Case Note

WHEN DOES ONE CROSS THE RUBICON OF SUBMISSION?

Broadcast Solutions Pte Ltd v Zoom Communications Ltd
[2014] 1 SLR 1324

This note seeks to examine the recent High Court decision of Woo Bih Li J in *Broadcast Solutions Pte Ltd v Zoom Communications Ltd* [2014] 1 SLR 1324. In particular it seeks to examine the issues of what acts of the defendant amounts to submission to the jurisdiction of the court to determine the merits of the decision.

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I. Introduction

1 The recent decision of *Broadcast Solutions Pte Ltd v Zoom Communications Ltd*[1] is interesting as it makes us revisit the issues arising from service out of jurisdiction under O 11 of the Rules of Court[2] ("ROC"). It also raises the question: when is one deemed to have crossed the Rubicon to be held to have submitted to the jurisdiction of the Singapore court?

II. Brief facts

2 The case involved Broadcast Solutions Pte Ltd ("Broadcast"), a Singapore company which was suing Zoom Communications Ltd ("Zoom"), an Indian company, for unpaid sums in respect of hire-purchase agreements.[3] As Zoom was in India, Broadcast had to seek permission to serve out of jurisdiction pursuant to O 11 of the ROC. On 14 February 2013, Broadcast obtained leave, on an *ex parte* basis, to serve the writ of summons on Zoom,[4] and managed to effect service on Zoom either on 22 or 25 February 2013.

* The author would like to express his thanks to Professor Adrian Briggs for his comments on an earlier draft of this note. All mistakes remain solely the author's own.

1 [2014] 1 SLR 1324.

2 Cap 322, R 5, 2006 Rev Ed, currently 2014 Rev Ed.

3 *Broadcast Solutions Pte Ltd v Zoom Communications Ltd* [2014] 1 SLR 1324 at [5].

4 *Broadcast Solutions Pte Ltd v Zoom Communications Ltd* [2014] 1 SLR 1324 at [6].

3 On 4 April 2013, Zoom filed an application to extend the dateline for service by one week from the date on the order.[5] It managed to obtain the order and was granted an extension of time to 15 April 2013 to file its defence ("First EOT Defence Application"). Instead of filing its defence, Zoom filed an application to set aside the service of the writ and to stay the proceedings ("Setting Aside and Stay Application"). Zoom was unsuccessful initially; it then appealed the application and sought a further extension of time to file and serve its defence.[6]

4 Zoom relied on the material non-disclosure made by the plaintiff in its *ex parte* application to set aside the order to serve out of jurisdiction.[7] However, the key hurdle Zoom faced was the arguments made by Broadcast to the court that:

(a) the First EOT Defence Application by Zoom amounted to a submission by Zoom to the jurisdiction of the Singapore court; and if not,

(b) the Setting Aside and Stay Application by Zoom amounted to a submission to the court.

III. Submission

5 The issue of submission is important at two levels. The first, if the defendant has submitted to the jurisdiction of the Singapore court, he cannot thereafter protest to the existence of the jurisdiction of the Singapore court. Whether there is submission by the defendant is to be determined by Singapore law. At a secondary level, the issue of submission is often important. If there is an unfavourable judgment for the defendant, it is possible to reject enforcement on the basis that the defendant never submitted to the jurisdiction of the court giving the judgment (assuming the foreign country applies a similar law to Singapore). This is to be determined by the foreign court applying its own laws. Therefore, one can see the anxiety on the part of the defendant to ensure that it has never submitted to the Singapore courts.

A. Whether the First EOT Defence amounts to a submission by Zoom to the Singapore court?

6 Woo Bih Li J's decision on this point was that the First EOT Defence Application did not amount to the defendant submitting to the Singapore court.

5 *Broadcast Solutions Pte Ltd v Zoom Communications Ltd* [2014] 1 SLR 1324 at [7].
6 *Broadcast Solutions Pte Ltd v Zoom Communications Ltd* [2014] 1 SLR 1324 at [9].
7 *Broadcast Solutions Pte Ltd v Zoom Communications Ltd* [2014] 1 SLR 1324 at [11].

