IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHCR 19

Originating Claim No 443 of 2024 (Summons No 106 of 2025)

Between

(1) Chern Chye Keow
(2) Jeremy Chern Ming Ponniah

… *Claimants*

And

(1) Roger Peter Ponniah
(administrator of the estate of
John Danaraj Ponniah,
deceased)

… *Defendant*

GROUNDS OF DECISION

[Civil Procedure — Stay of proceedings]
[Probate and Administration — Grant of letters of administration]

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Chern Chye Keow and another
v
Roger Peter Ponniah (administrator of the estate of John Danaraj Ponniah, deceased)

[2025] SGHCR 19

General Division of the High Court — Originating Claim No 443 of 2024
(Summons No 106 of 2025)
AR Perry Peh
15 February, 14 March, 5 May 2025

1 July 2025

AR Perry Peh:

Introduction

1 Where a deceased person dies intestate, a grant of letters of administration ("LOA") must first be obtained for the deceased's properties to be distributed in accordance with the laws of intestacy. The effect of a grant of LOA is to formally appoint an administrator (also known as a personal representative) and confer on him or her authority to deal with and manage the deceased's estate (see generally, *Chye Hwa Luan and others v Do, Allyn T* [2023] SGHCR 10 at [39]).

2 The defendant in HC/OC 443/2024 ("OC 443") was appointed administrator of the estate of the late Dr Roger Peter Ponniah ("Dr Ponniah"), who died intestate, pursuant to a grant of LOA made by the High Court of Johor

Bahru (the "Malaysia Grant"). The claimants are two of the beneficiaries of Dr Ponniah's estate. OC 443 is the claimants' claim to compel the defendant to perform his duties as administrator, which they say he has breached. Before me was HC/SUM 106/2025 ("SUM 106"), which is the defendant's application to stay OC 443 on the ground that Malaysia is the more appropriate forum for the dispute to be tried. The defendant argued that is so because the dispute in OC 443 stems from a grant of LOA made by a Malaysia court.

3 I agree, as the parties were also of the view, that there is nothing as a matter of jurisdiction which prevented OC 443 from being brought or tried in the Singapore courts. However, I agree with the defendant that OC 443 is more appropriately tried in Malaysia. In my view, there are two key connections which identified Malaysia as the more appropriate forum. First, given that the legal relationship between the claimants and defendant as estate beneficiaries and administrator – which is the subject matter of OC 443 – flow from the Malaysia Grant made under Malaysia law, this identifies Malaysia law as the governing law of the dispute in OC 443, and a Malaysia court is better placed than a Singapore court to apply its own laws and decide issues regarding the standards of conduct and the contents of duties to be imposed on an administrator appointed under Malaysia law. Secondly, OC 443 sought reliefs affecting land situated in Malaysia, and a Malaysia court is similarly better placed than a Singapore court to make the appropriate orders to give effect to the reliefs claimed, if the claimants were eventually found to be entitled to them. I therefore granted the application in SUM 106 and stayed OC 443 in favour of an action in West Malaysia, as prayed for by the defendant.

4 The claimants have appealed against my decision.[1] These grounds elaborate on the reasons which I provided to parties when I delivered my decision, and supplement them, where appropriate.

Background

The parties and undisputed facts

5 As mentioned, the claims in OC 443 arise out of the administration of the estate of the late Dr Ponniah. The first claimant is Dr Ponniah's lawful wife. This was Dr Ponniah's second marriage; he had three children from his first marriage, one of whom is the defendant.[2] The second claimant is the single child from Dr Ponniah's second marriage with the first claimant. The claimants are Malaysia citizens, but they are also permanent residents of Singapore and they resided here since 2000, and in the case of the second claimant, he has also completed his National Service.[3] The defendant appears to be a US citizen who lives and resides in San Diego.[4]

6 The background facts are largely undisputed. After Dr Ponniah passed away in June 2020, the defendant approached the claimants and informed them of his intention to apply for a grant of LOA of Dr Ponniah's estate from the High Court of Johor Bahru. The claimants agreed.[5] For that purpose, the claimants each signed and filed affidavits for renunciation of administration in the proceedings for the grant of LOA before the High Court of Johor Bahru.

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1 HC/RA 105/2025.

2 1st affidavit of Chern Chye Keow ("1-CCK") at para 7.

3 1-CCK at para 32.

4 1-CCK at para 35.

5 1-CCK at para 8; 1st affidavit of Roger Peter Ponniah ("1-RPR") at paras 7–9.

Under s 8 of the Malaysia Probate and Administration Act 1959 (Act 97) ("the Malaysia PAA"), which is similar in language to s 3 of the Probate and Administration Act 1934 ("the PAA"), any person who is or may become entitled to representation (*ie*, obtain a grant of LOA, or where the deceased left a will, a grant of probate) may expressly renounce his or her right to the same by way of an oral renunciation at the relevant hearing or in writing and attested by any person before whom an affidavit may be sworn.

7 On 6 September 2021, the High Court of Johor Bahru made an order for a grant of LOA (*ie*, the Malaysia Grant) and appointed the defendant as the administrator of Dr Ponniah's estate. There appears to be no dispute that the Malaysia Grant has been extracted, which is necessary in order for the defendant to be authorised to manage and deal with Dr Ponniah's estate within Malaysia (see *Chye Hwa Luan* ([1] above) at [39]). The defendant's appointment pursuant to the Malaysia Grant was communicated to the claimants by his then solicitors in November 2021.[6] Also in November 2021, the Family Justice Courts ("FJC") in Singapore granted an application by the defendant to reseal the Malaysia Grant pursuant to s 47 of the PAA.[7] The effect of resealing the Malaysia Grant is that it becomes of "like force and effect, and [has] the same operation in Singapore, as if granted by the General Division of the High Court to the person by whom … the application for sealing was made" (see s 47(2) of the PAA).

The claimants' pleaded case

8 The claimants' case is that they received no updates from the defendant relating to the administration of Dr Ponniah's estate in the two years after the

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6 Statement of Claim (Amendment No 1) ("SOC") at para 7.

7 1-RPR at para 11.

Malaysia Grant was made.[8] Further correspondence was exchanged between the parties, in which the claimants asked for updates on the administration, but the defendant persisted in his refusal to provide any update.[9] In September 2023, the claimants discovered that the defendant had resealed the Malaysia Grant in the FJC, which they were previously unaware of.[10]

9 Based on the list of assets and liabilities annexed to the Malaysia Grant, Dr Ponniah's estate consisted of, among other things: (a) shares of companies maintained in brokerage accounts held in Singapore, Malaysia and a Superannuation Fund in Australia; (b) monies deposited in bank accounts held in Singapore, Malaysia and Australia; and (c) real property located in Bandar Johor Bahru.[11] Based on the claimants' pleaded case, it appears that Dr Ponniah's home in Malaysia, also located in Johor Bahru ("the JB Property"), formed part of his estate,[12] though I note that this was not specifically identified in the list of assets and liabilities annexed to the Malaysia Grant.

10 The claimants plead that the defendant, as the administrator of the estate, owed the following duties to the beneficiaries of the estate (including them): (a) a duty to faithfully administer Dr Ponniah's estate; (b) a duty to draw up full and complete accounts of the estate; and (c) a duty to collect and distribute Dr Ponniah's estate to the beneficiaries in accordance with the law.[13] The claimants plead that the defendant had breached each of these duties by, among other

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8 SOC at para 12.

9 SOC at paras 13–26.

10 SOC at para 28.

11 SOC at para 8; 1-CCK at pp 21–22.

12 SOC at para 18.

13 SOC at para 11.

things: (a) persistently refusing to draw up full and complete accounts of Dr Ponniah's estate and/or provide an update on the administration of the estate; and (b) failing to distribute Dr Ponniah's assets to the beneficiaries.[14] The claimants further plead that they are entitled to be reimbursed for expenses which they have incurred on behalf of the estate in maintaining the JB Property.[15]

11 Relying on the above, the claimants sought the following reliefs in OC 443: (a) that the defendant provide a full and complete account of Dr Ponniah's estate in relation to the assets situated in Singapore, Malaysia and Australia; (b) that an order be made for payment, whether from the funds of the estate or out of the defendant's own funds, for all amounts found to be due to the claimants, including the expenses which they have incurred for maintaining the JB Property; (c) an order that the JB Property be sold in the open market within six months, with the claimants having sole conduct of the sale and for amounts due to the claimants to be paid out of the net proceeds of sale ("Prayer 3"); and (d) that the defendant make payment of any sums ordered in OC 443 from the assets of Dr Ponniah's estate, or from the defendant's own funds.

