

Piong Michelle Lucia v Lau Kee Swan
[2012] SGHCR 16

Case Number : Suit No 696 of 2011 (Summons No 2772 of 2012)
Decision Date : 17 October 2012
Tribunal/Court : High Court
Coram : Justin Yeo AR
Counsel Name(s) : Mr Philip Ling and Mr Teng Jian Xi (Wong Tan & Molly Lim LLC) for the plaintiff;
Mr Tan Yew Fai (Y F Tan & Co) for the defendant.
Parties : Piong Michelle Lucia — Lau Kee Swan

Civil Procedure

17 October 2012

Justin Yeo AR:

1 This is an application by the defendant pursuant to O 23 r 1(1)(a) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("Rules of Court"), for an order *inter alia* that the plaintiff provides security for costs on the ground that the plaintiff is ordinarily resident out of jurisdiction, and that in the meantime all further proceedings in respect of the present suit be stayed until such security is provided ("the Application").

2 After protracted proceedings involving numerous affidavits and hearings (on which see [15]-[18] below), I hold that the defendant has failed to prove, on the balance of probabilities, that this court has the jurisdiction to make an order for security for costs pursuant to O 23 r 1(1)(a) of the Rules of Court. I therefore dismiss the Application.

Facts

Background to the present suit

3 The plaintiff and defendant were former lovers. However, the relationship broke down sometime in 2009. Subsequently, the plaintiff brought the present suit against the defendant with regard to 43 Jalan Anggerek, Singapore 369578 ("the Property"), on two grounds.

4 The first ground is based on an oral agreement allegedly made between the parties in August and September 2008 ("the Oral Agreement"). The material terms of the Oral Agreement (as pleaded by the plaintiff) were as follows:

- (a) The Property would be purchased in the defendant's name;
- (b) The defendant would be the registered owner of the Property;
- (c) The plaintiff would pay to various third parties, on behalf of the defendant, the entire purchase price of the Property, including all mortgage loan repayments in respect of the Property, as well as costs and expenses of renovation incurred in respect of the Property.

(d) The defendant would live in the Property with her family, free of rent; and

(e) When the Property is sold, all sale proceeds less the outstanding mortgage loan and reasonable costs and expenses related to the sale, will be paid over to the plaintiff.

5 The second ground is based on a trust deed purportedly executed on 13 March 2009 ("the Trust Deed"), whereby the defendant was to hold the Property on trust for purposes set out in the Trust Deed. The plaintiff was appointed as the "1st Protector", and all powers vested in the defendant under the Trust Deed would only be exercisable by the defendant with the prior written consent of the plaintiff. It is further alleged by the plaintiff that she had instructed the defendant to sell the Property to the plaintiff's present husband, one Lee Han Min Garry ("Lee"). However, the defendant – without the plaintiff's prior written consent – sold the Property to one Tay Teck Meng ("Tay"). The sale was completed on 12 January 2011.

6 The sale of the Property to Tay was allegedly in breach of the terms of the Trust Deed. The plaintiff therefore claims damages for breach of the Trust Deed. The plaintiff further alleges that in breach of the Oral Agreement, the defendant failed, refused and/or neglected to repay the sum of S\$681,912.43 (being monies paid by the plaintiff to various parties for and on behalf of the defendant and at his request) to the plaintiff.

Facts related to the Application

7 It is undisputed that the plaintiff is an Indonesian citizen who, since 1998, has concurrently held the status as a permanent resident of Singapore. It is also undisputed that the plaintiff is currently married to Lee, and that the plaintiff resides at the Property with her family. Indeed, the defendant deposed on affidavit that even after he moved out of the Property following the breakdown in relations with the plaintiff, he continued to pay the utility bills for the Property as he "could not bear to cut off the utilities to the Property which would bring about much inconvenience to [the plaintiff] and her family". [\[note: 1\]](#) It also appears undisputed that the plaintiff occasionally travelled to Indonesia, [\[note: 2\]](#) and that she is known by two names, viz "Michelle Lucia Piong" and "Michelle Setiadi" (by virtue of her previous marriage to her Indonesian ex-husband). [\[note: 3\]](#)

