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

[2025] SGHC 240

Originating Claim No 665 of 2024 (Registrar's Appeal No 118 of 2025)

Between

Le Ninh Tien

… *Claimant*

And

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

… *Defendants*

JUDGMENT

[Conflict of Laws — Natural forum]

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v
Rainbow Forest Enterprises Ltd and others

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Aidan Xu @ Aedit Abdullah J
19 August 2025

4 December 2025 Judgment reserved.

Aidan Xu J @ Aedit Abdullah J:

1 This appeal from the decision of the learned Assistant Registrar ("AR") throws up issues about the relative weight and salience of some of the usual connecting factors considered in *forum non conveniens* applications: the location and availability of witnesses and evidence, and consideration of foreign law. The weight to be given to procedural convenience and overlap of matters is also in dispute here.

2 Having considered the arguments, I have concluded that the appeal should be dismissed, on the ground that it has not been shown that foreign fora are more appropriate than Singapore, and thus that no stay should be ordered against the counterclaim being pursued by the respondent against the appellant.

Background

The parties

3 The claimant in HC/OC 665/2024 ("OC 665") and the appellant in the present case, Mr Le Ninh Tien ("Appellant"), seeks reliefs for minority oppression arising in connection with the affairs of Song Doc MV19 Pte Ltd ("Company"), a Singapore-incorporated company. The Appellant is a director and 40% shareholder of the Company. The first defendant, Rainbow Forest Enterprises Limited ("RFE"), holds 59% of the Company's shares, and the fourth defendant, Mr Gordon Roy Bate, holds the remaining 1%. The sixth defendant and the respondent in the present case is Mr Truong Dinh Hoe ("Respondent"), the ultimate beneficial owner of RFE and thereby its 59% shareholding in the Company. The second and third defendants are nominee shareholders of the Company.[1]

4 The Company is an asset-holding vehicle, whose sole asset is the vessel FPSO Song Doc Pride MV 19 ("Vessel"). The Vessel engages in floating production storage and offloading operations.[2]

OC 665

Appellant's pleaded claim

5 The Appellant's main contention in his pleaded claim ("Claim") is that since he became a director and shareholder of the Company, the defendants in OC 665 have conducted the affairs of the Company in a way that has been unfair

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1 Statement of Claim (Amendment No 1) ("SOC") at paras 1–4; Defence in the Joint Defence of the 1st to 4th and 6th Defendants and Counterclaim of the 6th Defendant (Amendment No 1) ("D&CC") at paras 1–4.

2 SOC at para 7; Defence in the D&CC at para 7.

and oppressive to his interests, contrary to the personal relationship of mutual trust and confidence between himself and the Respondent which grounded his involvement in the Company.

6 According to the Appellant, he became acquainted with the Respondent in 2022. The Respondent was looking for new projects to deploy the Vessel after its engagement at the Song Doc Oil Field concluded, and was having internal conflicts with his business associate, Mr Nguyen Van Thu ("NVT"), who then beneficially held 40% of the Company's shares. The Respondent thus took interest in the Appellant, who had opportunities for the Vessel to be deployed in Cambodia or the overlapping area between Cambodia and Thailand.[3]

7 On 6 May 2023, the Respondent met with the Appellant to discuss their collaboration on various business ventures and the Appellant's acquisition of an interest in the Vessel and its usage. The terms of the parties' discussions were recorded in a Memorandum of Understanding dated 6 May 2023 ("MOU"):[4]

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

(b) The Respondent invited the Appellant to take over NVT's 40% shareholding in the Company at a consideration of VND 70bn.

(c) The parties agreed that the Vessel would be used for the exploration of oil and gas in Cambodia and/or the overlapping area between Cambodia and Thailand.

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3 SOC at paras 10–11.

4 SOC at para 12.

8 In July 2023, the Respondent arranged for the Appellant to enter into an agreement with NVT to acquire all of his interests in the Vessel at a consideration of VND 71m ("Transfer Agreement"). According to the Appellant, payment was made in US dollars to the Respondent, for the Respondent to deliver to NVT. Of this sum, US$4,000 constituted the transfer price for NVT's 40% shareholding, and the remainder would be applied towards the maintenance and upkeep of the Vessel. Pursuant to the Transfer Agreement, the Appellant was also appointed as a director of the Company.[5]

9 The Appellant's involvement in the Company was thus grounded in a personal relationship of mutual trust and confidence between himself and the Respondent. The Appellant's discussions and negotiations with the Respondent gave rise to shared understandings and legitimate expectations as to the governance of the Company's affairs and the Vessel's usage.[6]

10 However, after the Appellant became a shareholder and director of the Company, the first to fourth defendants in OC 665 began to engage in oppressive and commercially unfair conduct on the instructions of the Respondent. The Appellant thus seeks relief against the defendants in OC 665 under s 216 of the Companies Act 1967 (2020 Rev Ed) ("CA").[7]

Defendants' pleaded defence

11 The first to fourth defendants as well as the Respondent have filed a joint defence ("Defence") to the Claim. In particular, they raise the defence that the

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5 SOC at para 13.

