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

[2025] SGHCR 23

Originating Claim No 665 of 2024 (Summons No 1061 of 2025)

Between

Le Ninh Tien

… *Claimant*

And

(1) Rainbow Forest Enterprises Ltd
(2) Stevean Goh Hwee Peng
(3) Lu Qianxiang
(4) Gordon Roy Bate
(5) Song Doc MV19 Pte Ltd
(6) Truong Dinh Hoe

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure — Stay of proceedings — Counterclaim]

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Le Ninh Tien
v
Rainbow Forest Enterprises Ltd and others

[2025] SGHCR 23

General Division of the High Court — Originating Claim No 665 of 2024
(Summons No 1061 of 2025)
AR Perry Peh
19 May, 10 June 2025

18 July 2025

AR Perry Peh:

Introduction

1 HC/SUM 1061/2025 ("SUM 1061") was the claimant's application for the dismissal and/or stay of the sixth defendant's counterclaim in HC/OC 665/2024 ("OC 665") on grounds of *forum non conveniens*. The sixth defendant resists SUM 1061 on two key grounds: (a) first, the claimant is precluded from challenging the jurisdiction of the Singapore courts in relation to the *counterclaim*, by virtue of having commenced the *claim* in OC 665 and thereby submitting to the jurisdiction of the Singapore courts; and (b) secondly, it is procedurally convenient to have the *counterclaim* tried together with the *claim*, in light of the common factual matrix and overlap in evidence and witnesses between the *claim* and *counterclaim*.

2 As I explain below, since a claim and a counterclaim are in effect independent actions, the principles on *forum non conveniens* ought to be applied without distinction. Accordingly, a claimant cannot be precluded from mounting a jurisdictional challenge on *forum non conveniens* grounds in respect of a counterclaim brought against him in the action which he commenced. In this case, I agree that the overlap in factual issues between the *claim* and the *counterclaim* rendered it procedurally convenient for both to be tried together and this identified Singapore as the more appropriate forum for the counterclaim to be tried. While the other connections emphasised by the claimant did point towards foreign jurisdictions, I do not think they ought to be given weight in the analysis and so they did not detract from my conclusion that Singapore is the more appropriate forum.

3 Accordingly, I dismissed SUM 1061. The claimant has appealed against my decision.[1] These are my detailed grounds which elaborate on, and are intended to supersede, the reasons which I earlier provided to parties when I delivered my decision.

Background

4 In OC 665, the claimant, Mr Le Ninh Tien ("LNT"), seeks reliefs for minority oppression in connection with the affairs of the fifth defendant ("MV19"), which is a Singapore-incorporated company. LNT is a 40% shareholder in MV19. The remaining shares in MV19 are held by the first defendant ("RFE") (59%) and the fourth defendant (1%). According to LNT, the sixth defendant, Mr Truong Dinh Hoe ("TDH"), is the ultimate beneficial owner and controlling mind of RFE. As such, TDH is also the beneficial owner

[1] HC/RA 118/2025.

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of the 59% shares in MV19 held by RFE,[2] though he is not directly involved in the affairs on MV19. The second and third defendants are nominee directors of MV19.[3]

LNT's pleaded case for the claim

5 MV19 is an asset holding vehicle and its sole asset is the vessel, *Dong Doc Pride MV 19* ("the Vessel"), which engages in floating production storage and offloading operations.[4] LNT pleads that he became acquainted with TDH at around the start of 2022.[5] TDH, who was in the business of oil and gas projects, took interest in LNT's business interests which spanned power plants, shipyards, barges, floating production storage and offloading operations, and manufacturing plants in Southeast Asia.[6]

6 In May 2023, TDH met with LNT to discuss their collaboration on various business ventures, including LNT's acquisition of an interest in the Vessel and its usage.[7] At that time, the Vessel was the sole asset of MV19, and 40% shares which LNT now held were held by TDH's close business associate, Mr Nguyen Van Thu ("NVT").[8] At the meeting, three key business ventures were discussed, and the terms of the parties' discussions were recorded in a Memorandum of Understanding dated 6 May 2023 ("the MOU"):[9]

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2 Statement of Claim (Amendment No 1) ("SOC") at para 4.

3 SOC at para 4.

4 SOC at para 7.

5 SOC at para 10.

6 SOC at para 8.

7 SOC at para 12.

8 SOC at para 10(a)

9 SOC at para 12(d).

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(a) The parties would pursue the operation of a bauxite mine in Cambodia, and they agreed to each provide contributions worth US$10m in value.

(b) TDH invited LNT to acquire a 40% stake in the Vessel by acquiring 40% of the shares in MV19 at a consideration of 70 billion VND.

(c) The parties agreed that the Vessel would be exploited to explore oil and gas in designated areas in Cambodia and Thailand.

7 In July 2023, on TDH's arrangement, LNT entered into a "Transfer Agreement" with NVT for the purposes of acquiring a 40% stake in the Vessel as agreed under the MOU. Under the Transfer Agreement, LNT paid 71 billion VND as consideration for NVT to transfer all of his interests in the Vessel to LNT. LNT avers that this sum was paid in US dollars to TDH, for TDH to deliver to NVT.[10] It was agreed that the equivalent of US$4,000 represented the acquisition consideration of NVT's 40% shareholding in MV19, and the remainder would be applied towards the maintenance and upkeep of the Vessel.[11] Pursuant to the Transfer Agreement, LNT was also appointed as a director of MV19.[12]

8 However, since LNT became a director and shareholder of MV19, the defendants have conducted the affairs of MV19 in a manner that has been unfair and oppressive to his interests, contrary to the personal relationship of mutual trust and confidence between himself and TDH, which underlies his

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10 SOC at para 13(b).

11 SOC at paras 13(c)–13(d)

12 SOC at paras 13(a)–(e).

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involvement in MV19.[13] Since SUM 1061 pertains to TDH's *counterclaim*, I will not go into detail into each of the acts of oppression pleaded by LNT, and just briefly outline them:

(a) The use of the Vessel was commercially unfair to LNT's interests as MV19 had entered into agreements with entities related to TDH, the terms of which were commercially disadvantageous to MV19.[14]

(b) Changes were made to the composition of directors and shareholders in MV19 without consultation with LNT. In August 2023, Ms Troung Diem Quynh ("TDQ"), who was TDH's daughter, transferred her 59% shareholding in RFE. This posed impediments to the business ventures contemplated under the MOU because RFE, which is a BVI-registered company, became a majority shareholder in MV19.[15]

(c) There were attempts by the defendants to deal with the Vessel with consulting LNT.[16] In particular, the defendants made plans to sell and/or dispose the Vessel and/or its parts.[17]

9 In connection with the alleged oppressive acts which prejudiced LNT's commercial interests in MV19, LNT had successfully obtained interim injunctions against the first to fourth defendants in HC/SUM 2468/2024 and

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13 SOC at paras 15 and 19.

14 SOC at para 24.

15 SOC at paras 26–27.

16 SOC at para 28.

17 SOC at para 43.

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HC/SUM 2695/2024 for the preservation of the status quo pending the determination of LNT's claim in OC 665.[18]

The defence

10 The first to fourth defendants as well as TDH have filed a joint defence to LNT's claims for minority oppression. In their defence, they deny the commercially unfair conduct alleged by LNT.[19] What is more important for present purposes, however, is TDH's defence that LNT is not entitled to any legitimate expectations in respect of MV19's affairs because LNT had failed to perform his obligations under the MOU.[20] TDH elaborates on this in the defence:

> (a) TDH was introduced to LNT sometime in 2022 by one Dr Nguyen Quoc Quan ("NQQ"), who shared a close relationship with LNT. Through the introduction facilitated by NQQ, TDH and LNT discussed the pursuit of several business ventures. It was at this point that LNT took an interest in MV19 and the Vessel.[21]
>
> (b) TDH was induced to enter in the MOU because LNT made, among others, the following representations to him ("the Representations"), which were also recorded in the MOU:[22]

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18 SOC at paras 40 and 56.

