Beckkett Pte Ltd *v* Deutsche Bank AG
[2010] SGHC 55

Case Number : Suit No 326 of 2004 (Summons No 5313 of 2009)

Decision Date : 12 February 2010

Tribunal/Court : High Court

Coram : Lee Yeow Wee David AR

Counsel Name(s) : Mr Davinder Singh SC, Ms Cheryl Tan and Mr Pardeep Singh (Drew & Napier LLC) for the plaintiff; Mr Ang Cheng Hock SC, Mr William Ong, Mr Loong Tse Chuan and Mr Kenneth Lim (Allen & Gledhill LLP) for the defendant.

Parties : Beckkett Pte Ltd — Deutsche Bank AG

Civil Procedure

Conflict of Laws

12 February 2010 Judgment reserved.

Lee Yeow Wee David AR:

Introduction

1 In perhaps the first case of its kind in Singapore, the Court is asked: should the Court restrain a party, who has pursued its claim for a particular remedy for no less than five years in Singapore, all the way to the Court of Appeal, and lost, from pursuing the same remedy in a foreign Court?

2 These are the interesting and novel issues raised in this application which is but a chapter of a long-running saga between the protagonists. The plaintiff, Beckkett Pte Ltd ("Beckkett") is a Singapore company. Beckkett and its subsidiary, PT Swabara Mining and Energy ("SME") (an Indonesian company) owned shares in an Indonesian company, PT Asminco Bara Utama ("Asminco") which in turn owned shares in another Indonesian company, PT Adaro Indonesia ("Adaro"). Adaro's key asset was a coal mine in Kalimantan which produced low-ash, low-energy coal.

3 The defendant is Deutsche Bank AG ("the Bank"), a German bank with a branch in Singapore. The Bank extended a Bridging Loan to Asminco which Beckkett provided a guarantee of. In exchange, Beckkett and Asminco pledged their shares in SME, Asminco and Adaro to the Bank. Asminco subsequently defaulted in paying the Bridging Loan. The Bank eventually sold the pledged shares in SME and Adaro to PT Dianlia Setyamukti ("DSM") on 21 November 2001 and the sale was completed on 15 February 2002.

4 Beckkett brought a claim against the Bank and DSM for the following reliefs:

(a) a declaration that the sale of the P Shares was invalid, null and void and for an order to set it aside;

(b) a declaration that the equity of redemption over the Pledged Shares be restored to Beckkett,

SME and Asminco;

(c) an order that the Bank and DSM return the Pledged Shares to Beckkett, SME and Asminco;

(d) alternatively, damages to be assessed.

5 At the risk of oversimplifying an otherwise complex and intricate set of exchanges between the parties thus far, the dispute between the parties boils down to shares in two subsidiaries of Beckkett, namely, SME and Adaro. The simplicity of the description of this dispute belie the complex and intricate exchanges that had transpired between the parties since Beckkett commenced its suit in Singapore in 2004. It has resulted in no less than two judgments from the Supreme Court of Singapore: one from the High Court Judge after a 50-day trial (see *Beckkett Pte Ltd v Deutsche Bank AG & Anor* [2007] SGHC 153) and one from the Court of Appeal (see *Beckkett Pte Ltd v Deutsche Bank AG & Anor* [2009] SGCA 18).

6 The salient facts of the dispute between the parties have been summarised succinctly in the Court of Appeal judgment at [3] to [22] and they shall not be repeated here. Suffice to say that the matter is now pending an assessment of damages in the Singapore High Court pursuant to the Court of Appeal's findings which may be found at [143] of the Court of Appeal judgment:

"(a) The Bank, in exercising its power of sale, did not take proper steps to sell the Pledged Shares, in particular, the Adaro Shares and the IBT Shares, at the best price, and was therefore in breach of such duty as pledgee.

(b) Beckkett has adduced sufficient proof that the Adaro Shares and the IBT Shares had been sold at an undervalue.

(c) It is not possible to determine whether the sale of Beckkett's 74.2% equity share in SME at US$800,000 was at an undervalue and whether Beckkett has suffered a loss until the values of the Adaro Shares and the IBT Shares have been determined and taken into account in the valuation of the SME Shares.

(d) Contrary to the Judge's decision, the Bifurcation Order did not require Beckkett to adduce at the trial evidence of its actual loss at the 2001 valuations of the Pledged Shares. It did not abrogate Beckkett's pleaded claim that damages were to be assessed after the issue of liability was determined.

(e) Beckkett is entitled to have its loss, if any, determined at an inquiry for damages, at which it may prove the value of the SME Shares by adducing evidence of the values of the Adaro Shares and the IBT Shares.

(f) Although Beckkett, as pledgor of the SME Shares, has no direct claim for any loss arising from the sale of the Adaro Shares and the IBT Shares at an undervalue, it is entitled, as guarantor of the Bridging Loan, to prove any undervalue with respect to the Pledged Shares and to set it off against the Bank's counterclaim.

(g) The sale of the Pledged Shares by the Bank to DSM was not improper nor effected pursuant to a conspiracy between them, whether by lawful or unlawful means.

(h) Beckkett has failed to prove that DSM was not a bona fide purchaser of the Pledged Shares.

(i) Having regard to the subsequent developments relating to the Adaro Shares and the IBT Shares and the conduct of Beckkett, it would be wholly inequitable for the court to set aside the sale of the Pledged Shares."

7 The Court of Appeal then proceeded to make the following orders (at [143] of the judgment):

"(a) We dismiss, with costs, Beckkett's appeal against the Judge's decision to dismiss its claims to set aside the sale of the Pledged Shares against the Bank and/or DSM. The costs payable to DSM shall be paid forthwith, but the costs to the Bank will be stayed until the determination of Beckkett's claim for damages against the Bank as set out in the order in sub-para (b) herein.

(b) We allow Beckkett's appeal against the decision of the Judge dismissing Beckkett's claim for damages against the Bank and we order that such damages, based on the 2001 valuations of the Pledged Shares, be assessed before the Registrar, with the costs of assessment to follow the event.

(c) We order that judgment on the Bank's counterclaim against Beckkett be stayed pending the completion of the assessment of damages, the costs of the Bank's counterclaim here and below to follow the event of the assessment of damages in sub-para (b) herein.

(d) The security deposits for costs paid into court will remain in court until the final determination of Beckkett's claim for damages and the Bank's counterclaim, the deposits to be paid out to whichever party succeeds on the claim and the counterclaim, respectively.

(e) There shall be liberty to apply for further orders or directions."

8 Before I end the narration of the judgments that have thus far been rendered in the Singapore Courts on this dispute, and at the risk of highlighting the judgments out of sequence, I ought to highlight a portion of the High Court Judge's decision on the issue of whether the sale of the Pledged Shares was carried out by unlawful means. On this issue, the High Court found that:

"125 This relates back to the *penetapan-putusan* question under Art 1156 of the [Indonesian Commercial Code ("ICC")] . There is no controversy that the private sale had to be approved by the Indonesian courts. The sale of the Pledged Shares was carried out after the *penetapans* were obtained from the South Jakarta District Court. However, those *penetapans* were set aside by the Jakarta High Court, and have not been reinstated.

126 Under Indonesian law, the position must be that there were no valid approvals for the sale. It would follow that the sale was not carried out by lawful means, and was carried out by unlawful means as no valid court approval was obtained.

127 This conclusion has different consequences for each defendant. This fixes liability on [the Bank] as it was a failure on its part as mortgagee to discharge its duties towards [Beckkett]. However, it does not attach liability on DSM unless they intended to injure the Plaintiff when they agreed that the application to court was to be made *ex parte*.

9 For the purposes of the present application, and at the risk of setting out what may appear at first blush to be a pedantic set of dates, it is vital to set out the chronology of events, particularly

after the Court of Appeal judgment was rendered.

Sequence of Events

The Singapore High Court Trial & Court of Appeal Hearing

10 The High Court trial began on 20 February 2006. After a 50-day trial, judgment was rendered on 21 September 2007. Beckkett filed a Notice of Appeal to the Court of Appeal on 22 October 2007 and the Bank filed a cross-appeal. The appeals were heard on 23 April 2008 and judgment was reserved.

Beckkett Filed Suit in the District Court of South Jakarta

11 On 2 May 2008, about a week after the appeals were heard in Singapore, Beckkett filed a suit in the District Court of South Jakarta. In the Indonesian suit, Beckkett claimed essentially that the sale of the SME Shares were unlawful under Indonesian law. The basis of Beckkett's Indonesian proceedings can be distilled to the following:

(a) The sale of the SME Shares was based on *penetapans* issued by the South Jakarta District Court pursuant to an *ex parte* application by the Bank;

(b) The *penetapans* were successfully challenged by Beckkett and subsequently set aside and revoked on 9 March 2005; and

(c) Therefore, the sale of the SME Shares was contrary to Indonesian law, being a violation of Articles 1155 and 1156 of the ICC.

12 As relief, Beckkett sought the return of the SME shares and a declaration that it was the owner of the SME shares which it had pledged to the Bank. In particular, Beckkett sought the following reliefs in the Indonesian proceedings:

(a) To declare that the sale of the SME Shares performed between the Bank and Mulhendi (DSM's nominee) in accordance with the Deed of Sale and Purchase shall be illegal and legally defective;

(b) To declare that the Deed of Sale and Purchase, the Deed of Minutes and all and any binding legal document drawn up and executed on the basis of these two documents shall be null and void; and

(c) To declare that the Beckkett is the legal owner of the SME Shares and that it shall exercise all rights as a shareholder of SME in accordance with the law.

13 It is important to highlight that at this point in the proceedings, the Court of Appeal had reserved its judgment. Consequently, the parties did not know if Beckkett would be successful in its appeal and if so, what remedy would be awarded by the Court of Appeal. Two remedies were possible

if the appeal was allowed. First, the Court of Appeal could find that the Bank was liable and award damages. Second, the Court of Appeal could order a return of the Pledged Shares.

The Bank Challenged the Indonesian Courts' Jurisdiction and Failed

14 On 30 October 2008, the Bank filed an application known as an "Absolute Competency Exception" in the District Court of South Jakarta. In this application, the Bank, in essence, sought a stay of the Indonesian proceedings on the ground that the Bridge Facility Agreement between the parties designated the Courts of England or Singapore as the proper forum of the dispute and that Beckkett had acted in bad faith by filing its claim in Indonesia. Several other defendants against whom Beckkett had filed the claim also filed similar applications (which are not relevant for the purposes of determining this application).

