PT Sandipala Arthaputra *v* STMicroelectronics Asia Pacific Pte Ltd and others [2015] SGHC 245

Case Number	: Suit No 542 of 2012 (Summons Nos 3342 of 2015 and 4013 of 2015)
Decision Date	: 23 September 2015
Tribunal/Court	: High Court
Coram	: George Wei J
Counsel Name(s)	: Govintharasah s/o Ramanathan and Sarah Kuek Xin Xin (Gurbani & Co LLC) for the plaintiff; Danny Ong, Yam Wern-Jhien and Eugene Ong (Rajah & Tann LLP) for the first and third defendants.
Parties	: PT SANDIPALA ARTHAPUTRA — STMICROELECTRONICS ASIA PACIFIC PTE LTD — OXEL SYSTEMS PTE LTD — VINCENT PIERRE LUC, COUSIN — PAULUS TANNOS — CATHERINE TANNOS — LINA RAWUNG

Conflict of Laws – Restraint of Foreign Proceedings – Vexatious and Oppressive Conduct

23 September 2015

George Wei J:

1 Two summonses were heard together on 28 August 2015. Summons No 3342 of 2015 ("**SUM 3342**") was the first and third defendants' ("**the Applicants**") application for a final anti-suit injunction. By SUM 3342, the Applicants sought an order that:

> (a) the plaintiff be ordered to forthwith withdraw, and be restrained from pursuing, or continuing to pursue, the claim which it had filed against STMicroelectronics NV ("**ST-NV**") and/or the third Defendant ("**Mr Cousin**") in the Central Jakarta District Court ("**CJDC**") on 13 February 2015 in Civil Claim No 67/PDT.G/2015/PN.JKT.PST ("**Prayer 1**"); and
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> (b) the plaintiff be restrained from commencing or continuing any further or other proceedings of any nature in Indonesia or anywhere else in the world against STMicroelectronics Asia Pacific Pte Ltd ("**ST-AP**"), ST-NV, or any of its agent and/or employees, including Mr Cousin, in relation to the Indonesian Government's E-KTP card production project for the years 2011 and 2012 ("**Prayer 2**").

2 Earlier, I had granted an interim anti-suit injunction ("**the Interim Order**") set to expire on 28 August 2015 (unless otherwise ordered). This is the date on which the application for the final anti-suit injunction application was due to be heard. The interim anti-suit injunction was intended to preserve the status quo pending the hearing of the final anti-suit injunction application.

3 The second application brought before me was Summons No 4013 of 2015 ("**SUM 4013**") in which the plaintiff sought to set aside: (a) the application for a final anti-suit injunction in SUM 3342, and (b) the Interim Order. In SUM 4013, the plaintiff also sought compensation from the Applicants for damages and costs arising from its compliance with the Interim Order.

4 My decision was delivered on 4 September 2015. I granted Prayer 1 of SUM 3342 and in brief, ordered the plaintiff to withdraw and be restrained from continuing the Jakarta Action that had been filed against the third defendant and the parent company of the first defendant or any of its agents

and employees. I also dismissed the prayers sought in SUM 4013. At the hearing, I indicated that written grounds would follow. My grounds are set out below.

Background

The parties

5 The plaintiff is a company incorporated in Indonesia and carries on the business of, *inter alia*, the production of personalised electronic identification cards. [note: 1] Paulus Tannos ("**Mr Tannos**") is the President Director (equivalent to a managing director) of the plaintiff company. [note: 2] Catherine Tannos ("**Ms Tannos**"), the daughter of Mr Tannos, is a director of the plaintiff-company. [note: 3]

6 At all material times, Mr Tannos and Ms Tannos were acting on behalf of the plaintiff. [note: 4] It also appears that they have been residing in Singapore since around March 2012. [note: 5]

7 The first defendant, ST-AP, is a company incorporated in Singapore and carries on the business of, *inter alia*, the marketing and sales of integrated circuit chips ("**electronic chips**"). [note: 6]

8 ST-AP is a wholly owned subsidiary of ST-NV, a company incorporated in the Netherlands. [note: 7] It is significant to note that ST-NV is a holding company which does not carry out any operational activity and it is asserted that it does not have any employees of its own. [note: 8] The relevance of this point will become clearer later.

9 The second defendant, Oxel Systems Pte Ltd ("**Oxel**"), is a company incorporated in Singapore, and carries on the business of "trading of software and services such as resale and development". [note: 9]

10 The third defendant, Mr Cousin, was at all material times ST-AP's Country Manager for Indonesia. [note: 10] He is at present based in and residing in Singapore. That said, the plaintiff asserts that Mr Cousin owns property in Indonesia and has family members in Indonesia.

The tender

11 In early 2011, the Ministry of Home Affairs of the Indonesian Government invited tenders for the production and supply of personalised electronic identification cards ("**E-KTP Cards**") for the Indonesian population. [note: 11]

12 By reason of their common interest in participating in the tender, the plaintiff and four other Indonesian companies entered into a consortium agreement. [note: 12] The Consortium comprised: (i) the plaintiff, (ii) Perusahaan Umum Percetakan Negara Republik Indonesia ("**PNRI**"), (iii) Perusahaan Superintending Company of Indonesia, (iv) PT Quadra Solutions and (v) PT Len Industri. [note: 13] It appears that PNRI is the "leader" of the Consortium. [note: 14]

13 The Consortium contracted with ST-AP to supply 100,000 pieces of electronic chips for use in the tender evaluation ("**Tender Evaluation Chips**"). [note: 15] If the Consortium was successful in the tender, the Consortium was to source for the same electronic chips from ST-AP for the mass production of E-KTP Cards. [note: 16]

14 The Consortium dealt with Mr Cousin, who was ST-AP's Country Manager for Indonesia. [note: 17] Mr Cousin was the one who prepared and signed the document which contained the specifications of the Tender Evaluation Chips. [note: 18] It is to be stressed that in the proceedings in Singapore ("**the Singapore Action**"), the plaintiff takes the position that Mr Cousin was an employee of and acted on behalf of ST-AP. [note: 19] The significance of this will become clearer later in the decision.

15 The E-KTP Cards made with the Tender Evaluation Chips, upon testing by the Indonesian Government, worked successfully with the card reading system. [note: 20] The tender was awarded to the Consortium. The tender was for approximately 172m personalised E-KTP Cards which were to be produced and supplied in 2011 and 2012 ("**the E-KTP Project**"). [note: 21]

16 Within the Consortium, the member companies agreed among themselves on their respective roles and obligations with respect to the Card Production Agreement. [note: 22] Notably, the plaintiff was required to produce, supply and personalise 60% of the E-KTP Cards (which translated to approximately 103m E-KTP Cards). PNRI, on the other hand, was allocated the remaining 40%. [note: 23]

17 Following the award of the tender, Mr Tannos proceeded to enter into negotiations with Mr Cousin for the purchase of 100m electronic chips from ST-AP. Mr Cousin then introduced Mr Tannos to Mr Andi Winata and made the following representations:

(a) first, that Mr Winata's company, Oxel, was the exclusive distributor of ST-AP's electronic chips in Indonesia; [note: 24] and

(b) second, that Oxel would supply electronic chips that were the same as the Tender Evaluation Chips. [note: 25]

18 In reliance upon the aforesaid representations, the plaintiff entered into a contract with Oxel on 9 November 2011 for the supply of 100m electronic chips.

19 Thereafter, the plaintiff requested ST-AP to provide samples of electronic chips to be furnished for functional testing before delivery of the order. [note: 26] ST-AP failed to do so. [note: 27] Subsequently, the first 5.8m chips were delivered in nine batches between 22 December 2011 and 9 February 2012. The first three batches comprising some 908,046 chips were delivered on 22, 27 and 29 December 2011. [note: 28]

20 After the first batches of electronic chips were delivered, the plaintiff discovered that the cards made with those electronic chips could not be personalised, unlike the cards that were made with the Tender Evaluation Chips. [note: 29] The plaintiff was told that the problem was with the Key Management System it was using which should be changed to one that Oxel had developed. [note: 30]

21 To resolve the problem, Mr Tannos tried to persuade the Indonesian Government officials to accept the E-KTP Cards made with the electronic chips supplied by the defendants, together with the Key Management System developed by Oxel. [note: 31] He failed. He was later contacted by one Ms Marie France Florentin ("**Ms Florentin**") who allegedly represented that she would make a trip to Indonesia to explain the error to the Indonesian Government officials and that the ST-AP would ensure that the correct type of electronic chip with the software would be provided henceforth for

the production of the E-KTP Card. [note: 32] It is noted that the plaintiff took the position in the Singapore Action that Ms Florentin was acting on behalf of ST-AP. [note: 33]

22 The long and short of it is that the problem with the electronic chips and the software was not resolved.

The reduction of the plaintiff's share of work

23 As mentioned earlier, the plaintiff was originally supposed to produce and personalise 103m E-KTP Cards. The plaintiff's share of work in the E-KTP Project was subsequently reduced by the Consortium on two occasions.

(a) The first reduction took place on 19 December 2011 when the plaintiff's share of work was reduced from 103m to 60m ("**the First Reduction**").

(b) The second reduction took place on 10 July 2013 where due to the disruption caused to the plaintiff's production schedule, the plaintiff had no choice but to agree to stop production at 45m E-KTP cards ("**the Second Reduction**"). [note: 34]

24 To be clear, the above summary is based on the plaintiff's pleadings and it is to be noted that many points of detail are disputed by the defendants in the Singapore Action.

The Singapore Action

25 On 28 June 2012, the Singapore Action action was commenced against ST-AP and Oxel in Singapore. At the material time, the plaintiffs were PT Sandipala, Mr Tannos and Ms Tannos ("**the Original Plaintiffs**"). Aside from claims for breach of contract, misrepresentation and conspiracy, a defamation claim was also brought against Oxel for, *inter alia*, making police reports and publishing defamatory statements about the Original Plaintiffs. These allegations were in connection with the E-KTP Project. The defamation action was subsequently dropped on 15 January 2013, and Mr Tannos and Ms Tannos ceased to be plaintiffs in the Singapore Action.

26 Central to the plaintiff's remaining claims in the Singapore Action are the following representations that were allegedly made by Mr Cousin:

(a) that Oxel was ST-AP's exclusive distributor in Indonesia;

(b) that the electronic chips offered by Oxel were the same as the Tender Evaluation Chips; and

(c) that Oxel would be able to procure and supply the plaintiff with the same type of electronic chips as the Tender Evaluation Chips.

