

**IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2023] SGHC(A) 37

Appellate Division / Civil Appeal No 42 of 2023

Between

- (1) Group Lease Holdings Pte Ltd
- (2) Mitsuji Konoshita

... Appellants

And

JTrust Asia Pte Ltd

... Respondent

In the matter of Originating Summons No 780 of 2021

Between

JTrust Asia Pte Ltd

... Plaintiff

And

- (1) Group Lease Holdings Pte Ltd
- (2) Mitsuji Konoshita
- (3) Adalene Limited
- (4) Bellaven Limited
- (5) Aref Holdings Limited
- (6) Baguera Limited

... Defendants

EX TEMPORE JUDGMENT

[Res Judicata — Issue estoppel]
[Civil Procedure — Stay of proceedings]

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**Group Lease Holdings Pte Ltd and another
v
JTrust Asia Pte Ltd**

[2023] SGHC(A) 37

Appellate Division of the High Court — Civil Appeal No 42 of 2023
Woo Bih Li JAD, Kannan Ramesh JAD and See Kee Oon JAD
22 November 2023

22 November 2023

Kannan Ramesh JAD (delivering the judgment of the court *ex tempore*):

1 This is an appeal against the decision of the Judge below (the “Judge”) in HC/OS 780/2021 (“OS 780”) to award damages of US\$124,474,854.00 and interest to the respondent and decline to grant a case management stay of OS 780 in favour of proceedings in Thailand (see *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2023] SGHC 167). Having heard the parties’ submissions, we dismiss the appeal.

Background to the dispute

2 The present appeal is the latest instalment in a long running dispute between the parties centred on three investment agreements entered into on 20 March 2015, 6 June 2016 and 1 December 2016 between JTrust Asia Pte Ltd (“JTA”), a company incorporated in Singapore, and Group Lease Public Company Thailand (“GL Thailand”), a company listed in Thailand

(respectively, the “1IA”, the “2IA” and the “3IA”, and collectively, the “IAs”). Pursuant to the IAs, JTA subscribed to convertible debentures in different amounts that matured on different dates.

3 GL Thailand is the sole shareholder of the first appellant, Group Lease Holdings Pte Ltd (“GLH”), a company incorporated in Singapore. The second appellant, Mr Mitsuji Konoshita (“MK”), is a director of GLH and formerly the chairman and chief executive officer of GL Thailand. Unless otherwise stated, GLH and MK shall collectively be referred to hereinafter as the “appellants”. The respondent is JTA.

4 The IAs were the subject of earlier proceedings between JTA and the appellants in HC/S 1212/2017 (“Suit 1212”), commenced by JTA on 26 December 2017. In CA/CA 21/2020 (“CA 21”), an appeal from the decision in Suit 1212, the Court of Appeal (“CA”) found GLH and MK liable in the torts of deceit and unlawful means conspiracy to JTA as regards the 1IA and the 3IA. As regards the 2IA, the CA held that JTA had not proven actual loss as, *inter alia*, it had not shown that GL Thailand would not be able to pay the principal sum under the convertible debentures on 1 August 2021, which was the date of maturity (see *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2020] 2 SLR 1256 (the “CA 21 Decision”) at [245]).

5 OS 780 and the present appeal concern the 2IA. OS 780 was commenced by JTA on 3 August 2021 based on the same cause of action on the 2IA in Suit 1212, following GL Thailand’s failure to pay the principal sum upon maturity. The Judge held that the appellants’ liability in the torts of deceit and unlawful means conspiracy was *res judicata* as it had been decided in CA 21, and the only live issue was the quantum of damages which JTA was entitled to

for its loss under the 2IA. The Judge quantified damages at US\$124,474,854.00. This was based on the principal sum under the relevant convertible debentures less interest that had been paid to JTA by GL Thailand. The Judge awarded JTA this sum and interest on the said sum from 1 August 2021. Further, the Judge declined to grant a case management stay of OS 780 in favour of proceedings in Thailand.

6 Those proceedings are a civil action described as Black Case No. Por 83/2561 (2018) (the “Thai Civil Case”) commenced by JTA on 9 January 2018 against, amongst other parties, GL Thailand and MK, for fraudulent misrepresentation in relation to the 2IA. The Thai Civil Case is ongoing and expected to be resolved between 2025 and 2028.

Issues in the present appeal

7 Three issues arise in the present appeal:

- (a) whether there is an issue estoppel on the issue of GLH’s and MK’s liability to JTA in the torts of deceit and unlawful means conspiracy on the 2IA;
- (b) whether JTA is entitled to damages under the 2IA; and
- (c) whether a case management stay should be ordered.

Whether there is an issue estoppel on the issue of GLH’s and MK’s liability to JTA in the torts of deceit and unlawful means conspiracy on the 2IA

8 The torts of deceit and unlawful means conspiracy are not actionable *per se*. In order for a claimant to establish liability in either tort, loss must be

established (see, eg, *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 at [13]–[14] and *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 at [112]).

