

12. CONFLICT OF LAWS

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I. Introduction

12.1 For this year's chapter, the authors have confined themselves to eight cases from the Court of Appeal, the Appellate Division of the High Court ("Appellate Division"), the General Division of the High Court ("General Division"), the General Division of the High Court (Family Division) and the Singapore International Commercial Court ("SICC") which seem of particular importance. Issues covered include: (a) substituted service out of jurisdiction; (b) the dispensation of service for defendants overseas; (c) the Vandepitte procedure and contractual anti-suit injunctions; (d) sovereign immunity for separate entities; (e) anti-suit and anti-enforcement injunctions in matrimonial matters; (f) the natural justice defence for foreign judgments; and (g) stays of proceedings and stays of enforcement.

II. Jurisdiction and stays of proceedings

A. GLAS SAS (London Branch) v European TopSoho Sàrl

Jurisdiction – Forum election – Lifting of stay

12.2 In *GLAS SAS (London Branch) v European TopSoho Sàrl*,¹ European TopSoho Sàrl ("ETS"), a Luxembourgian company, issued bonds to the London branch of GLAS SAS ("GLAS"), a French company. When ETS failed to redeem the bonds upon maturity, GLAS commenced insolvency-related proceedings against ETS in multiple jurisdictions. ETS then transferred a substantial amount of its assets in the form of shares ("Shares") to Dynamic Treasure Group Ltd ("Dynamic"), a British

1 [2025] 5 SLR 648.

Virgin Islands company, in return for €1. Dynamic subsequently placed the Shares in a Singapore bank account.

12.3 GLAS then commenced concurrent proceedings against ETS and Dynamic in the UK and Singapore. In the UK proceedings, GLAS sued ETS for the bond debt, and also sued both ETS and Dynamic in unlawful means conspiracy and under the clawback provisions in s 423 of the UK Insolvency Act 1986.² In the Singapore proceedings, GLAS brought essentially the same claims, with its clawback claim being based on s 438 of the Insolvency, Restructuring and Dissolution Act 2018³ (“IRDA”), and also obtained a Mareva injunction against ETS and Dynamic.

12.4 Thereafter, GLAS applied to stay the Singapore proceedings, on grounds that the English proceedings were *lis alibi pendens* brought by a common plaintiff. GLAS then obtained from the English courts two summary judgments, one for the bond debt and the other for an order that Dynamic transfer the Shares back to ETS. GLAS’s claim in unlawful means conspiracy, and for compensation under s 423 of the UK Insolvency Act 1986⁴ remained outstanding.

12.5 Since ETS had no major assets, and since the English judgment ordering the transfer of the Shares could not be enforced in Singapore, GLAS found itself compelled to apply for the stay of the Singapore proceedings to be lifted. This application was granted by Assistant Registrar Wong Hee Jinn (“AR Wong”).

12.6 AR Wong noted that where proceedings in Singapore and elsewhere were commenced by the same plaintiff and were substantially identical – having reference to the parties, causes of actions mounted, and reliefs sought – the plaintiff might be subject to the doctrine of forum election.⁵ This would require the plaintiff to opt between the Singapore and forum proceedings, on grounds that allowing both to proceed in tandem would involve a risk of conflicting judgments and would also unfairly require the defendant to “fight the same battle twice”.⁶ However, where a plaintiff elected to pursue the foreign proceedings, the question arose whether the Singapore proceedings should be stayed or discontinued. A stay would be more appropriate where (a) there might be some obstacle to the foreign court’s ability to adjudicate the merits;⁷

2 c 45 (UK).

3 Act 40 of 2018.

4 c 45 (UK).

5 *GLAS SAS (London Branch) v European TopSoho Sàrl* [2025] 5 SLR 648 at [58]–[60].

6 *GLAS SAS (London Branch) v European TopSoho Sàrl* [2025] 5 SLR 648 at [61].

7 *GLAS SAS (London Branch) v European TopSoho Sàrl* [2025] 5 SLR 648 at [63(b)].

(b) the Singapore proceedings were brought to obtain security;⁸ (c) the foreign court's willingness to hear the plaintiff's claims was subject to a credible appeal;⁹ or (d) there was some other reason why a stay would "best serve the ends of justice".¹⁰

12.7 AR Wong then considered the test to be applied to determine whether a stay imposed via forum election should be lifted. There are five relevant factors here:¹¹

- (a) What is the basis on which the case management stay was initially granted?
- (b) Has the basis on which the case management stay was initially granted since fallen away or has there been a change in circumstances?
- (c) At the point in which the case management stay was granted, was the plaintiff made to elect the forum in which to pursue its claims?
- (d) If the plaintiff has so elected, what reasons has it now provided in support of its application seeking to lift the case management stay?
- (e) Are there any countervailing factors that weigh against lifting the case management stay?

12.8 In relation to factors (a) and (b), it was said that:¹²

... in the context of a stay granted because of a plaintiff's election to pursue proceedings in the foreign jurisdiction ... in practical terms ... the court will have to determine whether there remains a *lis alibi pendens vis-à-vis* the Singapore proceedings that have been stayed.

12.9 Moreover, less exceptional circumstances might be needed to lift a case management stay as compared to a *forum non conveniens* stay, since in the former context there was no finding that the foreign court was in some way more appropriate than the Singapore court for trial.¹³ In relation to factors (c) and (d), it was noted that, since the plaintiff who elects to proceed in a foreign court usually obtains a benefit from the Singapore proceedings being stayed rather than discontinued (*eg*, the maintenance of security in Singapore), it should be held to the consequences of the stay.¹⁴ Thus, where the plaintiff seeks to lift the Singapore stay after the foreign court has decided on its claims, the stay may be lifted for the

8 GLAS SAS (London Branch) v European TopSoho Sàrl [2025] 5 SLR 648 at [63(b)].

9 GLAS SAS (London Branch) v European TopSoho Sàrl [2025] 5 SLR 648 at [65]–[66].

10 GLAS SAS (London Branch) v European TopSoho Sàrl [2025] 5 SLR 648 at [67].

11 GLAS SAS (London Branch) v European TopSoho Sàrl [2025] 5 SLR 648 at [75].

12 GLAS SAS (London Branch) v European TopSoho Sàrl [2025] 5 SLR 648 at [81].

13 GLAS SAS (London Branch) v European TopSoho Sàrl [2025] 5 SLR 648 at [82].

14 GLAS SAS (London Branch) v European TopSoho Sàrl [2025] 5 SLR 648 at [84]–[85].

plaintiff to have the foreign judgment recognised in Singapore, but not to relitigate the merits of the claim.¹⁵

12.10 On the facts, there were two significant reasons why the stay should be lifted. First, the basis of the stay had fallen away, as the Singapore and English proceedings were no longer *lis alibi pendens*. This was because GLAS had sought permission to amend its claims in Singapore, limiting the reliefs sought now to an order for Dynamic to transfer the Shares to ETS under s 438 of the IRDA. As the only outstanding claim in the English proceedings was for compensation, the two sets of proceedings were no longer substantially similar.¹⁶ Second, GLAS was not seeking to relitigate the merits of its claims in the English proceedings. All it would do in the Singapore proceedings was give effect to the transfer order made by the English court, ideally by relying on the English judgment as estoppel in its claim under s 438 of the IRDA, but in any case seeking the same relief as had been issued by the English court.¹⁷

12.11 AR Wong also considered and rejected an argument raised by Dynamic, relying on the fact that the Shares had been the subject of a dispute between ETS and its parent company, Wuhu Ruyi Xinbo Investment Partnership (Limited Partnership) (“Xinbo”), which had culminated in an arbitral award granting Xinbo a “priority right of compensation”¹⁸ from the sale proceeds.¹⁹ Permission to enforce this award had been denied in Singapore, on grounds that Xinbo had failed to comply with a production order for certain documents relevant to the dispute.²⁰ In any event, the award on its face purported to confer on Xinbo no proprietary right or security interest in the Shares, so Xinbo’s claims on the award had to be submitted in ETS’s insolvency proceedings – which had since commenced in Luxembourg – like all else.²¹

15 GLAS SAS (London Branch) v European TopSoho Sàrl [2025] 5 SLR 648 at [85]–[86].

16 GLAS SAS (London Branch) v European TopSoho Sàrl [2025] 5 SLR 648 at [89]–[94].

17 GLAS SAS (London Branch) v European TopSoho Sàrl [2025] 5 SLR 648 at [118]–[119].

18 GLAS SAS (London Branch) v European TopSoho Sàrl [2025] 5 SLR 648 at [99].

19 GLAS SAS (London Branch) v European TopSoho Sàrl [2025] 5 SLR 648 at [99].

20 GLAS SAS (London Branch) v European TopSoho Sàrl [2025] 5 SLR 648 at [103]–[105].

21 GLAS SAS (London Branch) v European TopSoho Sàrl [2025] 5 SLR 648 at [109]–[115].

B. Exchange Union Co v Wo Qi

Jurisdiction – Substituted service – Defendant not present in jurisdiction

Jurisdiction – Service on officer of foreign company

12.12 In *Exchange Union Co v Wo Qi*²² (“*Exchange Union*”), the father of a family brought proceedings in Singapore against his wife and his daughter in February 2024, in breach of contract and unlawful means conspiracy. In July 2024, the father then successfully had his son, and a British Virgin Islands company, Jumbo Access Investments Ltd (“Jumbo”), controlled by his son, added as defendants. In September 2024, the father obtained permission to make substituted service on the son, by posting a notice on the front door of the son’s last-known address in Singapore and by sending the cause papers in a portable document format (PDF) file to his son’s Telegram profile. The father also obtained permission to make substituted service on Jumbo, by serving the son in his capacity as Jumbo’s sole director and officer. Service was purportedly effected later that month.

12.13 Both the son and Jumbo challenged the validity of service. The son argued that he had permanently relocated to Greece three months before he was joined as a defendant, so permission to serve him out of jurisdiction should have been sought. Jumbo argued that, as a foreign corporation, it could only be served if permission were first obtained for service out, and that service on it via service on its director and officer could only be effective if that permission were first obtained.

12.14 Assistant Registrar Chong Ee Hsiun (“AR Chong”) upheld the service on the son. The starting point here was the rule in *Consistel Pte Ltd v Farooq Nasir*,²³ that where a defendant has left Singapore before he is served, substituted service is usually effective only where permission to serve out of jurisdiction had first been obtained. On the evidence, the son was not in Singapore when he was served in September 2024: he had been a Greek permanent resident since April 2023,²⁴ and his only substantial connection to Singapore was an employment pass that he had cancelled in April 2024.²⁵ However, in *Consistel Pte Ltd v Farooq Nasir*,²⁶ Andrew Ang J had recognised at least two non-exhaustive exceptions to the above rule:²⁷

22 [2025] SGHCR 26.

23 [2009] 3 SLR(R) 665.

24 *Exchange Union Co v Wo Qi* [2025] SGHCR 26 at [31].

25 *Exchange Union Co v Wo Qi* [2025] SGHCR 26 at [26]–[27].

26 [2009] 3 SLR(R) 665.

27 *Consistel Pte Ltd v Farooq Nasir* [2009] 3 SLR(R) 665 at [35].

One clear exception mentioned earlier is where the defendant leaves the country in anticipation that legal proceedings will be initiated against him. In such a situation, substituted service would be warranted. Another exception is when a defendant is constantly moving from country to country such that it is impossible to serve the writ on him personally. In such a case, there is no need to apply for personal service out of jurisdiction since any attempt at personal service clearly will be futile. Substituted service will suffice. There may be other exceptions but it would be unwise to speculate.