The plaintiff claims to have entered into the contract with Oxel in reliance upon the aforesaid representations which it says turned out to be false. Further and in the alternative, the plaintiff claims that there was an unlawful conspiracy between the defendants to offload on the plaintiff electronic chips which could not be used to manufacture E-KTP Cards. Notably, ST-AP is being sued in its capacity as the employer of Mr Cousin who was only added as the third defendant in the Singapore Action recently, on 15 May 2015.

27 The losses claimed by the plaintiff stem mainly from the reduction in its share of work. Initially,

the plaintiff attributed both reductions to the allegedly wrongful acts of the defendants. Much later, on 14 November 2014 (more than two years after the Singapore Action was commenced), the plaintiff dropped its claim for the losses stemming from the First Reduction.

28 On 6 January 2015, a pre-trial conference was held in Singapore and the Singapore trial dates were fixed for 12 days in March/April 2016. Following that, the plaintiff tried unsuccessfully to bring the trial dates forward.

The Jakarta Action

29 Soon after the plaintiff failed in its attempt to bring forward the Singapore trial dates, the plaintiff commenced an action in Jakarta on 13 February 2015 ("**the Jakarta Action**"). [note: 35]

30 The Jakarta Action was brought against (a) ST-NV, the parent company of ST-AP in the Singapore Action, (b) Mr Cousin, as well as (c) PNRI. It will be recalled that PNRI is the lead member of the Consortium. [note: 36]

31 It is also apposite to set out, in brief, the facts that the plaintiff relies upon to establish its claim in the Jakarta Action. [note: 37]

32 After the tender was awarded to the Consortium, Mr Tannos was instructed by PNRI's chairman, Mr Isnu Wijya, to source for the necessary electronic chips through Mr Cousin. Thereafter, PNRI and Mr Cousin represented that the electronic chips offered by ST-NV could be used by the plaintiff for the E-KTP Project. Mr Cousin further represented that Oxel was the exclusive distributor of the aforesaid electronic chips. Subsequently, the plaintiff, relying on the representations made by PNRI and Mr Cousin, entered into a contract with Oxel for the supply of electronic chips.

33 Despite assuring the plaintiff that the electronic chips offered by ST-NV could be used for the E-KTP Cards, PNRI did not source any of its electronic chips from ST-NV. Instead, PNRI procured its electronic chips from another company, NXP.

34 On 19 December 2011, the PNRI Consortium, without inviting or notifying the plaintiff, held a consortium meeting in which PNRI seized production and personalisation of a portion of the plaintiff's share of work in the E-KTP Project.

35 After the reduction on 19 December 2011, it came to light that that the electronic chips purchased by the plaintiff could not be used for the personalisation of E-KTP Cards. In contrast, all the electronic chips procured by PNRI worked successfully.

36 The problem with the electronic chips was not resolved and the plaintiff was unable to meet further deadlines for the production of E-KTP Cards. Consequently, another reduction was made to the plaintiff's share of work on 10 July 2013. It is asserted that PNRI benefited from the reduction in the plaintiff's share in the E-KTP Project.

Issues

37 In SUM 3342, the issues were (a) whether the application for a final anti-suit injunction should be set aside for procedural irregularity, and (b) whether a final anti-suit injunction should be granted.

38 SUM 4013, on the other hand, concerned the issue of whether the Interim Order should be set aside on the basis of (a) procedural irregularity; and (b) material non-disclosure.

Procedural matters

39 As the plaintiff has launched several procedural attacks on SUM 3342, I will address them before turning to the substantive issues. SUM 3342 was taken out as an application in chambers under Suit No 542 of 2012 ("Suit 542/2012") which is the Singapore Action. It is pertinent to note that, of the three defendants, only Oxel has launched a counterclaim against the plaintiff.

The plaintiff's position

40 Learned counsel for the plaintiff strongly objected to the manner in which the application for the final anti-suit injunction had been brought. His objection was two-fold.

41 *First*, learned counsel for the plaintiff argued that the application for a final or perpetual anti-suit injunction could not be brought as an application under Suit 542/2012. According to him, the application should have been commenced by an originating process which must be indorsed with a claim for a perpetual anti-suit injunction. [note: 38] This is because the application for the perpetual anti-suit injunction was not in any way incidental or comprised within the scope of the substantive relief sought in Suit 542/2012. [note: 39]

42 *Second*, it was argued that the Applicants did not have the *locus standi* to apply for a final anti-suit injunction insofar as the application sought to benefit ST-NV. [note: 40] It was further argued that ST-NV was not a proper party to Suit 542/2012 and was not a party to the application for an anti-suit injunction. [note: 41]

The Applicants' position

43 The Applicants' responses may be summarised as follows.

(a) *First*, that it is trite that an application for an anti-suit injunction can be made by application in existing proceedings, and there is no requirement for it to be specifically pleaded or made by way of an originating process.

(b) *Second*, that the Applicants had standing to make the anti-suit injunction application by virtue of their being parties to the Singapore Action. This was because ST-AP and Mr Cousin (not ST-NV) had a legitimate interest in making the application to protect the proceedings in Singapore.

Decision

44 After considering the submissions and authorities cited in argument, I took the view that the procedural objection was misconceived and is to be rejected. The reasons, in brief, are as set out below.

Whether a fresh originating process is required

45 The issue here is whether the application for a final anti-suit injunction in SUM 3342 was procedurally irregular because it was not commenced by way of a fresh originating process indorsed with a claim for an anti-suit injunction.

46 Learned counsel for the Applicants referred me to the case of *Glencore International AG v Exter*

Shipping Ltd [2002] CLC 1090 ("*Glencore*") for the proposition that an application for a final anti-suit injunction did not necessarily have to be made by way of an originating process. In that case, the applicant had instituted proceedings in England in respect of a huge shortfall of oil stored at an oil storage facility ("the UK Proceedings"). The company operating the facility had collapsed and was in receivership. Numerous actions by various persons had been brought. The foreign ship-owners were owners of vessels that had carried fuel oil to and from the oil storage facility. All of them were involved in the UK Proceedings.

47 The applicant applied for an anti-suit injunction to restrain foreign ship-owners pursuing proceedings in the United States ("the US Proceedings") on the basis that London was the natural forum and that the US Proceedings were vexatious as they duplicated the issues in the UK Proceedings. Against that, the respondents challenged the court's jurisdiction to grant an anti-suit injunction against them, arguing that the applicant had not made any formal counterclaim against them for an injunction. Further, it was said the applicant could not have made a counterclaim since it was not a defendant.

48 The respondents' argument was rejected. Rix LJ (at [59]) affirmed the decision of the first instance judge and stated that he did not think that an application for an anti-suit injunction had to be made by formal claim or counterclaim; it could be made simply by application in the existing proceedings.

49 In *Masri v Consolidated Contractors International (UK) Ltd and others (No 3)* [2009] 2 WLR 669 ("*Masri*"), Lawrence Collins LJ observed that in contrast to *single forum* cases, the application for an anti-suit injunction in *alternative forum* cases will normally be made by an application in existing proceedings:

> 57 Where a claim for an anti-suit injunction is made on the basis of an exclusive English jurisdiction clause, or where it is made in a single forum case, the claim for the final injunction may be made in the claim form, as it was in *British Airways Board v Laker Airways Ltd* [1985] AC 58, where the writs by British Airways and British Caledonian sought declarations of non-liability and injunctions to restrain the US anti-trust actions [1984] QB 142, 147; and in *Donohue v Armco Inc* [2002] 1 All ER 749, where Donohue's action in England was for an anti-suit injunction and for damages against Armco for breach of the exclusive jurisdiction clause; but there was no other substantive remedy sought, such as a declaration on non-liability: see [2000] 1 All ER (Comm) 425, 433, para 18.
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> 58 In alternative forum cases the application for an anti-suit injunction will normally be made, as it was in this case, by way of an application in existing proceedings: *The Eras EIL Actions* [1995] 2 All ER 278; *Glencore International AG v Exter Shipping Ltd* [2002] 2 All ER (Comm) 1, para 59, per Rix LJ and Gee, *Commercial Injunctions*, 5th ed (2004), para 14.031. As long ago as 1867 it was said that if the court is in full possession of the cause, or a decree has been made, an injunction will be granted on motion in the suit, but if the court is not in possession of the matter, an action must be brought: Kerr, *Injunctions in Equity* (1867), p 160.

50 A similar conclusion may be drawn from the case of *Beckkett Pte Ltd v Deutsche Bank AG and another* [2011] 1 SLR 524 ("*Beckkett*") in which a final anti-suit injunction was sought by way of summons in the existing proceedings (see [2]). The injunction was granted and upheld by the Court of Appeal (see *Beckkett Pte Ltd v Deutsche Bank AG* [2011] 2 SLR 96).

51 In the circumstances, I had no doubt that the Applicants were entitled to apply for the anti-suit injunction by means of a summons in the existing proceedings. For completeness, I turn to

address the authorities cited by learned counsel for the plaintiff.

52 Reference was made to *Colebourne v Colebourne* [1876 C. 8.] 1 Ch D 690 ("*Colebourne v Colebourne*") in support of the contention that the claim for an anti-suit injunction must be indorsed on an originating process. In that case, the plaintiff and her brother, the defendant, were entitled under a will to a deceased's personal estate. As the defendant, who was the sole executor, had proceeded to advertise a substantial portion of the assets in the personal estate for sale and had professed an intention to leave the country shortly after, the plaintiff commenced an action for an administration of the estate. Her writ was a claim for administration only, not for an injunction. The claimant subsequently filed a motion for an injunction against the defendant to restrain him from receiving the proceeds of the above sale. Hall VC held that the plaintiff should have indorsed her writ with a claim for the injunction as the injunction was a substantial object of her action.

53 The plaintiff also cited *Carter v Fey* [1894] 2 Ch 541 ("*Carter v Fey*") and *Des Salles D'Epinox v Des Salles D'Epinox* [1967] 1 WLR 553 ("*Des Salles D'Epinox*") for the proposition that where injunctive relief is not comprised in or incidental to the plaintiff's cause of action, there is a procedural irregularity that cannot culminate in an order-in-terms.