SUM 106 and the parties' submissions

12 SUM 106 is the defendant's application to stay OC 443 on the ground that Singapore is *forum non conveniens*. The defendant's case is that Malaysia is the more appropriate forum for OC 443 to be tried. The main point emphasised by the defendant is that the Malaysia Grant, being the source from which his authority as administrator of Dr Ponniah's estate flowed, had been

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14 SOC at paras 31–40.

15 SOC at paras 41–44.

obtained from a Malaysia court. Importantly, by filing affidavits of renunciation in the proceedings for the grant of LOA before the High Court of Johor Bahru, the claimants had submitted to the jurisdiction of the courts in Malaysia. It is therefore not open to the claimants to now maintain that Malaysia is not the appropriate forum to try the dispute in OC 443, which arises entirely from the Malaysia Grant.

13 Besides this, the defendant also urged me to have regard to the following factors which pointed to Malaysia as the more appropriate forum: (a) the Singapore court had no jurisdiction to make an order in respect of Prayer 3, which concerned land situated in Malaysia (*ie*, the JB Property);[16] (b) Dr Ponniah had substantial connections to Malaysia during his lifetime, but had no connections whatsoever to Singapore; and (c) since the Malaysia Grant was made by a Malaysia court, the defendant is accountable to administer the estate in accordance with Malaysia law, and the governing law of the dispute in OC 443 is Malaysia law. Finally, the defendant also argued that little to no weight should be placed on the fact that the Malaysia Grant had been resealed by the FJC – that was merely a recognition by the Singapore courts of the validity of the Malaysia Grant to enable the defendant to deal with assets in Singapore and in no way gave rise to separate rights between the parties.[17]

14 The claimants submitted that, in the identification of the natural forum for OC 443, no particular weight should be attached to the fact that the Malaysia Grant was obtained from a Malaysia court. They argued that the Malaysia Grant has no foundational character which the defendant seeks to characterise it as

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16 Defendant's written submissions at paras 38 and 40–43; Defendant's supplementary written submissions at para 16.

17 Defendant's written submissions at paras 28–29; Defendant's supplementary written submissions at para 38.

having, since it only authorises the defendant to deal with Dr Ponniah's assets *in Malaysia* – that is why the Malaysia Grant had to be resealed in Singapore in order for the defendant to deal with Dr Ponniah's assets here.[18] Further, since OC 443 is a personal action against the defendant for the breach of his duties as an administrator and does not in any way challenge the validity of the Malaysia Grant, there is no reason why it could only be tried in Malaysia where the Malaysia Grant was obtained.

15 The claimants also highlighted two other factors which they argued weigh in favour of Singapore being the more appropriate forum: (a) first, that the Malaysia Grant was resealed by the FJC, which shows that the defendant had submitted to the jurisdiction of the Singapore court in respect of disputes concerning Dr Ponniah's estate;[19] and (b) secondly, that Dr Ponniah also had assets in Singapore requiring administration.[20] As for the governing law of the dispute, the claimants submitted that this is a neutral factor since Malaysia law only applies to the part of the estate situated in Malaysia, and Singapore law would apply to the part of the estate situated in Singapore, and a Singapore court is equally well adept at applying Malaysia law on the fiduciary duties of estate administrators, especially when the defendant has not even adduced evidence showing that Singapore and Malaysia law are distinct in this area.[21]

16 The claimants further submitted that, even if it is shown that Malaysia is a more appropriate forum, reasons of justice require that OC 443 not be stayed. This is because there are liquid assets in Singapore, and they would lose

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18 Claimants' supplementary written submissions at paras 47–49.

19 Claimants' written submissions at para 18.

20 Claimants' written submissions at para 16.

21 Claimants' supplementary written submissions at paras 68–69.

the advantage of ease of enforcement if the matter were to be litigated in Malaysia.[22]

The applicable principles

17 The two-stage test in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 ("*Spiliada*"), which was approved by the Court of Appeal in *Rickshaw Investments Ltd and another v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 ("*Rickshaw Investments*") (at [12]), govern an application for a stay of proceedings on grounds of *forum non conveniens*:

> (a) At the first stage, the court will determine, by reference to connecting factors that link the dispute with the competing jurisdiction(s), whether there is some other available forum which is more appropriate for the case to be tried. These connecting factors include: (i) the personal connections of the parties and the witnesses; (ii) the connections to relevant events and transactions; (iii) the applicable law to the dispute; (iv) the existence of proceedings elsewhere or *lis alibi pendens*; and (v) the shape of the litigation (see *Rappo, Tania v Accent Delight International Ltd and another and another appeal* [2017] 2 SLR 265 ("*Rappo*") at [71]).
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> (b) If the court concludes at the end of the first stage that there is a "more appropriate" forum, a stay will ordinarily be granted, unless the court finds, at the second stage of the *Spiliada* test, that there are circumstances by reason of which justice requires that a stay be refused, such as if the claimant establishes with cogent evidence that it will be

22 Claimants' written submissions at para 54.

denied substantial justice if the case is not heard in the forum (see *Rappo* at [68]).

The main issue – whether the defendant has shown that Malaysia is the more appropriate forum for OC 443 to be tried

18 Undoubtedly, if Malaysia was found to be a more appropriate forum, there were no reasons of justice shown under the second stage of the *Spiliada* test for a stay to be refused. The broad question under the second stage of the *Spiliada* test is whether the foreign court would be able to try the dispute between the parties in a manner which is procedurally and substantively fair (see *Rappo* at [110]). Mere differences in procedure and remedies between the forum and the foreign court will not by themselves amount to a denial of substantial justice (see *Rappo* at [109]). Therefore, and quite clearly, the relative ease of enforcement which the claimants said they would be deprived of, if OC 443 were tried in Malaysia, cannot constitute a denial of substantial justice.

19 As such, the main issue to be decided in SUM 106 is whether the defendant has discharged his burden of showing that Malaysia is the more appropriate forum for OC 443 to be tried, for the purposes of the first stage of the *Spiliada* test. For this, I considered the following connections identified in the parties' submissions:

(a) That the Malaysia Grant was made by a court in Malaysia.

(b) That the Malaysia Grant was resealed in Singapore by the FJC.

(c) The governing law of the dispute in OC 443.

(d) That Prayer 3 seeks an order in respect of land situated in Malaysia.

(e) The personal connections of the parties and the jurisdictions in which Dr Ponniah's assets are located.

The character of the action in OC 443

20 Before turning to the connections proper, I think it is necessary to have some clarity on the character of the claimants' action in OC 443 as it lays the foundation for the analysis that follows. I highlight two relevant distinctions.

21 The first distinction is that between (a) the court's jurisdiction to make a grant of probate or LOA to a deceased's personal representative and to alter or revoke such grants and (b) the court's jurisdiction to try questions of management of administration and of beneficial succession (see Tan Yock Lin, *Conflicts Issues in Family and Succession Law* (Butterworths, 1994) ("*Conflicts Issues in Succession*") at p 523). The former is specifically provided for in s 17(1)(*f*) of the Supreme Court of Judicature Act 1969 ("the SCJA"). On the other hand, the latter comes within the court's general civil jurisdiction which is *in personam* in nature (see s 16(1) of the SCJA). An example of a case in which the latter aspect of the court's jurisdiction is invoked is a proceeding instituted by the beneficiaries of an estate against the administrator in a dispute concerning the management and administration of the estate (see *Conflicts Issues in Succession* at pp 523 and 567). This *in personam* jurisdiction can be exercised against an administrator so long as he is amenable to the jurisdiction of the court and is unaffected by the fact that the property of the estate is situated outside the jurisdiction or if the deceased had died domiciled outside of the jurisdiction (see *Conflicts Issues in Succession* at p 567; see also [57]–[59] below).

