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

[2021] SGHCR 10

HC/S 624 of 2020
HC/SUM 4702 of 2021

Between

1. TA Private Capital Security Agent Limited

2. TransAsia Private Capital Limited

… *Plaintiffs*

And

1. UD Trading Group Holding Pte Ltd

2. Rutmet Inc

… *Defendants*

JUDGMENT

[Civil Procedure] – [Stay of Proceedings]
[Conflict of Laws] – [Natural Forum]

TA Private Capital Security Agent Limited & another
v
UD Trading Group Holding Pte Ltd & another

[2021] SGHCR 10

General Division of the High Court — Suit No 624 of 2020 (Summons No 4702 of 2021)
Colin Seow AR
16 November 2021

10 December 2021

Colin Seow AR:

Introduction

1 This judgment concerns an application seeking a stay of court proceedings in Singapore on the ground of *forum non conveniens*, where the applicant, who is a co-defendant alleged to have assigned to the plaintiffs a right to enforce a corporate guarantee against another party, is not the subject of any substantive claim in the action.

Background

2 On 9 July 2020, TA Private Capital Security Agent Limited (a British Virgin Islands registered corporate entity) and TransAsia Private Capital Limited (a Hong Kong registered corporate entity) (respectively "the 1st Plaintiff" and "2nd Plaintiff", and together "the Plaintiffs" or "the 1st and 2nd

Plaintiffs") commenced High Court Suit No 624 of 2020 ("the Action") in Singapore against UD Trading Group Holding Pte Ltd (a Singapore registered company) ("UDT"), claiming principally a sum of US$63,303,806.66. The sum claimed represents the total outstanding invoice payments owed to Rutmet Inc (a Canadian registered corporate entity) ("Rutmet") by a number of its trade creditors, which are guaranteed by UDT pursuant to a corporate guarantee entered into between UDT and Rutmet on 15 April 2019 ("the Corporate Guarantee").

3 Rutmet was initially joined by the Plaintiffs in the Action as the 3rd plaintiff, on the basis as alleged by the Plaintiffs that:

(a) the 2nd Plaintiff, as Rutmet's financier and by virtue of certain anterior commercial arrangements it had entered into with Rutmet, is a legal or equitable assignee and/or a holder of a power of attorney in respect of Rutmet's rights to enforce the Corporate Guarantee; and

(b) the 1st Plaintiff, as the security agent of the 2nd Plaintiff, is entitled to exercise the latter's rights as a legal or equitable assignee and/or a holder of a power of attorney in respect of Rutmet's rights just described.

4 By way of High Court Summons No 3114 of 2021 filed by Rutmet on 2 July 2021, a hearing came up before me on 19 August 2021 where Rutmet sought, in the main, to "wholly discontinue the claims" against UDT. Although UDT consented to that summons application, the Plaintiffs objected. After hearing the parties, I applied the English authority of *In Re Mathews. Oates v Mooney* [1905] 2 Ch 460 at 463 (stating the general rule that "where co-plaintiffs disagree the name of one is struck out as plaintiff and added as

defendant") and ordered (in the exercise of the court's discretion pursuant to Order 21 Rule 3(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC")) that leave be granted to Rutmet to discontinue the claims in the Action only as between itself and UDT, on terms that Rutmet was forthwith to be removed as a co-plaintiff and joined as a co-defendant in the Action. In my *ex tempore* brief oral grounds of decision, I observed, *inter alia*, that "[t]he core of the matter is that [Rutmet] is unwilling to proceed with the action against [UDT] at the same time as the 1st and 2nd plaintiffs are intent to pursue the same action in the name and on behalf of [Rutmet]". No appeal was filed against that decision of mine made on 19 August 2021.

5 What followed in the Action was the filing and service of a Statement of Claim (Amendment No 1) by the Plaintiffs on or around 22 September 2021, where the Plaintiffs amended the original Statement of Claim to essentially reflect the change of Rutmet's capacity in the Action from that of the 3rd plaintiff to a co-defendant. No other amendment was introduced by way of the Statement of Claim (Amendment No 1) in respect of the substantive claims pleaded in the original Statement of Claim.

