IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 321

Suit 526/1999, RA 408/1999

Between

Itochu Steel Asia Pte Ltd

… *Plaintiff*

And

C V Wira Mustika Indah
Tansri Benui also known as
Tan Beng Hoei
Tansri Saridju Benui also
known as Tan Peng Boen
formerly trading as Tri Nigaga
Enterprise

… *Defendant*

GROUNDS OF DECISION

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Itochu Steel Asia Pte Ltd v C V Wira Mustika Indah and Others

[1999] SGHC 321

Suit 526/1999, RA 408/1999
Amarjeet Singh JC
16 December 1999

JUDGMENT:

GROUNDS OF JUDGMENT

1. The Asst. Registrar dismissed the 2nd Defendant's application to stay the action against him as a guarantor liable to the Plaintiffs on the ground of *forum non conveniens.* The 2nd Defendant appealed against this decision. I allowed the appeal and stayed the action against the 2nd Defendant holding that Indonesia was clearly and distinctly the more appropriate forum for an action against the 2nd Defendant than Singapore.

Background to Action

2. The events leading to this action against the 2nd Defendant and others are briefly as follows:-

3. The Plaintiffs are a Singapore incorporated company carrying on business in the trading of cold rolled steel sheets in coil and other steel products.

3.1 The 1st Defendants are a limited partnership company established and existing under the laws of the Republic of Indonesia. The partners at the material times consisted of the 2nd Defendant, his wife and another. The 2nd Defendant withdrew from the partnership on 3 February 1998.

3.2 The 2nd Defendant is an Indonesian citizen and generally resides in Indonesia where he now lives. He also holds the status of a permanent resident of Singapore. He has property both in Singapore and Indonesia.

3.3 The 3rd Defendant, an Indonesian citizen, is the 2nd Defendant's son. The 3rd Defendant is the sole proprietor of *Tria Niaga Enterprise* which is registered in Singapore.

4. Between 1996 to October 1997, the Plaintiffs and the 1st Defendants entered into contracts for the sale and supply of cold rolled sheets in coils ('the goods') to the 1st Defendants in Indonesia.

4.1 The Plaintiffs, the 1st and 3rd Defendants further agreed that the 3rd Defendant shall issue Bills of Exchange to the Plaintiffs in payment for the goods to be shipped for delivery in Indonesia. Accordingly, upon each shipment of goods to the 1st Defendants in Indonesia, the Plaintiffs would be invoicing the 3rd Defendant for value of the shipment.

5. Further, byy Guarantee dated March 1995 ('1st Guarantee') the 2nd Defendant guaranteed the due discharge of all liability that the 3rd Defendant may have to the Plaintiffs up to US$3,000,000/- as a primary obligation on demand. This sum was increased to US$5,000,000/- (clause 5) by the 2nd Defendant when he signed a second Guarantee on 1st April 1996 ('2nd Guarantee') in otherwise identical terms. The 1st Guarantee gave the 2nd

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Defendant's address as TMN Tomang Indah, Blk V/3, Djakarta Bonel, Indonesia. The 2nd Guarantee left the address blank next to the address column. Both Guarantees were prepared by the Plaintiffs' solicitors and signed in Indonesia by the 2nd Defendant. In the Guarantees, the sole proprietorship *Tri Niaga Enterprise* fully owned by Tan Peng Boen with its registered address of business in Singapore is referred to as the 'Principal' and a subsidiary of the 1st Defendants. This Principal in effect is the 3rd Defendant.

5.1 The relevant portions of both Guarantees then go on to read as follows:

Clause 2

> I, the undersigned, guarantee to you the due discharge by the Principal of each and every liability the Principal may now or hereafter have to you (whether solely or jointly with one or more other and whether as principal or as surety or in some other capacity) and promise to pay to you forthwith on demand being made in writing by you on me the unpaid balance of each and every sum (of principal, interest or otherwise) now or hereafter owing, due and payable by the Principal to you in respect of any such liability.

Clause 3

> I, the undersigned, hereby for the same consideration agree as a primary obligation to indemnify you in full forthwith on demand being made in writing by you on me against any loss you may incur as a result of any such liability, or any agreement relating thereto, being or becoming void, voidable or unenforceable for any reason whatever, and whether or not known to you, the amount of such loss being in each case the amount which you would otherwise have been entitled to recover from the Principal.

