Mineral Enterprises Ltd *v* JIO Minerals FZC and others
[2010] SGHC 109

Case Number : Suit No 167 of 2009 (Registrar's Appeal No 98 of 2010)

Decision Date : 13 April 2010

Tribunal/Court : High Court

Coram : Philip Pillai JC

Counsel Name(s) : Gan Kam Yuin (Bih Li & Lee) for the plaintiff; Cavinder Bull SC and Adam Yusoff Maniam (Drew & Napier LLC) for the defendants.

Parties : Mineral Enterprises Ltd — JIO Minerals FZC and others

Conflict of laws – Natural forum

13 April 2010

Philip Pillai JC:

1 This was an appeal against the decision of the Assistant Registrar dated 18 February 2010 in Summons No 6033 of 2009 filed in Suit No 167 of 2009 ordering that:

(a) the plaintiff's action be stayed pursuant to O 12 r 7(2) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) and para 9 of the First Schedule of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed); and

(b) costs of and occasioned by the defendants' application fixed at S$4,500.00 plus reasonable disbursements be paid forthwith by the plaintiff to the defendants.

2 The only issue before me was that of *forum non conveniens, viz*, whether the Singapore court should adjudicate this dispute or decline to exercise jurisdiction in favour of another more appropriate forum.

Background

The parties

3 The plaintiff was a company incorporated in India, with expertise in mining and marketing of iron ore. The first defendant was a company incorporated in United Arab Emirates ("UAE") with a representation office in Jakarta, Indonesia. The second defendant was an Indonesian citizen and a director and shareholder of the first defendant. The third defendant was an Indian national who had been residing in Indonesia since 1995. Both the second and the third defendants were representatives of the first defendant, and hence were included in this action.

The factual matrix

4 The second defendant was the President and Director of an Indonesian incorporated company, PT JIO Energi Resources ("PT JIO Indonesia"), which held Indonesian iron ore concessions. It was

apparent in this appeal that the second defendant, was the common directing mind behind each of the Indonesian, Singapore and UAE JIO companies. His purpose in establishing the offshore companies in Singapore and then UAE, was to procure offshore mining and marketing expertise, as well as funding, for PT JIO Indonesia.

The joint venture agreement of 7 April 2006 between the plaintiff and JIO Singapore

5 On 7 April 2006, the plaintiff entered into a joint venture agreement ("JVA") with a Singapore incorporated company, JIO Corporation Pte Ltd ("JIO Singapore"), to assist PT JIO Indonesia in mining its Indonesian iron ore concessions. At all material times, the second defendant was a director and controlling shareholder of JIO Singapore.

6 Under the JVA the plaintiff was to provide the equipment and other technical support for mining, whilst JIO Singapore was to procure an exclusive agreement for the marketing of such iron ore to be purchased from its Indonesian counterparty, PT JIO Indonesia, for sale in international markets for the benefit of the joint venture.

7 Paras (D) and (E) of the preamble to the JVA state that:

> (D) The parties are desirous of entering into a joint venture to jointly assist PT JIO [Indonesia] in mining iron ore in the locations licensed to PT JIO [Indonesia] and subsequently to purchase the said iron ore at a price to be determined with PT JIO [Indonesia] and to market the iron ore for sale in international markets for the benefit of the joint venture.
>
> (E) The parties propose to incorporate a joint venture company in the Republic of Singapore as their joint venture vehicle for the abovementioned purposes. The joint venture company shall be named MEL-JIO PTE LTD (the "Company").

8 The principal terms of the JVA required the plaintiff to pay US$300,000 to JIO Singapore and to deposit an escrow sum of US$1.7m in a bank in Singapore to be paid to JIO Singapore on or before "completion", which was defined in the JVA as the completion of the establishment of the joint venture company named MEL-JIO Pte Ltd (the "JVA Company"). One of the conditions to completion was for JIO Singapore to procure the marketing rights over at least 1 million tonnes of iron ore from Indonesia for the JVA Company and for the plaintiff's verification of such deposit with the JVA Company. On completion the plaintiff and JIO Singapore would each subscribe for 50% of the shares in the JVA Company.