7 Broadcast relied on the Court of Appeal's decision in *Carona Holdings Pte Ltd v Go Go Delicacy Pte Ltd*[8] ("*Carona*") and argued that if "the purpose of asking for an extension of time to file a defence is not *bona fide* for the purpose of applying for a stay of proceedings pending arbitration", the court should either refuse the application for time to file a defence or dismiss the application for stay of proceedings.[9]

8 Woo J rejected the above arguments on the basis that Zoom had made it clear it needed time to take full instructions,[10] and further, that the key issue to be determined is whether Zoom had submitted to the jurisdiction of the court. Woo J relied on *Carona* where it was held that "[a]n application for an extension of time is not in itself tantamount to an unequivocal submission to jurisdiction",[11] and held that the First EOT Defence Application did not amount to submission by Zoom to the Singapore court.

9 It is submitted that Woo J was right in that the focus of the issue is whether Zoom had unequivocally submitted to the jurisdiction of the court and, as such, it is immaterial that the original method of establishing jurisdiction over Zoom was susceptible to be set aside. This argument operates at two levels. First, Zoom, by submitting to the court has provided an independent way for the court to obtain jurisdiction. Next, it can also be argued that through the conduct of Zoom, it is estopped from arguing that it has not submitted to the jurisdiction of the court. The critical test of submission in this case is whether a reasonable person in the position of the plaintiff would have understood the defendant's conduct as waiving any irregularity as to service, and whether the plaintiff had suffered detriment or prejudice in reliance of the same.[12]

10 In the first situation described, there is actual submission by the defendant, *ie*, the defendant has, through his conduct expressly or impliedly consented to the exercise of jurisdiction over him. With respect to the latter argument, the defendant can no longer revisit the argument that he had not submitted to the court as his conduct has created an estoppel preventing him from revisiting the same.[13]

8 [2008] 4 SLR(R) 460.
9 *Broadcast Solutions Pte Ltd v Zoom Communications Ltd* [2014] 1 SLR 1324 at [14]–[15].
10 *Broadcast Solutions Pte Ltd v Zoom Communications Ltd* [2014] 1 SLR 1324 at [16].
11 *Broadcast Solutions Pte Ltd v Zoom Communications Ltd* [2014] 1 SLR 1324 at [16].
12 *The Burns-Anderson Independent Network plc v Wheeler* [2005] EWHC 575; [2005] ILPr 38; [2005] 1 Lloyd's Rep 580 at [39]–[40].
13 *The Burns-Anderson Independent Network plc v Wheeler* [2005] EWHC 575; [2005] ILPr 38; [2005] 1 Lloyd's Rep 580 at [39]–[40].

11 However, it is submitted that not all applications for an extension of time should be treated as the same and a nuanced approach is required. When assessing whether a defendant has submitted to the jurisdiction, we are concerned with whether the defendant has, through his conduct, taken a step in the proceedings, which in all the circumstances, amounts to a recognition of the court's jurisdiction in respect of the claim that is the subject matter of those proceedings.[14] Therefore, it is important to investigate the reasons for the application for an extension of time. As Woo J rightly pointed out, it would be ideal for the defendant to expressly reserve the right to set aside the order to serve out of jurisdiction when he is filing an application for an extension of time.[15] However, the mere absence of such reservation does not amount to submission.[16] It appears that, unless the defendant has taken an overt step in showing his willingness to accept the jurisdiction of the court, it should be presumed that the defendant has not submitted to the jurisdiction of the court. This approach can be justified in that submission in and of itself robs the defendant of the right to contest the jurisdiction of the court any further. The basis of such an approach is precisely that the defendant has conducted himself in such a fashion that he has either actively consented or presumed to have consented to the removal of this right from him.

B. Whether the Setting Aside and Stay Application amounts to a submission to the court?

12 The second issue the court had to decide was whether the Setting Aside and Stay Application amounted to Zoom submitting to the jurisdiction of the court. The critical issue was with respect to the Stay Application and to whether it constitutes a submission to the jurisdiction of the court.

13 It must first be recognised that the two prayers in the summons were in and of themselves inconsistent courses of conduct, *ie*, both prayers can never be granted simultaneously.[17] As Woo J rightly pointed out, the first prayer is a dispute of the existence of the jurisdiction of the court (*ie*, it never existed) while the second involves the defendant recognising the jurisdiction of the court to hear the case but submitting that the court should not exercise its jurisdiction to hear it (*ie*, it recognises that this jurisdiction exist).[18]

14 *The Messiniaki Tolmi* [1984] 1 Lloyd's Rep 266 at 270.
15 *Broadcast Solutions Pte Ltd v Zoom Communications Ltd* [2014] 1 SLR 1324 at [16].
16 *Broadcast Solutions Pte Ltd v Zoom Communications Ltd* [2014] 1 SLR 1324 at [16].
17 Yeo Tiong Min, *Halsbury's Laws of Singapore* vol 6(2) (LexisNexis, 2009) at para 75.012.
18 *Broadcast Solutions Pte Ltd v Zoom Communications Ltd* [2014] 1 SLR 1324 at [18].