15 On 8 January 2009, the District Court of South Jakarta rejected the Bank's Absolute Competency Exception application. It is not disputed that the Bank did not appeal against this decision of the District Court of South Jakarta.

Judgment Granted in the Bank's Favour at First Instance in Indonesia

16 The parties then proceeded to contest the merits of the suit in the District Court of South Jakarta. On or about 8 April 2009, the District Court issued its judgment and dismissed Beckkett's suit in its entirety. On 13 April 2009, Beckkett filed an appeal against that decision. (For convenience, and for reasons which shall become apparent below at [60] and [61] below , this appeal shall be referred to in this judgment as the "First Indonesian Appeal". For all other references to the Indonesian proceedings as a whole, they shall be referred to as "Indonesian proceedings" or "Indonesian action".)

Singapore Court of Appeal Judgment Rendered

17 Exactly two weeks after the First Indonesian Appeal was filed, i.e. on 27 April 2009, the Singapore Court of Appeal rendered its judgment.

Beckkett Appealed against the Indonesian Judgment at First Instance

18 On 15 May 2009, the Bank's Indonesian counsel (Rahmat Bastian) received a notification from the District Court of South Jakarta informing the Bank of the First Indonesian Appeal. On 25 May 2009, Beckkett filed a Summons for Directions (as required by Order 37 of the Rules of Court) for the assessment of damages in the Singapore High Court. On 28 July 2009, the Bank's Indonesian counsel received another notification, this time from the District Court of Central Jakarta, informing him of the First Indonesian Appeal.

19 On 24 August 2009, the Bank's solicitors in Singapore wrote to Beckkett's solicitors to ask Beckkett to withdraw the First Indonesian Appeal. On 28 August 2009, Beckkett's solicitors replied asking for a copy of the Notice of Appeal referred to in the letter from the Bank's solicitors. This request was acceded to on 4 September 2009. After a period of silence from Beckkett, the solicitors for the Bank sent a reminder to Beckkett's solicitors. On 17 September 2009, Beckkett's solicitors replied to say that Beckkett did not intend to withdraw the First Indonesian Appeal. No reasons were given in that letter.

20 On 28 September 2009, the Bank's Indonesian counsel received a notice from the High Court of Jakarta informing him that the High Court had received the documents in Beckkett's First Indonesian Appeal from the District Court of South Jakarta. Beckkett did not file a Memorandum of Appeal setting

out the aspects of the decision of the District Court of South Jakarta which it was dissatisfied with. As a result, the appeal was against the whole of the District Court of South Jakarta's judgment. It is common ground between the parties that in such a situation, the High Court of Jakarta can decide the First Indonesian Appeal based solely on the court record and documents tendered by the parties in the Indonesian District Court Suit.

21 I had conduct of the Pre-Trial Conferences ("PTCs") for the purposes of the assessment of damages hearing. Counsel for the Bank first intimated to the Court that its client wished to take out an anti-suit injunction on 7 October 2009. On 9 October 2009, the present application was filed. The application was heard on 18 November 2009.

Beckkett's Reply Affidavit

22 Before I move on to the parties' respective submissions, I ought to point out a significant point made by Beckkett through the reply affidavit filed by Mr Anthony Jeffrey D'Cruz. At [87] of his affidavit, Mr D'Cruz stated that:

> "It is not and never has been Beckkett's intention to keep both damages and the Pledged Shares. If required by this Honourable Court, Beckkett is prepared to give the necessary undertakings to that effect."

The Bank's Submissions

23 Counsel for the Bank submitted that the present application concerned a clear and obvious case which merited the grant of an anti-suit injunction. The Bank relied on two main prongs for its submissions. The first key plank of its submission is that Singapore is the natural forum for the dispute. In this regard, the Bank submitted that Singapore was the forum chosen by Beckkett more than 5 years ago when the suit was first commenced in Singapore in 2004. Further, the Bank also relied on Beckkett's decision to file the Summons for Directions for the assessment of damages in Singapore after the Singapore Court of Appeal decision was rendered. Against this set of facts, and relying on the decision in *Shell International Petroleum Co Ltd v Coral Oil Co Ltd* [1999] 2 Lloyds Rep 606, counsel for the Bank submitted that a court which is not originally the natural forum for a dispute can become the natural forum as a result of the progress of litigation before it.

24 The second key plank of the Bank's submission lies in the argument that the First Indonesian Appeal was vexatious or oppressive. Relying on the test laid down by the Privy Council in *Société Nationale Industrielle Aerospatiale v Lee Kui Jak* [1987] AC 871 ("*Société Nationale*"), the Bank attempted to show that the continuation of the Indonesian proceedings was both vexatious and oppressive because:

(a) It constituted an attempt by Beckkett to re-litigate matters that were *res judicata* between the parties by reason of the Singapore Court of Appeal decision; and

(b) There was no legitimate reason for Beckkett to maintain concurrent proceedings against the Bank in Singapore and Indonesia.

25 To maintain this submission, the Bank submitted that at every stage of the Singapore proceedings, Beckkett had asked for alternative remedies, namely: (a) to set aside the Bank's sale of the Pledged Shares and obtain a return of the Pledged Shares as a result; and (b) alternatively, for

damages to be assessed against the Bank. References were made to Beckkett's Re-Amended Statement of Claim filed on 28 February 2005 (at pages 33-35), Beckkett's Opening Statement filed on 13 February 2006 (at pages 44-46) and Beckkett's Closing Submissions filed on 8 January 2007 (at pages 391-401). In the Bank's submissions, these two remedies are mutually exclusive, viz. Beckkett can either seek a return of the shares, or seek compensation of its loss (if any) by way of damages. The Bank submitted that Beckkett is not entitled to both remedies because that would constitute double recovery.

26 With regard to the offer by Beckkett to make the necessary undertakings to prevent double recovery, the Bank submitted that Beckkett's offer to elect between the remedy of damages and the return of the Pledged Shares before executing any judgment from either Court was inadequate. In the Bank's view, such an offer does not address the vexation and oppression created by Beckkett's pursuit of concurrent proceedings because it leaves the Bank exposed to the re-litigation of issues that are *res judicata* between the parties and would result in wasted costs in either the Indonesian or Singapore proceedings (depending on which remedy Beckkett elects to keep if Beckkett has a choice). The Bank also highlighted the risk of Singapore's judicial resources being wasted in conducting the assessment of damages if the Indonesian appeal was decided in favour of Beckkett.

27 In the circumstances, the Bank submitted that an appropriate order which fulfilled the "ends of justice" would be an anti-suit injunction. An order to put Beckkett to election would not be appropriate because it would be inconsistent with the Singapore Court of Appeal's judgment and would allow Beckkett a second bite at the cherry.

Beckkett's Submissions

28 In its 107-page written submissions tendered at the hearing, Beckkett adopted a seven-pronged argument to resist the present application. First, Beckkett submitted that there was no duplicity between the proceedings in Singapore and those in Indonesia. Second, Beckkett argued that even if there was duplicity, the application should be dismissed because the Bank had not acted with "clean hands". Third, Beckkett relied on the argument that it would be contrary to the ends of justice to grant an anti-suit injunction. Fourth, it argued that an injunction need not be granted because the Bank's concerns could be overcome by appropriate undertakings. Fifth, even if the Court was satisfied that there were grounds to intervene, the just and equitable solution would be to put Beckkett to its election. Sixth, it would be unjust to grant an anti-suit injunction as it would deprive Beckkett of its right to elect. Finally, even if the Court was not minded to allow concurrent proceedings, it was only fair and just that Beckkett be put to an election.

29 As can be seen from a reproduction of the seven-pronged approach, the arguments raised by counsel for Beckkett can be essentially distilled to five key issues:

(a) Whether there was duplicity between the proceedings in Indonesia and those in Singapore;

(b) Whether the Bank should be denied relief because it did not come to Court with clean hands;

(c) Whether the requirements for an anti-suit injunction were met;

(d) Whether the Bank's concerns could be overcome with the necessary undertakings; and

(e) Whether the just and equitable order would be to put Beckkett to an election.

30 Beckkett's submissions will be summarised along the five issues that I have identified.

Whether there is duplicity in the Indonesian and Singapore proceedings

31 Beckkett commenced its arguments on this issue by stating that multiplicity of proceedings is not to be confused with duplicity of proceedings; multiplicity without more does not amount to duplicity. Relying on the decision of Judith Prakash J in *Transtech Electronics Pte Ltd v Choe Jerry & Ors* [1998] 3 SLR 272 ("*Transtech Electronics*") at [16], Beckkett submitted that while it would be undesirable for there to be two sets of proceedings in two different jurisdictions: (a) involving the same parties, (b) involving the same issues and (c) arising from the same underlying cause of action, this does not *ipso facto* prevent one of those actions from continuing. Beckkett reiterated that the Court always has to have regard to the right of a party to invoke the jurisdiction available to him by the law of a particular country and cannot deprive such a party of that right without good ground. Further, Beckkett submitted that it was an essential ingredient of a finding that there was a duplicity of actions that the plaintiff must have sued the same defendant in two jurisdictions in substantially the same causes of action: see *Multi-Code Electronics Industries (M) Bhd & Anor v Toh Chun Toh Gordon & Ors* [2009] 1 SLR 1000 at [33] to [34].