9 Article 9 of the JVA provided that JIO Singapore's obligation was to ensure that all necessary permits, licences and regulatory approvals for the exploitation and mining of iron ore by the JVA Company at any mining area within Indonesia were obtained and to ensure that JIO Singapore granted the right to market iron ore mined in Indonesia to the JVA Company. The plaintiff's obligation was to provide technical know-how, equipment and expertise to the JVA Company and PT JIO Indonesia in relation to the mining and marketing of minerals and metals, to ensure full assistance was rendered to the JVA Company for the sale of the iron ore at the best prevailing market price for the JVA Company, and to bear all costs associated with the operation of the JVA Company until such time when the JVA Company was able to bear such operation costs with its internal or external financing.

10 Article 24 of the JVA provided for dispute settlement under the rules of the Singapore International Arbitration Centre and Art 25 of the JVA provided for Singapore law to be governing law. Curiously, Art 25 also provided that each of the parties to the JVA irrevocably submitted any legal actions or proceedings to enforce the JVA or arising out of or in connection with the JVA to the

jurisdiction of the Singapore courts and waived any objection to the proceedings in the Singapore courts on the grounds of venue or on the grounds that the proceedings had been brought in an inconvenient forum.

11 The JVA was amended on 9 May 2006 to provide that the plaintiff would pay JIO Singapore US$300,000 in Singapore and pay US$1.7m into an escrow account in a bank in Singapore under the name of JIO Singapore.

12 Subsequently, the plaintiff and the second defendant appeared not to have proceeded further with the JVA and the incorporation of the JVA Company. Instead, for reasons of procurement and other efficiencies as described in the letter of offer in [17] below, the first defendant was formed in the UAE.

UAE Exclusive Irrevocable Exploration, Exploitation, Mining and Marketing Agreement of 7 August 2006 between first defendant and PT JIO Indonesia

13 On 7 August 2006, the first defendant and PT JIO Indonesia entered into an Exclusive Irrevocable Exploration, Exploitation, Mining and Marketing Agreement ("Exclusive Mining Agreement"). Under this Exclusive Mining Agreement, PT JIO Indonesia appointed the first defendant as the sole agent with exclusive and irrevocable rights of exploration, exploitation, mining and marketing of iron ore concession in South Kalimantan, Indonesia. Pursuant to Art 3.1, the sole agency included:

(a) Survey and mapping of mines;

(b) Mining Plans;

(c) Drilling for the purpose of exploration;

(d) Exploitation rights;

(e) Blasting or any equivalent thereon;

(f) Mining operations *ie*, excavation, crushing, screening *etc*, in order to process the ore, to make it internationally marketable; and

(g) Sell – Export or locally.

14 PT JIO Indonesia represented that they possessed iron ore concessions with an estimated reserve of 1 million tonnes of "+65 Fe" iron ore.

15 Article 13 of the Exclusive Mining Agreement provided for the governing law to be that of Ajman, UAE and Art 14 provided for settlement of disputes to be referred to and settled under the

UAE International Arbitration Rules or by dispute resolution laws relating to International Trade and Commerce.

Letter of Offer of 12 September 2006 between plaintiff and first defendant

16 The final document which was the subject matter of this legal action was a letter of offer ("Letter of Offer") dated 12 September 2006 between the plaintiff and the first defendant. This Letter of Offer by the first defendant was signed by the second defendant as "President Director" of the first defendant.