8 There were, however, other major factual disputes raised at the hearings of the Application. The defendant was of the view that the plaintiff was "born and bred" in Indonesia, and had adopted Indonesia as her place of residence "with a substantial degree of settled purposes, both in the residential and business sense". [\[note: 4\]](#) He attempted to demonstrate that the plaintiff has addresses in Indonesia by adducing two documents in his supporting affidavit. [\[note: 5\]](#) He also alleged that the plaintiff has a close connection with several companies, namely: (a) Vantage Unicom Holding Ltd ("Vantage"), a company registered in the British Virgin Islands; (b) Unicom Kakao Makmur ("UKM"), an Indonesia registered company which operates a cocoa bean processing factor in Sulawesi, Indonesia; and (c) Fairswan Holdings Pte Ltd ("Fairswan"), a Singapore registered company. [\[note: 6\]](#) The defendant also alleged that the plaintiff did not own any real property or "asset of a fixed and permanent nature" in Singapore. [\[note: 7\]](#)

9 The defendant further contended that the plaintiff had multiple identities (viz, multiple official names and identification numbers). Other than the plaintiff's own names ("Michelle Lucia Piong" and "Michelle Setiadi"), it is alleged that the plaintiff also went under the names of "Michelle Pangestu" and "Megan Daniella". In particular, the defendant produced the following pieces of alleged evidence to buttress his claim that the plaintiff is also Megan Daniella:

(a) The “taking over” of the directorships in both Voorhoeve International Pte Ltd and Citiglobe (S) International Pte Ltd (“Citiglobe”) by the plaintiff from Megan Daniella took place in or around April 2009, at around the time Megan Daniella was adjudged a bankrupt. The plaintiff admitted to the “taking over”, but did not explain who Megan Daniella was and how the plaintiff came to take over both directorships; [\[note: 8\]](#)

(b) Two emails, enclosing the Memorandum and Articles of Association and the Directors’ Resolution of Citiglobe, had been sent to the defendant from the plaintiff’s email account “Michelle<eva.s@pacific.net.sg>” during the time that Megan Daniella was supposedly still the director of Citiglobe; [\[note: 9\]](#) and

(c) Various documents including two passports bearing the name “Michelle Lucia Piong”, two passports bearing “Megan Daniella” (with the plaintiff’s identification photograph, including a page showing a Japan visa with the Plaintiff’s photograph), four credit cards of the plaintiff under the name “Michelle Lucia Piong” with colour photographs of the plaintiff closely resembling the photographs of the “Megan Daniella” passports, a “Friends of the Zoo” card under the name “Piong Michelle L” with colour photographs of the plaintiff closely resembling the photographs of the “Megan Daniella” passports, an entry permit issued by the Immigration and Checkpoints Authority of Singapore (dated 10 March 1998), as well as two colour photographs of the plaintiff and defendant taken when they were in a relationship. [\[note: 10\]](#) According to the defendant, these third-party documents demonstrate that the plaintiff had been operating under the name “Megan Daniella”.

10 The nub of the defendant’s contention regarding the multiple identities is that the plaintiff’s alleged alter-identity, “Megan Daniella”, had been adjudged to be a bankrupt in April 2009, [\[note: 11\]](#) and was arguably ordinarily resident out of jurisdiction. As such, the defendant submitted that the court had jurisdiction and should exercise its discretion to order security for costs against the plaintiff.

11 In contrast, the plaintiff deposed on affidavit that she had “set up home in Singapore”, that she was residing in Singapore “on a permanent basis” and that she only travelled out of Singapore when necessary. [\[note: 12\]](#) She lived in Singapore when studying in Singapore between 1974/1975 and 1981/1982, after which she studied overseas until 1985. In 1985, she returned to Singapore and worked in Singapore until 1987. She got married to her Indonesian ex-husband and was in Indonesia from 1988 to 1997. She subsequently divorced her Indonesian ex-husband and returned to Singapore where she has resided since 1997. From 2007 to 2008, she resided at 16 Bright Hill Drive in Singapore, and from 2008 to date, she has been residing at the Property. She further deposed that her youngest child is schooling in Singapore, and that her mother also lives with her at the Property. She also pointed out that her present husband, Lee, is a Singapore citizen. [\[note: 13\]](#)

12 The plaintiff also adduced evidence of one bank account in Singapore, claiming that this was “one of the few bank accounts” that she held in Singapore. [\[note: 14\]](#) When pressed as to why the plaintiff did not disclose other assets in Singapore (if any), counsel for the plaintiff informed me that the plaintiff’s view was that the court did not have jurisdiction to order security for costs, and therefore full disclosure of assets was not necessary at present. He also pointed out that given the sensitivities arising from the fact that the parties were former lovers, the plaintiff preferred not to disclose her other assets at this point in time.

