found by the CA, it is apparent on the facts in *Xitrans* that the relevant Swiss courts did not make any such full and final determination that they did not have jurisdiction over the Discontinued Claims.

---

36 *Rotary Engineering Ltd v Kioumji & Eslim Law Firm* [2017] 1 SLR 907 at [25].

37 [1987] AC 460.

38 *Rappo, Tania v Accent Delight International Ltd* [2017] 2 SLR 265 at [101].

39 *Rappo, Tania v Accent Delight International Ltd* [2017] 2 SLR 265 at [101]. See also *Baridhi Shipping Lines Ltd v Sea Consortium Pte Ltd* [2002] 2 SLR(R) 269, where faced with a (subsequent) Bangladesh court's ruling that it had no jurisdiction over the claim, the High Court granted the plaintiffs' application to lift the *forum non conveniens* stay in Singapore (see [14]–[15]).

26 Interestingly, post-*Xitrans*, in *The Sea Justice*,[40] the CA,[41] without referring to its earlier decision in *Xitrans*, reiterated (in *obiter*) the position that a FNC stay would only be lifted in exceptional circumstances striking at the very basis on which the stay was granted.[42] *The Sea Justice* did not involve an application to lift a FNC stay, but was an appeal which concerned the issue of whether the FNC stay granted in the High Court below should have been on a conditional basis.

27 In that case, the vessel *Sea Justice* was arrested in Singapore by the appellant and was subsequently released upon the respondent shipowner furnishing security (under protest)[43] ("SG Security"). The Singapore admiralty proceedings were eventually stayed on the ground of FNC in favour of the Qingdao Maritime Court ("QMC") and the SG Security was ordered to be returned to the respondent.[44] On appeal to the CA, the appellant argued that the court below should have granted a *conditional* stay with the SG Security retained.[45] In dismissing the appeal, the CA rejected, amongst others, the appellant's contention that it should retain the SG Security with a view to lifting the FNC stay after obtaining judgment from the QMC, if the respondent could not satisfy in full such judgment (due to the limitation regime for maritime claims in the People's Republic of China ("PRC")).[46] The CA stated that "[t]he fact that any Chinese judgment might not be satisfied in full would not strike at the very basis on which the stay was granted, so as to justify a lifting of the stay in Singapore".[47] This was because the FNC stay was *not* granted on any premise relating to whether the limitation fund constituted in the PRC or the respondent would be able to satisfy any Chinese judgment.[48]

28 *The Sea Justice* provides further helpful insight as to what would *not* constitute "exceptional circumstances" that would strike at the very basis on which a FNC stay was granted. It illustrates that the "exceptional circumstances" must relate *directly* to factors which had influenced the court in coming to its earlier decision that the foreign court was the more appropriate forum.

40 [2024] 1 SLR 1118.
41 Comprising of a different coram.
42 *The Sea Justice* [2024] 1 SLR 1118 at [19(b)].
43 *The Sea Justice* [2024] 1 SLR 1118 at [2]–[4].
44 *The Sea Justice* [2024] 1 SLR 1118 at [5]–[10].
45 *The Sea Justice* [2024] 1 SLR 1118 at [11].
46 *The Sea Justice* [2024] 1 SLR 1118 at [19].
47 *The Sea Justice* [2024] 1 SLR 1118 at [19(b)].
48 *The Sea Justice* [2024] 1 SLR 1118 at [19(b)].