12.15 Yet, there was also no evidence that the son had left Singapore before September 2024 deliberately to evade service: by then, his companies and his relatives had been sued, but that alone did not necessarily imply that he too would be sued.²⁸

12.16 Nevertheless, AR Chong reasoned that “the two expressly stated exceptions to the *Consistel* Rule ... ought not to be too pedantically read”.²⁹ So:³⁰

In relation to the first exception, [there was] no principled reason why the intention of the defendant to *evade* service needed to be formed *when* he left jurisdiction ... this exception could be engaged even if the intention to evade service crystallised after the defendant had left jurisdiction. In relation to the second exception, [there was] no principled reason why the impossibility to serve the originating claim on the defendant needed to be due solely to the fact that the defendant was ‘constantly moving from country to country’. If a defendant deliberately hid his personal address and/or adopted other means of concealment in order to evade service, that could engage the second exception too. [emphasis in original]

12.17 In this regard, the son had consistently refused to disclose his personal address, which the father had alleged was in Greece, and had not given his lawyers instructions to accept service on his behalf. This was a “patent attempt to evade service”³¹ which “made it impossible to serve the originating claim on him personally”.³² As a result, the son had fallen within the exceptions to the *Consistel* rule, more broadly defined.

12.18 In AR Chong’s view, however, there were three additional caveats that had to be inserted to limit the scope of the exceptions to the *Consistel* rule:

(a) First, applying for service out of jurisdiction had to remain the first port of call for plaintiffs. This was ensured by

28 *Exchange Union Co v Wo Qi* [2025] SGHCR 26 at [37]–[40].

29 *Exchange Union Co v Wo Qi* [2025] SGHCR 26 at [47].

30 *Exchange Union Co v Wo Qi* [2025] SGHCR 26 at [47].

31 *Exchange Union Co v Wo Qi* [2025] SGHCR 26 at [57].

32 *Exchange Union Co v Wo Qi* [2025] SGHCR 26 at [57].

a requirement that, in applications for permission to make substituted service, plaintiffs had to make full and frank disclosure of all material facts that would enable the defendant to be notified of the proceedings – including whether the plaintiff knew or ought to have known that the defendant was out of jurisdiction when substituted service was sought.³³ The upshot is that substituted service, sought on the basis that the defendant was in jurisdiction but in circumstances where the plaintiff did not genuinely believe that the defendant was in jurisdiction, would be viewed “with great suspicion”.³⁴

(b) Second, even where the plaintiff had genuinely (but wrongly) believed that the defendant was in jurisdiction when it applied for substituted service, in the event that service was challenged, the plaintiff would have to demonstrate that it would have obtained permission for service out under O 8 r 1(1) of the Rules of Court 2021 (“ROC 2021”).³⁵ This ensured that substituted service under the Consistel rule’s exceptions would be consonant with s 16(1)(a)(ii) of the Singapore Court of Judicature Act 1969.³⁶

(c) Third, and in any event, the court should only uphold substituted service under the Consistel rule’s exceptions if it is satisfied that the defendant had or must have had notice of the documents that were the subject of the substituted service order.³⁷

12.19 None of the three caveats were engaged in this case. The father had genuinely believed that the son was in Singapore when applying for substituted service, so there was no failure to make full and frank disclosure.³⁸ The father could have obtained permission for service out, as there was a sufficient nexus between his claim and Singapore – *inter alia*, on grounds that he was a necessary and proper party to claims against the wife and daughter, that the alleged contract was breached in Singapore and that the alleged conspiracy took place when all parties were ordinarily resident in Singapore – and no one had suggested that Singapore was not the natural forum.³⁹ Finally, the son had evidently had notice of the cause

33 *Exchange Union Co v Wo Qi* [2025] SGHCR 26 at [49].

34 *Exchange Union Co v Wo Qi* [2025] SGHCR 26 at [49].

35 *Exchange Union Co v Wo Qi* [2025] SGHCR 26 at [50].

36 2020 Rev Ed.

37 *Exchange Union Co v Wo Qi* [2025] SGHCR 26 at [54].

38 *Exchange Union Co v Wo Qi* [2025] SGHCR 26 at [56] and [59].

39 *Exchange Union Co v Wo Qi* [2025] SGHCR 26 at [60]–[61].

papers, as he had been sent them on Telegram, read them, then deleted them.⁴⁰ Substituted service on the son was thus upheld.

12.20 By contrast, AR Chong set aside substituted service on Jumbo. Here, the father had relied on O 7 r 2(1)(b) of the ROC 2021, which states that: “Personal service of a document is effected ... on any entity by leaving a copy of the document with the chairperson or president of the entity, or the secretary, treasurer or other officer”. AR Chong noted that in *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills*⁴¹ (“COSCO Shipping”), S Mohan J had reasoned that O 7 r 2(1)(b) enabled service in Singapore on a foreign company if the company’s officers were served while in Singapore.⁴² However, “leaving” a copy of a document with a corporate officer did not include the posting of such documents on the officer’s front door.⁴³ Moreover, the Consistel rule applied “with full force”⁴⁴ to Jumbo, as “[t]here was no question of Jumbo attempting to evade service, or carrying out acts that made it impossible to serve the Cause Papers on it personally”.⁴⁵ The father thus ought to have applied for permission to serve Jumbo out of jurisdiction.⁴⁶

12.21 The starting point in a common law system is that service establishes the court’s jurisdiction over defendants. As service is usually viewed as the exercise of a State’s authority over the defendant, the default position is that service must be territorial, unless statute has permitted service out of jurisdiction. Beyond O 8 r 1(1), there are many rules of court – such as those permitting substituted service and service on agents of a foreign defendant – which may be read as permitting service out without more. However, consistent with the general position that service is territorial, these provisions should be presumed only to prescribe a method of effecting service on defendants who are either already present in Singapore or who may be served out under O 8 r 1(1), rather than a completely new basis for service (out), unless the text clearly provides otherwise.⁴⁷

12.22 Seen in this light, AR Chong’s judgment in *Exchange Union* is to be welcomed for two reasons.

40 *Exchange Union Co v Wo Qi* [2025] SGHCR 26 at [62].

41 [2024] 3 SLR 807.

42 *Exchange Union Co v Wo Qi* [2025] SGHCR 26 at [72].

43 *Exchange Union Co v Wo Qi* [2025] SGHCR 26 at [74]–[75] and [77].

44 *Exchange Union Co v Wo Qi* [2025] SGHCR 26 at [76].

45 *Exchange Union Co v Wo Qi* [2025] SGHCR 26 at [76].

46 *Exchange Union Co v Wo Qi* [2025] SGHCR 26 at [76].

47 For recent affirmation, see *Mikhail Fridman v Agrofirma Oniks LLC* [2026] EWCA Civ 139 at [36]–[37] and [48].

12.23 For starters, the Consistel rule's exceptions, though broadened in some sense, are now more substantially narrowed in the way that counts. Now, plaintiffs who have effected substituted service on evasive defendants out of jurisdiction must satisfy the court that service out would indeed have been permitted under O 8 r 1(1). This is consistent with the general position that service, if not territorial, should generally be permitted only under the established O 8 r 1(1) framework. The Consistel rule is itself a manifestation of that general position. *Exchange Union* now ensures that the Consistel rule's exceptions are consistent with that position as well.

12.24 Moreover, an overbroad interpretation of O 7 r 2(1) now seems to have been rejected. In *COSCO Shipping*, Mohan J had reasoned in *obiter* that O 7 r 2(1) permitted service *within* jurisdiction on any foreign defendant who was not present in Singapore (there, a Dutch company with no operations in Singapore) so long as any of the four limbs of O 7 r 2(1) were available:⁴⁸

True enough, a foreign-incorporated company cannot be said to be 'physically present' in Singapore in the same way an individual can, but that is why O 7 r 2 of the ROC 2021 exists – to provide for how personal service may be effected on entities. In that regard, personal service may be effected in Singapore on a foreign company under O 7 r 2(1)(b) if the company's chairman is served while he is in Singapore ...

12.25 The correctness of this *obiter* passage was not addressed by the Court of Appeal in *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills*,⁴⁹ and it has been criticised for “go[ing] against the principle of territoriality and separate legal personality of corporations”.⁵⁰ The proper approach, as AR Chong recognised, is for the plaintiff to obtain permission to serve a foreign company like Jumbo out of jurisdiction under O 8 r 1(1), and *Exchange Union* now exists as authority for that.

48 *Exchange Union Co v Wo Qi* [2025] SGHCR 26 at [37].

49 [2024] 2 SLR 516.

50 Yeo Tiong Min SC, Yong Pung How Chair Professor of Law, Yong Pung How School of Law, Singapore Management University, “Past, Present, and Future Tensions: Jurisdiction Over Absent Defendants”, lecture at the Yong Pung How Professorship of Law Lecture 2024 (23 May 2024) at para 23.

C. Xu Xiangrong v Fu Xianwei

Jurisdiction – Dispensation of personal service

Jurisdiction – *Forum non conveniens*

12.26 In *Xu Xiangrong v Fu Xianwei*,⁵¹ the General Division had to consider several civil procedural issues. This chapter focuses on issues relating to the defendants' application for (a) dispensation of personal service; and (b) an order that Singapore courts do not have jurisdiction on the ground of *forum non conveniens*.

12.27 The first claimant, Xu Xiangrong (“Xu”), a Chinese national, and the first defendant, Fu Xianwei (“Fu”), also a Chinese national, had entered into a shareholders' co-operation agreement dated 1 April 2014 (“SHA”). This SHA was later revised by a supplementary agreement entered into between the parties on 1 January 2016.⁵²

12.28 Under the SHA, Fu and Xu respectively contributed US\$4.25m and US\$750,000 to a group of companies known as the Pacific Glory Group (“Group”), in return for 85% and 15% interests respectively. With the supplementary agreement, Xu was further entitled to a 10% incentive from the Group's profits before dividends were paid out under the SHA.⁵³

12.29 One of the main companies of the Group was Pacific Glory Shipping Pte Ltd (“PGSPL”). Fu and Xu later incorporated other companies which were treated as part of the Group; some of these companies (but not all) were subsidiaries of PGSPL. These companies included the second claimant, a Shanghai company called Shanghai Changzhou International Freight Transport Agency Co Ltd (“Changzhou”), the second to eighth defendants which are Singapore companies, and the ninth defendant, a Hong Kong company.⁵⁴

12.30 Fu was the chairman and chief executive officer of the Group. Xu was the deputy general manager of PGSPL who supervised and represented the Group in signing all agreements and contracts.⁵⁵

12.31 In addition to the Group's business, Fu, Xu and their close business partners, family members and employees participated in an investment scheme relating to vessels. Under this scheme, each investor

51 [2025] SGHC 95.

52 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [6]–[8].

53 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [8].

54 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [6] and [9].

55 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [6].

contributed to the purchase price of a vessel, which would be held under a single ship owning company incorporated for that purpose. Each vessel investor would have a beneficial interest in the trust vessel proportionate to the vessel price contributed. This interest entitled the investor to receive a proportionate share of the profits generated from the voyages and sales proceeds upon the vessel's sale.⁵⁶

12.32 In 2022, Xu and Fu had a dispute over distribution of profits made by the Group and those relating to the vessels. Xu discovered that Fu might have used the Group's money as part of his personal contributions in the purchase of the vessel.⁵⁷

12.33 On 5 July 2024, Xu commenced proceedings in China against Fu in the Shanghai Maritime Court. Xu sought several reliefs, including an order for bonuses and dividends, distribution of the company's surplus reserves, net profit and surplus value of the vessels purchased. On 21 August 2024, Fu took out a jurisdictional objection to the Chinese proceedings on the basis that the Shanghai Maritime Court was not the appropriate court and that foreign or other Chinese courts would be more suitable. Xu responded with a defence to the jurisdictional objection on 27 August 2024.⁵⁸

12.34 At the same time, on 15 August 2024, the claimants Xu and Changzhou commenced an originating claim in Singapore against the defendants.⁵⁹

12.35 On 23 August 2024, the defendants entered a notice of intention to contest through their solicitors, JLex LLC. On 13 September 2024, the claimants served the statement of claim on the second to ninth defendants. On 10 October 2024, all the defendants, except Fu who had yet to be personally served with the originating process, entered a defence (jurisdiction) that the action should be stayed on the grounds of *forum non conveniens*.⁶⁰

12.36 On 27 September 2024, the Shanghai Maritime Court rejected Fu's jurisdictional objection. On appeal, the Shanghai Higher People's Court on 22 November 2024 affirmed the lower court's decision. However, in the appeal, Xu dropped many of the reliefs and restricted

56 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [10].

