IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 167

Originating Summons No 780 of 2021

Between

(1) 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*

GROUNDS OF DECISION

[Res judicata — Issue estoppel]
[Res judicata — Applicable principles]

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JTrust Asia Pte Ltd
v
Group Lease Holdings Pte Ltd and others

[2023] SGHC 167

General Division of the High Court — Originating Summons No 780 of 2021
Lee Seiu Kin J
14 November 2022, 10 April 2023

16 June 2023

Lee Seiu Kin J:

1 The plaintiff, the defendants, and companies related to these parties had been embroiled in various lawsuits across multiple jurisdictions. In HC/OS 780/2021 ("OS 780"), the plaintiff seeks payment of the sum of US$124,474,854.00, with interest.[1] The key question that arose for my determination pertained to whether the plaintiff could rely on a previous finding by the Court of Appeal ("SGCA") that the same defendants were liable for damages in the torts of deceit and/or conspiracy to the plaintiff.

[1] See Originating Summons for HC/OS 780/2021 filed 3 August 2021.

Introduction

Facts

The parties

2 The plaintiff, JTrust Asia Pte Ltd ("JTA") is an investment company incorporated in Singapore. Its parent company, J Trust Co, Ltd ("JTrust Japan"), is a company incorporated in Japan.[2]

3 The first defendant, Group Lease Holdings Pte Ltd ("GLH") is an investment company incorporated in Singapore. GLH's sole shareholder is Group Lease Public Company Limited ("GL Thailand"), a company listed on the Stock Exchange of Thailand.[3]

4 The second defendant, Mr Mitsuji Konoshita ("Mr Konoshita"), is a director of GLH and was previously Chairman and CEO of GL Thailand. The third to sixth defendants are companies incorporated in Cyprus (the "Cyprus companies") and are controlled and/or beneficially owned by the second defendant at all material times.[4]

Background to the dispute

5 This matter followed on the heels of several decisions already issued in the dispute between the parties. The relevant past judgments are as follows:

(a) On 26 December 2017, JTA commenced proceedings against the defendants and Cougar Pacific Pte Ltd ("Cougar") in

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2 Nobiru Adachi's 1st affidavit dated 3 August 2021 at para 5.

3 Nobiru Adachi's 1st affidavit dated 3 August 2021 at para 6.

4 Nobiru Adachi's 1st affidavit dated 3 August 2021 at paras 9–14.

HC/S 1212/2017 ("Suit 1212"). Cougar is a company incorporated in Singapore, which has the same registered address as GLH and whose sole shareholder is a company owned by a former director of GL Thailand's subsidiary in Cambodia. JTA's claim was that GL Thailand and the defendants had conspired to defraud JTA into believing that GL Thailand's performance was better than it was, and to misappropriate JTA's investment in GL Thailand to Mr Konoshita's benefit by lending money to Cougar and the Cyprus companies.

(i) Pursuant to Suit 1212, JTA then took out an application under HC/SUM 148/2018 ("SUM 148") to expand the scope of a Mareva injunction granted *ex parte* against several of the defendants in Suit 1212. It also took out an application under HC/SUM 377/2018 ("SUM 377") for an order that specific conduct by several of the defendants in Suit 1212 be prohibited. On the other hand, GLH and Mr Konoshita took out applications to set aside the *ex parte* Mareva injunction (the "Setting Aside Applications"). The High Court dismissed SUM 148 and SUM 377 and allowed the Setting Aside Applications on 23 February 2018: see *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2018] SGHC 38 at [1], [2] and [16].

(ii) JTA appealed against this decision in CA/CA 46/2018 ("CA 46"). The SGCA allowed the appeal, reinstating the domestic Mareva injunctions against GLH, Mr Konoshita and Cougar, and expanding the injunctions against GLH and Cougar to worldwide Mareva injunctions on 1 June 2018 in *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2018] 2 SLR 159 ("*CA 46 Decision*") at [3].

(iii) GLH and Mr Konoshita applied under HC/SUM 5340/2018 ("SUM 5340") to strike out Suit 1212 but were unsuccessful. The High Court gave its decision on 1 February 2019 in *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2019] SGHC 21 at [1] and [11].

(b) On 12 February 2020, the High Court gave its decision in respect of Suit 1212 where it dismissed JTA's claims in the torts of deceit and conspiracy and discharged the domestic Mareva injunction against Mr Konoshita and the worldwide Mareva injunctions against GLH and Cougar: see *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2020] SGHC 29 at [25].

(c) On 13 February 2020, JTA appealed against the High Court's decision in Suit 1212 under CA/CA 21/2020 ("CA 21").

(i) JTA applied under CA/SUM 21/2020 ("SUM 21") to reinstate the domestic Mareva injunction against Mr Konoshita and the worldwide Mareva injunctions against GLH and Cougar pending the determination of CA 21. The SGCA gave its decision on 1 June 2020 in *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2020] 2 SLR 490, wherein it reinstated the domestic Mareva injunction against Mr Konoshita and the worldwide injunction against GLH but dismissed the application to reinstate the Mareva injunction against Cougar (at [103]).