9 The issue of the loss in tort is separate albeit related to the issue of the quantum of damages. The former refers to the injury that a claimant must prove it has suffered as a result of interference with a right or an interest recognised as capable of protection by law. The latter refers to the monetary sum that is payable consequent upon proof of that injury (see *ACB v Thomson Medical Pte Ltd and others* [2017] 1 SLR 918 at [44]).

10 Pertinently, the appellants accept that issue estoppel arises as regards the other elements of the torts of deceit and unlawful means conspiracy save for the element of loss, as a result of the CA 21 Decision. Therefore, their contention in the present appeal is only on whether there is also an issue estoppel on loss.

11 The appellants submit that an issue estoppel does not arise on JTA’s loss under the 2IA as a result of the CA 21 Decision. The CA 21 Decision was not a final and conclusive judgment on the merits as the CA found that JTA had not suffered actual loss. Further, the CA did not conclude that JTA would suffer loss merely by reason of GL Thailand’s failure to pay the principal sum upon maturity. This was despite the CA’s observations that JTA’s claim was premature because the principal sum under the 2IA was only due to be paid in August 2021.

12 On the other hand, JTA submits that there is an issue estoppel on the appellants’ liability under the 2IA, including the element of loss. JTA asserts that the approach in the CA 21 Decision to loss is an issue estoppel. The

approach is described by JTA as follows: (a) whether the debentures under the relevant investment agreements had matured; and (b) whether JTA was paid the principal sums on the maturity date. On this basis, the CA determined that JTA suffered actual loss for the 3IA, but did not as regards the 2IA as the date for redemption had not arisen at that time. As GL Thailand subsequently failed to redeem the convertible debentures upon maturity in August 2021, JTA suffered actual loss then.

13 We agree with the appellants that there is no issue estoppel on JTA's loss under the 2IA, because the CA did not make a final and conclusive determination on that issue. We depart from the Judge in this regard. For there to be a final and conclusive determination, there must be a declaration or determination on the issue that leaves "nothing else to be judicially determined" (see *Goh Nellie v Goh Lian Teck and others* [2007] 1 SLR(R) 453 at [28]). In our view, the CA left the issue of loss as regards the 2IA to be pursued in a future action as actual loss had not been established at that stage. This is plain from the CA 21 Decision where the CA dismissed the claim because it was brought prematurely. In particular, [244]–[245] are pertinent. There, the CA observed that JTA could establish actual loss either by: (a) quantifying the actual diminution in value of its rights in relation to the redemption of the principal sum under the 2IA; or (b) proving that GL Thailand would not be able to pay the principal sum under the 2IA in August 2021, when the debentures matured. As the debentures under the 2IA had not matured, and in the absence of evidence on the diminution in value of its rights, JTA could not prove actual loss. This should be juxtaposed against JTA's claim as regards the 3IA where the CA observed at [246] that the JTA had shown actual loss because it was "already entitled to be repaid the principal sum of its investment by GL Thailand since the convertible debentures have matured".

14 It is therefore evident that that the CA did not make a final and conclusive determination on JTA's loss under the 2IA as the loss had not actualised. The issue remained alive for ventilation in future proceedings, which, as it turned out, was OS 780.

15 Accordingly, we find that no issue estoppel arises on JTA's loss under the 2IA.

16 As no issue estoppel arises on JTA's loss by reason of the CA 21 Decision, the *Arnold* exception does not arise for consideration. The *Arnold* exception is based on an exception to issue estoppel stated in the case of *Arnold and others v National Westminster Bank plc* [1991] 2 AC 93. In this regard, the appellants rely on a non-prosecution order (the "NPO") issued by the Thai Attorney-General in June 2022 against, *inter alios*, MK and GL Thailand, to invoke the *Arnold* exception. The *Arnold* exception is relevant only if an issue estoppel arises but there are countervailing reasons to enable a litigant to avoid being estopped. Since the CA did not make a final and conclusive determination on JTA's loss under the 2IA, the question of whether the CA's conclusion should be re-visited on the basis of the NPO does not arise for consideration.

Whether JTA is entitled to damages under the 2IA

17 As there is no issue estoppel on JTA's loss under the 2IA, it had to establish the same in OS 780. Thus, the Judge had to determine: (a) whether JTA suffered actual loss; and (b) if so, what the quantum of the damages should be.

18 We address the appellants’ argument that the NPO is pertinent to the issue of JTA’s loss. We are of the view that the NPO is not relevant to the issue of JTA’s loss as it is not a decision of any court.

