IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2020] SGHCF 11

Originating Summons Probate No 3 of 2019 (Summons No 96 of 2020)

Between

(1) VJZ
(2) VKA

… *Applicants*

And

(1) VKB
(2) VKC
(3) VKD
(4) VKE
(5) VKF
(6) VKG
(7) VKH
(8) VKI
(9) VKJ
(10) VKK
(11) VKL
(12) VKM
(13) VKN
(14) VKO
(15) VKP

… *Respondents*

GROUNDS OF DECISION

[Civil Procedure] — [Injunctions] — [Anti-suit injunction]

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VJZ and another
v
VKB and others

[2020] SGHCF 11

High Court (Family Division) — Originating Summons Probate No 3 of 2019 (Summons No 96 of 2020)
Tan Puay Boon JC
10 June 2020

19 August 2020

Tan Puay Boon JC:

Introduction

1 Summons No 96 of 2020 ("SUM 96") was an application by VJZ and VKA, the joint administrators ("the Administrators") of an estate, for, *inter alia*, an anti-suit injunction against the second respondent, VKC, in respect of legal proceedings that she had commenced against the Administrators in Indonesia. Having heard parties, I granted the injunction on 10 June 2020. VKC has filed an appeal against the order of the injunction, and I now furnish the grounds for my decision.

Facts

Background to the dispute

2 The application in SUM 96 arose in the context of the administration of the estate ("the Estate") of the Deceased, who had passed away on 31 October 2012.[1] He left behind a last will and testament dated 24 November 1995 ("the Will").[2] The 15 respondents in HCF/OSP 3/2019 ("OSP 3") are the beneficiaries under the Will. Four of the respondents are lawful widows of the Deceased, while the remaining are the Deceased's children, except for the third respondent, who is the executrix of the estate of one of the Deceased's late children, and the 15th respondent which is a Singapore-incorporated company wholly owned by the Deceased prior to his death.[3] There are effectively three groups of respondents – I will refer to the first to fifth respondents as Family [A], the tenth to 14th respondents as Family [B], and the sixth to ninth respondents as the "unrepresented beneficiaries".

3 After the Deceased passed away, a trust company ("First Trustee") was appointed as the sole administrator of the Estate by way of a Grant of Letters of Administration dated 19 October 2015.[4] After this appointment, the administration of the Estate became embroiled in conflict. Legal proceedings were brought in Singapore, as well as in Indonesia. An application was made on 6 March 2017 in HCF/SUM 84/2017 (as part of HCF/OSP 10/2016) for an order compelling all beneficiaries under the Will to attempt mediation in respect

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1 VJZ's 1st Affidavit dated 23 April 2019 at para 3.

2 VJZ's 1st Affidavit dated 23 April 2019 at para 4.

3 VJZ's 1st Affidavit dated 23 April 2019 at paras 6 – 10.

4 VJZ's 1st Affidavit dated 23 April 2019 at para 11.

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of the disputes relating to the Estate, whether in Singapore or elsewhere.[5] On 8 May 2017,[6] the High Court (Family Division) made orders to the following effect:

(a) Parties were to appoint a mediator by 30 June 2017.

(b) Mediation was to commence and be completed by 31 October 2017.

(c) All proceedings in Singapore, Indonesia, and elsewhere in relation to the Estate and its assets were to be stayed pending the appointment of an administrator to replace the First Trustee and pending the outcome of the mediation.

(d) Pending the outcome of the mediation, parties were, however, entitled to take all necessary actions to preserve their rights in the interim.

4 On 1 February 2018, the High Court (Family Division) appointed the Administrators as the joint and several administrators of the Estate (on 19 March 2018, this was varied to "joint administrators"). They applied for the Grant in the High Court Family Division on 15 March 2018. The Grant was granted and issued on 25 April and 26 July 2018 respectively.[7]

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5 VJZ's 1st Affidavit dated 23 April 2019 at para 23.

6 See HCF/ORC 248/2017

7 VJZ's 1st Affidavit dated 23 April 2019 at para 28.

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5 The parties participated in a mediation on 16 and 17 April 2018 at the Singapore Mediation Centre. As a result of mediation, they entered into a settlement agreement dated 18 April 2018 ("the Settlement Agreement").[8] I will discuss the terms of the Settlement Agreement in detail below (see [32]–[37] below). It is sufficient to state here for now that the Settlement Agreement provided that respondents agreed that the Administrators would be the administrators and/or executors of the Estate in all jurisdictions. Further, Family [A] would receive a lump sum payment (which was agreed would constitute the whole of their entitlement to the Estate), while the remainder of the beneficiaries would appear to have their entitlements according to the Will.

6 Following the issuance of the Grant in July 2018 and after the failure of further efforts to resolve certain ambiguities in the Settlement Agreement and to settle the terms of the Administrators' appointments, the Administrators applied to court on 23 April 2019 in OSP 3 for certain orders to be made pertaining to their appointment and indemnification, and in respect of various terms for giving effect to the Settlement Agreement and the Will.

7 On 13 August 2019, I granted certain prayers as modified in HCF/ORC 253/2019 ("ORC 253"). Two of the key orders are as follows:

> 1. The [Administrators] shall as far as reasonably practicable administer the estate of [the Deceased] (the "Estate"), including any distributions of assets of the Estate to the beneficiaries of the Estate in all jurisdictions, including but not limited to Singapore, Malaysia, Indonesia, Hong Kong and the People's Republic of China (in a manner consistent with the laws of the respective jurisdictions), in accordance with the Settlement Agreement between the Respondents dated 18 April 2018 (the "**Settlement Agreement**"). Should the Applicants decide to

[8] VJZ's 1st Affidavit dated 23 April 2019 at para 30.

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> depart from the Settlement Agreement, they shall notify the Respondents within 14 days of their decision to do so.
>
> 2. The [Administrators] shall be indemnified out of the Estate from any and all Losses which the [Administrators] may at any time and from time to time sustain, incur or suffer (whether to the Respondents or otherwise) by reason of the [Administrators] administering the Estate in accordance with the Settlement Agreement as set out in Order (1), provided that at all times the [Administrators] have acted in good faith in administering the Estate. "Losses" means all losses, liabilities, costs (including legal costs and experts' and consultants' fees), charges, expenses, actions, proceedings, claims and demands.
>
> [emphasis in original]

8 For completeness, I add that the respondents had entered into a new settlement agreement in December 2019. This provided that:

> (a) Family [B] and the unrepresented beneficiaries would receive a lump sum payment instead (which was agreed would constitute the whole of their entitlement to the Estate);
>
> (b) Family [A] would appear to have their entitlements according to the Will, and
>
> (c) new administrators (VKB and another person) would be appointed.[9]

9 The first respondent had since applied on 15 January 2020 in HCF/SUM 10/2020 ("SUM 10") for the Settlement Agreement to be replaced, and for the Administrators to be removed as administrators of the Estate.

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9 VKB's 1st Affidavit in SUM 10/2020 dated 14 January 2020 at pp 23–40, 44.

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10 When I considered the application in SUM 96 for the anti-suit injunction on 10 June 2020, SUM 10 remained unresolved. I proceeded to consider SUM 96 on the footing of ORC 253 and the Settlement Agreement for two main reasons: (a) SUM 96 dealt effectively with acts done by the Administrators as administrators of the Estate, which acts preceded the new settlement agreement in December 2019; and (b) the parties argued SUM 96 on the basis of the Settlement Agreement without suggesting that the new settlement agreement might affect the result of the present application.

The present dispute

11 On 13 June 2019, the Administrators had published two notices ("the Notices") in two newspapers in Indonesia, specifically in *Kompas* (in Bahasa Indonesia) and in *The Jakarta Post* (in English).[10] The Notices, in English and when translated into English, read:

> **NOTICE**
>
> [The Deceased] passed away on 31 October 2012. Pursuant to orders made by the High Court of the Republic of Singapore on 1 February 2018 and 19 March 2018, [VJZ] and [VKA], all care of [Firm and Firm's address] (the "**Administrators**") were appointed as the joint administrators of the Estate of [the Deceased] ("the **Estate**").
>
> TAKE NOTICE that assets of the Estate should not be dealt with in any manner whatsoever without proper sanction from the Administrators. If any person is aware of any dealings or have information in respect of assets belonging to the Estate, please inform the Administrators of the same at [email address] immediately.
>
> All creditors or next-of-kin interested in or having claims against the Estate should give particulars in writing their claims or interest to the above contact details.

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10 VJZ's 3rd Affidavit dated 24 March 2020 at pp 31–32.

