IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 6

Suit No 790 of 2017
(Registrar's Appeals Nos 229 of 2018 and 232 of 2018)

Between

(1) Bidzina Ivanishvili
(2) Ekaterine Khvedelidze
(3) Tsotne Ivanishvili (A Minor, Suing By His Litigation Representative, Ekaterine Khvedelidze)
(4) Gvantsa Ivanishvili
(5) Bera Ivanishvili

… *Plaintiffs*

And

(1) Credit Suisse AG
(2) Credit Suisse Trust Limited

… *Defendants*

JUDGMENT

[Conflict of Laws] — [Choice of jurisdiction] — [Exclusive]
[Conflict of Laws] — [Jurisdiction]
[Conflict of Laws] — [Natural forum]

Version No 2: 27 Oct 2020 (22:41 hrs)

TABLE OF CONTENTS

INTRODUCTION **1**

BACKGROUND **2**

THE SINGAPORE CLAIM 2

THE LITIGATION ELSEWHERE 8

In Switzerland *8*

Representation Agreements *9*

New Zealand *10*

Bermuda *11*

CONTEXT AND ISSUES **11**

DECISION **14**

NATURE AND SCOPE OF THE JURISDICTION CLAUSES 14

The forum of administration clause *14*

The scope of the clause *18*

Applicability of the clause to the Bank *21*

The exclusive jurisdiction clause between Mr Ivanishvili and the Bank *22*

GOVERNING LAW 25

MATTERS OF EVIDENCE AND EASE OF TRIAL 26

SHAPE OF THE LITIGATION 30

REASONS OF JUSTICE AGAINST A STAY 33

AVAILABILITY OF THE SINGAPORE INTERNATIONAL COMMERCIAL COURT 35

CASE MANAGEMENT STAY 35

CONCLUSION **37**

Version No 2: 27 Oct 2020 (22:41 hrs)

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Ivanishvili, Bidzina and others
v
Credit Suisse AG and another

[2019] SGHC 6

High Court — Suit No 790 of 2017 (Registrar's Appeals Nos 229 of 2018 and 232 of 2018)
Valerie Thean J
23, 25, 30 October 2018

18 January 2019 Judgment reserved.

Valerie Thean J:

Introduction

1 The first plaintiff, Bidzina Ivanishvili, a former Prime Minister of Georgia, has been a customer of the first defendant ("the Bank") since 2004. His relationship has been managed out of the Bank's branch in Geneva, Switzerland. The Bank is a Singapore registered foreign bank with a registered Singapore address, incorporated in Switzerland and headquartered in Zurich.

2 The second to fifth plaintiffs are Mr Ivanishvili's wife and children. The plaintiffs, French and Georgian nationals, are the beneficiaries of the Mandalay Trust, a Singapore discretionary trust established by a declaration of trust on 7

March 2005. The second defendant, the trustee of the Mandalay Trust ("the Trustee"), is a Singapore trust company. The Trustee operates independently of the Bank although both have the same ultimate holding company, Credit Suisse Group AG, which provides global financial services. Arising from arrangements made by the Trustee, the Trust was managed by the Bank.

3 This suit, which concerns losses to the Mandalay Trust and other assets managed by the Bank, therefore has connections to both Singapore and Switzerland. The defendants applied to stay the suit on the ground of *forum non conveniens* in favour of Switzerland. A Senior Assistant Registrar granted the orders on 31 August and 10 September 2018. The plaintiffs appealed therefrom. For reasons that follow, I am of the view that Geneva is the *forum conveniens* for this dispute between parties, and I dismiss both appeals.

Background

The Singapore claim

4 Sometime in or around December 2004, representatives of the Bank approached Mr Ivanishvili to offer him and his family private wealth management services.[1] On 28 February 2005, Mr Ivanishvili signed the "Acceptance Documentation, Trust/Company" in Geneva for the formation of the Mandalay Trust.[2] The Mandalay Trust is a Singapore discretionary trust, established by declaration of trust on 7 March 2005. The assets of the Trust were held by two investment companies, Meadowsweet Assets Ltd

1 Joint Bundle of Cause Papers ("JBCP") Vol 1 Tab 1 p 6.

2 JBCP Vol 8 Tab 9 2CPO pp 37–56.

Version No 2: 27 Oct 2020 (22:41 hrs)

("Meadowsweet"), incorporated in the British Virgin Islands, and Soothsayer Limited ("Soothsayer"), incorporated in the Bahamas.

5 On 22 March 2005, Mr Ivanishvili settled approximately USD1.1 billion in the Trust.[3] On 23 March 2005, USD550 million were transferred into accounts in the name of Soothsayer with the Singapore branch of the Bank.[4] The remaining USD550 million were held in accounts in the name of Meadowsweet with the Geneva branch of the Bank.[5] In 2011 the Trustee arranged for Meadowsweet to apply for a unit-linked insurance policy, a Life Portfolio International with Credit Suisse Life (Bermuda) Limited ("CS Life").[6] The policy commenced on 25 October 2011 with Mr Ivanishvili as the insured person, and the premium being invested in an internal fund in accordance with the investment profile in the policy. The premium was held in accounts with the Bank in the name of CS Life.

6 It is not disputed that the Trustee delegated its asset management and investment powers under the Trust to the Bank, which was given a mandate to manage the Trust assets. At all material times, the trust assets were managed and invested by the Bank, which provided investment reports detailing the performance of the accounts to the Trustee. It is not disputed that the centre of management of the plaintiffs' portfolio of assets was the Geneva branch of the Bank. Mr Ivanishvili's relationship manager was initially one Ms Daria

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3 JBCP Vol 12 Tab 14 pp 52–53.

4 JBCP Vol 12 Tab 14 pp 52–53.

5 JBCP Vol 12 Tab 14 pp 52–53.

6 JBCP Vol 8 Tab 9 pp 162–216.

Version No 2: 27 Oct 2020 (22:41 hrs)

Mihaesco.[7] From August 2006, one Mr Patrice Lescaudron took over as Mr Ivanishvili's portfolio manager.[8]

7 On 5 July 2013, the Trustee executed a Deed of Amendment and Restatement in respect of the Trust.[9] The validity of the Amended Trust Deed is in issue in this suit. The statement of claim contends that the execution of the Amended Trust Deed was an excessive exercise of the Trustee's power and/or was carried out for an improper purpose. The plaintiffs assert that the Restated Declaration of Trust is void because the amendments to the Declaration of Trust went beyond the intended purpose represented by the Bank to Mr Ivanishvili, of accommodating the investment of artwork under the Mandalay Trust.

8 Aside from the Mandalay Trust assets, Mr Ivanishvili held accounts with the Bank in his own name and through Wellminstone SA ("Wellminstone"), a company incorporated in the British Virgin Islands ("BVI"). It is not disputed that Mr Ivanishvili is the ultimate owner of Wellminstone.

9 The Bank reported to the Trustees and Mr Ivanishvili regarding their portfolio of investments from time to time. The plaintiffs allege that beginning in 2013, Mr Lescaudron gave regular reports to the plaintiffs which were false.[10] They also allege that in the course of 2014 and 2015, the Bank, through Mr Lescaudron and others, made a series of misrepresentations in relation to the value of the Trust and Wellminstone assets.[11] Arising from these

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7 JBCP Vol 2 Tab 7 pp 18–19.