57 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [11].

58 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [25].

59 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [29].

60 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [30]–[31].

his application only to the liquidation of the vessels and distribution of moneys according to the agreed proportions.⁶¹

12.37 On 17 October 2024, the claimants applied *ex parte* for an order to dispense with personal service on Fu and for permission to effect service by e-mailing the Originating Claim to JLex LLC. This was granted by the assistant registrar (“AR”). Fu later entered a defence (jurisdiction) on 22 November 2024 in which he argued that: (a) service of the process was improper; and (b) China, and not Singapore, was the most appropriate forum.⁶²

12.38 The claims in the Singapore proceedings could be classified into four broad categories:⁶³

- (a) breach of the SHA;
- (b) failure to distribute sales proceeds and/or profits generated by the vessels;
- (c) unauthorised transfers from Changzhou to the second defendant Quan An International Pte Ltd (“Quan An”) and in the alternative, restitution in respect of the unauthorised transaction and damages against Fu and Quan An for conspiracy; and
- (d) an application for a Mareva injunction in support of foreign proceedings.

12.39 The first issue the court considered was whether the originating papers were properly served on Fu. The defendants argued that the dispensation of personal service order, obtained pursuant to O 7 r 1(2) of the ROC 2021, should be set aside because the claimants did not first obtain the court’s permission to serve those papers out of jurisdiction.⁶⁴

12.40 Tan Siong Thye SJ reviewed the ROC 2021 provisions and decided that the ROC 2021 “does *not* require a formal application for permission to serve out of jurisdiction before an order for dispensation of personal service can be granted in relation to a foreign defendant”⁶⁵ [emphasis in original]. However, Tan SJ said that the court, in considering an application for dispensation for personal service:⁶⁶

61 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [26]–[27].

62 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [32].

63 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [1(a)], [12] and [17]–[18].

64 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [37]–[38].

65 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [39].

66 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [48].

... should for good order examine whether Singapore is the appropriate forum for the action. This is, out of abundance of caution, to preserve a foreign defendant's procedural right to challenge the existence of jurisdiction and in light of comity.

12.41 With respect, Tan SJ's decision is sound in practice but may not fit very well with the existing structure of the ROC 2021.

12.42 First, one must appreciate the starting position under the ROC 2021, *ie*, that O 6 r 4 requires every originating claim or originating application to be served personally on each defendant.

12.43 Order 7 r 1(2) of the ROC 2021 provides the court the discretion to "in an appropriate case, dispense with personal service". This appropriateness does not involve *forum conveniens* considerations. As Chua Lee Ming J observed in *Madison Pacific Trust Ltd v PT Dewata Wibawa*:⁶⁷

[I]t would be an appropriate case to dispense with personal service if personal service can reasonably be expected to be difficult or disproportionately time-consuming and the mode of ordinary service to be employed would be as effective in ensuring that the recipient is notified of the documents.

12.44 Therefore, traditionally, the query under O 7 r 1(2) of the ROC 2021 does not involve questions of *forum conveniens*. To now fit that into O 7 r 1(2) could be out of place. Instead, in such a situation, that claimant should consider the following:

(a) If the claimant is looking to serve the papers on the foreign defendant by way of substituted service out of jurisdiction, then the claimant should in one summons application apply for permission to: (i) serve out of jurisdiction; (ii) dispense with personal service; and (iii) effect substituted service out of jurisdiction (in that order).

(b) If the claimant is looking to serve the papers on the foreign defendant by way of ordinary service within jurisdiction (which was the case here), then the claimant should in one application apply for permission to: (i) serve out of jurisdiction; and (ii) dispense with personal service. This will address both the O 6 r 4 requirement of personal service and Tan SJ's *forum conveniens* considerations.

67 [2024] SGHC 184 at [57].

12.45 Tan SJ was satisfied on the facts that personal service should be dispensed with, subject to whether Singapore was the appropriate forum for the claims.⁶⁸

12.46 A preliminary question arose as to whether Art 11 of the SHA (drafted in Chinese) constituted a valid exclusive jurisdiction clause in favour of the Chinese courts.

12.47 Article 11 stipulated that disputes were to be submitted to the “local arbitration committee”⁶⁹ or brought before the “local 人民法院”.⁷⁰

12.48 Ironically, Xu’s and Fu’s positions in the Singapore proceedings were:⁷¹

... diametrically opposite to their stances taken before the Shanghai Maritime Court. At the Shanghai Maritime Court ... Xu had relied on Article 11 to argue that the term means ‘local people’s court’ and this refers to the people’s court in Shanghai ... Fu had argued that the Hong Kong courts have jurisdiction over the shareholders’ dispute, not the Chinese courts.

12.49 Probably because both parties were trying to resile from their positions taken before the Shanghai Maritime Court, neither of the parties appeared to have raised transnational issue estoppel.⁷²

12.50 Article 11 was, in Tan SJ’s view, uncertain and ambiguous, and Tan SJ found it difficult to ascertain the intended jurisdiction to handle the disputes. On this basis, Tan SJ found that the defendants failed to make a good arguable case that Art 11 was an exclusive jurisdiction clause in favour of the Chinese courts.⁷³

12.51 Tan SJ then turned to examine whether Singapore is the natural forum for each of the four claims. Tan SJ’s analysis is fairly extensive and, in some parts, uncontroversial. This chapter will focus only on the parts that merit further discussion.

12.52 In respect of the claims under the SHA, Tan SJ found that the connecting factors tilted in favour of Singapore as the natural forum.

68 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [49]–[54].

69 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [57].

70 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [57].

71 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [58].

72 For a discussion on transnational issue estoppel, see *Merck Sharp & Dohme Corp v Merck KGaA* [2021] 1 SLR 1102 at [24]–[43], which was noted in Joel Lee Tye Beng, Leow Wei Xiang Joel & Marcus Teo Wei Ren, “Conflict of Laws” (2021) 22 SAL Ann Rev 268 at paras 12.237–12.260.

73 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [62].

Fu highlighted that two ex-employees whom Xu had communicated with would be relevant to the proceedings. These two ex-employees were not in Singapore and would affect the “witness compellability factor”.⁷⁴ Tan SJ, however, rejected Fu’s argument, on the basis that:⁷⁵

Mr Fu ... has provided no evidence that the ex-employees would have to be compelled. The burden of proof to show that a foreign witness would be unwilling to testify is on the party who seeks to rely on the witness compellability factor ...

12.53 This appears to be an unfair position, for reasons Ang Cheng Hock J explained in *Sinopec International (Singapore) Pte Ltd v Bank of Communications Co Ltd*⁷⁶ (“*Sinopec*”).

(a) Ang J stated in *Sinopec* that:⁷⁷

[T]here may be practical difficulties if a defendant seeking a stay of proceedings is required to demonstrate, at an early stage of the proceedings, that the witnesses which it intends to call are unwilling to testify in Singapore. A defendant is not required to establish the materiality of any of its potential witnesses at this stage; it suffices that these witnesses are at least arguably relevant to its defence ... As such, there is usually no certainty that any such witnesses will be called for the trial ... it may be too much to expect of a defendant if it is required to obtain some confirmation from each and every such potential witness, who may be dispersed across different jurisdictions, stating that they are unwilling to come forward and testify in Singapore, at a time when its defence has not even been filed and all the disputed issues may not even be clear.

(b) What Ang J said in *Sinopec* must be correct when one considers the broader principle of why the courts permit hearsay affidavit evidence in interlocutory proceedings. This exception is allowed “to enable a deponent to put before the court in interlocutory proceedings, frequently in circumstances of great urgency, facts which he is not able of his own knowledge to prove”.⁷⁸

(c) Ang J’s position in *Sinopec* is arguably the preferred and right one on first principles, ie, that:⁷⁹

74 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [75].

75 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [78].

76 [2024] 3 SLR 476.

77 *Sinopec International (Singapore) Pte Ltd v Bank of Communications Co Ltd* [2024] 3 SLR 476 at [91].

78 *Gobi a/l Avedian v Attorney-General* [2020] 2 SLR 883 at [64].

79 *Sinopec International (Singapore) Pte Ltd v Bank of Communications Co Ltd* [2024] 3 SLR 476 at [86].

... the issue of compellability of witnesses should be focused on third-party witnesses over whom the parties to the dispute have no control and whom the parties may not be able to persuade to give evidence voluntarily in the absence of their compellability ...

12.54 Turning second to the vessel-related claims, Tan SJ was of the view that those claims tilted in favour of Singapore as the natural forum.⁸⁰

12.55 Tan SJ found that the governing law of the trust created over the vessels was Singapore law. In determining the governing law of the trusts, Tan SJ held that the court first considered whether the parties had made an express or implied choice of law. If there was no such choice, then the court would determine the governing law with which the trusts had the closest connection.⁸¹ Tan SJ gave weight to the fact that the second to eighth defendants were Singapore-incorporated companies and that in itself was “sufficient to ground a finding that there was an implied choice of Singapore law to govern the trusts”⁸² given that “[w]here a trustee is a corporate vehicle specially incorporated for a particular purpose, it may be inferred that the law of the place of incorporation was intended as the governing law for the trust”.⁸³ This was perhaps an infelicitous turn of phrase, for Tan SJ surely could not have meant this as an inflexible rule. Just as the domicile of a trustee who is a natural person cannot conclusively determine the trust’s implied governing law, so too should the law under which a corporate trustee is incorporated not have such conclusive effect. The better view of Tan SJ’s reasoning here was that, since the second defendant was merely an intermediary in alleged sham transactions and since the third to eighth defendants were one-ship companies, their place of incorporation was the only relevant factor of any significance to the determination of the governing law.

12.56 The unauthorised transfer claims presented a more nuanced picture. While some transactions were between Changzhou and Quan An, the Singapore-incorporated company, other transactions took place between Changzhou and third parties based in China. The relevant documents and contracts were concluded in Chinese.⁸⁴

12.57 Tan SJ considered the governing law of the conspiracy claim to be Chinese law, principally because the place of the tort appeared to be China. Tan SJ observed in particular that, according to Changzhou’s pleaded case, the series of unauthorised transfers to Quan An and third

80 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [85].

81 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [89].

82 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [91].

83 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [91].

84 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [95]–[96].

parties appear to have been carried out by alleged conspirators who were predominantly based in China. Given this, the purported agreement among the alleged conspirators “would also likely be made in China”.⁸⁵ Changzhou was incorporated in China and its purported losses would have been suffered in China.⁸⁶

12.58 On balance, Tan SJ found Singapore to be the appropriate forum for the overall dispute because, among other things:

(a) Tan SJ formed the view that all the claims in the case should be brought in one jurisdiction as fragmentation of the litigation could lead to increased costs and inefficiencies, especially where the underlying factual matrix was common among the claims with the same witnesses and factual issues to be determined.⁸⁷

(b) There were common key witnesses across the claims.⁸⁸

12.59 The rest of the judgment concerns issues not directly relevant to conflict of laws.

III. Jurisdiction clauses

A. *Finaport Pte Ltd v Techteryx Ltd*

Anti-suit injunctions – Contractual injunctions – Vandepitte procedure

Anti-suit injunctions – Non-contractual injunctions – Bound to fail

12.60 A contractual anti-suit injunction is generally understood as a remedy for breach of a contractual obligation to resolve one’s dispute other than by instituting the proceedings sought to be restrained. The question as to whether non-parties to a contract might be entitled to, or might be bound by, such relief obviously remains controversial. In *Finaport Pte Ltd v Techteryx Ltd*,⁸⁹ the Appellate Division considered the position of one such non-party – the beneficiary of a trust, seeking to enforce rights under the procedure established in *Vandepitte v Preferred Accident Insurance Corp of New York*,⁹⁰ in circumstances where the

85 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [102].