22 The second distinction is that between (a) an action brought against an administrator in his *official capacity* and (b) an action brought against an administrator in his *personal capacity*. The former is an action against the deceased's estate, and it can only be maintained against the administrator in a jurisdiction where a grant of LOA has already been obtained and extracted (see *Dicey, Morris & Collins on the Conflict of Laws* (Sweet & Maxwell, 15th Ed, 2017) ("*Dicey*") at para 26R-042; *Degazon v Barclays Bank International Ltd* [1987] 1 FTLR 17). This is because the grant of LOA is necessary to confer the administrator with standing to be sued in that jurisdiction (see, for example, *Chye Hwa Luan* ([1] above) at [46]). In the latter, since the action is one against the administrator *himself* and the jurisdiction invoked is that of the court's *in personam* jurisdiction, it could be maintained so long as the administrator is amenable to the jurisdiction of the court, and the fact that the administrator had been appointed by a grant of LOA made by a foreign court does not preclude the bringing of such an action in the forum (see also [57]–[59] below).

23 Returning to the present case, the claimants do not challenge or dispute the validity of the defendant's appointment as administrator under the Malaysia Grant.[23] Therefore, OC 443 is not an action which engages the court's specific jurisdiction to make a grant of LOA or to alter or revoke such a grant under s 17(*f*) of the SCJA. The claim in OC 443 is also not brought against Dr Ponniah's estate and neither does it seek reliefs against Dr Ponniah's estate. Rather, the action is brought by the claimants, in their capacities as the beneficiaries of Dr Ponniah's estate, to compel the defendant to perform his duties as administrator of Dr Ponniah's estate, which they say have been breached, and for the assets of the estate to be distributed. OC 443 is therefore

[23] 1-CCK at para 16; Claimants' written submissions at para 22.

a dispute between estate beneficiaries and an administrator relating to the management of administration, and what the claimants seek to invoke against Dr Ponniah is the *in personam* civil jurisdiction of the Singapore courts. Dr Ponniah has been properly effected with originating process in OC 443 and the jurisdiction of the Singapore courts over him as well as the dispute in OC 443 has been established. However, whether the Singapore courts should *exercise* its jurisdiction, and whether the action in OC 443 should be maintained in the Singapore courts, are altogether different questions, which are to be decided in SUM 106.

24 I thought it important to make this clarification because the defendant initially maintained in his written submissions that OC 443 was an action which invoked the court's probate and administration jurisdiction and therefore could only be tried in Malaysia, where the Malaysia Grant had been obtained.[24] The defendant's counsel rightly did not maintain this position after the distinctions above were highlighted to the parties;[25] instead, the defendant's submissions focused on the foundational character of the Malaysia Grant as the reason why Malaysia is the more appropriate forum for OC 443 to be tried.

The Malaysia Grant identifies the governing law of the dispute, which is a weighty connecting factor identifying Malaysia as the more appropriate forum

25 I now turn to consider the identified connections proper. The defendant argued that, because he was appointed as administrator pursuant to the Malaysia Grant, which was made by a Malaysia court, that in itself identified Malaysia as the more appropriate forum. I agree that the Malaysia Grant gives rise to a

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[24] Defendant's written submissions at paras 14–19.

[25] Defendant's supplementary written submissions at paras 25–27.

significant connecting factor, but my reasons were slightly different from those underlying the defendant's submissions. In my view, the Malaysia Grant is significant because it provides the foundation of the legal relationship between the parties (see [35] below) and therefore identifies Malaysia law as the applicable law of the dispute in OC 443 (see [38] below). Given that what a court is effectively asked to decide in OC 443 are the standards of conduct and the contents of duties to be imposed on an administrator appointed under Malaysia law, a Malaysia court is best placed to apply its own laws to the dispute in OC 443. In this context, the applicable law of the dispute in OC 443 gives rise to a significant connecting factor pointing towards Malaysia as the more appropriate forum (see [52] below). As I will explain later (at [45]), I disagree with the claimants' submission that the resealing of the Malaysia Grant in the FJC creates a connecting factor pointing towards Singapore.

Principles on domicile and the grant of LOA

26 For context, let me first set out the applicable legal principles on domicile and its interplay with the court's jurisdiction to make a grant of LOA. Disputes relating to jurisdiction are procedural in nature and are governed by the *lex fori*, *ie*, Singapore law (see *The Jarguh Sawit* [1997] 3 SLR(R) 829 at [29]–[32]). Therefore, although what is being considered is the *Malaysia* Grant, I applied principles of Singapore law, though I would add that Singapore and Malaysia law do not appear to differ materially in the relevant areas under consideration here.

27 A person's domicile assumes significance in several contexts, one of which is the administration of the person's estate upon his or her death. A person's domicile is the relationship that he or she had with a country and whether he or she intended to recognise that country as a permanent home (see

G Raman, *Probate and Administration Law in Singapore and Malaysia* (LexisNexis, 4th Ed, 2017) at para 6.01). The effect of the concept of domicile is to ensure that there is a definite law of succession to connect that person with a particular legal system (see *Peter Rogers May v Pinder Lillian Gek Lian* [2006] 2 SLR(R) 381 ("*Peter Rogers May*") at [14]). Given this, a person obviously cannot have more than one domicile at any particular point of time (see *Peter Rogers May* at [13]).

28 There is no requirement that a grant of LOA can only be sought in the country in which the deceased was domiciled at the time of his or her death. In the event of an intestate death, the foundation of the court's jurisdiction to make a grant of LOA is the *existence* of property to be administered within the jurisdiction (see, for example, *Conflicts Issues in Succession* ([21] above) at p 559). For example, s 18(1) of the PAA provides that, when a person has died intestate, the court may grant LOAs of his "estate". While the term "estate" is not defined in the PAA, it must be a reference to property of the deceased which is within the court's jurisdiction. Similarly, according to s 39 of the Malaysia PAA, a grant of LOA is made in respect of an intestate deceased's "movable and immovable property", and such reference to "property" must also be a reference to property which is within the jurisdiction of the court. A grant of LOA made in the country in which the deceased held property is necessary to allow the person appointed as administrator to deal with property in that country, because a grant of LOA only confers on the administrator authority to collect and administer assets that are situated within the jurisdiction in which the grant was made (see *Jennison v Jennison and another* [2023] 2 WLR 1017 at [20]). For instance, a grant of LOA made by a foreign court, unless resealed under s 47 of the PAA, does not authorise an administrator to deal with the deceased's assets in Singapore.

29 In deciding whether to make a grant of LOA, the court requires proof of a deceased's domicile (see, for example, P 6 r 3(5) of the Family Justice (Probate and Other Matters) Rules 2024; in the context of Malaysia law, see O 71 rr 5(3)–(4) of the Malaysia Rules of Court 2012). The utility in identifying the deceased's domicile is to determine which are the *principal* and *ancillary* jurisdictions for the administration of the estate. The *principal* jurisdiction for the administration is that in which the deceased died domiciled (see *Jigarlal Kantilal Doshi v Damayanti Kantilal Doshi (executrix of the estate of Kantilal Prabhulal Doshi, deceased) and another* [2000] 3 SLR(R) 290 ("*Jigarlal*") at [15]). With respect to the administration of the deceased's estate in the respective jurisdictions, the court in an ancillary jurisdiction generally gives effect to and adopts the findings and determination of the court in the principal jurisdiction, where similar questions or issues arise in both jurisdictions (see *Jigarlal* at [16]). The findings and determination of the court in the principal jurisdiction are generally regarded as conclusive, even if the foreign court had proceeded upon a misapprehension of the law, or if not all the facts were brought before the foreign court (see *WKR v WKQ and another appeal* [2023] SGHC(A) 35 ("*WKR*") at [66], citing *Conflicts Issues in Succession* at p 621). Another manifestation of the deference by a court in an ancillary jurisdiction to a court in the principal jurisdiction is the general rule that, if a person died domiciled in a foreign country, the court would in general make a grant of LOA to a personal representative entitled under the law of such foreign country, *ie*, the principal jurisdiction (see *Dicey* ([22] above) at para 26R-008; *Halsbury's Laws of Singapore: Probate, Administration and Succession* (LexisNexis, Vol 15) at para 190.132).

30 Two points can be distilled from the above. First, a grant of LOA can be made by a court in any jurisdiction, so long as the deceased held property in that

jurisdiction during his lifetime and which now requires administration after his or her death. Secondly, while I agree with the claimants that it does not appear to be a requirement – at least under Singapore law – that a grant of LOA must first be sought in the country in which the deceased died domiciled before it could be obtained from other countries in which the deceased also held property,[26] if such a grant has been obtained from the principal jurisdiction for the administration and its validity remains unchallenged, that grant necessarily functions as the foundation of the legal relationship between the estate's beneficiaries and the administrator, even if grants of LOA are subsequently obtained in the other jurisdictions in which the deceased held property. This is a consequence of the distinction between the principal and ancillary jurisdictions of the administration and the general deference by a court in an ancillary jurisdiction to the findings and determination by a court in the principal jurisdiction of the administration.