8 JBCP Vol 2 Tab 7 pp 18–19.

9 JBCP Vol 11 Tab 13 pp 42–68.

10 JBCP Vol 1 Tab 1 p 25–26.

11 JBCP Vol 12 Tab 14 p 54,

Version No 2: 27 Oct 2020 (22:41 hrs)

representations, Mr Ivanishvili transferred assets held in other banks into accounts held with the Bank. These accounts included his personal account. In March 2015, Mr Ivanishvili agreed to the Bank entering into a framework agreement, which provided that CS Life would pledge all the trust fund's assets in the CS Life Meadowsweet accounts to the Bank as collateral for a credit facility up to USD150 million.[12] In early 2015, Mr Ivanishvili also transferred assets of more than USD210 million to an account held by Sandcay Investment Limited ("Sandcay") with the Bank, held under the Green Vals Trust. The Green Vals Trust is the subject matter of separate proceedings in New Zealand. In or around June 2015, the plaintiffs agreed to the establishment of new trusts by the Trustee on behalf of each of the plaintiffs.[13]

10 In September and October 2015, the Bank issued margin calls totalling USD41.01 million on accounts within the Mandalay Trust.[14] The plaintiffs contend that following these margin calls, they discovered misconduct on the part of Mr Lescaudron, in the following manner:

> (a) Whilst in the care of the Trustee and the Bank, the value of the Trust Fund had dropped substantially. For example, between December 2014 and September 2015 the value of the Trust fund dropped from USD697.68 million to USD437.8 million and this had prompted the margin calls;[15]

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12 JBCP Vol 1 Tab 1 p 31.

13 JBCP Vol 1 Tab 1 p 31

14 JBCP Vol 1 Tab 1 p 34–41.

15 JBCP Vol 12 Tab 14 p 54.

Version No 2: 27 Oct 2020 (22:41 hrs)

(b) The Plaintiffs had been falsely informed of the value of the Trust fund by both the Bank and the Trustee over a prolonged period of time;[16]

(c) Instructions given in relation to Trust Assets held in the Soothsayer accounts had been ignored, and the effects of doing so had been actively hidden from the Plaintiffs;[17]

(d) Various other wrongdoing had occurred on the accounts containing the Trust Assets, including theft, unauthorised and imprudent trading.[18] The wrongdoing related to accounts held in Singapore and elsewhere.

11 The Bank filed a criminal complaint against Mr Lescaudron in Geneva in December 2015.[19] Mr Lescaudron admitted most of the allegations against him and in February 2018 was convicted of embezzlement, simple and aggravated misappropriation and forgery and sentenced to 5 years in prison.[20] Mr Lescaudron has appealed against his sentence. Various complainants in the criminal proceedings, including the Bank, have appealed against the decision to acquit Mr Lescaudron on certain specific charges. The appeals are due to be heard in January 2019.

12 The plaintiffs commenced this suit on 25 August 2017. This claim is one framed in the context of losses to the Mandalay Trust, a Singapore trust with a

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16 JBCP Vol 12 Tab 14 p 54.

17 JBCP Vol 12 Tab 14 p 64; JBCP Vol 1 Tab 1 p 46.

18 JBCP Vol 1 Tab 1 pp 35–36, 41–43.

19 JBCP Vol 1 Tab 1 p 41.

20 JBCP Vol 13 Tab 20.

Version No 2: 27 Oct 2020 (22:41 hrs)

Singapore company as trustee, with the Singapore courts as the forum for the administration of the trust. The plaintiffs claim against the Trustee for failing to take any steps to review or monitor the management of the trust assets.[21] Remedies sought against the Trustee include a declaration that the Amended Trust Deed is void, a declaration that the Trustee is liable to account for loss caused to the Mandalay Trust, an account to establish the sums due, equitable compensation to restore the value of the Trust or a declaration to rescind the new trusts, damages for misrepresentation, and damages for negligence.[22]

13 It is not disputed that the Bank managed the trust assets under a mandate to do so. The plaintiffs claim against the Bank for liability as an agent of the Trustee, as a constructive trustee and trustee de son tort, and for breach of the duties conferred under the Trustees Act.[23] In addition to the trust assets which form the subject matter of the claim against the Trustee, the portfolio of assets include that of Mr Ivanishvili and the Wellminstone account. Further, there is a misrepresentation claim brought against the Bank.[24] The plaintiffs contend that Mr Lescaudron and others within the Bank misrepresented the value of the trust accounts, in particular during the course of 2014–2015. Arising from this, further assets were brought into the management of the bank, including into Mr Ivanishvili's personal account, the Wellminstone account and a third, Sandcay account. A further negligence claim is made arising from the Bank's voluntary assumption, by letters in September and October 2015, of an obligation to the

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21 JBCP Vol 1 Tab 1 p 47.

22 JBCP Vol 1 Tab 1 pp 76–77.

23 JBCP Vol 1 Tab 1 p 45.

24 JBCP Vol 1 Tab 1 p 62.

Version No 2: 27 Oct 2020 (22:41 hrs)

plaintiffs to use best efforts to protect the plaintiffs' portfolio.[25] Remedies sought against the Bank include a declaration that the Bank is liable to account for losses to the Mandalay Trust, an account to establish the sums due, an account of profits made by the Bank, equitable compensation to restore the value of the Trust, a declaration to rescind the transfers of the further assets or to return these further assets, damages for misrepresentation, an indemnity for the fees of the new trusts, general damages and exemplary damages.[26]

14 On 15 November 2017, the Bank and the Trustee filed applications for a stay of the proceedings. Both defendants have undertaken to submit to the jurisdiction of the Swiss courts if the suit is stayed.

The litigation elsewhere

15 Multiple proceedings involving related parties have arisen in various jurisdictions out of the same series of events.

In Switzerland

16 Following various criminal complaints filed by the Bank and others (including Mr Ivanishvili and Meadowsweet) in Switzerland, criminal charges were brought against Mr Lescaudron. Mr Ivanishvili filed a civil adhesive claim against Mr Lescaudron as well.[27] After trial of the matter, Mr Lescaudron was convicted on some of the charges for fraud, criminal mismanagement and forgery. He was sentenced to 5 years' imprisonment and was ordered to pay the Bank damages in the sum of more than USD130 million. Various assets of Mr

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25 JBCP Vol 1 Tab 1 p 59.

26 JBCP Vol 1 Tab 1 pp 75–76.

27 JBCP Vol 2 Tab 7 p 49.

Version No 2: 27 Oct 2020 (22:41 hrs)

Lescaudron were confiscated and allocated to the Bank so that the latter may use the assets to reimburse the clients who were affected by the fraudulent transfers. The Bank, Mr Lescaudron and other customers have appealed against various parts of the decision.

17 At present, there is no criminal indictment laid against the Bank in Switzerland. The Public Prosecutor of Geneva issued a Disjoinder Order and Refusal of Investigative Measures Order on 7 June 2017 which in effect separated the criminal proceedings against Mr Lescaudron from those against the Bank so that the former could proceed first.[28]

18 Mr Ivanishvili has discontinued his civil adhesive action in Switzerland. The plaintiffs have not filed a suit against the Bank or the Trustee in Switzerland.

Representation Agreements

19 On 24 October 2016, the Plaintiffs entered into a representation agreement with the Trustee and Meadowsweet to authorise the Plaintiff to act on behalf of Meadowsweet to sue the Bank in the courts of Zurich and/or Geneva and/or any such other court for breach of contract and wilful misconduct to claim for losses relating to the Meadowsweet and CS Life Meadowsweet accounts.[29] It also authorises the plaintiffs to act on behalf of Meadowsweet to sue CS Life in Bermuda for losses relating to its failure to prudently invest and/or monitor investment of premiums paid.