17 The Letter of Offer stated:

> We have formed a Company based in AJMAN – FZ (Dubai) which will basically source raw material for steel globally particularly from Latin America, Australia, and Eastern Europe, to supplement our production in Indonesia.
>
> We chose Dubai for this activity is [sic] because of its strategic location to various destinations. Our business model is initially exporting the mined material from Indonesia to China directly. However, the equipment and machinery required for mining will be purchased / invested by the proposed FZCO in Ajman. All billing, banking and other administrative activities will be from the FZCO.
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> …
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> PT. JIO [Indonesia] through its "Exclusive Marketing Rights to JIO Minerals FZC established in Dubai-Ajman" - Offers a Joint Venture with your esteem [*sic*] company Mineral Enterprises Limited, for a 50% direct equity participation.
>
> While we have the Mines and other resources, we need your technical expertise and market reach for creating a proper mine plan and carry out activities in a professional manner in which your esteem [*sic*] company has been doing for many years.
>
> In this backdrop with our collaboration and strategic alliance we can achieve a cutting edge quality and price advantage in the International Market as well as become a major player in the Iron Ore industry.
>
> We therefore offer 50% shareholding of our company JIO Minerals FZC – Dubai as discussed with you earlier.

18 The offering was for 50% shareholding in the first defendant for a "premium of US$1.7 million for 50% shares worth US$0.5 million". The Letter of Offer contained no clause providing a choice of law or a choice of forum.

19 The offer was accepted and implemented by the transfer of 50 shares in the first defendant (20 shares from the third defendant and 30 shares from the second defendant) to the plaintiff for a total consideration of US$1,725,695 as confirmed by a certified true copy of the general meeting of the first defendant of 25 September 2006. The consideration was remitted to the second and third defendants' bank accounts in Singapore.

20 The Letter of Offer and acceptance constitute the foundation of the plaintiff's action in Singapore against the defendants.

The dispute

21 Subsequently, a dispute arose between the plaintiff and the defendants. The plaintiff claims to have found scant deposits of iron ore in the mining sites, not the amount which was represented to it. The plaintiff demanded the return of its investment amount of US$1,725,695, of which in March 2007, the defendants returned to the plaintiff the sum of US$697,000.

22 The plaintiff sought a declaration that it had validly rescinded the agreement, the return of the balance of their investment amount and damages to be assessed. In the alternative, the plaintiff claimed damages for fraudulent misrepresentation or misrepresentation under the Misrepresentation Act (Cap 390, 1994 Rev Ed).

23 The defendants applied for a stay of this action on the basis of *forum non conveniens*, arguing that Indonesia was the more appropriate forum for the trial of the action. The Assistant Registrar granted the stay and the plaintiff appealed against that decision.

Law of forum non conveniens

24 The law of *forum non conveniens* has been extensively expounded in several Singapore Court of Appeal and High Court decisions. It is founded on seven propositions set out in the English case of *Spiliada Maritime Corporation v Cansulex Ltd* [1987] 1 AC 460 ("*The Spiliada*"). The propositions are set out in *Dicey, Morris and Collin on the Conflict of Laws* vol 1 (Lawrence Collins gen ed) (Sweet & Maxwell, 14th Ed, 2006), which states at pp 475 – 477:

> The following propositions may be derived from the speech of Lord Goff of Chieveley, which has been applied in many subsequent cases. **First**, in general the legal burden of proof rests on the defendant to persuade the court to exercise its discretion to grant a stay, although the evidential burden will rest on a party who seeks to establish the existence of matters which will assist him in persuading the court to exercise its discretion in his favour. **Secondly**, if the court is satisfied by the defendant that there is another available forum which is clearly a more appropriate forum for the trial of the action, the burden will shift to the claimant to show that there are special circumstances by reason of which justice requires that the trial should nevertheless take place in England. **Thirdly**, the burden on the defendant is not just to show that England is not the natural or appropriate forum, but to establish that there is another forum which is clearly or distinctly more appropriate than the English forum; accordingly, where (as in some commercial disputes) there is no particular forum which can be described as the natural forum, there will be no reason to grant a stay. **Fourthly**, the court will look to see what factors there are which point in the direction of another forum as being the "natural forum", *ie*, that with which the action has the most real and substantial connection. These will include factors affecting convenience or expense (such as availability of witnesses) and such other factors as the law governing the transaction and the places where the parties reside or carry on business, and also whether the claim is part of a larger overall dispute which would be damaged by being fragmented. **Fifthly**, if the court concludes at that stage that there is no other available forum which is clearly more appropriate for the trial of the action, the court will ordinarily refuse a stay. **Sixthly**, if, however, the court concludes that there is some other available forum which prima facie is clearly more appropriate, it will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should not be granted. In that enquiry, the court will consider all the circumstances of the case, including circumstances which go beyond those taken into account when considering connecting factors with other jurisdictions. **Seventhly**, a stay will not be refused simply because the claimant will thereby be deprived of "a legitimate personal or