19 Defence in Joint Defence of the 1st to 4th and 6th Defendants and Counterclaim of the 6th Defendant (Amendment No 1) ("DCC") at paras 12(c), 16(f), 27 and 28.

20 Defence in DCC at paras 15(a) and 15(b).

21 Defence in DCC at paras 10(2)–(5).

22 Defence in DCC at para 10(11)(d).

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(i) There was an opportunity to acquire a bauxite mine owned and operated by Aluminia (Cambodia-Vietnam) Co Ltd ("ACV") at an undervalue.[23] LNT informed TDH that ACV was a State-owned Vietnamese company and he intended to acquire ACV through another company established by him in Cambodia, VICS M&E Co Limited ("VICS M&E").[24] The acquisition would provide very significant return for TDH because ACV had substantial amounts of bauxite reserve which could be exploited under a 99-year lease that it had already been granted by the Cambodian government.[25]

(ii) ACV's assets, which were valued at US$4.8b, could be leveraged upon together with capital provided one China Merchants Group ("CMG") to establish a fund, which was to be used to establish an investment bank provisionally named the "Indochina Development Bank" ("IDB"). The IDB's capital would be used to invest in other projects in Vietnam and Cambodia.[26]

(c) The material terms of the MOU relied on by TDH are as follows:

(i) Pursuant to the Representations, LNT was responsible for (1) procuring the acquisition of ACV through VICS M&E

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23 Defence in DCC at para 10(11)(d).

24 Defence in DCC at paras 10(11)(b)–10(11)(c)

25 Defence in DCC at para 10(11)(d).

26 Defence in DCC at para 10(11)(d)(iv)–10(11)(v).

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and (2) creating a fund of approximately US$9.6b to establish the IDB.[27]

(ii) LNT and TDH would contribute the required capital for the acquisition of ACV (US$20m) in equal proportions, *ie*, US$10m each, in two phases ("the Contribution Term").[28]

(d) Following the signing of the MOU, in satisfaction of the Contribution Term, TDH transferred to LNT the following (collectively, "the Capital Contributions"):[29]

(i) in May 2023, a sum of 46.9 billion VND to *LNT's* personal bank account;

(ii) between July and August 2023, a sum of 71 billion VND to *NVT* for the transfer of NVT's 40% shareholding in MV19 to LNT pursuant to the Transfer Agreement; and

(iii) in October 2023, a further sum of 84.2b VND to *LNT's* personal bank account.

(e) However, following the transfer of the Capital Contributions, LNT became largely unresponsive, and to date, he has failed and refused to procure the acquisition of ACV through VICS M&E or perform any of his obligations under the MOU.[30]

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27 Defence in DCC at para 10(11)(g).

28 Defence in DCC at paras 10(11)(f) and 10(11)(h).

29 Defence in DCC at para 10(12).

30 Defence in DCC at paras 10(14) and (15).

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11 Based on TDH's defence (at [10(d)(ii)] above), it would appear that the consideration provided to NVT for the transfer of his 40% shareholding in MV19 to LNT was provided *by TDH* and *not LNT*. On this, TDH pleads that it was specifically proposed by LNT himself, and agreed to between them, that the payment TDH had made to NVT for the transfer of NVT's 40% shareholding in MV19 would go towards TDH's satisfaction of the Contribution Term under the MOU.[31]

12 Relying on the above, TDH pleads that LNT is not entitled to any legitimate expectations in respect of the affairs of MV19 because: (a) LNT failed to perform his obligations under the MOU, including the Contribution Term and his obligation to procure the acquisition of ACV through VICS M&E; and (b) LNT also did not provide any consideration for the acquisition of NVT's 40% shareholding.[32]

TDH's pleaded case for the counterclaim

13 TDH's counterclaim is based on LNT's breach of the MOU and LNT's alleged fraud in procuring the MOU. The counterclaim repeats the facts pleaded in support of TDH's defence (at [10] above), namely, (a) the initial meeting between LNT and TDH facilitated by NQQ; (b) the Representations, which were made at meetings between January and April 2023, and in reliance on which TDH entered into the MOU; (c) the material terms of the MOU; and (d) the Capital Contributions made by TDH pursuant to the Contribution Term.

14 The counterclaim repeats the earlier pleading about LNT failing to perform his obligations under the MOU and elaborates on the same. In

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31 Defence in DCC at paras 13(b) and 13(f).

32 Defence in DCC at paras 15(a) and 15(b).

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particular, TDH pleads that LNT had failed to fulfil the purpose of the MOU because, to his knowledge: (a) VICS M&E has to date not acquired ACV; (b) ACV did not have a licence to exploit the bauxite mine; (c) the proposed fund with CMG as well as the IDB has not been established.

15 TDH also pleads that the Representations were fraudulently made by LNT. He pleads the following circumstances which led him to discover LNT's alleged fraud. In the course of December 2023, LNT updated TDH of each of the following developments, in sequence: (a) ACV was being re-registered as Alumina Cambodia Corporation ("ACC"); (b) the registration of TDH as 50% shareholder of VICS M&E and the registration of ACC had only just been completed; (c) ACV's license to exploit the bauxite mine had expired and that it was waiting for a similar licence to be granted; (d) the establishment of the IDB would only be completed in the first quarter of 2024 with US$75m in capital.[33] TDH pleads that these updates caused him alarm because they ran contrary to the Representations and the agreed timelines in the MOU.[34] TDH pleads that he subsequently followed up with LNT seeking further updates but no response was forthcoming.[35] Pursuant to his own investigations, he subsequently came to learn that VICS M&E continues to be a shell company with no known assets, including any ACV shares.[36]

16 Relying on the foregoing, TDH brings the following claims against LNT as part of his counterclaim:

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33 Counterclaim in DCC at para 38.

34 Counterclaim in DCC at para 39.

35 Counterclaim in DCC at para 42.

36 Counterclaim in DCC at para 46.

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(a) that LNT has committed a repudiatory breach of the MOU by failing to fulfil the Contribution Term and achieve the purposes of the MOU within the stipulated timelines;

(b) that LNT had made fraudulent misrepresentations to induce TDH to enter into the MOU;

(c) that LNT holds the Capital Contributions on trust for TDH, and that LNT has acted in breach of trust by failing to apply the Capital Contributions towards the purposes of the MOU, account to TDH for the use of the Capital Contributions and return any part of the Capital Contributions that was not applied towards the MOU; and

(d) that LNT has been unjustly enriched by his receipt of the Capital Contributions.

The applicable principles

17 Before turning to the parties' submissions, I set out the legal principles relevant to an application for stay of proceedings on grounds of *forum non conveniens*.

18 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

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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]).

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

SUM 1061 and the parties' submissions

19 LNT's counsel, Mr Francis Chan ("Mr Chan"), submitted that TDH's counterclaim should be dismissed and/or stayed on grounds of *forum non conveniens* because there were little to no connections between the counterclaim and Singapore. In fact, OC 665 had to be commenced in Singapore because MV19 is a Singapore-incorporated company and hence LNT's relief for minority oppression was sought under s 216 of the Companies Act 1967. There was no justification for TDH's counterclaim to also be commenced in Singapore as the facts underlying the counterclaim are quite distinct from those underlying LNT's minority oppression claim.

20 Mr Chan highlighted the following factors which showed that Singapore was *forum non conveniens*, and identified either Cambodia or Vietnam as the

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more appropriate forum for TDH's counterclaim to be tried: (a) the events and transactions underlying the counterclaim– namely, projects which the parties agreed to pursue under the MOU and the steps taken thereunder – all took place either in Cambodia or Vietnam and have no nexus to Singapore; (b) the witnesses likely to be called to testify for the counterclaim are also based in Vietnam; (c) the pleaded counterclaim relates to allegations that have no connection to Singapore; and (d) the applicable law of the MOU (which contains no express provision for governing law) is Vietnam or Cambodia law and this was a further factor which identified either of those jurisdictions, and not Singapore, as the more appropriate forum.

