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

[2024] SGHC 157

Originating Application No 820 of 2023 (Registrar's Appeals No 14 and 15 of 2024)

Between

Sir Cornelius Sean Sullivan

… *Applicant*

And

(1) Hill Capital Pte Ltd
(2) Ban Su Mei

… *Respondents*

GROUNDS OF DECISION

[Trusts] – [Trustees] – [Retirement]
[Trusts] – [Trustees] – [Duties]
[Conflict of Laws] – [Choice of jurisdiction]
[Conflict of Laws] – [Choice of law] – [Trusts]

TABLE OF CONTENTS

Sullivan, Sir Cornelius Sean
v
Hill Capital Pte Ltd and another

[2024] SGHC 157

General Division of the High Court — Originating Application 820 of 2023
(Registrar's Appeals No 14 and 15 of 2024)
Chua Lee Ming J
29 February 2024

20 June 2024

Chua Lee Ming J:

Introduction

1 In HC/SUM 2819/2023 ("SUM 2819"), the first and second respondents applied to stay HC/OA 820/2023 ("OA 820") on the ground that Cyprus was the more appropriate forum. The learned Assistant Registrar (the "AR") dismissed the application. HC/RA 14/2024 and HC/RA 15/2024 were the first and second respondents' respective appeals against the AR's decision (collectively, "RAs 14 and 15").

2 This case involved trust deeds that permitted the trustees to change the proper law and the forum for administration of the trusts. One of the questions in the appeals was which proper law and forum for administration applied to the alleged breaches in the administration of one of the trusts with respect to which

the proper law and forum for administration were changed subsequent to the alleged breaches.

Facts

The parties and their relationships

3 The applicant, Sir Sean Cornelius Sullivan, is a purported beneficiary of a trust created by his late father, Mr Joseph Sullivan. The first respondent, Hill Capital Pte Ltd, is a Singapore trust company. The second respondent, Ms Ban Su Mei, is the sole shareholder and director of the first respondent.

4 On 30 August 1995, Mr Joseph Sullivan created The Anchor Trust and The Anchor Two Trust. The beneficiaries of The Anchor Trust were Mr Joseph Sullivan and The Anchor Two Trust, while the beneficiaries of The Anchor Two Trust were Mr Joseph Sullivan and his issue. Both trusts were established in the Isle of Man.

5 The trust deeds of The Anchor Trust and The Anchor Two Trust (respectively, the "AT Deed" and the "A2T Deed") contained identically worded clauses on the proper law and forum for administration of the trust. Clause 2(a) in each of the Deeds provided for the trust to be governed by the law of the Isle of Man, and for the Isle of Man courts to be the forum for its administration. Clause 2(b) granted the trustees the power to resign and appoint new trustees in replacement. Clause 2(c) granted the trustees the power to simultaneously or subsequently amend the proper law and forum for administration of the trust.

6 The trustees of the two trusts changed several times. On 23 May 2011, the then-trustee of both trusts retired and the first respondent was appointed as

the new trustee of both trusts. The first respondent was then known as Anchor Trust Pte Ltd; it changed its name to its present name on 30 June 2023.

7 As the new trustee, the first respondent changed the proper law and forum for administration of both trusts to Singapore law and Singapore respectively.

8 According to the applicant, he wrote to the respondents on 16 December 2021 seeking accounts of both trusts, among other things. He received no response. On 14 March 2023, he wrote to the second respondent, repeating his request. Again, he received no response.

9 On or around 29 May 2023, Mr Joseph Sullivan passed away. From 25 June 2023 to 4 July 2023, the applicant made several written requests to the respondents for an account of the two trusts and the provision of other documents pertaining to the trusts. The respondents' responses were not satisfactory to the applicant.

10 On 18 July 2023, the first respondent retired as the trustee of The Anchor Two Trust and Fivehill Trustees Limited ("Fivehill"), a company incorporated in Cyprus, was appointed as the new trustee of The Anchor Two Trust. On the same day, Fivehill changed the governing law and forum for administration of The Anchor Two Trust to Cyprus law and Cyprus respectively. The applicant is challenging the appointment of Fivehill in separate proceedings but that is a separate matter. The applicant's claims with respect to The Anchor Two Trust are limited to a period before Fivehill was appointed as trustee (see [12] below).

11 The first respondent remained the trustee of The Anchor Trust and the proper law and forum for administration of The Anchor Trust remained Singapore law and Singapore respectively.