The Malaysia Grant identifies the governing law of the dispute

31 The claims brought in OC 443 are founded upon fiduciary duties which the claimants say the defendants owed to them by virtue of his appointment as administrator of Dr Ponniah's estate under the Malaysia Grant. These claims are therefore equitable in nature. In *Rickshaw Investments* ([17] above) (at [76]), the Court of Appeal considered that the identification of the applicable law for claims in equity should depend on a close examination of the nature and origins of the equitable obligations in the context of their respective factual matrices, as opposed to a blanket application of the *lex fori*.

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[26] Claimants' supplementary written submissions at para 54.

32 An example of a case which illustrates this approach in identifying the applicable law of equitable claims is *Murakami Takako v Wiryadi Louise Maria and others* [2008] 3 SLR(R) 198 ("*Murakami*"). The plaintiff was the eldest daughter of the deceased and also the executor of the deceased's estate, and the three defendants were respectively the deceased's wife ("W"), her son and brother-in-law. During the deceased's lifetime, W and the deceased were divorced in Indonesia and thereafter the deceased brought further proceedings in Indonesia for the division of the joint marriage assets. After the deceased's death, the plaintiff continued with the proceedings in Indonesia as the executor of the deceased's estate, and an action was later commenced in Singapore against W and the other defendants in respect of the estate's assets in Singapore (see *Murakami Takako v Wiryadi Louise Maria and others* [2007] 1 SLR(R) 1119). As the court noted, the plaintiff's claims were matrimonial in nature because at the heart of the dispute was whether the plaintiff or the defendants had a better claim to properties acquired by the deceased and W during a marriage celebrated in Indonesia (see *Murakami* at [43]). The plaintiff subsequently sought to introduce amendments to her statement of claims to include claims over immovable property in Australia and Indonesia. The High Court refused the amendments on the primary ground that a Singapore court had no jurisdiction over claims relating to those properties as the rule in *Companhia de Mocambique v British South Africa Company* [1892] 2 QB 358 ("the *Mocambique* rule") applied and the plaintiff could not avail herself of any exception to the *Mocambique* rule because the parties were not connected with Singapore in such a way that their relationship ought to be governed by the equitable standards of Singapore law (see *Murakami* at [23]). The court also applied the approach in *Rickshaw Investments* and held that, because the substance of the plaintiff's claim over the deceased's assets was matrimonial in nature, the applicable law of the dispute was Indonesia law, that being the law

of the matrimonial domicile (see *Murakami* at [43]–[45]). As such, putting aside the operation of the *Mocambique* rule, the court would have declined to exercise jurisdiction over that part of the plaintiff's proposed claim anyway.

33 I do not think a grant of LOA *in itself* gives rise to relevant connections capable of identifying a more appropriate forum in the context of a dispute between the administrator of an estate and its beneficiaries relating to the management of the administration, like that in OC 443. Connecting factors capable of identifying a more appropriate forum in the first stage of the *Spiliada* test are those which have relevant and substantial associations with the dispute, and are material to its fair determination, rather than merely tenuous or insubstantial points of contact (see *Rappo* ([17] above) at [70]–[71]). The fact that a grant of LOA could be made in any country so long as the deceased died with property in that country (see [28] above) means that any connection arising from a grant *in itself* is simply incidental to the countries in which the deceased held property in his lifetime which now require administration. The location of the deceased's assets has no significant bearing on a dispute relating to the management of the administration, the subject matter of which is the legal relationship between the administrator and the estate's beneficiaries, and whether the administrator had properly performed his duties owed to the beneficiaries. Indeed, the question of *where* the deceased's property is located and thus requiring a grant of LOA in that country is a rather fortuitous one and depends on how the deceased had conducted his affairs during his lifetime, which is quite far removed from a dispute that subsequently arises between the estate's beneficiaries and the administrator.

34 However, if a grant of LOA has been made by a court in the country of the deceased's domicile, which is also the principal jurisdiction of the administration, and in so far as the validity of that grant remains unchallenged,

that grant would operate as the foundation of the legal relationship between the administrator and the estate's beneficiaries (see [30] above). In these circumstances, the grant of LOA made by a court of the principal jurisdiction also identifies the system of law pursuant to which that grant was made and acquired effect, as the law applicable to any dispute arising from the legal relationship between the administrator and the estate's beneficiaries. This is because the source of any rights acquired by the estate's beneficiaries against the administrator and any obligations which the administrator came to owe towards the beneficiaries, which are in issue in such a dispute, are derived solely pursuant to the grant made by a court of the principal jurisdiction which had put together the parties' legal relationship in the first place.

35 Returning to the present case, quite clearly, the Malaysia Grant provides the foundation of the legal relationship between the claimants and the defendant *qua* estate beneficiaries and administrator, which is the subject matter of OC 443. Malaysia is the principal jurisdiction for the administration of Dr Ponniah's estate because Dr Ponniah had died domiciled in Malaysia (see [36]–[37] below). The claimants also do not challenge the validity of the Malaysia Grant.[27] As I will explain later, the resealing of the Malaysia Grant in the FJC, which to date remains unchallenged, is a further affirmation of its validity (see [43]–[45] below).

36 I make some brief observations regarding the issue of Dr Ponniah's domicile. In oral submissions, the defendant's counsel stated that Dr Ponniah had died domiciled in Malaysia. On the other hand, the claimants' counsel stated in written submissions that they do not concede that Dr Ponniah was domiciled in Malaysia, an issue which they say is reserved for the trial of OC 443, though

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27 1-CCK at para 16; Claimants' written submissions at para 22.

they were of the view that it makes no difference to the merits of their case in SUM 106 even if Dr Ponniah was found to be domiciled in Malaysia.[28] I note that the affidavits filed in SUM 106 did not contain evidence of the material which had been submitted to the High Court of Johor Bahru in support the defendant's application for the Malaysia Grant, such as the proof of Dr Ponniah's domicile. In the defendant's affidavit for SUM 106, while the defendant states that Dr Ponniah "was a Malaysian citizen who lived, worked and died in Malaysia",[29] the defendant did not go on to specifically state that Dr Ponniah had died domiciled in Malaysia. However, I note that the papers filed in the defendant's *ex parte* application in the FJC to reseal the Malaysia Grant specifically states that Dr Ponniah was domiciled in Malaysia.[30] The Malaysia Grant was resealed in due course and the claimants also did not take out any application to revoke the resealed Malaysia Grant.

37 The domicile of a deceased person is not an ancillary or subsidiary issue in a resealing application; it is one which the court must first determine in deciding whether to grant a resealing application (see *WKR* ([29] above) at [39]). Section 47(4) of the PAA further states that, "[i]f it *appears* that the deceased was not, at the time of his death, domiciled within the jurisdiction of the court from which the grant was issued" [emphasis added], the grant shall not be resealed unless the grant is one which the court itself would have made. With these in mind and coupled with the proof of Dr Ponniah's domicile as stated in the papers filed by the defendant to reseal the Malaysia Grant, I am satisfied that the Malaysia Grant was resealed by the FJC on the basis that Dr Ponniah had died domiciled in Malaysia. All this assumes greater significance especially

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28 Claimants' supplementary written submissions at para 75.

29 1-RPR at para 23.

30 1-CCK at p 16.

since the claimants did not take out any application to revoke the resealed Malaysia Grant and, in these proceedings, they also do not dispute the validity of the Malaysia Grant. Therefore, while I note that the claimants disputed the closeness of Dr Ponniah's connections with Malaysia by emphasising that Dr Ponniah (despite being a Malaysia citizen) had in the period between 2001 and 2019 worked outside of Malaysia and treated Singapore as his "home base" in the period between 2005 and 2019 when he worked in Australia,[31] I do not think it is seriously open to the claimants to dispute the fact that Dr Ponniah had died domiciled in Malaysia, for the purposes of SUM 106.

38 Since the Malaysia Grant provides the foundation of the legal relationship between the claimants and the defendant *qua* estate beneficiaries and administrator, for the reasons I have explained above (at [34]), it identifies Malaysia law, the system of law pursuant to which the Malaysia Grant was made and derived legal effect, as the applicable law of the dispute in OC 443.