32 On the facts of the present application, Beckkett submitted that the causes of action underpinning both sets of proceedings were "legally and conceptually distinct": see [90] of Beckkett's Written Submissions. Beckkett sought to argue that its causes of action in the Singapore proceedings were based on the illegality of the Sale Agreement, breach of the Bank's duties as mortgagee and conspiracy between the Bank and DSM. At the trial, Articles 1155 and 1156 of the ICC were relevant to Beckkett's case on the illegality of the Sale Agreement. Beckkett's case at the trial was that the Sale and Purchase Agreement was an agreement with an unlawful *causa* and was hence illegal and void from the outset. Although Beckkett's cause of action on the illegality of the Sale Agreement was premised on the breach of Articles 1155 and 1156, Beckkett submitted that this cause of action was not even adjudicated upon in the Singapore proceedings. In particular, Beckkett pointed to the Bank's Respondent's Case at the Singapore Court of Appeal where the Bank contended as follows:

> "1141 Beckkett's case on illegality was that the Sale Agreement should be set aside because it involved performance of an act which was alleged illegal under foreign law. This relates to the rule in *Foster v Driscoll* [1929] 1 KB 470 and the principle in *Ralli v Compania Naviera Sota v Anzar* [1920] 2 KB 287. **Beckkett does not pursue its case on illegality before this Court**." [emphasis added]

33 It is interesting and pertinent to note that although Beckkett submitted that, at the trial, it did not pursue its case on illegality, it conceded in its written submissions at [94] that "[o]n appeal, however, [Beckkett] argued, as part of its case on conspiracy (by unlawful means), that the *penetapans*, having been obtained by *ex parte* applications, constituted the unlawful means by which the conspiracy was perpetrated. The issue of the breach of Article 1156 was a mere ingredient (i.e. the unlawful act) that was part of [Beckkett's] cause of action on conspiracy by unlawful means." In other words, Beckkett sought to argue that for the Singapore proceedings, it had focussed its efforts on the guilty intent of the purchaser of the shares by proving that DSM was an accomplice of the Bank and that both of them had taken part in a conspiracy.

34 In contrast, Beckkett argued, the Indonesian proceedings were based on the Bank's failure to comply with the Articles 1155 and 1156 of the ICC: Beckkett's case was that the breach constitutes a tort and rendered the purported transfer of the Pledged Shares ineffective (null and void). Beckkett took pains to argue that the causes of action were different and that it could not have pursued, and did not pursue, a separate and distinct cause of action based on the breach of the Articles. Rather, the issue of the breach of the Articles was merely an ingredient of its cause of action that there had been a conspiracy by unlawful means. Beckkett then argued that it did not follow that, just because Beckkett could not prove that DSM was an accomplice of the Bank, Beckkett had lost its rights under Indonesian law to challenge the validity of the purported transfer of the Pledged Shares.

Whether the Bank came to the Court "with clean hands"

35 Next, Beckkett argued that the Bank's application ought to be dismissed because the Bank did not come to the court with clean hands. The arguments under this heading were fairly simple to understand. As anti-suit injunctions are equitable remedies, the Court ought to exercise its discretion only if the party seeking the Court's relief comes to the Court "with clean hands". In short, Beckkett relied on the long-established maxim that "he who seeks equity must do equity".

36 Beckkett relied on four acts for its allegation that the Bank did not come to the Court with clean hands. First, Beckkett pointed out that the Bank had been inconsistent (viz. "blowing hot and cold") with regard to the Indonesian proceedings. For this argument, Beckkett turned to various passages in the Bank's submissions made in its Appellant's Case before the Court of Appeal in Civil Appeal No 126 of 2007. For example, at [603] of the submissions, the Bank had submitted as follows:

> "603 The learned Judge appears to have assumed that Article 1156 requires an *inter partes* application. [The Bank] of course disputes that assumption. That aside, ***even if Article 1156 requires an* inter partes *application, [Beckkett] would have to file a claim before the Indonesian courts and argue, in contested proceedings, that there was a deliberate and wilful breach of Article 1156 and that the sale of the Pledged Shares should be annulled*** ." [emphasis added]

37 Relying on this passage, Beckkett argued that the Bank had been blowing hot and cold in these proceedings. Making reference to the recent Court of Appeal decision in *John Reginald Stott Kirkham & Ors v Trane US Inc & Ors* [2009] SGCA 32 ("*John Reginald Stott*") , Beckkett submitted that the conduct of the Bank was even more egregious than that of the unsuccessful applicants in *John Reginald Stott*.

38 Second, Beckkett alleged that there was material non-disclosure on the part of the Bank. Indeed, this was a point forcefully pursued by counsel for Beckkett at the hearing in oral submissions. For this point, Beckkett pointed out that the Bank had inexplicably failed to disclose in the affidavits filed in support of the application the material fact that the Bank had previously applied, but failed, to stay the Indonesian proceedings on the grounds of concurrent Singapore proceedings. Beckkett then sought to paint a picture of a party (i.e. the Bank) who had been successful at first instance seeking, by means of the present application in another jurisdiction, to stymie the unsuccessful party's (i.e. Beckkett's) chances at an appeal in the first jurisdiction.

39 Third, Beckkett pointed out that after having its stay application in Indonesian dismissed and failing to appeal against that unfavourable decision, the Bank continued to defend the Indonesian action vigorously on its merits. By participating in and defending both sets of proceedings in Indonesia and Singapore, Beckkett submitted that the Bank had submitted to the jurisdiction of the Indonesian Courts. Having accepted the jurisdiction of both the Indonesian and Singapore courts without putting

Beckkett to an election, and having fought in both jurisdictions, Beckkett submitted that the Bank must be taken to have waived its rights to fight one action only. To that end, Beckkett relied on the cases of *The Delta* (1876) 1 PD 393 and *Morrison Rose & Partners v Hillman* [1961] 2 QB 266 ("*Morrison Rose*").

40 Fourth, Beckkett submitted that there was significant delay in the Bank's taking out of this application for an anti-suit injunction. Beckkett pointed out that when the Bank's solicitors in Singapore wrote to Beckkett's solicitors in Singapore on 24 August 2009, the Bank had given the false impression that it had only learnt of Beckkett's appeal to the High Court of Jakarta (i.e. the First Indonesian Appeal) on 28 July 2009. In actual fact, it was alleged, the Bank knew about the appeal as early as 15 May 2009 when the first notification was sent from the District Court of South Jakarta to the Bank's solicitors in Indonesia. In other words, by the time Beckkett took out the Summons for Directions on 28 May 2009, the Bank already knew that an appeal had been filed in the Indonesian Courts. Yet, it took the Bank up to 24 August 2009 (some three months later) to write to Beckkett on this issue and up to 9 October 2009 to file the present application.

41 Relying on the decision of Kan Ting Chiu J in *VH v VI & Anor* [2007] SGHC 221, Beckkett submitted that the inexplicable and inordinate delay on the Bank's part was sufficient for the Court to refuse the Bank relief in the present application.

Whether the requirements for an anti-suit injunction were met

42 It was common ground between Beckkett and the Bank that the principles considered by the Court of Appeal in *John Reginald Stott* were applicable. The parties differed on their application of those principles to the facts of the present application.

43 Relying on the factors identified in that judgment, Beckkett submitted that:

(a) Indonesia was the natural forum for the adjudication of the issues in question;

(b) The Indonesian proceedings were not vexatious, oppressive or unconscionable because Beckkett had good reason for bringing the Indonesian proceedings and because Beckkett was not pursuing mutually exclusive remedies;

(c) On the contrary, it would be unjust to Beckkett if it was restrained from proceeding in Indonesia because it had expended significant time, resources, effort and costs in pursuing the Indonesian proceedings and because significant detriment would be occasioned to it; and

(d) The discretion to grant an anti-suit injunction ought to be exercised sparingly and with great caution.

44 On the first factor, Beckkett contended that the Bank's affidavits filed in support of the application failed to contend that Singapore was the natural and proper forum for the resolution of parties. Beckkett further submitted that the Bank did not do so because it could not make such an assertion.

45 Beckkett then argued that the relevant dispute was the one in Indonesia for the return of the Pledged Shares on account of the fact that the sale was based on *penetapans* issued by the District Court of South Jakarta which were in violation of Articles 1155 and 1156 of the ICC. Given the backdrop of this dispute, the Indonesian Courts were the natural forum to adjudicate on the issue of whether the sale had contravened Articles 1155 and 1156 of the ICC. Further, Beckkett pointed out that the Share Pledge Agreements were governed by Indonesian law and provided for the District Court of Central Jakarta to have non-exclusive jurisdiction of any disputes arising from the Share Pledge Agreements. Therefore, in Beckkett's view, only the Indonesian courts had the actual power, authority and jurisdictional competence to enforce an order to rescind the sale of the Pledged Shares and to grant a declaration that Beckkett was the legal owner of the Pledged Shares.

46 On the second factor, Beckkett's position is that the Bank did not, in its affidavits supporting the application, point to some inconvenience, much less prejudice, in having to defend both the Indonesian proceedings and the assessment of damages in Singapore. Further, Beckkett pointed out that the Bank failed to allege any bad faith on Beckkett's part in pursuing the Indonesian proceedings or that Beckkett's Indonesian proceedings were bound to fail. Relying on the cases of, amongst many others, *McHenry v Lewis* [1882] 22 Ch. D 397 and *Peruvian Guano Company v Bockwoldt* [1883] Ch. D 225, Beckkett submitted that there was no presumption in law that a multiplicity of proceedings in different jurisdictions was vexatious, or that the mere fact of a multiplicity of proceedings was sufficient, without more, to justify the granting of an anti-suit injunction. Citing the clear and proper advantages that it had in pursuing its remedy in Indonesia, Beckkett sought to argue that its pursuit of a legitimate advantage in Indonesia was not vexatious, as unpleasant as it might be to the Bank to be sued twice in two jurisdictions.

47 For the third factor, Beckkett alleged that that to restrain the continuation of the Indonesian proceedings at this very late stage would result in substantial wasted time, resources, effort and costs.

48 Finally, on the last factor, Beckkett relied on the cases of *Société Nationale* and *Royal Bank of Canada v Cooperative Centrale Raiffeisen-Boerenleenbank BA* [2004] 1 Lloyd's Rep 471 as authorities for the proposition that anti-suit injunctions ought to be rarely given in the wider context of comity amongst nations.