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Dated this 13th day of June 2019

[VJZ] and [VKA]

Joint Administrators

[emphasis in original]

12 The Notices came to the attention of VKC. She sought legal advice and instructed her Indonesia lawyers to commence proceedings against the Administrators in the Central Jakarta District Court ("the Indonesian Proceedings").[11] In the Indonesian Proceedings, VKC took the view that the Notices were "false and misleading", and that the publication of the said Notices directly affected her rights as a beneficiary of the Estate as the Notices invited "next-of-kin interested in or having claims against the Estate" to give particulars of their claim or interest to the Administrators.[12] In her view, this potentially "opened the floodgates for more claimants who could possibly make a claim against the Estate under forced heirship laws in Indonesia".[13] VKC therefore claimed against the Administrators, jointly or severally, in their personal capacities (since they were not yet officially administrators in Indonesia):[14]

(a) damages for "material loss" sustained by VKC in having to engage an attorney and/or legal counsel for the purposes of rendering legal advice and providing legal representation, amounting to not less than Rp 1bn (approximately S$93,900); and

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11 VKC's 1st Affidavit dated 3 June 2020 at para 7.

12 VKC's Lawyer's 1st Affidavit dated 3 June 2020 at para 12.

13 VKC's Lawyer's 1st Affidavit dated 3 June 2020 at para 12.

14 VKC's Lawyer's 1st Affidavit dated 3 June 2020 at paras 14–15.

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(b) damages for "immaterial loss" as a result of the Administrators' actions which "threatened the existence and diminution of her subjective rights based on the Testament Deed, *ie* the Will, representing [5%] of the estimated value of the Estate", which rights she estimated to be worth not less than Rp 200bn (approximately S$18m).

13 The Administrators were served in Singapore with a letter from the Embassy of the Republic of Indonesia on 7 February 2020, enclosing a letter of request for international judicial assistance from the Central Jakarta District Court.[15] This brought the Indonesia Proceedings to their attention.

The application

14 On 24 March 2020, the Administrators filed SUM 96, which sought the following:

> 1. A declaration that Prayer 2 of [ORC 253] shall continue to apply in relation to all Losses incurred by the [Administrators] in their defence in [Case 481] commenced by the 2nd Respondent in the District Court of Central Jakarta and any appeals and/or related proceedings arising therefrom ("**Indonesian Proceedings**"). "Losses" shall mean all losses, liabilities, costs (including legal costs and experts' and consultants' fees), charges, expenses, actions, proceedings, claims and demands.
>
> 2. Further and/or in the alternative, an injunction to restrain the 2nd Respondent by herself, her agents or servants or otherwise howsoever, from taking any further steps in the Indonesian Proceedings, including the prosecution of the action therewith.
>
> 3. Costs of this application incurred by the Applicants to be paid out from the Estate, in priority to any distribution of assets to any beneficiary of the Estate.

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15 VJZ's 3rd Affidavit dated 24 March 2020 at para 6.

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> 4. Liberty to apply.
>
> 5. Such further and/or other relief as this Honourable Court deems fit.
>
> [emphasis in original]

15 I decided to deal with prayer 1 for indemnity together with SUM 10 (see [9] above), and dealt with prayer 2 for an injunction in SUM 96 as a stand-alone application. As the appeal has been filed only against my order granting an injunction against VKC in respect of the Indonesian Proceedings, I do not deal with the other issues raised in SUM 96 in these grounds of decision. Hence, the only question in the present case was whether an injunction should be granted against VKC in the terms of prayer 2.

Parties' positions

16 The Administrators argued that they were acting in good faith and in accordance with the Settlement Agreement in publishing the Notices.[16] They submitted that the injunction against VKC should be granted, highlighting that: (a) VKC was amenable to the jurisdiction of the Singapore court;[17] (b) the Indonesian Proceedings were brought in breach of cl 19 of the Settlement Agreement (as laid out below at [25]), on which the Administrators could rely as third parties and which provided for exclusive jurisdiction in Singapore;[18] (c) Singapore was the natural forum for the resolution of the dispute;[19] (d) and the Indonesian Proceedings were vexatious and oppressive to the Administrators.[20]

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16 Applicants' Written Submissions at para 28.

17 Applicants' Written Submissions at paras 34–35.

18 Applicants' Written Submissions at paras 36–54.

19 Applicants' Written Submissions at paras 55–62.

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17 Before me, counsel for the first to fifth respondents and 15th respondent confirmed that he was only acting on behalf of the second respondent, VKC, with regards to the Administrators' application for an injunction in prayer 2 of SUM 96.[21] VKC, who was the one who had brought the Indonesian Proceedings, objected to prayer 2 of the application in SUM 96. The remaining respondents did not take a position on the injunction application. She argued that the Administrators were not parties to the Settlement Agreement and could not rely on any of its terms to support the injunction.[22] In any case, the relevant clause relied upon, cl 19, did not cover the matters raised in the Indonesian Proceedings.[23] As there were no parallel proceedings in Singapore, the court would be slow to grant an anti-suit injunction.[24] In any event, Singapore was not the natural forum for the dispute and the Indonesian Proceedings were not vexatious or oppressive to the Administrators.[25] As the dispute over the injunction was effectively between the Administrators and VKC, I will be focusing on these two parties throughout the rest of these grounds.

Legal context and issues

18 The principles relating to the court's exercise of discretion to grant an anti-suit injunction were not in dispute. The general principles were re-stated by the Court of Appeal in *Lakshmi Anil Salgaocar v Jhaveri Darsan Jitendra*

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20 Applicants' Written Submissions at paras 63–67.

21 Transcript for 10 June 2020 at p 4, ln 23–25.

22 Respondents' Written Submissions at paras 7–19.

23 Respondents' Written Submissions at paras 20–26.

24 Respondents' Written Submissions at paras 27–33.

25 Respondents' Written Submissions at para 36.

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[2019] 2 SLR 372 ("*Lakshmi*") at [49] (citing *Société Nationale Industrielle Aerospatiale v Lee Kui Jak* [1987] AC 871 at 892):

> (a) The jurisdiction is to be exercised when the "ends of justice" require it.
>
> (b) Where the court decides to grant an anti-suit injunction, its order is directed not against the foreign court but against the parties so proceeding or threatening to proceed.
>
> (c) An injunction will only be issued to restrain a party who is amenable to the jurisdiction of the court, against whom an injunction will be an effective remedy.
>
> (d) Since such an order indirectly affects the foreign court, the jurisdiction is one which must be exercised with caution.

19 The authorities have identified five non-exhaustive key factors that the court will consider in deciding whether to grant such an injunction (*Lakshmi* at [50]; *John Reginald Stott Kirkham v Trane US Inc* [2009] 4 SLR(R) 428 ("*Trane*") at [28]–[29]):

> (a) whether the defendants are amenable to the jurisdiction of the Singapore court;
>
> (b) the natural forum for resolution of the dispute between the parties;
>
> (c) the alleged vexation or oppression to the plaintiffs if the foreign proceedings are to continue;
>
> (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.

20 In relation to the last factor, which is generally taken to refer to jurisdiction clauses or arbitration agreements, the Court of Appeal in *Trane* at [29] held that where there is such an agreement, "the court may not feel diffident about granting an anti-suit injunction as it would only be enforcing a contractual promise and the question of international comity is not as relevant". The court

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would "readily grant anti-suit injunctions to restrain such proceedings" commenced in breach of exclusive jurisdiction clauses: *Vinmar Overseas (Singapore) Pte Ltd v PTT International Trading Pte Ltd* [2018] 2 SLR 1271 ("*Vinmar*") at [115]. If there is no exclusive jurisdiction clause, however, then the other four factors must be considered carefully – apart from showing that Singapore is the natural forum, "it must be only in the clearest of circumstances that the foreign proceedings are vexatious or oppressive before an injunction can be granted and justified": *Koh Kay Yew v Inno-Pacific Holdings Ltd* [1997] 2 SLR(R) 148 ("*Koh Kay Yew*") at [25].

21 This distinction was summarised by the Court of Appeal in *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] 1 SLR 732 ("*Sun Travels*"). Although this case was not cited by the parties, the principles within were not in dispute. After citing the factors listed at [19] above, the Court of Appeal stated:

> 67 **Although the factors are to be considered in the round, a breach of an agreement has been regarded as a separate basis on which an anti-suit injunction may be granted; one that is distinct from vexatious or oppressive conduct**: *UBS AG v Telesto Investments Ltd* [2011] 4 SLR 503 ("*Telesto Investments*") at [111]; *BC Andaman Co Ltd v Xie Ning Yun* [2017] 4 SLR 1232 ("*BC Andaman*") at [53]; *Lakshmi Anil Salgaocar v Jhaveri Darsan Jitendra* [2018] SGHC 90 at [15]; *Fentiman* at para 16.39. This was also the view that the Judge took at [58] of her Judgment ([41] *supra*).
>
> 68 **In cases involving an arbitration agreement or an exclusive jurisdiction clause, it would suffice to show that there was a breach of such an agreement, and anti-suit relief would ordinarily be granted unless there are strong reasons not to**: *Donohue v Armco Inc* [2002] 1 All ER 749 ("*Donohue*"), *per* Lord Bingham at [24]; *Morgan Stanley Asia (Singapore) Pte v Hong Leong Finance Ltd* [2013] 3 SLR 409 ("*Morgan Stanley*") at [29]. There will be no need to adduce additional evidence of unconscionable conduct in such cases. Crucially, however, this approach is subject to an important caveat: there is no requirement for the court to feel any

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> diffidence in granting an anti-suit injunction, "*provided that it is sought promptly and before the foreign proceedings are too far advanced*" [emphasis added]: *Aggeliki Charis Compania Maritima SA v Pagnan SpA (The "Angelic Grace")* [1995] 1 Lloyd's Rep 87 ("*The Angelic Grace*") at 96. In the same vein, Lord Bingham in *Donohue* at [24] had also held that "a party may lose his claim to equitable relief by dilatoriness or other unconscionable conduct". The issue of delay and how it relates to comity are key to the determination of this appeal and we turn now to it.
>
> [emphasis in original in italics; emphasis added in bold]

22 VKC highlighted that this is not a case where there are parallel proceedings in a foreign jurisdiction and in Singapore. The Court of Appeal in *Koh Kay Yew* distinguished such a situation from a situation where there are concurrent proceedings in two jurisdictions, and held that in the former scenario: "as long as the party who commenced the foreign proceedings was entitled to do so, whether or not the foreign courts recognise this, then our courts should be extremely cautious in granting an injunction" (at [23]). However, this must be read in line with the authorities relating to exclusive jurisdiction clauses, such that a party who commences the foreign proceedings in breach of such an agreement cannot be considered as "entitled to do so" in the words of the Court of Appeal.