86 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [98]–[103].

87 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [108].

88 *Xu Xiangrong v Fu Xianwei* [2025] SGHC 95 at [109].

89 [2025] 1 SLR 1236.

90 [1933] AC 70.

trustee was party to a dispute resolution agreement – concluding that the beneficiary's position in this regard was identical to the trustee.

12.61 Techteryx Ltd (“Techteryx”), a British Virgin Islands entity, acquired a business in stablecoins pegged to the US dollar, whose value was maintained by a reserve of US dollars. Techteryx appointed First Digital Trust Ltd (“FDT”), a Hong Kong company, as custodian of those US dollar reserves, under a custodianship agreement governed by Hong Kong law and containing Hong Kong jurisdiction agreements. FDT then appointed Finaport Pte Ltd (“Finaport”), a Singapore company, to act as investment manager for the US dollar reserves, under a discretionary investment management agreement (“DIMA”) governed by Singapore law and containing Singapore jurisdiction agreements.

12.62 The DIMA also stated in cl 24.3 that, in the event of a dispute arising:

Parties shall first attempt to settle any complaint or dispute relating to or in connection with this Agreement including any question regarding its existence, validity or termination or an alleged breach thereof by negotiation. If the Parties do not meet or the dispute cannot be settled through negotiation within 30 days from the date of notice for a meeting issued by a Party to the other Party, then any one Party may take step [*sic*] to refer the dispute for mediation at the Singapore Mediation Centre (‘SMC’). In the event the dispute is not settled by mediation for whatever reason(s) within 90 days from the date the dispute is referred to the SMC, any Party may then refer the dispute for final resolution by litigation in the Courts.

12.63 In February 2023, Techteryx instituted proceedings in Hong Kong against FDT, alleging that FDT had committed a breach of trust by mismanaging the US dollar reserves. Techteryx also brought proceedings against Finaport, alleging that Finaport had breached its duties relating to the investment of the US dollar reserves under the DIMA. As Techteryx was not itself party to the DIMA, its claim against Finaport had to be brought using the Vandepitte procedure.

12.64 After an unsuccessful jurisdictional challenge in Hong Kong, Finaport instituted Singapore proceedings in May 2024, seeking an anti-suit injunction to restrain Techteryx from continuing the Hong Kong proceedings on two grounds. It first argued that Techteryx, having invoked the Vandepitte procedure to sue Finaport for breach of the DIMA, was now bound by cl 24.3 of the DIMA to first submit to negotiation. Finaport also argued that the Hong Kong proceedings were vexatious and oppressive, *inter alia*, that Techteryx could not prove that it was entitled to utilise the Vandepitte procedure, and that its claim under the DIMA had been conceded by FDT.

12.65 At first instance before the General Division, Vinodh Coomaraswamy J dismissed Finaport’s application on both grounds.

12.66 On the contractual ground, Coomaraswamy J reasoned first that, unlike jurisdiction or arbitration agreements, the tiered dispute resolution agreement in cl 24.3 of the DIMA conferred “a purely procedural advantage”⁹¹ on parties to the DIMA, because that clause:⁹²

... does not even attempt to govern [Finaport’s] substantive rights and obligations in the *process* by which a dispute with FDT that cannot be resolved by settlement or mediation will be adjudicated upon with binding finality. [emphasis in original]

12.67 The Vandepitte procedure, however, had as its “very purpose”⁹³ the conferral of “procedural advantage[s]”;⁹⁴ such as the fact that it “allow[s] a beneficiary to bypass a trustee that does not consider it has any claim against a third party arising from a loss to the trust property and to sue the third party directly”.⁹⁵ Thus, although invoking the Vandepitte procedure might have entailed that Techteryx would be bound by any jurisdiction or arbitration agreements contained in the DIMA, because “policy imperatives may well bind the beneficiary to that [agreement] notwithstanding the rule of privity”,⁹⁶ this was not the case with cl 24.3 which was “purely procedural”.⁹⁷ Finaport thus could not say that Techteryx, in suing on the DIMA in Hong Kong using the Vandepitte procedure, had breached cl 24.3 such that an anti-suit injunction should be issued against it.

12.68 On the non-contractual ground, Coomaraswamy J held that neither was Singapore the natural forum for the parties’ dispute, nor were the Hong Kong proceedings vexatious or oppressive. Hong Kong was the natural forum, largely because the “primary defendant”⁹⁸ in the dispute was FDT, since there was a Hong Kong exclusive jurisdiction agreement between FDT and Techteryx.⁹⁹ This was not outweighed by other relevant factors, such as the governing law (given the likely similarity between Singapore and Hong Kong law),¹⁰⁰ the place of the wrong and the location of relevant witnesses (which were divided between Singapore

91 *Finaport Pte Ltd v Techteryx Ltd* [2024] SGHC 329 at [157].

92 *Finaport Pte Ltd v Techteryx Ltd* [2024] SGHC 329 at [157].

93 *Finaport Pte Ltd v Techteryx Ltd* [2024] SGHC 329 at [158].

94 *Finaport Pte Ltd v Techteryx Ltd* [2024] SGHC 329 at [158].

95 *Finaport Pte Ltd v Techteryx Ltd* [2024] SGHC 329 at [160].

96 *Finaport Pte Ltd v Techteryx Ltd* [2024] SGHC 329 at [158].

97 *Finaport Pte Ltd v Techteryx Ltd* [2024] SGHC 329 at [158].

98 *Finaport Pte Ltd v Techteryx Ltd* [2024] SGHC 329 at [73].

99 *Finaport Pte Ltd v Techteryx Ltd* [2024] SGHC 329 at [73].

100 *Finaport Pte Ltd v Techteryx Ltd* [2024] SGHC 329 at [60].

and Hong Kong).¹⁰¹ Neither were the Hong Kong proceedings vexatious or oppressive. They were not bound to fail, as Techteryx's ability to invoke the Vandepitte procedure or the existence of the trust relationship between it and FDT were both governed by Hong Kong law. In any case:

- (a) These issues turned on disputed facts in the Hong Kong proceedings.¹⁰²
- (b) A clause in the DIMA preventing non-parties from "enforc[ing] any of its terms"¹⁰³ did not preclude the Vandepitte procedure's application.¹⁰⁴
- (c) FDT's concession in Hong Kong that Finaport had not breached the DIMA could not bind Techteryx as that would undermine the Vandepitte procedure.¹⁰⁵

Nor were the Hong Kong proceedings brought in bad faith.

12.69 Finaport appealed. The Appellate Division granted the appeal in part, overturning Coomaraswamy J's ruling on the contractual ground. Key to this was appreciating the nature of the Vandepitte procedure. Kannan Ramesh JAD, for the Appellate Division, reasoned that:¹⁰⁶

41 ... Where it is shown that the trustee refuses to exercise that right to sue the third party, the beneficiary may enforce that right against the third party, but 'in the name of the trustee ... joining the trustee as a defendant' ...

42 The purpose of joining the trustee to the action is to confer on the court the necessary *in personam* jurisdiction over the trustee's legal title to sue. The beneficiary holds no right to sue the third party directly. In the absence of such joinder, the court has no power to try the substance of the underlying cause of action and award relief against the third party. Therefore, while the beneficiary may be directing the course of the litigation in practice, ***in theory, the cause of action remains the trustee's alone***, and it is *still the trustee* who is suing the third party – whether voluntarily or under the compulsion of court.

[emphasis in original in italics; emphasis added in bold italics]

12.70 The upshot was that, in invoking the Vandepitte procedure, it was really "*FDT's rights* which were being enforced by Techteryx ... not Techteryx's"¹⁰⁷ [emphasis in original]. As a result:¹⁰⁸

101 *Finaport Pte Ltd v Techteryx Ltd* [2024] SGHC 329 at [64]–[70].

102 *Finaport Pte Ltd v Techteryx Ltd* [2024] SGHC 329 at [89]–[100].

103 *Finaport Pte Ltd v Techteryx Ltd* [2024] SGHC 329 at [101].

104 *Finaport Pte Ltd v Techteryx Ltd* [2024] SGHC 329 at [104]–[106].

105 *Finaport Pte Ltd v Techteryx Ltd* [2024] SGHC 329 at [114].

106 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [41]–[42].

107 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [46].

108 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [46].

[I]f FDT was precluded by the terms of the DIMA from maintaining a cause of action on the DIMA against Finaport in the circumstances, Techteryx must also be precluded from enforcing FDT's rights against Finaport upon the same facts.

12.71 In this case, FDT was obliged under cl 24.3 to negotiate with Finaport for 30 days, and then be open to mediation before the Singapore Mediation Centre (SMC) for an additional 90 days, before instituting proceedings in Hong Kong. FDT was equally bound by this obligation whether it sued Finaport on its own volition or as compelled under the Vandepitte procedure. It was irrelevant whether this obligation was “procedural or substantive”:¹⁰⁹ a failure to comply with it was equivalent to a failure to perform a negative obligation not to sue imposed under a jurisdiction or arbitration agreement.¹¹⁰ Thus, an anti-suit injunction was issued to restrain the breach of the DIMA – with the qualification that, as the obligation under cl 24.3 was time-limited for 120 days, the injunction would be conditional and would expire at the end of that period.¹¹¹

12.72 Coomaraswamy J's ruling on the non-contractual ground, however, was upheld. A non-contractual injunction would be granted only if Singapore was the natural forum and the Hong Kong proceedings were vexatious or oppressive,¹¹² and the latter could not be established. In particular, Finaport's argument that Techteryx's claims in Hong Kong were bound to fail had to be to the effect that the claims were so unmeritorious that they “necessarily compelled the inference that [Techteryx] carried on those proceedings for something other than a legitimate juridical purpose”,¹¹³ this being a conclusion that would rarely be drawn.¹¹⁴ This threshold was not met: the most that could be said was that Techteryx's ability to invoke the Vandepitte procedure, and the possibility that Techteryx had sanctioned Finaport's actions, were issues for trial in Hong Kong.¹¹⁵

12.73 In *obiter*, the Appellate Division also considered and dismissed an additional argument Finaport raised on appeal. This relied on cl 23.3 of the DIMA, which stated that parties could not “delegate, assign, transfer, or otherwise dispose of”¹¹⁶ rights under the DIMA without the

109 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [47].

110 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [47].

111 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [52]–[54].

112 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [60].

113 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [61].

114 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [61].

115 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [65]–[66].