54 In *Carter v Fey*, the plaintiff commenced a writ for a perpetual injunctive relief against the defendant, the plaintiff's partner in a wine, ale and spirit merchant partnership, from carrying on in the same business in the city of Winchester. The defendant gave notice of a cross-motion for an interlocutory injunction restraining the plaintiff from using the name of the defendant on vans, signboards or labels in the carrying on of his business before a statement of claim or his defence was filed. In the course of the hearing, it was argued that the defendant, not having filed a counterclaim or a cross-action, could not seek any relief where the relief sought was not in any way comprised in or incidental to the plaintiff's cause of action. It was held (at 544–545) that the defendant's application for an interlocutory injunction must fail as the injunction sought was in no way connected with or incidental to the object and purpose of the plaintiff's action. If the defendant could not wait till the time for delivering a counterclaim, he must issue a writ in an action of his own.

55 In *Des Salles D'Epinox*, a wife by originating summons, claimed maintenance on the ground of her husband's wilful neglect to maintain her. The husband then made an application by way of a summons to the wife's originating summons to injunct the wife from preventing him from returning to the matrimonial home. Following the decision in *Carter v Fey*, Sachs LJ held (at 563–564) that an injunction sought by a defendant or respondent to proceedings initiated by a plaintiff or an applicant must bear some appropriate relation to the subject-matter of the relief claimed in the proceedings already initiated, proceedings which may either have been commenced, or in certain cases, may be in the course of being commenced.

56 In my view, the above cases did not assist the plaintiff. In an alternative forum case, the right to apply for an anti-suit injunction is not of itself the cause of action. It is ancillary and incidental to the existing proceedings: *Masri* at [99]. Thus, unlike the cases cited by the plaintiff, the relief sought before this court (the anti-suit injunction) was not the object of the existing proceedings in Singapore. Further, the application was not founded on any substantive legal right (for *eg*, a contractual right to not be sued conferred by an exclusive jurisdiction clause). Instead, the object of the application was solely to protect the integrity of the ongoing proceedings in Singapore.

57 Where, however, the foreign proceedings have been commenced in breach of an exclusive jurisdiction clause (*ie*, where a contractual right is asserted), there is perhaps a more compelling argument to be made that the anti-suit relief ought to be sought by way of an originating process. That said, this issue was not before me and I decline to make any definitive ruling on it.

The locus standi of the Applicants

58 I turn now to consider the attack on the *locus standi* of the Applicants to make the anti-suit injunction application. In essence, the plaintiff asserted that the Applicants could not seek an anti-suit injunction for ST-NV's benefit as ST-NV is not a party to the Singapore Action. To this end, the plaintiff stressed that the principle of separate legal personality applies as between the parent company and a subsidiary.

59 Against that, learned counsel for the Applicants contended that the fact that the applicant is not a party to the foreign proceedings was not necessarily an insurmountable impediment. The question was whether ST-AP and Mr Cousin had sufficient interest in the Singapore Action to vest them with the standing to apply for an anti-suit injunction to restrain proceedings in Indonesia against ST-NV.

60 I start with the preliminary observation that contrary to the plaintiff's submissions, ST-AP and Mr Cousin were not applying for the anti-suit injunction on *behalf* of ST-NV. Rather, they were applying for the anti-suit injunction on the basis that they themselves had a real and legitimate interest in protecting the integrity of the Singapore proceedings.

61 In *Turner v Grovit and others* [2002] 1 WLR 107 ("*Turner*"), the House of Lords held (at [27]) that under English law the applicant for an anti-suit injunction must have a legitimate interest in making his application and the protection of that interest must make it necessary to make the order. Where the applicant has a contractual right not to be sued abroad, that contractual right is the legitimate interest. But where the applicant was relying upon the conduct of the other person which is unconscionable for some non-contractual reason, English law required that the legitimate interest must be the existence of proceedings in this country which need to be protected by the grant of a restraining order.

62 I note in passing that the decision in *Turner* was subsequently referred to the European Court of Justice ("ECJ") (see *Turner v Grovit* [2005] 1 AC 101). The matter before the ECJ concerned the compatibility of the decision in *Turner* with the Brussels Convention and therefore, the ECJ's decision has no application outside Convention countries.

63 As shall be explained later on, I found that there was a serious risk of conflicting decisions. It would suffice to note, for the purposes of the issue of *locus standi*, that the underlying bedrock of facts and the alleged wrongful acts were similar if not the same. In short, I was not convinced that a clear distinction may be drawn between the Jakarta Action and Singapore Action. Consequently, the Applicants, who are defendants to the Singapore Action, had a real and legitimate interest in protecting the proceedings in Singapore.

64 I add that in the event that the matter is taken further and I am wrong on the Applicants' standing to seek an anti-suit injunction to restrain the plaintiff from pursuing the Jakarta Action against ST-NV (whether because of the doctrine of separate legal personality or otherwise), this should not, on its own, affect the standing of Mr Cousin as he has been sued in both Singapore and in Jakarta.

Substantive matters

65 This is a case where parallel proceedings have been commenced in two separate jurisdictions. Such a situation may arise in two ways: first, where the same plaintiff sues the same defendant in Singapore and abroad and second, where the plaintiff sues the defendant in Singapore and the

defendant sues the plaintiff abroad or *vice versa* (see *Virsagi Management (S) Pte Ltd v Welltech Construction Pte Ltd and another appeal* [2013] 4 SLR 1097 ("*Virsagi*") at [26]).

66 Where the plaintiff is proceeding against the same defendant in two jurisdictions for the same subject matter, the court will normally compel the plaintiff to make an election unless the circumstances are "very unusual": *Virsagi* at [28]–[30]. The burden shifts to the common plaintiff to justify the continuation of proceedings by establishing the existence of the very unusual circumstances. This is known as the doctrine of forum election.

67 It is well established that the doctrine of forum election exists as a matter of case management in the local forum. As was said at [32] in *Virsagi*, the court is simply managing its own process given the prospect of the same issues being litigated twice and the risk of conflicting results. It is thus significant to note that the issue of *forum non conveniens* is not engaged where the plaintiff is put to an election: *Virsagi* at [30].

68 Where the plaintiff elects to continue the proceedings in Singapore, an anti-suit injunction may be granted to prevent him from continuing with the foreign proceedings. However, if the defendant does not want the Singapore proceedings to continue, he may assert *forum non conveniens* in favour of the foreign forum and attempt to have the Singapore proceedings stayed on that basis.

69 In the present case, it is the same plaintiff who has sued the same (or substantially the same) defendants (Mr Cousin and ST-AP/ST-NV) in Singapore and Jakarta. It is in this context that the Applicants are seeking to restrain the plaintiff from continuing with the Jakarta Action as they took the view that the proceedings are duplicitous. Notably, the plaintiff has elected to pursue the matters in both jurisdictions, taking the position that the actions are separate and distinct.

70 With this backdrop in mind, I turn now to examine whether an injunction should be granted to restrain the plaintiff from continuing with the Jakarta Action.

Anti-suit injunction

71 An anti-suit injunction is an order of the court compelling the party subject to the order to refrain from instituting or continuing with proceedings abroad: *Halsbury's Laws of Singapore* vol 6(2) (LexisNexis, 2009) at para 75.124. Although an anti-suit injunction is directed at the opposing party and not the foreign court, its indirect effect on the foreign court may nevertheless be an affront to comity. Bearing in mind considerations of comity, it is apposite to note that the court's jurisdiction in respect of an anti-suit injunction should be exercised sparingly and only in exceptional cases. That said, it is well established that an anti-suit injunction may be granted where the ends of justice requires it: *Koh Kay Yew v Inno-Pacific Holdings Ltd* [1997] 2 SLR(R) 148 at [14]–[16] ("*Koh Kay Yew*").

72 In *John Reginald Stott Kirkham and others v Trane US Inc and others* [2009] 4 SLR(R) 428 ("*John Reginald*") at [28]–[29], the Court of Appeal identified factors that should be considered in determining whether an anti-suit injunction should be granted:

(a) whether the defendants are amenable to the court's jurisdiction;

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

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

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

(e) whether the institution of the foreign proceedings is in breach of any agreement between the parties.

73 The first factor identified by the Court of Appeal goes towards the jurisdiction of the court to grant an anti-suit injunction. The rest of the factors are to be taken into account in deciding whether the grant of an anti-suit injunction serves the ends of justice. I will proceed to analyse each of these issues in turn.

Jurisdiction

74 The plaintiff resisted the application for the anti-suit injunction on the basis that it is not amenable to the jurisdiction of the Singapore courts *vis-a-vis* the subject matter claim in the Jakarta action. [note: 42] In short, it argued that whilst the plaintiff was and is amenable to the jurisdiction of the Singapore courts for the claims in the Singapore Action, it is not amenable to the Singapore courts' jurisdiction for the claims in the Jakarta Action.

75 Amenability is understood as meaning that the court has *in personam* jurisdiction over the party that the injunction seeks to bind. The court must have *in personam* jurisdiction over the respondent since the anti-suit injunction is addressed to the respondent who is ordered to exercise self-restraint or suffer the consequences prescribed by law: Adrian Briggs, *The Conflict of Laws* (Oxford University Press, 3rd Ed, 2013) at p 131.

76 A party makes itself amenable to the jurisdiction of the Singapore courts by seeking relief in a Singapore court. In *Bank of America National Trust and Savings Association v Djoni Widjaja* [1994] 2 SLR(R) 898, the respondent had commenced proceedings against the appellant bank in Singapore. Subsequently, the respondent commenced an action in Indonesia over the same subject matter. The appellant bank applied for an anti-suit injunction. The respondent asserted that he was not amenable to the Singapore jurisdiction as he was not physically present in Singapore. The Court of Appeal agreed with the first instance holding that the respondent having submitted himself and his claim to the jurisdiction of the Singapore courts, he could not assert that he was not amenable to the court's jurisdiction when it came to hearing the anti-suit application.

77 In *Glencore*, Rix LJ rightly drew a distinction between a case where the foreign party invokes the jurisdiction of the English courts by claiming here and the case of a foreign party who is brought to this jurisdiction by answering a claim:

> 45 In my judgment a distinction has to be made between the case of a foreign party who invokes the jurisdiction of the English court by claiming here, and the case of a foreign party who is brought to this jurisdiction by answering a claim within England's long-arm statute (formerly RSC, O.11 and now CPR, r. 6.20). In the first case the foreign claimant submits himself willingly to the jurisdiction. *He does so, and in my judgment must do so, without reservation, and is subject, so far as territorial jurisdiction is concerned, to all the incidents of litigation in this country, including, for instance, his amenability to a counterclaim.* He cannot say: 'I came here only for the purpose of my claim. I am not willing to accept this jurisdiction for the purpose of my defendant's counterclaim.' …
>
> [emphasis added]

78 The plaintiff's contention here is framed in terms of non-amenability to the Singapore courts' jurisdiction over the subject-matter of the Jakarta Action. This contention is misconceived.