21 The primary submission made by TDH's counsel, Mr Tan Youliang ("Mr Tan"), was that LNT is precluded from challenging the jurisdiction of the Singapore courts in respect of the *counterclaim* because he had commenced the claim in OC 665 and therefore submitted to the jurisdiction of the Singapore courts similarly in respect of the *counterclaim*. Mr Tan argued that the principles in *Spiliada* are not strictly relevant in this context because the present case involves a stay sought in respect of a *counterclaim* and hence required a different approach to be taken. At law, there is no requirement that a *claim* and *counterclaim* must necessarily have nexus with each other, and if a stay were granted, it effectively allows LNT to bifurcate proceedings into multiple jurisdictions at his own choice and compels TDH to pursue his counterclaim elsewhere. However, Mr Tan submitted that, if the court were to apply the principles in *Spiliada*, the overlap between the claim and counterclaim in terms of the factual matrix and evidence required meant that it was procedurally convenient to have both tried together, and this identified Singapore as the more appropriate forum for the counterclaim to be tried. Alternatively, even if a stay were to be granted, it ought to be refused as TDH would be denied substantial

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justice by being compelled to take out proceedings in other jurisdictions where LNT had assets and was therefore worth suing.

The issues

22 SUM 1061 raised three key issues for decision:

(a) Whether a claimant is precluded from challenging the jurisdiction of the Singapore courts in respect of a counterclaim commenced against him by the defendant in the action, on grounds of *forum non conveniens*?

(b) If not, whether LNT has shown, for the first stage of the *Spiliada* test, that there is a more appropriate forum elsewhere for TDH's counterclaim to be tried?

(c) If so, whether there are any reasons of justice under the second stage of the *Spiliada* test requiring that a stay be refused?

23 Before addressing the issues proper, I make a brief comment on the *dismissal* of TDH's counterclaim, which LNT sought as the primary relief in SUM 1061. At the hearing, Mr Chan confirmed that the application in SUM 1061 is based on Singpaore being *forum non conveniens*. I accept that para 9 of the First Schedule to the Supreme Court of Judicature Act 1969 states that the court has the "[p]ower to dismiss or stay proceedings … by reason of a court in Singapore not being the appropriate forum the proceedings ought not to be continued". However, there was no legal authority cited to me as to why, if I considered Singapore to be *forum non conveniens* for TDH's counterclaim, the exceptional course of a *dismissal* rather than the usual *stay of proceedings* should be ordered. Mr Chan also did not stress or rely on any specific

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circumstances of the case as reasons for why I should adopt the exceptional course of ordering a dismissal if I found that Singapore was *forum non conveniens*. As such, I dealt with SUM 1061 on the basis that it was an application for a *stay* of TDH's counterclaim on grounds of *forum non conveniens*.

Whether a claimant is precluded from challenging the jurisdiction of the Singapore courts in respect of a counterclaim on grounds of *forum non conveniens*?

24 Mr Tan's submission on this point (at [21] above), if taken to its logical conclusion, effectively means that a counterclaim can *never* be challenged on *forum non conveniens* grounds. As I explain below, this is incorrect.

25 In the context of the Rules of Court (2014 Rev Ed) ("ROC 2014") and its predecessors, it has been held that a counterclaim is an independent cause of action which the court entertains as a separate action (see *Terrestrial Pte Ltd v Allgo Marine Pte Ltd and another and another appeal* [2013] 3 SLR 527 at [15]). The counterclaim is a creature of our civil procedure rules, and its rationale is to ensure that a defendant, who has a claim against the claimant or other person involved in the action, could pursue it in the same action and thereby save time, costs and avoid the inconvenience and complexity of separate proceedings (see *Drolia Mineral Industries Pte Ltd v Natural Resources Pte Ltd* [2002] 1 SLR(R) 880 ("*Drolia*") at [25]; Jeffrey Pinsler SC, *Singapore Civil Procedure: Volume II* (LexisNexis, 2022) at para 19-101). Given the independent character of a counterclaim, there is also no requirement that the subject matter of a counterclaim have any nexus with the subject matter of the claim in order that they could be tried together (see *Suresh Agarwal v Naseer Ahmad Akhtar* [2019] 2 SLR 672 ("*Suresh Agarwal*") at [25]). As explained by Lightman J in *Ernst & Young v Butte Mining plc (No 2)* [1997] 1 WLR 1485 (at

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1493, cited in *Droila* at [23]), "[t]he subject matter of the counterclaim need not be of the same nature as the original action or even analogous to it", and the only limitation on the causes of action that could be pursued in a counterclaim is that ordinarily applicable to the claim itself.

26 The previous judicial views expressed about the independent character of the counterclaim apply equally in the context of the Rules of Court 2021 ("ROC 2021") (see Chua Lee Ming editor-in-chief, *Singapore Rules of Court: A Practice Guide* (Academy Publishing, 2023) at para 06.027). Order 6 r 8 of the ROC 2021 states:

> If the defendant intends to *counterclaim* against the claimant, the defendant must file and serve *the counterclaim* with the defence.

27 Order 1 r 3(1) defines a "counterclaim" as having the same meaning as a "statement of claim", which is in turn defined also by O 1 r 3(1) to mean "a statement setting out the material facts which constitute the cause of action". The ROC 2021, like the ROC 2014 and its predecessors, similarly does not impose any limitation on the subject matter of a counterclaim. The first reference to "counterclaim" in O 6 r 8 is used in the sense of the defendant *bringing* a claim of its own against the claimant in the same action. The second reference to "counterclaim" is used in the sense of it being a *pleading* and containing all the material facts which constitute the cause of action pursued in the counterclaim, as defined in O 1 r 3(1) of the ROC 2021.

28 Following from the point that a counterclaim is in effect an independent action, there is no reason why a claimant should be precluded from challenging the jurisdiction of the Singapore courts on grounds of *forum non conveniens*, in respect of a counterclaim commenced against him by the defendant in the same action. If a claim and counterclaim are effectively independent actions and need

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not have any nexus in subject matter as a matter of law, the jurisdictions in which a claim and a counterclaim may be "tried suitably for the interests of all parties and for the ends of justice" (see *Rappo* ([18(a)] above) at [72], citing *Spiliada* ([18] above) at 476) could conceivably be different. Indeed, based on case law, applications to stay a counterclaim on grounds of *forum non conveniens* have been dealt with no differently from similar applications to stay a claim (see, for example, *Civelli, Carlo Giuseppe v Mulacek, Philippe Emanuel and another matter* [2019] SGHC 182 ("*Civelli*") at [96]; *Shahar v Tsitsekkos and others and another matter* [2004] All ER (D) 283 (Nov) ("*Shahar*")).

29 A *foreign* claimant (*ie*, one who is not within the jurisdiction of a Singapore court) who commences a claim against the defendant, is deemed to have submitted to the jurisdiction in respect of any matter that may properly be the subject of a counterclaim, and he cannot be heard to say that he has not submitted to the jurisdiction of the Singapore courts in respect of a counterclaim properly raised against him (see *Droila* ([25] above) at [22 and [28]]). However, any such submission to jurisdiction does not have the effect of precluding the claimant from challenging the jurisdiction of the Singapore courts in respect of the counterclaim on *forum non conveniens* grounds. A party's submission to jurisdiction goes towards the issue of whether the court *has* jurisdiction over the cause or matter (*ie*, the existence of jurisdiction). On the other hand, where a party challenges the court's jurisdiction on grounds of *forum non conveniens*, it only seeks to persuade the court to not *exercise* its jurisdiction, but in doing so, it necessarily must acknowledge the existence of the court's jurisdiction over the cause or matter (see *Halsbury's Laws of Singapore: Conflict of Laws* (LexisNexis, Vol 6(2)) at para 75.012). Indeed, in SUM 1061, it is *not* LNT's position that he has not *submitted* to the jurisdiction of the Singapore courts in respect of TDH's counterclaim; LNT's case is that Singapore is not the natural

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forum for the counterclaim to be tried. The fact of LNT's submission to jurisdiction does not preclude him from challenging the jurisdiction of the Singapore courts over TDH's counterclaim on *forum non conveniens* grounds.