6 On 11 October 2021, Rutmet brought the present summons application (ie, High Court Summons No 4702 of 2021) seeking, *inter alia*, the following:

(a) That the Action "be stayed pursuant to Order 12 Rule 7(2) of the [ROC] and/or the inherent jurisdiction of the Honourable Court".

(b) Alternative to (a) above, "that the Honourable Court grant a limited stay of [the Action] pending the hearing and/or final determination of the proceedings commenced by [Rutmet] against the

> 1st and 2nd Plaintiffs before the Ontario Superior Court of Justice … (Court file No. CV-20-00653063-00CL)".

7 At the hearing convened before me on 16 November 2021, counsel acting for Rutmet clarified the following points in relation to the summons application:

> (a) That in respect of [6(a)] above, Rutmet was not seeking a complete stay of the entire proceedings in the Action, but rather seeking a stay of proceedings only insofar as the Action is also now against Rutmet as a co-defendant. In this regard, counsel further confirmed in unequivocal terms that the *sole* ground that Rutmet is relying on as basis for the stay of proceedings is that Singapore is *forum non conveniens*, and that Rutmet is *not* seeking a case management stay of proceedings in any event.
>
> (b) That Rutmet no longer wishes to pursue the alternative relief mentioned in [6(b)] above, and that the alternative relief be accordingly withdrawn.

8 It is undisputed as between the parties to the application that the Statement of Claim (Amendment No 1) essentially makes no substantive claim against Rutmet. In particular, the Plaintiffs and Rutmet confirmed that there would be nothing of controversy arising from the Plaintiffs' assertion of a default by Rutmet as pleaded in paragraph 4(d) of the Statement of Claim (Amendment No 1), which I drew both counsel's specific attention to at the hearing:

> 4. By way of general background only and not intended as a detailed account of the Plaintiffs' claim (which follows):

> […]
>
> d. [Rutmet] defaulted on its obligations under the financing terms with the 1st and 2nd Plaintiffs. The 1st and/or 2nd Plaintiffs are now taking steps to enforce their security *inter alia* against [UDT], and do so as assignees of and/or in the alternative, holders of powers of attorney from [Rutmet].

9 Furthermore, I note that even though the Statement of Claim (Amendment No 1) in its subsequent paragraphs (eg, paragraphs 20 to 23) appear to repeat in greater detail the Plaintiffs' assertion of Rutmet's default, no remedy whatsoever has been framed by the Plaintiffs against Rutmet in the reliefs section of the Statement of Claim (Amendment No 1).

10 For completeness, it is apposite to also highlight that there is currently no Defence filed by Rutmet in the Action, and that the filing of Rutmet's Defence (if any) is in fact being held in abeyance pending the determination of the present summons application. Permission to hold off Rutmet's filing of its Defence (if any) was granted by a Judge upon Rutmet's oral application made in the course of the hearing of Registrar's Appeal No 138 of 2021 on 14 October 2021, which was UDT's appeal against another of my earlier decision in High Court Summons No 3537 of 2020 dismissing UDT's application for a stay of the Action against it. UDT's appeal was dismissed by the Judge, and UDT has on 11 November 2021 filed an application to the Appellate Division of the High Court seeking permission to appeal against the Judge's decision. In that regard, I understand that the filing of UDT's Defence (if any) in the Action has also been held in abeyance for the time being.

Whether a stay on ground of *forum non conveniens* should be granted

11 Central to the present summons application is the question whether Rutmet can succeed in seeking a stay of the Action against it, on the ground that there is some available forum other than the Singapore courts which is clearly and distinctly more appropriate for the "trial of the action", in accordance with the well-established principles laid out in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 ("*Spiliada*") (see, eg, *CIMB Bank Bhd v Dresdner Kleinwort Ltd* [2008] 4 SLR(R) 543 at [26], and *JIO Minerals FZC and others v Mineral Enterprises Ltd* [2011] 1 SLR 391 at [38]).

