IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 276

Suit No 601 of 2015
(Summonses Nos 4246 and 4399 of 2019)
(Registrar's Appeal No 26 of 2020)

Between

First Property Holdings Pte Ltd

… Plaintiff

And

U Myo Nyunt @ Michael Nyunt

… Defendant

GROUNDS OF DECISION

[Civil Procedure] — [Delay]
[Civil Procedure] — [Judgments and orders] — [Setting aside] — [Principles]

Version No 1: 21 Dec 2020 (09:42 hrs)

TABLE OF CONTENTS

INTRODUCTION **1**

BACKGROUND FACTS **2**

NATMAUK LANE PROPERTY 5

Proceedings in Myanmar *6*

(1) Criminal Case 102/2003 6

(2) Case 330/2003 7

TARMWAY PLAZA 8

Proceedings in Myanmar – Case 2275/2004 ..... *8*

PROCEDURAL HISTORY OF THE PRESENT PROCEEDINGS **9**

ISSUES **15**

DELAY BY DEFENDANT IN FILING HIS APPLICATIONS **15**

DELAY IN APPLICATIONS TO SET ASIDE THE SERVICE ORDER AND TO ENTER APPEARANCE 15

DELAY IN APPLICATION TO SET ASIDE DEFAULT JUDGMENT AND ASSESSMENT JUDGMENT 16

DEFENDANT'S EXPLANATIONS FOR THE DELAY 17

EFFECT OF DELAY: THE LEGAL PRINCIPLES **20**

APPLYING THE LEGAL PRINCIPLES TO THE DELAY IN THE PRESENT CASE **22**

APPLICATION TO SET ASIDE THE DEFAULT JUDGMENT FOR US$585,143.67 22

APPLICATION TO SET ASIDE THE ASSESSMENT JUDGMENT AND DEFAULT JUDGMENT FOR DAMAGES TO BE ASSESSED 23

Version No 1: 21 Dec 2020 (09:42 hrs)

Whether TCC received the Plaintiff's Investment Moneys.....*24*

Illegality *26*

Res judicata and abuse of process *26*

Time-bar and laches.....*27*

Conclusion.....*29*

APPLICATION TO SET ASIDE THE SERVICE ORDER 31

Requirements for grant of leave for service out of jurisdiction *31*

(1) A good arguable case that the claim falls within one of the limbs in O 11 r 1 of the Rules and sufficient degree of merit 32

(2) Singapore as the forum conveniens 34

Full and frank disclosure *36*

Conclusion.....*38*

CONCLUSION.....38

Version No 1: 21 Dec 2020 (09:42 hrs)

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First Property Holdings Pte Ltd
v
U Myo Nyunt (alias Michael Nyunt)

[2020] SGHC 276

High Court — Suit No 601 of 2015 (Summonses Nos 4246 and 4399 of 2019) (Registrar's Appeal No 26 of 2020)
Chua Lee Ming J
23 March, 24 June 2020

18 December 2020

Chua Lee Ming J:

Introduction

1 In 2015, the plaintiff, First Property Holdings Pte Ltd, commenced the present action against the defendant, U Myo Nyunt @ Michael Nyunt, and effected service on the defendant in Australia pursuant to an order granting leave to serve the Writ of Summons out of jurisdiction ("the Service Order"). The defendant, a national of the Republic of the Union of Myanmar, chose not to defend the claim because he was advised that a judgment issued by a Singapore court would not be enforceable against him in Myanmar.

2 In January 2016, the plaintiff entered judgment in default of appearance for a liquidated sum of US$585,143.67 and for damages to be assessed ("the Default Judgment"). The defendant again chose not to participate in the

assessment of damages hearings and in November 2016, damages were assessed in the sum of US$66,243,572.84 ("the Assessment Judgment").

3 The plaintiff registered the judgments against the defendant in Australia. The defendant challenged the registration but failed. The defendant then applied to set aside the Service Order, the Default Judgment and the Assessment Judgment. The defendant also applied for leave to enter appearance. The Assistant Registrar ("AR") dismissed the defendant's application to set aside the Service Order and the Default Judgment, as well as his application for leave to enter appearance. The defendant's application to set aside the Assessment Judgment was fixed for hearing before me.

4 I heard the appeal against the AR's decisions and the application to set aside the Assessment Judgment. I set aside the Default Judgment with respect to the liquidated sum of US$585,143.67 but dismissed the rest of the defendant's appeal. I also dismissed the defendant's application to set aside the Assessment Judgment.

5 The defendant has appealed against my decision save for that part of my decision setting aside the Default Judgment for the liquidated sum of US$585,143.67.

Background facts

6 On 9 September 1996, the plaintiff entered into a Joint Venture Agreement (the "JVA")[1] with the defendant and his brother, U Ye Myint ("Myint") for the development of property projects in Myanmar (the "JV business"). The JV business was to be undertaken through a Myanmar company, Town & City Co Ltd ("TCC"). The shareholders of TCC were the defendant

Version No 1: 21 Dec 2020 (09:42 hrs)

and Myint, each holding one share. Myint signed a Declaration of Trust, also dated 9 September 1996, declaring that he held his one share on trust for the defendant.[2] The plaintiff could not hold shares in TCC due to restrictions in foreign ownership of land under Myanmar law.

7 Clause 3.2 of the JVA contemplated the issuance of a debenture by TCC to the plaintiff. On the same day, 9 September 1996, the plaintiff and TCC entered into a US$7,600,000 Convertible Performance Debenture (the "Debenture"), under which TCC promised to pay the plaintiff the amount of US$7,600,000 (the "US$7.6m Loan").[3]

8 The JVA and Debenture provided for the following, among other things:

(a) The plaintiff would have the US$7.6m Loan converted into a 95% shareholding in TCC at the earliest possible time that the plaintiff was legally entitled under Myanmar law to become a shareholder of TCC.

(b) Until the US$7.6m Loan and all other amounts that may become due under the Debenture have been paid in full, TCC:

(i) would (unless otherwise agreed to by the plaintiff) maintain its existence as a limited liability company, and deposit original title deeds to all its assets and properties with the plaintiff and any other documents and security which the plaintiff may require;

(ii) would not (without the plaintiff's prior written consent) merge or consolidate with any other company or dispose of or sell any of its assets; and

Version No 1: 21 Dec 2020 (09:42 hrs)

(iii) would not voluntarily dissolve itself or liquidate its assets without the plaintiff's prior written consent.

9 The JVA stated that TCC had been incorporated on 12 June 1996. However, according to the defendant, TCC was incorporated only on 30 October 1996.[4] In its statement of claim, the plaintiff accepted that TCC was incorporated in or around October 1996.[5]

10 On 3 March 1998, the plaintiff entered into a Loan Agreement with the defendant by which the plaintiff agreed to extend a maximum loan of US$850,000 to TCC, subject to the approval of the Central Bank of Myanmar (the "Loan Agreement").[6]

11 The JVA, Debenture and Loan Agreement were all governed by the laws of Singapore and provided for the non-exclusive jurisdiction of Singapore Courts.

12 The plaintiff claimed that it invested an aggregate sum of about USD8,185,143.67 in the joint venture (the "Plaintiff's Investment Moneys"), comprising:

(a) USD7.6m pursuant to the Debenture; and

(b) US$585,143.67 drawn down under the Loan Agreement.

The defendant claimed that no funds were received from the plaintiff at all. The defendant also claimed that the Central Bank of Myanmar rejected TCC's application for approval to receive and pay back the loan of US$850,000.[7]

Version No 1: 21 Dec 2020 (09:42 hrs)

13 It was not disputed that TCC was involved in two property projects in Myanmar:

(a) the planned development of units in Natmauk Lane, Bahan Township, Yangon Region, Myanmar (the "Natmauk Lane Property"); and

(b) the construction, development and management of a ten-storey commercial retail shop building called Tarmway Plaza, Tamwe Township, Yangon Region, Myanmar ("Tarmway Plaza").