6 SOC at para 15.

7 SOC at paras 17–18.

Appellant has failed to perform his obligations under the MOU and is thereby not entitled to any legitimate expectations in respect of the Company's affairs.

12 The defendants in OC 665 allege that the Respondent was introduced to the Appellant by one Dr Nguyen Quoc Quan ("NQQ"), who shared a close relationship with the Appellant. The defendants deny that the Respondent had solicited the interest of the Appellant. Rather, it was the Appellant who took an interest in the Company and the Vessel as he purported to have leads on opportunities where the Vessel could be used.[8]

13 The Respondent was induced to enter into the MOU by representations made by the Appellant regarding, amongst other things, an opportunity to acquire a bauxite mine at an undervalue ("Representations"). These Representations were recorded in the MOU:[9]

> (a) Pursuant to the Representations, the Appellant was responsible for (i) procuring the acquisition of Aluminia (Cambodia-Vietnam) Co Ltd ("ACV"), the company which owned and operated the bauxite mine, through another company established by him in Cambodia, VICS M&E Co Ltd ("VICS M&E"); and (ii) using the assets of the company to establish a fund with one China Merchants Group ("CMG"), which would in turn be used to establish an investment bank provisionally named the "Indochina Development Bank" ("IDB").[10]

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8 Defence in the D&CC at paras 10(1)–10(4).

9 Defence in the D&CC at para 10(11)(d).

10 Defence in the D&CC at paras 10(11)(d) and 10(11)(g).

(b) The Appellant and the Respondent would each contribute equal sums of US$10m as capital for the acquisition of ACV in two phases.[11]

14 As such, the Respondent has made the following transfers in furtherance of his capital contribution obligations under the MOU ("Contributions"):[12]

(a) In May 2023, the Respondent transferred a sum of VND 46.9bn to the Appellant's personal bank account.

(b) Between July and August 2023, the Respondent transferred a sum of VND 71bn to NVT for the transfer of NVT's 40% shareholding in the Company pursuant to the Transfer Agreement. The parties had agreed that this payment would go towards the Respondent's contribution obligation under the MOU.[13]

(c) In October 2023, the Respondent transferred a further sum of VND 84.2bn to the Appellant's personal bank account.

15 However, following the above transfers, the Appellant became largely unresponsive and to date, has failed to perform any of his obligations under the MOU.[14] As such, the defendants in OC 665 plead that the Appellant is not entitled to any legitimate expectations in respect of the affairs of the Company as he has neither performed his obligations under the MOU nor provided any consideration for the acquisition of NVT's 40% shareholding.[15]

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11 Defence in the D&CC at paras 10(11)(f) and (10)(11)(h).

12 Defence in the D&CC at para 10(12).

13 Defence in the D&CC at paras 13(b) and 13(f).

14 Defence in the D&CC at paras 10(14) and 10(15).

15 Defence in the D&CC at para 15.

Respondent's pleaded counterclaim

16 The pleaded counterclaim ("Counterclaim") repeats and expands upon the facts pleaded in support of the Defence. In particular, the Respondent expands upon how he came to discover the Appellant's alleged misrepresentations. Over the course of December 2023, the Appellant informed the Respondent of the following developments, in sequence: (a) that ACV was being re-registered as Alumina Cambodia Corporation ("ACC"); (b) the registration of the Respondent as a 50% shareholder of VICS M&E and the registration of ACC had only just been completed; (c) ACV's licence to exploit the mine had expired and ACC was waiting for the Cambodian government to grant ACC a similar licence, and IDB had not yet been established and would only be completed in the first quarter of 2024 with lesser capital.[16] The Respondent alleges that these updates caused him serious alarm as they ran contrary to the Representations and the agreed timelines in the MOU.[17] After seeking further updates from the Appellant and receiving no response, he then came to learn that VICS M&E remains a shell company with no known assets, including any ACV or ACC shares.[18]

17 Relying on the foregoing, the Respondent brings the following claims against the Appellant:

(a) that the Appellant has committed a repudiatory breach of the MOU by failing to perform his obligations under the MOU and achieve the purposes of the MOU within the stipulated timelines;[19]

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16 Counterclaim in the D&CC at para 38.