Whether LNT has shown a more appropriate forum elsewhere for the counterclaim to be tried under the first stage of the *Spilida* test?

30 As such, I apply the two-stage *Spiliada* test to determine if there is any merit in LNT's stay application in SUM 1061. For the first stage, the parties' submissions identified four sets of connections to be examined:

(a) whether there is any nexus between the claim and the counterclaim and its significance for the purposes of the first stage of the *Spiliada* test;

(b) the connections arising from the events and transactions underlying the counterclaim;

(c) the personal connections of the witnesses who would likely be called to testify in relation to the counterclaim; and

(d) the governing law of the dispute.

Relationship or nexus between the claim and the counterclaim is a relevant connecting factor

31 A counterclaim is in effect an independent action and there is no requirement that the subject matter of a counterclaim must have any nexus with a claim (see [25] above). However, under the ROC 2014, O 15 r 5(2) states:

> If it appears on the application of any party against whom a counterclaim is made that *the subject-matter of the counterclaim ought for any reason to be disposed of by a separate action*, the Court may order the counterclaim to be struck out or may order

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> it to be tried separately or make such other order as may be expedient.
>
> [emphasis added]

32 While there is no legal impediment in having a claim and counterclaim heard together even if they engaged distinct subject matter, where the subject matter of a counterclaim and the subject matter of a claim are "completely alien" to each other, that can provide grounds for the court to order that the two be tried separately (see *Suresh Agarwal* ([25] above) at [25]). According to *Droila* ([25] above), O 15 r 5(2) of the ROC 2014 involves a two stage-test: (a) the first stage involves a balancing of the considerations of "procedural convenience" in favour of and against disposal of the claim and counterclaim in separate actions; (b) if this weighs in favour of disposal in separate actions, the second stage asks whether the counterclaim should be struck out or ordered to be tried separately. "Procedural convenience" raises questions of the extent to which the facts underlying the claim and counterclaim are linked, and whether there is an overlap in the evidence and witnesses required for the claim and the counterclaim (see *Droila* at [24]). In *Droila*, the court found that the claim and the counterclaim were intimately linked and the evidence given in support of both were similar, and hence it concluded that there was procedural convenience in having both disposed by way of a single action.

33 Order 9 r 25(13) appears to be equivalent of O 15 r 5(2) in the ROC 2021, but it is applicable only to a counterclaim brought in an action commenced by way of an originating application. For actions commenced by way of an originating claim, there appears to be no direct equivalent of O 15 r 5(2) in the ROC 2021, and the closest functional equivalent is O 9 r 11 of the ROC 2021, which states:

> The Court may order 2 or more actions to be consolidated, or order them to be tried together or one immediately after

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> another, or order any of them to be stayed pending the determination of the other action or actions, if the Court is of the opinion that —
>
> (*a*) there is some common question of law in the actions;
>
> (*b*) the reliefs claimed in the actions concern or arise out of the same factual situation; or
>
> (*c*) it is appropriate to do so.

34 Under O 9 r 11 of the ROC 2021, the court may order 2 or more actions to be separately tried if any of the circumstances specified in r 11 are present. However, given that O 9 r 11 is stated to be applicable to "2 or more actions", and since an "action" is defined in O 1 r 3(1) to mean "proceedings commenced by an originating claim or an originating application", it is unclear whether the court's power in O 9 r 11 extends to ordering the separate trials of a claim and a counterclaim which, strictly speaking, arise within the same *action* despite their independent character. Thus, there appears to be no express provision in the ROC 2021 for the court to order that a claim and counterclaim engaging entirely distinct subject matter be tried separately, though I do not think it is in doubt that such a course should be open to a court pursuant to O 3 r 2(2) where it is in the interests of justice and consistent with the Ideals in O 3 r 1 of the ROC 2021, for example, where there is no procedural convenience in having a claim and counterclaim tried together.

35 Quite apart from the issue of whether a claim and a counterclaim should be disposed by way of separate actions, in my view, the procedural convenience in having a claim and a counterclaim tried together is of itself relevant in the identification of the natural forum in which the counterclaim could be tried. If the parties do not dispute that the natural forum for a *claim* is Singapore, and if the court is satisfied of the procedural convenience in having the *claim* and the *counterclaim* tried together, such as if the evidence and witnesses required for

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the claim and counterclaim are identical or substantially overlap with each other, this must be an indication that the counterclaim can also be "tried more suitably for the interests of all the parties and for the ends of justice" (see *Rappo* ([18(a)] above) at [72]) in the jurisdiction in which the claim is to be tried. It is also in the jurisdiction in which the claim is tried where the trial of the counterclaim "could be held at least expense and inconvenience" (see *Best Soar Ltd v Praxis Energy Agents Pte Ltd* [2018] 3 SLR 423 ("*Best Soar*") at [19]). For instance, if the trial of the counterclaim would involve substantially the same witnesses testifying for the counterclaim as well utilise evidence that is already adduced for the claim, it necessarily produces cost savings for the counterclaim to be tried in the same jurisdiction as the claim, rather than have the counterclaim litigated afresh in another jurisdiction. Of course, procedural convenience must still be weighed against the other relevant connections under the first stage of the *Spiliada* test which are specific to the factual matrix of the counterclaim.

36 A case which illustrates the relationship between *procedural convenience* and the *forum non conveniens* analysis is *Shahar* ([28] above). To be clear, this was not cited by parties, and I had come across this only in the course of preparing these grounds. The facts were as follows. There were two actions before the court – the first was an action commenced by one Mr Shahar against various defendants including Mr Igor and Mr Cheklanov for various claims, including a claim that the defendants have conspired together to deprive Mr Shahar of the value of assets which he held through his company "Teamtrend" by taking steps to gain control of Teamtrend; the second was an action commenced by Mr Igor and Mr Cheklanov against Mr Shahar in which they sought an order that, pursuant to an agreement entered between parties in June 2002 ("the June 2002 Agreement"), Mr Cheklanov is the beneficial owner

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of the single share in Teamtrend which Mr Shahar owns. In the second action, Mr Shahar also brought counterclaims against Mr Igor and Mr Cheklanov and the reliefs sought were similar to the claims which Mr Shahar had advanced in the first action, including damages for conspiracy and other torts. There were various applications before the court, and the relevant one for present purposes was the application by Mr Igor and Mr Cheklanov to stay Mr Shahar's counterclaim in the second action on grounds of *forum non conveniens*.

37 The court rejected the stay application in relation to Mr Shahar's counterclaim for conspiracy and other torts. The court accepted that Mr Shahar, in defending the claims brought by Mr Igor and Mr Cheklanov in the second action, would in effect be raising the idea of a conspiracy as a defence. As such, "the core facts and penumbra" associated with Mr Shahar's counterclaim in the second action would be litigated as part of his defence in the second action in any event (see *Shahar* at [81]). Further, the trial of the part of Mr Shahar's counterclaim relating to conspiracy and other torts would not involve new issues or further evidential material over and above those which are involved in the trial of the claim to sustain a submission that Ukraine is the more appropriate forum for the counterclaim to be tried. In particular, the court noted that most of the witnesses and documentary evidence required for the counterclaim would already be made available in relation to the trial of the claim anyway (see *Shahar* at [82]–[83]). However, the court accepted that the part of the counterclaim in which Mr Shahar sought certain reliefs in subrogation, which were premised on Mr Shahar failing in his allegations of a conspiracy, ought to be stayed on grounds of *forum non conveniens* (see *Shahar* at [84]). This part of the counterclaim dealt with the consequences which followed if Mr Shahar failed in his allegations of conspiracy and was thus unrelated to the subject matter of the claim in the second action, and the factual issues it raised were also unlikely

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to be dealt with as part of the trial of Mr Shahar's conspiracy claim in the first action, and in the circumstances, Ukraine was the more appropriate forum for this part of the counterclaim (see *Shahar* at [84]).

