IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE

[2025] SGHC(I) 2

Originating Application No 2 of 2024 (Summons No 4 of 2025)

In the matter of the Service Agreement of Deutsche Bank AG between Deutsche Bank AG and Lee Yung-Te

Between

Deutsche Bank Aktiengesellschaft

… *Claimant*

And

Lee Yung-Te

… *Defendant*

ORAL JUDGMENT

[Civil Procedure — Originating processes — Extension of validity of originating application]

Deutsche Bank AG
v
Lee Yung-Te

[2025] SGHC(I) 2

Singapore International Commercial Court — Originating Application No 2 of 2024 (Summons No 4 of 2025)
Roger Giles IJ
24 January 2025

4 February 2025

Roger Giles IJ:

1 The claimant is the well-known German bank, with headquarters in Germany and branches throughout the world including in Singapore. The defendant is a Taiwanese citizen and resident, and was a customer of the Singapore branch of the claimant.

2 By an Originating Application filed on 30 January 2024, the claimant claims from the defendant an amount exceeding HK$32,000,000 as the amount due under loan facilities provided under accounts with its Singapore branch. In the circumstances described below, the Originating Application has not been served on the defendant. Pursuant to O 4 r 3(1) of the Singapore International

Commercial Court Rules 2021 (the "SICC Rules"), it is valid for service for 12 months and hence its validity will expire on 29 January 2025.

3 On 16 January 2025, the claimant filed an application to extend the validity of the Originating Application for six months from 30 January 2025. It appearing that the application was not straightforward, I have today, 24 January 2025, heard Mr Ker for the claimant on the application.

4 Order 4 r 3(3) of the SICC Rules provides that the court "may order the validity of the Originating Application to be extended by a period beginning with the day next following that on which the Originating Application would otherwise expire". No criteria for ordering an extension are stated and there is a general discretion, but one to be exercised judicially. Principles governing the exercise of the like discretion have been established in relation to extension of an originating process pursuant to O 6 r 3(3) of the Rules of Court 2021, relevantly in the same terms as O 4 r 3(3) of the SICC Rules, and those principles should govern the exercise of my discretion.

5 The power of extension should only be exercised for good reason: *Lim Hong Kan and others v Mohd Sainudin bin Ahmad* [1992] 1 SLR(R) 108 at [15], following *Kleinwort Benson Ltd v Barbrak Ltd, The Myrto (No 3)* [1987] AC 597. That translates to whether there was good reason for the failure to serve the originating process within its period of validity. A claimant who invokes the jurisdiction of the court is expected to act promptly by service in order to bring the exercise of that jurisdiction. That was always so, and see now a party's duty to assist the court in the expeditious and efficient administration of justice according to law in O 1 r 3(1)(*a*) of the SICC Rules. What amounts to good reason depends on the circumstances, a paradigm case being where there is

difficulty in serving the defendant, in particular where the defendant is evading service.

6 I have said that it appeared that this application was not straightforward. That is because it is not because of any question of difficulty in service, but because it is substantially based on the claimant's election not to serve the Originating Application because it was engaged in without prejudice negotiations with the defendant to settle the proceedings. But the authorities make clear that in the absence of an agreement that service be deferred, that the parties are negotiating for a settlement is not a good reason for granting renewal of the originating process: see, as a strong example, *The Mouna* [1991] 2 Lloyd's Rep 221 where renewal was refused even when a limitation period had expired while the parties were negotiating.

7 However, it is necessary to consider the circumstances of the present case in more detail.

8 From the witness statement of Mr Sawkar, a senior officer at the claimant's Singapore branch, the parties were engaged in without prejudice negotiations from around 30 January 2024, leading to a mediation on 10 July 2024, and the claimant did not serve the Originating Application "as this could have potentially derailed the settlement negotiations and to prevent the incurrence of unnecessary legal costs" (at para 15).

9 Mr Sawkar continues (at para 16):

> While parties were unable to reach any definitive settlement at the mediation, I understand that both parties did not appear to be desirous of escalating the disputes and therefore did not take any further steps to progress the suit in Singapore and in the proceedings filed by the Defendant in HCA 2062/2023 in the Hong Kong Court of First Instance ("Hong Kong Proceedings").

> Although no settlement was reached at the mediation, the Bank was still hopeful that a global settlement could be reached.