14 It would be helpful here to go through the requirements for service out of jurisdiction. At both the *ex parte* stage for leave to serve out of jurisdiction and the *inter partes* stage to set aside leave for service out of jurisdiction, the plaintiff always has the burden of proof[19] to show the following:

(a) there is a serious issue to be tried on the merits;

(b) there is a good arguable case that one of the heads of jurisdiction under O 11 of the ROC is met; and

(c) Singapore is clearly the appropriate forum to hear the dispute.[20]

15 As seen above, the third factor that the plaintiff has to show is that Singapore is clearly the appropriate forum to hear the dispute. That requires the plaintiff to satisfy the two-stage test in *Spiliada Maritime Corp v Cansulex Ltd*[21] (*ie*, Singapore is the natural forum and that the justice of the case does not demand that it be heard in another forum).

16 As an observation, the choice by Zoom to pursue both an application to set aside service out of jurisdiction and an application to stay appears to be a strange course of action as, it is submitted, it did not put it in a more advantageous position. In fact, as shown below, it conversely was a disadvantage to it.

17 First, it appears that the only point relied on for the stay application was that of *forum non conveniens*.[22] As highlighted above, it was also a ground to set aside leave to serve out of jurisdiction. If the defendant had relied on that in its application to set aside the service of out jurisdiction together with the ground of material non-disclosure, it would have been advantageous to it as it would then have become the plaintiff's burden to satisfy the courts that Singapore was an appropriate forum to hear the dispute.

18 However, in a stay application, as Zoom was the applicant, it would be Zoom's obligation to persuade the court to stay its jurisdiction.[23] Thus, as illustrated, a stay application in this situation gave no benefit to the defendant and as such appears to have been an unnecessary step taken by Zoom.

19 *Lee Hsien Loong v Review Publishing Co Ltd* [2007] 2 SLR(R) 453 at [20]–[21].
20 *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460; [1986] 3 WLR 972; [1986] 3 All ER 843.
21 [1987] AC 460; [1986] 3 WLR 972; 3 All ER 843.
22 *Broadcast Solutions Pte Ltd v Zoom Communications Ltd* [2014] 1 SLR 1324 at [18].
23 *OCM Opportunities Fund II, LP v Burhan Uray* [2004] SGHC 115 at [58].

C. What amounts to submission?

19 Aside from the point above, the more interesting issue is whether the inclusion of a prayer for a stay application amounts to a submission to the court's jurisdiction, and if not, when would the defendant be considered to have submitted to the jurisdiction of the court?

20 Traditional wisdom has it that a court has two distinct jurisdictions, the first jurisdiction is to determine if it has a jurisdiction to hear a case and the second is to hear the merits of the case.[24] As such, submission is an important issue to be determined as it represents an independent basis for the court to assume jurisdiction over the defendant.[25] Therefore, if a defendant has through his conduct voluntarily submitted to the court, he has waived all objections to the existence of the jurisdiction of the court (*ie*, the first jurisdiction of the court). Voluntary submission is a question of fact,[26] submission is the taking of a step in the proceedings that *in all the circumstances amounts to a recognition of the court's jurisdiction* in respect of the claims which is the subject matter of the proceedings.[27]

21 Woo J made two distinct holdings. The first is that there is no distinction between a sole prayer for a stay on the grounds of *forum non conveniens* or when it exists as an alternative prayer to the setting aside of service.[28] Further, even if there is a distinction, it is irrelevant as the defendant has crossed the line once he advances arguments for a stay. The author respectfully disagrees with Woo J's view on this matter.