Clause 4

> I agree that my obligation hereby is that of sole or principal obligors …….

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Clause 15

> This guarantee shall be governed by and construed in accordance with Indonesia law and the undersigned hereby irrevocably submits to the non-exclusive jurisdiction of the Indonesian courts.

Clause 16

The undersigned hereby waives any and all of its rights against you regarding the provisions of section 1430, 1831, 1847 through 1849 of the Indonesian Civil Code.

6. Again, by letters dated March 1995 and 1st April 1996 to the Plaintiffs, the 3rd Defendant represented to the Plaintiffs that the Principal (*Tri Niaga Enterprise*) was a sole proprietorship, that he was its owner and that he was fully liable to the Plaintiffs for any and all liabilities arising from transactions with them in the name of *Tri Niaga Enterprise* and further stated that:

> "the said Principal (*Tri Niaga Enterprise*) is a subsidiary of C.V. Mustika Indah ('C.V.') an Indonesian partnership and he shall cause the C.V. to make sure a business of the Principal and further to inject cash into the Principal in case of a shortfall in funds of the Principal". [sic]

7. Pursuant to the contracts and the agreement earlier referred to, the 3rd Defendant drew Bills of Exchange from 24 April 1997 to 16 January 1998 payable on the Plaintiffs' invoices as presented to him from time to time and exchanged the said Bills of Exchange for Bills of Lading issued by the Plaintiffs for the release of the goods on their arrival in Indonesia in respect of the total sum of $5,992,375.18cts. There is no dispute that the goods under the said contracts were delivered to the 1st Defendants to the said total value. The Plaintiffs presented each and every Bill for payment on the due dates but all the

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said Bills were dishonoured on the due dates resulting in a notice of dishonour being given to both the 1st and 3rd Defendants.

8. The 1st and 3rd Defendants acknowledged in writing on 20th May and 13th April 1998 that as at 29th June 1998 the sum of US$5,992,375.18cts was owed to the Plaintiffs.

9. Between 12th January 1999 and 2nd March 1999 the Plaintiffs were repaid $533,063.00 leaving the current balance due and owing in the sum of US$5,459,312.18cts.

10. Upon demand being made of the 2nd Defendant to pay the said current sum due and owing as a guarantor, the 2nd Defendant failed and or neglected to repay the said sum resulting in loss to the Plaintiffs.

11. As for the Plaintiffs' claim against the 3rd Defendant, the same came on for summary judgment by application made but the 3rd Defendant was granted unconditional leave to defend the action. The 3rd Defendant had raised the defence that he was merely a conduit for payment of the 1st Defendants' outstandings and would pay and had made part payment when funds were transmitted to him for the 1st Defendants in Djakarta.

11.1 In April 1999, the Plaintiffs obtained leave to serve the papers in this action on the 1st Defendants.

12. On 8th August 1999, the Plaintiffs applied for Mareva Injunction against the 2nd Defendant to prevent dissipation of his assets. On 10th August 1999, the Plaintiffs obtained the Mareva Injunction.

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13. The 2nd Defendant in support of his application to stay the action, filed an Affidavit explaining that the 1st Defendants had previously paid for all goods ordered but was unable to pay the outstanding amount in the current transactions at the expiry of 180 days because of the economic crisis that enveloped Indonesia which had very badly affected his business. There had been a sharp drop in demand for the 1st Defendants' manufactured products, the firm's factory had to close down because of rioters due to mischief caused by them and the value of the Rupiah had plunged from one US Dollar to 3,000 Rupiahs to one US Dollar to 15,000 Rupiahs then. The 1st Defendants had usually a credit of US$5m every month and the 1st Defendants had been caught in the crisis and it was not possible to repay the Plaintiffs in view of such adverse conditions.

13.1 The 2nd Defendant on the advice of his Indonesian solicitors Laode M Sabur ('Laode') stated that if the action aginst him was tried in Indonesia, the 1st Defendants and himself would have available to them the defence of *force majeure* (or *overmacht*) – an unpredictable situation not caused by the debtor.

13.2 The 2nd Defendant also averred that Laode had further advised him on the matter being taken up by his wife Madam Ng Tja Giok to whom he had been married since 26 August 1964 that under Indonesian law all property acquired after marriage was the joint property owned by the husband and wife and a husband could not issue any Guarantee in respect of such property jeopardising the same unless the wife consented to the Guarantee. The 2nd Defendant therefore could not issue any guarantee after that date without his wife's permission and the Guarantee having been issued was invalid/voidable. The 2nd Defendant's wife also filed an Affidavit confirming that the 2nd Defendant had never sought her consent before signing the Guarantees and she had never given him such consent. She had only come to know of the Guarantees well after they were signed.