79 The anti-suit injunction is sought in order to protect the integrity of the Singapore Action. What matters is whether the Singapore court has *in personam* jurisdiction over the parties in the Singapore Action. As long as it does, that jurisdiction would extend to the making of ancillary orders to protect its own processes. Here, the plaintiff had voluntarily submitted to the jurisdiction of the Singapore courts by choosing to bring its claim in Singapore. In these circumstances, I was satisfied that the plaintiff was amenable to the Singapore courts' jurisdiction for the purposes of the anti-suit injunction.

Discretion

80 The discretion to grant an anti-suit injunction (bearing in mind comity) must be exercised with great caution and only where the anti-suit injunction is necessary to serve the ends of justice.

(1) Natural forum

81 The bedrock for a claim to an anti-suit injunction in alternative forum cases is the issue of natural forum. What must be shown is not just that the foreign forum is not the natural forum, but that the forum issuing the anti-suit injunction is *the* natural forum: Jonathan Hill and Adeline Chong, *International Commercial Disputes: Commercial Conflict of Laws in English Courts* (Hart Publishing, 4th Ed, 2010) at para 11.2.3. This is because considerations of comity require that the forum has sufficient interest or sufficient connection with the case before it grants an anti-suit injunction: *Halsbury's Laws of Singapore* vol 6(2) (LexisNexis, 2009) at para 75.129.

82 Between two available fora, the search is for the one with which the dispute has the most real and substantial connection: *Sun Jin Engineering Pte Ltd v Hwang Jae Woo* [2011] 2 SLR 196 at [47]. Where circumstances have changed since the dispute arose, the question is whether the court should take into account the change to decide which forum has the most real and substantial connection to the dispute.

(a) The relevance of events following commencement of the suit

83 Learned counsel for the Applicants relied on the case of *Mohammed v Bank of Kuwait and the Middle East KSC* [1996] 1 WLR 1483 ("*Bank of Kuwait*") for the proposition that the question of natural forum is to be determined at the date the application for the anti-suit injunction is heard. [note: 43] In that case, the issue before the English Court of Appeal was whether *forum non conveniens* was to be assessed at the date of the hearing or the date on which the action was started.

84 In *Bank of Kuwait*, the appellant took the position that, save for rare exceptions, the general principle ought to be that the date to determine the availability of a foreign forum was the date of the action (not the hearing of the stay application). On this basis, it was argued that since Kuwait was not available as a forum to the plaintiff, an Iraqi citizen (because of consequences arising out of the invasion of Kuwait) at the date the action was commenced, it was wrong as a matter of law to find that it was, at the time of the stay application, available and to require the plaintiff to attempt to commence proceedings in Kuwait.

85 In finding for the plaintiff, the Court of Appeal held that the question as to whether an alternative forum was available (in this case Kuwait) was to be determined at the date of the application for a stay of proceedings. In exceptional and extreme cases, the stay could be granted on

the basis of a change in circumstances between that date and the date of the hearing if a fresh application for stay made at the date of the hearing would have succeeded despite having been brought so long after the proceedings were commenced. The appeal was allowed since there was no basis for concluding that Kuwait had become an available forum in the practical sense.

86 It is to be noted that the *Bank of Kuwait* case did not concern an application for an anti-suit injunction and the question of natural forum. Instead it was a case where the issue was whether the English court should stay the English proceedings on the grounds that Kuwait was the proper and available forum.

87 In the later case of *Lubbe and others v Cape Plc and related appeals* [2000] 1 WLR 1545, the plaintiffs brought proceedings in England against a company registered in England which owned a number of subsidiary companies in South Africa engaged in the mining and processing of asbestos. The plaintiffs alleged that the defendant-company had breached its duty of care it owed to employees of its subsidiary companies by failing to adopt proper working practices and safety precautions throughout its subsidiary companies. The issue was whether South Africa was the clearly more appropriate forum to adjudicate on a tortious claim brought by the plaintiffs (who were almost all South African citizens) against the defendant. In that context, a question arose as to whether the South African court constituted an available forum. It was contended that the courts in South Africa were not available at the time the plaintiffs brought their proceedings in England as the defendant did not indicate its willingness to be sued in South Africa. It was only until the hearing of the stay application that the defendant undertook to submit to the jurisdiction of the courts in South Africa.

88 The first instance judge concluded that South Africa was the clearly more appropriate forum and granted the stay of proceedings sought by the defendant-company. The Court of Appeal reversed that decision and placed some emphasis on the fact that the South African forum had been unavailable to the plaintiffs until the defendant offered undertakings during the hearing before the first instance judge. The defendant appealed. On appeal, the House of Lords took the view that the Court of Appeal should not have taken into account the timing of the defendant's undertakings to submit to the jurisdiction since the undertakings were before the first instance judge when he considered the issue of *forum non conveniens* (at 1565–1566).

89 The above cases stand for the proposition that there must be an available forum abroad at the date of the application for the stay, not the date of commencement of the suit. It logically follows that where circumstances have changed between the commencement of the suit and the application in question, the court may consider the new developments if they have a bearing on the issue of the availability of the alternative forum.

90 Indeed, I note that some support for this can be found in the English case of *Shell International Petroleum Co Ltd v Coral Oil Co Ltd* [1999] 2 Lloyd's Rep 606 ("*Shell International Petroleum*"). This was a case where disputes arose over the termination by the applicant of a service and trade mark agreement. The defendant protested the termination and threatened to bring proceedings in Lebanon for compensation. The applicant sought and obtained an order to restrain the defendant from commencing proceedings in Lebanon. The injunction was granted *inter alia* because the claim fell within the exclusive jurisdiction or arbitration clauses of the agreement.

91 Shortly before that hearing, the defendant issued proceedings in Beirut against the applicant (Shell) and a Mr Fakhr. It was common ground that the Beirut claim, framed (or limited) in this way, fell outside the exclusive jurisdiction or arbitration clauses.

92 Thomas J noted (at 608) that since the claim (as narrowed or limited) fell outside the exclusive

jurisdiction and arbitration clauses, Shell's application was (necessarily) founded on the assertion that the claim was vexatious and oppressive (*ie*, the claims were bound to fail). Thomas J, after reviewing the material before him, agreed that the claim was based on facts which were "plainly unsustainable" and was therefore vexatious. Given his finding that the action was vexatious, the learned judge went on to consider whether (bearing in mind comity) the English forum had a sufficient interest in or connection with the matter to justify the indirect interference of the foreign court which an anti-suit injunction entails.

93 Thomas J (at 610) had no doubt that the answer to the question of which court was the natural forum for deciding whether the claim was vexatious, was the English Court (in view of the previous history and relationship between the applicant and defendant).

94 The learned judge went on to find that both England and Lebanon could be regarded as *a* natural forum for the claim. Whilst the court also held that it could not be said that England was *the* natural forum for the trial of the claim, the injunction was still granted given the "extremely" unusual circumstances. The claim it will be recalled was found to be purely vexatious and the English court already had been involved in restraining a prior claim. That being so and notwithstanding the general rule that where a remedy was available in an English and a foreign court, the English court would not interfere unless it was *the* natural forum for trial of the action, the injunction was granted.

95 Whilst this decision was not cited by counsel, it is noted that Thomas J paid close attention to the previous history including the fact that the English court had already been involved in restraining a prior claim. Whilst the decision is not on all fours with the present case, it supports the view that a court which was not originally the natural forum for a particular claim can become the natural forum due to the progress of litigation before it on the claim in question, or on closely related claims.

96 Accordingly, I was satisfied that the appropriateness of adjudicating the dispute in Singapore must be assessed with reference to the state of affairs as at the date of the anti-suit injunction application. In this regard, I also note the comments made by the learned Professor Yeo Tiong Min SC in *Private International Law: Law Reform in Miscellaneous Matters* at para 35:

> … On the other hand, appropriateness of forum is a state of affairs that is susceptible to changes of circumstances over time. Thus, as a matter of practical justice, courts consider the factors for determining the natural forum at the time of the hearing.

(b) Is Singapore the natural forum?

97 I now turn to the question of whether Singapore is the natural forum to resolve the dispute between the parties. The court will take into consideration all relevant factors, including factors relating to convenience or expense (such as the availability of witnesses) and factors such as the law governing the transaction and the places where the parties respectively reside or carry on business: *John Reginald* at [34]. These factors are not exhaustive. V K Rajah J (as he then was), in *Peters Roger May v Pinder Lillian Gek Lian* [2006] 2 SLR(R) 381 ("*Peters Roger May*"), stated (at [20]):

> … A court has to take into account an entire multitude of factors in balancing the competing interests. The weightage accorded to a particular factor varies in different cases and the ultimate appraisal ought to reflect the exigencies dictated by the factual matrix. Copious citations of precedents and *dicta* are usually of little assistance and may in reality serve to cloud rather than elucidate the applicable principles.

98 Insofar as the Singapore Action is concerned, the plaintiff has accepted that the natural forum

for the claims in the Singapore Action is Singapore. [note: 44] It would be most surprising if the position was anything else given that the plaintiff chose to sue in Singapore and indeed resisted (at an earlier stage) an attempt by Oxel to have the defamation claim relating to the same E-KTP Project stayed on the basis that Indonesia was the more appropriate forum to hear the dispute. In particular, Mr Tannos and Ms Tannos filed affidavits to resist the stay application (with respect to the defamation claim) on the basis that:

(a) Singapore is the just and convenient forum given the numerous connecting factors linking the claims to Singapore. Mr Tannos referred in particular to the fact that his family has now relocated to Singapore.

(b) It will be just and convenient for all issues in the Singapore Action (which then included the defamation claims) to be heard, investigated and determined in a single forum *ie*, Singapore, so as to avoid duplicity of proceedings and the risk of inconsistent findings.

99 Nevertheless, the plaintiff resisted the application for anti-suit injunction on the basis that the Jakarta Action is independent of the Singapore Action. What is argued is that there is a sufficient difference between the claim as formulated against ST-AP, Oxel and Mr Cousin, and the claim formulated against ST-NV, PNRI and Mr Cousin such that the natural forum for the latter claim remains Indonesia.