39 The claimants submitted that the applicable law of the dispute in OC 443 ought to be Malaysia law in respect of the administration covered by the Malaysia Grant and Singapore law in respect of the administration covered by the resealed Malaysia Grant.[32] The leading academic texts do state that the administration of an estate is governed by the law of the country in which a grant was made (see, for example, Alexander Learmonth KC, *Williams, Mortimer and Sunnucks: Executors, Administrators and Probate* (Sweet & Maxwell, 22nd Ed, 2023) ("*Williams*") at para 45-05). However, this rule follows from the point that the administration of an estate must be in the country in which possession of it is taken and held under lawful authority (see *Williams*

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31 1-CCK at para 34.

32 Claimants' supplementary written submissions at para 68.

at para 45-04) and that an administrator only has authority to collect and administer assets that are situated within the jurisdiction in which the grant was made (see [28] above). Therefore, the word "administration" is used here in the sense of the management and distribution of an estate by an administrator (see generally, *Ewing and others v Orr Ewing and others* (1885) 10 App Cas 453 ("*Ewing (1885)*") without encompassing the distribution of the estate amongst the persons who are beneficially entitled (see *Williams* at 45-04). Obviously, administration in this sense must be governed by the law of the country in which the grant was made. However, the present dispute concerns the management of an administration and involves the legal relationship between an administrator and the estate's beneficiaries. It would produce a rather absurd result if more than one system of law applied to the determination of disputes arising from this *single* legal relationship and if the applicable system of law could be determined fortuitously based on the countries in which the estate's assets are located, and in which grants of LOA could possibly be obtained.

40 At this juncture, let me segue to address the defendant's reliance on the affidavits for renunciation of administration filed by the claimants in the proceedings before the High Court of Johor Bahru (see [6] above), which the defendant argued signified the claimants' acceptance of the Malaysia courts' exclusive jurisdiction to supervise the administration of Dr Ponniah's estate and adjudicate the dispute in OC 443.[33] In support of this submission, the defendant's counsel relied on *Peter Rogers May* ([27] above). In that case, a grant of probate had been made in the Singapore courts and a further ancillary application was filed by the executor to determine whether a notation that the deceased had died domiciled in Singapore should be endorsed on the grant of

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[33] Defendant's written submissions at para 14.

probate (the "notation proceedings"). The deceased's wife then brought an application to stay the notation proceedings, on the basis that the issue of the deceased's domicile was more appropriately determined in England. The court applied the *Spiliada* principles and found that the wife had not shown that England is the clearly more appropriate forum. In arriving at that conclusion, the court also placed weight on the fact that the respondent had consented to the grant of probate made in the Singapore courts (see *Peter Rogers May* at [23]):

> It is a highly relevant consideration that the respondent consented to the grant of probate to the Executor on 4 August 2004. The grant was made in accordance with Singapore law under the PAA. Given such an unqualified acceptance of this court's jurisdiction at that juncture, the respondent cannot now turn around and conceivably contend that *Singapore is not an* (as opposed to "the") *appropriate forum to determine and notate Pinder's domicile for the purposes of the grant of probate pursuant to s 7 of the PAA*. The jurisdiction of the Singapore courts has ab initio been founded as of right in this matter.
>
> [emphasis added]

41 The facts in *Peter Rogers May* are superficially analogous to the present case in that the claimants, by virtue of having filed the affidavits for renunciation of administration in the proceedings before the High Court of Johor Bahru, had also consented to the Malaysia Grant being made in favour of the defendant. However, in *Peter Rogers May*, the court regarded the wife's consent to the grant of probate as signifying her acceptance of the jurisdiction of the Singapore courts in relation to the proceedings for the grant of probate as well as ancillary proceedings arising therefrom in the Singapore courts. Therefore, the court concluded that it was not open to the wife to contend that Singapore was not the appropriate forum to determine and notate the deceased's domicile for the purposes of the grant of probate which she had earlier consented to. I do not think the court intended to suggest that the wife's consent to the grant of probate would preclude the wife from asserting that Singapore is not the

appropriate forum for all other legal proceedings so long as they involved the deceased's estate in some way.

42 In this case, the parties are in agreement that OC 443 is an *in personam* action brought against the defendant to compel him to perform his duties as administrator, and they are also in agreement that OC 443 does not engage the specific jurisdiction to make grants of probate or LOAs and to alter or revoke such grants, which the High Court of Johor Bahru had exercised when it made the Malaysia Grant (see s 24(*f*) of the Malaysia Courts of Judicature Act 1964 (Act 91) (see also [23] above). As such, any expression of acceptance of the Malaysia courts' jurisdiction by the claimants in their affidavits for renunciation is limited only to the specific jurisdiction which the High Court of Johor Bahru had exercised in the proceedings in which the Malaysia Grant was made and in any ancillary proceedings arising therefrom. It does not extend to a dispute like OC 443 which seeks to invoke the court's general civil jurisdiction. However, to the extent the affidavits for renunciation show that the claimants had consented to the Malaysia Grant, this reinforces their acceptance of the validity of the Malaysia Grant (see [35] above) which, as explained, provides the foundation of the legal relationship between the parties.

The resealing of the Malaysia Grant in Singapore does not create a connecting factor

43 Next, it should be highlighted that the resealing of the Malaysia Grant in Singapore does not give rise to a fresh grant in terms of the Malaysia Grant. The effect of resealing a foreign grant under s 47 of the PAA is limited to recognition of that grant under Singapore law, and the extension of its validity to Singapore, similar in nature to the recognition and enforcement of a foreign judgment (see *WKR* ([29] above) at [71]). The resealing of a foreign grant does

not have the effect of converting it into a fresh grant made by the Singapore courts, and the resealed foreign grant is parasitic on the foreign grant (see Re *The Estate of T Raman Nair a/l C U Kurup, deceased* [1999] SGHC 118 at [4]). This is also made clear by the language of s 47(2) of the PAA, which states that a foreign grant, upon being resealed, shall be accorded "like force and effect" and be treated "as if granted" by a Singapore court. In other words, a resealed foreign grant has effect under Singapore law, but its legal character remains to be that of a foreign grant.

44 The resealing of the Malaysia Grant therefore does not alter the characterisation of the Malaysia Grant as providing the foundation of the legal relationship between the parties. If anything, the resealing of the Malaysia Grant, which extends recognition of and validity to the Malaysia Grant under Singapore law, *affirms* that characterisation. Indeed, as stated above (at [37]), I am satisfied that the Malaysia Grant was resealed by the FJC on the basis that Dr Ponniah died domiciled in Malaysia, which confirms that Malaysia is the principal jurisdiction for the administration of Dr Ponniah's estate.

45 This is a convenient juncture to address the claimants' submission that the resealing of the Malaysia Grant in Singapore creates a connecting factor in favour of Singapore.[34] It would be apparent from the principles on resealing of foreign grants which I have recited above that I disagree with this submission. Since the effect of resealing a foreign grant is to recognise it under Singapore law and extend its validity to Singapore, the resealing of a foreign grant only affirms its foundational status, and it cannot be capable of creating any independent connections with Singapore in the context of a dispute like OC 443. In any case, the fact that a foreign grant had to be resealed in Singapore only

[34] Claimant's written submissions at para 18.

means that there are assets in Singapore also requiring administration and thus the need to extend the validity of the foreign grant to Singapore to authorise the administrator appointed under the foreign grant to deal with assets here. Put another way, the fact that a foreign grant had to be resealed in Singapore only speaks of the existence of assets within the jurisdiction. As explained above (at [33]), in a dispute between an administrator and the estate's beneficiaries relating to the management of the administration like that in OC 443, the location of the assets of the estate is not a relevant connection that is capable of identifying a more appropriate forum.

46 The claimants further argued that, because the defendant applied to reseal the Malaysia Grant in Singapore, the defendant has therefore submitted to the jurisdiction of the Singapore courts in relation to affairs concerning the resealed Malaysia Grant, and this encompasses the duties he owed to the claimants under the resealed Malaysia Grant.[35] I do not think this is of any assistance to the claimants. First, any such submission to jurisdiction by the defendant is not of significance because there is no dispute that the Singapore courts *have jurisdiction* over the dispute in OC 443; the only question is whether that jurisdiction should be *exercised* (see [23] above). Secondly, the purpose of the defendant's application to reseal the Malaysia Grant is to allow himself to be conferred with authority to administer Dr Ponniah's assets which are located in Singapore. I do not think it could be implied from the defendant's application to reseal the Malaysia Grant that he necessarily recognises or accepts that the Singapore court should exercise its jurisdiction for all other purposes, such as in a dispute involving himself and the estate's beneficiaries relating to the management of the administration like that in OC 443. This follows what I have

[35] Claimant's written submissions at para 20.

said earlier (at [42]) in relation to the significance that could be attached to the affidavits for renunciation of administration filed by the claimants in support of the Malaysia Grant, namely, that they only signify the claimants' acceptance of the Malaysia courts' jurisdiction in the proceedings in which the Malaysia Grant was made and ancillary proceedings arising therefrom, but not for all other purposes.