juridical advantage", provided that the court is satisfied that substantial justice will be done in the available appropriate forum. [emphasis added in bold]

25 In Singapore, the *Spiliada* propositions have been succinctly distilled in *Halsbury's Laws of Singapore* vol 6(2) (LexisNexis Singapore, 2009) at paras 75.083 and 75.084:

> The basic principle in *The Spiliada* is to identify the court which should adjudicate the dispute most suitably for the interests of all the parties and the ends of justice. Because it is applying its own domestic law, the court can only decide whether it wants to hear the dispute; it cannot decide whether another court should or should not hear the case. Thus, the issue is posed as whether the Singapore court will adjudicate a dispute.
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> …
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> Nevertheless, the practical approach is to consider the question of appropriateness in the two distinct stages described under the previous heading. In Stage One, the court is concerned principally with identifying the forum with the most real and substantial connection with the dispute, where the trial could be held at least inconvenience and expense. In Stage Two, all circumstances will be taken into consideration, including factors that go beyond those considered in Stage One. The principal concern at Stage Two is whether the plaintiff will be deprived of substantial justice if the trial were conducted abroad.
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> The Court of Appeal has also observed that the test for the identification of the forum where the case ought to be tried for the interests of the parties and the ends of justice is not mechanical, but 'really a simple and commonsensical' one.

26 The crux of the matter has been crystallised by Chao Hick Tin JA in *PT Hutan Domas Raya v Yue Xiu Enterprises (Holdings) Ltd and another* [2001] 1 SLR(R) 104 at [17] in the following terms:

> The ultimate question remains the same: where should the case be suitably tried having regard to the interest of the parties and the ends of justice.

27 The nature of the analysis has been well stated by V K Rajah J in *Peters Roger May v Pinder Lillian Gek Lian* [2006] 2 SLR(R) 381 at [20] and [21]:

> A court has to take into account an entire multitude of factors in balancing the competing interests. The weightage accorded to a particular factor varies in different cases and the ultimate appraisal ought to reflect the exigencies dictated by the factual matrix. Copious citations of precedents and *dicta* are usually of little assistance and may in reality serve to cloud rather than elucidate the applicable principles.
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> …
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> In granting a stay application the court must be persuaded that compelling reasons have been advanced precipitating the conclusion that the interests of the parties seeking justice can be more appropriately secured in some other jurisdiction. As Lord Sumner aptly put it in *Société du Gaz de Paris v Société Anonyme de Navigation "Les Armateurs Français"* 1926 SLT 33 at 37:
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> > The object under the words "*forum non conveniens*" is to find that *forum* which is the more suitable for the ends of justice, and is preferable, because pursuit of the litigation in that *forum* is more likely to secure those ends.

[emphasis in original]

28 Finally, the law accords the plaintiff the freedom of choice of the forum where its choice is challenged by *forum non conveniens*, subject only to the following considerations, as stated by Judith Prakash J in *Focus Energy Ltd v Aye Aye Soe* [2009] 1 SLR(R) 1086 at [46]:

> Where more than one forum is appropriate, the plaintiff does not have to affirmatively choose the forum that might be marginally more appropriate than the other(s) to bring its claim. The plaintiff has the right to elect to bring its claim in a forum where the court has jurisdiction, provided only that there be no other forum that is *clearly or distinctly* more appropriate. [emphasis in original]

29 With these principles in mind, I considered the defendants' and plaintiff's arguments.

The defendants' submission that there was another more appropriate forum

30 The issue before me in this appeal was whether the defendants were able to establish that there was another forum which was more appropriate for this action to be suitably tried, having regard to the interest of the parties and the ends of justice.