Procedural history

12 On 15 August 2023, the applicant commenced OA 820 against the respondents. OA 820 was amended pursuant to an order made on 11 January 2024. In his amended application, the applicant sought the following:

> (a) an order that the respondents provide the applicant with a detailed account of the assets and monies of The Anchor Trust and The Anchor Two Trust (the "Trust Assets and Monies") and all transactions in respect thereof for the period from:
>
> > (i) 23 May 2011 to present in respect of The Anchor Trust, and
> >
> > (ii) 23 May 2011 to 18 July 2023 in respect of The Anchor Two Trust;
>
> (b) an order that the respondents provide the applicant with, among other things, all the financial statements in respect of the Trust Assets and Monies and all documents which had the effect of modifying the AT Deed or the A2T Deed for the period from:
>
> > (i) 23 May 2011 to present in respect of The Anchor Trust, and
> >
> > (ii) 23 May 2011 to 18 July 2023 in respect of The Anchor Two Trust;

(c) a declaration that the first respondent had breached its duties as trustee of The Anchor Trust and Anchor Two Trust by failing to provide an account of the Trust Assets and Monies to the applicant for the period from:

(i) 23 May 2011 to present in respect of The Anchor Trust, and

(ii) 23 May 2011 to 18 July 2023 in respect of The Anchor Two Trust; and

(d) a declaration that the second respondent had breached her fiduciary duties owed to the beneficiaries of The Anchor Trust and Anchor Two Trust by failing to provide and/or failing to procure an account of the Trust Assets and Monies for the period from:

(i) 23 May 2011 to present in respect of The Anchor Trust, and

(ii) 23 May 2011 to 18 July 2023 in respect of The Anchor Two Trust.

13 On 15 September 2023, the respondents filed SUM 2819 to stay OA 820 on the grounds that:

(a) any legal question arising in the running and administration of The Anchor Two Trust should be resolved by the Cyprus court;

(b) alternatively, that Cyprus was the more appropriate forum for the determination of the claims in OA 820; and

(c) further or in the alternative, that as far as The Anchor Trust was concerned, OA 820 should be stayed pursuant to the court's inherent jurisdiction.

14 On 11 January 2024, the AR dismissed the respondent's application in SUM 2819. On 21 November 2023, the respondents appealed against the AR's dismissal of SUM 2819.

The AR's decision

15 Clause 2 in the AT Deed and the A2T Deed are identical, and states as follows:

> **PROPER LAW**
>
> 2. (a) This Settlement is established under the laws of the Isle of Man and subject and without prejudice to any transfer of the administration of the trusts hereof to any change in the Proper Law of this Settlement and to any change in the law of interpretation of this Settlement duly made according to the powers and provisions hereinafter declared the Proper Law of this Settlement shall be the law of the Isle of Man the Courts of which shall be the forum for the Administration thereof;
>
> (b) If at any future date in the opinion of **THE TRUSTEES** it is desirable for the protection of the Trust Fund or Trust Funds and/or for the proper administration of the Trusts hereby created to appoint a new Trustee outside the Isle of Man and/or to remove the forum for the administration of the Settlement from the Isle of Man for any reason whatsoever any Trustee may at any time or times thereafter by deed resign as Trustee and/or remove any Trustee or Trustees hereof resident in the Isle of Man from the office of Trustee and may appoint any person or persons or corporation to be the new Trustee or Trustees in place of the Trustee or Trustees so resigned and/or removed;
>
> (c) In addition to the power conferred by sub-paragraph (b) hereof **THE TRUSTEES** shall have power simultaneously with or at any time after exercising the power under sub-paragraph (b) by deed to declare that the forum for the administration of the trusts hereby constituted be thenceforth some place outside the Isle of Man and that the trusts hereof be administered in

> accordance with the law of that place or of any other place specified in such deed and the trusts hereby constituted be thenceforth administered from the place and in accordance with the law so specified;
>
> …
>
> [emphasis in original]

"Proper law" is defined in cl 1(a)(x) in both the AT Deed and the A2T Deed as follows:

> "the Proper Law of this Settlement" means the law to the exclusive jurisdiction of which the rights all parties and the construction and effect of each and every provision of this Settlement shall be subject and by which such rights construction and effect shall be construed and regulated;

16 Clause 2 was similar to the clause that was considered by the Court of Appeal in *Ivanishvili, Bidzina and others v Credit Suisse Trust Ltd* [2020] 2 SLR 638 ("*Ivanishvili*") at [50]. Unsurprisingly, it was common ground before the AR that:

(a) cl 2 was a jurisdiction clause (*Ivanishvili* at [60]); and

(b) cl 2 was intended to refer to the court which would settle questions arising in the day-to-day administration of the trust and to denote the supervisory and authorising court for actions the trustee might need to take; it was not intended to be an exclusive jurisdiction clause for the settlement of contentious disputes between trustees and beneficiaries (*Ivanishvili* at [76]).