17 Counterclaim in the D&CC at para 39.

18 Counterclaim in the D&CC at paras 40–46.

19 Counterclaim in the D&CC at para 47.

(b) that the Appellant has made fraudulent misrepresentations (by way of the Representations) to induce the Respondent to enter into the MOU;[20]

(c) that the Appellant holds the Contributions on trust for the Respondent and has acted in breach of trust by failing to: (i) apply the Contributions towards the purposes of the MOU; (ii) account to the Respondent for the use of the Contributions; and (iii) return any part of the Contributions that was not applied towards the MOU;[21] and

(d) that the Appellant has been unjustly enriched by his receipt of the Contributions.[22]

The decision below

18 The Appellant then filed HC/SUM 1061/2025 ("SUM 1061"), seeking the dismissal and/or stay of the Respondent's counterclaim on grounds of *forum non conveniens*.

19 The Appellant argued that the applicable test was that in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 ("*Spiliada*").[23] Singapore was not an appropriate forum to hear the Respondent's counterclaim as there were little to no connections between the counterclaim and Singapore.[24] OC 665 was commenced in Singapore because the Company is a Singapore-incorporated company and hence the Appellant sought relief for minority

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20 Counterclaim in the D&CC at paras 48–51.

21 Counterclaim in the D&CC at paras 54–56.

22 Counterclaim in the D&CC at para 57.

23 Claimant's Written Submissions for SUM 1061 at para 17.

24 Claimant's Written Submissions for SUM 1061 at paras 37–38.

oppression under s 216 of the Companies Act 1967 (2020 Rev Ed).[25] There was no justification for the Respondent's counterclaim to also be commenced in Singapore as the facts underlying the counterclaim were distinct from those underlying the claim in OC 665.[26]

20 The Respondent argued that the applicable test was instead that in *Drolia Mineral Industries Pte Ltd v Natural Resources Pte Ltd* [2022] 1 SLR(R) 880 ("*Drolia*").[27] The Appellant's application thus ought to be dismissed for the following reasons:[28]

(a) first, the Appellant has submitted to the jurisdiction of the Singapore courts by commencing the claim in OC 665, and is thereby precluded from challenging the jurisdiction of the Singapore courts in relation to the Appellant's counterclaim;[29]

(b) second, 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 two; and

(c) third, even if Singapore was not the natural forum, a stay ought to be refused as the Respondent would be denied substantial justice.

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25 Claimant's Written Submissions for SUM 1061 at para 45.

26 Claimant's Written Submissions for SUM 1061 at paras 43–44.

27 6th Defendant's Written Submissions for SUM 1061 at para 11.

28 6th Defendant's Written Submissions for SUM 1061 at para 12.

29 6th Defendant's Written Submissions for SUM 1061 at paras 5–6 and 40.

21 The AR dismissed the Appellant's application in SUM 1061. His full grounds can be found in *Le Ninh Tien v Rainbow Forest Enterprises Ltd* [2025] SGHCR 23 ("GD").

22 The AR found that the applicable test was that in *Spiliada* (GD at [18] and [30]). He also noted that while the Appellant had sought a dismissal of the Respondent's counterclaim as opposed to the usual stay of proceedings, he had not provided any reasons as to why this exceptional relief should be granted. As such, the AR dealt with SUM 1061 on the basis that it was an application for a stay of the Respondent's counterclaim (GD at [23]).

23 As a counterclaim is in effect an independent action, the Appellant's submission to jurisdiction in respect of his own claim did not preclude him from challenging the jurisdiction of the Singapore courts in respect of the Respondent's counterclaim (GD at [28]–[29]).

24 However, the Appellant had not demonstrated that either Vietnam or Cambodia is the more appropriate forum for the Respondent's counterclaim to be tried. The procedural convenience in having the claim tried with the counterclaim pointed to Singapore as the more appropriate forum for the counterclaim, whilst other factors pointing to Vietnam or Cambodia (*ie*, the connections arising from the events and transactions underlying the counterclaim and the personal connections of the witnesses who were likely to be called) were either not material or ought not to be given weight in the circumstances of the case. The governing law being either Vietnam or Cambodia law did not identify either jurisdiction as the more appropriate forum (GD at [65]).

