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

[2025] SGHC 25

Originating Claim No 614 of 2024
(Registrar's Appeal No 4 of 2025)

Between

City Spark (Singapore) Pte Ltd

… *Claimant*

And

(1) The Outdoor Recreation Group, LLC
(2) Andrew Altshule

… *Defendants*

JUDGMENT

[Civil Procedure — Stay of proceedings]
[Conflict Of Laws — Jurisdiction]
[Conflict Of Laws — Natural forum]

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City Spark (Singapore) Pte Ltd
v
The Outdoor Recreation Group, LLC and another

[2025] SGHC 25

General Division of the High Court — Originating Claim No 614 of 2024
(Registrar's Appeal No 4 of 2025)
Choo Han Teck J
10 February 2025

18 February 2025 Judgment reserved.

Choo Han Teck J:

1 This is an appeal against an order dismissing the application in HC/SUM 3435/2024 for a stay of proceedings in Singapore. The appellants, The Outdoor Recreation Group, LLC ("TORG") and Andrew Altshule, are the defendants in the suit. TORG is a company registered in the United States of America. It is a wholly owned subsidiary of The Outdoor Recreation Group Holdings, LLC, which has its headquarters in California. Mr Altshule is the Chief Executive Officer of TORG as well as its corporate parent. TORG is engaged in the business of design, development, manufacturing, importing, marketing, distributing and retailing a variety of products such as computer bags. The respondent, City Spark (Singapore) Pte Ltd ("City Spark Singapore") is the claimant in this action. It is a company incorporated in Singapore and is a wholly owned subsidiary of Xiamen City Spark Import and Export Co Ltd, a company registered in People's Republic of China. City Spark Singapore carries

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on the business of a wholesaler of a variety of goods such as laptop bags, but does not have a dominant product in Singapore.

2 City Spark Singapore claims to be TORG's competitor to their mutual client, Dell Global B.V. (Singapore Branch) ("Dell Singapore"). On 27 April 2024, the parent company of TORG commenced a claim in California against Xiamen Spark Import and Export Co Ltd, and its unknown alternative names and/or affiliates, and various other defendants (the "US Claim"). Three days later, Mr Altshule sent a text message to Mrinal Jain, a procurement director at Dell Singapore, informing him of the US Claim ("the statement"). The respondent claims that the statement is defamatory and it thus commenced this action on 8 August 2024 against the appellants. The appellants filed a summons on 25 November 2024 to stay the whole action on the grounds of *forum non conveniens*. This application was dismissed by the Assistant Registrar ("AR") on 23 December 2024. The appellants now appeal against the AR's decision.

3 Counsel for the appellants, Mr Ling, argues that the respondent's action is an exercise in futility because the American courts will not enforce a claim that is decided on legal principles inconsistent with theirs. Mr Ling relies on the Court of Appeal's decision in *Tan Ng Kuang Nicky (the duly appointed joint and several liquidator of Sembawang Engineers and Constructors Pte Ltd (in compulsory liquidation)) and others v Metax Eco Solutions Pte Ltd* [2021] 1 SLR 1135 (at [85]) for the proposition that a court will not answer hypothetical questions or opine on academic points merely because a party wants a ruling from the court. He also cites *Sun Life Assurance Company of Canada v Jervis* [1944] AC 111, in which the House of Lords declined to hear an appeal because they found that there was no issue before them to be decided

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between the parties. The appellants' position is that any judgment rendered by the Singapore courts will not be enforceable in the United States. The appellants rely on their expert witness on American defamation law, Andrew J. Thomas, Esquire, a partner at the Los Angeles office of Jenner & Block LLP. Mr Thomas says that a judgment of a non-American court against an American defendant applying certain non-American defamation laws cannot be enforced in the United States. The appellants argue that since they intend to raise certain defences which are available under American law but unavailable under Singapore law, the matter can only be properly dealt with by a full hearing in the American courts.

4 The respondent's counsel, Mr Zheng, denies that enforcement of the judgment will not be possible in the United States and says that the cases raised by the appellants are irrelevant because there is a live issue in the present case. He argues that, in any case, the respondent is also seeking an injunction in Singapore to restrain the appellants from publishing the statement or any similar allegedly defamatory words.

5 I agree with the respondent that even if there were to be difficulties in enforcing a Singapore judgment in the United States, this does not mean that there are no "live issues" to be determined. Further, the injunction sought by the respondent may be granted and enforced in Singapore. Therefore, the appellants must still discharge their burden of proving that the United States is a clearly or distinctly more appropriate forum.

6 The House of Lords in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 ("*Spiliada*") held that the legal burden is on an applicant (for a stay) to show that there is a clearly or distinctly more appropriate forum

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elsewhere. The relevant factors for consideration have been set out in *Lakshmi Anil Salgaocar v Jhaveri Darsan Jitendra* [2019] 2 SLR 372 ("*Lakshmi*") at [53], namely,

(a) the personal connections of the parties;

(b) the connections to relevant events and transactions;

(c) the governing law of the dispute;

(d) the existence of proceedings elsewhere; and

(e) the overall shape of the litigation.

7 In determining the choice of law for claims in tort, the Singapore courts apply the double actionability rule. By this rule, 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*) (*Rickshaw Investments Ltd and another v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 at [53]). The place of commission of the tort of defamation is the place in which the defamatory statement is published (*Low Tuck Kwong v Sukamto Sia* [2013] 1 SLR 1016 at [15]). Where online defamation is concerned, this refers to the place "where the material is downloaded and accessed by end users" (*Ng Koo Kay Benedict and another v Zim Integrated Shipping Services Ltd* [2010] 2 SLR 860 at [26]).