(ii) JTA's appeal in CA 21 was allowed by the SGCA on 6 October 2020: see *JTrust Asia Pte Ltd v Group Lease Holdings*

Pte Ltd and others [2020] 2 SLR 1256 ("*CA 21 Decision*") at [3] and [257].

(iii) Following the *CA 21 Decision*, JTA brought an application under CA/SUM 132/2020 for the existing Mareva injunctions against GLH, Mr Konoshita and Cougar to remain in effect until the judgment debt and costs were satisfied, and for JTA to be released from undertakings it had provided when the worldwide Mareva injunctions were granted. GLH and Mr Konoshita in turn applied under CA/SUM 133/2020 for the enjoined quantum of the Mareva injunctions to be reduced. On 26 March 2021, in *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2021] 1 SLR 1298, the SGCA ordered, *inter alia*, that the Mareva injunctions be extended until GLH, Mr Konoshita and Cougar satisfied the judgment debt and costs that they owed to JTA, but reduced the enjoined sum (at [3] and [74]): see *JTrust Asia v Group Lease Holdings Pte Ltd and others* [2021] 1 SLR 1298.

6 The above disputes – and also the present one – arose out of three investment agreements ("IAs"). Between March 2015 and September 2017, while Mr Konoshita was the chairman of GL Thailand, JTA made investments in GL Thailand pursuant to the following IAs (see *CA 21 Decision* at [13]):

(a) The first IA ("1IA"): On 20 March 2015, JTA invested US$30m under the 1IA which provided that JTA would subscribe to US$30m worth of GL Thailand's convertible debentures. JTA completed the subscription on 22 May 2015. In December 2015, JTA exercised its right to convert the debentures into shares.

(b) The second IA ("2IA"): In June 2016, JTA subscribed for US$130m of GL Thailand's convertible debentures. JTA completed the subscription on 1 August 2016. If JTA elected not to convert the debentures into shares, it would be entitled to be repaid its investment in 2021.

(c) The third IA ("3IA"): On 1 December 2016, JTA subscribed for a further US$50m of GL Thailand's convertible debentures. JTA completed the subscription on 20 March 2017. If JTA elected not to convert the debentures into shares, it would be entitled to be repaid its investment in 2020.

All three IAs contained an express warranty in respect of the accuracy of GL Thailand's consolidated financial statements: see *CA 21 Decision* at [14].

7 On 16 October 2017, the Securities and Exchange Commission ("SEC") of Thailand issued a news release (the "SEC News Release") stating that GLH had issued sham loans under a round-tripping scheme designed to inflate GL Thailand's operating results. The SEC announced that it had filed a criminal complaint against Mr Konoshita: see *CA 21 Decision* at [18].

8 On 26 December 2017, JTA commenced Suit 1212 against, *inter alia*, the defendants, bringing claims in the torts of unlawful conspiracy and deceit: see *CA 21 Decision* at [21]. As mentioned above, its claims were dismissed at first instance, but on appeal, the SGCA in CA 21 allowed JTA's appeal for its claims in deceit and unlawful conspiracy: see *CA 21 Decision* at [202] and [210].[5] The SGCA found that the loans made were in fact shams and not *bona fide*, independent, arm's length transactions: see *CA 21 Decision* at [45]. The

[5] Nobiru Adachi's 1st affidavit dated 3 August 2021 at paras 31–33.

SGCA allowed JTA's appeal for its claims in deceit and unlawful conspiracy (see *CA 21 Decision* at [202] and [210]) and awarded JTA damages for its loss suffered as a result of the exercise of conversion rights of the convertible debentures under the 1IA (see *CA 21 Decision* at [239]). The SGCA also held that JTA was entitled to the principal sum of US$50m owed under the 3IA, minus the interest it had received (see *CA 21 Decision* at [246]). However, JTA was unable to establish actual loss for the 2IA at the time, as it was only entitled to be repaid the principal sum of its investments in 2021 and had not proven that GL Thailand would not be able to pay back the principal sum for the 2IA in 2021 (*CA 21 Decision* at [244]–[245]).[6]

Maturity of the 2IA and the present proceedings

9 On 30 July 2021, GL Thailand issued a notice purporting to terminate the 2IA on the basis that JTA had, *inter alia*, issued a notice avoiding the 2IA on 30 November 2017 ("the Avoidance Notice"). According to GL Thailand, JTA had therefore allegedly waived its contractual rights under the 2IA, which in turn "constituted the parties' mutual intention to extinguish the [2IA]".[7]

10 Following the maturity of the 2IA on 1 August 2021, GL Thailand did not pay JTA the principal sum under the 2IA.[8]

11 On 3 August 2021, JTA commenced OS 780 against the defendants to claim for loss and damage suffered by JTA as a result of entering into the 2IA.[9] JTA essentially seeks to be paid its principal investment of US$130m minus the

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6 Nobiru Adachi's 1st affidavit dated 3 August 2021 at paras 31–33.