38 The case of *Shahar* lends support for the view that the procedural convenience in having a claim and a counterclaim tried together is a relevant consideration in the identification of the natural forum of the counterclaim. The predominant reason why the court in *Shahar* concluded that the UK was the appropriate forum for the part of Mr Shahar's counterclaims relating to conspiracy and other torts to be tried was the procedural convenience in having that part of the counterclaim tried with the claim in the same action, which engaged similar factual issues and involved similar documentary evidence and witnesses. The court considered this to outweigh the other connections arising from this part of the counterclaim, such as the fact that the counterclaim was governed by Ukrainian law and required expert evidence of Ukrainian law (see *Shahar* at [81]).

39 LNT's counsel, Mr Chan, submitted that there was no procedural convenience in having the claim and counterclaim tried together because the MOU merely forms part of the background facts as to how LNT came to be a shareholder of MV19 and it does not hold much relevance in relation to the claim, especially since the alleged conduct giving rise to minority oppression does not touch upon the MOU.[37] I did not agree with this submission because it only appreciates the issues in a one-sided manner from the perspective of the claim. The issue of procedural convenience must be considered in relation to matters which LNT pleaded in support of the claim, as well as what TDH had pleaded in defence to the claim.

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[37] Notes of Arguments, 19 May 2025, p 6 lines 25–33, p 7 lines 1–11.

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40 Returning to the present case, I am satisfied that there is procedural convenience in having LNT's claim and TDH's counterclaim tried in the same forum because the subject matter of the claim and the counterclaim overlap with each other. TDH's defence to LNT's claims is that LNT is not entitled to any legitimate expectations in respect of the affairs of MV19 because, among other things, LNT failed to perform his obligations under the MOU (see [12] above). In other words, TDH relies on LNT's breach of the MOU as a defence to the minority oppression claim. The gist of TDH's counterclaim also involves LNT's breach of the MOU and two of the four claims pursued by TDH specifically engage this: (a) that LNT committed repudiatory breach of the MOU; and (b) that LNT failed to apply the Capital Contributions towards the purposes of the MOU and thus was in breach of trust (see [16] above). Given the overlap in subject matter, the trial of a significant part of TDH's counterclaim would involve evidence and witness testimony that would already have to be adduced as part of the trial of LNT's claim. In these circumstances, there is procedural convenience in having TDH's counterclaim also tried in Singapore, where LNT's claim would be tried and TDH's defence regarding the breach of MOU would be ventilated as part of that claim. This gives rise to a connecting factor pointing towards Singapore for the first stage of the *Spiliada* test.

41 I accept that there are two other parts of TDH's counterclaim which do not overlap with LNT's claim: (a) that LNT had made fraudulent misrepresentations to induce TDH to enter into the MOU; and (b) that LNT has been unjustly enriched by his receipt of the Capital Contributions. These aspects of the counterclaim do not, strictly speaking, overlap with TDH's defence based on LNT's breach of the MOU. However, I do not think this detracts from my conclusion above that there is procedural convenience in having both the claim and the counterclaim (as a whole) tried together. These other aspects of TDH's

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counterclaim, although not directly based on LNT's breach of the MOU, involve the same underlying factual matrix as well as the same witnesses and evidence adduced in connection with the parts of the counterclaim involving the MOU. I do not think the threshold for procedural convenience is so high that it could only be found where the counterclaim and claim overlap on all fours in terms of the factual matrix and evidence adduced – where that is the case, it might well be that a stay *must* be refused pursuant to the second stage of the *Spiliada* test in any event, even if the court is satisfied that the natural forum of the counterclaim is *not* Singapore (see [70] below).

The other connections

42 Under the first stage of the *Spiliada* test, the court attributes differing weight to each factor depending on whether they are material to the fair determination of the dispute. The court will weigh the connecting factors with reference to the likely issues, and connections which have little or no bearing on the adjudication of the issues in dispute between the parties will generally carry little weight (see *Sinopec International (Singapore) Pte Ltd v Bank of Communications Co Ltd* [2024] 3 SLR 476 ("*Sinopec*") at [62]).

43 Therefore, before turning to the other connections, I first consider what are the likely issues in dispute arising in respect of TDH's counterclaim. As mentioned, the gist of the counterclaim is LNT's breach of the MOU, as well as the dealings between LNT and TDH in relation to the MOU. Based on TDH's pleaded counterclaim, the main factual issues in dispute are:

(a) what had been agreed between LNT and TDH as part of their agreement under the MOU;

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(b) whether LNT had performed his obligations under the MOU, including in particular whether he had fulfilled the Contribution Term and took steps to procure the various business ventures which he said he would pursuant to the MOU, such as the acquisition of ACV and the establishment of the IDB;

(c) what representations LNT had made to procure TDH's entry into the MOU; and

(d) whether those representations were false and if so, whether LNT knew they were false.

The events and transactions underlying the counterclaim

44 With that, I turn to consider the first connection – the events and transactions underlying the counterclaim. These connections are relevant for the first stage of the *Spiliada* test because it is assumed that evidence would typically be found in the jurisdiction where these events and transactions occur, which is also likely where the trial could be held at least expense and inconvenience (see *Shen Sophie v Xia Wei Ping and others* [2023] 3 SLR 1092 ("*Shen Sophie*") at [124]; *Best Soar* ([35] above) at [18]).

45 I agree entirely with Mr Chan that there are little to no connections between Singapore and the events and transactions underlying the counterclaim in Singapore. As pointed out by LNT in his supporting affidavit in SUM 1061 (none of which were rebutted by TDH in his reply affidavit), the relevant events and transactions all took place in either Vietnam or Cambodia:

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(a) The initial introductory meeting between the parties, which was arranged by NQQ, took place in Vietnam.[38]

(b) The bauxite mine which the parties intended to acquire under the MOU is located in Cambodia, and the companies involved are also not Singapore-incorporated companies – such as ACV, which is incorporated in Vietnam, and VICS M&E, which is incorporated in Cambodia.[39]

(c) The in-person meetings between the parties (at which the Representations (abbreviated at [10(b)] above) were allegedly made) took place in Vietnam and the MOU was also signed in Vietnam. Any written communications exchanged between the parties, either on Viber or WhatsApp, were also exchanged while LNT was in Vietnam.[40]

(d) The obligations under the MOU – in particular, the acquisition of ACV and the establishment of the IDB – were envisaged to be performed in either Vietnam or Cambodia.[41]

(e) TDH's payments under the MOU (*ie*, the Capital Contributions) were made from his bank account in Vietnam, and the monies were also received by LNT through his bank account in Vietnam.[42]

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38 5th affidavit of Le Ninh Tien ("5-LNT") at para 15.

39 5-LNT at paras 17–21.

40 5-LNT at paras 24 and 27.

41 5-LNT at para 29.

42 5-LNT at para 33.