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13.3 Laode filed a number of Affidavits and explained that he had been consulted by the 2nd Defendant and his wife and had given them advice as set out earlier. He went on in his Affidavits to set out and to give his expert opinion on various aspects of Indonesian law highlighting two main defences available to the 2nd Defendant in Indonesia i.e. *force majeure* and the invalidity or voidability of the Guarantees in view of the absence of consent from his wife before he signed the same as it would affect her rights to share in the property jointly owned by her and the 2nd Defendant.

13.4 Concerning *force majeure*, Laode referred to *Article 1245* of the Indonesian Civil Code which stipulated:

> "Tidaklah biaya rugi dan bunga, harus digantinya, apabila lantaran keadaan memaksa atau lantaran suatu kejadian tak disengaja si berutang beralangan memberikan atau berbuat sesuatu yang diwajibkan, atau lantaran hal2 yang sama telah melakukan perbuatan yang terlarang".

Translation:-

> "No need to compensate for loss or interest, which should be compensated, when caused by force majeur (or overmacht) or the debtor is prevented from giving or doing something which he is obliged to give or do by an occurrence which he did not intend or because the said matters caused acts contrary to the agreement".

13.5 On the joint ownership of property and requirement of consent from a wife before the husband undertakes an onerous obligation in respect thereto, Laode referred to the Indonesian Marriage Laws as reproduced at pg.40 of his Affidavit and exhibits filed on 9th July 1999.

13.6 Laode further opined that the 2nd Defendant was prohibited by *Article 1821* of the Indonesian Civil Code from assuming the primary obligation to indemnify the Plaintiffs for their loss which obligation the 2nd Defendant

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undertook in clauses 3 and 4 of the Guarantees. He referred to *Article 1821* and *1822* of the Indonesian Civil Code as stipulating:

Article 1821

> "Tiada penanggungan jika tidak ada suatu perikatan pokok yang sah".

Translation:

> "There is no guarantee if there is no valid primary obligation".

Article 1822

> "Seorang penanggang tidak dapat mengikatkan diri untuk lebih, maupun dengan syarat-syarat yang lebih berat, daripada perikatan si berutang".

Translation:

> "A guarantor cannot bind himself for more, or heavier obligations, than the debtor's obligations".

Laode further opined that the Plaintiffs could not avoid or expand the effect of these legislative clauses in Indonesia.

14. On the other hand, the Plaintiffs' Indonesian solicitor Kunarti Santoso ('Santoso') a lawyer in practice since 1953 and who has appeared as an expert witness in Singapore Courts and practises in the field of corporate, finance agreements, securities and commercial law filed a number of Affidavits giving his expert opinion as to the law on the matter.

Briefly:-

> (i) Santoso did not dispute the Indonesian law provided for the defence of *force majeure*. However, his argument was that *force*

majeure could not be invoked where a party under a contract had agreed to assume the risk for certain events or matters like paying in US Dollars and had thus undertaken the risk of fluctuations of the US Dollars to local currency. Further, in his opinion, according to authoritative Dutch authors of repute, *force majeure* would not be allowed to be invoked concerning loan agreements so as to allow a borrower to be discharged from his obligation to repay in view of Article 1764, a lex specialis on *force majeure* applicable to loan agreements which superceded the general *force majeure* provision under Article 1245 of the Indonesian Civil Court.

(ii) On the law relating to guarantees, the 2nd Defendant had assumed the role of primary obligor to indemnify the Plaintiffs. He had assumed that independent obligation outside the statutory provisions and therefore he was bound. Notwithstanding the 2nd Defendant's factory may have been destroyed, he was nevertheless obliged to indemnify the Plaintiffs for the liability of the 3rd Defendant.