17 The AR decided as follows:

(a) The crux of OA 820 was the seeking of documents and information relating to the trusts and the claims involved questions

relating to the administration and running of the trusts. Thus, the claims in OA 820 fell within the scope of the forum for administration provision in cll 2(a) and 2(c) in both the AT Deed and the A2T Deed.

(b) In view of the finding in (a) above, it was not necessary to consider the *forum non conveniens* analysis.

(c) The claims relating to The Anchor Two Trust had arisen before the proper law and forum for administration were changed. Accordingly, the proper law and forum for administration applicable to these claims were Singapore law and Singapore.

(d) As the dispute relating to The Anchor Two Trust was to be determined in Singapore, there was no reason why the dispute relating to The Anchor Trust needed to be stayed.

18 Accordingly, the AR dismissed the respondents' application in SUM 2819.

The appeals before me

19 The parties' submissions before me were broadly similar to those made before the AR and gave rise to the following issues:

(a) Whether the claims in OA 820 fell within the scope of the forum for administration provision in cll 2(a) and 2(c) in both the AT Deed and A2T Deed?

(b) Whether the proper law and forum for administration that were applicable to the claims relating to The Anchor Two Trust were Singapore law and Singapore or Cyprus law and Cyprus?

(c) Whether Cyprus was the more appropriate forum in any event?

(d) Whether the claims relating to The Anchor Trust should be stayed pursuant to the court's inherent jurisdiction?

Whether the claims in OA 820 fell within the scope of the forum for administration provisions

20 The question was whether the claims in OA 820 were in respect of the day-to-day administration of the trusts or whether they were contentious disputes between trustees and beneficiaries. I agreed with the AR that the claims involved questions relating to the administration and running of the trusts.

21 The claims in OA 820 were for (a) accounts and documents, and (b) declarations that the respondents had breached their fiduciary duties by failing to provide the accounts and documents. I agreed with the AR that the crux of OA 820 was the seeking of documents and information relating to the trusts. It was clear that the claims in OA 820 involved disputes relating to the administration of the trusts rather than contentious disputes between trustees and beneficiaries.

22 I therefore agreed with the AR that the claims in OA 820 fell within the scope of the forum for administration provision in cll 2(a) and 2(c) in both the AT Deed and A2T Deed.

The proper law and forum for administration applicable to the claims relating to The Anchor Two Trust

23 The proper law and forum for administration were changed from Singapore law and Singapore to Cyprus law and Cyprus with respect to The Anchor Two Trust but not The Anchor Trust. The proper law and forum for

administration with respect to The Anchor Trust remained Singapore law and Singapore. The question as to the applicable proper law and forum for administration thus arose only in respect of the claims relating to The Anchor Two Trust.

24 The proper law and forum for administration with respect to The Anchor Two Trust were changed on 18 July 2023. The claims relating to The Anchor Two Trust were in respect of accounts and documents for the period from 23 May 2011 to 18 July 2023 and breaches of duties by failing to provide such accounts and documents. OA 820 was commenced on 15 August 2023, after the changes had been effected.

25 The question was whether the proper law and forum for administration applicable to the claims relating to The Anchor Two Trust were Singapore law and Singapore or Cyprus law and Cyprus.

26 In *Ivanishvili,* the Court of Appeal expressed the following views about the proper law and forum for administration provisions in that case (at [59]):

> … Under cl 2(b) [of the Mandalay Trust], when the governing law changes, the relevant court changes too, to the courts of the jurisdiction of the proper law. This parallel change makes sense in that the courts of a particular jurisdiction are the best placed to interpret the laws of that jurisdiction as they apply to the affairs of a trust governed by those laws. In our view, the intention of the draftsman in indicating the courts of the jurisdiction of the proper law to be the forum for administration was to make crystal clear that if any legal question rose in the running of the Mandalay Trust, that question should be resolved by the courts of the jurisdiction of the proper law *at the time the question arose*.
>
> [emphasis added]

27 The respondents submitted that the phrase "at the time the question arose" referred to when legal proceedings were commenced. Thus, according to

the respondents, the proper law and forum for administration applicable to the claims relating to The Anchor Two Trust were the proper law and forum for administrative that were effective when OA 820 was commenced on 15 August 2023, *ie*, Cyprus law and Cyprus.