7 Nobiru Adachi's 1st affidavit dated 3 August 2021 at para 38 and NA-10.

8 Nobiru Adachi's 1st affidavit dated 3 August 2021 at para 35; Plaintiff's Written Submissions ("PWS") at para 9.

9 PWS at para 9.

interest it received in respect of the 2IA.[10] In OS 780, JTA sought the following orders:[11]

(a) for the defendants to pay JTA the sum of US$124,474,854.00;

(b) for a declaration that the defendants are jointly and severally liable to JTA for the sum of US$124,474,854.00;

(c) for the defendants to pay JTA interest on any or all sums due and payable to it;

(d) for the costs of and incidental to this application to be paid by the defendants; and

(e) such further or other relief as the court deems fit.

Proceedings in Thailand (the "Thai proceedings")

12 JTA and GL Thailand have also commenced proceedings against each other in Thailand. JTA has also initiated private prosecution complaints against GL Thailand and GL Thailand is also facing criminal investigations. I elaborate on these proceedings below.

Proceedings by JTA

13 First, JTA commenced Black Case No Por 83/2561 (the "Thai Civil Case") on 9 January 2018 against Mr Konoshita, GL Thailand, and three directors of GLH. In these proceedings, JTA sought damages arising from: (a) avoidance of the 2IA on the basis of fraudulent misrepresentations made by

10 PWS at para 90.

11 See Originating Summons for HC/OS 780/2021 filed 3 August 2021.

GL Thailand and GL Thailand's failure to restore JTA into its former position prior to its entry into the 2IA, and (b) its claim against GL Thailand for committing the tort of fraudulent representation. As the trial dates were fixed on certain days between 8 November 2022 to 14 December 2022, the matter had not been heard at the time of the present proceedings.[12]

14 Second, on 10 January 2018, JTA filed rehabilitation proceedings (the "Rehabilitation Proceedings") against GL Thailand in the Central Bankruptcy Court of Thailand.[13] It was ultimately unsuccessful in its petition for rehabilitation.[14]

Proceedings by GL Thailand

15 First, in Black Case No 2313/2561 ("Thai Claim 2313"), GL Thailand seeks damages in tort arising from JTA's unlawful commencement of Suit 1212 in Singapore, as well as the Thai Civil Case and Rehabilitation Proceedings. The Thai Civil Court gave its first instance decision on 5 March 2020. JTA appealed and its appeal was allowed by the Thai Court of Appeal in March 2021. On 31 August 2022, GL Thailand obtained leave to appeal against the Thai Court of Appeal's decision to the Supreme Court of Thailand. The appeal is still pending.[15]

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12 Nobiru Adachi's 9th affidavit dated 7 October 2022 at paras 8–9; Don Rojanapenkul's 1st affidavit dated 7 October 2022 at para 10(3); Nobiru Adachi's 7th affidavit dated 8 April 2022 at para 65.

13 Nobiru Adachi's 9th affidavit dated 7 October 2022 at para 10; Don Rojanapenkul's 1st affidavit dated 7 October 2022 at para 10(4).

14 Don Rojanapenkul's 2nd affidavit dated 28 October 2022 at para 24; Decision of the Supreme Court of Thailand (translated) dated 22 December 2021 (Amonwan Chatchalitwaphong's 1st affidavit of 4 Jan 2022 at AC-1 Tab 2)

15 Nobiru Adachi's 7th affidavit dated 8 April 2022 at para 71; Nobiru Adachi's 9th affidavit dated 7 October 2022 at para 12; Don Rojanapenkul's 1st affidavit dated 7

16 Second, GL Thailand filed Black Case No Aor 6/2561 with the Central Bankruptcy Court of Thailand against JTA and other persons, alleging that they had unlawfully filed the Rehabilitation Proceedings. On 9 August 2022, the claim was dismissed, and GL Thailand had yet to appeal at the material time.[16]

17 Third, GL Thailand filed Black Case No Por 4613/2563 ("Thai Claim 4613") against JTrust Japan, JTA and two directors of JTA and JTrust Japan, alleging that they had wrongfully induced JTA to commence the Thai Civil Case, Rehabilitation Proceedings and/or Suit 1212. This matter was pending trial at the material time.[17]

18 Lastly, GL Thailand commenced Black Case No Por 5922/2564 ("Thai Claim 5922") against JTA and JTrust Japan, alleging that JTA had breached the 2IA and acted in a manner which undermined the purposes and intent of the 2IA. This matter was pending trial at the material time.[18]

Criminal cases/private prosecutions

19 In 2018, the Thai SEC filed Special Case No 36/2561 ("Special Case 36") with the Department of Special Investigations of the Ministry of Justice of

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October 2022 at para 10(7); Don Rojanapenkul's 2nd affidavit dated 28 October 2022 at paras 31–32; Nobiru Adachi's 10th affidavit dated 28 October 2022 at paras 18–19.

16 Nobiru Adachi's 9th affidavit dated 7 October 2022 at paras 13–27; Don Rojanapenkul's 1st affidavit dated 7 October 2022 at para 10(9); Don Rojanapenkul's 2nd affidavit dated 28 October 2022 at para 36; Nobiru Adachi's 10th affidavit dated 28 October 2022 at para 21.

17 Nobiru Adachi's 7th affidavit dated 8 April 2022 at para 73; Nobiru Adachi's 9th affidavit dated 7 October 2022 at paras 18–23; Don Rojanapenkul's 1st affidavit dated 7 October 2022 at para 10(8).