116 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [27].

prior written consent of the other contracting party.¹¹⁷ Finaport argued that cl 23.3 should prevent Techteryx from enforcing FDT's claims under the DIMA via the Vandepitte procedure. This argument could not be considered because it was raised for the first time on appeal, without opportunity for Coomaraswamy J to consider it or for Techteryx to respond.¹¹⁸ In any event, the Vandepitte procedure was not an assignment of the trustee's rights to the beneficiary, and clearer words were required before the court would conclude that parties intended to preclude its operation.¹¹⁹

12.74 The Appellate Division's decision is correct, though it is worth pointing out just why that is so. As Ramesh JAD makes clear, when the beneficiary triggers the Vandepitte procedure, "in theory, the cause of action remains the trustee's alone, and it is still the trustee who is suing the third party"¹²⁰ [emphasis in original omitted] – the beneficiary is simply taking the wheel in proceedings where the trustee technically remains in the driver's seat. Perhaps the best conceptualisation of how this works involves the concept of standing. The Vandepitte procedure gives the beneficiary standing to enforce the trustee's rights against persons who owe correlative duties, but the claim still remains the trustee's and the benefit of that claim thereto still flows to the trustee (though a sole beneficiary may obviously take the entire benefit in effect).¹²¹ Since it is the trustee's right that is being enforced, enforcement must surely be subject to any conditions imposed thereon by the contract creating that right – such as a tiered dispute resolution clause like cl 24.3, compliance with which can be objectively assessed. It is irrelevant whether that condition may be described as "procedural or substantive";¹²² so long as it binds the trustee, it also encumbers the beneficiary's attempt to enforce the trustee's rights.

12.75 One question, however, does persist, which was raised by Coomaraswamy J's reasoning but which went unaddressed by the Appellate Division. In the eyes of the conflict of laws, are questions about the Vandepitte procedure questions of procedure, for the *lex fori*, or questions of substance, for the *lex causae*? There are in fact two such questions here. The question of whether a litigant is a beneficiary of a trust is clearly one of substance, for the *lex causae* of the alleged trust relationship. However, are subsequent questions about the availability of the Vandepitte procedure – *ie*, questions about the circumstances

117 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [27].

118 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [25].

119 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [26]–[27].

120 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [41].

121 See Timothy Liao, *Standing in Private Law* (Oxford University Press, 2023) at ch 9.

122 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [47].

in which a trust beneficiary might sue on the trustee's rights – ones of procedure or substance? Coomaraswamy J said that they are questions of procedure,¹²³ but that is open to debate. Certainly, the traditional test is that questions about an obligation's existence are substance while questions about their enforcement are procedure,¹²⁴ but that test has been described as overly restrictive, been explicitly doubted in *obiter*¹²⁵ and been implicitly departed from in certain decisions on remedies.¹²⁶ Moreover, it has been suggested that the ability of a shareholder to bring a derivative action on behalf of a company is a question of substance,¹²⁷ and in that context, Lawrence Collins LJ reasoned in *Konamaneni v Rolls Royce Industrial Power (India) Ltd* that:¹²⁸

If it had arisen for decision I would have held that the law of the place of incorporation governs. That is because the basic rule is that the shareholders have no direct rights ... Although for purely English domestic purposes, the exceptions to the rule have been regarded as a procedural device, I do not consider that in the international context their real nature is procedural. They confer a right on shareholders to protect the value of their shares *by giving them a right to sue and recover on behalf of the company*. It would be very odd if that right could be conferred on the shareholders of a company incorporated in a jurisdiction which had no such rule, and under which they had acquired their shares. [emphasis added]

12.76 If this is correct – and to the extent that the Vandepitte procedure is properly described as giving beneficiaries “a right to sue and recover on behalf of”¹²⁹ the trust – then a strong argument may be made for viewing its availability as a question of substance for the governing law of the trust.

123 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [89].

124 *Star City Pty Ltd v Tan Hong Woon* [2002] 1 SLR(R) 306 at [11]–[12].

125 *Goh Suan Hee v Teo Cher Teck* [2010] 1 SLR 367 at [16]–[22].

126 See, eg, *Rappo, Tania v Accent Delight International Ltd* [2017] 2 SLR 265 at [74], which held that the availability of equitable remedies is for the *lex causae*.

127 *Shafeeg bin Salim Talib v Helmi bin Ali bin Salim bin Talib* [2009] SGHC 180 at [51] and [54].

128 [2002] 1 WLR 1269 at [50].

129 *Konamaneni v Rolls Royce Industrial Power (India) Ltd* [2002] 1 WLR 1269 at [50].

B. Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu

Anti-suit injunction – Contractual injunction – Exclusive jurisdiction of court of seat

Sovereign immunity – Enforcement jurisdiction

12.77 In *Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu*,¹³⁰ Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy (“CMC”), an Italian construction company, entered into an agreement with the Melamchi Water Supply Development Board (“MB”) for the provision of construction services. Clause 20.6(a) of the general conditions of the contract stated that parties agreed to “International Arbitration”¹³¹ administered by the Singapore International Arbitration Centre (“SIAC”) and conducted in accordance with the SIAC Rules, and that the “Place of Arbitration”¹³² would be “Singapore”.¹³³ Subsequently, CMC commenced arbitration in the SIAC against the Department of Water Supply & Sewerage Management, Kathmandu (“DOW”), adding that the DOW “was formerly known as [MB]”.¹³⁴ CMC alleged that, according to statements made by the Government of Nepal, the MB had been dissolved and succeeded by the DOW.¹³⁵

12.78 Before the Tribunal, the DOW applied for CMC’s claims against it to be dismissed on grounds that it was not party to the arbitration agreement, and CMC applied for a declaration that the MB was already party to, or should also be joined to, the proceedings. In September 2023, the Tribunal allowed both applications, with its decision effectively substituting the DOW for the MB as the defendant in the arbitral proceedings.

12.79 In October 2023, the DOW commenced proceedings in the High Court of Patan in Nepal for the Tribunal’s decision to be annulled. CMC

130 [2025] 4 SLR 983.

131 *Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu* [2025] 4 SLR 983 at [5].

132 *Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu* [2025] 4 SLR 983 at [5].

133 *Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu* [2025] 4 SLR 983 at [5].

134 *Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu* [2025] 4 SLR 983 at [6].

135 *Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu* [2025] 4 SLR 983 at [6].

then applied for an anti-suit injunction restraining both the MB and the DOW from proceeding with that annulment application. In August 2024, the MB applied in Patan for the Tribunal's decision to be annulled, and CMC again sought an anti-suit injunction restraining MB's application.

12.80 The SICC granted the anti-suit injunction. Noting first that it was “trite that a choice of seat embodies the parties’ submission to the curial jurisdiction of the courts of the seat”,¹³⁶ Hri Kumar Nair J for the SICC held that, by designating “Singapore” as the “Place of Arbitration”, parties had intended to choose Singapore as the seat. Since the physical place or venue of an arbitration was far less significant than its seat, references to “place[s]”¹³⁷ or “venue[s]”¹³⁸ for arbitration were to be construed as selections of the seat.¹³⁹ The only indicator to the contrary – that Nepalese law was the governing law of the construction contract – was weak.¹⁴⁰ Next, it was also clear that “[a] choice of seat by the parties is generally construed as a choice of the exclusive jurisdiction in which the parties can challenge decisions made by an arbitral tribunal”.¹⁴¹ Thus, the application to annul the Tribunal's decision in Patan rather than Singapore was a breach of the negative obligation to not make such applications in a jurisdiction other than the seat in Singapore (if at all).¹⁴² Finally, there were no strong reasons to deny the injunction, as CMC had not delayed in seeking it, since the Patan proceedings were still in their infancy.¹⁴³

12.81 The SICC then considered, *ex officio*, the question of whether the MB might be entitled to sovereign immunity to the extent that an anti-suit injunction could not be ordered against it. This was required by s 3(2) of the State Immunity Act 1979¹⁴⁴ (“SIA”), which states that “[a] court is to give effect to the immunity conferred by [Pt 2 of the SIA] even though the State does not file and serve a notice of intention to contest or not

136 *Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu* [2025] 4 SLR 983 at [29].

137 *Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu* [2025] 4 SLR 983 at [30].

138 *Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu* [2025] 4 SLR 983 at [30].

139 *Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu* [2025] 4 SLR 983 at [30].

140 *Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu* [2025] 4 SLR 983 at [32].

141 *Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu* [2025] 4 SLR 983 at [34].

142 *Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu* [2025] 4 SLR 983 at [34].

143 *Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu* [2025] 4 SLR 983 at [38].

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contest in the proceedings in question”. However, Nair J also emphasised that.¹⁴⁵

[A]pplicants seeking relief against entities that may be entitled to sovereign immunity should raise the issue to the court’s attention and ensure that it is addressed ... given not only its potentially dispositive significance but also its implications on matters of importance such as comity and state sovereignty.

12.82 In the circumstances, however, the MB was not entitled to immunity. The SIA contemplated that a State might be entitled to immunity from the adjudicative jurisdiction of the Singapore courts, which was governed by ss 4–13 of the SIA, as well as from the enforcement jurisdiction of the Singapore courts, which was governed by ss 15(2)–15(6) and ss 16(3)–16(4) of the SIA. The two were not identical: a State who lacked immunity from adjudicative jurisdiction might still possess immunity from enforcement jurisdiction.

12.83 In this case, *were* the MB a “State” for the purposes of Pt 2 of the SIA, it would have lacked immunity from adjudicative jurisdiction by virtue of s 11(1) of the SIA, negating immunity for disputes which a State “has agreed in writing to submit ... to arbitration”.¹⁴⁶ Yet, the MB would still have had immunity from enforcement jurisdiction under ss 15(2)(a) and 15(3), which state, *inter alia*, that “relief must not be given against a State by way of injunction” unless express consent for that was given separate from the arbitration agreement.¹⁴⁷

12.84 However, the MB was not a “State”. This is because s 16(1) of the SIA provided that, for the purposes of Pt 2 of the SIA:

... references to a State include references to —

- (a) the sovereign or other head of that State in his or her public capacity;
- (b) the government of that State; and
- (c) any department of that government,

but not to any entity (called in this section a separate entity) which is distinct from the executive organs of the government of the State and capable of suing or being sued.

145 *Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu* [2025] 4 SLR 983 at [48].

146 *Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu* [2025] 4 SLR 983 at [51].

147 *Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu* [2025] 4 SLR 983 at [52]–[53].

12.85 Section 16(2) of the SIA then provided that such “separate entit[ies]” would be entitled to immunity only for “anything done by it in the exercise of sovereign authority” in circumstances where “a State would have been so immune”. In this regard, Nair J cited *Ministry of Trade of the Republic of Iraq v Tsavliris Salvage (International) Ltd (The Altair)*¹⁴⁸ for the proposition that:¹⁴⁹

While the issue of whether a party is to be characterised as a department of government or a separate entity does not turn on any single factor and the existence of separate legal personality is therefore not decisive in itself, caution is warranted before a party with separate legal personality is treated as a department of government ...

12.86 Nair J, then noting that the MB was conferred separate legal personality by Nepalese legislation, concluded that the MB was a “separate entity” under s 16(1) of the SIA.¹⁵⁰ Further, as the construction contract was a commercial transaction for which a State would have lacked immunity from adjudicative jurisdiction, the MB as a separate entity would lack immunity from enforcement jurisdiction for injunctions issued to enforce that contract.¹⁵¹

12.87 A court inevitably faces difficulties when it must apply, *ex officio*, a legal rule which requires it to engage in a complex factual inquiry. The first difficulty is that courts rely on litigants’ legal arguments to discern the correct position in law. On the definition of a “separate entity” under s 16(1) of the SIA, fuller submissions might have unearthed the Privy Council’s decision in *La Générale des Carrières et des Mines v FG Hemisphere Associates LLC*,¹⁵² where Lord Mance reasoned that:¹⁵³

The distinction between a state organ and a separate or distinct entity is not concluded by determining whether the separate entity has separate legal personality ... The [UK State Immunity Act 1978] makes this clear by providing that a separate entity must be ‘distinct from the executive organs of the government of the state’ as well as ‘capable of suing or being sued’. A separate entity *must* therefore have legal personality in this sense in order to have immunity as part of the state. But an organ of the state *may* under certain circumstances have legal personality. [emphasis in original]

148 [2008] 2 Lloyd’s Rep 90.