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46 The fact that the events giving rise to a cause of action arose in a particular country does not necessarily identify that country as the most appropriate forum to try the case, and the court has to consider with what forum the *issues* have the closest connection (see *Perwira Habib Bank Malaysia Bhd v Soon Peng Yam and others* [1994] 3 SLR(R) 768 at [21]). The locations of the envisaged projects under the MOU, as well as where the parties met and where the obligations under the MOU were to be performed, are simply coincident with where the parties' business interests were. However, those business interests do not form the subject matter of the counterclaim, the gist of which simply involves what LNT and TDH had agreed between themselves under the MOU and what LNT had done or did not do pursuant to that agreement. The key actors who can shed light on the issues raised by the counterclaim are LNT and TDH. For instance, *only* LNT and TDH can shed light on what they had agreed to under the MOU, and *only* LNT can shed light on the steps which he had taken in pursuit of the agreement under the MOU and whether any representations which he made to TDH to procure the latter's entry into the MOU were false. In my view, the evidence which could be obtained from Vietnam or Cambodia does not appear to be of any greater relevance or significance than the evidence of LNT and TDH themselves. It goes without saying that LNT and TDH would already be testifying before the Singapore courts in relation to LNT's minority oppression claim. As such, while I accept that the relevant events and transactions created connections in favour of Cambodia or Vietnam, I do not think they are material to the key factual issues in dispute, and hence I do not attribute them any weight in the first stage of the *Spiliada* test.

47 A specific example of how the underlying events and transactions give rise to relevant connecting factors under the first stage of the *Spiliada* test is the

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general rule, applicable to tort claims, that the place where a tort occurred is *prima facie* the natural forum for the tort claim, though this presumption can be displaced where it is shown that the place of the tort was merely fortuitous, or if the tortious claim is parasitic on other non-tortious claims to be determined in a different fora (see generally *Shen Sophie* ([44] above) at [124]). This rule is engaged here because one of TDH's counterclaims is a claim for fraudulent misrepresentation.

48 The test applied to determine the place of the tort is that which looks at the events constituting the tort and asks where, in substance, the cause of action arose (see *JIO Minerals FZC and others v Mineral Enterprises Ltd* [2011] 1 SLR 391 ("*JIO Minerals*") at [90]). In *JIO Minerals* (at [93]), the Court of Appeal stated in *obiter* that an alternative formulation of the rule, specifically applicable in the context of misrepresentation claims and where a representation was received and acted upon in a single jurisdiction, is that that jurisdiction should be the place of the tort unless it was fortuitous or if the receipt and reliance occurred in different countries. Applying either version of the rule, I am satisfied that the place of the tort underlying the claim for fraudulent misrepresentation is Vietnam, given the claimant's unrebutted evidence that (a) the in-person meetings at which LNT allegedly made the Representations to TDH took place in Vietnam and (b) the meeting between TDH and LNT to sign the MOU, which is also where the Representations were acted upon by TDH, also took place in Vietnam (see [45(c)] above)

49 Since the place of the tort underlying the fraudulent misrepresentation claim is Vietnam, a presumption arises that Vietnam is the natural forum for the tort claim. However, this is but one of the factors to be considered in the overall analysis, albeit a significant one (see *Rickshaw Investments* ([18] above) at [50]). For reasons similar to those which I have explained earlier (at [46] above),

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I do not think this factor should be given much weight with respect to identifying the natural forum for the fraudulent misrepresentation claim. First, the resolution of the disputed factual issues in the fraudulent misrepresentation claim will turn on evidence from LNT and TDH (the only parties involved in the Representations), who will already be coming before the Singapore courts to testify in relation to the minority oppression claim. It does not appear to me that any documentary evidence or witness testimony that could only be obtained from Vietnam would shed better light on the disputed factual issues than the evidence of LNT and TDH themselves. Even if documentary evidence were required, I do not see why LNT could not produce and rely on them at a trial in Singapore. The location of documentary evidence generally does not present a weighty connecting factor since documentary evidence is easily transportable between jurisdictions in this digital age (see *Sinopec* ([42] above) at [162], citing *John Reginald Stott Kirkham and others v Trane US Inc and others* [2009] 4 SLR(R) 428 at [40]). Secondly, the Representations, which underlie the part of TDH's counterclaim for fraudulent misrepresentations, were ultimately made in connection with the MOU. As such, the evidence and witnesses required for this part of the counterclaim would be substantially similar to that required in relation to the remainder of the counterclaim relating to LNT's breach of the MOU. Since such evidence and witnesses would already be before the Singapore courts in connection with TDH's defence to the minority oppression claim as well as the remainder of TDH's counterclaim, having the claim for fraudulent misrepresentation tried in Singapore with the remainder of TDH's counterclaim would appear to occasion the least cost and expense.

The personal connections of the likely witnesses

50 The personal connections of witnesses encompass two factors – the locations in which they are ordinarily resident and where they are compellable

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to testify (see *JIO Minerals* at [63]). These connections tend to assume greater significance where the main disputes in the action revolve around questions of fact, because there would be savings of time and resources if the matter is tried in the forum in which witnesses reside and where they are clearly compellable to testify (see *Rickshaw Investments* at [19]).

51 LNT's case is that the personal connections of the likely witnesses identified Vietnam as the more appropriate forum. He identified the following persons as likely witnesses: (a) TDH himself, whose business interests appear to be mainly in Vietnam; (b) NVT, who is a Vietnamese national based in Vietnam; (c) NQQ, who facilitated the first meeting between LNT and TDH (see [13] above), is similarly a Vietnamese national based in Vietnam; and (d) any other persons present at the signing of the MOU, who are likely Vietnamese nationals, are also based in Vietnam.[43]

52 I accept that the personal connections of the likely witnesses is a significant factor given that the key issues in dispute in the counterclaim involve questions of fact (see [43] above). However, I do not think the personal connections of the witnesses identified by LNT can be given much weight, for the reasons explained below.

53 First, TDH is obviously a relevant witness given that he is at the heart of the dispute regarding the MOU, but even if I were to accept that he is indeed located and based in Vietnam (to be clear, there was no affidavit evidence on this point), I do not think this is of any significance. TDH is a defendant to the claim in OC 665, and he would obviously be appearing before the Singapore courts to testify in support of his defence to the claim. There would be no issue

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

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in securing his attendance before the Singapore courts to also testify for the purposes of the counterclaim. The issue of compellability of witnesses should be focused on *third-party witnesses* over whom the parties to the dispute have no control and whom the parties may not be able to persuade to give evidence voluntarily in absence of their compellability (see *Ivanishvili, Bidzina and others v Credit Suisse Trust Ltd* [2020] 2 SLR 638 ("*Ivanishvili*") at [84]).

54 Secondly, as for NVT, I accept that he can give evidence on whether TDH had indeed provided the consideration for the 40% shareholding that was transferred by NVT to LNT. This evidence is relevant in respect of the *counterclaim* (in which TDH claims he had performed all his obligations under the MOU, including that he had fulfilled the Contribution Term, but that LNT had failed to do so) as well as the *claim* (since it is TDH's defence that LNT did not provide any consideration for the 40% shareholding and thus not entitled to any legitimate expectations in respect of MV19, which LNT disputes). However, it is pleaded by TDH that NVT is his "close business associate".[44] As such, I do not think TDH would face any difficulty faced in procuring NVT's attendance before the Singapore courts to testify in relation to both the claim and counterclaim. On this note, Mr Tan had also indicated at the hearing of SUM 1061 that NVT will be giving evidence for the defendants at the trial of OC 665.[45]

55 Thirdly, as for NQQ, I do not think his evidence is of much relevance to the dispute in the counterclaim and accordingly no connecting factor arises by virtue of him being located in Vietnam. I note LNT has not given evidence on affidavit as to where NQQ is located but for the sake of argument, I assume, as

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44 Defence in DCC at paras 10(e).

45 Notes of Arguments, 19 May 2025, p 11, lines 7–8.

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Mr Chan submitted, that NQQ is indeed located in Vietnam. Based on the counterclaim, TDH was introduced to LNT by NQQ through a meeting in 2022, and it was further pleaded that LNT and NQQ shared a close relationship.[46] However, I do not think the initial introduction between the parties facilitated by NQQ is of relevance to the key factual issues in dispute. After all, the agreement in the MOU which forms the basis of the counterclaim was reached between TDH and LNT *subsequent* to that initial meeting, and it also does not involve NQQ. Further, the Representations which underlie the claim for fraudulent misrepresentation were also made by LNT to TDH personally at a subsequent meeting and *not* at the initial meeting facilitated by NQQ,[47] and it is also not pleaded in the counterclaim that any other party, apart from TDH and LNT themselves, were present at the meetings where the Representations were made.