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28 JBCP Vol 2 Tab 7 p 65.

29 JBCP Vol 12 Tab 14 p 61.

Version No 2: 27 Oct 2020 (22:41 hrs)

20 A similar representation agreement was entered into in relation to the Green Vals Trust which also suffered losses from this series of events. Pursuant to this representation agreement, the Plaintiffs have conduct of the claims that may be pursued by Sandcay, the special purpose vehicle under the Green Vals Trust.

New Zealand

21 The Plaintiffs commenced suit in New Zealand on 7 August 2017 in respect of losses suffered by the Green Vals Trust.[30] Claims were made against the Bank as well as the initial and existing trustees for losses which arose from the alleged wrongful acts of Mr Lescaudron. The causes of action are not completely identical to the Singapore suit even though there are substantial similarities in terms of the factual matrix. Both the Bank and the initial trustees were served out of jurisdiction while the existing trustees were served within jurisdiction. The New Zealand High Court found that Switzerland was the most appropriate forum for the case to be tried and dismissed the claims against the Bank and the initial trustees and ordered a stay of proceedings for the claims against the existing trustees.[31] This decision is pending appeal.

22 The grounds of decision of Justice Venning, Chief High Court Judge of the High Court of New Zealand, *Ivanishvili v Credit Suisse AG* [2018] NZHC 1755, dated 17 July 2018, were relied on by both sides in argument.[32] There are various differentiating factors between that litigation and the present case. From 2012 to 2014 the trust was governed by Prince Edward Island law. It was only

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30 JBCP Vol 2 Tab 7 p 68.

31 Defendants' Joint Supplementary Bundle of Documents ("DJSBD") Tab 3 pp 80–81.

32 DJSBD Tab 3 pp 39–81.

Version No 2: 27 Oct 2020 (22:41 hrs)

from 1 July 2014 that a New Zealand trust company became the trustee and after 1 July 2014 New Zealand law became the governing law of the trust. The "Deed of Appointment and Retirement", which made the change, itself was governed by Prince Edward Island law. Neither the Bank, who does not provide private banking services in New Zealand, nor the trustee prior to 2014, a Canadian company with no connection with New Zealand, were resident in jurisdiction in New Zealand. They were served out of jurisdiction without leave. Whilst there are some similarities in arguments made, there are also important points of difference.

Bermuda

23 Proceedings in Bermuda were filed on 17 August 2017 by the Plaintiffs, Meadowsweet and Sandcay against CS Life pursuant to the representation agreements.[33] The central issue in that suit is the conduct of CS Life, and the plaintiffs have undertaken that they will not seek to recover in this suit any losses recovered in Bermuda but give credit for any recovery obtained.[34] There is no application to stay the Bermuda proceedings.

Context and issues

24 The two-part test found in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 ("*Spiliada*") governs the principles for granting a stay of proceedings on the basis of *forum non conveniens*. These principles were summarised by the Court of Appeal in *CIMB Bank Bhd v Dresdner Kleinwort Ltd* [2008] 4 SLR(R) 543 at [26]. At the first stage, the critical question is

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33 JBCP Vol 12 Tab 14 p 72.

34 JBCP Vol 12 Tab 14 pp 71–72

Version No 2: 27 Oct 2020 (22:41 hrs)

whether there is another available forum which is clearly or distinctly more appropriate than Singapore. This, in turn, would depend upon which forum has the most real and substantial connection with the dispute. Considerations of convenience or expense, the governing law, and the places where the parties reside or carry on business come into play. In *JIO Minerals FZC and others v Mineral Enterprises Ltd* [2011] 1 SLR 391 at [42], the Court of Appeal endorsed five non-exhaustive types of connections, which are: (a) personal connections, (b) connections to events and transactions, (c) governing law, (d) other proceedings and (e) the shape of the litigation. If there is another available forum that is more appropriate than Singapore, the second stage of the inquiry is then to ask whether any reasons of justice militate against a stay of the proceedings in Singapore.

25 In a case such as the present, where there are connecting factors in Singapore and in Switzerland, the Court of Appeal's caution given in *Rappo, Tania v Accent Delight International Ltd* [2017] 2 SLR 265 ("*Rappo, Tania*") not to apply the five-fold framework in a mechanistic manner is apt (see [71]). Courts are reminded to look to the quality, rather than the quantity, of connecting factors on each side of the scale. Lord Sumner's summation in *La Societe du Gaz de Paris v La Societe Anonyme de Navigation "Les Armateurs Francais"* (1926) Sess Cas (HL) 13 at 22, cited with approval in *Rappo, Tania*, the Court of Appeal, is instructive:

> The object, under the words '*forum non conveniens*' is to find that forum which is the more suitable for the ends of justice, and is preferable because pursuit of the litigation in that forum is more likely to secure those ends.

Version No 2: 27 Oct 2020 (22:41 hrs)

26 The plaintiffs characterise the claim as a trust claim against two defendants who are resident in Singapore and were served within jurisdiction.[35] Further, they contend, the Trust Deed contains an exclusive jurisdiction clause.[36] Singapore is also the most appropriate forum when the connecting factors are considered. And if this suit were to be tried in Switzerland, they would be denied juridical advantages, which they say weigh in their favour under the second stage of the *Spiliada* test.

27 The defendants, on their part, contend that the Trust Deed merely contains a forum of administration clause, which is not an exclusive jurisdiction clause;[37] the Bank is also of the view that it does not bind them.[38] The Trustee, on the other hand, is of the view that the trust was merely a device to manage the global funds in question. The defendants characterise this claim as one arising out of a banking relationship spanning six bank accounts, only three of which are trust accounts: one held by Soothsayer and two by Meadowsweet. They contend that at present most of the assets are in the three non-trust accounts, which comprise Mr Ivanishvili's personal account, the Wellminstone account and the Sandcay account. They emphasise the role of Swiss witnesses, in particular, Mr Lescaudron, which are, in their view, necessary for a fair trial of the action, and the difficulties presented in this case impeding disclosure of documents for the purpose of litigation outside Switzerland. They further contend that the denial of juridical advantages raised by the plaintiffs is not of sufficient prejudice to warrant a stay.

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35 Plaintiff's Appeal Submissions ("PAS") p 5.

36 PAS p 6.

37 1st Defendant's Written Submissions ("1DS") p 124.

38 2nd Defendant's Written Submissions ("2DS") p 78.

Version No 2: 27 Oct 2020 (22:41 hrs)

Decision

28 I hold that the forum of administration clause, while relevant for some kinds of disputes arising out of the trust, is not an exclusive jurisdiction clause for all disputes related to the trust. On the other hand, Mr Ivanishvili and the Bank have an exclusive jurisdiction agreement for disputes arising out of their relationship, but it is conceded that this agreement does not bind all five plaintiffs. For that reason, other factors such as governing law, the location of witnesses, documents and evidence, finding a trial venue that better secures a just trial, and the overall shape of the litigation are more important. Taking a holistic view of the claim and the relationship between the parties, I hold that Geneva is the *forum conveniens*. My reasons follow.