25 The AR thus found it was unnecessary to consider if there were any grounds on which a stay could be refused. Nevertheless, the AR was of the view that the Respondent had failed to establish such grounds. The difficulty in enforcement alleged by the Respondent was not a relevant consideration under the second stage of the *Spiliada* test. The counterclaim was also not connected to the claim in such a matter that it would warrant the refusal of a stay (GD at [66]–[67]).

Summary of the Appellant's Case

26 The Appellant takes issue with the determination of the AR. He argues that the AR erred as:[30]

(a) the AR placed excessive emphasis on the procedural convenience factor as it is but one factor in stage one of the *Spiliada* test;

(b) in any case, there is no significant procedural convenience arising from having the counterclaim heard together with the claim; and

(c) even if some procedural convenience would result from hearing the counterclaim in Singapore, all the material factors (such as the connections to witnesses, the events and transactions underlying the claim, and the governing law) point away from Singapore and instead point to either Vietnam or Cambodia. This should be given significant weight over any procedural advantages that may be had.

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30 Appellant's Written Submissions ("AWS") at para 5.

Summary of the Respondent's Case

27 The Respondent argues that the AR was correct to find that Singapore is the natural forum to try the counterclaim, as:

(a) the significant overlap in facts and issues between the claim and the counterclaim make it procedurally convenient to try the two together;[31]

(b) the witnesses relevant to the counterclaim will already be attending in Singapore to give evidence in respect of the claimant's claim;[32]

(c) while there is little connecting the events and transactions underlying the claim to Singapore, there is nothing to be gained by having the counterclaim heard in Vietnam or Cambodia;[33] and

(d) the claimant has not established that the Singapore courts would face any difficulty in applying Vietnam or Cambodia law.[34]

28 However, the Respondent argues that the AR erred in finding that in the event that Singapore was not the natural forum, there were no grounds on which a stay could be refused.[35]

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31 Respondent's Written Submissions ("RWS") at para 21.

32 RWS at paras 26–27.

33 RWS at para 28.

34 RWS at paras 35–36.

35 RWS at paras 41–47.

The Decision

29 I am satisfied that there should be no stay of proceedings in Singapore.

30 The Appellant maintained that he was not precluded from contesting the court's jurisdiction, despite having submitted to such in respect of his own claim in OC 665. The AR found in favour of the Appellant on this point in the proceedings below. This issue was not taken up by the Respondent on appeal. It is not thus a live issue before me. But had the matter been pursued, I am of the same view as the AR and would have affirmed the Appellant's ability to contest jurisdiction.

The standard of review on appeal

31 On appeal from the AR, the matter is considered by me *de novo*, that is, anew, without any deference to the AR's exercise of discretion or findings: *Tan Boon Heng v Lau Pang Cheng David* [2013] 4 SLR 718 at [22].

The legal framework

32 There is no dispute between the parties on the law in the present appeal. The parties agree that the governing rule was laid down in *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 ("*Rickshaw Investments*") (at [12]), applying the approach in *Spiliada*.[36]

[36] AWS at para 12; RWS at para 6.

33 The *Spiliada* test consists of two stages (*Rickshaw Investments* at [14]):

(a) a determination whether, *prima facie*, there is some other available forum that is distinctly more appropriate for the case to be tried ("Stage One"); and

(b) if so, the court will ordinarily grant a stay unless justice requires that a stay should not be granted ("Stage Two").

34 The focus for the court's determination at Stage One is whether any of the connecting factors point towards a jurisdiction in which the case may be tried more suitably for the interests of all parties and the ends of justice: *Rappo, Tania v Accent Delight International Ltd* [2017] 2 SLR 265 ("*Rappo*") at [72], citing *Spiliada* at 476. The usual five factors the court will consider were outlined in *JIO Minerals FZC v Mineral Enterprises Ltd* [2011] 1 SLR 391 ("*JIO*") (at [42]) and *Rappo* (at [71]), namely:

(a) the personal connection of the parties and witnesses;

(b) the connections to relevant events and transactions;

(c) the applicable law to the dispute;

(d) the existence of proceedings elsewhere; and

(e) the shape of the litigation.

It is a question of the quality of the factors rather than an arithmetical tallying of the factors at play. The weight to be ascribed to each factor will depend on the circumstances of the case: *Rappo* at [70]–[71]; *Lakshmi Anil Salgaocar v Jhaveri Darsan Jitendra* [2019] 2 SLR 372 ("*Lakshmi*") at [54].

Issues arising

35 No legal issues are in play in the present case. The issues that do arise concern the exercise of the court's discretion on the facts, focusing on the weight to be given to each, and the overall appraisal leading to a conclusion on the centre of gravity of the matter.