13 With regard to the ownership of companies, the plaintiff pointed out as follows:

(a) Vantage was clearly registered in the British Virgin Islands (rather than Indonesia), and she neither owned Vantage nor was there proof of the same.

(b) She neither owned UKM nor was there proof of the same.

(c) She neither owned Fairswan nor was there proof of the same. Indeed, a corporate search on Fairswan revealed that the plaintiff was neither a director nor a shareholder of Fairswan.

14 With regard to the issue of multiple identities, the plaintiff repeatedly denied that she was also Megan Daniella. Although she recognised that the passports bearing the name “Megan Daniella” carried her (*ie* the plaintiff’s) photographs, she claimed that the passports were not hers, and challenged their authenticity because neither the stated date of birth nor the signatures on the passports were hers. [\[note: 15\]](#) She could not say whether the photograph on the Japan visa was her (*ie* the plaintiff’s) photograph as she did not remember having such a photograph. [\[note: 16\]](#) She further exhibited a judgment by the Supreme Court of the Republic of Indonesia (“the Indonesian judgment”) overturning a Bandung Class 1 A District Court declaration that “the Name Megan Daniella and Michelle Lucia Piong and Michlle [*sic*] Lucia and Michlle [*sic*] Lucia Piong and Michelle Pangestu are names of one person”. [\[note: 17\]](#) A copy of the Indonesian judgment (Bahasa Indonesia with English translation) was exhibited as well.

Proceedings in the Application

15 The Application was very protracted due to parties’ repeated applications to file fresh affidavits making or responding to fresh allegations. Several additional rounds of affidavits were filed on the issue of multiple identities. Counsel for the defendant explained that such an iterative process was necessary because the defendant was continuously searching for fresh information and evidence in view of the fact that he (*ie* the defendant) had no personal knowledge regarding the various identities allegedly used by the plaintiff.

16 The issues relating to multiple identities were only canvassed at depth *after* the first hearing before me (19 July 2012) because the defendant had only uncovered further “evidence” of the potential multiple identities at that stage. At the second hearing (7 August 2012), prior to granting leave to file the affidavit regarding potential multiple identities, I reminded counsel for the defendant that O 23 r 1(1) of the Rules of Court created a two-stage test as set out in *Tjong Very Sumito and others v Chan Sing En and others* [2011] 4 SLR 580 (“*Tjong Very Sumito (CA)*”) at [20], and queried if the issue of multiple identities was relevant to the first stage of the test. Counsel for the defendant maintained that the issue of multiple identities was relevant to both stages of the test, and emphasised that it would only be prudent if the court had all the necessary evidence before it before making a decision on the Application.

17 The third hearing (31 August 2012) was adjourned because the plaintiff’s affidavit was filed late, thus depriving the defendant of his right to file a reply affidavit before the hearing. A short adjournment was granted, and at the fourth hearing (18 September 2012), the plaintiff sought a further adjournment as the defendant had just filed the documents referred to at [9(c)] above and the plaintiff needed leave to reply to the damning allegations contained therein. At this point, I candidly suggested to the parties that in my provisional view, the issue of multiple identities seemed to go toward the second stage of the test in *Tjong Very Sumito (CA)*, and that it might be possible to proceed to determine whether the first stage of the test was fulfilled without having regard to the issue of multiple identities. As such, I invited counsel for the defendant to consider if we could proceed without his affidavit exhibiting the various documents. Counsel for the defendant