31 The defendants submitted that Indonesia was the more appropriate forum, for the reasons which will be set out hereafter. Interestingly, they did not submit that the law of UAE would be the more appropriate forum in light of the fact that the Letter of Offer was an offer to acquire a 50% shareholding in an UAE company which in turn had an exclusive agency agreement with PT JIO Indonesia.

32 It was common ground that the burden of proof was on the defendants to establish that Indonesia was the more appropriate forum for this action. It was again common ground that the court would only consider connecting factors material and relevant to the claim and the issues in dispute. I noted and adopted the observations of Belinda Ang Saw Ean JC in *Yeoh Poh San and another v Won Siok Wan* [2002] SGHC 196 ("*Yeoh Poh San*") at [18]:

> It must be remembered that the court is required to consider what forum the issues have the closest connection with and will not simply weigh factors without reference to the likely issues.

33 Similarly I noted and adopted the observations of Andrew Phang JC in *Q & M Enterprises Sdn Bhd v Poh Kiat* [2005] 4 SLR(R) 494 ("*Q & M Enterprises Sdn Bhd*") at [21]:

> It is important to note that it is not the mere literal or factual geographical connections that are important (which the plaintiff raised in the context of Singapore). There must be legal significance, so that the mere number of geographical connections *per se* is not conclusive by any means.

34 Having noted the above, I then proceeded to consider the defendants' arguments that by reason of the factors they had raised, there was a more appropriate forum for this action to be suitably tried, in the interests of the parties and the ends of justice.

Connecting factors to another more appropriate forum

Geographical factors

35 The defendants first argued that Indonesia was the more appropriate forum because the

dispute had its closest connection with Indonesia. The dispute involved concessions located in Kalimantan, Indonesia, and the parties engaged in visits and discussions in Indonesia. They pointed to these further connecting factors: (i) that the second and third defendants were residents in Indonesia, (ii) the alleged false representations were made there, (iii) the first defendant, whilst a UAE company, had a representation office in Indonesia and (iv) its extraordinary general meeting resolutions recording the transfer of 50% shares to the plaintiffs were passed in Indonesia. As per Andrew Phang JC in *Q & M Enterprises Sdn Bhd* at [21], it was not simply literal or factual connections that were important but there had to be legal significance. Of all the factors lined up by the defendants, I found the legally significant factors to be the location of the concession in Indonesia and the Indonesian residency of the second defendant who was the directing mind behind the corporate structures and documentation. The weight I attached to these factors and the reasons for so doing are set out later in [40].

Imputed choice of law of Letter of Offer

36 In a stay application, it is appropriate, at this interlocutory stage before all the evidence has been heard, for the court to form a *prima facie* view of the governing law (see *Banco Atlantico SA v British Bank of the Middle East* [1990] 2 Lloyd's Rep 504, per Bingham LJ at 507.)

37 The defendants cited *Rickshaw Investments Ltd and another v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 ("*Rickshaw Investments Ltd*") at [42] in support of their submission that Indonesia was the more appropriate forum based on their argument that the imputed choice of law of the Letter of Offer ought to be Indonesian law, *viz*:

> Choice of law issues are relevant even to a question of jurisdiction. The relevance of choice of law considerations in a *jurisdictional* enquiry regarding the "natural forum" lies in the general proposition that where a dispute is governed by a foreign *lex causae*, the forum would be less adept in applying this law than the courts of the jurisdiction from which the *lex causae* originates. [emphasis in original]

38 The defendants submitted that in imputing the governing law of the Letter of Offer, the court would have to consider to which system of law the transaction had its closest and most real connection, taking into consideration the place of contracting, the place of performance, the places of residence or business of the parties, and the nature and subject matter of the contract.