18 Nobiru Adachi's 7th affidavit dated 8 April 2022 at para 74; Nobiru Adachi's 9th affidavit dated 7 October 2022 at paras 24–25; Don Rojanapenkul's 1st affidavit dated 7 October 2022 at para 10(10); Nobiru Adachi's 10th affidavit dated 28 October 2022 at para 23.

Thailand ("Department of Special Investigations (Thailand)" against Mr Konoshita on the basis that he had concealed transactions and prepared false accounts in respect of GL Thailand's financial statements.[19]

20 On 11 January 2018, JTA filed Special Case No 153/2561 with the Department of Special Investigations (Thailand) against GL Thailand, Mr Konoshita, and another person who was a director of both GL Thailand and GLH, complaining that they were in breach of the Thai Penal Code 1956 ("Thai Penal Code") and the Thai Public Limited Companies Act 1992 ("Thai Public Limited Companies Act") by making materially false statements to induce JTA's investments in GL Thailand.[20] On 29 June 2022, the Thai Attorney-General issued a non-prosecution order ("NPO") in respect of the offence under the Thai Penal Code. Moreover, the investigations in respect of the offences under the Thai Public Limited Companies Act would be considered under Special Case 36 instead. Such investigations were still ongoing at the material time.[21]

21 JTA also initiated two private prosecution complaints which were still pending at the material time:

(a) on 18 July 2022, JTA commenced Black Case Aor No 2201/2565 against GL Thailand, Mr Konoshita, and one Mr Tashiro

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19 Nobiru Adachi's 9th affidavit dated 7 October 2022 at para 26; Don Rojanapenkul's 1st affidavit dated 7 October 2022 at para 10(1).

20 Nobiru Adachi's 9th affidavit dated 7 October 2022 at para 27; Don Rojanapenkul's 1st affidavit dated 7 October 2022 at para 10(2).

21 Nobiru Adachi's 9th affidavit dated 7 October 2022 at NA-91; Nobiru Adachi's 10th affidavit dated 28 October 2022 at para 24; Don Rojanapenkul's 1st affidavit dated 7 October 2022 at para 10(2); Don Rojanapenkul's 2nd affidavit dated 28 October 2022 at paras 11 and 22.

alleging that they had defrauded JTA and seeking reliefs pursuant to s 341 of the Thai Penal Code;[22] and

(b) on 26 April 2022, JTA commenced Black Case No Aor 991/2565 against the same persons in [(a)] and one Mr Tatsuya Konoshita, alleging that they were in breach of s 216 of the Thai Public Limited Companies Act by jointly making false entries in GL Thailand's financial statements and by failing to disclose GL Thailand's interest in the contracts entered into by the GL group of companies.[23]

Procedural history

22 I turn now to the procedural history of OS 780. Pursuant to an application under HC/SUM 3637/2021 made on 3 August 2021 by JTA, a worldwide Mareva injunction was issued by way of HC/ORC 4388/2021 ("ORC 4388") against GLH, and a domestic Mareva injunction HC/ORC 4389/2021 ("ORC 4389") was issued against Mr Konoshita, pending the final determination of OS 780 or further order.

23 Separately, GLH and Mr Konoshita applied under HC/SUM 4368/2021 for a stay of OS 780 in favour of the courts of Thailand on the basis that Singapore was not the proper or appropriate forum for the determination of the dispute in OS 780 and/or on case management grounds. This application was dismissed, and GLH and Mr Konoshita appealed against the decision in HC/RA 18/2022 ("RA 18"). On 11 February 2022, I dismissed the appeal in

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22 Nobiru Adachi's 9th affidavit dated 7 October 2022 at para 30(a); Don Rojanapenkul's 1st affidavit dated 7 October 2022 at para 10(6); Rojanapenkul's 2nd affidavit dated 28 October 2022 at para 25.

23 Nobiru Adachi's 9th affidavit dated 7 October 2022 at para 30(b); Don Rojanapenkul's 1st affidavit dated 7 October 2022 at para 10(5).

RA 18 and ordered that the costs of RA 18 be costs in the cause fixed at S$9,000, all in.[24]

The parties' cases

Whether the issue of the first and second defendants' liability in deceit and unlawful means conspiracy is res judicata

24 The crux of JTA's submissions was that the finding of the SGCA that the defendants were liable in tort of deceit and conspiracy in respect of the 2IA was *res judicata* and created binding issue estoppels precluding the defendants from re-litigating the issue of liability. Alternatively, JTA submitted that the defendants were barred by the rule in *Henderson v Henderson* (1843) 3 Hare 100 (the "*Henderson* rule") from raising this argument in OS 780 in abuse of process.[25]

25 GLH and Mr Konoshita, as the first and second defendants respectively, in turn submitted that the SGCA findings were not binding on them in relation to the 2IA. They pointed out that the SGCA had accepted JTA's claims on the basis of news released by the SEC News Release of 16 October 2017 (see above at [7]) which stated that the SEC had filed a criminal complaint against Mr Konoshita with the Department of Special Investigations (Thailand) and was investigating other persons.[26] However, the SGCA did not have the opportunity to consider the NPO which showed that the Department of Special Investigations (Thailand) and the Office of the Attorney-General had found that there was insufficient evidence to justify prosecution under s 341 of the Thai

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24 See HC/ORC 937/2022 dated 21 February 2022.