acknowledged that while the issue of multiple identities issue went towards the second stage “more than” it did the first, the issue was possibly relevant to the first stage, and therefore that the affidavit could not be disregarded. Counsel for the plaintiff was of the view that the multiple-identities issue *may* be relevant to the first stage, and therefore suggested that either the defendant’s affidavit exhibiting the various documents be disregarded, or otherwise, leave be granted to the plaintiff to respond to the affidavit. It should be emphasised that it was only at this hearing that I was informed of the matters referred to in [14] above. When queried as to why the plaintiff did not adduce evidence of the Indonesian judgment at an earlier stage, counsel for the plaintiff explained that prior to having sight of certain allegations raised by the defendant on the issue of multiple identities, the plaintiff did not think that it was necessary to bring the Indonesian judgment to the court’s attention. [\[note: 18\]](#) Indeed, counsel for the plaintiff informed me that he personally did not know about the Indonesian judgment and that he had only been informed about the same by the plaintiff after the defendant had adduced the documents referred to at [9(c)] above. As such, a short adjournment was granted for the parties to put in the necessary affidavits.

18 The fifth hearing (3 October 2012) was adjourned because the plaintiff had discharged her solicitors and appointed fresh solicitors the morning before the hearing. This was, again, done very late in time. At the sixth hearing (10 October 2012), I limited parties to submissions on the first stage of the test propounded in *Tjong Very Sumito (CA)*, so that I could decide on that issue and – in the event that I were to find that the first stage was not fulfilled – potentially save time and costs of the parties in raising arguments relating to the second stage of the test. Therefore, at the sixth hearing, I reserved my judgment on whether the first stage of the test was fulfilled in the present case.

19 On perusal of all the evidence and submissions before me, I decide that the first stage of the test propounded in *Tjong Very Sumito (CA)* is not fulfilled. There is therefore no need to address the arguments relating to the second stage of the test.

The law

20 Order 23 r 1(1) provides:

Security for costs of action, etc. (O. 23, r. 1)

(1) Where, on the application of a defendant to an action or other proceeding in the Court, it appears to the Court —

- (a) that the plaintiff is ordinarily resident out of the jurisdiction;
- (b) that the plaintiff (not being a plaintiff who is suing in a representative capacity) is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so;
- (c) subject to paragraph (2), that the plaintiff’s address is not stated in the writ or other originating process or is incorrectly stated therein; or
- (d) that the plaintiff has changed his address during the course of the proceedings with a view to evading the consequences of the litigation,

then, if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to give such security for the defendant’s costs of the action or other proceeding as it thinks just.

21 The relevant principles governing O 23 r 1(1) of the Rules of Court were enunciated by the Court of Appeal in *Tjong Very Sumito (CA)*. It would suffice for me to briefly summarise the key principles relevant to the Application.

22 It is clear from *Tjong Very Sumito (CA)* that O 23 r 1(1) of the Rules of Court creates a two-stage test, consisting of the “jurisdiction” stage and the “discretion” stage (*Tjong Very Sumito (CA)* at [20]). It is only if the applicant can show that the court has jurisdiction to order security against the plaintiff under one of the four grounds set out in O 23 rr 1(1)(a)-(d) of the Rules of Court that the court would proceed to consider whether it would, in the circumstances, exercise its discretion to order security in favour of the defendant (*ibid*). For the purposes of the Application, O 23 r 1(1)(a) of the Rules of Court contains the relevant ground of jurisdiction.

23 A person’s ordinary residence is to be determined not only by his or her physical presence, but also by his mental attitude and purpose in relation to that place (*ibid* at [22]). Therefore, the test for “ordinary residence” depends to a *significant degree* on the *state of mind* of the person in question (*ibid*).

24 It is possible for a person to be ordinarily resident in more than one jurisdiction; this is a question of fact in every case (*ibid* at [33]). The fact that a party is ordinarily resident in Singapore *as well as* in another country does not preclude the court from exercising jurisdiction under O 23 r 1(1)(a) of the Rules of Court (*ibid* at [33]-[43]). As the Court of Appeal postulated, if it was the intention of the framers of the Rules of Court that the court has no jurisdiction to order security for costs against any person ordinarily resident in Singapore, O 23 r 1(1)(a) of the Rules of Court would not have been formulated in the way that it presently stands; rather, O 23 r 1(1)(a) of the Rules of Court might have been worded differently, *eg* “that the plaintiff is *not* ordinarily resident *within* the jurisdiction” [emphasis in original] (*ibid* at [42]).