36 The determination of the court depends on where the needs of justice and the interests of all the parties are best met: *Rappo* at [72].

Factors

37 The factors raised by the parties are:

(a) availability of witnesses and evidence;

(b) the place of the events, including the tort;

(c) the governing law of the issues raised in the counterclaim; and

(d) concurrent proceedings in Singapore.

Availability of witnesses

38 The Appellant argues that it is likely that the key witnesses are in Vietnam or Cambodia. The AR found that the only key witnesses are the Appellant, the Respondent, and NVT, who would be appearing in the main claim anyway. The Appellant however denies this, and argues that evidence from other foreign witnesses would be required for his defence. These various witnesses would not be compellable in Singapore. No Singaporean or Singapore based witnesses have been identified to date.[37]

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[37] AWS at paras 34–37.

39 The Respondent relies on the attendance of the witnesses to testify in relation to the claims pursued by the Appellant. Therefore, while the location of the witnesses and compellability may be considerations in identifying the appropriate forum, here, little or no weight should be given to these as they would be already in Singapore, saving time and resources should the counterclaim be tried in Singapore. A similar approach was adopted in *Drolia*.[38]

40 The location and compellability of witnesses have been taken in previous cases as relevant factors. The physical location of the witnesses is not, in itself, a significant connecting factor in present times considering the ease of travel and the possibility of giving evidence by video-link. Instead, the question is focused on third-party witnesses, who parties may not be able to persuade to give evidence voluntarily in the absence of their compellability: *Ivanishvili, Bidzina v Credit Suisse Trust Ltd* [2020] 2 SLR 638 ("*Ivanishvili*") at [84]; *Sinopec International (Singapore) Pte Ltd v Bank of Communications Co Ltd* [2024] 3 SLR 476 ("*Sinopec*") at [84] and [86].

41 On the facts here, I do not consider the witnesses likely being from Vietnam or Cambodia as being a factor pointing away from Singapore. Remote testimony can be readily arranged from either jurisdiction, should they not be able to come to Singapore.

42 As for the issue of compellability, the Respondent argues that it has not been shown that there are relevant witnesses who are unwilling to testify.[39] In this regard, a defendant who seeks to rely on foreign witnesses as a factor pointing towards another jurisdiction must at least show that evidence from

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38 RWS at paras 22–27.

39 RWS at para 26.

foreign witnesses is arguably relevant to their defence. However, there is no requirement for such defendants to show that a witness is unwilling to testify in Singapore for the compellability of that witness to become relevant: *Sinopec* at [88]–[93].

43 In this case, the Appellant has raised three categories of foreign witnesses that may be relevant to his defence. He alleges that evidence would need to be led:[40] (a) on the procedures for registration of VICS M&E with the Cambodian Ministry of Commerce, and this evidence is "unlikely to be found in Singapore"; (b) on negotiations between the leadership teams of VICS M&E and the majority owner of ACV, who are "likely to be based in Cambodia and Vietnam respectively"; and (c) on issues arising from opaque BVI entities as shareholders of the Company from "both categories of witnesses". He also notes that it "may not necessarily be the case that the Appellant would represent VICS M&E in the negotiations".[41]

44 As such, I note that the Appellant has not actually argued that those witnesses would definitively not be available or compellable, only that they are likely to be.

45 Further, of the three categories of witnesses, two involve VICS M&E, a company owned by the Appellant. As such, even if the relevant witness from VICS M&E is not compellable in Singapore, the Appellant is likely to be able to secure their attendance in any case: *Sinopec* at [86]. Moreover, the Appellant would likely be the primary witness on this matter. An allegation that the

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40 AWS at para 35.

41 AWS at para 35.

Appellant "may not necessarily" have been involved in the negotiations (and is therefore not the relevant witness) falls short of an adequate denial.

46 As regards the first category, the Appellant has failed to explain how such evidence is even arguably relevant to his defence. Though the acquisition of ACV was contingent on, *inter alia*, the registration of VICS M&E with the Cambodian Ministry of Commerce, the Appellant himself has furnished evidence that VICS M&E was successfully registered on 16 May 2023.[42] As such, it would appear that the registration of VICS M&E is a non-issue in the Counterclaim. Indeed, the Respondent does not complain of any failure by the Appellant to register VICS M&E. At most, the Respondent complains of some delay by the Appellant in registering the Respondent's 50% shareholding (see above at [16]); however, this complaint does not directly relate to any of his claims and should therefore be of little consequence to the Appellant's defence.