25 PWS at paras 48–65 and 104–113; Plaintiff's Reply Submissions ("PRS") at paras 38 and 45.

26 Defendants' Written Submissions ("DWS") at paras 25–26.

Penal Code.[27] Moreover, the SGCA in CA 21 had not made any determination as to JTA's alleged loss suffered under the 2IA.[28] In reply submissions, JTA responded that GLH and Mr Konoshita's arguments that there were material changes to the background facts were "factually and legally fallacious".[29]

Whether JTA suffered loss and damage as a result of the torts

26 JTA submitted that under the 2IA, it was entitled to be repaid its principal investment sum of US$130m upon the maturity date of 1 August 2021, and that GL Thailand had failed to pay JTA since the passing of this maturity date.[30] The quantum it presently sought constituted the principal sum of US$130m, less the interest of US$5,525,146 received in respect of the 2IA.[31]

27 JTA also submitted that it did not cause or contribute to its own loss through its commencement of proceedings against GL Thailand. The SGCA had not accepted such an argument with respect to proceedings commenced by JTA prior to 6 October 2020 (when the *CA 21 Decision* was issued), and JTA had not commenced fresh proceedings between 6 October 2020 and the maturity date of the 2IA on 1 August 2021.[32] The proceedings that were commenced after 1 August 2021 were also irrelevant as they had no bearing on whether

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27 DWS at paras 80–85 and 100(1).

28 DWS at paras 86–97 and 100(2).

29 PRS at para 45.

30 PWS at para 68.

31 PWS at para 90.

32 PWS at paras 91–99.

GL Thailand would be in a position to pay JTA on the maturity date, and as one of them had been commenced by GL Thailand itself.[33]

28 The first and second defendants in turn submitted that no loss and damage was suffered by JTA in respect of the 2IA. This was because JTA's position in the Thai Civil Case was that it had cancelled and/or voided the 2IA by way of the Avoidance Notice on 30 November 2017, prior to the commencement of Suit 1212.[34] Moreover, JTA had not established how GL Thailand's refusal to pay JTA the principal sum under the 2IA would constitute a loss that JTA could recover from GLH and Mr Konoshita.[35]

29 In reply, JTA submitted that the Avoidance Notice and evidence of the Thai Civil Case had been before the SGCA in CA 21. There was nothing inconsistent about JTA taking the position in the Thai Civil Case that 2IA and 3IA had been avoided as a matter of Thai law, and the position in Suit 1212 and CA 21 that as a matter of Singapore law, JTA had suffered loss and damage as it would not have entered into the IAs but for the defendants' deceit and conspiracy.[36] Further, in Suit 1212 and CA 21, it was the first and second defendants who had pleaded that notwithstanding JTA's Avoidance Notice, JTA would still receive the principal sum invested.[37]

30 The first and second defendants submitted in reply that the precise interest said to have been infringed upon was JTA's right to receive a return of the principal sum (less the interest) upon maturity of the 2IA. Since it had not

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33 PWS at paras 100–103.

34 DWS at paras 102–105.

35 DWS at paras 119–120.

36 PRS at paras 49–53.

37 PRS at para 55.

been established that GL Thailand was not in an ordinary position to repay the principal sum on 1 August 2021, there was no basis for JTA to assert that it has been defrauded into thinking that GL Thailand would be in an ordinary position to repay the principal on maturity.[38]

Whether a case management stay should be granted

31 JTA submitted that the Thai proceedings did not affect the outcome of OS 780 and no case management stay should be granted. JTA argued that the defendants were also barred by issue estoppel or the *Henderson* rule from arguing that the Thai proceedings – and their findings on GL Thailand's liability to JTA and any set-off that may arise from the findings in the Thai proceedings – would affect the outcome of OS 780.[39] In any case, JTA contended that the question of whether JTA had suffered loss and damage in respect of the torts of deceit and conspiracy under Singapore law did not depend on the liability, if any, incurred in the proceedings in Thailand between JTA and GL Thailand.[40] JTA also submitted that there were no grounds for a case management stay as there were no overlapping issues with the Thai proceedings, which in turn meant that the resolution of OS 780 did not depend on the determination of the Thai proceedings; rather, the facts required for a proper resolution of OS 780 had already been determined in CA 21.[41] Even if there was some notional or theoretical overlap, JTA argued it would still not be in the interests of justice or efficient case management for OS 780 to be stayed.[42]

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38 Defendants' Reply Submissions ("DRS") at paras 51–52.