100 The plaintiff further submits that Indonesia is clearly the more appropriate forum to hear the Jakarta Action as the Jakarta Action has a real and substantial connection to Indonesia. Four reasons were advanced: [note: 45]

(a) The parties to the Jakarta Action with exception of Mr Cousins are resident in Indonesia or have a presence in Indonesia.

(b) The key witnesses to the Jakarta Action are resident in Indonesia and are unable to travel to Singapore as they are under investigation for corruption-related matters.

(c) The documents relevant to the Jakarta Action are located in Indonesia and are being held by the Indonesian Anti-Corruption Authorities.

(d) The Consortium agreement was signed in Indonesia and is subject to Indonesian law and the unlawful acts by PNRI, ST-NV and Mr Cousin took place in Indonesia.

101 The following points, in response, by the Applicants must also be borne in mind:

(a) Even though the plaintiff is an Indonesian incorporated company, its central control and management is exercised from Singapore. [note: 46] Mr Tannos is a Singapore Permanent Resident. He has been residing in Singapore with his family which includes his daughter Ms Tannos, who is also a director of the plaintiff company. [note: 47]

(b) The third defendant is resident in Singapore. Indeed, it bears repeating that the plaintiff has served Mr Cousin in respect of the Singapore Action in Singapore. [note: 48] That said the plaintiff submits that Mr Cousin's residence has not been proven by way of independent and reliable evidence and he appears to have property and family interests in Indonesia.

(c) ST-AP is a Singapore company. ST-NV is a Dutch company and does not have an office in

Indonesia. [note: 49]

(d) There have been several rounds of discovery in the Singapore Action. Documents disclosed include the Consortium Agreement and subsequent amendments. [note: 50]

(e) Learned counsel for the Applicants also relied on the AR's decision in *Beckkett* for the argument that even if Indonesia was at the onset of dispute the natural forum of the claim that is being asserted in the Singapore Action and the Jakarta Action, the developments over the last three years had tilted the balance in favour of Singapore as the natural forum. [note: 51] The factors included: (i) that Singapore proceedings had gone on for three years; (ii) all parties to the Singapore Action were legally represented and had built up considerable expertise and knowledge of the case; and (iii) the numerous interlocutory applications that had taken place in Singapore.

102 On the whole, I agreed that the developments and steps taken in the Singapore Action had tilted the balance in favour of Singapore as the natural forum. At this juncture, it is worth stressing again that the plaintiff accepts that Singapore is the natural forum for the claims in the Singapore Action. [note: 52]

103 This situation is similar to that of the English case of *CNA Insurance Co Ltd v Office Depot International (UK) Ltd* [2005] EWHC 456 (Comm). In that case, the dispute concerned the insurance of a warehouse or distribution centre in Oldham. The insurance comprised a series of programmes made up of local policies, governed by English law, and "difference in condition" policies, governed by the laws of California or Florida. The warehouse suffered unequal settlement and the defendants brought proceedings against CNA as sole insurers on one of the local policies. The defendants intended that any proceedings on the DIC policies, should they be necessary, be pursued in Florida. The insurers served a defence and counterclaim, and brought declaratory proceedings seeking to ensure that all liabilities under all potentially relevant policies were determined in one action in England. The defendants challenged English jurisdiction and commenced proceedings in a Florida State Circuit Court. The insurers brought an application for an anti-suit injunction to restrain the proceedings in Florida.

104 The English High Court held (at [26(vi)]) that in view of the advanced stage of proceedings in England, the conduct of the parties during the course of proceedings could make what might otherwise not have been an appropriate forum for a trial the only appropriate forum for a trial:

> Even if it were right, as Mr Boswood submits, that had the claim been made originally only by OD Inc under the period 5 DIC policies, the appropriate forum would have been Florida, the simple fact is that this is not what happened. The first proceedings were commenced in this jurisdiction by the defendants. There has been a submission to the jurisdiction. There has been an agreement that this court should proceed before the courts in Florida. Very substantial costs have been incurred here as a result, including the instruction of experts on the causes and manifestation of the defects in the warehouse. Those advising insurers in this jurisdiction have acquired and absorbed considerable information and knowledge about the issues both legal and factual. *In principle, I see no reason why the conduct of the parties during the course of proceedings should not make what might otherwise not have been an appropriate forum for a trial the only appropriate forum for a trial.*
>
> [emphasis added]

105 Indeed, it would be highly unrealistic and impossible for the court to turn a blind eye to all that has been said and done in the Singapore Action. It has been three years since the suit was commenced and the parties' positions have altered materially in that time. Indeed, some may even question whether the plaintiff is entitled to challenge Singapore as the appropriate or natural forum given that it decided to sue ST-AP, Oxel and now Mr Cousin in Singapore in respect of the losses and damages arising out of the E-KTP Project. To be fair, the plaintiff has not challenged the appropriateness of Singapore as the forum to adjudicate the issues arising out of the Singapore Action as it takes the position that the Jakarta Action is (sufficiently) different from the Singapore Action.

106 For completeness, I have taken note of the plaintiff's submission that the conspiracy between PNRI, ST-NV and Mr Cousin took place in Indonesia and was for the objective of assisting PNRI seizing the plaintiff's share of work in the E-KTP Project ("**the Indonesian Conspiracy**"). Indeed, whilst the plaintiff submitted that the conspiracies alleged in the Singapore Action and Jakarta Action were separate and distinct, it is reasonably clear that the Singapore conspiracy (to supply electronic chips that could not be used) was for the purpose of helping or at least assisting PNRI in its plan to take over the plaintiff's allocation under the Consortium agreement.

107 I have also taken account of the submissions on the location of witnesses. Whilst there are several potential witnesses (members of the Consortium) to the claim against PNRI who are under travel restriction orders placed by the Indonesian authorities, the issue as to whether it is proper for the claim against PNRI to be heard in Singapore is not before me. The anti-suit injunction sought in the application before me is only directed at the claim against ST-NV and Mr Cousin. To be clear, even if the anti-suit injunction is granted, the plaintiff may continue to pursue its claim against PNRI (and/or other members of the Consortium) for loss and damage arising from the reduction of the plaintiff's share of work in the E-KTP project. In any event, whilst there may be some difficulties for some PNRI personnel to attend in Singapore, there is no evidence before me to suggest that the problem is insuperable.

108 To conclude, I am of the view that, notwithstanding the claimed differences between the Singapore Action and the Jakarta Action, the natural forum to resolve all the matters between the plaintiff, ST-AP/ST-NV as well as Mr Cousin, is Singapore. I am only concerned with the claims against Mr Cousin and ST-AP/ST-NV. In this respect, I am satisfied that the natural forum for the resolution of the dispute is Singapore.

109 In reaching the above conclusion, reference can be made again to the *Glencore* decision. In that case, Rix LJ comments (at [63]):

> … There are existing proceedings in England. England is the natural forum for those proceedings as is demonstrated by the receivership order, the great accumulation of actions and parties which are all joined to the Metro litigation … . *Above all there is the need to find one forum in which the complexity of such litigation can, if not entirely, then at any rate for the most part, be resolved in such a way as to bind but also to assist as many parties as possible.* Glencore, the applicant for the injunction, has a role, perhaps the leading role in the litigation and a legitimate interest to protect. Although Glencore has had to go to Singapore to arrest the ships … and thus gain security for its claims, it has proposed that these actions should be transferred to London, but has been rebuffed.
>
> [emphasis added]

(2) Vexatious and/or oppressive conduct

110 I was satisfied that that the plaintiff's pursuit of both actions was vexatious and merited the grant of an anti-suit injunction. *First*, the issues arising out of both sets of proceedings were inextricably intertwined and the Singapore Action had reached an advanced stage and was well ahead of the Jakarta Action. *Second*, there was some semblance of bad faith in the plaintiff's pursuit of both actions.

111 I will now elaborate on each reason in turn.

(a) Duplicitous proceedings

112 Where the proceedings are duplicitous, the law recognises the undesirable consequences that may arise given the risk of conflicting judgments. Beyond this, it is unfair or unconscionable for the defendant to have to fight the same battle twice. Thus, where a party to litigation in one country begins proceedings in another country on the same subject matter, his conduct may be regarded as a "vexatious harassing of the opposite party": see *Stichting Shell Pensioenfonds v Krys and another* [2015] AC 616 at [18]. That said, there is no presumption that a multiplicity of proceedings is vexatious: per Lord Goff, *Société Nationale Industrielle Aerospatiale v Lee Kui Jak and another* [1987] 1 AC 871 at 894.

113 In *Virsagi*, the Court of Appeal observed that there has been some dissonance in the preceding cases as to what precisely constitutes duplicitous proceedings (or *lis alibi pendens*). On one hand, a differently constituted Court of Appeal in *Yusen Air & Sea Service (S) Pte Ltd v KLM Royal Dutch Airlines* [1999] 2 SLR(R) 955 focused on: (a) the identity of the parties, (b) the issues arising from both sets of proceedings, and (c) the underlying factual matrix. On the other hand, more recent High Court decisions have also focused on the causes of action and the relief sought by the parties in the various proceedings.

114 In those circumstances, the Court of Appeal in *Virsagi* held:

> 47 We are of the view that in deciding whether there is a *lis alibi pendens*, the first legal port of call ought to be the identity of the parties and the causes of action concerned. This will enable the court to identify whether there are same or similar issues arising from the same factual matrix which are before both the local and foreign court(s), and, if so, the extent of these similarities. The nature of the reliefs sought will be relevant to the analysis, given that in most cases the reliefs sought and the causes of action concerned will be inextricably linked with each other. However, the court ought not to hold, without more, that the local and foreign court(s) are faced with the same or similar issues by focusing merely on the reliefs sought – for example, whether the claimant is entitled to the same quantum of damages as a remedy. As for the degree of similarity necessary, the party seeking to demonstrate that there is a *lis alibi pendens* need not show a total correspondence of issues, but the court will be more likely to find a *lis alibi pendens* where the issues are of a greater degree of similarity.

115 The Court of Appeal made an important observation that the court should not conclude that the local and foreign courts are faced with the same or similar issue just by focusing on the reliefs. It follows that the reverse must also be true: the fact that the reliefs are not the same does not necessarily mean that the issues are not the same or similar. What is required is that the court should assess the matter in the round by taking account of all the relevant factors.