14 TCC was placed into liquidation in August 2005.

Natmauk Lane Property

15 On 30 December 1996, one Daw San Myint (seller) and TCC (buyer) entered into a Contract of Sale of Land and Building for the sale and purchase of the Natmauk Lane Property at the price of K44.05m (approximately US$117,567). The contract was registered with the Myanmar Office of Registration of Deeds on 31 December 1996.[8] According to the defendant, one of his companies had acquired the property from Daw San Myint in April 1996 and the property was transferred to TCC, representing his contribution to the paid-up capital of TCC.[9] The plaintiff disputed this and claimed that TCC paid US$3,064,210.37 to purchase and develop the Natmauk Lane Property and that this amount came from the Plaintiff's Investment Moneys.

16 On 1 November 2000, the defendant caused TCC to transfer the Natmauk Lane Property to himself and his wife (the "Natmauk Lane Transaction"). The plaintiff claimed that the transfer was made dishonestly and fraudulently, without its knowledge and consent. The defendant claimed that

Version No 1: 21 Dec 2020 (09:42 hrs)

the transfer was made because the plaintiff had failed to provide funds to TCC and that he had used his own money to finance the purchase of the Natmauk Lane Property.[10]

Proceedings in Myanmar

(1) Criminal Case 102/2003

17 On 14 February 2003, the plaintiff, through its agent U Tin Win, commenced Regular Criminal Case No 102/2003 ("Criminal Case 102/2003") in the Bahan Township Court, Yangon Division. Criminal Case 102/2003 was a private criminal prosecution against the defendant and one U Kyaw Tint ("Kyaw") for violations of the Myanmar Companies Act and Penal Code.[11] The plaintiff's complaints were as follows:

(a) A Board meeting at which Kyaw was appointed as a director of TCC was invalid and the defendant submitted a false return to the Registrar of Companies in relation to that meeting.

(b) The defendant had made a false statement claiming that the Natmauk Lane Property was purchased by his family with their own money, although TCC had bought the property under a registered contract.

(c) The defendant had wrongfully obtained possession of and wrongfully withheld the properties of TCC.

18 On 8 April 2008, the Yangon Northern District Court acquitted the defendant on the ground that the plaintiff had not proven its case. The main

Version No 1: 21 Dec 2020 (09:42 hrs)

ground for the Court's decision was the lack of evidence that the plaintiff had permission from the Central Bank of Myanmar to remit funds to TCC.[12]

19 The Attorney General's Office of Myanmar filed an appeal against the acquittal in Appeal Case No 322 of 2008 before the Supreme Court of the Union of Myanmar. On 14 January 2009, the Supreme Court dismissed the appeal.[13] Again, it appears that the absence of evidence of any permission from the Central Bank of Myanmar for the plaintiff to remit funds to TCC was a key consideration.

(2) Case 330/2003

20 On 2 May 2003, the plaintiff commenced Major Civil Case No 330 of 2003 ("Case 330/2003") in the Yangon Division Court in Myanmar against, among others, TCC, the defendant and his wife, seeking orders for the Natmauk Lane Transaction to be nullified and/or for the Natmauk Lane Property to be returned to TCC.[14]

21 On 14 January 2015, the Yangon Western District Court dismissed Case 330/2003 on the ground that the plaintiff failed to attend the hearing of the case on 30 December 2014.[15] Although the plaintiff's advocate was present at the hearing, he did not have the requisite power of attorney to appear in the case.

22 The plaintiff applied to set aside the order made on 14 January 2015 on the ground that it did attend the hearing and that the court had no jurisdiction to make the order. On 21 February 2019, another judge of the Yangon West District Court dismissed the plaintiff's application on the ground that, as a judge who inherited the case, he was not entitled to consider the plaintiff's submission.[16]

Version No 1: 21 Dec 2020 (09:42 hrs)

Tarmway Plaza

23 The Yangon City Development Committee of Myanmar awarded the rights to develop and manage Tarmway Plaza to Aung Thu Ka Co Ltd ("ATK"), a company incorporated in Myanmar. On 13 October 1996, ATK and TCC formed a joint venture company, Tamwe Market Development Co Ltd ("TMDC") to construct and own Tarmway Plaza. The agreement between ATK and TCC was made orally.

24 It was not disputed that TCC held 80% of the shareholding in TMDC. The plaintiff claimed that TCC acquired the 80% shares by contributing a total sum of US$5,053,502.15 (from the Plaintiff's Investment Moneys) to the construction of Tarmway Plaza whilst the defendant claimed that TCC did so by contributing K900m towards the capital of TMDC.

25 The construction of Tarmway Plaza was completed in 1997. The plaintiff claimed that, as agreed, it was given possession and management of Tarmway Plaza. The plaintiff continued to manage Tarmway Plaza until about February 2004, when the defendant (acting together with the Managing Director of ATK, one U Soe Aung) caused TMDC to remove the plaintiff from the management of Tarmway Plaza. The plaintiff claimed that its removal was without cause and wrongful (the "Tarmway Plaza Removal").[17]

Proceedings in Myanmar – Case 2275/2004

26 On 19 August 2004, the plaintiff commenced Major Civil Case No 2275 of 2004 ("Case 2275/2004") in the Yangon Divisional Court in Myanmar against the defendant, his wife and U Soe Aung, seeking orders to recover possession and management of Tarmway Plaza.[18]

Version No 1: 21 Dec 2020 (09:42 hrs)

27 On 25 October 2017, the Yangon Eastern District Court dismissed the plaintiff's claim.[19] On 15 December 2017, the plaintiff filed Civil Revision Case No 810 of 2017 ("Revision Case 810/2017) against the decision dismissing its claim.[20] On 26 January 2018, the Yangon Regional High Court admitted Revision Case 810/2017 for hearing. As of October 2019, the parties were awaiting the Yangon Regional High Court's decision on Revision Case 810/2019.

Procedural history of the present proceedings

28 On 19 June 2015, the plaintiff commenced the present action against the defendant. The plaintiff claimed that:[21]

(a) The defendant had acted, and continued to act, in fraudulent breach of trust and/or breach of fiduciary duties, by (among other things) fraudulently causing TCC to transfer the Natmauk Lane Property to himself and his wife, and fraudulently procuring TMDC to remove the plaintiff from possession and management of Tarmway Plaza.

(b) The defendant breached the Loan Agreement by failing to return the sum of US$583,143.67 loaned by the plaintiff to him.

(c) The defendant wrongfully procured and/or induced TCC to breach its obligations, owed to the plaintiff under the Debenture, to continue to maintain its existence as a limited liability company and not enter into voluntary dissolution or to liquidate its assets without the plaintiff's consent, pending the repayment of the US$7.6m Loan.

29 The plaintiff claimed that it entrusted the defendant with, and the defendant did undertake, full control of the management of the affairs of TCC

Version No 1: 21 Dec 2020 (09:42 hrs)

and/or the responsibility of managing TCC's property projects and investments and/or overseeing the plaintiff's interests in the JV business and that trust and confidence was reposed in the defendant; thus, the defendant owed fiduciary duties to the plaintiff.[22] In its statement of claim, the plaintiff claimed against the defendant for:

> (a) damages, or alternatively an account of profits, in respect of breaches of his fiduciary duties owed to the plaintiff and/or breaches of trust in relation to, among other things, the Natmauk Lane Transaction and the Tarmway Plaza Removal;
>
> (b) damages in respect of the defendant's wrongful inducement and/or procurement of TCC to breach its obligations owed to the plaintiff under the Debenture; and
>
> (c) payment of the sum of US$585,143.67 in respect of the defendant's failure to repay the same in breach of the Loan Agreement.