Whether the Bank's concerns can be addressed by undertakings

49 Beckkett relied on the following passage of Lord Goff's judgment in *Société Generale* where Lord Goff opined (at pg 896F-H):

> "since the court is concerned with the ends of justice, … account must be taken not only of injustice to the defendant if the plaintiff is allowed to pursue foreign proceedings, but also of injustice to the plaintiff if he is not allowed to do so. So the court will not grant an injunction if, by doing so, it will deprive the plaintiff of advantages in the foreign forum of which it would be unjust to deprive him. Fortunately, however, as the present case shows, **that problem can often be overcome by appropriate undertakings** given by the defendant, or by granting an injunction upon appropriate terms" [emphasis added]

Whether the Court may put Beckkett to an election

50 Beckkett admits that where a plaintiff has commenced two sets of proceedings, ostensibly involving the same defendant and where the same issues arise, one of the options that could arise is where the defendant invites the Court to compel the plaintiff to make a positive election as to which

of the proceedings to pursue: see [214] of the Beckkett's Written Submissions. Beckkett then goes on to submit that to grant an anti-suit injunction would be to deprive it of its right to elect between the two sets of proceedings when the time for election has not yet arrived. Beckkett's position is that it is only where a party is placed in a position in which he is confronted with two mutually exclusive courses of action that he must choose between them: see *Spencer Bower: The Law Relating to Estoppel by Representation* (LexisNexis UK, 4th Ed, 2004) at [XIII.1.8] ("*Spencer Bower*"). As this passage has the potential to play a critical part in the eventual outcome of this application, I will reproduce the relevant text here for ease of reference:

> "XIII.1.8 Election comes into play, therefore, when a party is placed in the position where he is confronted by two mutually exclusive courses of action and must choose between them. A number of points may be made about this doctrine. First, it is clearly distinct from promissory estoppel because it arises where one party is faced with a choice. Although a finding of promissory estoppel may often be made where a party has made a promise not to exercise a particular right or a declaration of intention to that effect, there are many occasions on which a party may be bound by a promise where the law does not require him to make a choice at all. Secondly, the doctrine of election is usually expressed in terms of 'courses of action' but the courses of action open to a party faced with an election may involve a choice between (a) remedies, (b) substantive rights, (c) procedural steps or requirements, or (d) parties. In the last case where the two persons are liable for the same debt or performance of the same obligation and the creditor elects to take proceedings against one debtor rather than the other then he or she will be precluded from later taking proceedings against the other debtor if the remaining conditions of a valid election are met. […]"

51 Beckkett then referred the Court to *Ross v Ross* [1950] P 160, a decision of the Probate Division of the High Court in England. There, after a *decree nisi* (or what is now known as an interim judgment) was granted, counsel for the successful wife stated that no question of maintenance would arise as the wife intended to rely on an existing maintenance order of a court of summary jurisdiction. Two months after the decree absolute was granted, the wife applied to the High Court for maintenance. While that application was pending, she took out a summons for arrears under the order made by the court of summary jurisdiction, contending that she had, by her conduct, made an irrevocable election to rely on the earlier order. The English High Court rejected this contention. The Court explained at p 163 of the report:

> "The doctrine of election, as I understand it, applies in a case where a plaintiff has alternative remedies, and it is held that where he has once elected to pursue one he has waived his right to the other and is for ever precluded from asserting it […] In the present case, as it seems to me, the wife was never in the position of having alternative or inconsistent remedies; she never had more than one remedy open to her, namely an order for maintenance against the husband; but she had a choice of courts in which she might pursue that remedy. The position, as I see it, is somewhat analogous to the case where proceedings in respect of substantially the same cause of action are pending at the same time in two different courts. Of this class of case, *McHenry v Lewis* (1882) 22 Ch. D. 397, is a well known example. In such cases it has never, so far as I know, been suggested that a plaintiff, by instituting proceedings in one court, has irrevocably elected to pursue his remedy only in that court, so as to be precluded for all time from proceeding elsewhere. On the contrary, it is clear that, on a motion to stay proceedings on the ground of lis alibis pendens, the court has a discretion to stay or not to stay the proceedings, **and may at that stage put the plaintiff to his election as to the court in which he will proceed**. I very much doubt, therefore, whether the doctrine of election as enunciated in the cases referred to, could ever be applied to a case such as the present, where the wife's only choice so far has been as to the court in which she will pursue the remedy which she

undoubtedly has." [emphasis added]

52 Beckkett then goes on to submit that as damages have yet to be assessed in Singapore, it has yet to obtain an enforceable and quantifiable judgment for damages against the Bank. Similarly, as the Indonesian courts have not granted an order to rescind the sale of the Pledged Shares and a declaration that Beckkett is the legal owner of the shares, Beckkett has never been in a position where it has available to it alternative and inconsistent remedies.

53 Beckkett also referred the Court to the very recent decision of Belinda Ang Saw Ean J in *Main-Line Corporate Holdings Ltd v United Overseas Bank Ltd & Anor* [2009] SGHC 232 ("*Main-Line*"). There, the Court held, albeit in the context of electing between two remedies pursuant to a provision under the Patents Act (Cap 221, 2005 Rev Ed) against two different defendants (at [24]):

> 24 The rationale for the principles of election between alternative remedies is to prevent double recovery since a plaintiff should not be permitted to recover more than he has lost. The other reason (associated with equitable election) is that the plaintiff is not permitted to approbate and reprobate. **What this means is that the plaintiff cannot take the benefits without the burdens**." [emphasis added]

54 In this connection, Beckkett relied on a passage of Viscount Simon LC from the Privy Council's decision in *United Australia Ltd v Barclays Bank Ltd* [1941] AC 1 ("*United Australia*"), which was a decision cited by Belinda Ang J in her judgment in *Main-Line*:

> "The substance of the matter is that on certain facts [the plaintiff] is claiming redress either in the form of compensation, i.e., damages as for a tort, or in the form of restitution of money to which he is entitled, but which the defendant has wrongfully received. The same set of facts entitled the plaintiff to claim either form of redress. At some stage of the proceedings the plaintiff must elect which remedy he will have. **There is, however, no reason of principle or convenience why that stage should be deemed to be reached until the plaintiff applies for judgment**" [emphasis added]

55 Finally, and for the sake of completeness, Beckkett concedes that "it is … clear that a plaintiff may postpone election for a reasonable period, provided such delay is necessary in order to make an informed choice between alternative remedies available": see [235] of the Beckkett's Written Submissions.

56 Before I leave Beckkett's submissions on this final but critical point, I should point out that in the course of oral submissions, counsel for Beckkett submitted to the Court that Beckkett's "bottomline submission" (in the event that the Court was not prepared to dismiss the application in its entirety) would be for an order to put Beckkett to an election. This appeared to me to be a fall-back position that Beckkett was prepared to take on the issue of what would be a fair and just order given the present circumstances.

Post-Hearing Events

57 Parties subsequently filed supplementary written submissions on 19, 20, 23 and 30 November and 4 December 2009. This set of supplementary submissions was precipitated by a letter from counsel for the Bank dated 19 November 2009 pointing out that it had omitted to address the Court on the issue of whether Singapore was the natural forum for the dispute. Attention of the Court was drawn to paragraph 8 of the affidavit filed by Mr Arthur Ling on 28 March 2005 where, in essence, Mr Ling deposed on affidavit that after seeking legal advice from solicitors in Indonesia and Singapore,

Beckkett came to the view that there was potential overlap between the subject matter in both suits (in Indonesia and Singapore) and therefore chose to discontinue the action in Indonesia on or around 11 February 2005. This, Mr Ling averred, demonstrated Beckkett's intention to pursue its claims in the Singapore Courts. The submission from the Bank was therefore that Beckkett's position had always been that Singapore was the natural forum for the subject matter.

58 Quite naturally, counsel for Beckkett did not let matters rest there. A day after the Bank's letter, on 20 November 2009, counsel for Beckkett wrote a short holding letter to state that Beckkett took objection to the letter from the Bank written the day before and reserved its rights to reply. Three days later, on 23 November 2009, counsel for Beckkett replied with a substantive letter to assert that Mr Ling's affidavit was historical and completely irrelevant to the application. It then sought to trace the chronology of events in or around January 2005 to March 2005 for the proceedings in both Indonesia and Singapore. Counsel sought to impress upon the Court that there was a fundamental change of circumstances subsequent to the particular affidavit filed by Mr Ling on 28 March 2005. Counsel then reiterated its argument that this did not preclude Indonesia from becoming the natural forum due to the subsequent events.

59 It was not surprising that this led to yet another reply from counsel for the Bank. Seeing that the utility of the letters was getting inversely proportional to their lengths and their ability to raise peripheral issues, I granted leave to counsel for Beckkett to put in a final reply submission at a PTC in early December 2009. The letter from counsel for Beckkett dated 4 December 2009 finally closed the loop in this round of supplementary submissions.

60 On 15 January 2010, both counsel for Beckkett and counsel for the Bank wrote in to inform the Court that the outcome of the High Court of Jakarta had been released on 12 January 2010. A PTC was called. At the PTC on 21 January 2010, parties informed the Court that the High Court of Jakarta had dismissed Beckkett's appeal. Counsel for Beckkett informed the Court that their client might wish to appeal further ("the Second Indonesian Appeal") to the Supreme Court of Indonesia and that they had up to 26 January 2010 (14 days from 12 January 2010) to file the memorandum of appeal. I adjourned the PTC to allow the parties to take some quick instructions on whether the turn of events had an impact on the outcome of this application.

61 The parties reverted at a PTC the next day (on 22 January 2010) to inform the Court of the impact, if any, of the decision from the High Court of Jakarta. Essentially, the parties updated the Court that their respective positions were the same. In particular, counsel for Beckkett added that if the judgment in this application was not released prior to the deadline for filing a memorandum for appeal to the Supreme Court of Indonesia, Beckkett would file the memorandum to preserve its position, but undertook to withdraw the appeal if the Court ordered an election to be made and Beckkett elected to pursue its action in Singapore.

The Law

62 By way of laying a framework and foundation for the reasoning and decision to follow, I will cite a few key passages from the leading authorities on the issue of anti-suit injunctions and the remedies available to the Court when faced with such applications.

63 A useful starting point to consider would be *Dicey, Morris and Collins on The Conflict of Laws* (Sweet & Maxwell, 14th Ed, 2006) ("*Dicey & Morris*") at [12-069] to [12-074], a common resource relied upon by both sets of counsel. The pertinent passages on how the discretion ought to be exercised in an application for an anti-suit injunction are set out as follows:

[12-069] **The exercise of the discretion**. The underlying principle is that the jurisdiction is exercised "where it is appropriate to avoid injustice" or as it was once put, where the foreign proceedings are "contrary to equity and good conscience". Although it is possible to identify certain categories of cases in which the jurisdiction has been exercised "the width and flexibility of equity are not to be undermined by categorisation". […] [I]n the most recent authoritative formulation of the principles there is no indication that the exercise of the discretion is limited by the need to demonstrate a legal or equitable right not to be sued.