28 I disagreed with the respondents' submission. I agreed with the AR that:

(a) *Ivanishvili* did not stand for the proposition that an amended proper law would apply retroactively to the duties and responsibilities of a trustee or a previous trustee before the amendment took effect;

(b) the issues relating to the interpretation of the trust deed or the trustee's powers were subject to the proper law and forum for administration that were in effect when those issues first arose, whether or not a claim was commenced; and

(c) the change in the proper law and forum for administration could not have retrospective effect.

29 A trustee would have conducted himself on the basis of the proper law and forum for administration that were applicable to him then. It made no sense and would be grossly unfair to the trustee for the question as to whether his conduct was wrongful to be subject to a proper law and forum for administration that was unknown to him and to be decided in the future. There is nothing in *Ivanishvili* that goes this far. In my respectful view, what the Court of Appeal said in *Ivanishvili* simply meant that questions as to the correctness or otherwise of the trustee's actions in the running of the trust were subject to the proper law and forum for administration that were applicable during the period that those questions related to.

30 The respondents also relied on the following view expressed in *Ivanishvili* (at [79]):

> It is also important to have due regard to the fact that the proper law of the Mandalay Trust was not fixed for all time upon the settlement of the trust but could change with a change of trustee. When a trust like the Mandalay Trust is established, from the beginning it is anticipated that any subsequent trustee may be incorporated or carry on business in a different jurisdiction from that of the original trustee, and that in order to obtain the services of the subsequent trustee the proper law of the trust would have to change. *Once the proper law changed it would make no sense for the questions arising in respect of the running of the trust to continue to be referred to the courts of the jurisdiction governing the previous trustee …*
>
> [emphasis added]

31 In my view, this did not assist the respondents. All that the Court of Appeal said was that questions about the running of the trust *after* the proper law and forum for administration had been changed should not be subject to the proper law and forum for administration that was applicable *before* the change. On the contrary, in my view, the statement by the Court of Appeal was consistent with the proposition that questions about the running of the trust should be subject to the proper law and forum for administration applicable during the period that these questions related to.

32 In a similar vein, the proposition that the proper law governing claims for breach of trust would be the law that was applicable at the time the breaches allegedly occurred is supported by *dicta* in *Crociani v Crociani* [2014] UKPC 40 at [28] (see also, Lynton Tucker, Nicholas Le Poidevin & James Brightwell, *Lewin on Trusts* (Sweet & Maxwell, 20th Ed, 2020) ("*Lewin on Trusts*") at para 11–065).

33 In the present case, it was clear from the amended application (see [12] above) that the applicant's case relating to The Anchor Two Trust was in respect

of a period that ended before its proper law and forum of administration were changed. I agreed with the AR that the claims relating to The Anchor Two Trust were therefore subject to the laws and jurisdiction of Singapore.

34 The respondents also argued that the claim for accounts raised the following legal questions which should be resolved by the Cyprus courts:

(a) whether the applicant was a beneficiary under The Anchor Two Trust;

(b) whether the applicant was a "Hostile Beneficiary", which was defined in the A2T Deed as any beneficiary "who brings legal proceedings or initiates any other form of action or legal process in any jurisdiction relating to this Settlement …"; under the A2T Deed, all provisions relating to a Hostile Beneficiary would be rendered void;

(c) whether the applicant had a right to an account of The Anchor Two Trust in any event, in view of the wide discretionary powers given to the trustee under the A2T Deed; and

(d) whether the applicant was precluded from seeking an account and documents against the first respondent because cl 19 of the A2T Deed provided that a trustee who retired "shall be released from all claims demands actions proceedings and accounts …".

35 In my view, these questions went to the merits of the claims, and were subject to the laws and jurisdiction of Singapore. They were not grounds for granting a stay. I would add that I also had reservations about the applicability of the "Hostile Beneficiary" provision where the legal proceedings were brought against the trustee for breach of duties or breach of trust.

36 The first respondent further submitted as follows:

(a) As the first respondent had retired as trustee on 18 July 2023, the question as to whether he was liable to provide an account and documents arose only when OA 820 was filed. His liability was therefore subject to the laws and jurisdiction of Cyprus.

(b) As the substance of OA 820 was for accounts and documents, the applicant should seek the same from the current trustee of The Anchor Two Trust. The applicant's entitlement to the same would be subject to the laws and jurisdiction of Cyprus.