23 In the present case, VKC did not dispute that the Singapore courts have jurisdiction over her.[26] While she has not raised any alleged injustice as a separate argument, I note that she has addressed it together with the question of vexation and oppression, and, in any case, all the factors could not be separated but had to be considered in the round: *Sun Travels* at [67]. Taking the parties' positions and arguments, these were the issues for my determination:

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26 Respondents' Written Submissions at para 36.

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(a) whether the Indonesian Proceedings were brought in breach of the Settlement Agreement:

(i) whether the Administrators could rely on cl 19 of the Settlement Agreement;

(ii) whether the Indonesian Proceedings fell within the scope of cl 19 of the Settlement Agreement;

(b) whether Singapore was the natural forum;

(c) whether the Indonesian Proceedings were vexatious or oppressive to the Administrators; and

(d) whether the grant of the anti-suit injunction would cause any injustice to VKC.

Decision

24 I held that the Administrators could rely on cl 19 of the Settlement Agreement and the Indonesian Proceedings fell within the terms of that exclusive jurisdiction clause. I further held that Singapore was the natural forum and that the Indonesian Proceedings would be vexatious or oppressive if allowed to continue. I therefore exercised my discretion to grant the anti-suit injunction in terms of prayer 2 of SUM 96. I turn now to explain these conclusions.

Breach of agreement

25 The primary contention made by the Administrators was that the Indonesian Proceedings had been brought in breach of cl 19 of the Settlement Agreement, which read:

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> The Parties hereby submit to the exclusive jurisdiction of the Courts of Singapore. The Parties agree that in respect of all disputes, controversies, claims or disagreements arising out of or in connection with this Agreement, including but not limited to its existence, validity, breach and enforcement, shall be first submitted to mediation at the Singapore International Mediation Centre and the mediator shall be Mr [xxx] *S.C.* The Parties further agree that only if the Parties have in good faith carried out the mediation and they have not been able to resolve their dispute, controversy, claim and/or disagreement, then, and in that event only, the Parties shall commence legal proceedings in Singapore.

26 The "Parties" as defined by the Settlement Agreement refers to the 15 respondents, and does not include the Administrators. It was not disputed that the Administrators were not, as such, parties to the Settlement Agreement. There were therefore two issues to be resolved. First, whether the Administrators could rely on cl 19 of the Settlement Agreement? Second, if they could, did the Indonesian Proceedings fall within the scope of cl 19?

Can the Administrators rely on cl 19 of the Settlement Agreement?

27 The Administrators relied on the Contract (Rights of Third Parties) Act (Cap 53B, 2002 Rev Ed) ("CRTA") to argue that they were entitled to enforce cl 19 of the Settlement Agreement. The material portions of s 2 of the CRTA read:

> **2.**—(1) Subject to the provisions of this Act, a person who is not a party to a contract (referred to in this Act as a third party) may, in his own right, enforce a term of the contract if —
>
> (*a*) the contract expressly provides that he may; or
>
> (*b*) *subject to subsection (2), the term purports to confer a benefit on him.*
>
> (2) *Subsection (1)(b) shall not apply if, on a proper construction of the contract, it appears that the parties did not intend the term to be enforceable by the third party.*

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> (3) *The third party shall be expressly identified in the contract by name*, as a member of a class or as answering a particular description but need not be in existence when the contract is entered into.
>
> (4) This section shall not confer a right on a third party to enforce a term of the contract otherwise than subject to and in accordance with any other relevant terms of the contract.
>
> (5) *For the purpose of exercising his right to enforce a term of the contract, there shall be available to the third party any remedy that would have been available to him in an action for breach of contract if he had been party to the contract (and the rules relating to damages, injunctions, specific performance and other remedy shall apply accordingly) and such remedy shall not be refused on the ground that, as against the promisor, the third party is a volunteer.*
>
> …
>
> [emphasis added]

28 It is clear that the Settlement Agreement did not expressly provide that the Administrators may enforce cl 19. The Administrators, therefore, had to rely on s 2(1)(*b*) of the CRTA.

29 The approach to be taken in applying s 2(1)(*b*) of the CRTA can be derived from the Court of Appeal's judgment in *CLAAS Medical Centre Pte Ltd v Ng Boon Ching* [2010] 2 SLR 386:

> (a) The court first considers whether s 2(1)(*b*) is satisfied. While "[t]here is no requirement that benefiting the third party must be the predominant purpose or intent behind the term", "it must be *a* purpose of the parties" [emphasis in original]: at [28].
>
> (b) Section 2(1)(*b*) must be read with s 2(2). The burden of proof lies on the party invoking s 2(2) to show "on a proper construction of the contract, that the parties did not intend the term concerned to be enforceable by the third party": at [29]. In that regard, "[t]he mere

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> absence in the contract of an express statement that the third party is to have the right to enforce the term is not a bar to his entitlement under s 2(1) to do so. Neither is such absence an indication of a contrary intention": at [37].

30 Before turning to the facts of this case, I pause here to note that the present case does not involve some of the more thorny issues relating to third-party enforcement of exclusive jurisdiction clauses. The High Court has previously noted that "the boundaries of the effect of exclusive forum clauses (whether exclusive jurisdiction or arbitration clauses) on third parties are being tested" in many cases and constitutes a complex area of law: *Hai Jiang 1401 Pte Ltd v Singapore Technologies Marine Ltd* [2020] SGHC 20 ("*Hai Jiang*") at [82]. However, in many of the cases discussed in *Hai Jiang*, and which constitute or are related to what has been called the *Sea Premium* line of cases (after the decision in *Sea Premium Shipping Ltd v Sea Consortium Pte Ltd* [2001] EWHC 540 (Admlty) ("*Sea Premium*")), the statutory provisions relating to the enforcement of contractual terms by third parties were not referred to. This is likely because the commercial contracts in question expressly excluded the application of statutes similar to the CRTA (*eg*, *Dell Emerging Markets (EMEA) Limited and another v IB Maroc.Com SA* [2017] EWHC 2397 (Comm) at [13]), or because the contracts in question fell within the provisions which exclude the application of such statutes from certain classes of contracts (*eg*, contracts for the carriage of goods by sea, which *Sea Premium* was concerned with), or perhaps because they were governed by laws that did not include such statutory provisions. Put another way, these cases involved attempts by third parties to rely on exclusive jurisdiction or arbitration clauses in the absence of a statute that provided for such enforcement. It also follows that whatever reservations expressed by the High Court about the

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applicability of *Hai Jiang* and the *Sea Premium* principle to actions in tort brought in foreign proceedings did not apply in the present case (except to the extent of the question of whether such tort claims would fall within the scope of the exclusive jurisdiction clause), since those concerns arose specifically in relation to the *Sea Premium* line of cases. The only questions here were whether s 2 of the CRTA applied to cl 19 of the Settlement Agreement, and whether the Indonesian Proceedings fell within cl 19.

31 In order to answer whether cl 19 of the Settlement Agreement purported to confer a benefit on the Administrators, it is important to consider the Settlement Agreement as a whole. I turn to set out some of the key terms in the Settlement Agreement that deal with or concern the Administrators.

32 Clause 1 of the Settlement Agreement expressly mentioned the Administrators by name and provided:

> Parties agree that [VJZ] and [VKA] … (the "**New Administrators**") shall be the administrators/executors of the Estate in all jurisdictions, including but not limited to Singapore, Malaysia, Indonesia, Hong Kong SAR, and the People's Republic of China. To this end, Parties shall do all things necessary, including the lodgement of the necessary applications, the withdrawal and/or discontinuance of proceedings in Indonesia and/or the drawing up of the relevant public declarations before the Notary, to appoint and recognise the New Administrators as the administrators and/or executors of the Estate. [emphasis in original]

Notably, the agreement between the respondents that the Administrators were to be administrators in all of those jurisdictions came with the attendant obligation to "do all things necessary … to appoint or recognise" them in their roles in each of these jurisdictions. For completeness, I note that by way of cl 1, s 2(3) of the CRTA was satisfied since the Administrators were expressly identified in the Settlement Agreement by name.