[12-070] […] The court will also restrain proceedings which interfere with "the due process of the court" or with the court's jurisdiction to decide cases pending before it. […]

64 At the risk of excessive citation, the following passages (also from *Dicey & Morris*) provide a useful summary and cross-section of the approach taken in the Commonwealth jurisdictions:

[12-071] It is also clear that the court may restrain foreign proceedings which are "oppressive or vexatious" in the traditional sense. For some years it was not clear what effect the modern development of *forum non conveniens* principles in the staying of *English* actions was to have on the exercise of the jurisdiction to enjoin *foreign* proceedings. […] In the [*Société Nationale*] case, […], the Privy Counsel (speaking through Lord Goff of Chievely) held that it was not right to treat the principles applicable in injunction cases as equivalent to those in *forum non conveniens cases*, as developed in *Spiliada Maritime Corp v Cansulex Ltd*. If the principles were the same, it would mean a party could be restrained from proceeding in a foreign court on the sole ground that England was the natural forum. That could not be right, because it would lead to the conclusion that, in a case where there was simply a difference of view between the English court and the foreign court as to which was the natural forum, the English court could arrogate to itself, by the grant of an injunction, the power to resolve the dispute: such a conclusion would be "inconsistent with comity" and "disregard the fundamental requirement that an injunction will only be granted where the ends of justice so require". The Privy Council held that where a remedy was available both in England and in the foreign court, the English court would in general only restrain the plaintiff from pursuing proceedings in the foreign court if the pursuit would be vexatious or oppressive. The English court must be the natural forum for the action, and it must take account of the injustice to the defendant if the plaintiff is allowed to pursue the foreign proceedings, and also the injustice to the plaintiff if he is not allowed to do so. The Supreme Court of Canada has broadly accepted the same principles while preferring to utilise the terminology of what is required for "the ends of justice", and by making a more direct assessment of whether the jurisdictional rules of the foreign court correspond to the Canadian principle of *forum conveniens*. The High Court of Australia, by contrast, has adopted a rather narrower definition, namely that "foreign proceedings are to be regarded as vexatious or oppressive only if there is nothing which can be gained by them over and above what may be gained in local proceedings", but it also characterised as oppressive proceedings which were instituted in one court after an action had been begun in another court and which appeared to be brought for the dominant purpose of preventing the first action from continuing."

65 The above passages demonstrate that the general thread to be drawn from the case law in the various Commonwealth jurisdictions is that the discretion to grant an anti-suit injunction may be exercised in the interests of justice, or conversely, to prevent injustice. While the various jurisdictions may appear to differ on what their respective thresholds are for issuing such injunctions, the baseline appears to be clear: the pursuit of a set of proceedings in another jurisdiction will be enjoined only if it is required for the "ends of justice". Ultimately, the Court is tasked to weigh and balance the justice to the applicant if the respondent is allowed to pursue a concurrent set of proceedings overseas, and the injustice to the respondent if he is enjoined from pursuing the overseas proceedings.

66 In Singapore, a useful starting point would be the recent Court of Appeal decision in *John Reginald Stott*. There, a High Court Judge granted an anti-suit injunction restraining the appellants from proceeding with an action in Indonesia against the respondents. The Judge found that: (a) Singapore was the natural forum; (b) the continuation of the Indonesian action would be vexatious and oppressive, as it would be inappropriate for the Indonesian court to decide whether liability existed independently of three critical documents; and (c) it would be highly undesirable if the Singapore court and the Indonesian court arrived at different conclusions as to whether liability existed independently of contract. On appeal to the Court of Appeal, the appeal was allowed. In coming to its judgment, Chao Hick Tin JA (who delivered the judgment of the Court) cited the principles established by Lord Goff in *Société Nationale*, namely:

(a) The jurisdiction is to be exercised when the "ends of justice" require it;

(b) Where the Court decides to grant an injunction restraining proceedings in a foreign court, its order is directed not against the foreign court but against the parties so proceeding or threatening to proceed;

(c) It follows that an injunction will only be issued against a party who is amenable to the jurisdiction of the court and against whom an injunction will be an effective remedy; and

(d) It has been emphasised on many occasions that, since such an order indirectly affects the foreign court, the jurisdiction is one which must be exercised with caution.

67 After citing the passages from *Dicey & Morris*, in particular para 12-072, Chao JA went on to make the following observations:

28 In *Evergreen International SA v Volkswagen Group Singapore Pte Ltd* [2004] 2 SLR 457 ("*Evergreen International SA*"), Belinda Ang Saw Ean J ("Ang J") stated that she had to consider the following elements in determining whether an anti-suit injunction ought to be granted in the case (at [16]):

(a) whether the defendants are amenable to the jurisdiction of the Singapore court;

(b) the natural forum for resolution of the dispute between the parties;

(c) the alleged vexation or oppression to the plaintiffs if the foreign proceedings are to continue; and

(d) the alleged injustice to the defendants as an injunction would deprive the defendants of the advantages sought in the foreign proceedings.

29 In our view, this is as good a list as any with one qualification, which would constitute a fifth element – whether the institution of the foreign proceedings is in breach of any agreement between the parties (see *South Carolina Insurance Co v Assurantie Maatschappij "De Zeven Provincien" NV* [1987] AC 24). Where there is such an agreement, the court may not feel diffident about granting an anti-suit injunction as it would only be enforcing a contractual promise and the

question of international comity is not as relevant (see *The Angelic Grace* [1995] 1 Lloyd's Rep 87 at 96 and *WSG Nimbus Pte Ltd v Board of Control for Cricket in Sri Lanka* [2002] 3 SLR 603 at [91])."

68 Before leaving the discussion on the law and embarking on an application of the above principles to the facts, it is imperative for the purposes of this application to provide a closer examination of two other legal issues. First, on the issue of whether the overseas proceedings are "vexatious and oppressive", it appears that an examination of this factor requires a survey beyond the immediate rights of and prejudices to the parties. Para 12-073 of *Dicey & Morris* helpfully states:

> "In the result, an injunction may be granted if England is the natural forum for the resolution of the dispute and the proceedings in the foreign court are vexatious or oppressive. English courts have refrained from giving a comprehensive or limiting definition of these expressions; indeed, they have deliberately refrained from marking the outer extent of their power to act to restrain conduct which may give rise to injustice or, if the need for caution is given its due weight, serious injustice. It has been held that vexation or oppression may be indicated by the following: subjecting the other party to oppressive procedures in the foreign court, especially a party with no substantial connection with that jurisdiction, bad faith in the institution of the proceedings, or the institution of proceedings which are bound to fail; extreme inconvenience caused by the foreign proceedings; multiplicity of actions, especially where the foreign action might spawn further consequential litigation which might not be reconcilable with the foreign decision; **bringing proceedings which interfere with or undermine the control of the English court of its own process**; **bringing proceedings which could and should have formed part of an English action brought earlier**; bringing proceedings for no good reason in a court which will disregard an express choice of English law." [emphasis added]

69 The factors emphasised above suggest that in assessing whether the respondent to an application had been vexatious or oppressive, the Court may be permitted to look at other factors, such as its ability to control its own proceedings and whether there is a risk that the failure to grant an anti-suit injunction (or other associated relief, e.g. an election) could undermine the control of the Court.

70 In the same vein, it may be useful to refer to the fairly recent decision of the English Court of Appeal in *Masri v Consolidated Contractors International (UK) Ltd & Ors (No 3)* [2008] EWCA Civ 625 ("*Masri*"). In that case, the plaintiff had succeeded in an English action in proving that he had an interest in an oil concession in Yemen. The judgment debtors, who were incorporated in Lebanon, had submitted to the jurisdiction of the English court in that claim. The judgment debtors, who did not pay any part of the judgment debt, subsequently brought an action in Yemen for a declaration that they were not liable to the plaintiff. The Court of Appeal granted an anti-suit injunction restraining the proceedings in Yemen. In delivering the judgment of the Court, Lawrence Collins LJ made the following observations at [82], [83] [85] and [100] of the judgment:

> "82 I do not accept the judgment debtors' argument that there is a principle […] that the English court will not restrain relitigation abroad of a claim which has already been the subject of an English judgment adverse to the person seeking relitigate abroad. **It has been established since at least 1837 that the fact that the respondent is seeking to relitigate in a foreign jurisdiction matters which are already res judicata between himself and the applicant by reason of an English judgment can be a sufficient ground for the grant of an anti-suit injunction**.[…]
>
> 83 In *Bank of Tokyo Ltd v Karoon (Note)* [1987] AC 45, 63, Robert Goff LJ referred to the

public interest in the finality of litigation, and said that there were authorities in England and the United States in which courts had granted injunctions restraining persons properly amenable to their jurisdiction from relitigating matters which had already been the subject of a judgment of the court of the forum. […]

85 […] I doubt whether it is profitable to do more than note that the **protection of the jurisdiction of the English court and its judgments by injunction has a long lineage**. In my judgment there is no reason to doubt that **in appropriate cases, the English court may enjoin a foreign defendant against whom there is an English judgment** (in proceedings to which the foreign defendant has submitted) from seeking to relitigate the same issues abroad.

100 […]It is consistent with principle for an English court to restrain relitigation abroad of a claim which has already been subject of an English judgment. **There is long-established authority that protection of the jurisdiction of the English court, its process and its judgments by injunction is a legitimate ground for the grant of an anti-suit injunction**." [emphasis added]

71 In my view, these passages serve to highlight the importance of the principle of finality in legal proceedings. The need for the Court to protect its jurisdiction, processes and judgments by issuing injunctions in appropriate cases is a well-established one. I would go further to say that if the need for finality as well as the need for the Court to protect its jurisdiction, processes and judgments are so important as to warrant the grant of an anti-suit injunction in appropriate cases, a fortiori, it is an important consideration for the Court to bear in mind when deciding whether the Court should turn to an equitable relief which falls short or shy of an injunction.