30 On 2 July 2015, the plaintiff obtained the Service Order.[23] On 19 December 2015, the plaintiff effected personal service of a copy of the Writ of Summons, the statement of claim and the Service Order on the defendant in Australia.[24]

31 The defendant did not enter an appearance. On 14 January 2016, the plaintiff entered the Default Judgment for:[25]

> (a) the sum of US$585,143.67 with interest;

Version No 1: 21 Dec 2020 (09:42 hrs)

(b) damages to be assessed, or alternatively an account of profits, in respect of the defendant's breaches of fiduciary duties and/or breaches of trust; and

(c) damages to be assessed in respect of the defendant's wrongful inducement of TCC to breach its obligations owed to the plaintiff.

32 Thereafter, the plaintiff's solicitors, Allen & Gledhill LLP ("A&G"), informed the defendant of the status of the proceedings leading up to the first assessment hearing as follows:

(a) On 3 February 2016, A&G informed the defendant of the Default Judgment.[26]

(b) On 17 March 2016, A&G informed the defendant of the directions given by the Court in respect of the assessment of damages hearing and the Pre-Trial Conference fixed on 21 April 2016.[27]

(c) On 24 March 2016, A&G sent the defendant copies of the documents disclosed by the plaintiff in its List of Documents.[28]

(d) On 15 April 2016, A&G informed the defendant of the deadline for the exchange of Affidavits of Evidence-in-Chief ("AEICs") in respect of the assessment of damages and of the further Pre-Trial Conference fixed on 12 May 2016.[29]

(e) On 13 May 2016, A&G informed the defendant that the plaintiff's AEICs were filed on 12 May 2016.[30]

Version No 1: 21 Dec 2020 (09:42 hrs)

(f) On 1 June 2016, A&G informed the defendant that the assessment hearing was fixed on 27 July 2016 at Court 6D and enclosed a copy of the Notice of Appointment for Assessment of Damages.[31]

(g) On 27 June 2016, A&G informed the defendant that the assessment hearing was re-fixed to 11 August 2016 at Court 6D.[32]

(h) On 22 July 2016, A&G informed the defendant that the Court had changed the venue for the assessment hearing on 11 August 2016 to Court 5E.[33]

(i) On 27 July 2016, A&G informed the defendant that the Court had changed the venue for the assessment hearing on 11 August 2016 to Court 3A.[34]

All of the above correspondences from A&G to the defendant were by way of email, and in the case of the correspondences in (f) to (i) above, also by way of post to the defendant's address in Australia.

33 On 11 August 2016, I heard the assessment hearing. The defendant was absent. After the hearing, I adjourned the matter for the plaintiff to submit written submissions.

34 On 30 August 2016, the plaintiff filed two summonses seeking leave to amend its statement of claim and to file supplementary AEICs.

35 A&G continued to inform the defendant of the status of the proceedings:

(a) On 2 September 2016, A&G informed the defendant that the plaintiff had filed summonses seeking leave to amend its statement of

Version No 1: 21 Dec 2020 (09:42 hrs)

claim and to file supplementary AEICs and that these were fixed for hearing on 6 September 2016, while the assessment hearing had been fixed for further hearing on 7 November 2016. A&G also sent copies of the summonses and the draft of the plaintiff's Statement of Claim (Amendment No 1) to the defendant.[35]

(b) On 11 October 2016, A&G informed the defendant of the assessment hearing on 7 November 2016, enclosing copies of the orders of court granting leave to amend the statement of claim and to file supplementary AEICs. The order of court granting leave to amend had attached to it a copy of the Statement of Claim (Amendment No 1).[36]

The above correspondences from A&G to the defendant were by way of email and also by way of post to the defendant's address in Australia.

36 On 16 October 2016 and 24 October 2016, the defendant replied to A&G's email of 11 October 2016 and requested that all further communications be sent to an address at Natmauk Lane, Myanmar, which the defendant described as his permanent residential address.[37]

37 The assessment of damages hearing continued on 7 November 2016. The defendant was again absent. The plaintiff did not pursue its claim for damages in respect of its wrongful inducement claim. I assessed the damages suffered by the plaintiff in respect of the Natmauk Lane Property at US$42,722,839 and the damages in respect of Tarmway Plaza at US$23,520,733.84. The Assessment Judgment was thus entered against the defendant in the total amount of US$66,243,572.84.[38]

Version No 1: 21 Dec 2020 (09:42 hrs)

38 On 2 March 2017, the Default Judgment and Assessment Judgment were registered as judgments of the Supreme Court of New South Wales, Australia (the "NSW Supreme Court").

39 On 17 March 2017, the defendant applied to set aside the registration of the Default and Assessment Judgments in Australia (the "Australian proceedings"). On 13 March 2019, the NSW Supreme Court dismissed the defendant's application.[39]

40 The defendant appealed against the decision of the NSW Supreme Court. However, on 26 August 2019, four weeks before the hearing of the appeal, the defendant filed Summons No 4246 of 2019 in in the present action, seeking to set aside the Service Order, the Default Judgment and the Assessment Judgment ("SUM 4246/2019").

41 Since judgment had been entered against the defendant, he needed leave of court to enter an appearance. As SUM 4246/2019 did not include an application for such leave, on 3 September 2019, the defendant filed Summons No 4399 of 2019 in which he applied for leave to enter an appearance ("SUM 4399/2019").

42 The hearing of the defendant's appeal against the decision of the NSW Supreme Court was vacated pending the outcome of the SUM 4246/2019 and SUM 4399/2019.

43 On 17 January 2020, the AR dismissed the defendant's application to set aside the Service Order and Default Judgment, and the defendant's application for leave to enter appearance. The application to set aside the

Version No 1: 21 Dec 2020 (09:42 hrs)

Assessment Judgment was adjourned to be heard by me. On 28 February 2020, the defendant appealed against the AR's decisions made on 17 January 2020.

44 On 24 June 2020, I set aside the Default Judgment for the liquidated sum of US$585,143.67 and dismissed the rest of the defendant's appeal against the AR's decision. I also dismissed the defendant's application to set aside the Assessment Judgment.

Issues

45 The issues in this case were:

(a) What was the delay by the defendant in filing his applications and what were the reasons for the delay?

(b) What are the legal principles on the effect of delay?

(c) How should the legal principles apply to the present case?

Delay by defendant in filing his applications

Delay in applications to set aside the Service Order and to enter appearance

46 The defendant's application in SUM 4246/2019 to set aside the Service Order was made pursuant to O 12 r 7 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (the "Rules").

47 An application under O 12 r 7 (1) or r 7(2) of the Rules must first satisfy two procedural requirements before it can be considered on its merits:

(a) the defendant must enter an appearance; and

Version No 1: 21 Dec 2020 (09:42 hrs)

(b) the application must be filed within the time limited for serving a defence.

The defendant did not satisfy both of the above the requirements.

48 With respect to the first requirement, the defendant could no longer enter an appearance without leave of court because judgment had been entered against him: O 12 r 5(1) of the Rules. The defendant therefore filed SUM 4399/2019 seeking leave to do so. This application was made after a delay of more than *three and a half years* from the time that the defendant was notified of the Default Judgment.

49 As for the second requirement, the time limited for the defendant to serve his defence expired before the end of January 2016. The defendant's application in SUM 4246/2019 to set aside the Service Order was therefore filed out of time by more than *three and a half years*. SUM 4246/2019 should have but did not include an application for an extension of time for the filing of the application. However, in my view, this was not fatal as the Court may, in an appropriate case, grant such an extension of time.