IV. *Forum non conveniens* distinct or as an alternative prayer?

22 It is submitted that when an application for a stay is made solely on the ground of *forum non conveniens simpliciter*, it is indeed a submission to the jurisdiction of the court.[29] This is because in the context of a service out of jurisdiction, the defendant would be taken to have waived any argument of jurisdiction over him via the process of service out jurisdiction when he files an application for a stay *simpliciter*. This is because the defendant makes no protest as to the service out of

24 *Williams & Glyn's Bank v Astro Dinamico* [1984] 1 WLR 438.
25 Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) s 16(1)(*b*).
26 *International SOS Pte Ltd v Overton Mark Harold George* [2001] 2 SLR(R) 777 at [5].
27 *The Burns-Anderson Independent Network plc v Wheeler* [2005] EWHC 575; [2005] ILPr 38; [2005] 1 Lloyd's Rep 580 at [39]–[40].
28 *Broadcast Solutions Pte Ltd v Zoom Communications Ltd* [2014] 1 SLR 1324 at [45].
29 Yeo Tiong Min, *Halsbury's Laws of Singapore* vol 6(2) (LexisNexis, 2009) at para 75.012.

jurisdiction by the defendant. Further, it can be argued that he accepts the jurisdiction of the court to determine the merits of the case. However, despite the existence of jurisdiction, the defendant is asking the court not to exercise its jurisdiction as Singapore is not the natural forum or that the justice of the case demands that the case be heard in a foreign jurisdiction.

23 However, when an application for a stay on the grounds of *forum non conveniens* is made as an alternative prayer to a setting aside application, it is submitted that the position taken by the defendant is as follows:

> (a) the defendant is telling the court to set aside the service out of jurisdiction on the basis that it had no jurisdiction to begin with; or
>
> (b) if the court has jurisdiction, the court should not exercise its jurisdiction in the given case.

24 For the above position to be read consistently, it is submitted that it should be inferred from the entire circumstances of what is sought, which is that the second prayer is without prejudice to the primary position in the first prayer. As such, in this situation, there is no submission to the court. It is submitted that this position is on all fours with the holding of Lord Fraser in *Williams & Glyn's Bank v Astro Dinamico*[30] ("*Williams*"), where he held:[31]

> My Lords, it would surely be quite unrealistic to say that the respondents had waived their objection to the jurisdiction by applying for a stay *as an alternative* in the very summons in which they applied for an order giving effect to their objection to the jurisdiction. [emphasis added]

25 In the situation of *Williams*, when the court chooses on its own volition to hear the stay application first rather than to hear the setting aside application, it is submitted this has to be without prejudice to the defendant's position protesting the existence of jurisdiction. As Lord Fraser held:[32]

> By entertaining the application for a stay in this case, the court would be assuming (rightly) that it has jurisdiction to decide whether or not it has jurisdiction to deal with the merits, but would not be making any assumption about its jurisdiction to deal with the merits.

26 Thus, in effect, when a court chooses to hear an application for a stay first (before an application to set aside), the court is *acting on the*

30 [1984] 1 WLR 438.
31 *Williams & Glyn's Bank v Astro Dinamico* [1984] 1 WLR 438 at 442.
32 *Williams & Glyn's Bank v Astro Dinamico* [1984] 1 WLR 438 at 443.

assumption that if it had jurisdiction it would stay or not stay the application on whatever grounds it is sought to stay the application. This assumption, it is submitted, can be revisited, and clearly any holdings must be without prejudice to the defendant's right to revisit this assumption by having his application for setting aside heard. In this situation, even if the court's decision is that it would not have stayed the application, if it can be shown that there was no jurisdiction to begin with, the assumption that the court proceeded on is invalid. As such, the first decision on the stay application would be moot as it was based on an invalid assumption.

V. There are stays and there are stays

27 Is there then a distinction in a situation where the defendant fails in its application to set aside? Should they appeal or should they continue with the alternative prayer for stay? Woo J held that the moment "Zoom proceeded with its prayer for a stay, it had crossed the line".[33] The author respectfully disagrees with Woo J's conclusion. In this situation, Zoom's conduct should be seen in the context of the application made. If it is abundantly clear that the arguments for stay were made in the alternative to the setting aside application, it is submitted that the submission by Zoom should be considered to be ambulatory in nature such that pending an exhaustion of his right to appeal it should not be considered that he has submitted fully to the court such that he no longer has a right to pursue his appeal on the issue of setting aside.

28 Further, Woo J held that the approach in *Singapore Civil Procedure 2013*[34] appeared inconsistent.[35] In *Singapore Civil Procedure 2013*, the learned authors, relying on *Williams*, reached a conclusion that "an application to stay proceedings in Singapore pending the outcome of proceedings in a foreign jurisdiction does not amount to a submission to jurisdiction".[36] Thereafter, it was argued that:[37]

> … [w]here the defendant has been served in accordance with the ROC and applies for a stay on grounds of *forum non conveniens* he in fact accepts the court's jurisdiction and is not to be treated as disputing it.