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33 Clause 2 then provided a number of steps that "shall be taken" for the administration of the Estate, including the following:

> (a) The Administrators "shall take all necessary steps" to pay to Family [A] a sum agreed within a reasonable period of time from the date of the appointment as administrators of the Estate (subject to a maximum period of four years). Family [A] would accept that the sum paid "constitutes and/or is a complete and exhaustive quantification and representation of their full entitlement to the Estate". The other beneficiaries may contribute to the sum to be paid to Family [A], and they agreed not to receive any sums from the Estate until Family [A] had received payment in full.
>
> (b) In the interim, the Administrators were to make distributions to Family [A] every six months, and were to provide their reasons to them if they are unable to do so.

34 Clause 3 dealt with the steps to be taken after the payment to Family [A] was made under cl 2. In particular, it dealt with the situation where the Administrators contemplated sale of any assets in the Estate, requiring them to give a right of first refusal over any asset to the respondents. Under cl 3.a., the respondents were granted ten days once the Administrators presented the offer to decide whether to negotiate an agreement to purchase the asset. Clause 3.b. then provided that the respondent who wished to do so would send a written notice within the ten-day period, following which that party and the Administrators would commence good faith negotiations for up to 30 days after the notice is given. Under cl 3.c., if no notice was given, or no legally binding contract was entered into, then the Administrators would be free to enter into an agreement with a third party for the sale of the assets on terms that should be

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more favourable than the terms offered by that respondent to the Administrators. Clauses 3.d. to 3.f. went on to make provision for the situation where one of the respondents wished to purchase a certain asset from the Estate.

35 Clause 4 provided that the costs of the First Trustee (see [3] above) and the Administrators would be borne by the Estate, except that Family [A] shall not be responsible for any of the costs, and these costs should not be deducted from the sum owed to Family [A] under cl 2.

36 Clause 5 then went on to describe a number of acts as "material breach[es]" which would entitle the respondents to treat the Settlement Agreement as null and void (subject to any rectification of the default within 30 days of receiving notice of the default), meaning that the Administrators shall be "entitled to administer the whole of the Estate at their sole discretion in accordance with their prevailing duties under law". Four of these, in particular, are worth noting:

> a. Any failure to adhere to Clause 1 and/or to support the appointment of the [Administrators] as the administrators and/or executors of the Estate in any jurisdiction;
>
> b. Any challenge to the appointment of the [Administrators] as the administrators and/or executors of the Estate in any jurisdiction;
>
> c. Any failure to provide full and frank disclosure and/or otherwise assist the [Administrators] with a view to ascertaining, valuing, and/or distributing the assets of the Estate in accordance with Clause 2 above;
>
> d. Any failure to adhere to the directions of the [Administrators] to step down from any and all positions in relevant companies within the Estate and/or relinquish control of such companies …
>
> …

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37 Clause 7 provided that the Settlement Agreement would constitute full and final settlement of "all disputes, claims, matters and issues of any kind or nature whatsoever … which have arisen from or in connection with the Will and/or the Estate". The remaining clauses dealt with various other matters that did not concern the Administrators. After those provisions came the exclusive jurisdiction clause in cl 19 of the Settlement Agreement.

38 I begin my analysis with the wording of cl 19 of the Settlement Agreement, which I reproduce here again for convenience:

> The Parties hereby submit to the exclusive jurisdiction of the Courts of Singapore. The Parties agree that in respect of all disputes, controversies, claims or disagreements arising out of or in connection with this Agreement, including but not limited to its existence, validity, breach and enforcement, shall be first submitted to mediation at the Singapore International Mediation Centre and the mediator shall be Mr [xxx] *S.C.* The Parties further agree that only if the Parties have in good faith carried out the mediation and they have not been able to resolve their dispute, controversy, claim and/or disagreement, then, and in that event only, the Parties shall commence legal proceedings in Singapore.

39 There are two aspects to this clause. The first is expressed in the first sentence, under which the "Parties … submit to the exclusive jurisdiction of the Courts of Singapore". The second is expressed in the next few sentences, which required that the "Parties" first submit any relevant dispute, *etc* to mediation, and only if the mediation has been carried out in good faith and the dispute, *etc* has not yet been resolved, can legal proceedings in Singapore be commenced. The immediate question in relation to the first sentence is this: *what* have the respondents agreed to submit to the exclusive jurisdiction of the Singapore courts? In context, it must refer to "all disputes, controversies, claims or disagreements arising out of or in connection with this Agreement, including but not limited to its existence, validity, breach and enforcement". On the face

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of the provision, this could mean that the respondents have agreed to submit to the exclusive jurisdiction of the Singapore courts *either* (a) only those matters which only concern the respondents, *or* (b) *any such matters,* even where the dispute is with the Administrators, such that no proceedings can be brought against the Administrators in relation to such matters outside of Singapore. If the latter was true, then, cl 19 would purport to confer a benefit onto the Administrators as a third party.

40 In this regard, I disagreed with VKC that the plain and ordinary meaning of cl 19 of the Settlement Agreement could not bear an interpretation that would purport to benefit the Administrators. She had argued that a plain reading of cl 19 shows that it only applies to the parties to the Settlement Agreement, since there was no reference to the Administrators specifically, or any administrator generally, in cl 19.[27] In my judgment, this was not conclusive. The fact that it was the parties to the Settlement Agreement who agreed to submit themselves to the exclusive jurisdiction of the Singapore courts was not disputed. The question is *what* they have submitted to the Singapore courts for determination. VKC's argument must then be that only disputes *as between the respondents* (*ie,* as parties to the Settlement Agreement), are submitted to the exclusive jurisdiction of the Singapore courts. But this is not expressly stated in cl 19. While this was certainly a possible interpretation of cl 19, the same could be said about the interpretation that the parties to the Settlement Agreement have also agreed to submit disputes involving the Administrators to the exclusive jurisdiction of the Singapore courts. The plain and ordinary meaning of cl 19 did not conclude the analysis.

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27 Respondents' Written Submissions at para 23.

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41 In deciding between the two possible interpretations, I then considered the Settlement Agreement as a whole. In my judgment, the latter interpretation, that the respondents have submitted all matters relating to the Settlement Agreement, including matters concerning the Administrators, to the exclusive jurisdiction of the Singapore courts, was the correct one.

42 The content of the Settlement Agreement showed that the Administrators were a key part of the functioning of the settlement. Indeed, the vast majority of the substantive clauses dealing with the actual terms and operation of the settlement concerned the Administrators. This was not surprising in this context, since the Estate cannot be dealt with except by administrators duly appointed. Hence, both from the text and context of the Settlement Agreement, it was clear that the respondents, as parties to the Settlement Agreement, clearly envisaged that the Administrators would be the ones putting the Settlement Agreement into effect. Without their participation, none of the substantive provisions in the Settlement Agreement could be implemented. The starting point for all this was the agreement that the Administrators will administer the Estate *and* that the respondents will do the necessary to effect their appointment, not just in Singapore, but in all jurisdictions: cl 1 of the Settlement Agreement. Clauses 2 and 3, which formed the core of the *substance* of the settlement, were clearly drafted with the intention of providing guidance to the Administrators on how they were to then administer the Estate upon appointment.

43 The centrality of the Administrators' role in the operation of the Settlement Agreement can also be seen in cl 5, which sets out a list of acts that would be treated as material breaches of the Settlement Agreement. If notice of such default was given, and if the default was not remedied or cured within a

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certain time period, then the respondents were entitled to treat the Settlement Agreement as null and void. The Administrators would thereafter administer the Estate without the Settlement Agreement, and in accordance with the law. The list of acts was primarily concerned with the cooperation with the Administrators: see [36] above. This clause, in my view, showed very clearly that the parties to the Settlement Agreement envisaged that cooperation with the Administrators and facilitation of their work would be a fundamental part of the Settlement Agreement.

44 It is convenient for me to deal here with VKC's argument that the Administrators had consistently maintained in OSP 3 that they were not parties to the Settlement Agreement and were not bound to follow the Settlement Agreement.[28] She argued that, having "disavowed" their obligations under the Settlement Agreement, they could not now seek to benefit from the Settlement Agreement.[29] As a matter of fact and the history of this case, I did not think this argument was correct. At the outset, the Administrators were the ones who had brought the initial application in OSP 3 for them to be entitled to administer the Estate according to the Settlement Agreement in question. It is certainly true that the Administrators had consistently taken the position that they were not *bound* as contracting parties, since they were clearly not parties to the Settlement Agreement. But this was simply a fact – they could not have taken any other position. Yet, the Administrators expressed their intention to abide by terms of the Settlement Agreement by seeking prayer 1 in OSP 3. They required an order from court because (1) their initial appointment in 2018 by the High

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28 Respondents' Written Submissions at para 8.