39 PWS at paras 118–142.

40 PWS at para 144–153; PRS at paras 79–80 and 85.

41 PWS at paras 159–164.

42 PWS at paras 165–166.

32 The first and second defendants in turn submitted that a case management stay should be granted pending the determination of the Thai proceedings including the Thai Civil Case, Thai Claim 5922, Thai Claim 2313, and Thai Claim 4613 on the ground that it would be just and convenient to do so to avoid the risk of inconsistent judgments and of double recovery. Even if JTA was found to have suffered loss and damage in respect of the 2IA, the first and second defendants submitted that the quantum of damages could not be determined when Thai proceedings dealing with the same issue were ongoing (*ie*, the Thai Civil Case and Thai Claim 5922).[43] Moreover, the question of whether GLH and Mr Konoshita were liable in the torts of deceit and conspiracy remained under investigation in the Thai Civil Case with fresh evidence of the NPO.[44] They also suggested that no real prejudice would be occasioned through a temporary case management stay.[45]

Issues to be determined

33 The following issues arose for my consideration:

(a) whether the first and second defendants were liable in the tort of deceit in respect of the 2IA;

(b) whether the first and second defendants were liable in the tort of conspiracy in respect of the 2IA;

(c) whether JTA suffered any loss or damage;

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43 DWS at paras 144–147, 178–181.

44 DWS at paras 166–217; DRS at paras 71 and 84–86.

45 DRS at para 6.

(d) whether JTA's loss or damage was caused by or contributed to by JTA's alleged wrongful acts in commencing various proceedings against GL;

(e) the quantum of damages, if any, to be awarded; and

(f) whether there should be a case management stay in view of the ongoing Thai proceedings.

Doctrine of *res judicata*

34 The doctrine of *res judicata* has been described as a "portmanteau term which is used to describe a number of different legal principles with different juridical origins" (see *The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd (nTan Corporate Advisory Pte Ltd and others, other parties) and another appeal* [2015] 5 SLR 1104 ("*RBS*") at [98]). Essentially, it provides that the final judicial pronouncement of a competent court creates legal barriers to re-litigation, and it is founded on two undergirding considerations: the public interest of finality in litigation and the private interest that nobody be proceeded against twice on the same matter (see *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal and other matters* [2017] 2 SLR 12 ("*Turf Club*") at [81]). There are three conceptually distinct but interrelated principles which make up the doctrine of *res judicata* (*Turf Club* at [82]):

(a) cause of action estoppel;

(b) issue estoppel; and

(c) the extended doctrine of *res judicata*, *ie*, the defence of abuse of process or the *Henderson* rule (the "extended doctrine").

35 Cause of action estoppel holds that when a cause of action has been determined by a court of competent jurisdiction to exist or not to exist between the same parties, that outcome may not be challenged by either party in subsequent proceedings: (see *Turf Club* at [83]; *RBS* at [99]).

36 Issue estoppel is wider in application than cause of action estoppel, and operates as long as some question of fact or law which is necessarily common to both an earlier action and a later action had been decided on the earlier occasion and is binding on the parties, either in the course of the same litigation (*eg*, as a preliminary point) or in other litigation which raises the same point between the same parties (see *Turf Club* at [84]; *RBS* at [100]). The following requirements must be met to establish an issue estoppel (see *Turf Club* at [87], citing *Lee Tat Development Pte Ltd v MCST Plan No 301* [2005] 3 SLR(R) 157 at [14]–[15]):

(a) there must be a final and conclusive judgment on the merits;

(b) the judgment must be by a court of competent jurisdiction;

(c) the two actions that are being compared must involve the same parties; and

(d) there must be identity of subject matter in the two proceedings.

37 That being said, the doctrine of issue estoppel may be excluded in the special circumstance where relevant evidence subsequently becomes available (see *Beh Chew Boo v Public Prosecutor* [2021] 2 SLR 180 at [39]). This exception has been referred to in local case law as the *Arnold* exception, taking its name from the House of Lords decision of *Arnold and others v National Westminster Bank plc* [1991] 2 AC 93, where it was considered that there might be "an exception to issue estoppel in the special circumstance that there has

become available to a party further material relevant to the correct determination of a point involved in the earlier proceedings", provided that the further material in question "could not by reasonable diligence have been adduced in those [earlier] proceedings" (at 109A–109B). However, the *Arnold* exception is a highly circumscribed one, for which five cumulative conditions which must be fulfilled before such exception can arise: (see *RBS* at [103] and [190]):

(a) first, the decision said to give rise to issue estoppel must directly affect the future determination of the rights of the litigants;

(b) second, the decision must be shown to be clearly wrong;

(c) third, the error in the decision must be shown to have stemmed from the fact that some point of fact or law relevant to the decision was not taken or argued before the court which made that decision and could not reasonably have been taken or argued on that occasion;

(d) fourth, there can be no attempt to claw back rights that have accrued pursuant to the erroneous decision or to otherwise undo the effects of that decision; and

(e) fifth, it must be shown that great injustice would result if the litigant in question were estopped from putting forward the particular point which is said to be the subject of issue estoppel – in this regard, if the litigant failed to take advantage of an avenue of appeal that was available to him, it will usually not be possible for him to show that the requisite injustice nevertheless exists.

38 Finally, the extended doctrine applies to situations where litigants seek to argue points not previously determined by the court as they had not been brought to the court's attention but ought properly to have been raised or argued

then. The extended doctrine essentially extends the cause of action estoppel and issue estoppel to preclude parties, in the absence of special circumstances, from raising in subsequent proceedings matters which were not, but could and should have been, raised in the earlier proceedings (see *Turf Club* at [85]; *RBS* at [101]–[102]).