149 *Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu* [2025] 4 SLR 983 at [55].

150 *Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu* [2025] 4 SLR 983 at [55].

151 *Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu* [2025] 4 SLR 983 at [56].

152 [2013] 1 All ER 409.

153 *La Générale des Carrières et des Mines v FG Hemisphere Associates LLC* [2013] 1 All ER 409 at [16].

12.88 In addition to the above, Lord Mance reasoned that:¹⁵⁴

29 Separate juridical status is not however conclusive. An entity's constitution, control and functions remain relevant ... But constitutional and factual control and the exercise of sovereign functions do not without more convert a separate entity into an organ of the State. Especially where a separate juridical entity is formed by the State for what are on the face of it commercial or industrial purposes, with its own management and budget, the strong presumption is that its separate corporate status should be respected, and that it and the State forming it should not have to bear each other's liabilities. It will in the Board's view take quite extreme circumstances to displace this presumption. The presumption will be displaced if in fact the entity has, despite its juridical personality, no effective separate existence ... [ie,] that the affairs of the entity and the State were so closely intertwined and confused that the entity could not properly be regarded for any significant purpose as distinct from the State and vice versa ...

30 There may also be particular circumstances in which the State has so interfered with or behaved towards a state-owned entity that it would be appropriate to look through or past the entity to the State, lifting the veil of incorporation.

12.89 The reasoning here clearly resonates with Nair J's definition of "separate entit[ies]", but also adds more useful detail, highlighting in particular the kinds of evidence that might be adduced to rebut the presumption created by an entity's separate legal personality.

12.90 The second and perhaps greater difficulty that confronts the court applying a complex rule on its own motion is that it will lack the benefit of parties' (willing) arguments and evidence when it makes findings of fact. In this regard, little was said about the MB's relationship with the Government of Nepal, beyond its possession of separate legal personality. Questions could have been asked about the degree of control the Government exercised over it – especially if, as CMC alleged, the MB could simply be dissolved and succeeded by the DOW¹⁵⁵ – yet without more evidence, answers were unlikely to be forthcoming. If state immunity is indeed a matter which Singapore courts must always address given its "implications on ... comity and state sovereignty",¹⁵⁶ a better approach, such as the appointment of an independent expert on foreign law (and amendments to the ROC 2021 to facilitate that), might be worth pursuing.

154 *La Générale des Carrières et des Mines v FG Hemisphere Associates LLC* [2013] 1 All ER 409 at [29]–[30].

155 *Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu* [2025] 4 SLR 983 at [6].

156 *Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu* [2025] 4 SLR 983 at [48].

C. XQN v XQO

Anti-suit injunction – Cross-border matrimonial proceedings – Comity

12.91 *XQN v XQO*¹⁵⁷ is a decision of the General Division of the High Court (Family Division). In that case, Choo Han Teck J considered the grant of an anti-suit injunction in the context of cross-border matrimonial proceedings involving competing applications in Singapore and Ontario, Canada.

12.92 The parties, both Singapore citizens, were married in Singapore and had their first child in Singapore in 2021. The family emigrated to Canada in March 2022, having been granted permanent residency status there in January 2022. They returned to Singapore in October 2023 to have their second child, who was born here in February 2024. By that time, the marriage had broken down.¹⁵⁸

12.93 On the husband’s application, divorce proceedings commenced in Singapore in June 2024 and by consent, interim judgment was entered in November 2024. The ancillary matters remained pending before the Family Justice Court.¹⁵⁹

12.94 On 9 January 2025, the wife commenced proceedings in Ontario seeking “‘temporary and final orders’ relating to ‘custody, care and control and maintenance of the children’”¹⁶⁰ (“First Ontario Application”). In response, in Singapore:¹⁶¹

- (a) the husband applied for an anti-suit injunction to restrain the wife from continuing with the proceedings in Ontario;
- (b) the wife, on her part, applied for a stay of the divorce proceedings in Singapore; and
- (c) both applications were dismissed by the District Judge (“DJ”) on 22 August 2025.

12.95 After the dismissal, the wife commenced a further application in Ontario on 29 August 2025 for temporary orders relating to custody, care and control and maintenance (“Second Ontario Application”).¹⁶²

157 [2025] SGHCF 63.

158 *XQN v XQO* [2025] SGHCF 63 at [1]–[2].

159 *XQN v XQO* [2025] SGHCF 63 at [2].

160 *XQN v XQO* [2025] SGHCF 63 at [3].

161 *XQN v XQO* [2025] SGHCF 63 at [4].

162 *XQN v XQO* [2025] SGHCF 63 at [5].

12.96 On 1 October 2025, the wife obtained an interim “parenting order”¹⁶³ from the Ontario court, which, among other things, granted her sole decision-making responsibility for the children and the right to travel outside Canada without the husband’s consent. The order also provided that the husband may: (a) not remove the children from Ontario without written consent or a court order; and (b) have virtual parenting time with the children on a weekly basis on Sundays at 9.00am Eastern Standard Time (EST) for up to 30 minutes. The husband was ordered to pay \$800 monthly for “child support”¹⁶⁴ and half of the children’s expenses. The husband later took steps to appeal against this “parenting order”.¹⁶⁵

12.97 Further to the appeal filed by the husband on 3 September 2025 against the DJ’s decision, Choo J held that:

(a) In respect of the First Ontario Application, the DJ should have granted the husband’s application for an anti-suit injunction. Choo J reasoned that “[a]nti-suit injunctions are extraordinary applications that a court will not likely grant”,¹⁶⁶ and that a court will do so only in clear cases where it is satisfied it is the appropriate forum and there is evidence that a party is commencing proceedings elsewhere with the intention of frustrating the proceedings in Singapore or forum shopping.¹⁶⁷

(b) As to the Second Ontario Application, Choo J declined to grant an anti-suit injunction. Since proceedings had already been commenced and the Ontario court had issued orders, an injunction in Singapore would not be appropriate; the aggrieved party should instead appeal against the foreign order in that jurisdiction, or apply to set it aside on the grounds that Singapore proceedings had already begun and that Singapore was the more appropriate forum. Choo J emphasised that this approach was required by the doctrine of comity.¹⁶⁸

Save in regard to the First Ontario Application (where no orders have been issued there), [the Singapore court] should not make orders interfering with the orders already made [by the Ontario court].

(c) However, Choo J stressed that the doctrine of comity must not result in the Singapore court “surrendering its sovereignty”.¹⁶⁹ Given that the wife had already consented to

163 *XQN v XQO* [2025] SGHCF 63 at [7].

164 *XQN v XQO* [2025] SGHCF 63 at [9].

165 *XQN v XQO* [2025] SGHCF 63 at [7]–[10].

166 *XQN v XQO* [2025] SGHCF 63 at [11].

167 *XQN v XQO* [2025] SGHCF 63 at [11].

168 *XQN v XQO* [2025] SGHCF 63 at [12]–[13].

169 *XQN v XQO* [2025] SGHCF 63 at [14].

the divorce and entering interim judgment in the Singapore proceedings, the wife had accepted that Singapore was the appropriate jurisdiction to hear the outstanding ancillary matters of division of matrimonial assets, maintenance, and custody, care and control of the children. Given this, the wife had no basis to ask that the proceedings in Singapore be stayed just because she had obtained an order on a part of the matters in Ontario.¹⁷⁰

12.98 Readers familiar with conflict of laws cases will notice that this case bears resemblance to the Court of Appeal's decision in *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd*¹⁷¹ ("*Sun Travels*"). Perhaps, and regrettably, the counsel in *XQN v XQO*¹⁷² failed to raise these points to Choo J's attention, but the outcome could have been different had there been arguments on the following:

(a) First, it appears from the facts that while the wife (improperly) commenced the First Ontario Application on 9 January 2025, it is not clear if there was delay on the part of the husband that resulted in his application for the anti-suit injunction to only be heard by the DJ more than six months later on 18 July 2025. As the Court of Appeal said, "the longer an action continues without any attempt to restrain it, the less likely a court is to grant an injunction and considerations of comity have greater force".¹⁷³ When did the husband become aware (or when should he ought to have become aware) of the First Ontario Application? How long did it take him to make the application for an anti-suit injunction? Why did he not ask for an earlier hearing or make an urgent application before the Duty Registrar? Counsel unfortunately did not appear to have raised these arguments for Choo J's consideration.

(b) It was also not explained how the wife could make the Second Ontario Application while the First Ontario Application was pending. More importantly, did the husband attempt to draw the Ontario court's attention to the pending proceedings in Singapore, in which the wife had taken steps and accepted jurisdiction?

(c) Choo J also took pains to explain how the Singapore court should not "make orders interfering with the orders

170 *XQN v XQO* [2025] SGHCF 63 at [14].

171 [2019] 1 SLR 732. This case was covered in Joel Lee Tye Beng & Leow Wei Xiang Joel, "Conflict of Laws" (2019) 20 SAL Ann Rev 251 at paras 11.175–11.191.

172 [2025] SGHCF 63.

173 *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] 1 SLR 732 at [82].

already made”¹⁷⁴ in the Second Ontario Application. Choo J was referring to the “parenting order[s]”¹⁷⁵ that were made further to the Second Ontario Application, between the time “the notice of appeal [was filed by the husband] and the hearing of the appeal before [Choo J]”.¹⁷⁶ Again, the dismissal of an application for an anti-suit injunction against the Second Ontario Application could be justified on the basis that the husband failed to promptly take steps to stop the foreign court proceedings from progressing.

(d) There was also regrettably no discussion on an anti-enforcement injunction against the wife for the “parenting order” obtained in the Second Ontario Application. However, this could be because the two grounds recognised in *Sun Travels* did not apply, *ie*, (i) where a judgment has been procured by fraud; and (ii) where the applicant could not have sought relief before the foreign judgment was given because he had no means of knowing that the judgment was being sought until it was served on him.¹⁷⁷

12.99 The above points are raised out of the intellectual curiosity of the authors. It has been more than seven years since the Court of Appeal’s decision in *Sun Travels* on anti-enforcement injunctions. The authors hope for another factually similar case to come before the courts to further test and/or develop the principles on anti-enforcement injunctions that were extensively discussed in *Sun Travels*.¹⁷⁸

IV. Recognition and enforcement of foreign judgments

A. Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee

Foreign judgments – Recognition and enforcement – Breach of natural justice – Whether there was proper service of process

12.100 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee*¹⁷⁹ concerned an application for summary judgment to enforce

174 *XQN v XQO* [2025] SGHCF 63 at [13].

175 *XQN v XQO* [2025] SGHCF 63 at [7].

176 *XQN v XQO* [2025] SGHCF 63 at [7].

177 Joel Lee Tye Beng & Leow Wei Xiang Joel, “Conflict of Laws” (2019) 20 SAL Ann Rev 251 at para 11.185.

178 For a useful overview, see generally Yeo Tiong Min, “Foreign Judgments and Contracts: The Anti-Enforcement Injunction” in *A Conflict of Laws Companion: Essays in Honour of Adrian Briggs* (Andrew Dickinson & Edwin Peel eds) (Oxford University Press, 2021) at p 251.