The governing law of the dispute in OC 443 is a weighty connection for the first stage of the Spiliada *test*

47 To reiterate, I have concluded that the Malaysia Grant identifies Malaysia law as the applicable law to the dispute in OC 443. However, that is not the end of the matter, and I must be satisfied as to *why* this identifies Malaysia as the more appropriate forum. Where the applicable law of a dispute is foreign law, one ground on which it can be regarded as a relevant connecting factor is where the forum will be less adept in applying that law than the foreign court, and so there could be savings in time and resources in having the dispute litigated in the foreign court (see *CIMB Bank Bhd v Dresdner Kleinwort Ltd* [2008] 4 SLR(R) 543 ("*CIMB Bank*") at [63]). Therefore, our courts have accorded weight to the governing law of a dispute where the applicant for a stay has shown such a difference between Singapore and the foreign jurisdiction in the relevant body of law such that a Singapore court would face difficulty in applying foreign law without the assistance of experts (see *CIMB Bank* at [63]; *Sinopec International (Singapore) Pte Ltd v Bank of Communications Co Ltd* [2024] 3 SLR 476 at [78]).

48 I accept, as the claimants submitted, that the defendant has not put before me evidence as to how the law applicable to the present dispute differs as a matter of Singapore and Malaysia law. The claimants argued that, given the

absence of evidence on Malaysia law, I can proceed on the basis that Malaysia law is no different from Singapore law and so even if the applicable law of the dispute in OC 443 is Malaysia law, that is of no significance.[36] However, I do not think the defendant's failure to adduce proof of Malaysia law necessarily requires that this connection be given no weight in the first stage of the *Spiliada* test. Our courts have recognised that, where the circumstances are appropriate, the court may have regard to the fact that the principles to be applied in the foreign jurisdiction concerned will differ from those to be applied in the forum in some respects despite a party's failure to adduce proof of foreign law (see *Rickshaw Investments* ([17] above) at [43]).

49 In my view, where the applicable law of a dispute is foreign law, it can be a weighty connecting factor where the *context* in which foreign law is to be applied and the *nature* of the issues to be determined by the application of foreign law show that it is more satisfactory and appropriate for the foreign court to apply its own laws. The underlying notion here is that the forum should not determine issues which are better reserved for determination by a foreign court applying its own laws. This reflects the demands of international comity, which is a relevant consideration in the first stage of the *Spiliada* test (see *Trisuryo Garuda Nusa Pte Ltd v SKP Pradiksi (North) Sdn Bhd and another and another appeal* [2017] 2 SLR 814 at [56]).

50 A case which illustrates this is *Eng Liat Kiang v Eng Bak Hern and others* [1994] 3 SLR(R) 594 ("*Eng Liat Kiang (HC)*"). The plaintiff commenced an action seeking a declaration that the defendant held on trust for him, among other things, the defendant's interest in various land parcels situated in Malaysia as well as shares in a Malaysia-incorporated company that were registered in

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[36] Claimants' supplementary written submissions at para 69.

the defendant's name. The High Court ordered that this part of the plaintiff's action be stayed on the ground that Malaysia was the more appropriate forum. In arriving at that conclusion, one factor which the court considered, in relation to the part of the action relating to land situated in Malaysia, was the "undesirability of a Singapore court deciding issues of Malaysian law which would impact on the ownership of land in Malaysia" (see *Eng Liat Kiang (HC)* at [39]). A further reason why the court considered it more satisfactory for a Malaysia court to apply its own laws was because (see *Eng Liat Kiang (HC)* at [39]):

> … a Singapore court's decision on foreign law is treated as a question of fact for the purposes of appeal whereas a question of foreign law decided by a court of the foreign country concerned is appealable as such to the appropriate appellate court of the country.

51 Where the proceedings before the forum concern the administration of an estate of a deceased who died domiciled in another jurisdiction, international comity is a particularly relevant consideration. This explains the general deference given by a court in an ancillary jurisdiction to a court in the principal jurisdiction for the administration, which I have referred to earlier (at [29]). One example of this is the approach taken by a court in an ancillary jurisdiction towards proceedings for judicial administration commenced there as well as in the principal jurisdiction. As explained in the following extract from *Williams* ([39] above) (at para 45-09), an earlier iteration of which appears to have been cited in *Jigarlal* ([29] above):

> Where an application for judicial administration is made, the English courts' approach to those proceedings is governed by the comity of courts. Thus, if proceedings are brought in the courts of the country of the domicile of the deceased, the English court may adopt them and if all the questions which would arise in the course of the administration in England could be decided in those foreign proceedings, the English court

> may stay the English proceedings on the ground that they would be vexatious and unnecessary. …

52 In the present case, because the Malaysia Grant is foundational to the legal relationship between the parties, a Singapore court deciding OC 443 will have to apply Malaysia law to determine the rights and duties of the claimants and defendant *qua* estate beneficiaries and administrator. In doing so, however, the court will also have to decide questions relating to the contents of the duties and the standards of conduct to be imposed on the administrator of an estate whose appointment flows from a grant of LOA made under Malaysia law. In my view, it is inconsistent with international comity and undesirable for a Singapore court to determine these questions of Malaysia law, which are best decided by a Malaysia court applying its own laws. Further, any finding made in OC 443 regarding the issue of whether the defendant has breached his duties as administrator could provide grounds for the Malaysia Grant to be revoked (see, for example, s 34 of the Malaysia PAA; *Jigarlal* ([29] above) at [12]–[13]), an issue over which the Malaysia courts have exclusive jurisdiction. I am cognisant of the claimants' position that they do not, in OC 443, seek to challenge the Malaysia Grant. However, this nonetheless underscores the desirability in having a Malaysia court applying its own laws to determine issues which can have a downstream impact on matters that come within its exclusive jurisdiction and the undesirability of a Singapore court determining such issues by an application of Malaysia law.

The other cases which appear to support the claimants' position can be distinguished

53 The claimants have cited a few cases in support of their submission that the existence of the Malaysia Grant and the fact of Dr Ponniah not having been domiciled in Singapore at the time of his death both pose no impediment to a

Singapore courts exercising its jurisdiction over the dispute in OC 443.[37] It should be apparent from the above that my conclusion about the Malaysia Grant giving rise to connecting factor in favour of Malaysia is not premised on the fact that Malaysia is the principal jurisdiction for the administration, by virtue of Dr Ponniah having died domiciled in Malaysia. Rather, what is critical here is that the Malaysia Grant, the validity of which is unchallenged by the claimants, is foundational to the legal relationship between them and the defendant *qua* estate beneficiaries and administrator. This identifies Malaysia law as the applicable law to the dispute between them, and in the context of this case, it is more appropriate for a Malaysia court to apply its own laws to determine the issues arising in OC 443, given that they raise questions about the contents of duties and the standards of conduct to be imposed on an administrator appointed under Malaysia law. Be that as it may, I do not think the cases cited by the claimants support their position that a Singapore court should exercise its jurisdiction in a dispute like OC 443 as these cases are all factually distinguishable.

54 The first case is *Jigarlal* ([29] above). The deceased died domiciled in Malaysia and the defendants were granted probate of the will by the Malaysia courts. The plaintiffs took out proceedings in Malaysia seeking to revoke the grant, which was eventually allowed. Separately, the defendants were also granted probate of the deceased's will in Singapore. The plaintiffs then took out the subject application to revoke the Singapore grant. The High Court dismissed the application, which the Court of Appeal upheld. It is correct that the estate in *Jigarlal* was that of a deceased who died domiciled in Malaysia, but it should be noted that in the Singapore proceedings, the court's determination was limited to the administration of the deceased's estate in Singapore. The

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[37] Claimants' supplementary written submissions at paras 10–11 and 37.