12 Rutmet contends that either Canada (in particular, the Ontario courts) or Hong Kong is a clearly and distinctly more appropriate forum to determine any claim or dispute arising between the Plaintiffs and Rutmet, citing the following connecting factors:

(a) Any claim that the Plaintiffs may have against Rutmet would arise out of or relate to the alleged breach of Rutmet's obligations owed to the Plaintiffs under an anterior set of commercial agreements and/or deed, all of which are governed by the laws of either Canada or Hong Kong.

(b) The same anterior set of commercial agreements and/or deed similarly stipulate either an exclusive or a non-exclusive jurisdiction clause pointing in favour of the courts of either Ontario or Hong Kong.

(c) None of the Plaintiffs or Rutmet is a party based in Singapore or a party having assets in Singapore. On the contrary, Rutmet is a Canadian corporate entity with a registered address in Ontario, and the 2nd Plaintiff is a Hong Kong corporate entity with a registered address

in Hong Kong. The 1st Plaintiff is a British Virgin Islands corporate entity sharing the 2nd Plaintiff's address in Hong Kong for the purpose of correspondence and notices.

(d) There is currently a multiplicity of courts proceedings involving, among others, Rutmet and the Plaintiffs which are ongoing in Ontario, the subject matters of which engage or could have an impact on the issues around which the assignment of Rutmet's rights to the Plaintiffs revolves.

(e) Any claim or dispute arising out of or relating to the anterior set of commercial agreements and/or deed between the Plaintiffs and Rutmet would likely require the calling of witnesses involved in the execution of those agreements and/or deed, all of whom are variously based in Ontario, Hong Kong, India and Dubai, save for one witness in Singapore.

13 The Plaintiffs dispute Rutmet's case in its entirety for a variety of reasons. For the analysis that follows, however, I find that the present summons application can and ought to be determined dispositively on a preliminary ground of principle, having regard to what is in essence the fact that the parties do not dispute that the Statement of Claim (Amendment No 1) raises nothing of controversy as between the Plaintiffs and Rutmet as far as the pleading goes, and makes no substantive claim or seeks no remedy against Rutmet at all (see [8]-[9] above).

14 The parties informed me at the hearing that it is their understanding that is no authority dealing directly with the situation, as in the present case, where an applicant seeking a stay of proceedings on the ground of *forum non*

conveniens is not confronted by any substantive claim or controversy in the action. Be that as it may, a closer examination of the jurisprudence in this area of law suggests to me that an application for such a stay should not be entertained unless there is a real dispute or controversy underlying the specific proceedings which is the subject of the stay application.

15 I begin with *Rappo, Tania v Accent Delight International Ltd and another and another appeal* [2017] 2 SLR 265 at [72], where the Singapore Court of Appeal recognised that:

> 72 Ultimately, the lodestar for a court tasked with identifying the natural forum is whether any of the connections point towards a jurisdiction in which the case may be "tried more suitably for the interests of all the parties and for the ends of justice", to use the words of Lord Goff of Chieveley in *Spiliada* at 476. This lies at the heart of the *forum non conveniens* analysis, and we can do no better than to reiterate the elegant summation of principle by Lord Sumner in *La Société du Gaz de Paris v La Société Anonyme de Navigation "Les Armateurs Français"* 1926 SC (HL) 13 at 22:
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> > … [O]ne cannot think of convenience apart from the convenience of the pursuer or the defender or the court, and the convenience of all these three, as the cases show, is of little, if any, importance. If you read it as 'more convenient, that is to say, preferable, for securing the ends of justice,' I think the true meaning of the doctrine is arrived at. *The object, under the words 'forum non conveniens' is to find that forum which is the more suitable for the ends of justice, and is preferable because pursuit of the litigation in that forum is more likely to secure those ends.* […]
>
> [emphasis in underline added]

16 In the seminal decision of *Spiliada* (see [11] above), which is the *locus classicus* on the question of when a stay would be granted on the basis of *forum non conveniens*, Lord Goff of Chieveley summarised the "basic principle" underpinning this area of law as follows (*Spiliada* at 476C-E):