33 *Broadcast Solutions Pte Ltd v Zoom Communications Ltd* [2014] 1 SLR 1324 at [26].
34 Sweet & Maxwell, 2012.
35 *Broadcast Solutions Pte Ltd v Zoom Communications Ltd* [2014] 1 SLR 1324 at [40]–[43].
36 *Broadcast Solutions Pte Ltd v Zoom Communications Ltd* [2014] 1 SLR 1324 at [40]–[43], citing *Singapore Civil Procedure 2013* (Sweet & Maxwell, 2012) at para 12/7/3(3).
37 *Singapore Civil Procedure 2013* (Sweet & Maxwell, 2012) at para 12/7/4.

29 It is submitted that there is no inconsistency with the two paragraphs. The former notes that a stay application pending the outcome of proceedings in a foreign jurisdiction does not amount to a submission to the Singapore court. The latter states that a stay application on the ground of *forum non conveniens simpliciter* amounts to submission to the Singapore court. This in fact comports with the fact-centric approach in construing whether a defendant has submitted to the Singapore courts. The reason(s) for the stay application is important and not all stays should be viewed the same way. As such, it is submitted that this approach is also applicable when viewing an application for a stay by reason of *forum non conveniens versus* a situation where it is a prayer in the alternative. The effects should be different.

30 It is the author's view that the above approach of allowing the defendant to argue his application for both prayers (without prejudice to the first) would be most practical. To take an alternative position of requiring Zoom to first appeal the setting aside application, and thereafter, in the event that it fails in its appeal, to then revisit the issue of the stay separately is a waste of time and costs for all parties.

31 As argued by the learned authors of *Dicey, Morris & Collins on the Conflict of Laws*,[38] in the context of enforcement of foreign judgment:[39]

> … so long as the defendant asserted, and is obviously still asserting, as his primary defence that the court has no jurisdiction over him in relation to the merits of the claim, then even if he also takes steps that are purposeful in relation to the merits of the claim, his doing so should not be taken to mean that he has submitted to the jurisdiction for the purposes of the common law of submission … The real question for the English court should not be whether the defendant has taken a step in the proceeding that prepares for the trial of the merits, but whether he has chosen to abandon his challenge to the jurisdiction.

32 As such, even in an application in the alternative for a stay application, as long as the primary application is a challenge to the jurisdiction and it has not been abandoned, the defendant should not be taken to have submitted to the jurisdiction of the Singapore courts.

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38 *Dicey, Morris & Collins on the Conflict of Laws* (Lord Collins of Mapesbury *et al* gen eds) (Sweet & Maxwell, 15th Ed, 2012) at para 14-047. This argument was in the context of an enforcement of foreign judgment.

39 Relying on the English Court of Appeal decision of *AES Ust-Kamenogorsk Hydropower Plant LLP v AES Ust-Kamenogorsk Hydropower Plant JSC* [2011] EWCA Civ 647; [2012] WLR 920.

VI. Observations on the English position

33 Woo J made certain observations on the English position[40] that, pursuant to s 33(1)(b) of the English Civil Jurisdiction and Judgments Act,[41] for the purpose of enforcing a foreign judgment, a defendant who argues for a stay application is not taken to have submitted to the jurisdiction of that foreign court. He further emphasised that while that position may have influenced the English courts' position, Singapore does not have an equivalent provision.

34 The English position has indeed changed, if one refers to Pt 11 of the Civil Procedure Rules 1998,[42] the procedure to stay a court's jurisdiction and disputing a court's jurisdiction are the same and are to be made within the same time frame.[43] The crucial point is that the defendant does not lose the right to dispute the court's jurisdiction.[44]

VII. The recognition of a third jurisdiction

35 At first blush, Woo J's implicit point that the English position may be different, or in this case is actually different, appears justified that it is a result of a legislative change to their position *vis-à-vis* the issue of submission and recognition of foreign judgments, and as there is no such change in Singapore, our common law position is justifiably different.