116 In *Virsagi*, the Court of Appeal found against *lis alibi pendens*. In the Singapore action, the plaintiff company "V" and the defendant companies "W" and "B" were involved in a training centre set up in Bangladesh for workers intended for the construction industry in Singapore. A joint venture

company WTPL was set up for this purpose together with a Bangladesh partner GB. Disputes subsequently arose. On 5 January 2012, the Bangladesh action was commenced by V against WTPL. The suit in Bangladesh concerned minority oppression under the Bangladesh Companies Act. Two suits were commenced in 26 January 2012 against W for inducing breach of contract by B. The Singapore action against B was for breach of contract.

117 W and B the defendants in the Singapore action applied to stay the Singapore proceedings. At first instance, W and B argued that the parties were effectively the same. This point was not examined further since counsel for V later conceded the point. That said, the Court of Appeal found that the causes of action and issues were not the same: they were *entirely* different. The Singapore action was for the tort of inducing breach of contract or unlawful interference with an agreement. The action in Bangladesh was pursuant to a provision in the Bangladesh Companies Act for the protection of minority shareholders interest. The issues arising were found to be completely different. Consequently, *lis alibi pendens* did not apply as between the Bangladesh and Singapore proceedings. That said, the Court of Appeal agreed with the judge at first instance that the proceedings nevertheless constituted parallel or related proceedings and that the Singapore proceedings were to be stayed in any case on the basis of *forum non conveniens*. The application in the Bangladesh proceedings had already been heard, dismissed and was under appeal at the time the appeals were heard in the Singapore proceedings.

118 I will now turn to examine the factors set out by the Court of Appeal in *Virsagi*.

(i) Identity of parties

119 The plaintiffs in both actions are identical. However, there are some differences in the parties involved in the Jakarta Action and the Singapore Action. The *first* and most obvious difference is that the Jakarta Action is against ST-NV, ST-AP's parent company. The *second* difference is that PNRI, which is not a party to the Singapore Action, is named as the second defendant. The *third* difference is that Oxel, the second defendant in the Singapore Action (who supplied the actual chips in dispute) is not a party to the Jakarta Action.

120 I am of the view that the differences are immaterial. This is because:

(a) This is an exceptional case in which the plaintiff has treated ST-AP and ST-NV interchangeably. Both ST-AP and ST-NV are being sued in two jurisdictions in the same capacity and for essentially the same wrongs. In the Singapore Action, ST-AP is being sued in its capacity as the employer of Mr Cousin and Ms Florentin. Curiously, in the Jakarta Action, ST-NV is being sued in its capacity as the employer of the same individuals.

(b) The involvement of PNRI and Oxel is irrelevant as the anti-suit injunction is directed only at the Jakarta claim against ST-NV and Mr Cousin. Therefore, what is at issue is whether the Singapore and Jakarta claims against ST-NV/ST-AP and Mr Cousin are duplicitous.

(ii) Issues raised

121 It is fair comment that the Jakarta claim against ST-NV and Mr Cousin were founded on the same wrongful acts that are the subject of the Singapore Action. For example:

(a) In the Singapore Action, it is asserted that Mr Cousin, prior to receiving Oxel's quotation, sent the plaintiff a quotation for electronic chips that was different from the Tender Evaluation Chips despite being fully aware that the plaintiff was only willing to contract for the same type of

chips. [note: 53] The summary of facts for the Jakarta Action provided by the plaintiff's Indonesian lawyer sets out the same allegation. [note: 54]

(b) In the Singapore Action, it is pleaded that Mr Cousin misrepresented to Mr Tannos of the plaintiff that ST-AP would supply the same electronic chips as the Tender Evaluation Chips but that Oxel was the exclusive distributor of ST-AP for Indonesia and that all orders would have to be placed through Mr Andi Winata's company (Oxel). [note: 55] The summary of facts for the Jakarta Action provided by the plaintiff sets out a similar allegation. To be clear, the summary states that the plaintiff, relying on representations by PNRI and Mr Cousin that the electronic chips offered by ST-NV could be used for the E-KTP Project, entered into a contract with Oxel for the supply of ST-NV electronic chips that were sourced through ST-NV's subsidiary, ST-AP. [note: 56] Whilst there are some slight differences, the substance is essentially the same.

(c) In the Singapore Action, it is pleaded that Oxel had breached the terms of the agreement by failing to supply to the plaintiff electronic chips that were the same as the Tender Evaluation Chips. [note: 57] It is also pleaded that ST-AP breached the terms of the collateral contract by failing to manufacture the same electronic chips as the Tender Evaluation Chips for Oxel to supply to the plaintiff. [note: 58] The substance of this complaint is said to be essentially repeated in the Jakarta Action. [note: 59]

(d) In the Singapore Action, it is asserted that Oxel concealed the fact that the electronic chips which they intended to supply could not be used by refusing to provide the plaintiff with samples. [note: 60] It is also pleaded that Mr Cousin participated in the concealment. [note: 61] The basic allegation is repeated in the Jakarta Action. [note: 62]

(e) In the Singapore Action, it is pleaded that the first three deliveries of electronic chips comprised chips of 18 kilobytes capacity instead of 12 kilobytes and were not identical to the Tender Evaluation Chips. [note: 63] The same point surfaces in the Jakarta Action. [note: 64]

(f) In the Singapore Action, it is pleaded that ST-AP refused to render any assistance to the plaintiff despite representations it would make a trip to Indonesia to explain the mistake to the Indonesian Authorities. [note: 65] It is further pleaded that the representations were made by one Ms Florentin. [note: 66] In the Jakarta Action, what is asserted is that the plaintiff met with Marie France Florentin *of ST-NV*. After explaining that the chips provided by Oxel were different and could not be used and that Oxel was unwilling to send a technician to get to the root of the problem, the said Marie France Florentin promised to help by going to Indonesia to meet the relevant authority. [note: 67]

(g) In the Singapore Action, it is pleaded that on 29 February 2012 a group of armed gangsters appeared at the residence of the Tannos family in Jakarta and caused a commotion. [note: 68] It is pleaded that the gangsters could only be acting under the instructions of Oxel. On the other hand, in the Jakarta suit, what is stated is that the incident occurred without specifically alleging that the gangsters were acting under the instructions of Oxel. [note: 69]

(iii) Relief sought

122 Learned counsel for the plaintiff contended that the proceedings were not duplicitous as the

Jakarta Action concerned the First Reduction whereas the Singapore Action concerned the Second Reduction. The underlying premise of his contention was that the First Reduction could be neatly severed from the Second Reduction. However, the plaintiff's own evidence showed otherwise.

1 2 3 *First*, the Jakarta Action appears to involve both the First and Second Reductions. Both reductions were mentioned in the summary of claim attached to the affidavit filed by the plaintiff's Indonesian lawyer. At [4] of the summary, it was stated: [note: 70]

> g. On 19 December 2011, the PNRI Consortium, without inviting or notifying Sandipala, held a consortium meeting in which PNRI seized production and personalisation of a portion of Sandipala's share of production and personalisation of E-KTP cards. …
>
> …
>
> m. … [D]uring a consortium meeting held on 10 July 2013, a representative of Sandipala was forced to, and did agree to do so under intense duress, agree to relinquish a portion of Sandipala's already reduced share of personalisation and production of the e-KTP cards to PNRI.

124 Further, in Mr Tannos' affidavit filed in response to the application for an anti-suit injunction, he clarified that the Jakarta Action concerned both the First and Second Reductions. [note: 71] He stated at [46]:

> The Jakarta Claim, conversely, concerns an amendment to the Consortium Agreement on 19 December 2011 between members of the PNRI Consortium which Sandipala, one of the members of the PNRI Consortium, did not agree to. *The Jakarta Claim, additionally, concerns an agreement made on 10 July 2013 between the members of the PNRI Consortium that Sandipala's shares were reduced further.* While Sandipala did agree to the agreement during the 10 July 2013 meeting, Sandipala has continually asserted that it did so under duress and intense pressure from PNRI.
>
> [emphasis added]

125 In view of the above, counsel's argument that the Jakarta Action only concerned the First Reduction could not stand. There was a serious risk that Mr Cousin and ST-NV/ST-AP would be placed in double jeopardy and indeed face the possibility of conflicting decisions should both actions proceed concurrently.

(iv) Conclusion

126 In my judgment, the fact that the plaintiff sliced and diced its claim into two sets of proceedings does not necessarily make the two claims different. It merely makes them each a part of the same whole. The Applicants argued that the plaintiff is trying to carve up the claims so as to avoid the prospect of an anti-suit injunction. Indeed, I note that in the *Glencore* case, the respondent ship-owners unsuccessfully argued that as a result of various settlements and discontinuances, the issues raised in the US proceedings no longer formed part of the English proceedings. In short, while it is not necessary to find that the proceedings are, strictly speaking, duplicitous, it is nevertheless clear to me that two actions are inextricably intertwined and are premised on the same wrongful acts.

(v) Advanced stage of the Singapore Action

127 Next, I considered the advanced stage of the Singapore Action to be a factor that pointed in favour of granting the anti-suit injunction. In *Kishinchand Tiloomal Bhojwani and another v Sunil Kishinchand Bhojwani and another* [1996] 1 SLR(R) 861, in determining whether the pursuit of parallel proceedings in a foreign court was vexatious or oppressive, Judith Prakash J took into account the fact that the Singapore action was at an advanced stage: the pleadings were closed and directions had been given for the further conduct of the matter and its trial (at [14]).

128 In the present case, the fact remains that the plaintiff chose to sue in Singapore and the Singapore Action has reached an advanced stage. The Singapore Action has been underway for over three years. Extensive discovery has already taken place and numerous affidavits have been filed by the parties. Significantly, the plaintiff alone has filed at least 40 affidavits and eight lists of documents. The first and second defendants have each filed three lists of documents. The matter has also been set down for a 12-day trial in March/April 2016. In comparison, the Jakarta Action was commenced late in the day and after the Singapore Action was set down for trial.

129 Comity properly requires that control of the pace and steps in the Jakarta Action are matters solely for the court in Jakarta. What the court in Singapore must do is to look at the facts and circumstances as a whole, including the history of the proceedings and litigation. I find that the Jakarta Action brought against ST-NV and Mr Cousin is vexatious and oppressive to the Applicants by reference to the Singapore Action. Indeed, aside for the above comments, the remarks below on bad faith are also relevant in supporting the finding of vexatious conduct.