Singapore court also made no determination or orders in relation to whether the defendants had failed to perform their duties as executors of the deceased's will, and specifically, the Singapore court accepted findings made by the Malaysia courts that the defendants had not properly discharged their duties as executors and that there was sufficient cause for the revocation of the grant of probate made in Malaysia (see *Jigarlal* at [16]). Eventually, though, the court held that it was not in the interests of the beneficiaries for the grant in Singapore to be revoked where there was no suitable party at hand to take over the defendants' role in administering the estate in Singapore (see *Jigarlal* at [20]–22]).

55 The second case is *L Manimuthu and others v L Shanmuganathan* [2016] 5 SLR 719 ("*L Manimuthu*"). The plaintiffs commenced an action against the defendant pursuant to a compromise agreement made between the parties which was intended to be a comprehensive division of their father's assets in both India and Singapore. The father died intestate in Singapore. One of the arguments raised by the defendant was that the court should decline to exercise jurisdiction over the dispute because, among other things, given the domicile and nationality of their father, Indian intestacy laws applied to the entire dispute. This argument was rejected by the High Court, which held that the main issues in the dispute were contractual in nature and the governing law of the dispute was Singapore law (see *L Manimuthu* at [8]). The court further held that, even if Indian intestacy laws were applicable, that would not be an immediate bar to the court's exercise of jurisdiction, as a court could apply Indian law in the resolution of the dispute (see *L Manimuthu* at [8]). *L Manimuthu* is, in my view, entirely distinguishable because, while it did involve a dispute over the distribution of a deceased's assets, it did not arise in the context of administration – it was undisputed that no grants of LOA had been obtained (see *L Manimuthu* at [5]). The dispute before the court, and the legal relationship between the plaintiffs

and defendant that it involved, was founded, as a matter of contract, on the compromise agreement.

56 The third and last case is *Jane Rebecca Ong v Lim Lie Hoa also known as Lim Le Hoa also known as Lily Arief Husni and another* [1996] SGHC 140. The claimants similarly referred to this as a precedent case in which the Singapore courts exercised jurisdiction over a claim for breach of duties of an administrator where the deceased was not domiciled in Singapore. The plaintiff in that case was assigned by her ex-husband ("OST") a half share of OST's entitlement to the estate of OST's father. Ancillary to that was a deed of release which OST had executed prior to the assignment in which he purported to acknowledge receiving from the administrators of his father's estate a sum of money in full and final settlement of his interest in the estate. The plaintiff then brought an action against the executor of the estate to claim her half-share of OST's entitlement, and also sought a declaration that the deed of release is void unenforceable and further, that accounts be taken and inquiries be made to determine the whereabouts of the assets of the estate and the amounts due to her under the deed of assignment. It is correct that the deceased in this case appears to have died domiciled in Indonesia (see *Ong Jane Rebecca v Lim Lie Hoa (also known as Lim Le Hoa and Lily Arief Husni)* [2003] SGHC 126 at [3]). However, similar to *L Manimuthu*, the plaintiff's claim is based on contract and the reliefs which she claimed were grounded in her entitlement to the estate pursuant to the deed of assignment executed by OST in her favour.

57 Finally, let me address *Ewing (1885)* ([39] above). This was not a case cited in the parties' submissions, and I have also not highlighted this to parties as I came across this only in the course of preparing these grounds. *Ewing (1885)* is, however, related to an earlier decision of the of House of Lords in *William Ewing and others v Malcolm Hart Orr Ewing* (1883) 9 App Cas 34

("*Ewing (1883)*"), which I had highlighted for the parties to file further submissions after SUM 106 first came up for hearing. The relevant background facts are as follows. The deceased (domiciled in Scotland) left a will in respect of his estate which comprised substantial property in Scotland and some property in England. The earlier proceedings in *Ewing (1883)* concerned an application brought by a beneficiary of the estate for an order for judicial administration of the estate by the English courts. The trustees of the will resisted the application and argued that the courts in Scotland are the primary forum for the administration of the estate. The English Court of Appeal rejected the trustees' objection and held that they had no basis to object to the maintenance of the application, because the jurisdiction exercised by the court in that case was a personal jurisdiction against the trustees, and it could be exercised so long as the trustees were within the jurisdiction or if they were outside of the jurisdiction, they had been properly served and also submitted to the jurisdiction (see In re *Orr Ewing* (1882) 22 Ch D 456 at 464 and 467). The Court of Appeal's decision was affirmed by the House of Lords. Similarly, the House of Lords rejected the trustees' position that only the courts in Scotland had jurisdiction to administer the trusts, and held that the English courts had jurisdiction to administer the trusts of the will as to the whole of the deceased's estate. The following extract from Lord Blackburn's judgment is illustrative (see *Ewing (1883)* at 45–46):

> It was argued that the domicil of the testator being Scotch, the Court of Chancery had no jurisdiction at all; that the jurisdiction depended on the domicile of the testator, or at least on the probate in England, and was therefore confined to the comparatively small part of the property that was obtained by means of the English probate.
>
> I do not think that there is either principle or authority for this contention. The jurisdiction of the Court of Chancery is *in personam*. It acts upon the person whom it finds within its jurisdiction and compels him to perform the duty which he owes to the plaintiff.

58 The case in *Ewing (1885)* arose from subsequent proceedings brought in Scotland by other beneficiaries of the estate in which the Scottish courts granted a declaration that the trustees were bound to administer the estate in Scotland, subject to Scotch law and under the authority and jurisdiction of the Scottish courts alone, and alternatively, that a "judicial factor" (a person appointed by the court and who is an officer of the court) be appointed to take the place of the trustees in the administration of the deceased's estate. This, coupled with the earlier proceedings for judicial administration brought in England, left the trustees in an invidious position as they were liable for contempt in Scotland if they obeyed the orders made in the English courts, but also liable for contempt in England if they obeyed the orders made in the Scottish courts. The trustees appealed to the House of Lords against the decision of the Scottish courts. The House of Lords rejected the submission that only the Scottish courts had exclusive jurisdiction over the trusts by virtue of the deceased having died domiciled in Scotland and it therefore reversed the part of the declaration which required the trustees to administer the estate under the authority and jurisdiction of the Scottish courts alone (see *Ewing (1885)* at 508, 523, 542–543 and 546). In arriving at this conclusion, the House of Lords was of the view that the forum in which an action could be brought to enforce the performance of a trust should *not* be dependent on the domicile of the deceased or the nationality of the trustees (see *Ewing (1885)* at 502, 514–515 and 546). This is because the jurisdiction which a court exercised in supervising the administration of a trust was *in personam* in nature which could be invoked by a competent plaintiff against trustees so long as they were amenable to the court's jurisdiction (see *Conflicts Issues in Succession* ([21] above) at p 567). For completeness, the House of Lords upheld the decision of the Scottish courts to appoint a judicial factor, which they held was a matter properly within the

jurisdiction of the Scottish courts and in respect of which the Scottish courts had properly exercised its discretion (see *Ewing (1885)* at 529).

59 The conclusion which I have reached above (at [53]) effectively limits the claimants to the Malaysia courts if they wish to seek recourse against the defendant for the non-performance of his duties as administrator under the Malaysia Grant. This might appear to be inconsistent with *Ewing (1885)*, which suggests that the claimants' action could be brought and maintained anywhere (provided the defendant was amenable to the jurisdiction of the relevant court) because the claimants should not be limited to the courts of the country of the deceased's domicile (*ie*, the courts of the principal jurisdiction for the administration). However, I do not think *Ewing (1885)* is relevant to the present analysis. The issue decided in *Ewing (1885)* was whether the jurisdiction over a dispute between beneficiaries and trustees relating to the administration of an estate under a will is *exclusive* to the courts of the principal jurisdiction, which was answered in the negative (see *Ewing (1885)* at 502–505; see also [21] above). The issue as to which court could more *appropriately* exercise such jurisdiction did not appear to arise for decision. While the reasoning of the judgments in *Ewing (1885)* suggests that the House of Lords would likely have saw no impediment in such an action being determined in the courts of any other country in which the deceased testator had not been domiciled (*ie*, ancillary jurisdictions for the administration) as a matter of *forum non conveniens*, I do not think that is persuasive for present purposes, given that judicial attitudes towards a stay of proceedings have changed since the time *Ewing (1885)* was decided following the development of the *Spiliada* principles (see *Conflicts Issues in Succession* at 568–569). Importantly, and for the avoidance of doubt, the conclusion I have reached above is not intended to reflect, as a general rule, that the natural forum for an action by an estate's beneficiaries against an

administrator to compel the latter's performance of his duties arising from a grant of LOA is necessarily the court of the principal jurisdiction for the administration which made that grant. Whether that is so turns on the precise complexion of each case and the connecting factors engaged on the facts.