Nature and scope of the jurisdiction clauses

The forum of administration clause

29 The document which opened the parties' relationship was that signed on 28 February 2005, when Mr Ivanishvili signed the "Acceptance Documentation Trust/Company" in Geneva for the formation of the Mandalay Trust.[39] This document had a non-exclusive jurisdiction clause in favour of Singapore. It is a clause in the 7 March 2005 Trust Deed upon which the plaintiffs rely as an exclusive jurisdiction clause.[40]

30 Clause 2(a) of the Trust Deed reads:

> This Declaration is established under the laws of the Republic of Singapore and subject to any change in the Proper Law duly made according to the powers and provisions hereinafter

[39] JBCP Vol 8 Tab 9 2CPO pp 37–56.

[40] JBCP Vol 8 Tab 9 2CPO p 61.

Version No 2: 27 Oct 2020 (22:41 hrs)

> declared the Proper Law shall be the law of the said Republic of Singapore and the Courts of the Republic of Singapore shall be the forum of administration thereof.

31 The same clause is contained in the 2013 "Deed of Amendment and Restatement" which is also in issue in this suit.

32 The plaintiffs and defendants alike rely on *Crociani v Crociani* [2014] JCA 089 ("*Crociani*"). In *Crociani*, the clause was worded as follows at [64]:

> … thereafter the rights of all persons and the construction and effect of each and every provision hereof shall be subject to the exclusive jurisdiction of and construed only according to the law of the said country which shall become the forum for the administration of the trusts hereunder.

33 The Jersey Court of Appeal held that the concept of the forum of administration related to the internal administration of the trust and not to hostile litigation. The defendants emphasise this decision, which was upheld on appeal to the Privy Council.

34 In *Crociani* the clause referred only to the country as the forum of administration. A difference between that clause and the one at hand is that, in the present case, reference is made to "the courts of the Republic of Singapore" as the forum of administration. The plaintiffs are of the view that this difference is significant, and rely on comments made by Lord Neuberger in the Privy Council in *Crociani v Crociani* [2014] UKPC 14. In that decision, at [17], Lord Neuberger accepted that the expression "forum of administration" did not have a well-established technical significance; his Lordship highlighted that different authorities have used the phrase to refer to either the court that is to enforce the trust or to the place where the trust is administered in the sense of its affairs being organised. At [20] is the crucial comment:

Version No 2: 27 Oct 2020 (22:41 hrs)

> … if the stipulation was intended to indicate the country whose courts were to determine disputes, rather than the country in which the trust was to be managed, one would have expected the draftsman to refer to the courts of the country, as opposed to the country *simpliciter*, as being the forum.

35 I do not think these remarks assist the plaintiffs' purposes. As may be seen from the extract above, Lord Neuberger, in stating the Board's view that the clause in question referred only to the specified country and not its courts, was merely making a logical point that a draftsman who wished to indicate the courts of a country, rather than the specified country, would have been expected to do so. He did not, however, by this, make the point that whenever the courts of a particular country were so specified as the forum of administration, it would then mean that those courts would have exclusive jurisdiction over all disputes in connection with the trust. Such a conclusion, which the plaintiffs assume, does not necessarily follow from what was essentially an observation that the draftsman could easily have named the courts rather than the country if that was what parties intended.

36 *Koonmen v Bender* (2002) 6 ITELR 568 ("*Koonmen*") assists the plaintiffs a little more in their argument. In that case, the word "courts" appeared within the clause dealt with in that case, which extract may be found at [44]:

> The forum for the administration thereof shall thenceforth be the courts of that state or territory.

37 The Jersey Court of Appeal held that the forum of administration clause amounted to an exclusive jurisdiction clause. Rokison JA held at [47], that "the forum charged with the administration of the AEBT and so the resolution of any disputes in relation thereto was to be the court of Anguilla".

Version No 2: 27 Oct 2020 (22:41 hrs)

38 *Koonmen* has been criticised by Professor Paul Mathews, whose view was endorsed in *Helmsman Ltd and another v Bank of New York Trust Company* [2009] CILR 490 ("*Helmsman*"). Henderson J at [10] cited with approval, that the phrase "forum for administration" in its ordinary meaning does not extend to contentious breach of trust litigation. The clause is concerned with aspects of administration of trust which requires the assistance of the court. This is the "domestic jurisdiction" of the Chancery Court which is represented under O 85 of the former Rules of the Supreme Court 1965 in England. Singapore's O 80 is similar to O 85. Counsel for the plaintiffs emphasised that O 80 r 4 refers to breach of trust and wilful default of trustees. However, O 85 r 4 does similarly. Henderson J made the point at [12] of *Helmsman* that Rule 4 is not a standalone provision and must have arisen in an action referred to in Rule 2.

39 Subsequently, in *Re a Trust* [2012] SC (Bda) 72 Civ ("*Re a Trust*"), the Supreme Court of Bermuda dealt with a clause in a settlement agreement drafted in the following terms:

> … the interpretation and validity of the provisions of this Trust and all questions relating to the management, administration, investment, distribution and the perpetuity period applicable to this Trust shall be governed by the laws of Bermuda and the forum for the administration of this Trust shall be the courts of Bermuda.

40 Kawaley CJ, explaining and interpreting *Koonmen*, held at [64] that the designation of Bermuda as the forum for administration of a trust will ordinarily signify both (a) the exclusive selection of Bermuda as the domicile of the trust, and (b) the exclusive selection of Bermuda as the forum the courts of which will supervise the administration of the trust. Therefore, such a clause constitutes an exclusive jurisdiction clause in applications involving the administration of the trust (see *Re a Trust* at [65]). The plaintiffs rely on this. Kawaley CJ did,

Version No 2: 27 Oct 2020 (22:41 hrs)

however, reflect an important caveat at [67], in the following terms, and to which I will return:

> This conclusion necessarily leaves open the possibility that a variety of claims might not be caught by such a clause. Obvious examples of potential claims not caught by the clause include claims brought by trustees against strangers to the trust or beneficiaries to recover trust property, claims relating to the administration of the trust asserted abroad in ancillary proceedings and/or any other claims which clearly have no connection with the administration of the trust.

41 The plaintiffs also rely on *Lewin on Trusts* (Sweet & Maxwell, 19th Edition, 2017) ("*Lewin*"), at 11-055, where in discussing a narrower and a wider view, prefers the wider construction, explained as follows:

> Another view is that the phrase should cover matters that would fall within the scope of an administration order if such an order were made by the court, said to be matters such as production of accounts and directions or other questions concerning the administration or execution of trusts, and questions of construction incidental to administration or execution but not claims for breach of trust. The latter construction has been approved on occasion, mostly obiter, so as to exclude an action for breach of trust or other hostile proceedings against a former trustee. But that construction is based on a misunderstanding of the scope of an administration action, which has always extended to remedying a breach of trust; and more generally it presupposes that the draftsman would have chosen to limit the jurisdiction of the chosen court by reference to an obsolescent procedure while making no provision for other cases. Accordingly, we favour the wider construction which has been adopted in other decisions, under which the country designated as the forum of administration has jurisdiction to resolve any disputes relating to the trust, whether commenced by trustees or beneficiaries.