29 Respondents' Written Submissions at para 19.

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Court Family Division was not on the basis of the Settlement Agreement (which was entered into after their appointments), and (2) abiding by the Settlement Agreement would mean deviating from the terms of the Will. There were also details concerning the sale of assets that they wished to obtain clarifications about. Nothing about the history of this case suggests that the Administrators were, in the words of VKC, "approbating and reprobating".[30]

45 In any case, the question of the effects of contracts on third parties has always distinguished between the *obligations* under the contract and the *benefits* under a contract. The CRTA makes clear under s 2 that it is only the *benefits* that the third party can seek, whereas no provision is made for the enforcement of *obligations* against third parties. Further, s 2(5) of the CRTA provides expressly that a third party is not prevented from enforcing a term under s 2 just because it is a volunteer, *ie,* just because it has not provided any consideration. VKC's arguments, therefore, are not convincing since the questions of obligation and benefit are to be treated distinctly. The question under s 2(1)(*b*) of the CRTA is simply whether the term that the third party seeks to enforce purports to confer a benefit on that third party.

46 Having identified the centrality of the Administrators' role in the Settlement Agreement, it is clear the agreement contemplated that disputes between the Administrators and the respondents or some of them might arise. This was so particularly in relation to cll 2 and 3. While the *primary* purpose of the Settlement Agreement was to settle the various claims against the Estate, arising out of the conflict between Family [A] and Family [B] primarily, it is

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30 Respondents' Written Submissions at para 19.

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easy to see how the conflict would spill over to the Administrators as well because of how the operation of the settlement was inextricably tied up with the Administrators.

47 This was the context in which I interpreted cl 19 of the Settlement Agreement. Given the history of conflict and the various legal proceedings in multiple jurisdictions, I found that cl 19 of the Settlement Agreement was intended by all parties to channel any future disputes to Singapore for resolution. This would resolve the difficulties of maintaining and defending multiple suits in different jurisdictions, and would also afford the opportunity for a more coherent approach to the Estate, which comprised assets in various countries. The parties agreed for Singapore to be, in the words of the Administrators, the "centre of gravity" for the administration of the Estate thereafter.[31]

48 The conflicts among the respondents could not be neatly divided from the conflicts that might involve the Administrators. This followed from my conclusions on the centrality of the Administrators to the operation of the settlement. Every substantive decision by the Administrators would inevitably affect the operation of the settlement, and each act of any of the respondents in relation to the Estate would also necessarily affect the Administrators who were in charge of administering the Estate and implementing the settlement. This was a situation where the respondents, as parties to the agreement, had, in that sense, bound themselves up with a third party, the Administrators, *whom they expected would then give effect to the Settlement Agreement*. Indeed, if the Administrators chose not to follow the Settlement Agreement, then all would come to nought.

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[31] Applicants' Written Submissions at para 67.

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In that situation, conflicts between the respondents would inevitably touch on the Administrators, and conflicts would also arise between the respondents and the Administrators themselves. To take a simple example: if one set of respondents was unhappy with the manner in which the Administrators sold one of the assets to a particular respondent under cl 3 of the Settlement Agreement, the conflict would involve not just that particular respondent, but would necessarily touch upon the Administrators' acts. Given the structure of the Settlement Agreement, there could be no neat division between the two.

49 Therefore, when the parties to the Settlement Agreement agreed to the exclusive jurisdiction of the Singapore courts for "all disputes, controversies, claims or disagreements arising out of or in connection with this Agreement", I interpreted this to also refer to such matters which concerned the Administrators as well, such that the parties have bound themselves not to proceed against the Administrators in any other jurisdiction for matters falling within cl 19. To continue the example above, if the disgruntled respondents commenced an action against the Administrators for selling that asset, say, in Indonesia, this would clearly undermine the intention of the parties for disputes to be resolved in Singapore, especially because there would be the risk of fragmentation since the *particular respondent* who purchased the asset could only be proceeded against in Singapore by virtue of cl 19. The parties, for the sake of selecting a single jurisdiction within which to resolve all the matters relating to the Estate, must have intended also to bind themselves not to bring any claims or proceedings in relation to any disputes against the *Administrators*. Any other conclusion, in my view, would undermine the entire structure of the Settlement Agreement.

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50 I turn then to whether, despite cl 19 purporting to confer a benefit on the Administrators, there was any ground for concluding that "on a proper construction of the contract, it appeared that the parties did not intend the term to be enforceable by the third party": s 2(2) of the CRTA. As the Court of Appeal recognised, s 2(2) of the CRTA seeks to "distinguish between intended and incidental beneficiaries to a contract, with the latter beneficiaries not being entitled to sue under the contract": *CLAAS* ([29] *supra*) at [29]. In my judgment, it was clear that the Administrators were not just "incidental" beneficiaries to the exclusive jurisdiction clause in cl 19 of the Settlement Agreement. I did not believe that VKC has discharged the burden of showing that the construction of the contract shows that the parties did not intend for the term to be enforced by the Administrators – I have addressed the two primary contentions raised at [40] and [44] above, and I further note here that the absence of any reference to the Administrators in cl 19 itself was not fatal: *CLAAS* at [37]. To the contrary, I found that cl 19 was a key part of an agreement which clearly envisaged a central role for the Administrators in a potentially contentious administration of the Estate. Therefore, I found that s 2(2) of the CRTA did not apply to the present case.

51 On the basis of the arguments above, I found that the Administrators could enforce cl 19 of the Settlement Agreement by virtue of s 2(1)(*b*) of the CRTA, which gave them the right to enforce the exclusive jurisdiction clause by way of, *inter alia*, an injunction: s 2(5) of the CRTA.

52 I pause to note that I did not make any decision on whether the *Sea Premium* line of cases applied in the present case (see [30] above), although the cases were cited to me. In my view, it was not necessary to consider the principle approved in *Hai Jiang* ([30] *supra*) at [81] given the application of the CRTA.

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In any case, I recognised that the High Court had expressed doubts over whether the *Sea Premium* principle would apply to a tortious claim in another jurisdiction when the plaintiff in the foreign proceedings was not relying on the contract which contained the exclusive jurisdiction clause, and where there was no risk of fragmentation since no contractual claim was also being brought elsewhere (*Hai Jiang* at [84]). However, I make no further comment since it was not necessary for my decision.

Does the present case fall within the terms of the exclusive jurisdiction clause?

53 The next issue of construction was whether the Indonesian Proceedings fell within the scope of cl 19 of the Settlement Agreement. The parties to the Settlement Agreement had agreed to submit to the Singapore courts "all disputes, controversies, claims or disagreements arising out of or in connection with this Agreement, including but not limited to its existence, validity, breach and enforcement". Since I had already found that cl 19 included such disputes in relation to the Administrators as well, the question was whether the subject-matter of the Indonesian Proceedings would fall within cl 19. VKC argued that it did not, claiming that cl 19 would not extend to the "reckless behaviour" of the Administrators which constituted a civil wrong that has no connection to the Settlement Agreement.[32]

54 The parties had agreed to enter into this Settlement Agreement, presumably because they considered it to be in their interests to have the settlement so that they could obtain what they wanted from the Estate. Part of

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[32] Respondents' Written Submissions at para 24.

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that settlement was to agree to submit all the "disputes, controversies, claims or disagreements arising out of or in connection with this Agreement" to the exclusive jurisdiction of the Singapore courts. There was no reason to take a narrow view in interpreting cl 19 of the Settlement Agreement, since clearly one of the benefits of cl 19 in the context of the settlement was to prevent multi-jurisdictional disputes from continuing. It would defeat that purpose to take a narrow view of this provision, for example, to refer only to claims made under the Settlement Agreement *per se*, since that would make too much depend on the exact contours of each claim that an enterprising party could get around.

55 This was supported also by the specific facts surrounding the Settlement Agreement. As the recital to the agreement stated, at the time when the respondents entered into mediation, there were proceedings afoot in Singapore and Indonesia. Further, under cl 1 of the Settlement Agreement, it was clearly envisaged that the Estate might comprise assets in multiple jurisdictions, with specific reference to Malaysia, Indonesia, Hong Kong, and China. This was an Estate that was multi-jurisdictional, and it made eminent sense for the parties to agree to channel all disputes to a single jurisdiction for resolution. This supported a generous interpretation of cl 19, as I found that it could not have been the parties' intentions to allow multiple proceedings in multiple jurisdictions to be brought simply on the basis of minor distinctions in the nature of the legal actions.

56 It was also telling that cl 19 did not make reference to specific legal proceedings or legal claims, but only referred broadly to "disputes, controversies, claims or disagreements". These were the *facts underlying* legal proceedings, not the legal proceedings themselves, and the clause did not specify the exact type of legal claim would fall outside its scope. The focus,

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therefore, should be on the facts underlying the foreign proceedings, rather than the legal characteristics of the action itself.