3 9 *Pacific Recreation Pte Ltd v S Y Technology Inc and another appeal* [2008] 2 SLR(R) 491 provides guidance on determining the imputed choice of law where the parties have not expressly or impliedly chosen a governing law. As stated in [36] and [49]:

> 36 In *Overseas Union Insurance Ltd v Turegum Insurance Co* [2001] 2 SLR(R) 285 ("*OUI v Turegum Insurance*") at [82], it was pointed out that:
>
> > There are three stages in determining the governing law of a contract. The first stage is to examine the contract itself to determine whether it states expressly what the governing law should be. In the absence of an express provision one moves to the second stage which is to see whether the intention of the parties as to the governing law can be inferred from the circumstances. If this cannot be done, the third stage is to determine with which system of law the contract has its most close and real connection. That system would be taken, objectively, as the governing or proper law of the contract. …
>
> …

49 When one has ascribed the proper weightage to the relevant factors, the next step would be that enunciated in *Las Vegas Hilton* at [40] (namely, the third stage). In that case, Chao J went on to cite (at [42]) the following passage from *The Assunzione* [1954] P 150 at 179 by Singleton LJ:

> [O]ne must look at all the circumstances and seek to find what just and reasonable persons ought to have intended if they had thought about the matter at the time when they made the contract. If they had thought that they were likely to have a dispute, I hope it may be said that just and reasonable persons would like the dispute determined in the most convenient way and in accordance with business efficacy.

We agreed with Chao J's observation in *Las Vegas Hilton* at [44] that the "closest and most real connection" test (*id* at [40]) was the same as the objective test of the reasonable man adopted in *The Assunzione*.

40 In my view, the defendants in lining up the Indonesian connecting factors (see [35] and [38] above) appeared to have ignored a significant counter connecting factor to the UAE insofar as the substance of the Letter of Offer was an offer to acquire shares in a UAE company. The determination of what reasonable persons ought, in the context of this Letter of Offer, to have intended if they had thought about which law would govern the Letter of Offer, at the time the agreement was made, was not to be conducted *in vacuo* but in light of the business objectives of the parties as expressed in the Letter of Offer. The Letter of Offer expressly stated:

> We have formed a Company based in AJMAN – FZ (Dubai) which will basically source raw material for steel globally particularly from Latin America, Australia, and Eastern Europe, to supplement our production in Indonesia.
>
> We chose Dubai for this activity is [*sic*] because of its strategic location to various destinations …

As the location of the concession was in Indonesia and the second defendant was resident in Indonesia, it was open to the second defendant, who was the directing mind behind both PT JIO Indonesia and first defendant, to have made this offer to the plaintiff, to invest onshore in any suitable Indonesian incorporated company, whether a newly incorporated company or PT JIO Indonesia. Nevertheless he structured this Letter of Offer for the investment to be made in a UAE company. It was also significant that previous to this the second defendant had utilised and later abandoned a Singapore company for the same objective. The second defendant appeared to have planned at least two offshore vehicles and arrangements first in Singapore and then in the UAE, through which to source the offshore expertise and financing to produce and market PT JIO Indonesia's iron ore concession.

41 In the light of these actions and decisions which revealed a business objective to establish an offshore vehicle for financing and marketing of the iron ore hoped to be mined from the PT JIO Indonesia concession, it was not a compelling conclusion that the governing law to be imputed to the Letter of Offer was Indonesian law. The facts that UAE law was expressly chosen to govern the Exclusive Mining Agreement between the first defendant and the plaintiff and that Singapore law was to govern the JVA between the plaintiff and JIO Singapore indicated that the reasonable persons in their shoes would not have, in order to give business efficacy to their arrangements, concluded that Indonesian law was to govern this Letter of Offer.