72 Apart from these legal principles to be considered by the Court when it is faced with an application for an anti-suit injunction, it is also pertinent to consider the situations in which the Court may order that a party be put to an election. In *Yusen Air & Sea Service (S) Pte Ltd v KLM Royal Dutch Airlines* [1999] 4 SLR 21 ("*Yusen Air*"), the Court of Appeal considered this issue at [27] and [34] of its judgment:

"27 In our judgment, when a plaintiff sues the same defendant in two or more different jurisdictions over the same subject matter, the defendant can take up an application to compel the plaintiff to make an election as to which set of proceedings he wishes to pursue. For the purposes of an election, the considerations of forum conveniens do not come into play. However, the defendant would need to demonstrate **a duplicity of actions in the different jurisdictions. Once this is established, the burden of proof then shifts to the plaintiff to justify the continuance of the concurrent proceedings by showing 'very unusual circumstances'. If the plaintiff fails to demonstrate such unusual circumstances, he would have to make an election**. […]

34 It is also our considered view that the plaintiff's election is not the only way to resolve this issue. Apart from compelling the plaintiff to elect, it remains open to the defendant to take up an application for a stay of local proceedings or a restraint of foreign proceedings if the defendant wishes to have the action tried in one of the jurisdictions where the plaintiff has commenced an action." [emphasis added]

73 This case stands for the proposition that where an applicant for an anti-suit injunction is able to demonstrate that there is a duplicity of proceedings in Singapore and the foreign jurisdiction, the burden shifts to the respondent to justify the continuance of concurrent proceedings by showing "very unusual circumstances". If the respondent in the application is unable to do so, then the Court

may order him to make an election.

74 Finally, as cited in [54] above, the decision in *Main-Line* provides an analysis for the reason as to why a party may be put to an election: namely, to prevent double recovery, where there are alternative and inconsistent remedies, the plaintiff must choose or elect between those remedies.

The Court's Decision

75 The issues may be considered in three broad areas. First, I propose to deal with the two (what I term) "threshold" issues of duplicity and clean hands presented by counsel for Beckkett. Next, I will come to the crux of the decision, viz. how the Court's discretion ought to be exercised on the issue of whether an anti-suit injunction ought to be granted. Third and finally, in the event that the Court finds that an anti-suit injunction ought not be granted, I will evaluate whether the Court should nevertheless order Beckkett to elect between the Indonesian and the Singapore proceedings and if so, the form and terms that such an order for election should take.

Special Facts Present in the Present Application

76 Before I turn to the substantive analysis, I should point out three facts in the present application which stood out in my mind. First, Beckkett commenced the Indonesian suit while the parties were awaiting the Singapore Court of Appeal's decision. Based on a survey of the reported cases, it is quite rare to find a party (such as Beckkett) commencing a foreign proceeding when the local proceedings are at a very advanced stage, viz. where parties are waiting for the outcome of an appeal to the highest Court.

77 Second, the Bank's application for an anti-suit injunction was likewise taken out when the Indonesian proceedings were at a fairly advanced stage. When the application was taken out, the parties had gone through in Indonesia both a challenge on jurisdictional grounds as well as a hearing on the merits of the action. At the point of the application, the parties were waiting for the outcome of the appeal to the High Court of Jakarta. As at the date of this judgment, Beckkett had intimated that it wished to appeal further further to the Supreme Court of Jakarta (the Second Indonesian Appeal). Much has been said about the lateness of the Bank's application which I have summarised above and will not repeat here.

78 Third, given the reliefs sought by Beckkett in the Indonesian proceedings and the judgment of the Singapore Court of Appeal awarding damages which are to be assessed, Beckkett's rights to a remedy are presently in a state of flux in both jurisdictions, given that the quantum of damages has not been fixed in Singapore and relief has not been granted in its favour (thus far) in the Indonesian Courts.

79 Against the backdrop of these three facts which stand out in my mind for the purposes of this application, I now turn to the substantive analysis.

Whether there is a duplicity of proceedings in Indonesia and Singapore

80 Beckkett sought to dispose of the application by first submitting that the Indonesian proceedings and the proceedings in Singapore are not duplicitous. The essence of their submissions lie in the ostensibly well-crafted argument that the causes of action in the Singapore proceedings were illegality, breach of contract and conspiracy, whereas in Indonesia, the cause of action is purely the illegality of the Sale Agreement. References were made to the Bank's Respondent's Case where the Bank appeared to have conceded that Beckkett did not pursue its case on illegality before the

Singapore Courts. The argument also sought to distinguish between illegality being a "mere ingredient" of Beckkett's cause of action in conspiracy (in Singapore) as opposed to its being the foundation of Beckkett's cause of action in Indonesia (Beckkett's Indonesian action being based on the Bank's failure to comply with Articles 1155 and 1156 of the ICC).

81 As attractive as the arguments on this issue appear at first blush, I cannot agree with Beckkett. To my mind, the flaw in this argument lies in the fact that it fails to see the forest for the trees. By focussing on what I may loosely term as the "nitty-gritties" of what each set of cause(s) of action entails, Beckkett has obfuscated the fundamental point that the reliefs sought in both jurisdictions vis-à-vis the return of the Pledged Shares are essentially the same. The issues may be masqueraded in different forms but, stripped of the unnecessary details, the following identical features of both sets of proceedings may be distilled. In Singapore, Beckkett sought to rely on a failure to comply with Articles 1155 and 1156 as the fundamental underlying basis for claiming that the Pledged Shares ought to be returned. One must not forget that at para 45B of its Amended Statement of Claim in the Singapore proceedings, Beckkett did plead that the Sale Agreement was unlawful by the laws of Indonesia. In Indonesia, Beckkett has used an identical approach: a failure to comply with Articles 1155 and 1156 is the fundamental underlying basis of its cause of action there. Where, as in this case, the reliefs sought are the same, where the parties are the same, where the underlying bases for the causes of action are the same, and where the underlying transaction is the same, in both jurisdictions, I am of the view that the present situation has gone beyond mere multiplicity of proceedings and has entered into the realm of duplicitous proceedings.

82 Further, I found Beckkett's reliance on the case of *Transtech Electronics* misguided. There, Judith Prakash J found that there was only some overlapping of issues between the action in Singapore and the action in New York: see [20] of the judgment. The present case is vastly different from the situation found there. Here, as I have explained, the same plaintiff is seeking the same relief against the same defendant, and the relief in question is one that has been sought in Singapore previously but without success. While Beckkett may not be faulted in commencing the action in Indonesia while it was waiting for the Singapore Court of Appeal's judgment, I am of the view that once the Singapore Court of Appeal's judgment was rendered, or once a reasonable period of time thereafter had lapsed (e.g. for the parties to digest the impact and import of the Court of Appeal judgment), Beckkett's justification for maintaining the Indonesian action out of prudence evaporated. In such a situation, it must be said that there were duplicitous proceedings. Further, and before I leave the decision of *Transtech Electronics*, it is to be noted that in *Transtech Electronics*, the proceedings in both jurisdictions were at a fairly early stage. That is very different from the situation in this case where, as I have highlighted above, the proceedings in Singapore had reached an advanced stage at the point when Beckkett commenced the Indonesian proceedings. While Beckkett may not be faulted for commencing the proceedings out of prudence before the Singapore Court of Appeal's judgment was rendered, I am of the view that a situation where there were clearly duplicitous actions being maintained in the two jurisdictions arose when (or, as just mentioned, within a reasonable period of time after) the Singapore Court of Appeal's judgment was rendered.

83 For the reasons which I shall come to below as the analysis develops, I agree with the approach adopted by Chan Seng Onn J in *Multi-Code Electronics Industries (M) Bhd & Anor v Toh Chun Toh Gordon & Ors* [2008] SGHC 193 ("*Multi-Code*"), particularly, at [32] onwards of the judgment where the case of *Australian Commercial Research and Development Ltd v ANZ McCaughan Merchant Bank Ltd* [1989] 3 All ER 65 ("*Australian Commercial Research and Development Ltd*"), which was cited with approval by the Singapore Court of Appeal in *Yusen Air*, was discussed. As Chan J rightly pointed out at [33] of his judgment:

> "[I]t is important to discern between three different situations: (a) where the same plaintiff "A"

sues the same defendant "B in two jurisdictions on substantially the same causes of action; (b) where the plaintiff "A" sues the defendant "B" in Singapore but "A" is the defendant in a suit brought by "B" in a foreign jurisdiction; and (c) where "A" is the defendant in Singapore but is the plaintiff in the suit in the foreign jurisdiction, and "B" is the plaintiff in Singapore but the defendant in the foreign suit. Clearly, the legal principles applicable for situation (a) would be quite different from those applicable for situations (b) and (c)."

84 Like Chan J did on the facts of *Multi-Code*, I am prepared to find that the present facts gave rise to situation (a) as described in the above quotation. Applying the test in *Yusen Air*, once the defendant has established that the actions in the two jurisdictions are duplicitous (i.e. situation (a)), the burden shifts to the plaintiff to justify the continuance of the concurrent proceedings by showing "very unusual circumstances".

85 Consequently, I dismiss Beckkett's arguments on this threshold issue.

Whether the Bank came to the Court with clean hands

86 The next threshold issue that Beckkett identified was whether the Bank came to the Court with clean hands. Overall, while I appreciate that there may have been some delay between the time when the Bank knew about the First Indonesian Appeal and the time when the Bank took out the present application, that is insufficient (for the reasons which I shall expand on below) to establish that the Bank failed to come to the Court with clean hands. I will deal with each of the arguments in turn.

87 To my mind, the argument that the Bank has been blowing hot and cold is a misplaced one. The submission in the Bank's Appellant's Case has been taken entirely out of its proper and appropriate context. One argument in a tirade of arguments, attempting to cover all bases, does not amount to blowing hot and cold. After a due and careful reading of the relevant passages in the Bank's Appellant's Case, it is my considered view that the Bank did not put Beckkett to a "dare", and the Bank did not – through those submissions – openly challenge Beckkett to bring a suit in Indonesia. A reasonable and objective reading of those passages must be achieved by setting the passages in their proper context of a long and antagonistic history in the parties' litigation in Singapore. Having defended the claims in Singapore all the way to the Court of Appeal, it would be a leap of faith and logic to suggest that the Bank, those few lines of submissions in its Appellant's Case as highlighted by Beckkett, effectively issued an open challenge to Beckkett to bring a suit in Indonesia.