The scope of the clause

42 An observation which is almost trite and yet fundamental to resolving this issue is that whether a jurisdiction clause applies in any given case is a function of two matters: the scope of the clause and its applicability on the facts

Version No 2: 27 Oct 2020 (22:41 hrs)

of the case. In *Re a Trust*, it is clear from [67] that Kawaley CJ, whilst using the frame of exclusive jurisdiction rather loosely, limited the frame to actions and persons directly concerned in the administration of the trust. *Lewin*, in the passage relied upon by the plaintiffs, similarly discusses how administration actions may encompass remedying a breach of trust, "whether such litigation is commenced by trustees or by beneficiaries". While the beneficiaries would not have signed the trust deed containing the forum of administration clause, the trust agreement is for their benefit and they have beneficial ownership of the trust assets. It is therefore logical to extend the protection of the clause and the forum of administration to them where the dispute concerns trust duties or trust assets. There can be no doubt that settlor, trustee and beneficiary are in a special relationship within the trust and the governing forum of administration for matters concerning the trust. Thus at [69], when Kawaley CJ opined that "the better view is that a modern draftsman using the terms 'administration' in a trust forum clause does not have in mind now rare administration actions but, rather, is merely seeking to signify the administration of a trust in a general sense by the domicilary courts of the trust", he uses as illustration Lord Walker's description in another case of a beneficiary's right to seek disclosure, which was the subject matter of *Re a Trust*, as an aspect of the court's inherent jurisdiction to supervise the administration of the trust.

43 In my judgment, a single governing law and supervisory judicial forum for the trust make the court that is the forum of administration an ideal forum for certain kinds of administration disputes. There is no dispute that the word "court" within such a clause must mean, as a starting point, the court that trustees return to when variations are required for trust administration purposes. The choice of law within the clause signifies the domicile of the trust. In such circumstances, a supervising court would be best placed to determine any legal

Version No 2: 27 Oct 2020 (22:41 hrs)

issues arising within the applicable law. It logically follows from this that this supervising court, applying the law of the country where it is sited, would be best placed to also hear certain contentious claims regarding maladministration of the trust, particularly where the litigants in such a suit are the beneficiaries and trustees to the trust. This is the wider construction placed upon it by *Lewin* and *Re a Trust*. The parties and the draftsman could fairly be said to have envisaged this. A court which is the forum of administration administering its own law as the governing law of the trust, in such cases between trustees and beneficiaries, will often be the *forum conveniens*.

44 For the same reasons, I disagree with the width of the clause proposed by the plaintiffs: the clause is not an exclusive jurisdiction clause for all kinds of litigation in the nature of a contractual exclusive jurisdiction clause. True it may be that here the Bank is not a "stranger(s) to the trust" in the manner framed by Kawaley CJ because they are sued as agents of the Trustee in the administration of the trust. But three points must be kept in consideration. First, the Bank is not settlor, trustee nor beneficiary within the primary trust agreement. Second, the claims against the Bank go farther than the trust agent claims. Third, the assets under discussion include non-trust assets such as Mr Ivanishvili's personal account and the Wellminstone account. The "forum for administration" for these assets must be Switzerland, because they are Swiss accounts and Swiss governing law and exclusive jurisdiction provisions apply under these relevant contracts. To the extent that *Koonmen*, which *Re a Trust* interpreted, involved a variety of defendants, related assets and claims, I find Justice David Hayton's criticism of it apt. Writing extra-judicially in *The International Trust* (Jordan Publishing, 3rd Edition, 2011), Justice Hayton makes the point, at p.104, that the clause in question "did not suggest that the courts of Anguilla had exclusive jurisdictional competence from the point of

Version No 2: 27 Oct 2020 (22:41 hrs)

inception of the trust to determine all matters, including contentious litigation, in relation to the trust."

Applicability of the clause to the Bank

45 The scope of the clause is one limiting factor. Equally crucial in this case are the parties to which the clause is applicable. The present case is not a suit where the beneficiaries have sued the trustees solely. This suit also joins the Bank, which is not privy to the clause. Because the clause does not bind both defendants, it cannot in any event be dispositive of the issue of jurisdiction in this case in the same way that a contractual exclusive jurisdiction clause for dispute resolution would be. The argument to the contrary being made by the plaintiffs is on the basis that the Bank stands in the shoes of the trustee under the Trustee Act. I disagree that the Trustees Act could impose Clause 2(a) upon a trustee-delegate. A delegate takes on the responsibilities of a trustee to the extent that he is delegated, but he cannot be taken to have signed a clause in a contract to which he was not a party. The reason that courts give significance to exclusive jurisdiction clauses is party autonomy, on the premise that parties have addressed their minds to potential litigation, and have chosen a venue for that litigation. This rationale does not apply to the forum of administration clause vis-a-vis the Bank. Indeed, where the Bank and Mr Ivanishvili are concerned, their minds have been directed to the issue and a venue chosen elsewhere, a matter which I will deal with in due course.

46 That is not to say that it can never be the case that such fora as specified in a forum administration clause may not still be the *forum conveniens* in suitable cases. Parties, assets and claims might be tightly interwoven and closely connected with the forum in question. It is a matter of the weighing up of the

Version No 2: 27 Oct 2020 (22:41 hrs)

various *Spiliada* factors. In this case, while the Bank is not party to Clause 2(a), they are sued because they are said to have mismanaged trust assets, and as a trustee de son tort. If the sole question concerned the maladministration of the trust, it could well be said that Singapore would be the *forum conveniens*. The present suit, however, concerns additional assets outside the trust and additional causes of action outside of the trust management. There are accordingly other factors concurrently in play.

The exclusive jurisdiction clause between Mr Ivanishvili and the Bank

47 One such factor is the presence of a contractual exclusive jurisdiction clause relevant to legal proceedings between Mr Ivanishvili and the Bank. The Bank points out that their General Terms and Conditions and various contracts with the Trustee and various account holders such as Meadowsweet contained exclusive jurisdiction clauses applicable to every document signed with the Bank. Many of these contracts, signed between trustees and the Bank, are not of direct application to the claims advanced. Mr Ivanishvili is the main plaintiff, however, and any clauses signed between him and the Bank have significance.

48 Mr Ivanishvili's personal account was opened on 24 March 2009. Clause 7 of the "Agreement on the Opening of a Banking Relationship" stipulated the following:[41]

> 7. Applicable Law and Place of Jurisdiction
>
> All legal relationships between the Client and the Bank are governed by Swiss law, to the exclusion of the conflict of laws provisions of Swiss private international law.
>
> The exclusive place of jurisdiction for all legal proceedings in connection with the present agreement is Zurich or – if different

[41] JBCP Vol 2 Tab 7 p 155.

Version No 2: 27 Oct 2020 (22:41 hrs)

> – the location stated in the Bank's address. The Bank is entitled to take legal action against the Client before any other competent court in Switzerland or abroad.

The Bank clarified at the hearing before me that it is relying on the Geneva address of the Bank, as Mr Ivanishvili's relationship was managed by relationship managers based in Geneva.

49 The Bank's General Terms and Conditions would have been referred to in documents Mr Ivanishvili signed. Article 14 of the "December 2009 General Conditions" provided:[42]

> All legal relations between the client and the Bank are governed by Swiss law. The exclusive venue for any kind of legal proceedings is Zurich or the place of business of the Swiss branch of the Bank with which the contractual relationship exists. The Bank also reserves the right to take legal action against the client before any other competent court.

Again, the Bank's position is that the place of business of the Swiss branch of the Bank with which the contractual relationship existed is Geneva.