25 On the facts of *Tjong Very Sumito (CA)*, with regard to the jurisdiction stage, the Court of Appeal expressly upheld the High Court judge’s finding that the appellants were ordinarily resident in Indonesia (*Tjong Very Sumito (CA)* at [52]; citing *Tjong Very Sumito and others v Chan Sing En and others* [2011] 2 SLR 360 (“*Tjong Very Sumito (HC)*”) at [21]). The Court of Appeal agreed with the High Court’s finding that it was significant that the appellants consistently provided their Indonesian addresses in various legal documents. This was because the provision of Indonesian addresses showed that the appellants were putting forward Indonesian addresses as their main address for business use, which in turn demonstrated their intention to do business from Indonesia (*Tjong Very Sumito (CA)* at [53]). According to the Court of Appeal, the fact of holding oneself out to be ordinarily resident in a particular place is “highly relevant” (*ibid* at [54]).

26 It is also important to note the Court of Appeal’s express caution against the conflating of factors or grounds relating to jurisdiction with those relating to the exercise of the court’s discretion as to whether security for costs should be ordered (*ibid* at [37] and [40]; and see [48] on how the appellants in that case appeared to conflate the factors).

Application to the facts

27 It should be noted that none of the matters raised at [11] above have been seriously disputed by the defendant. Indeed, counsel for the defendant appeared to take the position that the plaintiff had multiple ordinary residences (*viz* that the plaintiff was ordinarily resident in *both* Singapore and Indonesia) akin to the appellants in *Tjong Very Sumito (CA)*. Making analogy with *Tjong Very Sumito*, counsel for the defendant raised several arguments to buttress his contention that the plaintiff was ordinarily resident out of Singapore (specifically, ordinarily resident in Indonesia), as follows:

(a) First, like the appellants in *Tjong Very Sumito (CA)*, the plaintiff in the present case had addresses in Indonesia (see [8] above);

(b) Second, the High Court in *Tjong Very Sumito (HC)* found it relevant, for the purposes of the jurisdiction stage of the test, that it was common ground that the first plaintiff in that case had various businesses in Indonesia (see *Tjong Very Sumito (HC)* at [22]). In the present case, the defendant contended that the plaintiff owned businesses in Indonesia. The defendant cited a previous decision of *Piong Michelle Lucia v Yuk Ming Cheung* [2010] SGHC 110 ("*Piong Michelle Lucia*") at [1], [3] and [8], where Loh JC (as he then was) accepted that the same plaintiff was involved in businesses in Singapore, Indonesia and Hong Kong;

(c) Third, in *Tjong Very Sumito (HC)* at [23], it was noted that none of the plaintiffs owned real property in Singapore. By analogy, in the present case, the defendant contends that there was no evidence that the plaintiff held any real property in Singapore. This, the defendant argued, suggested that the plaintiff was not ordinarily resident in Singapore (and, by implication, was ordinarily resident out of Singapore), and that it would be difficult for the defendant to enforce any cost orders against the plaintiff in Singapore; and

(d) Fourth, the plaintiff was, on the balance of probabilities, also "Megan Daniella" and/or "Michelle Pangestu", and was therefore arguably ordinarily resident out of jurisdiction.

28 On the first argument, I note that unlike in *Tjong Very Sumito*, no evidence was adduced in the present case to the effect that the plaintiff had provided Indonesian addresses in various legal documents. Indeed, I note that it is unclear as to what, if any, Indonesian addresses the plaintiff was alleged to have. Although the defendant had exhibited documents purportedly evidencing two Indonesian addresses related to the plaintiff (see [8] above), I note that these documents were not in the English language. Although counsel for the defendant assured me, from the bar, that he had checked the relevant dictionaries and could confirm that the word "*alamat*" was a reference to "address", there is no evidence before me that the references stated therein are indeed references to addresses. In any case, at least one of the addresses was disputed because it referred to "Michelle Pangestu" rather than to the plaintiff. Quite unlike the appellants in *Tjong Very Sumito (CA)* who were found to have *held out* that they ordinarily resided in Indonesia (see *Tjong Very Sumito (CA)* at [54]), there is no similar evidence of "holding-out" in the present case.