57 In the light of this context, I held that the dispute in the Indonesian Proceedings should be subject to the exclusive jurisdiction of the Singapore courts as cl 19 of the Settlement Agreement applied. I had previously held that a dispute with the Administrators would fall within the scope of cl 19 (see [49] above). As for the nature of the dispute itself, I found that this was a "dispute … arising out of or in connection with this Agreement".

58 First, the Notices were published in June 2019, when the Settlement Agreement had already been entered into, and after OSP 3 had been filed in the Singapore court. I accepted that the Administrators' actions in Indonesia, which were concurrent with the application in OSP 3, and after actions were taken in May 2019 to publish similar notices in Singapore, showed that they were seeking, as far as they were able to, implement the Settlement Agreement. Put another way, if the Settlement Agreement had not existed and the respondents had not agreed that the Administrators would be the administrators of the Estate in Indonesia, I doubted that the Administrators would have taken any steps in Indonesia. The acts of the Administrators, therefore, arose out of, or in connection with the Settlement Agreement, and any dispute concerning those acts would similarly be so related to the agreement as to fall within cl 19.

59 Second, even though they were not administrators in Indonesia yet, c1 1 of the Settlement Agreement provided that the respondents were to take the necessary steps to secure the Administrators' appointment in Indonesia. In that regard, any complaints that the respondents would have against the Administrators' actions prior to their appointment as administrators in

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Indonesia would necessarily involve the background of the respondents' agreement to facilitate and effect those appointments. As the Administrators noted, they felt that the Notices were required because the respondents had not been cooperative in facilitating their appointments in Indonesia.[33] While I do not make a finding on this either way, it was clear to me that these allegations pertaining to the respondents' obligations under cl 1 of the Settlement Agreement were inextricably related to the Administrators' decision to publish the Notices. The dispute, therefore, was certainly "in connection with" the Settlement Agreement.

60 Third, in terms of the damage allegedly caused by the Administrators' actions, this must be understood in terms of VKC's entitlements under the Settlement Agreement and the Will. It is noteworthy that she has framed her losses in terms of her entitlement under the Will, *ie,* 5% of the Estate.[34] However, VKC is also a member of Family [A], which was entitled to the payment of the lump sum under cl 2 of the Settlement Agreement. The Settlement Agreement was agreed to be in full and final settlement of all the disputes that the respondents had against each other in relation to the Estate and/or Will (*per* cl 7), which meant that Family [A] (and all its members) were to wait for the payment under cl 2.a., which sum they agreed "constitutes and/or is a complete and exhaustive quantification and representation of their full entitlement to the Estate" (*per* cl 2.b.). In that sense, VKC's entitlement under the Will at the time was simply her share in the payment due to Family [A] under the Settlement Agreement. Any "damage" allegedly caused would appear

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33 VJZ's 3rd Affidavit dated 24 March 2020 at para 20.

34 VKC's Lawyer's Affidavit dated 30 June 2020 at para 15.

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to have been to her entitlement under the *Settlement Agreement*, which means that the dispute clearly fell within cl 19 of the Settlement Agreement. In substance, her complaint was that the Administrators' actions had jeopardised the payment that was due to her and the rest of Family [A], since, under the Settlement Agreement, *that* was to be their entitlement to the Estate.

61 Given the above features of the Indonesian Proceedings, I found that the dispute giving rise to the said action clearly fell within cl 19 of the Settlement Agreement. It followed that VKC's act in bringing the Indonesian Proceedings was in breach of cl 19, which the Administrators were entitled to enforce. As a result, it would generally follow that the anti-suit injunction should be granted, in the absence of strong reasons not to: *Sun Travels* ([21] *supra*) at [68]. For completeness, I note that VKC did not allege that there was "dilatoriness or other unconscionable conduct" (*per* Lord Bingham's leading judgment in *Donohue v Armco Inc* [2002] 1 All ER 749 ("*Donohue*") at [24]) that would have prevented the Administrators from seeking equitable relief. I now turn to the other aspects of the anti-suit injunction analysis, both for completeness and to see if there was any strong reason against granting the injunction.

Natural forum

62 The Administrators argued that Singapore was the natural forum as it was the more appropriate forum for the dispute. VKC argued that the natural forum was Indonesia. In my judgment, Singapore was the natural forum for the dispute.

63 The principles to be applied in determining the natural forum are those stated in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 ("*Spiliada*") (see *Koh Kay Kew* ([20] *supra*) at [18]; *Trane* ([19] *supra*) at [33]).

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The burden generally lies on the party seeking the anti-suit injunction to show that Singapore is the more appropriate forum for the dispute: *Trane* at [33]. However, in my view, the burden would shift where there is an exclusive jurisdiction clause and an anti-suit injunction is sought. Where there is such a clause, it would appear that the burden would be on the party who is resisting the anti-suit injunction *despite* the contractual agreement to show a *strong reason* for the court not to grant the relief. As Lord Bingham held in *Donohue* at [24] (see also *Vinmar* ([20] *supra*) at [97]):

> If contracting parties agree to give a particular court exclusive jurisdiction to rule on claims between those parties, and a claim falling within the scope of the agreement is made in proceedings in a forum other than that which the parties have agreed, the English court will ordinarily exercise its discretion (whether by granting a stay of proceedings in England, or by restraining the prosecution of proceedings in the non-contractual forum abroad …) to secure compliance with the contractual bargain, *unless the party suing in the non-contractual forum (**the burden being on him**) can show strong reasons for suing in that forum … [T]he general rule is clear: where parties have bound themselves by an exclusive jurisdiction clause effect should ordinarily be given to that obligation in the absence of strong reasons for departing from it. Whether a party can show strong reasons, **sufficient to displace the other party's prima facie entitlement to enforce the contractual bargain**, will depend on all the facts and circumstances of the particular case.*
>
> [emphasis added in italics and bold italics]

It is for the party resisting the injunction to show strong reasons why the injunction should not be granted to enforce the exclusive jurisdiction clause. It would follow that the burden would be on that party to show that Singapore is *not* the more appropriate forum, or that another jurisdiction *is* the more appropriate forum. As the general principle provides: "he who asserts should prove": *Trane* at [33].

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64 The natural forum is the forum "with which the dispute has the most real and substantial connection": *Lakshmi* ([18] *supra*) at [53]. In determining this, the court will consider all the relevant factors. In *JIO Minerals FZC v Mineral Enterprises Ltd* [2011] 1 SLR 391 ("*JIO Minerals*") at [42], the Court of Appeal identified five non-exhaustive factors: (1) personal connections of parties and witnesses; (2) connections to relevant events and transactions; (3) the applicable governing law; (4) existence of proceedings elsewhere (*lis alibi pendens*); and (5) the shape of the litigation (*ie*, how the claim and defence had been pleaded). However, the court should not apply this mechanistically, and "greater weight should be ascribed to the factors likely to be *material* to a fair determination of the dispute": *Lakshmi* at [54], citing *Rappo, Tania v Accent Delight International Ltd and another and another appeal* [2017] 2 SLR 265 at [70]–[71].

65 At the outset, I clarify that while the Administrators appeared to argue that the Indonesian court did not have jurisdiction in the Indonesian Proceedings,[35] I found the state of the evidence on Indonesian law in this case to be insufficient for me to make a finding either way. I proceeded on the assumption that the Indonesian courts could hear the Indonesian Proceedings.

Shape of the litigation

66 I was of the view that the shape of the litigation pointed to Singapore being the more appropriate forum.

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35 Applicants' Written Submissions at para 61.

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67 First, there were already on-going proceedings in Singapore concerning the Administrators' role in relation to the Estate in OSP 3. While not strictly speaking *lis alibi pendens*, since OSP 3 did not concern the torts alleged in the Indonesian Proceedings, I was of the opinion that the Indonesian Proceedings could not be considered apart from OSP 3. As the Administrators were not parties to the Settlement Agreement, ORC 253 in OSP 3 was the means by which they were able to and became compelled to implement the Settlement Agreement (as far as they were able to). Relevant to the present dispute was the subject-matter of prayer 1 in SUM 96, *viz,* the indemnity that was ordered in ORC 253. The indemnity was relevant because the actions of the Administrators were, in my view, done as part of their appointment in Singapore and their obligation to implement the Settlement Agreement. In fact, matters like the Indonesian Proceedings were exactly why something like the indemnity in ORC 253 was called for. Although the tort was allegedly committed in Indonesia, even if liability were established there, the Administrators would seek an indemnity from the Estate (as was done in this case), and that application would have to be made in Singapore.