56 Finally, as for the persons who are said to have witnessed the signing of MOU, I do not think they give rise to any relevant connections at all. In the first place, LNT has not provided any evidence as to *who* these persons are and it would be pure speculation to say that these persons are located and only compellable to testify in Vietnam. Since it is LNT who bears the legal burden under the first stage of the *Spiliada* test (see *Ivanishvili* ([53] above) at [60]), he must adduce cogent evidence as to who these persons are and where they are likely to be located and thus compellable to testify. In any event, I do not think these persons offer any evidence that is relevant to the counterclaim. As explained, the key factual issues in dispute centre around the MOU and the Representations, and the two key witnesses who can shed light on these issues – LNT and TDH – will necessarily be before the Singapore courts by virtue of

46 Counterclaim in DCC at paras 11–12.

47 Counterclaim in DCC at paras 19–20.

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the trial of the minority oppression claim in OC 665. I do not think evidence of those persons who witnessed the signing of the MOU can be of any relevance since the issue of what was agreed under the MOU, which would turn on its written terms and the evidence of the parties to the MOU.

The governing law of the dispute

57 Where the applicable law of a dispute is foreign law, it can be regarded as a relevant connecting factor where the forum will be less adept in applying that law than the foreign court, 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]).

58 It is not in dispute that the MOU, the terms of which have been pleaded in the joint defence,[48] does not contain any express provision for governing law.[49] As such, the exercise of determining the governing law of the MOU involves two stages: (a) first, whether the intention of the parties as to the governing law can be inferred from the circumstances; and (b) secondly, if this cannot be done, the system of law with which the contract has its most close and real connection would be taken, objectively, as the governing or proper law of the contract (see *Pacific Recreation Pte Ltd v S Y Technology Inc and another appeal* [2008] 2 SLR(R) 491 at [36]). Mr Chan submitted, given the events and transactions underlying the counterclaim, all of which took place in either Vietnam or Cambodia, it could *not* have been the parties' intentions for Singapore law to be the governing law of the dispute. Mr Chan submitted that either Vietnam or Cambodia law could be the governing law of the MOU, but

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48 Defence in DCC at para 10(9).

49 Claimant's written submissions at para 23.

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he did not specify which ought to be the governing law, and if so, whether this was to be inferred pursuant to the parties' intentions, or whether this was the objective proper law of the MOU.[50]

59 Given the absence of any connection between the events and transactions underlying the counterclaim and Singapore, I accept Mr Chan's submission that it would not have been the parties' intention for Singapore law to govern the MOU, and neither is it likely for Singapore law to be the objective proper law of the MOU. However, even if I were to proceed on the basis that the governing law of the MOU was either Vietnam or Cambodia law, I am not satisfied that this identifies Vietnam or Cambodia as the more appropriate forum for the counterclaim to be tried, for the following reasons.

60 First, LNT has not shown that there is likely to be any serious dispute on how Vietnam or Cambodia law is to be applied in relation to the dispute under the MOU, or that a Singapore court would necessarily face difficulty in applying Vietnam or Cambodia law (see *CIMB Bank* at [62]–[63]). Further, since foreign law is applied in relation to the parties' private dispute under the MOU, the issues of foreign law raised are not of such a nature that they must be reserved exclusively for determination by either the Vietnam or Cambodia courts applying their own laws (see, for example, *Eng Liat Kiang v Eng Bak Hern and others* [1994] 3 SLR(R) 594 at [39])

61 Secondly, if expert evidence on foreign law is required in relation to the dispute under the MOU, such evidence would already have been adduced by the parties in connection with the claim in OC 665. This is because TDH relies on

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[50] Claimant's written submissions at paras 26–27; Notes of Arguments, 19 May 2025, p 5 lines 29–33, p 6 lines 1–2.

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LNT's breach of the MOU as a reason why LNT is not entitled to legitimate expectations in respect of MV19's affairs. Of course, the breach of the MOU as well as the foreign law issues raised might have to be canvassed at a deeper level if it were dealt with as part of the counterclaim, than if it were dealt with as a defence to the claim. However, given that the bulk of foreign law evidence relating to the MOU would already be adduced as part of the evidence relating to the claim, even if the governing law of the MOU gave rise to a relevant connecting factor, I would consider it as being outweighed by the cost and resource savings in having the counterclaim tried in Singapore with the claim.

62 Mr Chan's submissions regarding governing law focused on the governing law of the MOU. However, TDH's counterclaim also involved non-contractual claims, namely, the claims for breach of trust, unjust enrichment and fraudulent misrepresentation by LNT. I therefore also consider the governing law of these claims to determine if they give rise to any relevant connections under the first stage of the *Spiliada* test.

63 For the claims for breach of trust and unjust enrichment, the governing law of the MOU would similarly apply. For the claim in breach of trust, which is a claim in equity, the identification of the applicable law 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* (see *Rickshaw Investments* ([18] above) at [76]). For the claim in unjust enrichment, the obligation to restore the benefit of an enrichment obtained at another person's expense is governed by the proper law of the *obligation*, and where the obligation arises in connection with a contract, the proper law is the proper law of the contract (see *Kuswandi Sundarga v Sutatno Sudarga* [2022] SGHC 299 at [56]). Both approaches would identify the governing law of the MOU (*ie*, either Vietnam or Cambodia law) as the

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applicable law of both claims, since the origins of the obligation giving rise to the claim in breach of trust and the claim for unjust enrichment lies in the MOU. As for the claim in fraudulent misrepresentation, given my earlier conclusion that the place of the tort underlying the fraudulent misrepresentation claim is Vietnam, I accept that the applicable law of the tort, or the *lex loci delicti*, is Vietnam law (see *JIO Minerals* ([48] above) at [95]).

64 However, for reasons similar to those which I have explained earlier (at [60]–[61] above), I do not think the applicable law of each of these other claims identified either Vietnam or Cambodia as the more appropriate forum. First, LNT has not adduced evidence on either Vietnam or Cambodia law to show that a Singapore court would necessarily face difficulty in applying such laws. Secondly, if evidence of foreign law is required in relation to the dispute under the MOU, such evidence would already have been adduced by the parties in connection with the claim in OC 665. If each of these other claims also require evidence of foreign law, it would merely augment the scope of foreign law evidence required by the court. In these circumstances, it would still produce resource and cost savings to have these other claims tried together with the claim, where foreign law evidence (albeit of a more limited scope) already has to be adduced. Therefore, even if the applicable law of these other claims gave rise to a relevant connecting factor, I would similarly consider it as being outweighed by the procedural convenience in having the counterclaim tried in Singapore with the claim.

Conclusion on the first stage of the **Spiliada** *test*

65 For the reasons above, I do not think LNT has discharged his burden under the first stage of the *Spiliada* test to show that either Vietnam or Cambodia is the more appropriate forum for TDH's counterclaim to be tried. At the

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primary level, the procedural convenience in having LNT's claim for minority oppression tried with TDH's counterclaim identifies Singapore – which the parties do not dispute is the appropriate forum for the minority oppression claim – also as the more appropriate forum for the counterclaim (see [40] above). While factors such as the events and transactions underlying the counterclaim as well as the personal connections of the witnesses indeed point to either Vietnam or Cambodia, these connections were either not material to the issues in dispute (see [46] and [49] above) or ought not to be given weight in the circumstances of this case (see [52] above). I accept that the law applicable to the dispute is either Vietnam or Cambodia law, but LNT has not persuaded me that this ought to be a reason why the counterclaim should be tried in those jurisdictions (see [60] above). More importantly, the procedural convenience in having TDH's counterclaim tried in Singapore with the claim, where some aspects of foreign law would already have to be adduced in relation to the MOU, outweigh any cost and resource savings associated with having a court in Vietnam or Cambodia applying its own laws to the issues raised in the counterclaim (see [61] above).