10 The Hong Kong proceedings to which reference is made were proceedings commenced by the defendant in Hong Kong against the claimant amongst others, the others including the former relationship manager of the claimant who was servicing the defendant. In those proceedings, the defendant alleged that the claimant was in breach of a duty of care in numerous respects whereby the relationship manager misappropriated the defendant's funds, or alternatively was vicariously liable for the relationship manager's conduct, and claimed damages. It is not entirely clear whether the damages included the amounts of the loan funds as funds which were borrowed by the defendant and in some manner then misappropriated.

11 The writ filed in the Hong Kong proceedings was not served on the claimant, and expired on 20 December 2024. Although not stated in the witness statement, in correspondence with the court responding to directions that it inform the court of the position as to settlement or service, the claimant's solicitors advised to the effect that it hoped the defendant would let his claim expire and did not want to provoke service of the writ in the Hong Kong proceedings by service of the Originating Application. That appears to have been a successful strategy. Mr Sawkar says that "there does not appear to be any application being taken out by the [d]efendant to renew the [Hong Kong writ]" (at para 18).

12 The mediation was unsuccessful, and in the period from July 2024 the claimant did not progress any settlement negotiations, on its part in the hope that the Hong Kong proceedings would themselves not be progressed. On 23 December 2024, the claimant revived the without prejudice negotiations with a settlement offer. The defendant's solicitors responded that the defendant was

away for the New Year and Chinese New Year holidays, and would only be able to review the terms of any proposed settlement and respond by 12 February 2025, that being after the expiry of the Originating Application.

13 The claimant did not serve the Originating Application, but brought this extension application. Mr Sawkar expressed the view that "there is a chance that the parties' disputes can be settled with [the settlement] offer" (at para 19).

14 I come then to whether good reason has been shown for the failure to serve the Originating Application.

15 The claimant submitted that there was an implied understanding to defer service of the Originating Application and the Hong Kong writ, whereby it did not take any steps to serve the Originating Application. I have difficulty with that, and do not accept it. In my view, the claimant was waiting with fingers crossed in the hope that the defendant would not proceed with the Hong Kong proceedings. There was no agreement that service of the Hong Kong writ was deferred, and equally no reciprocal agreement that service of the Originating Application was deferred.

16 The claimant alternatively submitted, with reference to the expression of a good reason in *The "Nur Allya"* [2018] SGHCR 12 at [37], that the circumstances were such as "to lead a reasonable plaintiff to think that it is unnecessary to serve the writ and to do so would increase the costs in a manner which is unwarranted in the circumstances". I also have difficulty with that. It does not seem to me that holding off on service, lest service provoke the defendant to proceed with the Hong Kong proceedings, is equivalent to it being

unnecessary to serve the writ. There still could have been service. It was not a case of lack of necessity, but of inaction in the claimant's perceived interests.

17 However, I do accept that the spectre of the Hong Kong writ was a significant matter for the claimant. It was in its interests that it not be embroiled in the Hong Kong proceedings with the attendant increase in costs, and it was not just a case of failure to serve the Originating Application because of negotiations for a settlement. There were the negotiations, with each party aware of the proceedings initiated by the other party, but there was more. It could be doubted that the claimant reasonably thought that the defendant might allow the validity of the Hong Kong writ to expire, thereby losing or at least inhibiting his bargaining position in the negotiations, although Mr Ker did explain the claimant's thinking in that respect, but any such doubt has been disproved in the result. The strategy of not escalating the dispute by service of the Originating Application may well have contributed to that result. I am prepared to regard that as good reason. By the strategy, the claimant has put itself in a better position.

18 It remains, however, that the claimant did not take steps to promptly serve the Originating Application after 20 December 2024. Instead, it revived the without prejudice negotiations. Two factors then come into play. One is that on the rather sketchy materials, there is good reason in the difficulty of prompt service. At an earlier time, the defendant's Hong Kong solicitors had said that they had no instructions to accept service. From their response to the latest settlement offer, the defendant is away, his location is not known to the claimant and the permissible means of personal service under Taiwanese law is not immediately available to the claimant. The other is an attenuated version of the good reason earlier accepted, in that it would seem to be open to the defendant to make an application for retrospective extension of the validity of the Hong

Kong writ – perhaps an unlikely event, but one which indicates some merit in at least a short further period allowed for settlement negotiations.

19 There is no question of a limitation period, and in the circumstances I will extend the validity of the Originating Application, but not for the six months sought by the claimant. It is incumbent on the claimant to serve, notwithstanding ongoing negotiations. The extension will be for a period of two months from the beginning of 30 January 2025. Costs of this application will be costs in the proceedings.

Roger Giles
International Judge

Ker Yanguang and Carrisa Low (Prolegis LLC) for the claimant;
The defendant absent and unrepresented.