88 To my mind, the facts and circumstances here are different and distinguishable from those found in *John Reginald Stott*. There, the party who was alleged to have blown hot and cold had filed a quarterly report stating in no uncertain terms that it intended to "vigorously contest the allegations" raised in the foreign (coincidentally Indonesian) action and that it had further written a letter to inform its customers that "legal matters at issue [would] be decided in the Indonesian courts": see [51] of the Court of Appeal's judgment.

89 A logical and rational distinction can be made between statements made by parties in company reports and open letters to customers on one hand, and comprehensive and vigorous arguments made in written submissions on the other. Reading the passage highlighted by counsel for Beckkett (as quoted in [36] above), one witnesses the evident work of a diligent counsel in an attempt to make his client's submissions as thorough as possible: see the use of "even if" in the statement. In such an instance where the statements in issue were made contingent upon a hypothetical scenario, I would be extremely hesitant and reluctant to find that there has been a clear case of inconsistent positions being taken by the Bank.

90 Next, I come to the issue of the Bank's failure to appeal against the Indonesian Court's decision on jurisdiction (viz. the decision on the Absolute Competency Exception application). Beckkett relied heavily on this fact to argue that the Bank could not be allowed to blow hot and cold by failing to challenge the Indonesian Court's finding on jurisdiction on the one hand and seeking the Court's equitable relief of an anti-suit injunction in Singapore on the other.

91 This argument has its attractiveness. A very prudent party in a foreign proceeding who has lost an interlocutory application on grounds of jurisdiction may appeal against that unfavourable decision. However, to my mind, to apply that very high standard to the Bank would not be reasonable. After its application on grounds of jurisdiction was dismissed, the Bank had two options: defend the main action or appeal against the decision on jurisdiction. Viewed with the benefit of 20/20 hindsight, it is very easy – and indeed, tempting – to find that the Bank could and should have appealed against that decision. However, in my judgment, that would be expecting too much from the Bank. A reasonable litigant in the Bank's position could do either. Indeed, one may be so bold as to suggest that the Bank, in deciding not to appeal against that decision, may have been prompted by an interest in seeing a speedy resolution of its dispute in Indonesia. Seen in that light, I find it very difficult to rely on the lack of an appeal as a basis to find that the Bank did not come to the Singapore Courts with clean hands.

92 Next, Beckkett argued that the Bank had waived its right to an election. To that end, Beckkett relied on the decisions in *The Delta* and *Morrison Rose*. In an effort to keep this judgment brief and to the point, I shall merely state that I find the reliance on both cases misplaced. In *The Delta*, the factual matrix was quite different from that found in the present case. First, the order of the parties was reversed in that the plaintiff (the owners of *The Delta*) who had obtained judgment in the foreign Court were being sued in England by the party which had been the defendant in the foreign Court (the owners of the *Erminia Foscolo*). In short, the roles of the parties were reversed in the two sets of proceedings. The owners of *The Delta* (the defendants in the English proceedings) sought to argue that the foreign judgment amounted to an estoppel. The Court roundly dismissed that argument but found that *lis alibi pendens* was established. The Court then held that if the defendants in the English action (the owners of *The Delta*) wanted to avoid having two suits against them for the same matter brought to a hearing, they should have put the plaintiff in the English action (the owners of the *Erminia Foscolo*) to an election. Moreover, in the decision of *The Delta*, much comment was made by the Court about how the owners of the *Erminia Foscolo* had not participated in the foreign proceedings and the fact that the foreign judgment was a judgment obtained in default. Given the present interest in promoting international comity, I would be surprised if the sentiments of the Court in *The Delta* were pursued with similar vigour in the present era. In any event, the case stands not so much for the proposition that there had been waiver, but that where there is a finding of *lis alibis pendens*, a party may be put to an election between its remedies in the two jurisdictions.

93 The criticisms against the decision in *Morrison Rose* may be levied along similar lines. In essence, given the rather doubtful value of *The Delta* as an authority, I was not impressed by the fact that *Morrison Rose* relied on the passages of doubtful value in *The Delta*. With all these problems, I find great difficulty in relying on these two cases as authority for a finding that the Bank had waived its rights to an election. As I alluded to above, the Bank's conduct in defending the action on the merits in Indonesia was reasonable and cannot be faulted. Seen in that light, I am unable to agree with Beckkett's arguments that there was a waiver by the Bank of the right to an election.

94 I now come to the issue of delay. This was perhaps the most thorny issue for the Bank under the "clean hands" arguments. To my mind, the period of delay cannot be said to be an insignificant one. Given the well-established principles that delay can be a factor to consider in equity, one has to pay particular attention to this allegation.

95 Taking a step back and looking at the conduct of the parties as a whole, and after a thorough analysis of the situation, I take the view that, while there may have been some delay on the part of the Bank in bringing this application, that delay falls short of a successful attack on the lack of bona fides on the Bank's part. One has to evaluate the situation in both jurisdictions and not just the situation in Indonesia. While the action was afoot in Indonesia, the parties were similarly preparing with haste to proceed with the assessment of damages in Singapore. It cannot be said that the Bank, in taking some time before bringing the present application, had been sitting on its laurels and doing nothing. Moreover, to my mind, the delay is not such a significant one that the Court can reasonably and safely impute a certain level of mischief or bad faith on the Bank's part. Bearing in mind all the facts and circumstances, I am of the view that the delay – although not insignificant – is not sufficient to warrant a finding that the Bank had come to the Court with unclean hands.

96 Therefore, on this second issue, I am unable to agree with Beckkett as well.

Whether the requirements for an anti-suit injunction were met

97 I now come to the crux of the application, viz. whether the Bank has met the substantive requirements for an anti-suit injunction to be ordered on the present facts and circumstances. I propose to adopt the framework in *John Reginald*, which identified five factors (adapting those found in *Evergreen International SA* (see [67] above)) for the Courts to consider in deciding whether an anti-suit injunction ought to be granted.

Whether the parties are amenable to the Singapore Courts' jurisdiction

98 To my mind, this factor may be most easily dealt with. Here, we find the parties in a situation where they had proceeded for a period of no less than 5 years before the Singapore Courts, leading up to appeals before the Court of Appeal which were heard and disposed of. Given that the parties had participated at great lengths in the Singapore proceedings, it can be said with great certainty that they are definitely amenable to the Singapore Courts' jurisdiction.

Whether Singapore is the natural forum for the dispute

99 This issue is a close one for a number of reasons. If one looks solely at the very micro issue of the return of the Pledged Shares, counsel for Beckkett may not be wrong in saying that Indonesia has become the natural forum for the dispute, relying on the decision in *Shell International Petroleum Co Ltd v Coral Oil Co Ltd (No 2)* [1999] 2 Lloyds Rep 601. Counsel for Beckkett is also not wrong in identifying the legal principle that a forum which was not initially the natural forum for a dispute may evolve through the course of litigation to become the natural forum.

100 However, assessing the matter as a whole, I cannot agree with counsel for Beckkett that Indonesia has become the natural forum of the dispute. To my mind, as with the issue on whether there are duplicitous proceedings, one must not lose sight of the forest for the trees. The issue of whether Singapore or Indonesia is the natural forum *at this point in time* must be evaluated bearing in mind all the facts and circumstances as well as the history of the litigation between the parties. What Beckkett cannot run away from is the fact that the parties have a more than 5-year long history of litigation in the Singapore Courts but a less than 1-year history of litigation in the Indonesian proceedings. Granted, the Indonesian proceedings are at a fairly advanced stage in Indonesia now. However, one does not and should not evaluate which is the natural forum based purely on the advanced nature of the proceedings. One also has to bear in mind where the parties have litigated in the past *and, more importantly*, whether they are continuing to litigate there at the present moment. Evaluating all the facts and circumstances as a whole, I am led to the inevitable conclusion that both

the history and the present point to Singapore being the natural forum.

101 As I mentioned above, there were supplementary written submissions exchanged on this issue after the hearing. Without going into the details of those submissions, which I have gone through in detail, I am of the view that those supplementary submissions – as detailed and diligently prepared as they may have been – do not detract from my overall impression that Singapore is the natural forum of the dispute.

Whether the Bank had shown a prima facie *case that Beckkett's actions were vexatious or oppressive*

102 The next two factors are probably the most thorny issues and warrant the most careful deliberation. In essence, bearing in mind the authorities which I cited above on what could amount to vexatious or oppressive conduct, I am of the view that the Bank has established a *prima facie* case that the conduct of Beckkett had been vexatious and oppressive, but that it has only barely done so.

103 The key factor in my mind is the conduct of Beckkett after the Singapore Court of Appeal's judgment was rendered. When Beckkett first commenced the Indonesian proceedings, it did so while the judgment of the Singapore Court of Appeal was reserved. Seen in that light, up to the point of the Singapore Court of Appeal's judgment being rendered, it could be said that the Beckkett's conduct was not vexatious or oppressive because it did not know what the outcome of the Singapore action would be. A reasonable and prudent litigant could, as Beckkett did, bring a suit in Indonesia in the hope that it may be able to get the relief that it prays for in Indonesia before the Singapore judgment is rendered.

104 However, once the Singapore Court of Appeal judgment's was rendered, or shortly therefore, things took on a very different complexion. The Singapore Court of Appeal's judgment, in essence, dismissed Beckkett's relief for a return of the Pledged Shares and ordered a remedy of damages only. Armed with that final judgment of the Singapore Courts, it is my view that it was vexatious and oppressive on the part of Beckkett to concurrently maintain the Indonesian proceedings.

105 In making that finding, I am acutely aware of Beckkett's submissions that right up to the point of enforcing its judgment, it does not have to elect between the two remedies. However, for three reasons, I find that such an argument is insufficient to defeat the claim that there was a prima facie case of vexatious or oppressive conduct.