50 These clauses are important for two reasons. First, the suit makes allegations concerning losses Mr Ivanishvili suffered from his personal account, as well as through the Sandcay and Wellminstone accounts. Secondly, the misrepresentation claim, which concerns misrepresentations made to him, is the only claim that cuts across the whole swathe of assets, and the clause applies in the context of this claim.

51 In *The "Jian He"* [1993] 3 SLR(R) 432 ("*Jian He*"), the jurisdiction clause applied to "all disputes arising under or in connection with this Bill of

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42 JBCP Vol 2 Tab 7 p 223.

Version No 2: 27 Oct 2020 (22:41 hrs)

Lading". The Court of Appeal held that a tort claim arising under or in connection with the bill of lading came within the jurisdiction clause. Chao Hick Tin JA cited at [14] with approval *The Playa Larga* [1983] 2 Lloyd's Rep 171 ("*The Playa Larga*"), which held that a jurisdiction clause whose scope was "all disputes arising out of this contract" covered a claim in tort. In that case, a ship headed away from the port of delivery without delivering the cargo that had been paid for by the plaintiffs, who then sued in contract and conversion. Lord Ackner held that the claim in conversion had a sufficiently close connection, explaining at 183:

> The claim in conversion had a sufficiently close connection with the claims under the contract that it came within the arbitration clause. Adopting the words of Mr Justice Mustill, the contractual and tortious disputes were so closely knitted together on the facts, that the agreement to arbitrate on one can properly be construed as covering the other. Accordingly, we would have held, had the matter required a decision, that the whole of the dispute as reflected in the pleadings could be properly regarded as falling within the scope of the agreement to arbitrate.

52 In *The Rainbow Joy* [2005] 3 SLR(R) 719 ("*The Rainbow Joy*"), similarly, the Court of Appeal held that where parties had specified the governing law in a contract of employment, the contractual term would prevail even where an appellant has sued in tort: (see *The Rainbow Joy* at [31] and [36]).

53 Mr Ivanishvili's claim against the Bank fits the frame of "close connection". By the time the false reports and representations were made, the exclusive jurisdiction clause had been signed. Money was moved into accounts, in particular, Mr Ivanishvili's personal account. The misrepresentation and misconduct alleged arose out of his banking relationship with Mr Lescaudron and other members of the Bank.

Version No 2: 27 Oct 2020 (22:41 hrs)

54 Of relevance here is the fact that the other four plaintiffs are not privy to such a clause. The Bank conceded that the clause would not cover the entirety of the claim. This point, then, should be considered in relation to the other factors which are relevant to the case as a whole, and to which I now turn.

Governing law

55 It is common ground that the governing law for the trust claims is Singapore law. The plaintiffs highlight that in *Trisuryo Garuda Nusa Pte Ltd v SKP Pradiksi (North) Sdn Bhd and another and another appeal* [2017] 2 SLR 814 ("*Trisuryo*"), the Court of Appeal emphasised the importance of governing law in the context of Singapore companies and trust claims against such companies. Judith Prakash JA, delivering the judgment of the court, stated at [95]:

> … Singapore law recognises trusts and allows Singaporean individuals and companies to act as trustees. It would be invidious for the Singapore courts to refuse their aid to parties who have structured their transactions in Singapore on the basis of Singapore law solely because the assets affected by the trust are foreign assets.

56 The plaintiffs emphasise that the governing law of the trust claims, negligence in the context of the trust, the claims under the Trustees Act against both defendants, and the constructive trust and trustee de son tort claims against the Bank would be Singapore law.

57 Nevertheless, the trust claims are not the only claims in this suit. There are also negligence and misrepresentation claims against the Bank. The misrepresentation claim is the only claim that cuts across all the assets dealt with by the statement of claim. In this case the representations were mostly made in Switzerland. Many of the acts of reliance took place there. Swiss law

Version No 2: 27 Oct 2020 (22:41 hrs)

would apply. Similarly, regarding the claim for negligence against the Bank arising out of the claim for their voluntary assumption of responsibility, Swiss law would apply. The alleged breaches took place in Switzerland and losses were suffered to the accounts in Switzerland. In respect of the negligence and misrepresentation claims involving non-trust assets, Mr Ivanishvili is the only relevant plaintiff. In this respect, the Swiss governing law clause he has signed with the Bank is relevant and the considerations I have mentioned above concerning exclusive jurisdiction clauses would apply.

58 Where there is more than one governing law in play for the varied claims, as in the present case, *Trisuryo* is distinguishable. Even in respect of the trust claim against the Trustee, the Trustee's view, with which I agree, is that on the facts of the present case the governing law of the trust is not the fundamental factor in considering the *forum conveniens*. In this suit, decisions on issues of Singapore trust law will require and be premised upon the facts found by the court. The factual findings in the claims made against the Bank as to the conduct of various players will be of primary importance. I turn, then to matters of evidence.

Matters of evidence and ease of trial

59 The key witness in these proceedings is Mr Lescaudron, who is compellable in Switzerland but not in Singapore. Further, he is at present incarcerated in a French prison. The plaintiffs insist it is up to them whether they will call Mr Lescaudron, and they emphasise they will not call him as a witness. Given the centrality of Mr Lescaudron's evidence, the defendants contend that they will be hampered in their defence if they are unable to call Mr Lescaudron. The defendants stated that they wish to call him, and his detailed

Version No 2: 27 Oct 2020 (22:41 hrs)

information as to the state of knowledge of other employees or monitoring mechanisms will be crucial to their defence.

60 The plaintiffs argue that Mr Lescaudron's admissions made and the subsequent conviction in the criminal proceedings make the facts sufficiently clear. For example, in the statement of claim, the Plaintiffs rely on the following admissions by Mr Lescaudrons when interviewed by the Swiss Public Prosecutor, particularised at paragraph 79 of the statement of claim:[43]

(a) the Bank had failed to execute instructions from Mr Ivanishvili to convert fixed-income assets held in Soothsayer's accounts into "full equity".[44]

(b) the Bank had caused or permitted assets to be transferred from accounts into the Plaintiffs' portfolio to other customers without authority or for no or less than market consideration.[45]

(c) the Bank had caused or permitted the accounts in the plaintiffs' portfolio to acquire shares from the accounts of other customers for more than market consideration.[46]

(d) the Bank had executed unauthorised trades or transactions, made investments in funds in which its employees or their associates had interests, made investments in products that were managed or associated

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43 JBCP Vol 1 Tab 1 p 41.

44 JBCP Vol 1 Tab 1 p 41.

45 JBCP Vol 1 Tab 1 p 41–42.

46 JBCP Vol 1 Tab 1 p 42.

Version No 2: 27 Oct 2020 (22:41 hrs)

by individuals engaged in real estate fraud, and took improper advice that was not independent.

(e) the Bank had completed trades and transfers using forged signatures and/or instructions, and had also conducted transactions not for investment purposes but solely for brokerage commission.[47]

(f) the Bank had falsified performance reports relating to the plaintiffs' portfolio and had misstated or misvalued assets.[48]

61 I disagree. There would be difficulty in proving these admissions. The criminal court made no findings specifically in respect of these admissions. Nor would Mr Lescaudron's admissions, even if proved, be necessarily binding on the Bank, which would be entitled to run its defences in relation to its own liability for Mr Lescaudron's acts. The Trustee was not party to the French action. In order for the defendants to have a fair chance at establishing their defence, they must have the ability to call him.