B. Does limitation provide basis for lifting stay?

29 After setting out the basis for the lifting of a FNC stay in *Xitrans*, the CA proceeded to consider the First Argument raised by Xitrans, noting that the starting point of the inquiry was the context in which the Undertakings were given.[49]

30 In this regard, the CA held that the Undertakings were given in response to and to address the key concern whether the Swiss courts would have jurisdiction over the parties' dispute, and whether the defendants would challenge such jurisdiction. Such jurisdiction was said to arise from Art 6 of the Swiss Federal Act on Private International Law of 18 December 1987 ("PILA"), which provided as follows: "In matters involving an economic interest, a court shall have jurisdiction if the defendant proceeds *on the merits without reservation*, unless such court denies jurisdiction to the extent permitted by Article 5, paragraph 3."[50] [emphasis added]

31 Accordingly, the word "merits" used in the Undertakings should not be interpreted any more widely than the word "merits" in Art 6 of the PILA.[51] The court further observed that there was no suggestion by Xitrans that the raising of a time bar objection would defeat the application of Art 6 of the PILA because the defendants would no longer be considered to have proceeded on the merits.[52] In fact, Xitrans appeared to accept that time bar objections do not defeat the Swiss courts' jurisdiction over the dispute.[53] It must therefore follow that Xitrans must accept that, even if the defendants were to raise time bar objections to the Discontinued Claims in the Swiss civil proceedings, they would still have proceeded on the merits for the purposes of Art 6 of the PILA.[54]

32 The CA also took issue with the wide interpretation of the Undertakings put forward by Xitrans. Based on Xitrans' interpretation of the Undertakings, the defendants would effectively have "relinquished" their right to take any action in the Swiss civil proceedings that would avoid a reckoning of whether Mr Bouvier and his co-conspirators deceived the claimants and earned secret profits.[55] This would involve giving up a number of substantive defences that would typically be available to litigants, including making arguments that the claimants'

49 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [52].
50 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [52].
51 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [54].
52 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [54].
53 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [54].
54 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [54].
55 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [55].

claims were time-barred, and also applying for the claimants' claims to be struck out for procedural irregularity.[56]

33 In the final analysis, the CA concluded that Xitrans had misinterpreted the Undertakings. The Undertakings were required to address the claimants' concerns that the defendants would raise jurisdictional objections and refuse to submit to the Swiss courts' jurisdiction.[57] The court clarified that while it insisted on a submission to jurisdiction and to a waiver of any jurisdictional objection, the court did not require, and indeed could not properly have required, the defendants to give up substantive defences.[58]

34 The CA's holding in this regard is both principled and fair. A claimant should not be allowed to *conflate* or *equate* a defendant's submission to jurisdiction and waiver of jurisdictional objection in the natural forum for purposes of FNC *as* the defendant giving up any substantive defences that would typically be available to such defendant (including any time bar defence) to have the claimant's claim dismissed or struck off (including on a summary basis). A submission to jurisdiction cannot go so far – and is not the same – as giving up such substantive defences, and it would be shocking if that were indeed the case. Seen another way, a defendant cannot be *worse off* in so far as substantive defences are concerned if a FNC stay is granted. It would be a highly anomalous situation if a defendant would have the benefit of such substantive defences if a FNC stay were not sought to begin with or granted, but would somehow lose such defences if it successfully obtained the FNC stay, having given an undertaking to submit to the jurisdiction of the foreign court.

35 In so far as specifically the issue of limitation is concerned, the CA in the earlier case of *MAN Diesel & Turbo SE v IM Skaugen SE*[59] ("*MAN Diesel*") considered whether this could be a reason against the grant of a FNC stay. In that case, the respondents had commenced two parallel proceedings in two jurisdictions, Singapore and Norway. The respondents did not seek a stay of either proceedings and were content to let both progress.[60] The appellants, however, sought to stay the Singapore proceedings. In allowing the appeal, the CA found that Norway was the more appropriate forum, and rejected the respondents' specific concern that their claims could be time-barred in the Norwegian proceedings, as

56 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [55].
57 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [56].
58 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [56].
59 [2020] 1 SLR 327.
60 *MAN Diesel & Turbo SE v IM Skaugen SE* [2020] 1 SLR 327 at [23]–[25].