36 It is submitted that this conclusion requires a closer analysis. The current position appears to be that different reasons for a stay attract different consequences. An application for a stay on the ground of *forum non conveniens* is considered to be a submission to the jurisdiction of the court. On the other hand, if we consider the decision of *WSG Nimbus Pte Ltd v Board of Control for Cricket in Sri Lanka*,[45] Lee Seiu Kin J, in applying the decision of *Williams*, held that an application to the Colombo High Court protesting the exercise of jurisdiction on the ground that there was an arbitration agreement was not a submission to the jurisdiction of the Colombo High Court.[46]

37 It is submitted that there is difficulty in reconciling both positions, when in essence both are stay applications. Next, both are

40 *Broadcast Solutions Pte Ltd v Zoom Communications Ltd* [2014] 1 SLR 1324 at [56].
41 c 27.
42 SI 1998 No 3132.
43 Civil Procedure Rules 1998 (SI 1998 No 3132) (UK) r 11(4).
44 Civil Procedure Rules 1998 (SI 1998 No 3132) (UK) r 11(3).
45 [2002] 1 SLR(R) 1088.
46 *WSG Nimbus Pte Ltd v Board of Control for Cricket in Sri Lanka* [2002] 1 SLR(R) 1088 at [37]–[38].

concerned with asking the court not to exercise its jurisdiction, in favour of another jurisdiction (*ie*, the appropriate forum or the arbitral tribunal).

38 Since Singapore law recognises that seeking a stay in favour of a different forum (the arbitral tribunal) is not a submission, it is argued that it has implicitly recognised that submission to a court to stay its proceedings is not a submission to the jurisdiction of the court to determine the merits of the decision.

39 As such, it is submitted that there is sense and reason in the English position, in finding that a stay application does not amount to a submission to the jurisdiction of the court as, when a party is making an application for a stay (regardless of reason), he is in fact telling the court (for whatever reason) to not exercise its jurisdiction to determine the merits of the case. In such a case, how can it be said that he has submitted to the jurisdiction of the court to determine the merits of the case?

40 Perhaps, there has come a time to recognise that there exists a third jurisdiction of the court to entertain stay proceedings. This jurisdiction is the jurisdiction to determine whether to proceed onto the jurisdiction to obtain the merits. As such, when a court is asked to exercise its powers under this particular jurisdiction, there is no question of the parties being held to have submitted to the jurisdiction of the court to entertain the merits of the case.

VIII. Conclusion

41 Traditional wisdom of conflict of laws has always regarded the exercise of service out of jurisdiction as an exercise of an "exorbitant jurisdiction".[47] Although there appears to be an erosion of such a view,[48] it is submitted that caution has to be exercised by the courts in deciding when the defendant has submitted to the jurisdiction of the court.

42 As a foreign defendant who is brought into the jurisdiction of the Singapore courts, *sans* a situation where he expressly consented, the presumption should be that he has not agreed that such a jurisdiction is to be exercised over him to determine the merits of the case.

43 Thirdly, perhaps there has come a time for the courts to develop the common law to give effect to what is the intention of the defendant when he makes an application to stay proceedings. This will eradicate

47 *Oriental Insurance Co Ltd v Bhavani Stores Pte Ltd* [1997] 3 SLR(R) 363 at [22].
48 *Abela v Baadarani* [2013] UKSC 44; [2013] 1 WLR 2043.

the current unsatisfactory distinction between setting aside applications and stay applications in the context of attempting to argue that an alternative forum is the most appropriate forum.

44 On a final note, until the Court of Appeal[49] is able to show the way by giving a clear bright line test of where the Rubicon is crossed by the defendant, having crossed the threshold of submission, any foreign defendant is recommended to exercise caution and to expressly reserve their position of not submitting, for fear of a similar situation as that which befell Zoom.

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49 Since this case note was written, the Court of Appeal has heard the appeal and handed down judgment. See *Zoom Communications Ltd v Broadcast Solutions Pte Ltd* [2014] SGCA 44. The judgment has helped to illuminate the Singapore court's position on this matter. In particular, the Court of Appeal's holding that the focus should be on whether the foreign defendant had waived its objection (or never entertained an objection) to determine if he has submitted to the Singapore court is a return to orthodoxy. Furthermore, it appears that counsel for the defendant did not attempt to canvas an argument on the potential third jurisdiction when entertaining a stay application, but with the Court of Appeal's approach, this author respectfully argues that Singapore is now closer to recognising that there is a third jurisdiction to determine stay applications between the jurisdiction to determine existence of jurisdiction and the jurisdiction to determine the merits of the case.