(iii) As for the impact of the Guarantees on the joint property of the 2nd Defendant and his wife, Santoso again did not dispute that under Article 35 of the Marriage Act 1974 properties acquired during marriage are to be jointly owned by the spouses (subject to exceptions such as inheritance or where the spouses had agreed to segregate their property). He further stated that in respect of jointly owned marital assets, the husband and the wife must act with mutual consent in line with Article 36(1) of the said Marriage Act. The husband and wife under Indonesian law had joint management power over the joint marital assets. He went on further to say that as regards voidance of the Guarantees, the 2nd Defendant cannot simply assume he is not bound by the Guarantees due to lack of approval from his wife. The Marriage Act did not state that the husband could not issue a guarantee without the consent of his wife or on that account the Guarantees issued by the 2nd Defendant were therefore invalid. He also opined that the wife was an investment partner in the 1st Defendants and would have stood to enjoy the benefit of the Guarantees. The wife ought first to contest in a separate application before the Indonesian Court the invalidity of the Guarantees and obtain a declaration that the Guarantees are invalid or void. Only if she had obtained such an order could she intervene and request the Court that she be permitted to join the case as an interested party. The wife had not presented such a declaration and not having obtained one, she was estopped from claiming voidance of the Guarantees. Counsel quoted extracts of statutory law and textbooks in the Indonesian language and also the Dutch Civil and Commercial Codes, all of which he said were substantially in the same tenor as the Indonesian laws to support his opinion.

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15. Laode in reply joined issue with Santoso's opinion stating amongst other things that:

> (i) the 2nd Defendant's wife did not have to be a 'process party' to the action to present her rights in the matrimonial property (against the Plaintiffs) but could appear before a judge in Indonesia dealing with the proceedings if brought by the Plaintiffs in Indonesia and testify and prove there that she did not consent to the Guarantees. Otherwise every wife in Indonesia would have to start an action. It was not something that was required in Indonesia.
>
> (ii) there was no benefit to the wife as stated by Santoso. A benefit would have to be clear and direct as for example where the husband guarantees the wife's debts. It would then be unjust and unfair for her to contest the Guarantees. The wife having filed her Affidavit in these proceedings the Court here should give it the proper consideration if it should consider the action as appropriately brought here.
>
> (iii) the implicit assumption of risk in paying in a foreign currency had been negated by *force majeure*.
>
> (iv) there were inherent difficulties in a Singapore Court applying Indonesian law both as to substantive *civil* law as distinguished from *common* law. The procedural approaches between Singapore Courts and Indonesian Courts were also different.
>
> (v) points of Indonesian law could be appealed from to the Supreme Court in Indonesia. In Singapore, issues of law would be decided as facts with limited appeal rights.

Forum Non Convenies

16. The issue therefore was whether Indonesia or Singapore was clearly the more natural and appropriate forum for trying the 2nd Defendant's liability arising from the Guarantees executed by him.

Submissions on behalf of Plaintiffs

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17. Plaintiffs' Counsel's submission before me was that the issue touching and concerning the liability of the 2nd Defendant as a Guarantor of the 3rd Defendant's liabilities arising from the issue of the Bills of Exchange and their dishonour was triable in Singapore, Singapore being clearly the more appropriate forum because of the connecting factors with Singapore namely:-

> (a) The sales contracts had taken place in Singapore.
>
> (b) The Bills of Exchange were issued in Singapore and were governed by Singapore law.
>
> (c) The 3rd Defendant and his employees are resident in Singapore as are the bankers of the 3rd Defendant and the Plaintiffs.
>
> (d) The 2nd Defendant is a permanent resident in Singapore although he since 1998 had been living in Djakarta.
>
> (e) The cause of action on a guarantee has no natural forum.
>
> (f) The Plaintiffs would be deprived of a legitimate juridical advantage if proceedings in Singapore were stayed to be brought to Indonesia as:
>
> (i) there would be a duplication of actions – one against 2nd Defendant in Indonesia and the other against the 3rd Defendant in Singapore resulting in the possibility of contradicting decisions.
>
> (ii) there would be a substantial delay of proceedings in Indonesia and if judgment was obtained in Indonesia against the 2nd Defendant, there were no laws for reciprocal enforcement of the same in Singapore.
>
> (iii) Plaintiffs had the benefit of a continuing Mareva Injunction against the 2nd Defendant.
>
> (iv) there was no concept of summary judgment or discovery in Indonesia and
>
> (g) The 2nd Defendant had failed as such to discharge the burden of proof placed on him that Indonesia was clearly the more appropriate forum.

Further, Counsel repeated the opinion of Santoso and asked me to accept it.