Governing law of alternative claim for misrepresentation

42 The defendants next submitted that the plaintiff's alternative claim, *viz*, the tort of fraudulent misrepresentation, was governed by Indonesian law by reason that the representations were made in Indonesia. The defendants submitted that the place where a tort occurred was *prima facie* the natural forum for determining the claim and that the tort occurred in Indonesia (see *Rickshaw Investments Ltd*, at [37] – [40]). He additionally cited *Wing Hak Man and another v Bio-Treat Technology Ltd and others* [2009] 1 SLR(R) 446 at [26] for the proposition that in order to determine where the alleged tort has been committed, the court should "look back over the series of events" constituting the elements of the tort and ask where in substance the cause of action arose. The defendants submitted that "looking back over the series of events", the representations were made in Indonesia and hence Indonesia law would apply.

43 They further submitted that for the matter to be heard in Singapore, the double actionability rule must apply*, ie*, for the Singapore court to find liability, the tort would have to be actionable in both jurisdictions. These did not, in my view, present insurmountable obstacles. Double actionability would first need to be raised at trial. Second, the court would need to find that the representations were in fact made in Indonesia. Third, expert evidence of Indonesian law would need to be adduced. The first two would present no difficulty for the trial court. As for Indonesian law the trial court would determine this either by expert evidence adduced or in the absence of its proof, the law of the forum would apply by default (see *Rickshaw Investments Ltd*, at [43]).

Location of witnesses and documents necessary for trial

44 The defendants next raised questions of witnesses and documents which they submitted pointed towards another more appropriate forum. He cited *Rickshaw Investments Ltd*, at [19] in support:

> In our view, the importance of the location and the compellability of the witnesses depends on whether the main disputes revolve around questions of fact. If they do and, for example, the judge's assessment of a witness's credibility is crucial, then the location of the witnesses takes on greater significance because there would be savings of time and resources if the trial is held in the forum in which the witnesses reside and where they are *clearly* compellable to testify. [emphasis in original]

45 The defendants then submitted that the witnesses who would be able to give evidence relating to the extent of drilling carried out by the plaintiff's drilling team included two Indonesian nationals and residents. They submitted also that many of the relevant documents were likely to be in Bahasa Indonesia which would need to be translated, and that was a factor in favour of the stay application.

46 The plaintiff submitted in response, citing *Yeoh Poh San* at [18] that this court was required to consider which forum the issues of the action had the closest connection with, and could not simply weigh factors without reference to the likely issues. The principal witnesses required for this action would be the plaintiff's representatives and the second and third defendants themselves. In addition, the relevant documents in such an action were, as she submitted, primarily agreements, correspondence and related documents in English between the plaintiff and the defendants. No issue was raised as to the availability of the plaintiff's representatives, the second and the third defendants themselves. One question of fact that might be raised related to the iron ore content of the concession site. In relation to this, the defendants raised one potential difficulty, *viz*, that the defendants might require evidence relating to the extent of drilling conducted by the plaintiff from two Indonesian nationals and residents.

47 At this stay application stage, in the totality of the likely issues in the trial, the defendants

were not able to show whether the evidence of the two Indonesian nationals and residents would be material, whether the defendants would require these two witnesses at the trial, whether they would be available, and whether or not other available witnesses would be able to provide the same evidence. Accordingly I was unable to conclude that the non-compellability of these two possible witnesses, in light of the undisputed availability of the parties and the English language communications and agreements established that there was another more appropriate forum.

Conclusion

48 I had considered the relevant connecting factors in their totality, taking into account the substance of this cross-border joint venture, the business efficacy and objectives of the parties, the absence of a choice of law or forum in the Letter of Offer which was the subject matter of the plaintiff's action against the defendants and the likely issues at the trial and the witnesses and evidence in light of such likely issues. On balance, I did not think that the defendants had shown that there was another more appropriate forum. Considering all the circumstances of this offshore arrangement, I was of the view that allowing the action to proceed in Singapore would meet the interests of the parties and the ends of justice.

49 In the light of the above, I allowed the appeal and fixed the costs of the hearings here and below at S$9,000 inclusive of disbursements.