(b) Bad faith

130 Leaving aside the risk of conflicting judgments and the advanced stage of the proceedings in the Singapore Action, I also noted the suggestion that the Jakarta Action was not a *bona fide* claim and that it was in fact brought to: (a) harass Mr Cousin, and (b) bypass the judicial process as the plaintiff was unhappy that trial dates were fixed for March and April 2016, which it considered as being too late.

1 3 1 *First*, as noted earlier, the Jakarta Action was commenced shortly after the plaintiff's unsuccessful attempt to bring forward the trial dates for the Singapore Action. The plaintiff has urged the court to note that in the ordinary course of events, law suits commenced in Indonesia are completed with six months. [note: 72] I make the observation that on this basis it would follow that the Jakarta Action though started much after the Singapore Action, would be finished long before the Singapore Action would be disposed of. Given the real possibility of conflicting decisions on what had transpired, the question arises as to why the plaintiff waited to this late stage to bring the Jakarta Action especially since the Singapore Action had been set down for trial.

1 3 2 *Second*, in the Jakarta Action, the Applicants point out that the plaintiff took positions that appear, at first glance, to be rather untenable and sometimes in conflict with the positions that it had taken in the Singapore Action.

(a) The plaintiff's purported basis for naming ST-NV as a defendant to the Jakarta Action rested entirely on its allegation that Mr Cousin made certain representations in his capacity as an employee of ST-NV. This was done despite the plaintiff being well aware that Mr Cousin was at all relevant times an employee of ST-AP and never ST-NV. Indeed, it bears repeating that in the Singapore Action, the claim against ST-AP is based on the assertion that Mr Cousin was the employee of ST-AP. [note: 73]

(b) The plaintiff sought to persuade the Jakarta court that it had jurisdiction over ST-NV on the false basis that ST-NV has a representative office in Indonesia. The plaintiff would surely have known it to be false given that information relating to the addresses of the ST Group's representative offices in each country is set out on ST Group's website.

(c) The plaintiff is seeking relief in the Jakarta Action, namely damages in respect of the First Reduction, which it had previously conceded in the Singapore Action to be speculative or otherwise unsustainable.

133 *Third*, I noted that the First Reduction complained of in the Jakarta Action was initially part of the Singapore Action. The Applicants submitted that the plaintiff had abandoned its claim in Singapore in respect of the First Reduction. The point made is that the original claim in respect of the First Reduction was plainly unsustainable since the first batch of chips was only delivered to the plaintiff on 22 December 2011. That being so, the alleged problems with the chips supplied by Oxel could not have been the reason for the First Reduction on 19 December 2011.

134 *Fourth*, as mentioned already, no suit was brought against PNRI in respect of that reduction until very recently. It bears repeating that the First Reduction took place a long time ago in December 2011. Indeed, the first reduction was larger than the second reduction. It will be recalled that in *Shell International Petroleum* the English court found that the defendant had been casting around for a claim to bring quite irrespective of whether it had any real substance. The foreign proceeding in question was said to be purely vexatious and that even though England was just *a* natural forum (as opposed to *the* natural forum) for the trial of the action that the grant of an anti-suit injunction was justified. That said, the mere fact that the plaintiff has been slow to bring a legal claim against PNRI, ST-NV and Mr Cousin in Indonesia in respect of the First Reduction does not of course compel the conclusion of bad faith or vexatious conduct. It is, however, a factor to be borne in mind.

135 Looking at the matter in the round, I took the view that the conduct of the plaintiff casts doubt on the *bona fides* of the Jakarta Action and that the pursuit of the Jakarta Action constituted vexatious and oppressive conduct on the part of the plaintiff. To be clear, whilst learned counsel for the Applicants raised the issue of bad faith, what is required by the established case law is sufficient proof that the proceedings are vexatious and/or oppressive. Bad faith is a factor that can be taken into account in making the finding.

136 At this juncture, it bears repeating that the plaintiff chose to sue in Singapore and had participated voluntarily and actively in the Singapore Action. Furthermore, the Singapore Action is at an advanced stage. In a common plaintiff situation (*ie*, where the injunction-respondent commenced actions concurrently in two jurisdictions), the court may be more prepared to grant an anti-suit injunction. The comments of the Court of Appeal in *Koh Kay Yew* at [22] are pertinent:

> 22 Having said that, we have to remind ourselves that, while the same principles and approach apply to every case of this nature, each case turns strictly on its individual facts. Further, in dealing with cases such as the present one, where the appellant had only started proceedings in one jurisdiction, the courts should be more cautious than not in granting injunctions compared with situations, in which a party had commenced actions concurrently in two jurisdictions. In the latter situations, it is understandable that any court should feel uncomfortable about allowing both actions to go on. Not only would the same issue be litigated twice but there would also be the risk of having two different results, each conflicting with the other. And these problems would have arisen simply because one party decided to sue in one place too many. In such circumstances, courts, including those in Singapore, should prevent the inherent abuse of the different judicial systems in different jurisdictions by compelling that party to choose the

jurisdiction that he wants to litigate in. The underlying need to prevent a multiplicity of similar proceedings justifies the courts being more prepared to grant an injunction.

137 In the same tenor, the learned author of *The Anti-Suit Injunction* (Oxford University Press, 2008) remarked at para 5.03 that the greater the positive and voluntary involvement of the injunction respondent in the local proceedings, and the longer the local suit has been allowed to proceed before the commencement of the parallel foreign proceedings, the stronger the case for an injunction.

(3) Alleged injustice to the plaintiff should the anti-suit injunction be granted

138 The anti-suit injunction would not deprive the plaintiff of any potential advantage in the Jakarta Action. Whilst it was suggested that the plaintiff may face difficulties in joining PNRI as a defendant to the Singapore Action, [note: 74] this argument was clearly misconceived. As mentioned earlier, the anti-suit injunction sought did not seek to restrain the claim against PNRI; it was only directed at the claims against Mr Cousin and ST-NV. The plaintiff is free to pursue its claim against PNRI in Jakarta. The present application does not seek to restrain proceedings in Jakarta against PNRI.

(4) Conduct of the Applicants

139 I pause here to note the plaintiff's allegation of bad faith against the Applicants. Essentially, the complaint is that they have been slow off the mark in respect of the application for an anti-suit injunction and that they do not honestly, sincerely and genuinely intend to restrain the Jakarta proceedings.

140 The Jakarta Action was commenced in February 2015 but the application for an anti-suit injunction was only taken out in July 2015. There has been no application for a stay of proceedings before the CJDC. Instead, the position taken by Mr Cousin was that he had not been properly served with the documents for the Jakarta Action. The plaintiff submits that ST-NV and Mr Cousin should have, at the very least, stated in correspondence or through their Indonesian lawyers to the CJDC that they objected to the bringing of the Indonesian proceedings against them. [note: 75]

141 Whilst delay may be a relevant factor, I note that Mr Cousin did in fact state to the CJDC at a preliminary hearing on 29 July 2015 (by letter and through his Indonesian counsel) that he was reserving his rights to contest the jurisdiction of the Indonesian courts. [note: 76] It will be recalled that at this point, the dispute or complaint before the CJDC concerned whether the proceedings had been properly served on ST-NV and Mr Cousin. Prior to that preliminary hearing, the Singapore lawyers for the Applicants had on 23 July 2015 sent a letter to the plaintiff's lawyers seeking a confirmation that they would not take further steps in the Jakarta Action pending the hearing of the application for anti-suit injunction in Singapore (that had been fixed for 28 August 2015). When no response was received, an application for an *ex parte* interim anti-suit injunction was made. In the circumstances, I reject the allegation of bad faith against the Applicants.

(5) Conclusion

142 The very belated commencement of the Jakarta Action, the almost complete (if not complete) identity of issues *vis-à-vis* the plaintiff, Mr Cousin and ST-AP/ST-NV in both proceedings as well as the lack of a good explanation for the duplicity led me to conclude that the pursuit of the Jakarta Action against Mr Cousin and ST-NV was vexatious and oppressive. Coupled with my finding that Singapore is the natural forum for the dispute between the aforementioned parties, I was satisfied

that the balance of justice lay in favour of granting the anti-suit injunction sought.

Setting Aside Application

143 The plaintiff sought to set aside the *ex parte* interim injunction obtained by the Applicants on 4 August 2015. The grounds for the application may be broadly characterised into: (i) procedural irregularity and (ii) material non-disclosure.

144 With regard to the first issue, the plaintiff's argument was that the application for the Interim Order was procedurally irregular because it was not accompanied by an originating process. This is without merit. I held earlier (at [56] above) that the application for the final anti-suit injunction did not have to be made by way of an originating process and could be made by way of a summons in chambers in the existing proceedings. My comments also apply to the Interim Order. This leaves us with the second issue of material non-disclosure. Before I proceed to address the plaintiff's complaint, it will be useful to first set out a brief timeline of the events surrounding the application for the Interim Order.

Brief facts

145 On 6 July 2015, ST-AP and Mr Cousin took out an application for an anti-suit injunction in Singapore. The hearing for the anti-suit injunction was fixed for 28 August 2015.

146 On 23 July 2015, solicitors for ST-AP and Mr Cousin, Rajah & Tann LLP, sent a letter to the plaintiff's solicitors, Gurbani & Co, requesting the plaintiff to undertake not to take further steps pending the hearing of the anti-suit summons in Singapore. No response was received.

147 On 29 July 2015, there was a preliminary hearing at CJDC. The first and third defendants attended the hearing through Indonesian lawyers. A letter was placed before the CJDC stating, *inter alia*, Mr Cousin was resident in Singapore and that he had not been served in Singapore and that Mr Cousin was not admitting or submitting to the jurisdiction of the Indonesian court. The CJDC adjourned the preliminary hearing to 12 August 2015. ST-NV and Mr Cousin were required to appear on 12 August 2015 failing which there was a possibility of a default judgment being granted by CJDC.

148 On 4 August 2015, an *ex parte* interim anti-suit injunction was applied for by ST-AP and Mr Cousin on the basis that the hearing of the substantive application (28 August 2015) post-dated the next hearing by the CJDC set for 12 August 2015. The interim injunction was granted on the same day.

Decision

149 The core of the plaintiff's complaint is that the following facts were not disclosed:

(a) By 4 August 2015, three hearings had already taken place before the District Court.

(b) During these three hearings, Indonesian lawyers had requested that the Indonesian proceedings be served on Mr Cousin in Singapore.

(c) ST-NV and Mr Cousin had never objected to the Indonesian claim before the CJDC. Indeed, in the oral submissions, it was said that the CJDC had not been apprised of the alleged similar or identical proceedings in Singapore.