179 [2025] SGHCR 36.

a judgment issued by the Intermediate People's Court of Xiamen City, Fujian Province ("Xiamen Intermediate People's Court"). The defendant resisted enforcement on the sole ground that there was a breach of natural justice in that "he was not properly served with process by the Xiamen Intermediate People's Court".¹⁸⁰

12.101 The claimant, Xiamen Tonghin Furniture Industries Co Pte Ltd, was a family-owned Chinese company in the business of furniture making and sales. The claimant was originally operated by one Goh Ai Tong until his death in 2013. After Goh Ai Tong's death, his sons, Goh Swee Hin and the defendant, Goh Heng Tee, decided to wind up the claimant's affairs, including selling certain factories in Xiamen. The claimant's case against the defendant in the Chinese courts was that the defendant, as the claimant's legal representative, had misappropriated the factory sale proceeds. On 8 October 2019, the defendant was removed as the legal representative of the claimant and Goh Swee Hin was appointed in his stead.¹⁸¹

12.102 In 2019, the claimant commenced proceedings in the Xiamen Intermediate People's Court against the defendant and one Xie Fangna ("Xie"). The defendant was represented by a Chinese litigation attorney, Bai Chongcheng ("Bai") of Shanghai Juntuo Law Firm. By a judgment dated 30 September 2022, the Xiamen Intermediate People's Court in the first proceedings found the defendant liable to return RMB10,989,924.58 to the claimant ("First Xiamen Judgment").¹⁸²

12.103 The defendant and Xie appealed to the Higher People's Court of Fujian Province. Bai was reflected as the litigation attorney for Xie and the defendant. On 30 October 2023, the Fujian Higher People's Court, on the basis that the "basic facts ascertained in the original judgment were unclear",¹⁸³ revoked the First Xiamen Judgment and remitted the matter for retrial.¹⁸⁴

12.104 The matter was returned to a differently constituted panel of the Xiamen Intermediate People's Court ("Second Xiamen Proceedings").

180 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [1]–[2].

181 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [4]–[7].

182 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [8]–[9] and [15].

183 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [20].

184 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [18]–[20].

On 27 August 2024, the court rendered a judgment (“Second Xiamen Judgment”) holding that the defendant was liable to return a total of RMB11,899,536.58 to the claimant. This is the judgment that is the subject of enforcement in the Singapore proceedings. The court in the Second Xiamen Proceedings conducted the trial *in absentia* as the defendant did not appear before the court and was not represented by Bai.¹⁸⁵

12.105 The Second Xiamen Judgment also stated that, if dissatisfied with the judgment, (a) the claimant and Xie could submit an appeal within 15 days from the date of service of the judgment; and (b) the defendant could submit an appeal within 30 days from the date of service of the judgment to the Fujian Higher People’s Court.¹⁸⁶

12.106 Some four months later, on 15 January 2025, the claimant commenced Singapore proceedings against the defendant to enforce the Second Xiamen Judgment for payment of the judgment sum of RMB11,899,536.58.¹⁸⁷

12.107 The defendant’s position is a rather curious one and merits setting out in full. The defendant does not dispute that:¹⁸⁸

- (a) The matter was reheard by a new panel of the Xiamen Intermediate People’s Court.
- (b) He did not attend the Second Xiamen Proceedings.
- (c) The Second Xiamen Judgment was a final and conclusive judgment on the merits.
- (d) The Xiamen Intermediate People’s Court had jurisdiction and that the other requirements for recognition and enforcement of a foreign judgment in Singapore were satisfied.

12.108 The defendant resisted on the sole ground that:¹⁸⁹

[T]he court notices and papers in relation to the Second Xiamen Proceedings were not served on him, with the result that he was unaware of the Second Xiamen Proceedings until the Claimant sought to have the Second Xiamen

185 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [21]–[22] and [27].

186 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [29].

187 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [30].

188 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [31].

189 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [31].

Judgment recognised and enforced in Singapore. This was a breach of the rule of natural justice that he should be afforded a reasonable opportunity to be heard before the pronouncement of judgment by the foreign court.

12.109 On 28 March 2025, the claimant filed an application for summary judgment, which is the subject of the decision. In its supporting affidavit, the claimant rejected the defendant's assertion that he had not been notified of the Second Xiamen Proceedings. According to the claimant, the defendant had submitted documents to the Chinese courts which confirmed his address at Carpmael Road, Singapore ("Carpmael Address") and the method by which he was to be notified of proceedings. The Chinese courts thereafter duly notified the defendant of the proceedings by sending notices of the proceedings to his address in Singapore.¹⁹⁰

12.110 The defendant did not dispute that he resided at the Carpmael Address. He, however, took the position that:¹⁹¹

[T]he postal records do not indicate that he had 'personally received' the court documents or that the documents had been 'collected by a 3rd party on [his] behalf'. The facts are 'unclear as to who had actually received and accepted delivery of the notices from the deliveryman'. The Defendant aver[red] that he 'truly did not receive the relevant notices of the [Second Xiamen Proceedings] and was, therefore, unaware of the need to attend [the trial]'.¹⁹²

12.111 Both parties adduced expert evidence on Chinese law:

(a) The claimant's expert explained that under Chinese law, it is the Chinese courts that notify the parties of the hearing date by way of hearing notices and effect service of court documents and papers using the service address provided by the party. In this case, the defendant had provided a service address (which was the Carpmael Address) to the Chinese court. The court notices were also sent to the defendant's Chinese lawyer, Bai.¹⁹²

(b) The claimant's expert opined that given that the Second Xiamen Proceedings was a retrial of the same matter, the Second Xiamen Proceedings should be seen as a continuation of the original legal proceedings.¹⁹³

190 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [32].

191 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [33].

192 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [37].

193 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [38].

(c) The defendant's expert, Zhu Lijun ("Zhu"), opined that the Xiamen Intermediate People's Court should have sent the documents relating to the Second Xiamen Proceedings to the Fujian Higher People's Court for onward transmission to the Supreme People's Court, which would then send the documents to the Ministry of Justice of the People's Republic of China for onward transmission to the Supreme Court of Singapore. The Supreme Court of Singapore would then effect service of the documents on the defendant in Singapore. Given that the documents were not served on the defendant in this manner, and instead the Xiamen Intermediate People's Court sought to effect direct postal service on the defendant in Singapore, Zhu opined that the Xiamen Intermediate People's Court violated the Civil Procedure Law of the People's Republic of China and judicial interpretations, as well as the bilateral treaty between Singapore and the People's Republic of China, "Treaty on Judicial Assistance in Civil and Commercial Matters".¹⁹⁴ Consequentially, Zhu took the view that the content determined by the legal documents was not effective against the defendant.¹⁹⁵

12.112 The AR first summarised the principles on enforcement of a foreign judgment:¹⁹⁶

(a) If a foreign judgment is final and conclusive on the merits, then unless one of a limited set of defences applies, that judgment cannot be impeached for any error either of fact or law. This is justified on the basis that it is in the public interest that there should be an end to litigation (*ie, interest reipublicae ut sit finis litium*), and that no one should be sued twice on the same ground (*ie, nemo debet bis vexari pro eadem causa*). International comity additionally furnishes another justification for the restrictive approach of the common law toward the defences, in that Singapore courts will generally treat foreign judgments with great respect.

(b) Where a foreign judgment has been obtained in breach of the principles of natural justice, it will be denied recognition. These principles of natural justice include:

194 Treaty on Judicial Assistance in Civil and Commercial Matters between the People's Republic of China and the Republic of Singapore (28 April 1997), GN No T 2/2001, Bilateral Treaty No B459.

195 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [39] and [46].

196 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [67]–[69] and [78].

(i) The court, being a court of competent jurisdiction, must have given notice to the litigant that they are about to proceed to determine the rights between him and the other litigant.

(ii) Having given him that notice, the court must afford that litigant an opportunity of substantially presenting his case before the court.

(c) The question of whether natural justice has been breached is fundamentally a question for the court of the forum. The views of the foreign court on this question are not determinative. Even if the foreign court has examined and dismissed a complaint that there has been a breach of natural justice, the court of the forum remains entitled to examine the question afresh and to make a contrary finding. This does not mean that the status of proceedings in the foreign court is irrelevant. If recourse is being sought from the foreign court by the judgment debtor (such as by way of pending appeals and judicial review applications), then it may not be appropriate for the Singapore court considering the recognition and enforcement of the foreign judgment to comment on the foreign process, since any alleged violation of natural justice principles may yet be corrected by the foreign court. The court may consider the status of the foreign proceedings as a preliminary issue, before determining whether it is appropriate to go into the merits of the allegation of breach of natural justice.

(d) In determining if there has been a breach of natural justice because the judgment debtor has not been notified of the proceedings, the Singapore court will consider whether, according to the applicable foreign law on service of process, there has been proper service. Additionally, the question of whether service has been properly effected is intrinsically tied to the question of whether the judgment debtor should be taken as having had notice. If a defendant has agreed, or is deemed to have agreed, to a particular method of service, and service is effected in accordance with the method of service to which it has agreed, then it is immaterial that the defendant did not receive actual notice; the defendant cannot complain if it did not receive actual notice. Ultimately, even where regard is had to foreign law on service of proceedings, the Singapore court will finally decide the issue based on its “views of substantial justice”.¹⁹⁷

197 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [78(c)].

12.113 The AR took pains to explain why he thought it was necessary as a “preliminary issue”¹⁹⁸ to consider “whether it [was] appropriate at this stage for the Singapore court to consider whether there [had] been a breach of natural justice in the obtaining of the Second Xiamen Judgment”.¹⁹⁹ On the facts, the AR thought it appropriate to do so:²⁰⁰

(a) The AR observed that while the defendant averred that he intended to appeal against the Second Xiamen Judgment, there was:²⁰¹

... no indication before [the AR] that [the defendant] has actually taken action to do so. The Second Xiamen Judgment was delivered on 27 August 2024. As the Claimant observed in its supporting affidavit dated 28 March 2025, neither the defendant nor his Chinese lawyers have taken action in the seven months since the Second Xiamen Judgment. At present, more than a year has elapsed since the release of the Second Xiamen Judgment.

The authors would add that failure on the defendant’s part in seeking a stay of execution of judgment before the foreign court is yet another reason why the defendant’s assertion that he intends to appeal against the foreign judgment is not a genuine assertion.

(b) The AR also observed that the Second Xiamen Judgment had stated that if the defendant was dissatisfied with the judgment, he was to submit an appeal within 30 days from the date of service of the judgment and appeal to the Fujian Higher People’s Court. Even going by the defendant’s indication that he only came to be aware of the Second Xiamen Proceedings after his Singapore lawyers notified him of the present proceedings, “it has been close to a year”²⁰² and the defendant had not taken any steps in the foreign court *vis-à-vis* the foreign judgment. On the evidence before him, the AR did not think that “avenues of legal recourse are being pursued before the Chinese courts at this time”.²⁰³

198 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [80].

199 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [80].

200 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [80]–[81].

201 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [80].

202 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [81].

203 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [81].

12.114 It is worth unpacking some of the principles stated by the AR in his decision.

12.115 The essence of principles of natural justice is, simply put, that of “due notice and proper opportunity to be heard”,²⁰⁴ as stated by the seminal decision of *Adams v Cape Industries Plc*,²⁰⁵ a decision which the AR also referred to.

(a) Given this, the AR is essentially saying that if the defendant has agreed to a specific method of service in the foreign court, that defendant cannot later complain before the enforcement forum court that he did not receive actual notice even though service was effected according to the method(s) the defendant had agreed to before the foreign court.

(b) It may be further added that it is incumbent on the defendant to promptly inform the foreign court in the event that the previously agreed methods are no longer proper nor reasonable methods of service, *eg*, where there is a change of address or legal representative.

(c) Given the above, the question is less so “whether, according to the applicable foreign law on service of process, there has been proper service”.²⁰⁶ The focus of the enforcement forum court is not whether that method of service is permissible under the foreign law, but whether the actual method of service carried out was one that breached the requirement of due notice.

(d) The AR, on the other hand, appears to be saying that if the service of process was done in compliance with the laws of the foreign jurisdiction, “then the [d]efendant cannot be heard to say that he had no notice of them”.²⁰⁷ This might be true in most, but not all, cases. The possibility should not be foreclosed of a situation where service was effected in accordance with the foreign law, but the enforcement court (with the utmost respect and comity considerations) thought that even so, those foreign laws did not meet the requisite threshold of “due notice”.