62 The plaintiffs complain at various points that the defendants have not articulated their defence, asserting that the Bank and Trustee have "a very clear obligation". But it cannot be assumed that the defendants have no defence. In stay applications on the ground of *forum non conveniens*, the court should not delve into substantive merits (see *The Rainbow Joy* at [27]). The plaintiffs rely on Lord Neuberger's dicta in *VTB Capital plc v Nutritek International Corp and others* [2013] UKSC 5 at p 22: "… if the defendant chooses to say nothing, then it would be quite appropriate for the court to proceed on the basis that there is

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47 JBCP Vol 1 Tab 1 p 44.

48 JBCP Vol 1 Tab 1 p 44.

Version No 2: 27 Oct 2020 (22:41 hrs)

no more (and no less) to the proceedings than will be involved in the claimant making, or trying to make, out its case." Nevertheless, the learned judge stated in the paragraph preceding the one cited, at p 21, that: "The mere fact that a defendant is challenging jurisdiction does not somehow impose a duty on him to specify his case". Mr Lescaudron is central to the plaintiff's statement of claim, whose testimony and cross-examination will be fundamental to a fair trial for the case.

63 The compellability of other witnesses is a second important consideration. The defendants lose the ability to compel Swiss witnesses in Singapore. Most of these witnesses live in Europe. Mr Lescaudron was supported by a department serving private banking clients domiciled in Russia, Eastern Europe and Central Asia, led out of Switzerland. Various classes of witnesses, such as the teams surrounding the main players and other departments involved in the transactions, are located in Switzerland. Of the witnesses named in the statement of claim, five who were employees of the Bank are no longer employees of the bank. Another three are not linked to the bank and live in Europe. Most of the witnesses, including the plaintiffs, are more fluent in French, the working language of the Geneva courts, than in English, the working language of the Singapore courts. Even if video-conferencing could be arranged for trial of a Singapore action, there would be logistical inconvenience relating to time differences and language interpretations to and from French. The location and compellability of witnesses carry greater weight in disputes involving questions of fact: *Rickshaw Investments Ltd v Nicolai Baron von Uexhall* [2007] 1 SLR(R) 377.

64 The availability of documents is a third concern. The Bank points out that because it has its statutory seat in Switzerland, it is subject to Swiss law

Version No 2: 27 Oct 2020 (22:41 hrs)

restrictions on information that it may disclose. It is at risk of criminal sanction under the Swiss Criminal Code unless there is a request for judicial assistance. Procedural requirements, such as the right of parties to be heard, will have to be met, for the judicial assistance to take place. These difficulties in evidence would be augmented by the consideration that the subject matter of the litigation, the accounts, are primarily in Geneva. Only one of the six accounts in question is located in Singapore, and this account has been closed. The other five accounts are Swiss. In contrast, a Swiss civil court trying the plaintiffs' claims against the bank would have known of these difficulties and would even be able to admit and take cognisance of the evidence collected in the criminal proceedings against Mr Lescaudron.

Shape of the litigation

65 In *Rappo, Tania*, the Court of Appeal explained that "the shape of the litigation" was shorthand for the manner in which a statement of claim and Defence are pleaded (see *Rappo, Tania* at [71]).

66 The case at hand is a complex one with multiple common factual issues, many divergent narratives and varied claims against different defendants. In my judgment, it is fundamental in such a case to take a holistic look at the substance of the claim; to assess, in the round, whether the trust claim, which anchors in Singapore, or the banking claim, which anchors in Switzerland, is the weightier.

67 The gravamen and premise of the suit is the fraud of Mr Lescaudron, who was Mr Ivanishvili's relationship manager at the Bank. If the parties' relationship is looked at as a whole, it would be fair to say, as the Trustee does, that the trust relationship was ancillary to the banking relationship. The source of the trust assets was the proceeds of the sale of Mr Ivanishvili's stake in

Version No 2: 27 Oct 2020 (22:41 hrs)

Mikhaylovsky GOK, a Russian iron ore company. The first deposit was of USD1.1 billion made into the Credit Suisse BVI Swiss Account. Thereafter the whole USD1.1 billion was transferred from the Credit Suisse BVI Swiss Account into the Meadowsweet BVI Swiss Account and from there USD550 million was transferred into the Soothsayer Bahamas Singapore Account. Throughout the whole of the relationship until the margin call, Mr Ivanishvili dealt with relationship managers based in Geneva, in particular Mr Lescaudron.

68 While the statement of claim commences with contentions regarding the Mandalay Trust, it expands, through a central allegation of misrepresentation, to cover a portfolio of further assets managed by the Bank. Some USD145 million were moved into the Bank upon specific misrepresentations made by employees of the Bank[49] There are three trust accounts and three non-trust accounts. Only one of the trust accounts, that of Soothsayer, was sited in Singapore. These funds, over the course of time, were transferred out of the Soothsayer account, and substantially transferred out by 21 June 2012, before the false reports were alleged to have commenced. The Soothsayer Bahamas account was closed on 26 March 2014. Within the remaining accounts, the relative value of the non-trust accounts are far higher than the trust accounts: by 2015 these non-trust accounts were 75% of the total value of assets.[50]. The claim in respect of events on and after September 2015 are also bolstered by a negligence claim against the Bank for its voluntary assumption of responsibility. The Trustee is not a defendant in respect of claims for relief for the non-trust accounts. The Bank is the only defendant in relation to these accounts. In this context, the plaintiffs' claim for exemplary damages against the Bank requires

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49 JBCP Vol 1 Tab 1 p 30–31; JBCP Vol 1 Tab 1 p 62.

50 Exhibit D9.

Version No 2: 27 Oct 2020 (22:41 hrs)

court to look at the whole range of the Bank's conduct across the six accounts, a wide ranging inquiry.

69 From the summation above, it is plain that the statement of claim has multiple narratives. But the threads common to all assets and all parties within the statement of claim are three: the misrepresentation claim, Mr Ivanishvili as a plaintiff, and the Bank's role in respect of each asset concerned. This is important because, if these three common threads are considered apart from the other narratives within the wide-ranging statement of claim, the exclusive jurisdiction clauses signed between Mr Ivanishvili and the Bank would become the most prominent factor deciding jurisdiction and governing law for this dispute. Of course, this clause does not bind the Trustee nor the second to fifth plaintiffs. What is important is which claims weigh more substantively in the overall shape of the litigation.

70 How then should we view the canvas? In the present case, there is in my view three significant questions when considering the shape of the litigation. First, is the common thread of misrepresentation the central and primary narrative, or only a tendril holding more powerful narratives in place? Here, the misrepresentation narrative is the premise of the entire statement of claim; it marks the commencement, along with fraudulent reporting, of the misconduct of Mr Lescaudron, and enables all the relevant assets to come into the purview of the Bank. It is the backbone of the statement of claim. Secondly, what is the painting of, when viewed from a larger perspective? This must perforce be seen as an impressionist work, because the merits of the case do not feature in detail in applications for stay. The claim is essentially one framed against the Bank for conduct wider than the Mandalay Trust. A fairer characterisation of the relationship between the Bank and Mr Ivanishvili, on the entirety of the course

Version No 2: 27 Oct 2020 (22:41 hrs)

of dealing between parties, would be that of the Bank acting throughout as Mr Ivanishvili's banker, and managing the Singapore trust as such, rather than being an agent of the Trustee. Thirdly, what are the remedies prayed for? The remedies requested against the Bank would require an assessment of the whole of the Bank's conduct in the context of its relationship with Mr Ivanishvili, his agents and the trusts and assets jointly managed, in particular the prayer for exemplary damages. These factors indicate that primacy should be accorded to Geneva in considering the *forum conveniens*.