Delay in application to set aside Default Judgment and Assessment Judgment

50 With respect to the applications to set aside the Default Judgment and the Assessment Judgment:

(a) The defendant was notified of the Default Judgment on 3 February 2016 (see [32(a)] above). The delay in applying to set aside the Default Judgment was therefore also more than *three and a half years*.

Version No 1: 21 Dec 2020 (09:42 hrs)

(b) It was not clear whether/when A&G notified the defendant of the Assessment Judgment, but it would have been brought to the defendant's attention by 17 March 2017 when the defendant applied to set aside the registration of the judgments in Australia (see [39] above). The delay in applying to set aside the Assessment Judgment was thus at least *two and a half years*.

Defendant's explanations for the delay

51 The delays were clearly substantial. The defendant's explanations for his non-participation in the present action and the delays were as follows:

(a) After having been served with a sealed copy of the writ, statement of claim and the Service Order, the defendant was advised by his Myanmar lawyers that judgment against him in Singapore could not be enforced in Myanmar.[40]

(b) He did not have the same financial means as the plaintiff to engage in litigation across multiple jurisdictions.[41]

(c) He was already in the middle of substantial proceedings with the plaintiff in Myanmar.

(d) The plaintiff did not inform him that it was seeking US$66m in damages.[42]

(e) He was not informed of the assessment hearing on 7 November 2016.[43]

52 I did not accept the defendant's second reason; I found it wholly unconvincing. Apart from his bare assertion, there was no evidence that

Version No 1: 21 Dec 2020 (09:42 hrs)

concerns over costs led to him being unable to engage solicitors to defend against the claim in Singapore. Further, he clearly had the financial means to challenge the registration of the judgments in Australia. The defendant argued that he had no choice but to defend the matter in Australia. I agreed with the plaintiff that this was incorrect. Clearly, as the defendant conceded during oral submissions, he could have applied to stay the proceedings in Australia earlier and he should have come to Singapore to defend against the plaintiff's claim. I also noted the fact that the defendant had no hesitation in commencing proceedings in Myanmar (after he had been served in the present action), not just once but twice, seeking a declaration that there was no financial settlement to be made by him to the plaintiff.[44] Both of his applications were dismissed, as was his appeal against the dismissal of his second application. I had no doubt that the question of costs did not prevent the defendant from defending against the plaintiff's claim in Singapore.

53 As for his third reason, the defendant submitted (for the first time) during oral submissions that his decision not to participate in the Singapore proceedings was reasonable because he took the view that the matters were being dealt with in the Myanmar proceedings. I rejected this submission. First, this reason did not appear anywhere in the defendant's affidavits. Second, it was clearly not reasonable for the defendant to ignore the Singapore proceedings on this basis. If he believed that the dispute should be dealt with in Myanmar, he ought to have entered an appearance in this action and applied to stay the present action.

54 With respect to his fourth reason, the defendant submitted that if he had known that the plaintiff was seeking damages in the sum of US$66m, he "would not have taken the same course of action that he had when initially faced with

Version No 1: 21 Dec 2020 (09:42 hrs)

the suit".[45] The defendant claimed that he had understood the plaintiff's claim to be for the sum of US$585,143.67. The defendant also complained that plaintiff had not served him with the AEICs of the plaintiff's witnesses for the assessment hearing, despite the Singapore Court having directed the AEICs to be served on him.

55 In my view, the defendant's fourth reason was not a valid reason for his non-participation and delay. The defendant's claim that he thought the plaintiff's claim was for US$585,143.67 was not believable. The plaintiff's statement of claim clearly stated that it was claiming damages in respect of the defendant's breach of trust and/or fiduciary duties, *in addition to* the sum of US$585,143.67 in respect of the defendant's breach of the Loan Agreement. These were separate heads of claims arising from separate legal obligations. It was also not correct that the Court had directed the plaintiff to serve the AEICs on the defendant; the directions were for the AEICs to be *filed and exchanged* and the defendant was so informed.[46] The defendant was also informed of the amendments to the statement of claim.[47] The defendant chose to ignore the plaintiff's claim; it did not lie in his mouth to now say that he would have acted differently had he known of the amount of damages that the plaintiff was claiming. In my view, the defendant's fourth reason was nothing more than an afterthought.

56 With respect to the defendant's fifth reason, A&G had informed him of the assessment hearing on 7 November 2016 twice (both times by way of email and post) – on 2 September 2016 and 11 October 2016 (see [35] above).[48] Indeed, the defendant responded to the 11 October 2016 email from A&G to request that all further communications be sent to an address at Natmauk Lane,

Version No 1: 21 Dec 2020 (09:42 hrs)

Myanmar.[49] I found that the defendant's fifth reason was plainly without any basis and rejected it accordingly.

57 In my view, the predominant (if not sole) reason for the defendant's omission to participate in the present action was his belief that the plaintiff would not be able to enforce a judgment of this Court against him. He was clearly prepared to let the plaintiff enter judgment against him in this action and to do nothing about it until the plaintiff registered the Default Judgment and the Assessment Judgment in Australia. It was only after his attempt to challenge the registration of the Default Judgment and the Assessment Judgment in Australia failed, that he sought to defend the claims in Singapore. There was no doubt that his decision not to participate in this action earlier was a deliberate one. The defendant's inordinate delay in participating in the present action could only be described as deliberate and contumelious.

Effect of delay: the legal principles

58 A defendant's delay in applying to set aside a default judgment will be viewed differently depending on whether the default judgment is entered *without a trial* (*eg*, in default of appearance, pleadings or discovery) or *after a trial* in the defendant's absence.

59 Where a defendant applies to set aside a default judgment entered *without a trial*:

(a) the question of whether there is a defence on the merits is the dominant feature to be weighed against the applicant's explanation for the default and any delay as well as against prejudice to the other party:

Version No 1: 21 Dec 2020 (09:42 hrs)

Su Sh-Hsyu v Wee Yue Chew [2007] 3 SLR(R) 673 ("*Su Sh-Hsyu*") at [42]–[43]; and

(b) the court will scrutinise the reasons for the delay; where the delay is deliberate, with the intent to gain some litigation advantage, a late application should *prima facie* be viewed uncharitably. Procedural rules must not occasion injustice by unfairly depriving a party of an opportunity to argue its case but the indolent cannot as a matter of course be awarded the same measure of justice as the diligent. The greater the delay, the more cogent the explanation must be as to why a miscarriage of justice would be occasioned if the default judgment were allowed to stand: *Mercurine Pte Ltd v Canberra Development Pte Ltd* [2008] 4 SLR(R) 907 ("*Mercurine*") at [32] and [35]–[36].

60 However, where the defendant applies to set aside a default judgment entered *after a trial*:

(a) the *predominant* consideration in deciding whether to set aside the judgment is the reason for the defendant's absence; and

(b) the reasons for non-attendance will be "most severely viewed" in instances where the defendant's omission was deliberate and contumelious. In such cases, the approach of the court is generally unforgiving. The court will be most reluctant to set aside the judgment even though there may be other persuasive countervailing factors in favour of setting aside. Any such countervailing factors would necessarily have to be *very compelling* to tilt the balance in favour of setting aside the judgment.

Version No 1: 21 Dec 2020 (09:42 hrs)

See *Su Sh-Hsyu* at [44]–[45], [49] and [57].