"the appellants have now raised a defence of time bar under … Norwegian law in the Norway proceedings".[61]

36 The CA reasoned as follows:[62]

> In our view, this submission has no merit. If the defence of time bar succeeds in the Norwegian proceedings, the respondents have only themselves to blame for not commencing the Norwegian proceedings earlier. *It does not, in any way, provide any legitimate justification for the Singapore courts to exercise jurisdiction if it is not otherwise the more appropriate forum* … If the claim is indeed time barred under Norwegian law, that would be the legal consequences of the respondents' conduct in the prosecution of their claims. In any event, we note that the respondents themselves do not accept that the defence of time bar has any merit. [emphasis added].

37 While this decision was not referred to in *Xitrans* (given the holding in *Xitrans* turned chiefly on the proper interpretation of the Undertakings), the reasoning in *Xitrans* is consistent with the position in *MAN Diesel*, as both cases underscore the point that a defendant raising a legitimate substantive defence of limitation is not a reason for the Singapore courts to exercise jurisdiction (over the natural forum).

C. When would substantial delay justify lifting forum non conveniens *stay?*

38 Turning to the Second Argument, the CA acknowledged that substantial delay could be a legitimate reason for lifting a FNC stay. In this regard, the court noted that "[w]hile not explicitly stated in the Stay Judgment, we likely assumed that there would be no delay amounting to a denial of substantial justice in the Swiss courts when we decided to grant the Stay".[63] Indeed, the Singapore courts have recognised that in applying the *Spiliada* Test at *first instance*, potential delays in the foreign forum could come into play at the second stage of the test, when the court considers if there are circumstances by reason of which justice requires that a stay should not be granted.[64] The court would have to consider what was "the *likely extent* of delays"[65] [emphasis added] should proceedings be brought in the foreign forum, and consider if such delays could be

61 *MAN Diesel & Turbo SE v IM Skaugen SE* [2020] 1 SLR 327 at [162].
62 *MAN Diesel & Turbo SE v IM Skaugen SE* [2020] 1 SLR 327 at [162].
63 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [60].
64 See *Grains and Industrial Products Trading Pte Ltd v State Bank of India* [2019] SGHC 292 at [121] (which was cited with approval by the Court of Appeal in *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [60]).
65 *Grains and Industrial Products Trading Pte Ltd v State Bank of India* [2019] SGHC 292 at [122].

"extensive and severe" so as to amount to a denial of substantial justice.[66] However, in the context of an application for the lifting of a FNC stay, a key difference is that the alleged delay would *already* have occurred by the time of the application, and the Singapore court is being asked, on hindsight, to consider whether the delay has resulted in a denial of substantial justice.

39 Coming back to the facts in *Xitrans*, the CA held that the difficulty with the Second Argument was the premise that it could now be said with hindsight that Xitrans had faced delay amounting to a denial of substantive justice in the Swiss courts.[67]

40 The CA noted that the Geneva CA had expressly found that there was *no* unjustified delay by the Swiss PP in the Swiss Criminal Proceedings. In these circumstances, it would be difficult to find that the claimants had been denied substantial justice by the delay in the Swiss Criminal Proceedings.[68] The CA reiterated that there was a general policy that a court should proceed cautiously before it would pronounce that a litigant would experience a deprivation of substantial justice in a foreign forum, especially where that forum operated a well-established and well-recognised system of justice.[69] This is consistent with the Singapore courts' repeated commitment to international comity.[70]

41 In *Xitrans*, the Second Argument was arguably a non-starter, given the express and specific finding made by the Geneva CA that there was no unjustified delay by the Swiss PP. However, in the absence of such express finding by the foreign court, a question arises as to what "sufficiently serious circumstances"[71] would constitute substantial delay or delay that would cause a denial of substantial justice for the court to lift a FNC stay?