Decision

The first and second defendant's liability in deceit and unlawful means conspiracy was res judicata

39 A major plank of the first and second defendants' submissions was essentially that JTA's causes of action in tort and the issue of JTA's loss under the 2IA were both not complete as the issue of loss and damage had not been resolved in CA 21.[46] JTA clarified in its reply submissions that it did not take the position that cause of action estoppel would apply as a result of the *CA 21 Decision*.[47] In any event, I did not think it was necessary to consider the operation of cause of action estoppel here. It was clear from the *CA 21 Decision* that JTA had causes of action in the torts of deceit and conspiracy with respect to the 2IA against the first and second defendants; the real dispute before me was not actually over the question of whether parties were entitled to challenge the existence or non-existence of this cause of action. Instead, the question before me was whether the doctrine of issue estoppel applied in this case; *ie*, whether the defendants were precluded in OS 780 from litigating *issues* pertaining to their liability in deceit and conspiracy, in light of the SGCA's holding in CA 21 that actual loss under 2IA had not been established as it was

46 DWS at paras 93(1) and 93(2).

47 PRS at para 38(a).

not evident that GL Thailand would not be able to pay JTA in 2021 for the 2IA (see *CA 21 Decision* at [243]–[245]).

40 Turning then to the question of issue estoppel, I was of the view that with respect to the 2IA, the doctrine of issue estoppel would operate to prevent re-litigation of the question of whether the defendants were liable in the torts of deceit and conspiracy. Out of the four requirements to make out issue estoppel (see above at [36]), the first three were clearly met in the present case. It was hence unsurprising that the first and second defendants only appeared to seriously dispute the fourth requirement, *ie*, that there must be identity of subject matter in both CA 21 and the present proceedings.

41 The first and second defendants contended that there was no final and conclusive judgment on the merits in the *CA 21 Decision* in relation to the issue of JTA's loss under the 2IA, and hence the *CA 21 Decision* had no preclusive effect on their ability to defend themselves on the issue of loss and damage.[48] I did not agree with this line of argument. With respect to JTA's claim in deceit, the SGCA had found in the *CA 21 Decision* that:

(a) GLH had made false representations of fact to JTA through GL Thailand's financial statements (at [146]);

(b) Mr Konoshita and GLH had both made false representations of fact (at [165]); and

(c) JTA had relied on Mr Konoshita's representations along with GL Thailand's financial statements before entering into the 2IA (at [172]);

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48 DWS at para 93(2).

(d) JTA had established dishonest intent on the part of GLH and Mr Konoshita (at [192], [194]–[201]); and

(e) JTA had made out all the elements of its claim in deceit against GLH and Mr Konoshita (at [202]).

42 With respect to JTA's claim in unlawful conspiracy, the SGCA held that the first to seventh respondents in CA 21 had intended to cause loss to JTA and were liable for the unlawful conspiracy claim (at [210]).

43 The SGCA proceeded to note at [221] that:

> Having found [Mr Konoshita] and GLH liable for the deceit claim and the first to seventh respondents liable for the unlawful conspiracy claim, we now turn to the assessment of damages.

It then held that actual loss under 2IA had not been established as it was not evident that GL Thailand would not be able to pay JTA in 2021 for the 2IA (see *CA 21 Decision* at [243]–[245]).

44 From the above, it was clear to me that the only question of fact and/or law which was *not* caught by issue estoppel was the question of the quantum of damages to which JTA was entitled under the 2IA following its maturity, and GL Thailand's non-payment of the principal sum. This question could be considered in the present application and will be addressed later in these grounds. Other questions pertaining to liability in deceit and/or unlawful conspiracy were however already resolved in CA 21 and could not be re-litigated in the present application.

45 Turning to another point, the first and second defendants also submitted that although the SGCA had accepted JTA's claims mounted on the basis of the SEC News Release, the SGCA had not yet considered the NPO as well as the

Thai Civil Case, which had not yet been concluded at the material time. Preliminarily and for the sake of clarity, while Suit 1212 was commenced soon after the SEC News Release, I did not think that the subsequent and final decision in CA 21 was based solely on the SEC News Release. Rather, the SGCA had premised its findings in respect of GLH's liability on evidence of: (a) two levels of round-tripping, which in turn showed that there had been sham loans designed to misrepresent GL Thailand's profitability; (b) the unusual and suspicious nature of the loans in question; and (c) Mr Konoshita's beneficial ownership of the third to seventh respondent borrowers, which included the Cyprus companies (see *CA 21 Decision* at [46]–[86], [101]–[111]).

46 Turning then to the NPO, I did not think the NPO sufficed to change the complexion of JTA's case against GLH, such that the *Arnold* exception would thereby arise in GLH's favour. Applying the cumulative conditions of the *Arnold* exception (see above at [37]), I did not see how the NPO would establish that CA 21 had been clearly wrong. The NPO was concerned with criminal fraud as defined in s 341 of the Thai Penal Code. This had no bearing on the SGCA's finding of whether the elements of deceit and unlawful means conspiracy in Singapore tort law were made out; the NPO did not throw up any new evidence that would be relevant to establishing the first and second defendant's liability for the torts of deceit and unlawful means conspiracy.