The relief sought in Prayer 3

60 As a further reason why OC 443 should be stayed, the defendant argued that a Singapore court had no jurisdiction to grant the relief sought in Prayer 3. The defendant relied on the *Mocambique* rule (see [32] above), which states that the court has no jurisdiction to entertain proceedings concerned with a question of the title to, or the right of possession of, immovable property situated in a foreign country. The *Mocambique* rule is well-established and is part of Singapore law (see *Eng Liat Kiang v Eng Bak Hern* [1995] 2 SLR(R) 851 ("*Eng Liat Kiang (CA)*" at [11]). However, an exception to the *Mocambique* rule is where the order sought in the proceeding is founded upon a personal obligation between the parties arising out of a contract or equity between them, save where the carrying out of the order is illegal or impossible according to the law of the foreign country (see *Eng Liat Kiang (CA)* at [12]–[14]; *Murakami* ([32] above) at [11]–[14]). The rationale of the exception is that, in such a case, the order affecting land is directed at the *defendant* to perform his obligation owed to the claimant and is therefore *not* an order determining *title* to land situated in a foreign country, over which the courts of that country have exclusive jurisdiction (see *Murakami* at [16]).

61 I do not agree with the defendant that Prayer 3 attracted the *Mocambique* rule. Based on the language of Prayer 3, it does not seek an order or judgment in relation to the title to or right of possession of the JB Property. To recap, Prayer 3 sought an order that the JB Property be sold in the open market within

six months, with the claimants having sole conduct of the sale and for amounts due to the claimants to be paid out of the net proceeds of sale. As I mentioned earlier (at [9]), it appears to be the claimants' pleaded case that the JB Property forms part of Dr Ponniah's estate, even though it was not specifically identified in the list of assets and liabilities annexed to the Malaysia Grant. Based on a literal reading of Prayer 3, it seeks an order against the *defendant* compelling *him* to *sell* the JB Property within six months, and that *he* let *the claimants* have sole conduct of the sale. While there are several possibilities as to how the claimants are to be given control over the sale of the JB Property, it is clear that Prayer 3 does not require that the claimants be given title to or right of possession of the JB Property for that purpose. As counsel explained in submissions, what Prayer 3 sought was for the claimants to be given administrative control over the sale process. Given the wording of Prayer 3, I accept that it does not attract the *Mocambique* rule because the relief sought does not concern title to or right of possession of the JB Property.

62 In cases where the exception to the *Mocambique* rule applies and so a court is not precluded, as a matter of jurisdiction, from determining a claim concerning title to or right of possession of foreign property, the court can nevertheless decline to exercise jurisdiction over the claim on the ground that the foreign court is a more appropriate forum. Therefore, in *Eng Liat Kiang (HC)* ([50] above), the facts of which I have set out earlier, the High Court accepted that the *Mocambique* rule did not apply because the plaintiff's claim arose in equity and thus fell within the exception to the *Mocambique* rule. However, the court considered it significant that the claim involved Malaysia land, which gave rise to an important connecting factor in favour of Malaysia, because the Malaysia land automatically fell within the exclusive jurisdiction of the Malaysia court, and only a Malaysia court order would have an effect *in rem*

and be registrable against the properties themselves, unlike a Singapore court order which can only act *in personam* against the defendant (see *Eng Liat Kiang (HC)* at [26]). In concluding that Malaysia was the more appropriate forum, the court also considered other factors which connected the claim to Malaysia (see *Eng Liat Kiang (HC)* at [27]–[38]), one of which was the desirability of having a Malaysia court apply its own laws in deciding issues which impact the ownership of land in Malaysia (see [50] above).

63 The Court of Appeal upheld the High Court's decision and agreed with the High Court's reasons (see *Eng Liat Kiang (CA)* at [26]–[29]). In particular, the Court of Appeal attached great weight to "the undesirability of a Singapore court deciding issues involving ownership of land in Malaysia (see *Eng Liat Kiang* at [34]). Although the observations in *Eng Liat Kiang (HC)* and *Eng Liat Kiang (CA)* which I have considered above were made in connection with a claim concerning title to foreign property, I think they are still of relevance in the context of Prayer 3, even though Prayer 3 does not directly affect title to or right of possession of foreign property but only *relates to* or *concerns* foreign property. Regardless of the actual complexion of the reliefs claimed, so long as the reliefs sought relate to foreign property, the point remains that it is more appropriate for a foreign court with exclusive jurisdiction over that property to grant the reliefs sought, bearing in mind that the foreign court is best placed to determine the appropriate reliefs in accordance with foreign law, and the ease with which any resulting judgment could be enforced in the foreign country.

64 Returning to the present case, although Prayer 3 did not attract the *Mocambique* rule, the relief sought *relates to* property situated in Malaysia (*ie*, the JB Property). A Malaysia court is therefore better placed than a Singapore court to determine the appropriate orders for the claimed relief in Prayer 3 to be effected, if the claimants were found to be entitled to them – including in

particular how the claimants are to be given control over the sale process of the JB Property in the absence of a transfer of title to or right of possession of the JB Property. The issues raised by the relief claimed in Prayer 3 are therefore best determined by a Malaysia court, which has exclusive jurisdiction over land situated in Malaysia. Prayer 3 therefore creates a further connection in favour of Malaysia for the first stage of the *Spiliada* test.

The other connections were given no weight in the first stage of the Spiliada *test*

65 Finally, let me address the significance of the personal connections of the parties to the dispute and the location of the assets of Dr Ponniah's estate, which the claimants placed emphasis on in arguing Malaysia is not the more appropriate forum.[38] The claimants submitted that, based on the locations of the assets (which are Singapore, Malaysia and Australia), there is no one distinct or more appropriate forum. The claimants also submitted that, despite them being Malaysian citizens, they are residents in Singapore, and the defendant himself is based in the US, and so the personal connections of the parties do not identify Malaysia as the more appropriate forum.

66 It is true that the personal connections of the parties, as the claimants have identified, do not point towards Malaysia as the more appropriate forum. However, these connections, being dispersed amongst several jurisdictions, are also incapable of pointing towards any particular jurisdiction as the more appropriate forum (see *Siemens AG v Holdrich Investment Ltd* [2010] 3 SLR 1007). In order for the claimants to rebut the defendant's contention that Malaysia is the more appropriate forum on the basis of the personal connections of the parties, they must show that those connections identify a distinctly more

[38] Claimant's written submissions at paras 15-17.

appropriate forum, which is not the case here. The same may also be said of the connections arising from the location of the assets of Dr Ponniah's estate. Indeed, as I have explained above (at [33]), I do not think the location of an estate's assets has a significant bearing on a dispute relating to the management of the administration, the subject matter of which is the legal relationship between the administrator and the estate's beneficiaries, since the locations in which the estate's assets could be found would be rather fortuitous in each case and be dependent on how the deceased had conducted his affairs in his lifetime.

Conclusion

67 In this case, the Malaysia Grant identified Malaysia law as the governing law of the dispute in OC 443. Given the nature of the dispute in OC 443, a court deciding it also has to determine, as a matter of Malaysia law, the contents of the duties and the standards of conduct to be imposed on an administrator appointed under Malaysia law. Therefore, a Malaysia court is better placed than a Singapore court to apply its own laws and determine the issues raised in OC 443. Besides that, the fact that Prayer 3 sought reliefs affecting Malaysia land means that a Malaysia court is better placed than a Singapore court to make the appropriate orders to give effect to the reliefs claimed, if the claimants were found to be entitled to them at the conclusion of trial. These factors, in my view, identify Malaysia as the more appropriate forum in which OC 443 could be tried.

68 In view of the above, I granted the application in SUM 106 and ordered that OC 443 be stayed in favour of an action in West Malaysia, as prayed for by the defendant. I also ordered the claimants pay to the defendant costs of $11,000 (all in). While the factual materials adduced in the affidavits was not lengthy, I took into account the fact that much work was done by the parties in considering

the relevant authorities which they identified through their own research as well as authorities which I had identified for their consideration.

69 In closing, I record my appreciation to both counsel for their submissions and assistance.

Perry Peh
Assistant Registrar

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