68 Second, although the Indonesian Proceedings involved only the Administrators and VKC, if what VKC alleged was true – that the Administrators' acts had reduced the value of the Estate available for distribution to the beneficiaries – then *all* of the respondents would also have been affected by the tort. If that were the case, then the most appropriate step would have been for *all the respondents* to be joined to the Indonesian Proceedings. Similarly, and related to the first point above, if the Administrators sought an indemnity for the Indonesian Proceedings, the other respondents would also have to be joined. Furthermore, the Administrators had good ground for asserting that they had published the Notices after being prompted to take

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further actions in Indonesia to preserve the Estate by Family [B], as indicated in a letter sent by their solicitors to the Administrators' solicitors dated 24 May 2019.[36]

69 Any joinder, however, would then run into the problem of cl 19 of the Settlement Agreement *vis-à-vis* the other respondents, since it is clear that they have agreed for any disputes arising from or in connection with the Settlement Agreement to be submitted for mediation in Singapore first, following which they would then be confined to bringing legal proceedings in Singapore. A bifurcated action of sorts where only the Administrators were proceeded against in Indonesia, while the respondents were then proceeded against by the Administrators in Singapore, made little sense. In fact, given that all the respondents have already been part of proceedings in Singapore, and they have agreed to cl 19 of the Settlement Agreement, the dispute between VKC and the Administrators can be viewed as ancillary to the overall administration of the Estate, which had its centre of gravity in Singapore.

70 Third, VKC's claims in the Indonesian Proceedings necessarily touched on the Settlement Agreement because her argument was that her entitlement was affected by the Notices being published in Indonesia. The issue of the scope of her entitlement would require an examination of the Will and the Settlement Agreement, and how they interacted (see [60] above), even if just to say that the entitlement under the Will continues despite the Settlement Agreement. At the same time, any finding of the Indonesian courts on the scope of the entitlements under the Will or Settlement Agreement may give rise to a risk of fragmentation

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[36] VJZ's 5th Affidavit dated 29 April 2020 at p 12.

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since the other respondents have not been (and arguably cannot be, by virtue of cl 19) joined to the Indonesian Proceedings.

71 Relatedly, the Administrators would claim, as they have, that they were acting with a view towards their eventual appointment as administrators in Indonesia by virtue of cl 1 of the Settlement Agreement. Insofar as any lack of cooperation was evident from VKC or any other respondent, that would necessarily have an impact on the operation of the Settlement Agreement by virtue of cl 5, since one of the "material breach[es]" listed is the failure to "support the appointment of the [Administrators] as the administrators and/or executors of the Estate in *any* jurisdiction" [emphasis added]. As that would affect the interests of all of the other respondents, including other members of Family [A], it would be more appropriate for all of the respondents to be involved.

72 Hence, the overall shape of the litigation showed that the dispute between VKC and the Administrators in Indonesia could not be neatly separated from issues pertaining to ORC 253 in Singapore, the Settlement Agreement, and the interests of all the other respondents in the proceedings and the Estate. In this case, given that the Indonesian Proceedings were based effectively on the acts of the Administrators in relation *to the Estate*, even if they were not strictly speaking the appointed administrators in Indonesia, I found that the overall shape of the litigation pointed strongly in favour of Singapore being the more appropriate forum.

Connections to relevant events and transactions

73 Similarly, while the Notices were published in Indonesia, I found that the relevant events and transaction had a closer connection to Singapore than to

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Indonesia. First, as I have already noted above at [58], the Administrators published the Notices in Indonesia *because* of the Settlement Agreement, especially cl 1, and in the context of their concurrent application in Singapore in OSP 3 to have the Settlement Agreement formally recognised as governing a large part of their obligations as administrators. This suggested that the *entire factual background* of the Notices was derived from the prior proceedings in Singapore and the Settlement Agreement. Without that Settlement Agreement, the Administrators simply would not have published the Notices at all. Second, the proper interpretation of the Notices, and the state of mind of the Administrators in relation to their acts, could not be understood apart from the Settlement Agreement and the on-going proceedings in Singapore. In that sense, the reasons for publishing the Notices primarily centred on what was happening in Singapore. Balanced against this was the fact that, in my view, the only relevant event in Indonesia was the publication of the Notices. No affidavit evidence has been given of any facts subsequent to the publication of the Notices that would be of relevance to the dispute.

74 While I recognised that as a general principle, in a tortious claim, the place where the alleged tort occurred is *prima facie* the natural forum, this is not conclusive and is "only one of the factors, albeit a significant factor, to be taken into account in the overall analysis": *Trane* at [42], citing *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 ("*Rickshaw*") at [40]. In my judgment, the nature of the tort and the context in which the tort was alleged to have been committed, together with the other factors identified above in relation to the shape of the litigation, point away from Indonesia as the natural forum, even if it was the place where the alleged tort occurred.

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The applicable law

75 VKC placed significant weight on the fact that the applicable law in relation to the tortious claim would be Indonesian law, being the *lex loci delicti*. The Administrators did not deny that Indonesian law would govern that action.[37] While this was a significant factor in favour of Indonesia as the more appropriate forum, I was of the view that there were particular elements of this case that reduced the weight to be given to this factor.

76 While the alleged tort was governed by Indonesian law, it would be necessary to interpret the Settlement Agreement in order for the court to arrive at a proper understanding of VKC's interest in the Estate, since that agreement purported to provide for the entitlements of all members of Family [A] by way of cl 2 and the payment of the agreed sum. In that regard, the questions relating to the Settlement Agreement would be governed by Singapore law, as provided for in cl 18 of the Settlement Agreement. Similarly, in relation to the Administrators' explanation for their actions, this could not be understood apart from the effect of cl 1 and the on-going proceedings in Singapore, which were governed by Singapore law. As a matter of principle, as summarised in *Halsbury's Laws of Singapore* vol 6(2) (LexisNexis, 2017) at para 75.093, citing *Rickshaw* at [85]: "It is common for more than one legal issue to arise in a dispute, and the weight of this factor may be reduced or even cancelled if different issues are governed by different laws." In my view, this principle applied in the present case.

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37 Applicants' Written Submissions at para 60.

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77 It was also, in my view, relevant that the parties had already foreseen that Indonesia might be a forum in which legal proceedings could be brought. As noted above, the Settlement Agreement was entered into by the respondents when legal proceedings in Indonesia were on-going, and the Settlement Agreement was intended, *inter alia*, to bring to an end those proceedings. In doing so, it also provided for exclusive jurisdiction in Singapore under cl 19 of the Settlement Agreement. The parties had *already* known that some disputes might be governed by Indonesian law, and it was envisaged that steps may be taken in Indonesia to implement the settlement (per cll 1, 2 and 3 of the Settlement Agreement) but they nevertheless decided to submit all those disputes relating to the Settlement Agreement (which governed their entitlements to the Estate) to the Singapore courts. Therefore, I did not give significant weight to the applicable law since I did not consider it appropriate to enable VKC to avoid the bargain made under the Settlement Agreement.

Personal connections of parties and witnesses

78 I did not find this factor to be significant in the present case. Neither the Administrators nor VKC pointed to any particular witnesses in either Singapore or Indonesia that would be needed for the dispute to be tried. The key facts relating to the alleged tort were largely uncontested, and it was not clear from the affidavits what further witnesses would be required. As for the parties themselves, I recognised that the Administrators are based in Singapore while VKC appears to be living in Indonesia.[38] I therefore found this to be a neutral factor in the present case.

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38 VKC's 1st Affidavit dated 3 June 2020 at para 1.

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Conclusion on natural forum

79 In my judgment, the most material factors in this case were the overall shape of the litigation, and the connection of the events and transactions to Singapore. These two factors clearly indicated that the Indonesian Proceedings were, in substance, concerned with the administration of the Estate, which was centred in Singapore. The Administrators' acts in Indonesia, which were done with a view towards their eventual appointment as administrators in that jurisdiction pursuant to the Settlement Agreement, could not be understood or assessed except in relation to the on-going proceedings in Singapore and the Settlement Agreement, both as a matter of the applicable background, and in terms of the remedies that the Administrators would seek against the Estate and/or the respondents. The resolution of the dispute over the publication of the Notices would necessarily involve an interpretation and assessment of the Settlement Agreement, which was governed by Singapore law, and which would affect the interests of all the other respondents. At the same time, the other respondents could not be joined to the Indonesian Proceedings because of cl 19 of the Settlement Agreement unless that was waived by the other respondents. There was a real risk of fragmentation in the interpretation and application of the Settlement Agreement. Thus, while the Administrators conceded that the applicable law to the tortious claim was Indonesian law, and while the place the tort occurred is given significant weight in the assessment of the natural forum, I concluded that in this case, the various factors identified above clearly pointed to Singapore as the more appropriate forum.

80 Under the authority of *Spiliada* ([63] *supra*), which dealt with stays of proceedings, after considering which forum is the more appropriate one, the court should also consider whether justice requires that a stay be refused. I deal

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with the issue of justice as part of the broader analysis of whether to grant the anti-suit injunction at [87]–[89] below.

Vexation or oppression

81 When it comes to an anti-suit injunction based on an exclusive jurisdiction clause, the strict test of vexation and oppression does not apply, and it is not necessary to prove such unconscionable conduct before an injunction is granted: *Sun Travels* ([21] *supra*) at [68]. In the following, I discuss whether the Indonesian Proceedings would be vexatious or oppressive to the Administrators as it formed a further reason as to why I was inclined to grant the injunction, and also showed why there was no strong reason against granting the injunction.