47 As for the Thai Civil Case, this was a claim for contractual damages against GL Thailand on the basis of JTA's Avoidance Notice of the 2IA and was distinct from the loss and damage claimed for here, which instead was based on JTA's claim that it entered into the 2IA as a result of the defendants' deceit and conspiracy. Accordingly, I did not see how any decision in the Thai Civil Case would engage the *Arnold* exception since it would not be relevant to the first and second defendant's liability in tort. Further, as noted by JTA, the

CA 46 Decision had already held at [50] that JTA's contractual claim against GL Thailand in the Thai proceedings was separate from its claims in tort in Singapore against entities which it alleged to be part of a conspiracy to defraud it.[49]

48 As such, I found that issue estoppel would bar the defendants from relitigating the question of whether they were liable in deceit and conspiracy.

The remaining issue of the quantum of damages to which JTA was entitled

49 For the same reasons as above, I was satisfied that JTA had suffered loss or damage pursuant to the 2IA. I was of the view that only the *quantum* of damages pursuant to the 2IA was a live issue in OS 780.

50 The first and second defendants contended that GL Thailand's ability to make repayment had been impaired by JTA's unreasonable intervening conduct in the form of bringing proceedings in various jurisdictions as well as the obtaining of Mareva injunctions.[50] I saw little merit in this line of argument. It was already established in the *CA 21 Decision* that JTA's loss and damage arose from the tortious wrongs inflicted by the defendants. Moreover, JTA was entitled to seek legal remedies for alleged wrongs that it had sustained; I did not see how doing so would constitute unreasonable intervening conduct.

51 Turning back to the *quantum* of damages, I was of the view that JTA is entitled to the principal sum under the 2IA of US$130m less interest already received. After deducting the interest already received, I found the first and second defendants jointly and severally liable to pay JTA the sum of

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49 PWS at para 43.

50 DWS at paras 148–163.

US$124,474,854.00, with interest to accrue on the said sum at the rate of 5.33% per annum from 1 August 2021 to the date of full payment.

Whether a case management stay should be granted

52 Finally, I turn to the question of whether a case management stay should be granted. For case management concerns to be relevant at all, there must be the existence or at least the imminence of separate legal proceedings giving rise to a real risk of overlapping issues. The typical case would be one where, in the action, there was some overlap in the parties, some overlap in the issues engaged, and possibly an underlap in the remedies to be granted: see *Rex International Holding Ltd and another v Gulf Hibiscus Ltd* [2019] 2 SLR 682 at [11].

53 I was not minded to grant a case management stay with respect to OS 780. The Thai Civil Claim, for one, was against GL Thailand and there was hence no overlap in parties. The issues also differed sufficiently as the Thai Civil Claim is for a contractual claim. Moreover, given what I had found above with respect to issue estoppel, I also did not think the other live Thai proceedings – which were largely concerned with questions of contractual liability, unlawful commencement of proceedings or criminal complaints under the laws of Thailand – were relevant to or had any bearing on the findings and orders granted in OS 780.

54 Further, as submitted by JTA,[51] *Merck Sharp & Dohme Corp (formerly known as Merck & Co, Inc) v Merck KGaA (formerly known as E Merck)* [2021] 1 SLR 1102 stands for the proposition that where, between the same parties, there is a prior or subsequent local judgment that is inconsistent with a foreign

[51] PRS at para 88.

judgment, the foreign judgment should not be recognised (at [36(b)]). As such, *even if* any findings are made in the various Thai proceedings as to the first and second defendant's tortious liability, I did not think such an overlap would justify the issuance of a case management stay.

55 Likewise, with respect to the quantum of damages, which I have given my decision on (see [51] above), I did not think there was a real risk of overlapping issues which would justify a case management stay.

Conclusion

56 For the foregoing reasons, I allowed OS 780 and ordered the first and second defendants to pay to JTA damages in the sum of US$124,474,854.00 plus interest on the said sum at the rate of 5.33% per annum from 1 August 2021 to the date of full payment.

57 As for costs, I ordered the first and second defendants to jointly and severally pay JTA the costs of OS 780, fixed at S$30,000, and disbursements at such quantum to be agreed, failing which parties shall be at liberty to apply. I also ordered the first and second defendants to jointly and severally pay JTA the costs of HC/RA 18/2022, which had been fixed at S$9,000 pursuant to HC/ORC 937/2022.

58 Upon JTA's undertaking to take out a formal application for a post-judgment Mareva injunction within 7 days, the orders in ORC 4388 and 4389 were to remain in force until further order for full payment of the judgment sum, interests and costs.

Lee Seiu Kin
Judge of the High Court

Chan Leng Sun SC and Colin Liew (instructed), Ang Hsueh Ling Celeste, Danitza Hon Cai Xia, Yiu Kai Tai and Yap Yong Li (Wong & Leow LLC) for the plaintiff;
Teh Kee Wee Lawrence, Pan Xingzheng Edric, Chia Huai Yuan, Melvin See Hsien Huei, Alexander Kamsany Lee, V Santhosh, Clarence Cheang Wei Ming and Philip Teh Ahn Ren (Dentons Rodyk & Davidson LLP) for the first and second defendants;
The third to sixth defendants absent and unrepresented.