61 Thus, in the case of a default judgment obtained without a trial, if the defendant is able to show triable issues, the Court would be slow to refuse to set aside the judgment on the ground of delay (even if the delay is deliberate and contumelious) unless the delay was to gain some litigation advantage or the prejudice to the plaintiff outweighs the fact that there are triable issues. However, where the default judgment has been obtained after a trial, the Court would be most reluctant to set aside the judgment in the face of deliberate and contumelious delay unless there are very compelling countervailing factors.

Applying the legal principles to the delay in the present case

Application to set aside the Default Judgment for US$585,143.67

62 As stated earlier, the Default Judgment included a final judgment for a liquidated sum of US$585,143.67 being the amount that the plaintiff claimed was due under the Loan Agreement (see [29(c)] above). The Default Judgment for this amount was obtained without a trial and therefore the merits of the defence were the dominant factor to be considered. The defendant asserted that this claim was time-barred, and the plaintiff properly conceded that it was difficult for it to assert otherwise. The plaintiff also could not point to any prejudice that it would suffer as a result of the judgment being set aside. In the circumstances, it was clear that the delay notwithstanding, it would be wrong not to set aside the judgment for this sum. I therefore set aside the Default Judgment for this sum.

Version No 1: 21 Dec 2020 (09:42 hrs)

Application to set aside the Assessment Judgment and Default Judgment for damages to be assessed

63 The Assessment Judgment was entered after a trial in the defendant's absence. Therefore, in considering the defendant's application to set aside the Assessment Judgment, the reason for the defendant's absence was the predominant consideration and any countervailing factors had to be very compelling to tilt the balance in favour of setting aside the judgment.

64 The Default Judgment for damages to be assessed was obtained without a trial. However, setting aside the Default Judgment for damages to be assessed would have resulted in the Assessment Judgment being set aside as well. Therefore, in my view, in considering the defendant's application to set aside the Default Judgment for damages to be assessed, the right approach to take had to be the same as that in respect of the application to set aside the Assessment Judgment.

65 It was not necessary to deal with the claim for damages against the defendant for inducing TCC to breach its obligations to the plaintiff under the Debenture since the plaintiff had abandoned that claim at the assessment hearing (see [37] above).

66 As for the plaintiff's claim for damages caused by the defendant's breach of fiduciary duties and breach of trust, the defendant raised the following defences:

(a) TCC did not receive the Plaintiff's Investment Moneys and therefore TCC could not have used the plaintiff's funds to purchase the Natmauk Lane Property and Tarmway Plaza.[50] It followed that the defendant could not have committed the breaches as alleged since these

Version No 1: 21 Dec 2020 (09:42 hrs)

breaches were premised on the fact that the Natmauk Lane Property and Tarmway Plaza were purchased using the Plaintiff's Investment Moneys.

(b) The loans from the plaintiff were illegal since they did not have the approval of the Central Bank of Myanmar.[51]

(c) *Res judicata* and abuse of process.

(d) The plaintiff's claims were time-barred or barred by the doctrine of laches.

Whether TCC received the Plaintiff's Investment Moneys

67 The defendant made several arguments in support of his case that TCC did not receive the Plaintiff's Investment Moneys, including the following:[52]

(a) The Central Bank of Myanmar did not give approval for any of the loans from the plaintiff.

(b) TCC's audited accounts from 1997 to 2005 did not show any loans from the plaintiff.

(c) The plaintiff did not notify the liquidators of TCC of any claims.

68 The plaintiff referred to the Australian proceedings and pointed out that the defendant had made similar arguments in the Australian proceedings in support of his contention that TCC did not receive the Plaintiff's Investment Moneys.[53] In the Australian proceedings, the plaintiff adduced evidence that it had paid the Plaintiff's Investment Moneys (which comprised the US$7.6m Loan and the sum of US$585,143.67 under the Loan Agreement) by way of 66

Version No 1: 21 Dec 2020 (09:42 hrs)

payments made by the plaintiff or its representatives to payees associated with the defendant.[54] The defendant then tried to explain away the payments by claiming that they represented "repatriation" of his own money into Myanmar. The defendant was cross-examined and eventually, the defendant's counsel in the Australian proceedings conceded that he did not have sufficient evidence to establish his case that the US$7.6m Loan "was sourced from some place other than the plaintiff in relation to the convertible performance dimension" and abandoned the contention that TCC did not receive the sum of US$7.6m from the plaintiff.[55]

69 The NSW Supreme Court's judgment noted that the plaintiff's witness' evidence of the 66 payments "was closely tested in cross-examination" and "[u]ltimately, [the defendant] abandoned the contention that there was no evidence to support the advancement of USD 7,600,000 by [the plaintiff]".[56]

70 As the NSW Supreme Court's judgment also noted, the defendant did not abandon his contention that TCC did not receive the loan of US$585,143.67 under the Loan Agreement. However, the defendant failed in his attempt to rely on this allegation. In the affidavit made in support of the plaintiff's application for the Service Order, the plaintiff's director (Mr Michael Chang Teck Chai) had stated that the plaintiff had contributed the Plaintiff's Investment Moneys (which included the loan of US$585,143.67) to TCC. The defendant argued before the NSW Supreme Court that this statement was false. However, the NSW Supreme Court rejected the defendant's submission.[57]

71 I agreed with the plaintiff that, on the evidence before me, the defendant's contention that TCC had not received the Plaintiff's Investment Moneys lacked credibility.

Version No 1: 21 Dec 2020 (09:42 hrs)

Illegality

72 The defendant raised the issue of illegality under Myanmar law only during his oral submissions. As the plaintiff submitted, the scope and effect of Myanmar law was a question of fact. I agreed with the plaintiff that the defendant had not properly articulated the defence of illegality. In particular, it was not clear to me that the lack of approval from the Central Bank of Myanmar for loans from the plaintiff to TCC would render the plaintiff's claims for breach of trust and/or fiduciary duties, unenforceable.

Res judicata and abuse of process

73 The defendant relied on the decisions by the Myanmar courts in Criminal Case 102/2003 and Case 2275/2004. Criminal Case 102/2003 was the plaintiff's private criminal prosecution against the defendant for violations of the Myanmar Companies Act and Penal Code (see [17] above).[58] There, the plaintiff alleged that the Natmauk Lane Property was paid for using part of the US$7.6m Loan but the defendant had falsely claimed that the property was purchased by his family with their own money.[59] The Yangon Northern District Court acquitted the defendant on the ground that the plaintiff had not proven that it had remitted the moneys "in a customary and lawful manner" to the defendant and that TCC "wrongfully recorded the particulars in the accounts and supporting documents".[60] The Supreme Court of the Union of Myanmar dismissed the appeal by the Attorney-General's Office of Myanmar on the ground that the plaintiff was unable to prove that it had "genuinely delivered the alleged USD 7.6 million of loan money into the hands of TCC".[61] It seemed to me that the main reason in the judgments for both the decisions was that there was no evidence that the Central Bank of Myanmar had given permission for the plaintiff to remit funds to TCC.

Version No 1: 21 Dec 2020 (09:42 hrs)

74 Case 2275/2004 was the plaintiff's claim in Myanmar against the defendant and his wife, seeking recovery of possession and management of Tarmway Plaza (see [26] above).[62] The plaintiff alleged that it had contributed US$5.1m towards the cost of construction of Tarmway Plaza and that it had legal possession of Tarmway Plaza pursuant to a resolution of the directors of TMDC, the joint venture company that owned Tarmway Plaza. The Yangon Eastern District Court dismissed the plaintiff's claim. The defendant produced a translation of the Yangon Court's judgment that stated that the Myanmar court had dismissed "Issue 1" (*ie*, whether US$5.1m of the total construction cost was money borrowed by TCC from the plaintiff) on 19 January 2005.[63] However, this was disputed by the plaintiff. The plaintiff produced a translation that stated that "Issue 1" had been "excluded from consideration" by the Court on 19 January 2005.[64]

75 In my view, given the circumstances set out above, it was far from clear that *res judicata* applied or that the present action was an abuse of process. Leaving aside the reason for the decision, Criminal Case 102/2003 concerned a finding that the plaintiff had not proved its case against the defendant in criminal proceedings. I agreed with the plaintiff that that did not necessarily mean the plaintiff would fail in civil proceedings. As for Case 2275/2004, it was not even clear what the Myanmar court had decided as regards "Issue 1", much less whether there was a final and conclusive finding that TCC did not receive the Plaintiff's Investment Moneys.