Submissions on behalf of 2nd Defendant

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18. Counsel for the 2nd Defendant in essence made two main submissions based on the 2nd Defendant's Affidavit and that of his wife and the expert opinion of Laode as to the law namely that the validity of the Guarantees and their effect was seriously in issue as:-

> (a) the 2nd Defendant had executed the Guarantees without the consent and permission of his wife and
>
> (b) on the grounds of *force majeure,* a defence under Indonesian law.

19. Counsel relied on the opinion of Laode as to the law in Indonesia on the above issues. Laode had replied to the submissions of Santoso joining issue on them with him.

Decision

20. The principles governing the appropriateness of a jurisdiction for trial of an action where *forum non conveniens* is raised are succinctly summarised by L P Thean J A in ***Eng Lian Kiang v Eng Bak Hern*** [1995] 3SLR 105:-

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

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21. In allowing the appeal and staying the action against the 2nd Defendant, I was satisfied that Indonesia and not Singapore is the natural forum for an action against the 2nd Defendant based on the Guarantees as such an action having the most real and substantial connection with that country.

22. In deciding thus it was my opinion that the more weighty factor for consideration in exercising my discretion in determining the appropriate jurisdiction as to where the subject matter of the action should be heard was the Indonesian law choice on balance - not points relating to the connecting factors of the 3rd Defendant and that of the Plaintiffs and their Bankers' presence in Singapore in relation to the issue of the Bills of Exchange.

22.1 The Plaintiffs' contention was that there would be a duplication of actions if the action against the 2nd Defendant was allowed to be tried in Indonesia and that the actions against the 2nd and 3rd Defendants could be quickly and effectively disposed of in Singapore at one and the same time. However, I noted that the evidence required to establish a case against the 2nd Defendant and the issues were very different from those required to establish liability against the 3rd Defendant. The Plaintiffs' case against the 3rd Defendant was largely based on the agreement made by him to pay for the goods through issue of Bills of Exchange against delivery of the Bills of Lading. On the other hand, the Plaintiffs' case against the secondary liability of the 2nd Defendant depended not only on the 3rd Defendant's liability being established and his defence rejected that he was only a conduit, a paying agent of the 1st Defendants but also on the construction to be placed on the Guarantees he issued in the light of his defences questioning the validity or enforcement of the Guarantees as a result of the Indonesian matrimonial law provision and *force majeure* impacting on the Guarantees.

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22.2 Plaintiffs' Counsel's further fear that in the event that the Plaintiffs obtained judgment in Singapore against the 3rd Defendant, the Plaintiffs would have to prove this aspect of the case again in Indonesia if and when the action was brought there against the 3rd Defendant was unfounded. The 2nd Defendant had on affirmation in his Affidavit undertaken or given his assurance that he would not challenge any judgment in proceedings in Indonesia which was obtained in Singapore against the 3rd Defendant. The Plaintiffs' further fear that an Indonesian Court was not bound to accept the Singapore Court's decision against the 3rd Defendant and may require the facts to be proved afresh concerning the liability of the 3rd Defendant was also unwarranted. I concurred with the rational submission and opinion put forward by Laode, the 2nd Defendant's expert witness that there would neither be probity nor any good reason for an Indonesian Court not to accept the findings of fact and the judgment obtained against the 3rd Defendant in Singapore. The 2nd Defendant could also not contradict his Affidavit made in Indonesia before Indonesian solicitors. His answers would have the effect of estoppel or in the nature of an estoppel. The confinement of issues in a conflict - not their enlargement is the goal of judicial proceedings no matter which jurisdiction they are heard in.

22.3 As for the delay in obtaining a hearing in Indonesia whether at first instance or on appeal, the lack of proper discovery and non-availability of summary judgments there - these are all matters on which I proffer no opinion. But I can only observe that all these matters would have been considered by the Plaintiffs who had a representative office in Djakarta at all material times and would have been familiar with the system of administration of justice there. The Plaintiffs had accepted the Indonesian law choice in the identical clause 15 of the Guarantees which provisions were drafted by their solicitors who had international practice and knowledge of Indonesian law as is obvious from

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clause 16 of the Guarantees which required the 2nd Defendant to waive certain clauses namely clauses 1430, 1831, 1847 through 1849 of the Indonesian Code. Whether waiver of these clauses as contracting out of the Code was another issue open for determination as pointed out by the 2nd Defendant's Counsel.