Reasons of justice against a stay

71 I turn to the second stage of *Spiliada*, to consider whether there are circumstances by reasons of justice why the court should exercise its jurisdiction even if it is not, prima facie, the natural forum. Insofar as I have decided that primacy ought to be accorded to Geneva in the light of the exclusive jurisdiction clause, such reasons are also relevant to the issue of "strong cause" test applicable in such cases.

72 The plaintiffs' key contention in this regard is that if the matter were heard in Switzerland, they would be deprived of legitimate juridical advantages. The experts agree that Swiss law does not recognise the remedial constructive trust and the statutory claims under the Trustees Act. These will have to be reframed as agency claims and become a matter of contract. The plaintiffs' expert, Professor Ginsberger, is of the view, supported by authorities such as *Lewin* and *Underhill & Hayton: Law of Trusts and Trustees* (LexisNexis, 19th Edition, 2016), that the trustee de son tort claim, too, will be lost as the Hague Trust Convention only applies to trusts created by a settlor. Alongside this, with the trust claims framed as contract claims, they will lose the advantage of being

Version No 2: 27 Oct 2020 (22:41 hrs)

able to use Singapore law as the governing law for those categories of trust claims. Framed as contract claims, Swiss law will apply. Where their representative actions come into play, the contractual provisions which provide for Swiss law to govern will then apply. They will moreover lose some remedies, such as the Bank's duty to account as agents or trustees de son tort of Trustees, and the ability to sue for equitable compensation.

73 In *Rappo, Tania*, the Court of Appeal similarly considered contentions made by the plaintiff that juridical advantages would be lost if Switzerland became the forum for trial. In that case, it was held that Swiss law governed in any event, but the court did consider how to approach such issues. The court held at [109] that such arguments were "questionable in principle". At [110] Sundaresh Menon CJ explained:

> 110 In our view, this is reflective of the general policy that a court must proceed cautiously before it pronounces that a litigant will experience a deprivation of substantial justice if it is left to seek recourse in an available and appropriate foreign forum. This is particularly so where the foreign forum operates a well-established and well-recognised system of justice. Indeed, it is well established that a court will be very slow to pass judgment on the quality of justice obtainable in a foreign court (see *Good Earth Agricultural Co Ltd v Novus International Pte Ltd* [2008] 2 SLR(R) 711 at [27]). In *Civil Jurisdiction and Judgments* (Informa Law, 6th Ed, 2015), Prof Adrian Briggs remarked (at para 4.31) that "[o]n the basis of the decision in *Spiliada*, the broad question appears to be whether the foreign court would be able to try the dispute between the parties in a manner which is *procedurally and substantively fair*. We accept this as a correct statement of principle. "
>
> [emphasis in original]

74 In this case, the plaintiffs have significant strategic advantages if they are able to pursue their specific trust claims against the Bank. *Rappo, Tania* makes clear, nevertheless, that the loss of such advantages is not sufficient. A

Version No 2: 27 Oct 2020 (22:41 hrs)

denial of justice is necessary. The situation at hand does not amount to a denial of justice.

Availability of the Singapore International Commercial Court

75 Counsel for the plaintiffs emphasised in oral argument that this is a case suited to the SICC. The Court of Appeal highlighted in *Rappo, Tania* at [124] that such arguments "must be grounded in specificity of argument and proof by evidence". In this case, there was no articulation of any particular quality or feature of the SICC that would make it more appropriate for the dispute to be heard in Singapore. Conversely, use of the SICC would not obviate the complexities surrounding the presence of Mr Lescaudron and other key witnesses or the necessity of Swiss banking documents.

Case management stay

76 Both the plaintiffs and the Trustee are of the view that the facts are so intertwined that a case management stay is not possible. The entirety of the claim ought to be tried in Switzerland, in the Trustee's view, or in Singapore, in the plaintiffs' view. Only the Bank asked for a case management stay in the alternative.

77 In *Humpuss Sea Transport Pte Ltd (in compulsory liquidation) v PT Humpuss Intermoda Transportasi TBK and another* [2016] 5 SLR 1322 ("*Humpuss*"), Steven Chong J (as he then was) dealt with overlapping claims. In that case, the natural forum for restructuring and proceedings concerning an inter-company loan for the second defendant was Singapore. The presence of the first defendant was necessary in the second defendant's suit, and it was therefore sensible for the claim against the first defendant on the inter-company

Version No 2: 27 Oct 2020 (22:41 hrs)

loan to be heard in Singapore as well. The learned judge dealt with two kinds of partial stay: either a stay concerning a specific defendant, or a stay involving specific claims. At [96], the learned judge pointed out that a partial stay would be particularly relevant where claims pursuant to a forum's statutory laws were brought alongside other claims. He cautioned that such a stay would however be impermissible if there is a high degree of overlap in the claims.

78 In the present case, it is not appropriate to give a partial stay in respect of the Bank or the claims against the Bank. The situs of events surrounding the claims against the Bank is Geneva and ought to be tested in Geneva. The only issue is whether a partial stay ought to be given in respect of the claims brought against the Trustee, or in respect of the Trustee as a defendant, in the light of the Trust being domiciled in Singapore, Singapore law being the governing law of the trust claim, and the Trustee being a Singapore company. On this issue, I agree with the Trustee that Mr Lescaudron and other Bank employees are central to the allegations of trust mismanagement. Factual findings will be critical to these allegations, which are grounded in Switzerland. The overlap envisaged by *Humpuss* is present in the claims against the Trustee and the Bank. The conduct of the Bank's various employees, Mr Ivanishvili and his agents such as Mr Bachiasvili, is the focus of both claims. The Trustee's conduct may only be properly understood in the context of its, and Mr Ivanishvili's, relationship with the Bank and the Bank's conduct in its delegated trust responsibilities. It would better suit the ends of justice for a Geneva court to apply Singapore trust law in the context of an appropriately developed factual matrix. The entirety of the trust claims, albeit that those against the Bank would require to be reframed, should be tried together and liability for the Trustee and the Bank determined at the same time upon the same factual findings.

Version No 2: 27 Oct 2020 (22:41 hrs)

Conclusion

79 In conclusion, the plaintiffs' trust case against the Trustee is rooted in Singapore, while their case against the Bank is rooted in Geneva. The centrality of Geneva as the theatre of action makes it inappropriate to try the trust part of the claim discrete from the claim against the Bank. Having regard to all the circumstances, it is fair to conclude that the trust relationship was the ancillary relationship, and the banking relationship in Geneva, the primary one. Geneva must accordingly be the *forum conveniens*. The appeals against the Senior Assistant Registrar's orders are dismissed.

80 I shall hear counsel on costs.

Valerie Thean
Judge

N Sreenivasan, S.C., Palaniapan Sundaraj, Lim Min, Ranita Yogeeswaran (Straits Law Practice LLC) for the plaintiff;
Harpreet Singh Nehal, S.C., Jordan Tan, Andrew Foo, Ho Wan Yi (Cavenagh Law LLC) for the first defendant;
Stanley Lai, S.C., Kenneth Lim, Melissa Mak, Afzal Ali, Wong Pei Ting (Allen & Gledhill LLP) for the second defendant.

Version No 2: 27 Oct 2020 (22:41 hrs)