Time-bar and laches

76 As dealt with earlier, the plaintiff's claim for the sum of US$585,143.67 under the Loan Agreement was time-barred and the Default Judgment for that amount has been set aside (see [62] above).

Version No 1: 21 Dec 2020 (09:42 hrs)

77 Under the exception in s 22(1)(*a*) of the Limitation Act (Cap 163, 1996 Rev Ed), there is no fixed limitation period for claims by a beneficiary under a trust "in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy". A breach of trust is fraudulent if it is dishonest: *Dynasty Line Ltd (in liquidation) v Sukamto Sia and another and another appeal* [2014] 3 SLR 277 ("*Dynasty Line*") at [54], citing *Yong Kheng Leong v Panweld Trading Pte Ltd* [2013] 1 SLR 173 at [52]. I agreed with the plaintiff that its claims against the defendant for breach of trust and/or breach of fiduciary duties were in respect of fraud or fraudulent breaches of trust within the scope of s 22(1)(*a*). Therefore, there was no fixed limitation period for these claims.

78 The defendant submitted that the plaintiff's claims were nevertheless barred by the equitable doctrine of laches. The defendant relied on *Cytec Industries Pte ltd v APP Chemicals International (Mau) Ltd* [2009] 4 SLR(R) 769 ("*Cytec*"), in which the High Court held (at [46]):

> Laches is a doctrine of equity. It is properly invoked where essentially there has been a substantial lapse of time coupled with circumstances where it would be practically unjust to give a remedy either because the party has by his conduct done that which might fairly be regarded as equivalent to a waiver thereof; or, where by his conduct and neglect he had, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him, if the remedy were afterwards to be asserted (*Sukhpreet Kaur Bajaj d/o Manjit Singh v Paramjit Singh Bajaj* [2008] SGHC 207 at [23]; *Re Estate of Tan Kow Quee* [2007] 2 SLR(R) 417 at [32]). This is a broad-based inquiry and it would be relevant to consider the length of delay before the claim was brought, the nature of the prejudice said to be suffered by the defendant, as well as any element of unconscionability in allowing the claim to be enforced (*Re Estate of Tan Kow Quee* at [38]). ...

Cytec was cited with approval by the Court of Appeal in *eSys Technologies Pte Ltd v nTan Corporate Advisory Pte Ltd* [2013] 2 SLR 1200 at [37]–[38].

Version No 1: 21 Dec 2020 (09:42 hrs)

79 It did not seem to me that the facts of the present case presented a strong case for the application of the doctrine of laches. The plaintiff commenced proceedings in Myanmar seeking different reliefs. Nothing in the plaintiff's conduct could be regarded as equivalent to a waiver of the claims it has pursued in this action. There was also no reason why allowing the plaintiff to proceed with this action would be unconscionable nor any evidence as to how the plaintiff's delay in commencing this action prejudiced the defendant.

80 In its statement of claim, the plaintiff also pleaded that the defendant's fiduciary duties "continue to apply until the business purpose of the Joint Venture is achieved".[65] I agreed with the plaintiff's submission that the defendant was therefore in continuing breach of his fiduciary duties and the defendant's assertion that the claim was time-barred was a non-starter.

Conclusion

81 The defendant's delay in applying to set aside the Default Judgment for assessment of damages and the Assessment Judgment was deliberate and contumelious. The defendant had raised triable issues in its defence. However, this was a relatively low threshold for the defendant to cross. In my judgment, the defendant had not shown a such a compelling case as to tilt the balance in favour of setting aside the Default Judgment and the Assessment Judgment.

82 The plaintiff also relied on *Ang Kim Soon v Sunray Marine Pte Ltd* [1997] 1 SLR(R) 714 ("*Ang Kim Soon*"). There, the plaintiff sued his employer in connection with an injury suffered in an accident while working aboard a vessel. The employer sued the vessel owner for an indemnity in respect of the accident. The employer did not enter a defence to the plaintiff's claim and the plaintiff entered interlocutory judgment. Subsequently, the Court found that the

Version No 1: 21 Dec 2020 (09:42 hrs)

shipowner was entirely responsible. The employer applied to set aside the interlocutory judgment nearly six months later. The employer's explanation for the delay was that if the shipowner succeeded, then it would be pointless to set aside the default judgment and if the shipowner failed, there would be little difficulty in having the default judgment set aside. Despite finding the employer's rationalisation to be "somewhat attractive and sensible", the High Court dismissed the defendant's application on the ground that once liability was disputed, the employer was "bound to set aside the interlocutory judgment at the earliest opportunity" and "not play a cat-and-mouse game with the shipowner using the plaintiff as cheese" (at [16]).

83 I agreed with the plaintiff that *Ang Kim Soon* supported its case against the defendant's application to set aside the Default Judgment for damages to be assessed. The defendant was bound to set aside this interlocutory judgment at the earliest opportunity, instead of challenging the registration of the judgments in Australia and seeking to defend in Singapore only after having failed in that challenge.

84 I also noted that all of the defences raised by the defendant related to the issue of his *liability* (see [66] above). The defendant did not raise any issue relating to the *quantum* of the damages that were assessed and awarded to the plaintiff. The defendant complained about not being served with the plaintiff's AEICs for the assessment hearing. This has been dealt with at [54]–[55] above. In any event, the defendant would have had sight of the AEICs since then. However, all of his submissions in respect of the Assessment Judgment related only to the issue of liability.[66]

Version No 1: 21 Dec 2020 (09:42 hrs)

Application to set aside the Service Order

85 Setting aside the Service Order would also have resulted in the Assessment Judgment being set aside. Accordingly, in my view, the same approach taken with respect to the application to set aside the Assessment Judgment applied to the application to set aside the Service Order. The defendant had to show compelling countervailing factors to tilt the balance in favour of setting aside the Service Order.

86 The defendant submitted that the Service Order should be set aside for the following reasons:

(a) The plaintiff did not satisfy the requirements for the grant of leave for service out of jurisdiction.

(b) The plaintiff failed to make full and frank disclosure in its application for the Service Order.

Requirements for grant of leave for service out of jurisdiction

87 The requirements which must be met before the court will grant leave for service out of jurisdiction are that:

(a) the claim must come within the scope of one or more of the paragraphs of O 11 r 1 of the Rules;

(b) the claim must have a sufficient degree of merit; and

(c) Singapore must be the *forum conveniens*.

Version No 1: 21 Dec 2020 (09:42 hrs)

See *Siemens AG v Holdrich Investment Ltd* [2010] 3 SLR 1007 ("*Siemens*") at [2]; *Zoom Communications Ltd v Broadcast Solutions Pte Ltd* [2014] 4 SLR 500 at [26].

