IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 196

Suit 211/1996, SIC 7115/1996

Between

Baring Futures (Singapore) Pte Ltd (in liquidation)

… *Plaintiff*

And

Deloitte & Touche (a firm) Another

… *Defendant*

GROUNDS OF DECISION

Conflict of Laws — Natural forum

Version No 1: 29 Oct 2026 (23:45 hrs)

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Baring Futures (Singapore) Pte Ltd (in liquidation) v Deloitte & Touche (a firm) and Another

[1997] SGHC 196

Suit 211/1996, SIC 7115/1996
Lai Kew Chai J
24 July 1997

1 The first defendant (D&T Singapore) applied to the High Court for an order that all further proceedings in this action be stayed on the ground that London was the forum conveniens to determine the claim in this action. At the conclusion of the hearing of the application, I ordered a stay but imposed a number of conditions because I was persuaded by D&T Singapore that London was an available court which would have jurisdiction and which was more appropriate for the trial. I concluded that in the light of all the circumstances and the relevant objective factors, to which I will return, London was `distinctly and clearly` the more appropriate forum in the sense that the case could and would be heard in London more suitably for the interests of all the parties and the ends of justice.

2 My decision was also based on the consideration that only by bringing all the principal players together before one forum for adjudication could the responsibility be justly, sensibly and more efficiently ascertained and distributed between those concerned: The ***Eras Eil*** Actions [1992] 1 Lloyd`s Rep 570. This approach would avoid the potential disaster of inconsistent

verdicts which could be given if similar disputes with overlapping facts involving the same or different parties were litigated before two courts in two different jurisdictions, a point accorded due weight in ***The El Amria*** [1981] 2 Lloyd`s Rep 119.

3 The plaintiff (BFS), in my view, was unable to show that there were circumstances, over and above those which D&T Singapore relied on and which weighed with me, such as would deprive BFS of a fair trial in the High Court in London.

4 In coming to my decision, I endeavoured to follow, as I was bound to, the guiding principles enunciated by Lord Goff in **Spiliada Maritime Corporation v Cansulex Ltd** [1987] 1 AC 460 , 476B-478E which were applied in Singapore by the Court of Appeal in **Brinkerhoff Maritime Drilling Corp & Anor v PT Airfast Services Indonesia** [1992] 2 SLR 776 , at p 784 and again in **Eng Liat Kiang v Eng Bak Hern** [1995] 3 SLR 97 where at p 103 the Court of Appeal `compressed` the formulation of Lord Goff in these terms:

> *A stay will only be granted on the ground of forum non conveniens, where the court is satisfied that there is some other available and appropriate forum for the trial of the action. The burden of proof rests on the defendant, and the burden is not just to show that Singapore is not the natural or appropriate forum but to establish that there is another forum which is clearly or distinctly more appropriate than the Singapore forum. The natural forum is that with which the action has the most real and substantial connection, and the court will consider what factors there are which point in that direction. If the court concludes at that stage that there is no other available forum which is clearly more appropriate for the trial of the action, it will ordinarily refuse a stay. If, however, the court concludes at that stage that there is some other available forum which prima facie is clearly more appropriate for the trial of the action it will ordinarily grant a stay, unless there are circumstances by reason of which justice*

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> *requires that a stay should nevertheless be refused. The court in this respect will consider all the circumstances of the case.*

5 Before I turn to the background and the relevant factors, I should set out the orders made by me on 12 February 1997 and which were finally settled and filed only on 9 May 1997:

> 1 All further proceedings in this action be stayed until further order on the conditions that the defendants:
>
> (i) Undertake forthwith to appoint solicitors to accept service of the writ of summons and statement of claim in England;
>
> (ii) agree that the time for service of the defence be six weeks from the service of the rrit of summons and statement of claim in England provided that there are no material amendments to the statement of claim filed in this action save as such amendments which are consequential to the proceedings being stayed in favour of London;
>
> (iii) agree to consent to any application or applications by the plaintiff for the issue of letters of request made in accordance with Rules of the Supreme Court in the United Kingdom for the taking of any oral evidence required by it, of the Singapore International Monetary Exchange Limited or the Monetary Authority of Singapore or their respective officials employees or agents, in Singapore; and
>
> (iv) agree that the English Court shall be at liberty, on the application of the plaintiff, to direct that such matter as it thinks fit may be conclusively proved by affidavit or by such other means as the English court thinks fit if it appears that proof of that matter has been rendered more difficult by reason of the fact that the action is not proceeding in Singapore. Subject to this paragraph, the defendants may oppose such application save as to the jurisdiction of the English court to make such direction.
>
> 2 If the aforesaid conditions are not met, the plaintiff shall be at liberty to continue with the action herein.
>
> 3 All parties shall be at liberty to apply to this honourable court for any further orders or directions;

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> 4 Costs of this application and of the action herein be costs in the cause of the proceedings to be commenced in England.