> (a) The basic principle is that a stay will only be granted on the ground of forum non conveniens where the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action, i.e. in which the case may be tried more suitably for the interests of all the parties and the ends of justice.
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> (b) As Lord Kinnear's formulation of the principle indicates, in general the burden of proof rests on the defendant to persuade the court to exercise its discretion to grant a stay […]. It is however of importance to remember that each party will seek to establish the existence of certain matters which will assist him in persuading the court to exercise its discretion in his favour, and that in respect of any such matter the evidential burden will rest on the party who asserts its existence. Furthermore, if the court is satisfied that there is another available forum which is prima facie the appropriate forum for the trial of the action, the burden will then shift to the plaintiff to show that there are special circumstances by reason of which justice requires that the trial should nevertheless take place in this country […].
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> [emphasis in underline added]

17 The above extract from *Spiliada* suggests quite clearly to me that, as a matter of basic principle, a determination of whether a stay should be granted on the ground of *forum non conveniens* involves a *comparative* dimension where a case is contended to be *tried* more suitably in one forum than in another forum. Essential to this comparative dimension, if it is to be meaningful at all, must be the existence of a real and genuine tension in the choice of deciding, as between two or more jurisdictions, which forum is clearly and distinctly the more appropriate one where a case may be *tried* more suitably for the parties concerned. The absence of such tension in an application for stay would threaten an overreach of the principles in *Spiliada*, if those principles are to continue to be applied by the court to which the application is made.

18 The analysis set out above would appear to explain why, for instance, a court to which a stay application is made may, in appropriate circumstances,

decline at the outset to grant a stay of proceedings on the ground of *forum non conveniens*.

19 In *Baturina v Chistyakov* [2014] All ER (D) 38 (Aug); [2014] EWCA Civ 1134 ("*Baturina*"), the English Court of Appeal was confronted with the issue whether the lower court Judge was correct in granting a stay of English court proceedings in favour of the courts of Russia, on the ground of *forum non conveniens*. There, the claimant sued for, *inter alia*, deceit and misrepresentation alleged to have been committed by the defendant, such as to induce the claimant to enter into a commercial agreement pursuant to which the claimant caused loans to be made by a company she owned (Inteco) to another company owned by the defendant (Sylmord) to fund certain development projects in Morocco.

20 In overturning the stay ordered by the lower court, Christopher Clarke LJ (with whom Rimer and Lewison LJJ agreed) held that there was "a *logically prior question* which is whether the claims, as pleaded, are maintainable in English law" (*Baturina* at [72]) (emphasis added). After examining a line of English authorities relating to cases involving "indirect" loss suffered by a shareholder on account of the impact of a loss occasioned to a company which does not have a cause of action, Clarke LJ concluded with the following (at [79]-[82]):

> 79 In light of these authorities I am of the view that the monetary claim as pleaded whether in deceit or breach of contract is unsustainable. The sum claimed is the loss of sums loaned to Sylmord together with interest. [The claimant] did not lend these sums and Inteco, which did, has not lost them. [The defendant] was not the borrower and did not owe them. The claim pleaded is not a claim for personal loss indirectly suffered. There is no averment as to any diminution of the value of [the claimant's] shareholding at any date or as to a personal loss which would have been avoided or profit which would have been

earned by her but for the deceit and/or breach of contract alleged. The claim is for damages quantified by reference to the loans made by Inteco to Sylmord and the interest thereon. The assignment of the Loans is not even referred to.

80 It may be that a differently formulated claim would be sustainable. The court itself raised that possibility and Mr Moverley Smith accepted that that might be so. It might, for instance, be possible to allege that, if [the claimant] had not been induced to enter into the Agreement by deceit, she would not have suffered a particular detriment to her personal financial position which she has in fact suffered, so that her reliance on what [the defendant] said he intended had made her worse off; and/or to contend that at some stage Inteco suffered a loss which affected the value of her shares which, had the deceit not occurred, she would have avoided, and that her purchase of the Loans for full value should not be treated as cancelling out that loss (by making Inteco whole and, thus, restoring the value of the shares) since, in a sense, it was done in mitigation of it.