(c) In any event, this Court should exercise its discretion not to give effect to the proper law and forum for administration provisions in the A2T Deed because the current trustee of The Anchor Two Trust, Fivehill, was not a party to these proceedings.

37 I rejected the first respondent's submissions.

38 The question of the first respondent's liability went to the merits of the claims. As stated in [33] above, the claims relating to The Anchor Two Trust were subject to the laws and jurisdiction of Singapore.

39 The submission that the applicant should seek the accounts and documents against the current trustee of The Anchor Two Trust was neither here nor there. It was not a justification to stay OA 820. The applicant was free to choose who he wanted to bring the claims against. A retired trustee remains liable to account for his conduct during his term as trustee: *Lalwani Shalini Gobind v Lalwani Ashok Berumal* [2017] SGHC 90 at [41]; *Lewin on Trusts* (Supp No 1) at para 21-121A.

40 The fact that Fivehill was not a party to the present proceedings was no reason to stay the proceedings. It had no bearing on whether the claims against the respondents ought to be stayed. Besides, there was no good reason why Fivehill had to be made a party to these proceedings. The determination of the claims relating to The Anchor Two Trust would not affect Fivehill for the following reasons:

(a) The claims for declaratory reliefs related to breaches of duties by *the respondents*. Any order made on these claims would not affect Fivehill.

(b) Before me, the applicant confirmed that his claims for an account and documents rode on the back of his claims for declaratory reliefs. Thus, if he failed to establish the alleged breaches of duties against the respondents, his claim for an account and documents would fall away.

(c) In any case, (i) any order requiring the *respondents* to provide accounts and/or documents in respect of The Anchor Two Trust would not affect Fivehill, and (ii) any order requiring the *respondents* to provide documents would not affect or bind Fivehill.

Whether Cyprus was the more appropriate forum in any event

41 Before the AR, the first respondent submitted that the question as to whether Cyprus was the more appropriate forum would arise only if the court found that the claims in OA 820 did not fall within the scope of the proper law and forum for administration provisions in the trust deeds. The first respondent referred to *Ivanishvili* where the Court of Appeal held (at [80]–[81]) that:

> 80 … the appellants cannot rely on cl 2(a) to subject the Trustee to the jurisdiction of the courts of Singapore … Instead,

> the issue of where the dispute should properly be tried will have to be determined by the doctrine of *forum non conveniens*.
>
> 81 In the light of our conclusion on the nature of cl 2(a), the [test in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460] governs the application for the stay …

42 Having decided that the claims fell within the scope of the proper law and forum for administration provisions, the AR found that it was unnecessary to consider whether Cyprus was the more appropriate forum.

43 I agreed with the AR. Clause 2 in the trust deeds, read with cl 1(a)(x) (see [15] above) was an exclusive jurisdiction clause on questions pertaining to the administration of the trusts. There was no strong cause not to give effect to the exclusive jurisdiction clause. In any event, the respondents had not shown that Cyprus was the more appropriate forum. The proper law and forum for administration applicable to the claims were Singapore law and Singapore. The first respondent was a Singapore company, and the second respondent was a Singapore national resident in Singapore. Fivehill was not a necessary party to the present proceedings.

Whether the claims relating to The Anchor Trust should be stayed pursuant to the court's inherent jurisdiction

44 As stated earlier, the proper law and forum for administration of The Anchor Trust remained Singapore law and Singapore. The question as to whether the claims relating to The Anchor Trust should be stayed arose only if the claims relating to The Anchor Two Trust were stayed. I agreed with the AR that as the dispute relating to The Anchor Two Trust fell to be determined in Singapore, there was no reason why the disputes relating to The Anchor Trust needed to be stayed.

Conclusion

45 For the reasons set out above, I agreed with the AR that there was no reason to stay the present proceedings. Accordingly, I dismissed the respondents' appeals in RAs 14 and 15. I also ordered the respondents to pay the applicant costs, fixed at $12,000 per respondent (inclusive of disbursements).

Chua Lee Ming
Judge of the High Court

Woo Shu Yan, Sanjana Jayaraman, Jonathan Mok and Nikhil Dutt Sundaraj (Drew & Napier LLC) for the applicant;
Davinder Singh SC, Sngeeta Rai, Tan Ruo Yu, Rajvinder Singh Chahal and Tanmanjit Singh Sidhu (Davinder Singh Chambers LLC) for the first respondent;
Tan Chee Meng SC, Lim Wei Lee, Lim Yuan Jing and Choo Qian Ke (WongPartnership LLP) for the second respondent.