19 We agree with the Judge that JTA suffered actual loss as a result of GL Thailand’s failure to redeem the 2IA upon the convertible debentures maturing in August 2021. This was the approach set out by the CA in the CA 21 Decision at [245] and which it adopted in determining loss as regards the 3IA at [246]. Notably, this approach was accepted by GLH and MK in CA 21 when they submitted that “the only way that JTA could demonstrate a loss is if GL Thailand was unable to repay the principal sum upon maturity” (see the CA 21 Decision at [242]) even though they sought to explain this away by arguing in the present appeal that GL Thailand terminated the 2IA by issuing the Notice of Breach dated 30 July 2021. However, that argument does not mean that there is no loss or that the loss has not yet arisen in the present circumstances.

20 We also agree with the Judge that the quantum of damages ought to be US\$124,474,854.00, which is the principal sum of US\$130m under the debentures issued pursuant to the 2IA, less the interest that JTA had already received. Again, this is consistent with the approach set out by the CA in the CA 21 Decision for the 3IA, where the CA held that JTA was entitled to the principal sum of US\$50m under the 3IA, less the interest received by JTA, amounting to US\$1,062,500 (see the CA 21 Decision at [246]).

Whether a case management stay should be ordered

21 Finally, the appellants argue that this court should grant a case management stay of the present appeal, pending the final disposal of the Thai Civil Case. This is because: (a) the Thai Civil Case is at an advanced stage with

trial having already begun; and (b) of the risk of conflicting judgments in the present appeal and the Thai Civil Case.

22 JTA contends that a case management stay is not appropriate. This is because Suit 1212 was commenced before the Thai Civil Case, and proceedings here are at a more advanced stage compared to the Thai Civil Case.

23 It should be pointed out that the appellants' case on appeal differs from that before the Judge. Before the Judge, the stay sought was as regards OS 780. As OS 780 has been determined, the case on appeal is for a stay of the present appeal. This raises two issues. First, whether it is appropriate for the appellants to appeal against the order of the Judge declining to grant a stay without permission being first sought and granted given that it is an interlocutory order (see s 29A read with para 3(k) of the Fifth Schedule to the Supreme Court of Judicature Act 1969 (2020 Rev Ed)). Second, whether it is even appropriate to seek a stay of the present appeal by way of an appeal against the Judge's refusal to stay the proceedings at first instance. It seems to us that these are intractable issues for the appellants. That said, we nonetheless consider that the application for a stay is wholly without merit.

24 We agree with the Judge that a case management stay should not be granted. Save for the present appeal, proceedings here have concluded. All but one of the elements of each cause of action have been determined, as recognised by the appellants, leaving open only the issue of JTA's loss under the 2IA. That issue too is guided by the observations in the CA 21 Decision on the 2IA and the approach taken there to loss as regards the 3IA. In any event, as conceded by counsel for the appellants, GL Thailand has not sought any relief in the Thai

Civil Case on the basis that it was entitled to terminate the 2IA by issuing the Notice of Breach dated 30 July 2021.

25 In these circumstances, there is no meaningful purpose served by staying the proceedings here pending the outcome of the Thai Civil Case. The true purpose of a case management stay is to avoid inconsistent outcomes and uphold international comity. This assumes that the concurrent proceedings in the different jurisdictions in question have not been resolved, making it sensible for one to await the outcome of the other. However, the proceedings here have been largely determined. As such, even if the Thai court reaches a different conclusion in the Thai Civil case on the issues that have been determined here, assuming for the moment that the issues are the same or similar, it will not result in the determinations that have been made here being set aside. It should be pointed out that as between the same parties, a foreign judgment will not be recognised where there is an inconsistent prior or subsequent local judgment. This principle gives priority to the *res judicata* effect of local judgments (see *Merck Sharp & Dohme Corp (formerly known as Merck & Co, Inc) v Merck KGaA (formerly known as E Merck)* [2021] 1 SLR 1102 at [36(b)]).

26 Indeed, we find the appellants' contention difficult to understand. It is significant that the Thai Civil Case was commenced on 9 January 2018 after Suit 1212 was commenced on 26 December 2017. If the concerns that underpin the appellants' argument for a case management stay were compelling, it is surprising that the appellants did not apply for a case management stay of Suit 1212 pending the disposal of the Thai Civil Case. Having stridently defended Suit 1212 and pursued CA 21, it is ironic that the appellants have made an application for a case management stay of the proceedings here, namely OS 780, so late in the day.

27 Finally, we agree with the Judge that in any event, the Thai Civil Case is not relevant to the proceedings here.

Conclusion

28 For all the reasons above, we dismiss the appeal.

29 On the issue of costs, the appellants submit that they should be awarded costs of between \$110,000 and \$150,000 (excluding reasonable disbursements), while JTA submits that it should be awarded costs of \$90,000 (including reasonable disbursements). We award costs of \$50,000 (inclusive of reasonable disbursements) to JTA to be borne by the appellants jointly and severally.

30 The usual consequential orders apply.

Woo Bih Li
Judge of the Appellate Division

Kannan Ramesh
Judge of the Appellate Division

See Kee Oon
Judge of the Appellate Division

Teh Kee Wee Lawrence, Pan Xingzheng Edric, Melvin See Hsien
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