12.116 The second point is what the AR said about recourse “being sought from the foreign court by the judgment debtor (such as by way of

204 *Adams v Cape Industries Plc* [1990] 1 Ch 433 at [563H].

205 [1990] 1 Ch 433.

206 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [78(b)].

207 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [78(b)] and [82].

pending appeals and judicial review applications)”²⁰⁸ In that scenario, the AR thought it inappropriate for the Singapore court to comment on the foreign process, since any alleged violation of natural justice principles might yet be corrected by the foreign court.²⁰⁹

12.117 The AR’s approach is sound. It may be further added that in that situation, one may argue that the defendant ought to properly apply for:

- (a) a (perhaps, case management) stay of proceedings before the enforcement court pending the determination of the pending appeals and/or judicial review applications before the foreign court; and/or
- (b) a stay of execution of judgment before the foreign court and have that stay of execution foreign judgment recognised in proceedings before the enforcement court in the event the judgment creditor seeks to enforce the foreign judgment.

12.118 There may be conceptually a neater way to deal with what the AR sought to do: examine “[w]hether it is appropriate to assess the merits of the natural justice challenge”²¹⁰ as a preliminary issue. This is the issue which the chapter now turns to.

12.119 Turning to the central issue, the AR found that there was proper service of process in respect of the Second Xiamen Proceedings (which led to the Second Xiamen Judgment). In particular, the AR, having reviewed the underlying sources and legal authorities, did not agree with Zhu that service can only be carried out by way of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.²¹¹ Specifically, the AR found that service had been effected on both Bai and on the defendant at his Singapore Carmel Address. Accordingly, the AR found that there was proper service of process from the Singapore court’s view of what substantial justice required.²¹²

208 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [78(a)].

209 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [78(a)].

210 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [80]–[81].

211 (15 November 1965), 658 UNTS 163 (entered into force 10 February 1969). *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [84] and [87].

212 *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee* [2025] SGHCR 36 at [91]–[93].

B. MBF Northern Securities Sdn Bhd v Purwadi

Foreign judgments – Enforcement – Reciprocal Enforcement of Commonwealth Judgments Act 1921 – Stay of enforcement – Conditional stay

12.120 Practitioners who regularly deal with foreign judgments will find the decisions of *Xiamen Tonghin Furniture Industries Co Pte Ltd v Goh Heng Tee*²¹³ and *MBF Northern Securities Sdn Bhd v Purwadi*²¹⁴ useful reads as a matter of formulating litigation strategy.

12.121 *MBF Northern Securities Sdn Bhd v Purwadi*²¹⁵ concerned an application by the defendant to stay the enforcement in Singapore of certain Malaysian judgments registered under the Reciprocal Enforcement of Commonwealth Judgments Act 1921²¹⁶ (“RECJA”), pending the determination of impeachment proceedings the defendant commenced in Malaysia to set aside the underlying judgments for fraud.²¹⁷

12.122 On 17 September 1998, the claimant commenced proceedings in the High Court of Malaya against the defendant for the repayment of losses incurred on a share trading account supposedly opened by the defendant with the claimant. The defendant, at that time, argued, among other things, that the application form for opening the account which bore the defendant’s signature was forged or falsified. After a three-day trial, the High Court of Malaya issued judgment in the claimant’s favour on 28 December 2010, holding that the defendant had failed to rebut the claimant’s case and failed to establish his defence of forgery. The defendant’s appeal to the Court of Appeal of Malaysia was dismissed on 4 January 2019, and his application for leave to appeal to the Federal Court of Malaysia was dismissed on 28 September 2020.²¹⁸

12.123 On 20 May 2022, the claimant obtained an order from the General Division for registration of the three Malaysian judgments against the defendant under the RECJA. What followed was a protracted history of the defendant evading service. It was only when the claimant commenced a bankruptcy application on 16 August 2024 that the defendant appeared before the Singapore court through counsel at

213 [2025] SGHCR 36.

214 [2025] SGHC 184.

215 [2025] SGHC 184.

216 2020 Rev Ed.

217 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [1].

218 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [3]–[6].

the hearing of the bankruptcy application on 19 September 2024. The defendant unsuccessfully sought to stay the bankruptcy application.²¹⁹

12.124 On 16 January 2025, the defendant commenced an impeachment application in the High Court of Malaya to set aside the Malaysian judgments for fraud, based on a statutory declaration from one Soh Chee Wen, who was serving a 36-year prison sentence in Singapore for stock market manipulation.²²⁰

12.125 After failing to stay the bankruptcy application, the defendant filed an application on 21 January 2025 to stay the enforcement in Singapore of the three Malaysian judgments against him which had been registered by the claimant under the RECJA. That application was also heard and dismissed by the AR on 24 February 2025.²²¹

12.126 On appeal from the AR's dismissal of the defendant's application for a stay of enforcement, Pang Khang Chau J allowed the appeal in part by imposing a stay with conditions.²²²

12.127 Pang J's decision concerned, in part, civil procedural issues under the Rules of Court²²³ and the ROC 2021 which this chapter is not concerned with. This chapter will focus on Pang J's decision concerning issues on conflict of laws.

12.128 First, readers should note that while the RECJA has been repealed with effect from 1 March 2023, s 2(2) of the Reciprocal Enforcement of Commonwealth Judgments (Repeal) Act 2019²²⁴ provides that ss 3(1) and 3(2) of the RECJA continue to apply to a commonwealth judgment obtained before 1 March 2023.²²⁵

12.129 Where a judgment registered under s 3 of the RECJA is alleged to be obtained by fraud, O 60 r 9 of the ROC 2021 allows an application to be made to set aside such registration. Of note is O 60 r 10(2) of the ROC 2021, which provides that if any application is made to set aside the registration of a judgment, an enforcement order must not be issued until such setting aside application is finally determined. Pang J observed that the effect of O 60 r 10(2) of the ROC 2021 is that "an automatic stay of enforcement would apply until the setting aside

219 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [7]–[11].

220 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [12].

221 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [14]–[15].

222 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [1].

223 2014 Rev Ed.

224 Act 24 of 2019.

225 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [24].

application is determined”.²²⁶ The defendant, however, did not take out such an application. This is a useful tool for practitioners seeking to stay enforcement proceedings.

12.130 The defendant’s stay of enforcement application was brought under the general provision under O 22 r 13 of the ROC 2021. This provision provides that a party may apply for stay of enforcement of a court order if there is a special case making it inappropriate to enforce the court order immediately. Pang J summarised the principles relevant to an application to stay the enforcement of a registered foreign judgment as such:

(a) When a Singapore court is asked to set aside the registration in Singapore of a foreign judgment, the Singapore court is only being asked to withhold recognition and enforcement in Singapore. It will not, and could not, purport to affect the claimant’s right to enforce the foreign judgment in that foreign or any third country.²²⁷

(b) An appeal does not operate as a stay of the proceedings in which the appeal is brought. Applying this to the case, the mere fact that the defendant had commenced the impeachment application is not a sufficient reason to grant a stay. The burden is on the defendant to show that there are special circumstances justifying a stay.²²⁸

12.131 On the one hand, the court does not deprive a successful litigant of the fruits of his litigation and lock up funds which he is *prima facie* entitled to. On the other hand, the court must also see that the appeal (or impeachment application), if successful, is not nugatory. The stay will be granted if it can be shown by affidavit that, if the damages and costs are paid, there is no reasonable probability of getting them back if the appeal (or impeachment application) succeeds.²²⁹

12.132 Pang J agreed with the defendant that there are “special circumstances”.²³⁰

(a) The claimant being in liquidation was sufficient to constitute a special circumstance. In the case, if a stay is not granted, any money paid by the defendant to the claimant

226 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [25]–[26].

227 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [33] and [34(b)].

228 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [28(a)]–[28(c)] and [36].

229 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [28(d)]–[28(e)].

230 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [37].

pursuant to the Malaysian judgments would be held by the liquidator for the benefit of the general body of creditors to be eventually distributed in accordance with corporate insolvency laws. Pang J was persuaded that there was no reasonable probability of the defendant getting the moneys back if his impeachment application in Malaysia were to succeed.²³¹

(b) There were equally relevant countervailing factors raised by the claimant against granting an unconditional stay. First, the impeachment application and related appeals were likely to take several years to complete, given that the original Malaysian proceedings had taken approximately 22 years from commencement to final determination.²³² Second, the defendant's only known asset was a property on Jervois Road held as joint tenant with two other persons. Given his advanced age (over 70), there was a real risk that the defendant's share could pass to the remaining joint tenants by right of survivorship before the impeachment application concluded.²³³ Third, given that the defendant had previously been evading service of papers relating to Singapore proceedings (until the bankruptcy application) and had acted in "disregard and contempt of the authority of the Singapore courts",²³⁴ Pang J thought this gave rise to a real risk of dissipation of assets on the defendant's part if enforcement of the Malaysian judgment was stayed for a prolonged period.²³⁵

12.133 As to the merits of the impeachment application, Pang J considered it relevant (contrary to the defendant's submission) to examine whether the application was devoid of merit. The rationale was this:²³⁶

[S]ince a key principle governing stay pending appeal is that the court does not deprive a successful litigant of the fruits of his litigation and lock up funds which he is *prima facie* entitled to, it would be consistent with the Ideals of expeditious proceedings and fair and practical results for the courts to strive to avoid unnecessarily locking up such funds in cases where the appeal is devoid of merit.

12.134 Pang J found that Soh Chee Wen's statutory declaration, which was primarily what the defendant was relying on in his impeachment application in Malaysia, did not amount to "material and cogent

231 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [38].

232 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [44].

233 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [45].

234 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [46].

235 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [46].

236 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [53].

evidence²³⁷ that the trading account application form was forged or falsified as the defendant was alleging.²³⁸

12.135 Pang J also considered the question of whether the absence of a stay of enforcement in Malaysia should preclude a stay in Singapore, which was a factor taken into account by the AR below for denying a stay.²³⁹ Pang J disagreed with the AR.

12.136 Pang J agreed with the defendant's submissions that:²⁴⁰

[T]here is no practical utility to be served by the Singapore courts insisting that the Defendant incur additional time and costs to seek a stay of enforcement of the Malaysian Judgments in Malaysia where no enforcement actions are being taken by the Claimant in Malaysia and the only enforcement actions are taking place here in Singapore.

12.137 Pang J went on to conclude that “the absence of an order staying enforcement in Malaysia is not a factor that should prevent a Singapore court from staying enforcement of the Malaysian Judgments in Singapore”.²⁴¹

12.138 Respectfully, Pang J is not wrong to say that this is not strictly necessary. However, if the defendant does obtain a stay of enforcement order in that foreign court and has that judgment or order recognised in Singapore, that could be the defendant's basis for a stay of enforcement application in Singapore. If the defendant does not do so, the defendant will have to demonstrate that its allegations of fraud are not raised as a litigation strategy to delay the fruits of the claimant's labour.

12.139 In the result, Pang J granted a conditional stay of enforcement pending the determination of the defendant's impeachment application in Malaysia. The conditions are:²⁴²

- (a) The defendant was to file an affidavit listing all his assets and liabilities.
- (b) The defendant was not to dispose of his assets without court permission, save for normal living expenses and legal costs.
- (c) The defendant was to pay into court S\$10m in four tranches over nine weeks, with liberty to apply for a reduction

237 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [58].

238 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [56]–[58].

239 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [59].

240 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [62].

241 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [63].

242 *MBF Northern Securities Sdn Bhd v Purwadi* [2025] SGHC 184 at [69]–[72] and [74].

if he could show with proper evidence that payment would stifle the impeachment application.