(1) A good arguable case that the claim falls within one of the limbs in O 11 r 1 of the Rules and sufficient degree of merit

88 A plaintiff must show a "a good arguable case" that his case falls within one of the limbs in O 11 r 1 of the Rules: *Bradley Lomas Electrolok Ltd and another v Colt Ventilation East Asia Pte Ltd and others* [1999] 3 SLR(R) 1156 ("*Bradley Lomas*") at [19]. *Bradley Lomas* also recognised (at [19]) that showing a good arguable case that the claim falls within some of the limbs in O 11 r 1 may touch on the merits of the claim (*eg*, O 11 r 1(*f*)) in which case, if that burden were satisfied, it would be unnecessary to go into the question of a "serious question to be tried" on the merits. However, where the evidence needed to establish a good arguable case within one of the limbs does not touch on the merits of the claim (*eg*, O 11 r 1(*a*) or (*r*)), the plaintiff needs to further establish that there is a "serious question to be tried" on the merits of the claim (see *Bradley Lomas* at [20]).

89 In its application for the Service Order, the plaintiff had relied on O 11 r 1(*d*)(i), (*d*)(iii), (*d*)(iv), (*f*), (*o*) and (*r*) of the Rules, which provide as follows:

> **Cases in which service out of Singapore is permissible (O. 11, r. 1)**
>
> **1.** Provided that the originating process does not contain any claim mentioned in Order 70, Rule 3(1), service of an originating process out of Singapore is permissible with the leave of the Court if in the action —
>
> …

Version No 1: 21 Dec 2020 (09:42 hrs)

> (*d*) the claim is brought to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being (in either case) a contract which —
>
> (i) was made in Singapore, or was made as a result of an essential step being taken in Singapore;
>
> …
>
> (iii) is by its terms, or by implication, governed by the law of Singapore; or
>
> (iv) contains a term to the effect that [the courts of Singapore] shall have jurisdiction to hear and determine any action in respect of the contract;
>
> …
>
> (*f*) (i) the claim is founded on a tort, wherever committed, which is constituted, at least in part, by an act or omission occurring in Singapore; or
>
> (ii) the claim is wholly or partly founded on, or is for the recovery of damages in respect of, damage suffered in Singapore caused by a tortious act or omission wherever occurring;
>
> …
>
> (*o*) the claim is a restitutionary one (including a claim for quantum meruit or quantum valebat) or for an account or other relief against the defendant as a trustee or fiduciary, and the defendant's alleged liability arises out of any act done, whether by him or otherwise, in Singapore;
>
> …
>
> (*r*) the claim is in respect of matters in which the defendant has submitted or agreed to submit to the jurisdiction of the [courts of Singapore];
>
> …

90 I agreed with the defendant that showing a good arguable case in respect of the limbs under O 11 r 1(*d*)(i), (*d*)(iii), (*d*)(iv), (*f*) and (*o*) would touch on the

Version No 1: 21 Dec 2020 (09:42 hrs)

merits of the claim. Thus, if the plaintiff satisfied the first requirement of a good arguable case in respect of these limbs, the second requirement of a sufficient degree of merit would also be satisfied. As for the limb in O 11 r 1(*r*), the plaintiff had to show a good arguable case that its claim fell within this limb. In addition, it had to show a sufficient degree of merit in it claim.

91 However, at the end of the day, the above distinction between the various limbs under O 11 r 1 did not really matter in this case because the defendant's case was that the plaintiff could not show an arguable case on the merits of its claims in respect of all the limbs relied upon by the plaintiff.[67] The defendant submitted that the plaintiff did not have any good prospect of success in respect of its claims because it could not show that it had paid the Plaintiff's Investment Moneys. The defendant's arguments were the same as those made in connection with his application to set aside the Assessment and Default Judgments. These arguments have been dealt with earlier at [63]–[84] above.

(2) Singapore as the *forum conveniens*

92 The defendant submitted that Myanmar was the natural forum in respect of the plaintiff's claims in this action, for the following reasons:

(a) The plaintiff had commenced proceedings in Myanmar which were contested by the defendant. There was overlap between the present action and the proceedings in Myanmar. The Myanmar Courts had given their decisions.

(b) By having commenced proceedings in Myanmar and not commencing proceedings in Singapore earlier, the plaintiff was estopped from contending that Myanmar was not the appropriate forum.

Version No 1: 21 Dec 2020 (09:42 hrs)

(c) The present dispute was more closely linked to Myanmar than Singapore. The joint venture was based on pursuing business opportunities in Myanmar. The defendant's actions were taken in Myanmar.

93 The plaintiff submitted that Singapore was the natural forum because the JVA, Debenture and Loan Agreement were governed by the laws of Singapore and contained non-exclusive jurisdiction clauses in favour of the Singapore Courts. Although the plaintiff's claims against the defendant were for breaches of trust and fiduciary duties, it was clear that the trust and fiduciary duties were inextricably linked to the JVA, Debenture and Loan Agreement. The plaintiff also pleaded in the alternative that the defendant's fiduciary duties arose as an implied term of the JVA, Debenture and Loan Agreement.[68]

94 The plaintiff relied on *Shanghai Turbo Enterprises Ltd v Liu Ming* [2019] 1 SLR 779 ("*Shanghai Turbo*"). In that case, the Court of Appeal held (at [84]) that any challenge to the exercise of jurisdiction by the court named in a non-exclusive jurisdiction clause amounted to an attempt to be released from the clause; a defendant applying to set aside a court order granting leave to serve out of the jurisdiction would have to show strong cause to justify such a result. The Court of Appeal explained (at [96] and [98]) that it would be difficult for a defendant to show strong cause unless he could point to factors which were not foreseeable at the time of contracting.

95 The plaintiff also relied on the fact that, after being served in the present action, the defendant had failed twice in his applications to the Myanmar Courts for declarations that there was no financial settlement to be made by him to the plaintiff.[69] The first application was Civil Regular Case No 266 of 2016 ("Case

Version No 1: 21 Dec 2020 (09:42 hrs)

266/2016") filed on 29 April 2016 in the Yangon Western District Court.[70] The defendant referred to the plaintiff's claim against him in the present action and sought a declaration that the plaintiff was not entitled to any financial sum from him. The application was dismissed on 18 May 2016.

96 The second application was Civil Case No 341 of 2016 ("Case 341/2016"), filed on 16 June 2016, also to the Yangon Western District Court.[71] The defendant again referred to the present action and sought a declaration that the plaintiff was not entitled to any financial settlement from him. The Yangon Western District Court dismissed Case 341/2016 on 30 June 2016 and expressed the view that the cause of action in the present action did not arise in Myanmar.[72] The defendant's appeal to the Yangon Divisional High Court was dismissed on 18 August 2017.

97 I agreed with the plaintiff that, on balance, Singapore was the natural forum. The defendant had not shown any strong cause to justify his release from his contractual obligations under the non-exclusive jurisdiction clauses in the JVA and Loan Agreement. The plaintiff's proceedings in Myanmar were for different reliefs; I saw no basis for the defendant's submission that the plaintiff was estopped from asserting that Singapore was the natural forum in the present action. Further, given the view expressed by the Yangon Divisional High Court in Case 341/2016, Myanmar was not the more appropriate forum.

Full and frank disclosure

98 The defendant submitted that the plaintiff failed to make full and frank disclosure in its *ex parte* application for the Service Order because the plaintiff did not highlight the following facts:

Version No 1: 21 Dec 2020 (09:42 hrs)

(a) Criminal Case 102/2003, Case 330/2003 and Case 2275/2004 had been decided against the plaintiff and the Myanmar Courts had made found that the Plaintiff's Investment Moneys had not been paid by the plaintiff.

(b) Under the Loan Agreement, the last instalment repayment in respect of the sum of US$585,143.67 fell due in February 1999.