42 On this question, the Hong Kong ("HK") case of *Signature Diamond LLC v Phillips Fine Watches Ltd*[72] ("*Signature Diamond*") may provide some guidance. In *Signature Diamond*, the plaintiff had

66 *Grains and Industrial Products Trading Pte Ltd v State Bank of India* [2019] SGHC 292 at [121].
67 *Grains and Industrial Products Trading Pte Ltd v State Bank of India* [2019] SGHC 292 at [121].
68 *Grains and Industrial Products Trading Pte Ltd v State Bank of India* [2019] SGHC 292 at [121].
69 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [60].
70 See, *eg*, *Good Earth Agricultural Co Ltd v Novus International Pte Ltd* [2008] 2 SLR(R) 711 at [27].
71 *Good Earth Agricultural Co Ltd v Novus International Pte Ltd* [2008] 2 SLR(R) 711 at [27].
72 [2021] HKCU 345.

commenced proceedings against the defendant in Switzerland in May 2017 and thereafter in HK in June 2017 in relation to watches it had purchased from the defendant at auctions in Geneva and HK. At the defendant's application, the HK proceedings were eventually stayed until the final determination of the Swiss proceedings, on the basis of there being concurrent proceedings and Switzerland being the more appropriate forum.[73] More than 16 months later in July 2019, the plaintiff applied to lift the HK stay, but this was refused at first instance, with the court finding no material change in circumstances. Pending the appeal of this decision, the Swiss court in a ruling dated 26 November 2020 dismissed all of the plaintiff's claims. The plaintiff argued on appeal that the Swiss proceedings (including appeals in relation to the Swiss Court ruling) would not be concluded before 2024 at least, while the watches in HK (which it had paid for) would risk being permanently damaged if not properly serviced (given the passage of time), and this would be a new and material change in circumstances justifying the lifting of the HK stay.[74]

43 The HK court *rejected* the plaintiff's argument and *refused* the lifting of the stay, explaining its decision as follows:[75]

> As the Defendant has highlighted, the Swiss Proceedings were instituted by the Plaintiff itself. The forum and its procedure was the Plaintiff's own choice. The time span for trial including appeals should have been known to the Plaintiff. It was also within the contemplation of the parties and the Court at the time of the application for the Stay and when the Stay was ordered in March 2018. On the issue of the alleged 7-year delay now asserted by the Plaintiff, Counsel for the Defendant pointed out that the Plaintiff had claimed in July 2019 (in opposition to the Stay application) that the main hearing would only take place in 2020 and that judgment of the Swiss Court would not be expected until 2021, but in fact the Swiss Ruling was handed down in November 2020. Any alleged or additional delay in the Swiss Proceedings appears to be an exaggeration on the part of the Plaintiff, but in any event, does not constitute any material change in circumstances not hitherto envisaged.

44 What *Signature Diamond* makes clear is that there is a high threshold for what would constitute substantial delay. Generally, it would not be enough for a claimant who encountered some delay in the foreign forum or what may appear to be a slower pace of progress compared to what may have been the case if the matter were not stayed and proceeded in the local courts, to run back to the local courts to lift the stay. Accordingly, the HK court was of the view that the alleged seven-year

73 *Signature Diamond LLC v Phillips Fine Watches Ltd* [2021] HKCU 345 at [21].
74 *Signature Diamond LLC v Phillips Fine Watches Ltd* [2021] HKCU 345 at [20].
75 *Signature Diamond LLC v Phillips Fine Watches Ltd* [2021] HKCU 345 at [27].

delay (even if true) would in any event not constitute a material change in the circumstances.

45 The reality is that the actual time that may take a case to traverse through a court system would invariably depend on the circumstances of each case, including: (a) the nature and complexity of the case; (b) the number of parties involved; (c) the parties' conduct of the proceedings; (d) the interlocutory applications and procedural steps that may be taken by parties; and (e) the court's schedule. Accordingly, some cases could legitimately take a longer time than others to resolve, but this does not necessarily mean that there was some form of unjustified delay. Bearing in mind also the principle of international comity, a Singapore court should be slow to pass judgment on the efficiency of a foreign court, especially where it may not have the full picture of what may have transpired in the foreign proceedings. Perhaps in circumstances where the record plainly and clearly shows that there have been egregious or persistent delays in the foreign forum that cannot be reasonably explained, a Singapore court may then be compelled to find that there has been unjustified substantial delay. That said, the actual time that has elapsed alone is not determinative, and it must depend on the context and circumstances of each case.