Whether there are any reasons of justice requiring that a stay be refused?

66 For the reasons above, I am not satisfied that a stay of TDH's counterclaim ought to be granted. As such, it is not necessary for me to consider the second stage of the *Spiliada* test. However, if I had to consider the issue, I do not think there would have been grounds on which a stay could be refused under the second stage of the *Spiliada* test, for the two reasons explained below.

67 First, I do not agree with Mr Tan's submission that TDH would be denied substantial justice because a stay of his counterclaim would compel him to take out proceedings in other jurisdictions in which LNT had assets and was

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worth suing. This submission is effectively based on the ease of enforcement which TDH would enjoy if he pursued LNT in Singapore, where he believed LNT held assets. However, a court proceeds cautiously before it pronounces that a litigant will experience a deprivation of substantial justice if it is left to seek recourse in an available and appropriate foreign forum (see *Rappo* ([18(a)] above) at [110]). The mere fact that a claimant would be deprived of a legitimate personal or juridical advantage that it would otherwise enjoy by proceeding in the forum is not decisive (see *Rickshaw Investments* ([18] above) at [13]). Against these principles, I do not think the ease of enforcement of any judgment obtained has a bearing on the broad question under the second stage of the *Spiliada* test, which is whether a foreign court would be able to try the dispute between the parties in a manner that is procedurally and substantively fair (see *Rappo* at [110]). Indeed, if such ease of enforcement were a relevant consideration, it effectively reduces the natural forum analysis under the first stage of the *Spiliada* test to nothing because it can justify the claimant pursuing the action in any jurisdiction in which it enjoyed greatest ease of enforcement or which it feels the defendant is worth suing, even if that jurisdiction had no substantive connections with the dispute.

68 Secondly, although I have concluded that there will be procedural convenience in having LNT's claim tried with TDH's counterclaim and so this identified Singapore as the natural forum for the dispute to be tried, I do not think the counterclaim was connected to the claim in such a manner that it would nonetheless warrant the refusal of a stay, if I had found at the first stage of the *Spiliada* test that there were other connecting factors identifying Vietnam and Cambodia as the more appropriate forum for the counterclaim to be tried. On this note, *PT Hutan Domas Raya v Yue Xiu Enterprises (Holdings) Ltd and another* [2001] 1 SLR(R) 104 ("*Yue Xiu Enterprises*") is relevant. In that case,

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the claimants (companies incorporated in Hong Kong) brought an action against a company incorporated in Indonesia ("PT Hutan") and the chief executive of the company ("Kho") for the recovery of debts arising from (a) a memoranda executed by Kho on behalf of PT Hutan acknowledging debts it owed to the claimants and (b) two personal guarantees executed by Kho in respect of the sums which PT Hutan undertook to pay under the memoranda. Kho did not challenge the jurisdiction of the Singapore courts in respect of the proceedings against him, which went ahead. However, PT Hutan applied to set aside the service of originating process, or in the alternative, that the action against it be stayed on grounds of *forum non conveniens*.

69 The High Court found, with which the Court of Appeal agreed, that Indonesia was the more appropriate forum for the action against PT Hutan to be tried as the connecting factors of the dispute pointed to Indonesia (see *Yue Xiu Enterprises* at [12]). However, the High Court considered that it would be wrong to stay the action against PT Hutan, because there are similarities of issues between the action against PT Hutan and the action against Kho (which was already at an advanced stage) and so it would likely result in conflicting outcomes if the actions against PT Hutan and Kho were heard in different courts, and further, there would be no undue inconvenience or expense in having the claim against PT Hutan heard in the Singapore courts since the witnesses which PT Hutan requires to defend its claim would largely be the same as those which Kho required to defend the claim against him (see *Yue Xiu Enterprises* at [13]). The Court of Appeal agreed with the High Court's reasons and concluded that the ends of justice would be better served if the actions against PT Hutan and Kho could be disposed of in the same forum (see *Yue Xiu Enterprises* at [27]). In particular, the Court of Appeal noted that effectively the same issues would be canvassed in both sets of actions, and to the extent that the same issues

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were involved, the witnesses or experts called in both sets of actions would also be identical (see *Yue Xiu Enterprises* at [23]).

70 The decision in *Yue Xiu Enterprises* suggests that, where one action is so closely related to another action that is also pursued in the forum, such that a stay of the former action would effectively compel the claimant in that action to bring his claim in another jurisdiction and result in a duplication of resources and conflict of decisions if the two actions were pursued and tried in different jurisdictions, it would not be in the interests of justice for the former action to be stayed, and so a stay of the former action ought to be refused under the second stage of the *Spiliada* test, even if it is shown that the more appropriate forum for the former action is a foreign jurisdiction. However, in my view, for a case to fall within the scenario contemplated in *Yue Xiu Enterprises*, the two actions in question (whether it be two claims, or a claim and a counterclaim) must involve near identical issues and require substantially similar if not identical evidence. The overlap between the two actions must be of such an extent that the claimant would be denied substantial justice if it were required to pursue the two actions in different jurisdictions, and this far exceeds that which is required for a finding of procedural convenience in having a claim and counterclaim tried together. Indeed, if mere procedural convenience would suffice, it effectively excludes counterclaims from the *forum non conveniens* analysis, because this means no counterclaim can ever be stayed so long as it raised some overlapping issue with the matters raised in the claim.

71 The level of overlap in *Yue Xiu Enterprises* between the actions against PT Hutan and Kho was sufficient, which the High Court accepted had "unusual features" and warranted the refusal of a stay of proceedings (see *Yue Xiu Enterprises (Holdings) and another v PT Hutan Domas Raya and another* [2000] 2 SLR(R) 326 at [20]). The subject matter of the actions against PT

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Hutan and Kho were identical since it concerned debts owed by PT Hutan, the defendants were sued in their respective capacities as principal debtor and guarantor, and PT Hutan's defence was also encompassed by that of Kho's. A stay of the action against PT Hutan would result in the claimants pursuing what is effectively the *same action* in two different jurisdictions. In this case, the extent of overlap between LNT's claim and TDH's counterclaim which I have found does not rise to the level contemplated in *Yue Xiu Enterprises* because the claim and counterclaim were not on all fours with each other, and the counterclaim, while canvassing part of the issues raised in the claim (LNT's defence for breach of the MOU) also engaged other issues (such as fraudulent misrepresentation, breach of trust and unjust enrichment).

Conclusion

72 For the reasons above, I dismissed SUM 1061. I do not think a stay of TDH's counterclaim is warranted. The connections pointing towards Vietnam and Cambodia which LNT had identified were not material to the issues in the case or ought to be given no weight. Instead, the procedural convenience in having TDH's counterclaim tried with LNT's claim meant that it was in the interests of justice for both claims to be tried together, and this identified Singapore as the more appropriate forum for the counterclaim.

73 In terms of costs, Mr Tan argued that TDH should be awarded $12,000 (all in), in particular, having regard to the fact that SUM 1061 was unmeritorious and that LNT had acted in abuse of process by bringing the application. On the other hand, Mr Chan submitted that $8,000 plus reasonable disbursements would suffice, and he argued that LNT was fully entitled to bring SUM 1061.

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74 I do not think SUM 1061 was so baseless and I also do not think there was anything in LNT's conduct so that his bringing of SUM 1061 could be characterised as an abuse of process. As such, I determined the appropriate quantum of costs based on the length of the submissions and papers filed and the duration of the hearing, and having done so, I ordered LNT to pay to TDH costs of $9,500 (all in).

Perry Peh
Assistant Registrar

Francis Chan and Alexius Chew (Titanium Law Chambers LLC) for the claimant and defendant-in-counterclaim;
Tan Youliang and Jaspreet Kaur (Tito Isaac & Co LLC) for the sixth defendant and claimant-in-counterclaim.

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