47 In light of the above, it is unclear what difficulties the Appellant would face in defending the proceedings in Singapore, particularly as the Appellant has not definitively alleged that the three categories of evidence would be unavailable if the counterclaim were heard in Singapore.

48 In any event, as argued by the Respondent, several witnesses may already be testifying in the original Claim. From what I can see of the pleadings, it is likely that these witnesses already involved in the main trial would be the primary witnesses. The main issues in the Counterclaim involve the discussions between the Respondent and the Appellant, and the steps taken by the Appellant in fulfilling his obligations under the MOU. The persons most qualified to give evidence in this regard would therefore be the Appellant and Respondent

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42 Fifth Affidavit of Le Ninh Tien at para 23 and at Tab 2 at p 88.

themselves, who would in any case be expected to appear in the Singapore proceedings.

49 From all of these, I conclude that the question of witness availability does not point against Singapore being the more appropriate forum.

Events and transactions underlying the claim

50 The Appellant also argues that the events and transactions underpinning the allegations in the Counterclaim point away from Singapore and point instead towards Vietnam and/or Cambodia.[43]

51 The Respondent does not deny that there is little connecting the events and transactions underlying the Counterclaim to Singapore. However, it argues that this connecting factor is not relevant as there is no evidence that can be obtained from Vietnam or Cambodia that would be of greater relevance than the evidence from the Appellant and Respondent, who would already be testifying in the Singapore proceedings.[44]

52 It is assumed that evidence would typically be found where the events or transactions underlying the claim occur. As such, this connecting factor is relevant to the first stage of the *Spiliada* test in so far as it points to the forum where the trial may be held with the least expense and inconvenience: *Shen Sophie v Xia Wei Ping* [2023] 3 SLR 1092 at [124] and *Best Soar Ltd v Praxis Energy Agents Pte Ltd* [2018] 3 SLR 423 at [19]. In particular, where the claim is in tort, the place where the tort was committed is *prima facie* the natural forum; however, the weight to be given to this factor depends on the particular

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43 AWS at paras 29–31.

44 RWS at paras 28–32.

facts of each case. For example, little weight will be given where the place of the tort is merely fortuitous: *JIO* at [106]–[107].

53 The place of the tortious misrepresentation claim, as well as the forum with the greatest connection to the events and transactions underlying the Counterclaim, would be either Cambodia or Vietnam. Thus, this factor indeed points towards those jurisdictions as more appropriate fora. However, this factor carries little weight on the facts of this case. It does not appear from the pleadings that the trial for the Counterclaim would be a document-intensive one, such that the likely location of such evidence should be a significant consideration in identifying the appropriate forum. More importantly, as noted above (at [48]), the issues would likely turn on the testimony of the Appellant and the Respondent, who would be attending in Singapore for the Claim in any event. The Appellant also has not raised any evidential difficulties (aside from witness evidence, which has been addressed above at [44]–[48]) it would face as a result of the Counterclaim not being heard in Vietnam or Cambodia. Accordingly, any convenience resulting from having the Counterclaim heard in the forum where the underlying events or transactions occurred would be limited.

Governing law of the issues in the counterclaim

54 The Appellant argues that the applicable law of the Counterclaim would be either Vietnamese or Cambodian law. The governing law of the MOU, which is in question in the Counterclaim, is likely to be Vietnamese law. The factors pointing to Vietnamese law are that the MOU was to be signed in Vietnamese in Vietnam, in respect of obligations to be performed either in Vietnam or Cambodia. For the claim in fraudulent misrepresentation, the place of the tort was Vietnam, and a presumption arises that the applicable law is Vietnamese.

Turning to the governing law for breach of trust or unjust enrichment, this is again said to be either Vietnamese or Cambodian law; but there is doubt as to whether claims in equity are capable of being pursued under Vietnamese or Cambodian law. Finally, in so far as the transfer agreement is relevant, its governing law would be Vietnamese law under the choice of law clause in clause 8.7 of that agreement, the choice of seat of arbitration was Vietnam, and the contract is in Vietnamese. There are significant differences between Singapore and Vietnamese and Cambodian law as the former is a common law system while the latter are civil law systems. It is sufficient for the Appellant to show that there are potential complications in the application of Vietnamese or Cambodian law by Singapore courts. Experts called in relation to the Appellant's claim would not necessarily be those for the MOU. It is more procedurally convenient for the counterclaim to be heard in Vietnam or Cambodia, as the relevant lawyers would be able to submit directly on the matters arising. Unnecessary time and expense would be incurred to appoint Vietnamese and Cambodian law experts for proceedings in Singapore.[45]

55 The Respondent accepts that the applicable law is likely to be either Vietnamese or Cambodian law. However, as the Appellant has not shown that there is any serious dispute on how the foreign law is to be applied or that the Singapore courts would face difficulty in applying the foreign law. The Respondent also agrees with the AR's observation that parties would already need to adduce expert evidence on Vietnamese or Cambodian law relevant to the Counterclaim in the Singapore proceedings, and thus would merely need to augment the scope of such evidence.[46]

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45 AWS at paras 39–63.