6 I turn to the background briefly. Barings plc was the English incorporated company of the group. As is well-known its business was based in London. In addition to its business of banking and asset management, Barings plc through its direct and indirect subsidiaries conducted securities and futures trading. Barings Securities Ltd (BSL), now known as Bishopscourt (BS) Ltd, was an indirect subsidiary of Barings plc. BSL and its subsidiaries carried on securities and futures trading. It engaged in agency trading and trading on its own account or `proprietary` trading. BFS, the plaintiff, was an indirect subsidiary of BSL and was the employer of one Nicholas Leeson (Lesson).

7 I revert to the events which, unfortunately, led to the collapse of the Barings group. Leeson was employed in April 1992. By early 1993 he was appointed as BFS`s general manager. He was alleged to be in charge of trading as well as the `back office` of BFS which was responsible for settlements by or in favour of BFS in its trading. In that position he could, as he did, manipulate the accounting and reporting records. Leeson resigned a few days before the collapse of the Barings group on 26 February 1995.

8 It has been alleged that Leeson had over a period of time indulged in unauthorised trading which resulted in losses for three years from 1992 to 1994 of Â£2.1m, Â£24.4 and Â£215.5m respectively. Spectacularly the losses escalated to the massive sums of Â£248.6m on 31 January 1995 and Â£848.5m on 26 February 1995. The losses exceeded the value of Baring plc`s shareholders` funds. Apparently, BSL and Baring Securities (London) Limited (BSLL), a subsidiary of BSL, also funded the trading of BFS.

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9 Leeson hid his losses in an account 88888 which was purportedly started as an error account. From 26 August 1992, account 88888 was entered with Simex as a BSL account. It was further alleged that Leeson caused BFS`s computer consultant to delete all references of the account in all the computer feeds sent to London, except the margin file. To induce London to remit funds he needed, it has been alleged that he falsely claimed that they were for `additional margin calls`.

10 As a result of the colossal losses, the principal companies in the Barings Group were put into administration in England. As it turned out, the entirety of Baring`s business in banking, asset management, securities and futures were sold to Internationale Nederlanden Groep NV (ING) for a nominal consideration upon ING`s undertaking to discharge certain specified liabilities.

11 As often happened following corporate losses of this magnitude over at least three years, the view was taken that auditors in Singapore and London were in breach of their duties in contract or in tort.

12 In January 1996 Barings plc and BSL commenced an action in the High Court in London against five defendants for damages for negligence or breach of contract (as the case may be) in the audits of the accounts of (BFS) for the purposes of the consolidated group accounts of Barings plc for financial year ended 31 December 1994 and in their reporting in connection with the same. The first defendant in the English action is Coopers & Lybrand (C&L London), a firm of accountants practising in London. The second and third defendants are the representative defendants of D&T Singapore, a firm of certified public accountants practising in Singapore. The fourth and fifth defendants are sued as

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the representative defendants of Coopers & Lybrand (C&L Singapore), a firm of certified public accountants practising in Singapore.

13 The Singapore auditors were alleged to have reported directly to Barings plc and BSL for the purposes of consolidating the group accounts under the English Companies Act and in accordance with the generally accepted accounting standards as required in UK. It was on that basis that the Singapore auditors of a subsidiary (BFS) were alleged to owe a duty of care to the plaintiffs in the English action. I need not set out the allegations of what each of the three auditors should or could have done but failed to do.

14 C&L Singapore, unlike D&T Singapore, challenged the appropriateness of the High Court of London to try the claim against it. It failed in its application to set aside the service of the writ out of jurisdiction both in the High Court and in the English Court of Appeal. One result of the continuation of the English action is the inevitability of D&T Singapore having to join BFS as a third party for the purposes of contribution if D&T Singapore should fail to stay the Singapore action.

15 By the intended joinder of BFS, D&T Singapore desired to overcome the insuperable problems of double jeopardy which it submitted would arise if there were two substantial parallel actions in both London and Singapore. D&T Singapore sought to make BFS a party to the issues so that the issues between BFS, D&T Singapore and the plaintiffs in the English actions would be resolved and binding on all three of them. The issues which were identified were: (a) whether BFS or Barings plc and BSL is or are the proper party or parties to claim; (b) the duties, if any, owed by D&T Singapore to each of BFS, Barings plc and BSL; (c) whether a substantial recovery by BFS would diminish to that

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extent the amount recoverable by Barings plc and BSL; (d) whether the negligence of D&T Singapore, the former auditors, (if proven) caused any loss; and (e) whether the collapse of the Barings Group could be attributable to the auditors or other causes which allegedly included the frauds of Leeson, serious management failures and failings on the part of C&L London and C&L Singapore in the audits for the year ended 31 December 1994?