29 On the second argument, counsel for the plaintiff responded by emphasising that unlike in *Tjong Very Sumito (HC)*, in the present case it is not "common ground" that the plaintiff had businesses in Indonesia (see [13] above). It should also be noted that specifically *vis-à-vis* the jurisdiction stage of the test, the Court of Appeal did not make any reference to the fact that the appellants in that case had businesses in Indonesia, despite discussion of the same in *Tjong Very Sumito (HC)*. In other words, as far as the Court of Appeal was concerned, this factor did not appear to have been a weighty consideration (if at all).

30 On the third argument, and again without definitively commenting on the weight that the Court of Appeal accorded to the appellants' absence of ownership of real property in Singapore, it should be noted that the Court of Appeal again did not make any reference to this factor despite discussion of the same in the *Tjong Very Sumito (HC)*. Indeed, the Court of Appeal appeared to treat this factor as one to be considered at the discretion stage, rather than at the jurisdiction stage (see *Tjong Very Sumito (CA)* at [57] and [60]). Furthermore, and specifically in relation to the defendant's contention that the plaintiff's absence of real property in Singapore is a factor in favour of finding jurisdiction under O 23 r 1(1) of the Rules of Court, it should be noted that the Court of Appeal recognised "ease of enforcement" of cost orders as one of the rationales for the jurisdiction stage but emphasised that

this was “not a determinative factor” (*ibid* at [41]). Indeed, the Court of Appeal emphasised that it was established law that the impecuniosity of a plaintiff (who is a natural person) cannot of itself found jurisdiction to give security for costs (*ibid*, citing *Ho Wing On Christopher v ECRC Land Pte Ltd* [2006] 4 SLR(R) 817 at [71]). It follows logically that the absence of real property in Singapore cannot *per se* found jurisdiction for the purposes of the Application.

31 On the fourth argument, I am unable to make a finding on whether the plaintiff is also “Megan Daniella” or “Michelle Pangestu”. In my view, the summons-in-chambers interlocutory processes through which the Application is taken is not well suited to the trying of such an issue of fact. In the absence of full trial mechanisms, including amongst other things cross-examination of witnesses, I do not see how I will be able to make a factual finding that, on the balance of probabilities, the plaintiff had operated under multiple identities. While I understand that the matters raised at [9] above may have led the defendant to the view that the plaintiff operated under multiple identities, the hearing of the Application is not, in my view, the proper forum for determination of such an issue. In this regard, it should also be emphasised that the Supreme Court of the Republic of Indonesia had expressly ruled (albeit through the overturning of a default judgment, without any written grounds of decision being rendered) that the plaintiff was *not* operating under the other identities alleged (see [14] above). As such, as the issue of multiple identities cannot be determined here, it would not be appropriate for me to take the fourth argument into consideration.

32 One final point should be addressed in relation to precedent decisions involving the same plaintiff. As mentioned at [27(b)] above, in the course of submissions, counsel for the defendant pointed me to the case of *Piong Michelle Lucia*. The plaintiff in *Piong Michelle Lucia* was the plaintiff in the present case. In *Piong Michelle Lucia*, Loh JC noted (at [8]) as follows:

8 The Plaintiff contended that her claim had nothing to do with Hong Kong and everything to do with Singapore. She was a Singapore Permanent Resident and in her third affidavit, filed on 23 November 2009, she exhibited a redacted copy of her Identity Card. She alleged in five bare paragraphs that she had strong local roots, all her children were studying here, Singapore was the place she called her home and she was an honourable well respected person in the community with integrity and of substantial means. The Defendants strongly disputed this claim and pointed to her exhibited identity card with the number redacted thereby preventing any checks and queried whether she still had her permanent residency status in Singapore. Because of this submission, at the hearing of an application for security for costs on 21 December 2009, AR Ang ordered the Plaintiff to furnish security unless she gave confirmation on affidavit that (a) she still remained a Singapore Permanent Resident, (b) her Singapore permanent residency status had not been revoked and (c) she was ordinarily resident in Singapore. The Plaintiff filed a further affidavit on 23 December 2009 which repeated some of her earlier statements and additionally confirmed her Permanent Resident status had not been revoked and deposed:

As deposed in my Affidavit filed herein on 23rd November 2009, **I am therefore ordinarily resident in Singapore**. What is the meaning of “not a foreigner” as I had deposed? What is the meaning of a place being one’s home?

[emphasis in the original]

Yet when this matter was argued before AR Ang she asked counsel for the Plaintiff, Ms Tan:

Ct: Where does the Plaintiff conduct her work?