46 RWS at paras 33–37.

56 I accept that the governing law is likely to be either Vietnamese or Cambodian law. However, the fact that a foreign law is applicable does not necessarily point to another forum being the appropriate forum.

57 A significant basis for foreign governing law being a factor pointing to another forum is that Singapore would be less adept in applying the foreign law: *CIMB Bank Bhd v Dresdner Kleinwort Ltd* [2008] 4 SLR(R) 543 at [63]. While this is true, such lack of adeptness is not necessarily a bar.: Foreign law may be readily the subject of expert opinion in cases. There is a well-honed machinery to obtain foreign expert opinions, and Singapore courts have sufficient expertise and experience to weigh such opinions. Where Singapore courts may be less able would be the determination of intricate issues of foreign law. Those would need generally to be left to the foreign court: *Lakshmi* at [56]–[57].

58 In the present case, the key issues in dispute between the parties are factual and not legal in nature, namely, the contents of the discussions between the Appellant and Respondent and the steps (or lack thereof) the Appellant had taken in fulfilment of his obligations under the MOU. This points to the limited relevance of the governing law as a factor: *Lakshmi* at [55]. The Appellant's main contention is that claims in breach of trust and unjust enrichment may not be capable of being pursued under Vietnamese and Cambodian law, which "bring[s] in complications of the inapplicability or impossibility of interaction between the legal systems of Singapore … and Vietnam / Cambodia".[47] This is an issue of applying established Vietnamese or Cambodian law, which the Singapore courts are well-equipped to handle, rather than determining an intricate unresolved legal issue. There is no issue of interaction between the Singapore legal system and the civil law systems of Vietnam and Cambodia. If

[47] AWS at para 58.

the applicable law is indeed Vietnamese or Cambodian law, and such laws do not recognise causes of action in equity, the Respondent's claims would simply fail: see *Trisuryo Garuda Nusa Pte Ltd v SKP Pradiksi (North) Sdn Bhd* [2017] 2 SLR 814 at [37]. For these reasons, I find the applicable law to the dispute to be of limited relevance.

Concurrent proceedings

59 The existence of related proceedings is a relevant factor in the identification of the natural forum for a dispute. Generally, where the risk of conflicting judgments arising from overlapping proceedings in multiple jurisdictions is high, the court may take the view that the ends of justice would be better served by consolidating the proceedings in a single forum: *Lakshmi* at [59]. However, the Respondent has not presented any arguments on the risk of conflicting judgments in the present appeal. Instead, his arguments in this regard are focused on the procedural convenience in having both proceedings heard together that arises from an alleged overlap in matters between the two proceedings.

(1) Degree of overlap

60 The first question then is whether there is indeed overlap between the Claim and Counterclaim, and the degree of such overlap.

61 The Appellant is suing the Respondents for oppression founded on breach of legitimate expectations. The MOU is referred to in the Claim. The Respondent also raises the MOU in his Counterclaim. The MOU covers a range of businesses and activities, namely:

(a) the acquisition of ACV;

(b) the joint ownership of the Vessel;

(c) investment in projects; and

(d) consideration.

Essentially, the Appellant is suing on one part of the MOU, which the Appellant says is distinct, while the Respondent refers to the whole set of obligations between the parties in the MOU.

62 The primary overlap, as was found by the AR, and relied upon by the Respondent,[48] is in respect of the Defence. The defendants seek to rely on the Appellant's breach of the MOU for his shares in the Company as a defence to deny any legitimate expectations. The Respondent, amongst other things, then seeks damages for the Appellant's breach of the MOU and breach of trust arising from his failure to apply the Contributions towards the purposes of the MOU in the Counterclaim. As such, there is to my mind some possible overlap between the Claim and Counterclaim, as they do not involve entirely separate transactions. I find it likely that the legitimate expectations underlying the Claim would either be founded or traced back to the MOU and obligations specified under it. This overlap would mean that there would be common evidence and witnesses that would be covered by both the Claim and at least part of the Counterclaim.