16 In the event that D&T Singapore should ultimately fail to stay this action in Singapore, I was told it would join Barings plc, BSL and C&L London as proper and necessary parties to this action commenced by BFS. The duality of actions in the two jurisdictions in those circumstances would be substantially duplicative.

17 In February 1996 the liquidators of BFS commenced this action in Singapore against D&T Singapore and C&L Singapore for damages for loss and damage suffered as a result of negligence and/or breach of duty and/or breach of contract by or on their respective part for their respective audits, financial statements and reporting. D&T Singapore were the auditors for the financial years ended 30 September 1992 and 31 December 1993. C&L Singapore were the auditors for the financial year ended 31 December 1994.

18 In these circumstances, it would have been axiomatic for the High Court of Singapore to regard itself as the natural forum for BFS`s claims against D&T Singapore and C&L Singapore, if there were no other complicating factors. As was pointed out on behalf of BFS, all parties have their places of business and reside in Singapore. This action was filed and served in Singapore as of right. It was true that the audits were carried out in Singapore. However, in my view, BFS`s main complaint that the auditors failed to uncover the fraudulent

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activities of Leeson could be investigated with more or less equal facility in Singapore or in London.

19 However, if Barings plc and BSL had claimed only against D&T Singapore and C&L Singapore in Singapore, it would be controversial to take the view that Singapore would be the appropriate forum.

20 Barings plc and BSL have in the same proceedings in London sued C&L London in addition to joining C&L Singapore and D&T Singapore as the other defendants. The introduction of C&L London as a defendant, in addition to the many factors referred to earlier, rather complicated the choice of forum.

21 I should summarise these factors, whether the proceedings be litigated in London or Singapore. The claims against all three defendant auditors raise many common factual questions. In this regard, as was reported by the Inspectors appointed by the Minister of Finance in Singapore and in the report of the Board of Banking Supervisions, there could have been management failure in the `matrix` management adopted by the Barings group. That system provided for management from London of the product and services of the group and such management straddled companies which accordingly did not operate independently. It would be necessary to investigate into the following matters at the trial: (i) the background and management structure of the Barings group; (ii) the reporting procedures of the group in London; (iii) the events leading to and during the collapse of the group; (iv) the extent that the reports of the auditors were relied upon by the group; (v) the inter-relationship and communications between the group auditors in London and BFS`s auditors in Singapore; (vi) the required standards to which the reporting and auditing functions were required to be performed; (vii) the losses incurred by the trading

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activities of Leeson; and (viii) whether, as D&T Singapore would want to investigate, the former directors and senior management of Barings companies, who were identified in the Inspectors` Report to be `grossly negligent, wilfully blind or reckless to the truth`, were in breach of their duties or wholly or contributorily negligent which resulted in the losses suffered by the group. There might well be other issues to be tried.

22 Based on the Inspectors` report, the vast majority of the documentary evidence is in England. It appeared from the affidavit evidence that Barings plc has in excess 2,000 files in London which may be relevant. C&L London has in excess 300 audit files. It was noted that the Singapore auditors would have the bulk of their evidence in Singapore. The inconvenience and expenses to arrange the attendance of the witnesses for the Singapore auditors and the production of their documents, though not insignificant and cumbersome, were outweighed by the many advantages of a composite trial in London. Most of the witnesses of facts, of whom many were former directors or employees of the Barings group, would be in England. The necessary expert evidence on the requirements of ICAEW Auditing Standards and Guidelines in relation to banks and companies trading in financial derivatives would be readily available in England.

23 The point was also made that the First Futures system, which would or could be central to the allegation of negligence against C&L London is located in London. C&L Singapore itself could conceivably want to explore this when considering whether there was contributory negligence, if any, on the part of C&L London.

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24 It was canvassed that the litigation in London would deprive parties of the evidential advantage provided by s 238 of our Companies Act. The section is to the effect that the report of the Inspectors appointed by the Minister of Finance would be admissible as evidence of facts upon which the opinion of those Inspectors were based. I was not persuaded that this juridical advantage would result in any substantial prejudice to BFS.

25 In the end, I was faced with the prospect that in the absence of a stay there would be two sets of litigation involving substantially the same parties over substantially the same underlying transactions. I repeat the reasons I summarised at the beginning of this judgment.

26 With regard to the conditions imposed by me, I did so in an endeavour to achieve practical justice, following what was said in ***Spiliada*** at pp 483-484. They were imposed to reduce the inconvenience, expenses and disability of BFS to adduce evidence.

Lai Kew Chai J

Sundaresh Menon and Chong Yee Leong (Rajah & Tann) for the plaintiffs
Haridass Ajaib and Leong Hee Tean (Haridass Ho & Partners) for the first defendants
Wong Meng Meng and Mohan Pillay (Wong Partnership) for the second defendants

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