81 Miss Dohmann accepted that the pleading was defective. She relied on the fact that no application had been made to strike the claim out; alternative ways of putting the case were open; some of them had been ventilated in evidence and argument; further particulars of loss could be given; and there was a pleaded claim for rescission and damages arising out of the deceit and breach of contract pleaded. There has, however, been no application to amend nor any provision of further particulars and we must treat the Particulars of Claim as they are. If a different form of claim is to be made it needs to be pleaded, not least because any new pleading may, itself, throw up new questions or issues. It is not sufficient to point out that there is a claim for damages and that they are "*at large*" (whatever exactly that means).

82 ***Since the monetary claim set out in the Particulars of Claim is unsustainable as it stands there seems to me no point in granting a stay in favour of Russia***. We should not export to a foreign jurisdiction – on the supposed footing that it is a clearly more appropriate forum – a claim which, to English eyes, is (a) governed by English law in relation to both tort and contract; and (b) appears in English law to be unsustainable. ***For such a claim there is no natural forum, not because several factors point to different jurisdictions but because the claim itself is bad***.

[emphasis in underline and in bold italics added]

21 In sum, it seems that the English Court of Appeal in *Baturina* found good reason to hold that the application for stay need not be entertained in a substantive manner at all, because the claim in the underlying action was so bad that it gave rise to no real dispute or controversy which ought to be tried. Flowing from that, if an application for stay on the ground of *forum non conveniens* is liable to fail preliminarily for the reason that the claims in the underlying proceedings are unsustainable, as a matter of principle a similar application must *a fortiori* also fail where there is no substantive claim to even begin with.

22 Applying the foregoing analysis to the present case, the application for stay on the ground of *forum non conveniens* must therefore fail. As highlighted earlier at [13], both the Plaintiffs and Rutmet do not dispute that the Statement of Claim (Amendment No 1) raises no controversy as between them and makes no substantive claim or seeks no remedy against Rutmet at all. This puts the matter squarely into the scenario where it can be said that there is no substantive claim to even begin with.

23 To put it in another way, it is also problematic, given the reasoning set out in [15]-[17] above, that this court should presume to proceed to determine substantively a purported issue of *forum non conveniens* absent a meaningful comparative dimension in the matter (where there has to be a real and genuine tension between one jurisdiction and at least another jurisdiction where a case may be *tried* more suitably). The current application presents no such tension because the positions as mentioned taken by the Plaintiffs and Rutmet on the Statement of Claim (Amendment No 1) leads me to find that there is no substantive claim or controversy to be tried as between the Plaintiffs and Rutmet in the Action before the Singapore courts. If this court were to otherwise

proceed to determine substantively the issue of *forum non conveniens*, it would in my view be stretching the well-established principles in *Spiliada* beyond the basic parameters within which those principles are designed and equipped to operate.

Conclusion

24 For the foregoing reasons, the present summons application for stay of proceedings (*ie*, High Court Summons No 4702 of 2021), made on the sole ground as pursued by Rutmet that Singapore is *forum non conveniens*, is legally flawed and/or misconceived given the state of matters presented before me. On that basis, I order that the application be dismissed.

25 Given the reasoning in this judgment and the decision arrived at, it is unnecessary for me to address the other points raised by the parties at the hearing which are not material to my decision.

26 The Plaintiffs and Rutmet are at liberty to agree on costs, or to file and exchange their written submissions on the appropriate costs order to be made in relation to this application by 17 December 2021. The written submissions (if any) are to be no more than 8 pages each for the Plaintiffs, on the one hand, and Rutmet, on the other hand. Further directions on a hearing for costs submissions may be issued, if necessary.

Colin Seow
Assistant Registrar

Mr Chan Leng Sun *SC* (Duxton Hill Chambers) (instructed),
Mr Jerald Foo and Mr Nicholas Chang (M/s Oon & Bazul LLP)
(instructing) for the Plaintiffs.
Mr Imran Rahim and Ms Zerlina Yee
(Eldan Law LLP) for Rutmet (the 2nd Defendant).