22.4 I was satisfied on the whole that the 2nd Defendant genuinely desired a trial in Indonesia and was not seeking a procedural advantage.

23. I come now to the weighty considerations concerning the Indonesian law choice. Whilst generally a cause of action on a guarantee may have no natural forum, this would be a matter for judicial consideration in the light of the laws of the two competing countries for jurisdiction impacting on the guarantee. If the laws are similar then the cause of action on a guarantee has no natural forum. If dissimilar, it would be otherwise.

23.1 The 2nd Defendant claimed that both Guarantees were executed in Indonesia. There was little contradiction of this by the Plaintiffs. Again, although the 2nd Guarantee is blank against the entry concerning the address of the 2nd Defendant, the 1st Guarantee bears the Indonesian address of the 2nd Defendant. Notwithstanding that the 2nd Defendant submitted himself to the non-exclusive jurisdiction of the Indonesian Courts under clause 15 of the Agreement allowing the action to be tried in Singapore, nonetheless the same clause importantly stipulated that the Guarantee/s shall be governed by and construed in accordance with Indonesian law. The two aspects of Indonesian law, *force majeure* and matrimonial provisions of Indonesian statutory law reasonably appear to impact on the legality or enforceability of the Guarantees. The Plaintiffs' expert witness Santoso giving his opinion on the law, did not dispute the presence in Indonesian law of the concepts of *force majeure* and provisions of the Marriage Act of 1974 impacting on jointly held property, both

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of which concepts have relevance to the Guarantees executed by the 2nd Defendant. Santoso only disputed the applicability and effect of these concepts in the law to the prevailing facts of this action. However, the effect as opined by Santoso was disputed by Laode, the 2nd Defendant's expert witness.

23.2 There was as far as I could discern, a sharp division in opinion between Santoso and Laode on the application of the law of *force majeure* and the matrimonial law provisions concerning the joint property of a husband and wife and its impact on the Guarantees signed by the 2nd Defendant without the permission of his wife. That the 2nd Defendant had so signed the Guarantees as is evidenced by the wife's Affidavit was not really seriously challenged by the Plaintiffs before me. Specifically, I determined the issues of Indonesian law to include:

> (a) whether the primary liability clauses (Clause 3 of the Guarantees) making the 2nd Defendant liable are enforceable in the face of Articles 1821 and 1822 of the Indonesian Civil Code;
>
> (b) *force majeure*;
>
> (c) the law of guarantees, in particular whether the Guarantees are void because of 2nd Defendant's wife's lack of prior knowledge or consent;
>
> (d) whether she received any benefit from the Guarantees and, if so,
>
> (e) whether she is precluded from contesting the Guarantees because she received such direct and substantial benefit from them that it would be very unfair and very unjust for her to contest them or because she is presumed to have consented or impliedly consented to them or because she had not started a separate 'process' to assert her rights.
>
> (f) whether Indonesian family law would impact on the case, in particular, the assets liable to execution.

As I have stated earlier, on all these material issues, Indonesian law differs from Singapore law in material aspects.

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24. In view of the contradictory Affidavit evidence of the two opposing experts on the above aspects of Indonesian law, the difficulties in construing translated provisions of the laws as well as the difficulty with some of the laws including textbooks which are in Indonesian language or in Dutch as the above concepts have their origin from Dutch law, it was plain that owing to the complexities, it was undesirable that a Singapore Court should become embroiled and decide on those issues as impacting on the Guarantees. That should naturally be left to Indonesian Courts interpreting Indonesian law where expert opinions of law giving rise to the issues of law could go to the highest level for determination if the parties so chose.

25. For the reasons given, I exercised my discretion and concluded Indonesia to be clearly the more appropriate forum for trial of this litigation against the 2nd Defendant bearing in mind that the overall requirement was that justice must be done to all parties. The 2nd Defendant having discharged the burden of proof placed on him, I stayed the action. Whilst I stayed the action, I also ordered that the Mareva Injunction obtained by the Plaintiffs against the assets of the 2nd Defendant, the 2nd Defendant's Counsel not objecting to the same, continue to be in force until otherwise set aside.

Dated this 16th day of December 1999

AMARJEET SINGH

JUDICIAL COMMISSIONER

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Amarjeet Singh JC

Philip Lam (Foo Liew & Philip Lam) for the appellant/2nd defendant
Low Chai Chong (Rodyk & Davidson) for the respondents/plaintiffs

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