DC: In Indonesia. She wanted to relocate to Singapore but the plant failed. The Plaintiff’s

work in Hong Kong is where the shares of Pan Sino are listed and that is purely coincidental.

Despite her claims of having roots here, Singapore being her home and being of substantial means, the Plaintiff lived in rented premises (see para12(a), Plaintiff's Affidavit filed on 23 November 2009). I was therefore left with a question mark in my mind where the Plaintiff resided. The fact that she still had her permanent residency in Singapore did not necessarily mean she spent most of her time here. On her own evidence and her pleaded case her business interests were in Indonesia, Singapore and Hong Kong and her business reputation had been seriously injured in Hong Kong, Indonesia, Germany and Singapore.

[emphasis in original]

33 However, and as emphasised by counsel for the plaintiff in the present case, Loh JC did not actually make any finding on whether the plaintiff was ordinarily resident in Singapore. This was because the issue before Loh JC was concerned neither with security for costs nor the place of the plaintiff's "ordinary residence"; rather, it related to the issue of whether Hong Kong was clearly and distinctly the more appropriate forum in the interests of all the parties and for the ends of justice, such as to warrant a stay of proceedings on the ground of *forum non conveniens* (see *Piong Michelle Lucia* at [19]).

34 It should be further noted that the reproduced passage alluded to a security for costs application before an assistant registrar in which the plaintiff's ordinary residence was at issue. Security for costs was not eventually ordered. In any case, the assistant registrar's decision *vis-à-vis* security for costs was not appealed against, and therefore was not before Loh JC in *Piong Michelle Lucia*.

35 In relation to precedent decisions involving the same plaintiff, counsel for the plaintiff additionally turned my attention to previous applications for security for costs against the same plaintiff in Suits No 259 of 2009 and 771 of 2009. The applications were based on similar grounds as those raised in the present Application, and those applications were dismissed by the respective courts.

36 In the circumstances, I find that the defendant has failed to demonstrate, on the balance of probabilities, that this court has the jurisdiction under O 23 r 1(1)(a) of the Rules of Court to make an order for security for costs. I therefore dismiss the Application.

37 I will now hear parties on costs.

[\[note: 1\]](#) Affidavit of Lau Kee Swan dated 5 June 2012 at para 20

[\[note: 2\]](#) Affidavit of Lau Kee Swan dated 5 June 2012 at para 8; Affidavit of Michelle Lucia Piong dated 4 July 2012 at paras 7-8

[\[note: 3\]](#) Affidavit of Michelle Lucia Piong dated 30 August 2012 at para 5

[\[note: 4\]](#) Affidavit of Lau Kee Swan dated 5 June 2012 at para 9

[\[note: 5\]](#) Affidavit of Lau Kee Swan dated 5 June 2012 at pp 23-24

[\[note: 6\]](#) Affidavit of Lau Kee Swan dated 17 July 2012 at para 5

[\[note: 7\]](#) Affidavit of Lau Kee Swan dated 5 June 2012 at para 10

[\[note: 8\]](#) Affidavit of Lau Kee Swan dated 11 September 2012 at para 12

[\[note: 9\]](#) Affidavit of Lau Kee Swan dated 11 September 2012 at para 12

[\[note: 10\]](#) Affidavit of Lau Kee Swan dated 11 September 2012 at para 5

[\[note: 11\]](#) Affidavit of Lau Kee Swan dated 1 August 2012 at para 5

[\[note: 12\]](#) Affidavit of Michelle Lucia Piong dated 4 July 2012 at para 12

[\[note: 13\]](#) Affidavit of Michelle Lucia Piong dated 4 July 2012 at para 16

[\[note: 14\]](#) Affidavit of Michelle Lucia Piong dated 4 July 2012 at para 17

[\[note: 15\]](#) Affidavit of Michelle Lucia Piong dated 28 September 2012 at paras 5-15

[\[note: 16\]](#) Affidavit of Michelle Lucia Piong dated 28 September 2012 at para 7

[\[note: 17\]](#) Affidavit of Michelle Lucia Piong dated 28 September 2012 at paras 20-21

[\[note: 18\]](#) Affidavit of Michelle Lucia Piong dated 28 September 2012 at para 22

Copyright © Government of Singapore.