99 The test of materiality is whether the facts in question are matters that the court would likely take into consideration in making its decision: *Shanghai Turbo* at [105]. In my view, the facts set out at [98(a)] above could not be described as material. As stated earlier:

(a) Criminal Case 102/2003 was a private criminal prosecution and the Myanmar Courts' decisions were based mainly on the absence of evidence of permission from the Myanmar Central Bank for the plaintiff to remit funds to TCC.

(b) Case 330/2003 was dismissed because the plaintiff's advocate did not have the requisite power of attorney to appear in the case.

(c) In Case 2275/2004, it was not even clear what the Myanmar court's decision in respect of "Issue 1" (*ie*, whether US$5.1m of the total construction cost was money borrowed by TCC from the plaintiff) was. According to the plaintiff, the Myanmar court had not considered "Issue 1".

(See [17]–[22] and [73]–[75] above).

Version No 1: 21 Dec 2020 (09:42 hrs)

100 Even if the facts set out at [98(a)] above were material, in my view, they were not so material in all the circumstances as to warrant setting aside the Service Order (see *Zoom Communications Ltd v Broadcast Solutions Pte Ltd* [2014] 4 SLR 500 at [69]).

101 As regards the fact set out at [98(b)] above, the Default Judgment for the sum of US$585,143.67 had been set aside (see [62] above).

Conclusion

102 In my judgment, the defendant had not shown a such a compelling case as to tilt the balance in favour of setting aside the Service Order.

Conclusion

103 For the reasons set out above, I set aside the Default Judgment for the liquidated sum of US$585,143.67 and dismissed the rest of the defendant's appeal against the AR's decision. I also dismissed the defendant's application to set aside the Assessment Judgment. I ordered the defendant to pay the plaintiff costs fixed at $15,000 inclusive of disbursements.

Chua Lee Ming
Judge

Version No 1: 21 Dec 2020 (09:42 hrs)

Chan Tai-Hui, Jason *SC*, Ong Min-Tse, Paul, Gan Yun Han, Rebecca, Lim Jun Rui, Ivan, Oh Jialing, Evangeline and Cheong Rui Jie, Kiron (Allen & Gledhill LLP) for the plaintiff;
Vergis S Abraham, Zhuo Jiaxiang and Kenny Lau (Providence Law Asia LLC) for the defendant.

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1 1st Affidavit of Michael Chang Teck Chai filed on 1 July 2015 ("Chang's 1st Affidavit"), at pp 47–72.
2 Chang's 1st Affidavit, at p 56.
3 Chang's 1st Affidavit, at pp 73–83.
4 Defendant's 1st Affidavit filed on 26 August 2019 ("Defendant's 1st Affidavit"), at para 11 and p 92.
5 Statement of Claim, at para 5.
6 Chang's 1st Affidavit, at pp 85–88.
7 Defendant's 1st Affidavit, at paras 13–14, and pp 9 and 101.
8 Defendant's 1st Affidavit, at pp 127–157.
9 Defendant's 1st Affidavit, at paras 18–22.
10 Defendant's 1st Affidavit, at para 23
11 Defendant's 1st Affidavit, at pp 167–171.
12 Defendant's 1st Affidavit, at pp 179–183 (Criminal Case 120/2003 had been converted into Criminal Case No 150/2007).
13 Defendant's 1st Affidavit, at pp191–196.
14 Defendant's 1st Affidavit, at pp 204–209.
15 Defendant's 1st Affidavit, at pp 218–220 (Case 330/2003 was subsequently reassigned as Major Civil Case No 97 of 2011).
16 Whiting's 1st Affidavit of Corey Whiting filed on 24 October 2019 ("Whiting's 1st Affidavit"), at pp 138–145.
17 Statement of Claim (Amendment No 1), at para 24.
18 Defendant's 1st Affidavit, at pp 228–234.
19 Defendant's 1st Affidavit, at pp 236–246 (Case 2275/2004 was subsequently converted to Civil Regular Case No 143 of 2016).
20 Whiting's 1st Affidavit, at pp 204–210.
21 Statement of Claim (Amendment No 1), at paras 39–41.
22 Statement of Claim (Amendment No 1), at para 36.
23 Defendant's 1st Affidavit, at pp 45–46.
24 Defendant's 1st Affidavit, at pp 510–513.
25 Defendant's 1st Affidavit, at p 42.
26 Whiting's 1st Affidavit, at p 1180.
27 Whiting's 1st Affidavit, at p 1181.
28 Whiting's 1st Affidavit, at pp 1182–1199.
29 Whiting's 1st Affidavit, at p 1200.
30 Whiting's 1st Affidavit, at p 1201.

Version No 1: 21 Dec 2020 (09:42 hrs)

[31] Whiting's 1st Affidavit, at pp 1202–1206.
[32] Whiting's 1st Affidavit, at pp 1207–1213.
[33] Whiting's 1st Affidavit, at pp 1214–1218.
[34] Whiting's 1st Affidavit, at pp 1219–1223.
[35] Whiting's 1st Affidavit, at pp 1224–1265.
[36] Whiting's 1st Affidavit, at pp 1266–1303.
[37] Whiting's 1st Affidavit, at pp 1305–1306.
[38] Defendant's 1st Affidavit, at pp 43–44.
[39] Whiting's 1st Affidavit, at pp 212–263.
[40] Defendant's 1st Affidavit, at para 51.
[41] Defendant's 1st Affidavit, at para 53.
[42] Defendant's 2nd Affidavit filed on 14 November 2019 ("Defendant's 2nd Affidavit") at para 23
[43] Defendant's 1st Affidavit, at para 55.
[44] Defendant's 1st Affidavit, at paras 51–52.
[45] Defendant's 2nd Affidavit, at para 23.
[46] Whiting's 1st Affidavit, at pp 1200–1201.
[47] Whiting's 1st Affidavit, at pp 1267–1302.
[48] Whiting's 1st Affidavit, at pp 1224–1225, 1266–1267.
[49] Whiting's 1st Affidavit, at pp 1305–1306.
[50] Defendant's 1st Affidavit, at para 74, 84 and 86.
[51] Defendant's 1st Affidavit, at paras 63–66, 77–80.
[52] Defendant's 1st Affidavit, at paras 62–84.
[53] Whiting's 1st Affidavit, at paras 68 and 73.
[54] Whiting's 1st Affidavit, at para 68 and pp 1312–1345.
[55] Whiting's 1st Affidavit, at para 69.
[56] Whiting's 1st Affidavit, at para 70 and at pp 223 – 224 (paras 34 – 37 of the NSW Supreme Court's judgment).
[57] Whiting's 1st Affidavit, at p 250 (para 142 of the NSW Supreme Court's judgment).
[58] Defendant's 1st Affidavit, at pp 167–171.
[59] Defendant's 1st Affidavit, at p 168 (para 5) and p 169 (para 11).
[60] Defendant's 1st Affidavit, at pp 179–183.
[61] Defendant's 1st Affidavit, at pp 191–196.
[62] Defendant's 1st Affidavit, at pp 228–234.
[63] Defendant's 1st Affidavit, at para 40 and p 238.
[64] Whiting's 1st Affidavit, at para 29 and pp 177–178.
[65] Statement of Claim (Amendment No 1), at para 38.
[66] Defendant's Written Submissions, at paras 173–186.
[67] Defendant's Written Submissions, at paras 52–54, 116–118.
[68] Statement of Claim (Amendment No 1), at para 37.
[69] Defendant's 1st Affidavit, at paras 51–52.
[70] Defendant's 1st Affidavit, at pp 409–413.
[71] Defendant's 1st Affidavit, at pp 419–423.
[72] Whiting's 2nd Affidavit filed on 16 March 2020, at pp 9–10.

Version No 1: 21 Dec 2020 (09:42 hrs)