63 I could not see any other factual overlap between the Claim and Counterclaim. The other issues raised in the Counterclaim mainly concerned representations allegedly made by the Respondent to the Appellant and their truth. The factual matters raised by these issues would not touch on, engage or

[48] RWS at para 16–18.

refute the Appellant's Claim in minority oppression, save perhaps through their basis in or connection through the MOU. The Respondent therefore has not shown that the interaction between the Claim and Counterclaim on these other issues is substantial.

64 The other legal issues in the Claim and Counterclaim were distinct. It is hard to see how the claims founded on misrepresentation, breach of trust and unjust enrichment would defeat the minority expression claim on legal grounds, acting as a defence or negating an element of that claim, save perhaps in so far as the Appellant's s 216 claim constituted an abuse of process (*Suying Design Pte Ltd v Ng Kian Huan Edmund* [2020] 2 SLR 221 at [30]–[31]), but that has not been raised in the Defence as such. I am also doubtful that any of the assertions raised in the Counterclaim could be said to rise to the level of alleging abuse on the part of the Appellant.

(2) Procedural convenience

65 The Respondent, supporting the learned AR's decision, invokes procedural convenience. The primary authority for this is the English decision in *Shahar v Tsitsekkos* [2004] EWHC 2659 (Ch).[49]

66 I accept that procedural convenience arising from overlap of issues or facts is a factor to be considered, though care should be taken that any overlap is not a tactical and illegitimate use of the filing of counterclaims to create artificial connections to a forum: *Lakshmi* at [59].

67 However, I am doubtful that procedural convenience should operate as a determinative factor. The duty of the court tasked with identifying the natural

[49] RWS at para 15.

forum is to find that forum in which the case may be tried more suitably for the interests of all the parties and for the ends of justice: *Rappo* at [72]. While significant convenience accorded to parties from pursuing litigation in a particular forum may point to litigation in that forum being in the interests of all the parties, the primary focus should remain on determining the forum with the most relevant and substantial associations with the dispute rather than allowing procedural efficiencies to drive the determination. Of particular concern is that too low a threshold in determining that there is procedural convenience would invite the erosion of established connecting factors, allowing minor efficiencies to override more substantial jurisdictional ties.

Overall weighing

68 The question is one of the quality of the various factors. It is not a numerical exercise: *Lakshmi* at [54]; *Rappo* at [70]–[71]. The overall weighing and balancing of factors would be dependent on the specific facts of the case.

69 Here, to recap, what informs the weighing of the connecting factors are the following aspects:

(a) that, despite witnesses and evidence likely being located in Vietnam and Cambodia, the Appellant has not identified any significant evidential difficulties that would arise from hearing the Counterclaim in Singapore;

(b) that the primary witnesses are likely to be testifying in the Claim in Singapore anyway;

(c) that the issues in the Counterclaim merely involve the application of Vietnamese or Cambodian law, which the Singapore courts are well-equipped to handle; and

(d) that at least some of the factual matters raised in the Counterclaim would overlap with factual issues in the Claim.

To succeed in his application for a stay, the Appellant must demonstrate that there is another forum which is distinctly more appropriate than Singapore: *Sinopec* at [60]–[61]; *Ivanishvili* at [82]; *Siemens AG v Holdrich Investment Ltd* [2010] 3 SLR 1007 at [4]. On balance, I do not find that the Appellant has done so. I do not see any strong factors pointing towards either Vietnam or Cambodia as a forum. If anything, the factors are generally at most neutral. The presence of overlapping proceedings points somewhat to Singapore, but not to the great degree that the learned AR determined.

70 I thus differ a little in my reasoning from that of the AR. The outcome is, however, the same.

71 It may be that concurrent proceedings could be ignored or outweighed if the degree of overlap were minimal, or if, for instance, there was great difficulty with foreign witnesses and issues of interpretation of foreign law that would need to be resolved by the foreign courts. The factors here did not go to that level. The degree of overlap, and thus the amount of procedural convenience, was not perhaps as great as would seem from the learned AR's determination. This overlap did not extend to the substantial portion of the counterclaim, but only in respect of the defence to the claim. The MOU and the events and transactions surrounding it were otherwise mostly background facts, with no direct impact on the other parts of the claim. However, at the same time,

the overlap could not be said to be minimal or negligible. As for the evidence and witnesses, no great difficulty was shown. No great uncertainty or intricacy about foreign law was made out either.

Conclusion

72 The appeal is thus dismissed. Directions will be given separately on costs.

Aidan Xu
Judge of the High Court

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