106 First, the prejudice to both parties in pursuing concurrent proceedings is not capable of compensation by any order of costs. In the course of oral submissions, counsel for both parties candidly mooted with the Court on whether the prejudice to both parties in terms of (what I termed) "burning the candles at both ends" could be compensated by an order of costs. After careful reflection, it is my view that the prejudice to the Bank of defending both actions is not one that can be met by a just order of costs. It is trite that in practice, any order of costs by the other party, even on an indemnity basis, is unlikely to compensate a party for its entire solicitor-and-client costs. If Beckkett wants to pursue both remedies as a matter of legal right and while it may be entitled to do so, it cannot pursue that right at the cost of creating a loss that is quite incapable of compensation on a full indemnity basis.

107 Second, as rightly identified by the decision in *Masri*, the Courts, in evaluating the issue of vexatious or oppressive conduct, are not limited to the conduct of the immediate parties. The Courts are entitled to take into account the importance of the principle of finality in legal proceedings as well as the need for Courts to protect their jurisdiction, processes and judgments by issuing injunctions in appropriate cases.

108 Applying those principles to the present facts, I am of the view that part of the Court's protection of its jurisdiction, processes and judgments, as well as its preservation of the principle of finality requires a finding that Beckkett's persistence in both jurisdictions *after* the Singapore Court of Appeal's judgment was rendered, is vexatious and oppressive. Quite simply, the Singapore Court of Appeal had dismissed Beckkett's claim for a return of the Pledged Shares. To condone Beckkett's persistence in the Indonesian proceedings without any sanction runs the risk that Beckkett may end up with a remedy that is inconsistent with the finding of the Singapore Court of Appeal. That would erode the sanctity to be found in the principle of finality, and may even send a wrong signal to future litigants that a Singapore Court of Appeal judgment is not worth much if one has sufficiently deep pockets to pursue another remedy in a foreign (and probably more favourable) jurisdiction after exhausting all avenues in Singapore and failing here.

109 Related to that point is the third issue of a possible waste of judicial resources. By that, I mean a possible waste of judicial resources in either Singapore or Indonesia. This, to my mind, is a real and possible risk that can arise if there is no finding that Beckkett's conduct in continuing the Indonesian proceedings is vexatious or oppressive. By allowing both sets of proceedings to continue abreast, one runs the inevitable risk that one set of judicial resources will be wasted. If Beckkett is not put to an election now, the Singapore Courts run a very real risk that Beckkett could elect to pursue its remedy in Indonesia at a later point and thereby render all judicial resources expended in Singapore hitherto (up to the point of eventual election) a waste.

110 Bearing in mind these three reasons which turn on the facts that have arisen in this application, I am of the view that the ends of justice require a finding that the conduct of Beckkett in pursuing both sets of remedies concurrently after the Singapore Court of Appeal's judgment was rendered has been oppressive and vexatious.

Whether Beckkett has discharged its burden to show that it would be unjust to grant an anti-suit injunction

111 I now turn to an evaluation of whether Beckkett has discharged its burden of demonstrating that it would be unjust to grant an anti-suit injunction. After due and careful consideration, I am of the view that, given the possibly unique circumstances of the present case, Beckkett has discharged its burden of demonstrating that it would be unjust for an anti-suit injunction to be granted.

112 The key issue to be considered is whether an anti-suit injunction would deprive Beckkett of a remedy which it is entitled to pursue under the law. For the reasons mentioned above, Beckkett is correct in saying that it is entitled to make an election of its remedy only at the point of enforcement. To order an injunction right now would be tantamount to staying the Indonesian proceedings; this may in turn rob Beckkett of the fruits of the labour that it has sown thus far in the course of the Indonesian proceedings. Bearing in mind that Beckkett cannot be faulted for commencing those proceedings (while waiting for the Singapore Court of Appeal's decision), but can only be faulted for maintaining those proceedings after the Singapore Court of Appeal's decision was rendered, it would be unjust for an anti-suit injunction to be granted now. Indeed, it does give force to Beckkett's arguments that such an order would be tantamount to robbing Beckkett of the right of a successful appeal in Indonesia. Given the present state of international comity, a Singapore Court would be loathe to deprive a litigant of any rights that it may rightfully obtain in a foreign jurisdiction.

113 Therefore, bearing in mind the potential prejudice to Beckkett, I am prepared to find that Beckkett has demonstrated that it would be unjust for an anti-suit injunction to be granted.

Whether Beckkett ought to be put to an election

Whether it is satisfactory to leave matters in status quo *(and without an injunction)*

114 Nevertheless, the enquiry cannot and should not end with a dismissal of the Bank's application. To let things remain in status quo would also lead to an unjust result. The Bank would have to burn its candles on both ends. The Singapore Courts run a risk that the finality of their judgments is not accorded its proper sanctity. More importantly, there is a real risk that the judicial resources in Singapore may be wasted if Beckkett eventually elects for the remedy given in Indonesia (if it succeeds there in the Second Indonesian Appeal). The Court's discretion to enjoin a party from proceeding in another jurisdiction to protect the jurisdiction of the local Court is not limited to enjoining the party from proceeding in the foreign jurisdiction. It necessarily extends to an order for an election.

115 To my mind, while Beckkett has demonstrated that it would be unjust to grant an anti-suit injunction, it has not demonstrated that it would be just to leave things in status quo either. To borrow the language of *Yusen Air* and *Australian Commercial Research and Development Ltd*, it is my view that Beckkett has not demonstrated such special circumstances in the present case that it ought not to be put to an election. To put it in a positive form, it is my view that Beckkett ought to be put to an election now between its remedies in Singapore and its remedies in Indonesia.

Whether undertakings are good enough

116 Before I turn to the issue of the form that the election should take, I should deal with Beckkett's submission that undertakings would be sufficient. Looking at the facts as a whole, I fail to see how any undertaking would be sufficient to address the potential prejudice, both to the parties as well as to the sanctity of the principle of finality in the Singapore Courts. Simply put, to my mind, the prejudice to the Court's jurisdiction, processes and judgments is not something that is capable of an undertaking.

The Form of the Order for an Election

117 I next turn to the nature of the order for an election. Counsel for Beckkett submitted that Beckkett should be permitted to make the election only at the point when it enforces judgment. That way, the Bank can be assured that there will be no double recovery and Beckkett will be allowed to pursue all the remedies that are available to it under the laws of both countries.

118 I am unable to agree with counsel for Beckkett that that would be a just and equitable outcome for the purposes of this application. At para 235 of its Written Submissions, Beckkett submitted that the case authorities show that a plaintiff may postpone election for a reasonable period, provided that such delay is necessary in order for the plaintiff to make an informed choice between the alternative remedies available. My views on this issue are these: in the colloquial context of choosing between two remedies in one jurisdiction, that principle is well-established and must be correct. However, where the choice is between different remedies in two jurisdictions, *and where the Court in one jurisdiction has decided by way of a final judgment of its highest Court* that a particular remedy is not available, it throws the issue into a different light. It is no longer just a matter of making an informed choice between two remedies, but whether the plaintiff should be allowed to be in a position to take its chances in the other jurisdiction (Indonesia) and then cherry-pick between the two sets of remedies. To my mind, the principle that election comes at the point of entering judgment cannot be turned on its head and taken to the extreme by allowing rgw plaintiff to pursue the same remedy in two jurisdictions *after one jurisdiction has decided that it is not entitled to that remedy*.

119 In my view, an order for an election has to be one which is final and irrevocable after giving

Beckkett sufficient time to decide which of the two jurisdictions it wishes to pursue its claim in. Once Beckkett makes that election, it signals to the jurisdiction which it elects that it will abide by whatever outcome that jurisdiction provides for it. Given the present state of proceedings, if it chooses Indonesia, Beckkett will allow the Supreme Court of Indonesia to decide whether it is entitled to a return of the Pledged Shares. Once it elects that remedy, it will not be allowed to pursue the assessment of damages in Singapore.

120 Conversely, if it elects for Singapore, Beckkett ought not to be allowed to pursue its Indonesian proceedings. Steps would have to be taken by Beckkett to withdraw from the Indonesian proceedings (either actively, or by allowing the appeal to lapse, e.g. through the effluxion of time, if the Indonesian Court's rules so allow) so that the Singapore Courts as well as the Bank are assured that the orders set out in this decision are rendered effective.

121 To my mind, only an order for a final and irrevocable election within a reasonable time would allow Beckkett to pursue its remedies without the added costs to the Bank or to the Courts of both jurisdictions as a result of Beckkett's vexatious and oppressive conduct in persisting with its actions in both Indonesia and Singapore. While Beckkett may have demonstrated that it would be unjust for an anti-suit injunction to be granted, it cannot evade from the reality that an order for an election is the just and equitable order to move the litigation between the parties forward.

Conclusion

122 In conclusion, I find that there are duplicitous proceedings in Indonesia and Singapore. I also find that the Bank did come to the Singapore Courts with clean hands and is therefore, contrary to Beckkett's submissions, entitled to equitable relief.

123 I further find that parties are amenable to the jurisdiction of the Singapore Courts and that Singapore is the natural forum. On the issue of vexatious and oppressive conduct, I am of the view that the Bank has established – but just barely so – that the conduct of Beckkett in maintaining suits in both Indonesia and Singapore after the rendering of the Singapore Court of Appeal's judgment, is vexatious and oppressive.

124 However, I agree with Beckkett that the circumstances are such that it would be unjust for an anti-suit injunction to be granted in the present application.

125 Nevertheless, I come to the view that the maintenance of the status quo with an outright dismissal of the Bank's application would not be tenable either.

126 Therefore, I order Beckkett to make an election between proceeding in Singapore for an assessment of damages and pursuing its claim through further appeal(s) in Indonesia within 14 days from the date of this judgment. I further order that this election shall be final and irrevocable. This means that Beckkett shall not be allowed to make an election contingent on the outcome of the Indonesian appellate proceedings. I will hear parties on costs and any other consequential orders.

Coda

127 I have given due and careful consideration to this chapter in the parties' long and arduous legal saga. More than 5 years' worth of legal effort has been spent in Singapore pursuing the remedies between the parties. Much ink has been spilt in the comprehensive judgments given by both the Singapore High Court and the Singapore Court of Appeal, not to mention the judgments rendered by our Indonesian counterparts.

128 With those judgments at hand, the parties are now at the tail end of evaluating the damages to be paid to Beckkett for its claim. Rather than burning the parties' candles at both ends, it is my fervent hope that the orders that I have made in this application will facilitate the making of a wise and practical decision on the part of the parties.