82 The Court of Appeal in *Trane* ([19] *supra*) summarised the applicable principles as follows (at [47]):

> We would observe that the courts have held that there is vexation or oppression in situations such as the following: where a party is subjected to oppressive procedures in the foreign court; bad faith in the institution of the foreign proceedings; commencing the foreign proceedings for no good reason; commencing proceedings that are bound to fail; and extreme inconvenience caused by the foreign proceedings (*Dicey on The Conflict of Laws* ([27] *supra*) at para 12-073). These situations can also be suitably described by the word *unconscionable*. In this respect, the following *dicta* of Ang J in *Evergreen International SA* ([28] *supra*) is helpful (at [41]):
>
> > The question for consideration is whether the conduct of the defendants in continuing with the Belgium proceedings is vexatious or oppressive and is hence unconscionable. Lord Hobhouse in *Turner v Grovit* [2002] 1 WLR 107 at 117 explained that the power to make the restraining order is dependent upon there being wrongful ('unconscionable') conduct of the party to be restrained of which the applicant is entitled to complain and has a legitimate interest in seeking to prevent. He said that the word 'unconscionable' is derived from English equity law. Injunctive relief is

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> based on equity. The words 'vexatious' or 'oppressive' have been used in relation to the conduct of the party to be restrained. They are derived from 'the basic principle of justice'. As the complaint is that unconscionable, vexatious or oppressive conduct lies in the pursuit of proceedings in Belgium, an assessment or evaluation of the conduct complained of and the nature of the plaintiffs' rights or interests that are being infringed or threatened is needed.

83 The central fact that rendered the continuation of the Indonesian Proceedings vexatious and oppressive was, in my judgment, the attempt by VKC to get around the Settlement Agreement. More than just the fact that VKC had agreed to an exclusive jurisdiction clause which she was now attempting to resile from, it appeared to me that in bringing the action against the Administrators, VKC was undermining the substantive settlement arrived at in the Settlement Agreement. As I have already noted, VKC's approach to the proceedings in Indonesia has been to rely on her entitlement under the Will, claiming damages against the Administrators for that entitlement. However, there was no mention of the *Settlement Agreement* in the letter sent to the Administrators by VKC's lawyers or in any of the documents exhibited.[39] I found this to be unsatisfactory. This raised significant doubts in my mind as to the *bona fides* of VKC in bringing the Indonesian Proceedings, since it appeared that she was seeking to enforce, indirectly, her entitlement under the Will rather than the agreed share that Family [A] would receive under the Settlement Agreement. Further, her failure to join the rest of the respondents in the Indonesian Proceedings was another indication that the proceedings would be vexatious and oppressive to the Administrators. There was the issue of the indemnity and liability (since Family [B] had invited the Administrators to take

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[39] VJZ's 3rd Affidavit dated 24 March 2020 at pp 50–65.

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further steps in Indonesia[40]), and also the risk that the positions of the other respondents, especially Family [B] and the unrepresented beneficiaries, might be affected by whatever interpretation VKC proposed to the Indonesian courts. This would be true of both the Will and the Settlement Agreement, since in order to arrive at a conclusion as to VKC's entitlement to the Estate, both instruments would need to be considered. That would then have worrying implications for the Administrators if they later, under cl 1 of the Settlement Agreement, were properly appointed as administrators in Indonesia.

84 This placed them in an invidious position. If the Indonesian Proceedings continued, and the court in Indonesia arrived at an interpretation of the Will and Settlement Agreement that was only binding between them and VKC (assuming the rules of issue estoppel applied in the same way), that would render their work in Indonesia and Singapore more difficult *vis-à-vis* the other respondents. Any actions they took to conform to the findings of the Indonesian court in relation to the Will and Settlement Agreement could then expose them to liability to, or at least complaints from, the other respondents, resulting in further costs and delays in the administration of the Estate. Given that a significant part of the Deceased's Estate was in Indonesian assets, this would have been an extremely inconvenient and unjust position. This is further compounded by the fact that (as I observed above at [69]) cl 19 would prevent VKC from joining the other respondents in the Indonesian Proceedings. What VKC was doing in Indonesia threatened to undermine the coherence of the settlement, albeit indirectly through an action in tort.

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40 See Applicants' Written Submissions at para 66.

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85 I recognised the force of some of the Administrators' arguments that the claim in the Indonesian Proceedings lacked any merit at all. However, I also recognised, as VKC argued, that the appropriate response could be to apply to the Indonesian courts to strike out the claim: see also *Trane* at [48], and that the lack of merit alleged would not *necessarily* lead to a finding that the continuation of proceedings would be vexatious and oppressive. Hence, I decided to place greater weight on the factors identified above in coming to my conclusion. In any case, I also considered that on the basis of the evidence before me, I could not come to a firm conclusion on the merits of the Indonesian Proceedings.

86 For the reasons above, I found that it would be unconscionable for VKC to maintain the Indonesian Proceedings in the light of the Settlement Agreement that she was a party to, and that the continuation of the proceedings would be vexatious and oppressive to the Administrators who were seeking to implement the Settlement Agreement.

Injustice

87 While the injustice that might be caused to VKC was not raised as a separate argument, VKC claimed, in passing, that she would not be able to seek a remedy for the alleged tort in Singapore, and hence, ordering the anti-suit injunction would be unjust as it would deprive her of any remedy for the wrong allegedly caused.[41]

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41 Respondents' Written Submissions at para 37.

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88 From the arguments on natural forum, it appeared to me that the parties have proceeded on the basis that the place where the tort occurred is Indonesia. That being the case, the question of whether the tort would be actionable in Singapore turns on the so-called "double actionability" rule. As stated by the Court of Appeal in *Rickshaw* ([74] *supra*) at [53]:

> Put simply, this rule states that in order for a tort to be actionable in Singapore, the alleged wrong must be actionable not only under the law of the forum (the *lex fori*) but also under the law of the place where the wrong was in fact committed (the *lex loci delicti*). In other words, both these limbs must be satisfied.

89 It was not contended by either the Administrators or VKC that the *lex loci delicti* is other than Indonesian law (see [75] above), and I also assumed for the purposes of my decision that the tort would be actionable in Indonesian law (since if it were not, then it necessarily follows that no injustice can be caused by preventing VKC from continuing with the Indonesian Proceedings). The question, then, is whether the tort would also be actionable under the *lex fori*, *ie,* Singapore law. The difficulty here was that none of the parties took a firm stance on whether the tort was actionable or not under the double actionability rule. While VKC alluded to this issue by stating "there is *probably* no corresponding remedy in Singapore"[42] [emphasis added] in submissions, this is far from an argument that showed that the tort was not actionable in Singapore. Counsel for the Administrators suggested that there were remedies available in Singapore, but this did not touch on whether the tort would be actionable.[43] This issue was not in fact canvassed before me, and since the burden lay in this case

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42 Respondents' Written Submissions at para 37.

43 Transcript for 10 June 2020 at p 11, ln 17 to p 12, ln 4.

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on VKC to show that there was a strong reason why the injunction should not be granted (see [63] above), I decided not to refuse the stay on this basis. In the absence of arguments from the parties, it was not clear to me that the alleged tort was not actionable in Singapore, since there could be a similar cause of action either for negligence or misrepresentation.

Conclusion on the anti-suit injunction

90 I summarise my findings relevant to the anti-suit injunction as follows:

(a) The Administrators were entitled to rely on cl 19 of the Settlement Agreement by virtue of s 2(1)(*b*) of the CRTA. The Indonesian Proceedings fell within the scope of cl 19. Therefore, in order to enforce the Settlement Agreement as a contract, the anti-suit injunction would be granted unless there was strong reason not to.

(b) Singapore was the natural forum as it was the more appropriate forum. As such, this further strengthened the case for granting the anti-suit injunction, and also meant that no strong reason for not granting the injunction on this basis could arise.

(c) Continuation of the Indonesian Proceedings would be vexatious and oppressive to the Administrators.

(d) I did not find that VKC had proved that she would suffer substantial injustice if the injunction were ordered.

91 Therefore, given that there was an exclusive jurisdiction clause in this case and no strong reason was shown for not granting the anti-suit injunction, I granted the injunction sought by the Administrators.

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Conclusion

92 For the foregoing reasons, I granted an order in terms of prayer 2 of SUM 96. Costs of the application were reserved to be dealt with together with the remainder of SUM 96 and SUM 10.

Tan Puay Boon
Judicial Commissioner

Ong Min-Tse Paul, Afzal Ali and Marissa Miralini Karuna (Allen & Gledhill LLP) for the first and second applicants;
Devinder Kumar s/o Ram Sakal Rai and Mikahil Rashid Wee (ACIES Law Corporation) for the first to fifth and fifteenth respondents;
Aditi Ravi (Tan Kok Quan Partnership) for the tenth to fourteenth respondents (watching brief);
The seventh respondent in person;
The sixth, eighth and ninth respondents absent and unrepresented.

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