D. Other factors

46 Given its conclusion on the First and Second Arguments, there was no need for the CA to go further to consider whether there were any other factors which may militate against exercising its discretion to lift the FNC stay. However, the CA commented in *obiter* that the effect of revoking the stay in respect of the Discontinued Claims would be to "split the litigation" between the parties across Singapore and Switzerland.[76] This would have been a "highly undesirable state of affairs", given the extent of factual and legal overlap between the two sets of claims.[77]

47 It therefore appears that fragmentation of litigation or having parallel and concurrent proceedings in different jurisdictions would be a weighty consideration for a Singapore court revisiting a FNC stay. This *obiter* observation by the CA is unsurprising, given that the Singapore courts have long recognised that the "existence of parallel proceedings gives rise to concerns of duplication of resources and the risk of conflicting judgments".[78] This is regarded as a valid concern for purposes of a FNC

76 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [62].
77 *Xitrans Finance Ltd v Rappo, Tania* [2023] SGCA 22 at [62].
78 *MAN Diesel & Turbo SE v IM Skaugen SE* [2020] 1 SLR 327 at [154]. See also *Virsagi Management (S) Pte Ltd v Welltech Construction Pte Ltd* [2013] 4 SLR 1097
(cont'd on the next page)

stay even if the concurrent proceedings fall short of a *lis alibi pendens*.[79] For completeness, it should be mentioned (in brief) that fragmentation of litigation is not always necessarily seen as an undesirable outcome to be avoided in all instances. In the *different* context of determining the scope of an arbitration agreement, the Singapore courts have cautioned against starting with any presumption that the parties must have intended for all their competing claims to be decided in the same forum, bearing in mind that "forum fragmentation is a fact of life with dispute resolution agreements", and it must ultimately depend on the express language of the agreement and the nature of the competing claims.[80] If upon examining the text of the agreement and the nature of the competing claims, a claim is not within its ambit, then forum fragmentation would be inevitable and the courts should not steer away from that outcome.[81]

48 Returning to the case at hand, allowing Xitrans' application would invariably have led to an undesirable situation where there would be "fragmentation of a dispute across multiple jurisdictions".[82] Only Xitrans' Discontinued Claims (regarding the affected eight artwork transactions) would proceed in Singapore, while *both* Accent's and Xitrans' claims regarding the other artworks (involving the *same* facts, parties and central issues) would proceed in the concurrent Swiss Criminal Proceedings.[83]

V. Conclusion

49 *Xitrans* undoubtedly provides helpful guidance as to when a FNC stay granted by a Singapore court can be revisited. What is clear is that only in exceptional circumstances where there has been a departure from the very basis upon which the FNC stay was granted would the court consider revoking the stay. A claimant will not do well to run back to the Singapore courts at the very first instance of encountering setbacks or inconveniences in prosecuting its claims in the appropriate foreign

at [38] and [42]; and *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 at [90].

79 See *Chan Chin Cheung v Chan Fatt Cheung* [2010] 1 SLR 1192 at [44]–[45].

80 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2024] 2 SLR 516 at [4].

81 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2024] 2 SLR 516 at [5], citing also *Asiana Airlines, Inc v Gate Gourmet Korea Co, Ltd* [2024] 2 SLR 279 at [88].

82 *Per* the Court of Appeal in *Vinmar Overseas (Singapore) Pte Ltd v PTT International Trading Pte Ltd* [2018] 2 SLR 1271 at [139], a case concerning a stay on the basis of an exclusive jurisdiction clause.

83 See also generally Adrian Briggs, *Private International Law in English Courts* (Oxford University Press, 2014) at para 4.408 and *Focus Energy Ltd v Aye Aye Soe* [2009] 1 SLR(R) 1086 at [41].

forum. The foreign court must at least first be given a proper opportunity to make a full and final determination on whether it has jurisdiction over the parties' dispute.