150 As is clear from above, the alleged material non-disclosure related to the urgency and

necessity of the *ex parte* application. The need was said to be urgent because of the next preliminary hearing had been fixed for 12 August 2015 and there was a fear that, if ST-NV and Mr Cousin did not appear, the CJDC would begin hearing the plaintiff's claim. These were said to be material in that they were relevant to the exercise of the judicial discretion. Of course, whether a different decision would have been reached does not matter.

151 Whilst it is clear and settled law that a duty of full and frank disclosure of material facts governs *ex parte* applications: *Tay Long Kee Impex Pte Ltd v Tan Beng Huwah (trading as Sin Kwang Wah)* [2000] 1 SLR(R) 786 at [21], I am not satisfied that this is such a case where a breach has been committed.

152 At the *ex parte* hearing, counsel for the Applicants drew my attention to the letter that had been sent to the CJDC on 21 July 2015 by Mr Cousin. [note: 77] In that letter, Mr Cousin stated, *inter alia*:

(a) that he had not been served in Singapore where he had been residing;

(b) that he had been joined as defendant in a lawsuit in Singapore (Suit 542/2012);

(c) that the Singapore Action was ongoing and that the papers for the Singapore Action had been served on him at a Singapore address;

(d) that the claims in the Jakarta Action against him are similar to those in the Singapore Action;

(e) that he requests the CJDC to adjourn examination of the Jakarta suit until after the Singapore High Court issues its judgement;

(f) that if the CJDC is inclined to proceed, that he should be treated in the proper manner and served in Singapore; and

(g) that for the avoidance of doubt, the letter was not to be construed as a an admission or submission to the jurisdiction of the Indonesian courts.

153 Also shown to me at the *ex parte* hearing was a letter dated 31 July 2015 written by the Indonesian lawyers who attended on behalf of ST-NV and Mr Cousin at the preliminary hearing on 29 July 2015. The letter explained that Mr Cousin's letter was conveyed to the CJDC at the hearing. The Indonesian lawyers concluded the letter with the statement that the next hearing date was 12 August 2015 and that the CJDC would start reading and examining the suit at that hearing. Unless the plaintiff was agreeable to an adjournment or withdrew the Indonesian suit, it would be necessary for ST-NV and Mr Cousin to appear at the next hearing (in person or by counsel). If they failed to do that a form of default judgment might be rendered.

154 The plaintiff further asserted that it should have been made clear to me that under Indonesian law, if the defendants did appear and contested the claim that the matter would (in the normal course of events) have been sent for mediation. Only after mediation had taken place would the hearing proceed. The point apparently being that there was no urgency if the defendants appeared. Then again, it was also submitted, as noted above, that ordinarily law suits before the Indonesian courts are completed within six months. [note: 78] Looking at the facts and circumstances as a whole, I am satisfied that there has been not been any non-disclosure of material facts. Even though I was not apprised in detail of what transpired at each of the three hearings, I am nonetheless satisfied

that I was apprised of all the relevant and material points. Indeed, I note that in his reply oral submissions, counsel for the Applicants pointed out that the second hearing did not even take place. It was adjourned for reasons to do with the unavailability of the Indonesian judge.

Conclusion

155 To conclude, I found that the procedural objections raised by the plaintiff were unfounded. I also dismissed the allegation of material non-disclosure raised against the Applicants in respect of the *ex parte* hearing.

156 Given my finding that plaintiff is amenable to the Singapore courts' jurisdiction that Singapore is the natural forum for resolving the disputes between the plaintiff and the Applicants, the proceedings are closely related and my comments on oppression and vexatious conduct (but bearing in mind the importance of comity), I granted the Applicants the anti-suit injunction sought. In reaching my decision, I stress again that ultimately the foundation of an anti-suit jurisdiction in a case such as this (where proceedings have been commenced by the plaintiff in Singapore) is unconscionability, the conduct of the plaintiffs, and the advanced stage of the Singapore proceedings. The order is directed against the plaintiff and not the CJDC in Indonesia whose court processes are and remain solely and rightly within their own purview and control. The order does not require the plaintiff to stay or withdraw the Jakarta Action against PNRI.

Costs

157 To be clear, there are two sets of costs that I am concerned about: the first pertaining to the Interim Order in SUM 3725, and the second pertaining to the final anti-suit injunction ("Final Order") in SUM 3342.

158 At the hearing on 4 September 2015, I directed parties to tender brief submissions to the court on the appropriate basis for the costs award. Costs are to be taxed or agreed by reference to my decision on the basis of the costs award which I will shortly render.

[note: 1] Statement of Claim (Amendment No. 4), para 1

[note: 2] Statement of Claim (Amendment No. 4), para 2

[note: 3] Statement of Claim (Amendment No. 4), para 3

[note: 4] Statement of Claim (Amendment No. 4), para 3A

[note: 5] Affidavit of Paulus Tannos dated 15 November 2013, para 10

[note: 6] Statement of Claim (Amendment No. 4), para 4

[note: 7] Statement of Claim (Amendment No. 4), para 4

[note: 8] First and Third Defendants' Written Submissions, para 7(e).

[note: 9] Statement of Claim (Amendment No. 4), para 5

[note: 10] Statement of Claim (Amendment No. 4), para 5A

[note: 11] Statement of Claim (Amendment No. 4), para 6

[note: 12] Statement of Claim (Amendment No. 4), para 7

[note: 13] Statement of Claim (Amendment No. 4), para 7

[note: 14] Affidavit of Paulus Tannos dated 19 August 2015, para 11(b)

[note: 15] Statement of Claim (Amendment No. 4), para 8

[note: 16] Statement of Claim (Amendment No. 4), para 9

[note: 17] Statement of Claim (Amendment No. 4), para 11

[note: 18] Statement of Claim (Amendment No. 4), para 11

[note: 19] Statement of Claim (Amendment No. 4), para 11A

[note: 20] Statement of Claim (Amendment No. 4), para 13

[note: 21] Statement of Claim (Amendment No. 4), para 14

[note: 22] Statement of Claim (Amendment No. 4), para 15

[note: 23] Statement of Claim (Amendment No. 4), para 15

[note: 24] Statement of Claim (Amendment No. 4), para 22

[note: 25] Statement of Claim (Amendment No. 4), para 23B

[note: 26] Statement of Claim (Amendment No. 4), para 26

[note: 27] Statement of Claim (Amendment No. 4), para 26A

[note: 28] Statement of Claim (Amendment No. 4), para 31

[note: 29] Statement of Claim (Amendment No. 4), para 32

[note: 30] Statement of Claim (Amendment No. 4), para 33

[note: 31] Statement of Claim (Amendment No. 4), para 35A

[note: 32] Statement of Claim (Amendment No. 4), para 39

[note: 33] Statement of Claim (Amendment No. 4), para 52AB(*l*)

[note: 34] Affidavit of Paulus Tannos dated 19 August 2015, para 20(o)

[note: 35] Affidavit of Paulus Sinatra Wijaya, para 12.

[note: 36] Affidavit of Paulus Sinatra Wijaya, para 12.

[note: 37] Affidavit of Paulus Tannos dated 19 August 2015, para 20.

[note: 38] Plaintiff's Written Submissions, paras 10(a) and (b).

[note: 39] Plaintiff's Written Submissions, para 10(c).

[note: 40] Plaintiff's Written Submissions, para 10(d).

[note: 41] Plaintiff's Written Submissions, para 10(e).

[note: 42] Plaintiff's written submissions, para 116.

[note: 43] Written submissions of first and third defendants, para 40(a).

[note: 44] 39th affidavit of Paulus Tannos at [56].

[note: 45] 39th Affidavit of Paulus Tannos, para 57

[note: 46] 9th Affidavit of Paulus Tannos, para 5(a)

[note: 47] 9th Affidavit of Paulus Tannos, para 8

[note: 48] 2nd Affidavit of Yam Wern Jhien, p 15

[note: 49] Written submissions of the first and third defendants, para 41(a)(iv)

[note: 50] Written submissions of the first and third defendants, para 41(b)(i)

[note: 51] Written submissions of first andthird defendants, para 41(b)(iii).

[note: 52] 39th affidavit of Paulus Tannos, para 56

[note: 53] Statement of Claim (Amendment No. 4), para 52AB(a)

[note: 54] Affidavit of Paulus Sinatra Wijaya, Annex A, para 4(d)

[note: 55] Statement of Claim (Amendment No. 4), para 52AB(b)

[note: 56] Affidavit of Paulus Sinatra Wijaya, Annex A, para 4(e)

[note: 57] Statement of Claim (Amendment No. 4), para 52AB(e)

[note: 58] Statement of Claim (Amendment No. 4), para 52AB(f)

[note: 59] Affidavit of Paulus Sinatra Wijaya, Annex A, para 4(i)

[note: 60] Statement of Claim (Amendment No. 4), para 52AB(h)

[note: 61] Statement of Claim (Amendment No. 4), para 52AB(i)

[note: 62] 4th Affidavit of Gregoire Charles Albert Barry-Martin Delongchamps, paras 29 and 30

[note: 63] Statement of Claim (Amendment No. 4), para 52AB(j)

[note: 64] 4th Affidavit of Gregoire Charles Albert Barry-Martin Delongchamps, para 33

[note: 65] Statement of Claim (Amendment No. 4), para 52AB(*l*)

[note: 66] Statement of Claim (Amendment No. 4), para 39

[note: 67] 4th Affidavit of Gregoire Charles Albert Barry-Martin Delongchamps, p 206 at para 44

[note: 68] Statement of Claim (Amendment No. 4), para 52AB(o)

[note: 69] 4th Affidavit of Gregoire Charles Albert Barry-Martin Delongchamps, p 206 at para 47

[note: 70] Affidavit of Paulus Sinatra Wijaya, p 24, para 4(n)

[note: 71] Affidavit of Paulus Tannos dated 19 August 2015, para 46.

[note: 72] Affidavit of Paulus Sinatra Wijaya, para 11.

[note: 73] Statement of Claim (Amendment No. 4), para 11A

[note: 74] Affidavit of Paulus Tannos dated 19 August 2015, para 59.

[note: 75] Plaintiff's Written Submissions, para 104

[note: 76] Written submissions of the first and third defendants at [20(a)].

[note: 77] 2nd Affidavit of Yam Wern Jhien, p 13.

[note: 78] Affidavit of Paulus Sinatra Wijaya, para 11.

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