8 Mr Ling argues that there are reasons why the United States is a more appropriate forum. He submits that the statement was made in the context of and could only refer to the US Claim, and that the US Claim does not involve any Singaporean party. Both appellants are Americans. They do not have any presence in Singapore and cannot be compelled to attend as witnesses in

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Singapore. There is no evidence to show that Mr Jain was in Singapore or subsequently used the information he received in the statement in Singapore. Neither is there any evidence to prove that the respondent suffered damage in Singapore. Further, the statement was made by Mr Altshule from the United States. The *lex loci delicti* of the alleged tort is therefore American law. Mr Ling also says that any defence raised by the appellants on the alleged defamation would have to refer to the US Claim. As such, the determination in the US Claim would be critical and must precede the defamation claim in this action.

9 Mr Zheng argues, to the contrary, that Singapore is the only appropriate forum to hear the dispute as the respondent is incorporated in Singapore and its key witnesses, including Mr Jain, are in Singapore. Mr Jain is not compellable to testify in the American courts. He submits that the place of the tort of defamation is Singapore. The meaning which the appellants claim that they intended to convey is irrelevant. The place of publication of the statement is Singapore as the statement, sent *via* WhatsApp, was received by Mr Jain in Singapore. As such, the governing law of the tort of defamation is Singapore law. Further, he says that the damage and harm to the respondent have been incurred in Singapore given that the statement is accessible and comprehensible in Singapore. The statement referred to the respondent, a Singapore entity and Mr Jain also believed that the reference to "City Spark" in the statement was a reference to the respondent. Finally, Mr Zheng says that there is no *lis alibi pendens* as the "common plaintiff" and the "reversed parties" situations do not arise in the present scenario. There are also no parallel proceedings in other jurisdictions as there is no overlap of issues and parties in the US Claim and HC/OC 614/2024.

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10 I am of the view that the appellants have not discharged their burden of proof in the first requirement in *Spiliada*. First, it is clear that the physical location of witnesses is less significant today given the ease of travel and the possibility of overseas witnesses giving evidence by video-link (*JIO Minerals FZC and others v Mineral Enterprises Ltd* [2011] 1 SLR 391 ("*JIO Minerals*") at [63]; *Lakshmi* at [72]). Compellability of the parties' witnesses, on the other hand, is generally regarded as a more significant factor since the Singapore courts cannot compel a foreign witness to testify. This consideration is particularly relevant for third-party witnesses over whom the litigants have little control and would have to depend on for their voluntary cooperation (*Lakshmi* at [73]–[74]). In the present case, Mr Jain, being the recipient of the statement, is a key third-party witness who works and resides in Singapore. It is unlikely that the American courts can compel Mr Jain to testify. Second, given that Mr Jain has a Singapore employment pass and works in Dell Singapore, it is likely that he was in Singapore when he accessed the statement from Mr Altshule *via* WhatsApp. Applying the double actionability rule, the governing law of the dispute is therefore Singapore law. Lastly, there are no existing proceedings elsewhere that would lead to a risk of conflicting judgments. The issues and parties in the US Claim are different from those in HC/OC 614/2024. In the circumstances, I find that Singapore has the most real and substantial connection with the case.

11 Nevertheless, I will address the second aspect of the *Spiliada* test for completeness. Even if the appellants had satisfied the first stage, a stay order may not be issued if it is found that there are circumstances by reason of which justice requires that a stay should nevertheless not be granted. The main

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consideration is whether substantial justice could be obtained in the foreign *prima facie* natural forum (*JIO Minerals* at [43]).

12 The AR agreed with the appellants that substantial justice would not be denied with a trial in the United States. The appellants did not make any submission on this point during their appeal, but the respondent says that the AR's findings on the second requirement of the *Spiliada* test ought to be overturned. The respondent argues that it would be deprived of substantial justice if the defamation suit is heard in the United States as it would be deprived of the opportunity to subpoena essential witnesses in Singapore. The respondent also contends that it would be unlikely to succeed on the merits due to the application of American law. The respondent would then be left with no recourse/remedy and therefore denied of substantial justice. This is an academic point since the appellants have already failed to establish the first requirement in *Spiliada*.

13 In any event, I disagree with Mr Zheng. The fact that the respondent has a legitimate or juridical advantage (if any at all) in Singapore does not mean that the respondent will be subject to a real and material risk of injustice. There is no evidence suggesting that the respondent will not be able to obtain a fair trial in the United States.

14 Finally, I agree with the AR that when it has been established that Singapore is the more appropriate forum, as is the case here, "the court will exercise its jurisdiction to hear the case". I would like to go further and say that, once jurisdiction is established and Singapore is the more appropriate forum, it is the duty of our courts to proceed with it.

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15 For the reasons above, I dismiss the appeal with costs. Counsel are to submit their arguments on costs by 27 February 2025.

- Sgd -
Choo Han Teck
Judge of the High Court

Zheng Shengyang, Harry and Yeo Qi Cheryl (Kelvin Chia Partnership) for the claimant;
Ling Vey Hong and Ng Huiling Cheryl (Foxwood LLC) for the defendants.

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