# PT Karya Indo Batam *v* Wang Zhenwen and others (Wang Zhenwen and others, third parties)

*[2021] SGHC 177*

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| **Case Number** | : Suit No 104 of 2020 (Summons No 4991 of 2020) |
| **Decision Date** | : 13 July 2021 |
| **Tribunal/Court** | : General Division of the High Court |
| **Coram** | : Lee Seiu Kin J |
| **Counsel Name(s)** | : Yeo Lai Hock, Nichol, Qua Bi Qi, and Zhang Jun (Solitaire LLP) for the applicant; Chia Jin Chong Daniel and Tan Lin Yin Vickie (Coleman Street Chambers LLC) for the respondent; Lim Min (K&L Gates Straits Law LLC) for the second defendant (watching brief). |
| **Parties** | : PT Karya Indo Batam — Wang Zhenwen — Rich Capital Holdings Limited (formerly known as Infinio Group Limited) — Rich-Capital Construction Pte Ltd — Oxley Batam Pte Ltd — (formerly known as Totality Pte Ltd) — Tai Kok Kit Aldrin — Oh Sikai (Hu Sikai) — Soong Kar Leong |

*Civil Procedure – Injunctions – Anti-suit injunctions*

*Conflict of Laws – Restraint of foreign proceedings – Vexatious and oppressive conduct*

*Conflict of Laws – Restraint of foreign proceedings – Comity*

13 July 2021

**Lee Seiu Kin J:**

**Introduction**

1 This is an application by Oxley Batam Pte Ltd ("OBPL"), the fourth defendant in Suit No 104 of 2020 ("Suit 104"), for an anti-suit injunction against PT Karya Indo Batam ("PT KIB"), the plaintiff in Suit 104, to restrain the latter from continuing actions against OBPL and various other entities in Batam and Jakarta. I will refer to OBPL and PT KIB by their names or as "the applicant" and "the respondent" respectively.

2 Having heard the parties' submissions, I was satisfied that the circumstances justify granting the anti-suit injunction sought by the applicant. I detail my reasoning below in these grounds of decision.

**Facts**

3 The present dispute arises out of a joint venture between PT KIB and OBPL to develop an integrated commercial and residential project in Batam, Indonesia, known as Oxley Convention City (the "Batam Project").[note: 1]

4 The Batam Project is carried out through a joint venture company, PT Oxley Karya Indo Batam ("PT OKIB"), in which PT KIB and OBPL were equal shareholders.[note: 2]

5 PT KIB is a company incorporated in Indonesia.[note: 3] Its principal business is real estate development, *viz*, in owning or leasing property, land preparation, and construction of buildings for hotel and apartments.

6 OBPL is a private limited company incorporated in Singapore and it similarly deals with real estate development.[note: 4] OBPL was originally a wholly owned subsidiary of Oxley International Holdings Pte Ltd ("OIH").[note: 5] On or about May 2018, Rich Capital Holdings Limited ("RCH"), through its wholly-owned subsidiary, Rich Batam Private Limited ("RBPL"), acquired an 80% stake in OBPL from OIH, with OIH retaining the remaining 20% interest.[note: 6] Also, RCH employed Tai Kok Kit Aldrin ("Aldrin") on or about 11 June 2018 to oversee the Batam project.[note: 7] Aldrin is also the Employer Representative of PT OKIB.[note: 8]

7 The terms of this joint venture are embodied in a number of agreements, including a shareholders' agreement between PT KIB and OBPL dated 12 August 2016 (the "SHA") and a Joint Operation Agreement (the "JOA") between PT KIB and OBPL dated 12 August 2016.[note: 9] Broadly speaking, the parties agreed that PT KIB was to procure the land on which the Batam Project would be built while OBPL was to manage the construction of the Batam Project.[note: 10] The construction contract for the Batam Project was eventually awarded to Rich-Link Construction Pte Ltd ("RLC") on or about 15 October 2018.[note: 11] At the material time, Wang Zhenwen ("Wang") was the sole shareholder of RLC.[note: 12]

8 To date, PT KIB has commenced four actions relating to the dispute over the Batam Project.[note: 13]

9 On 3 February 2020, PT KIB commenced this action, Suit 104 (the "Singapore Action"), against Wang, RCH, RLC, OBPL, and Aldrin.[note: 14]

10 PT KIB claims in the Singapore Action that the defendants or any two or more together, wrongfully and with intent to injure PT KIB by unlawful means conspired and combined together to injure PT KIB, thereby causing PT KIB to suffer loss and damage.[note: 15] The salient issues of the Singapore Action, as pleaded by PT KIB, include:[note: 16]

(a) PT KIB allegedly discovered that the SHA has never been translated into and re-executed in Bahasa Indonesia within 30 days of its execution and is therefore null and void, being contrary to the Indonesian Language Law (the "Validity Issue").[note: 17]

(b) PT KIB pleaded an alleged agreement between the shareholders of OBPL to vote in favour of the appointment of RLC as the main contractor for the Batam Project upon completion of RCH's acquisition of an indirect interest in OBPL, and an alleged packaged deal agreed between RCH and the Oxley Group for the Batam Project to be awarded for S$125m to RLC in return for RCH's investment in OBPL (the "Conspiracy Issue").[note: 18]

(c) The conduct of the tender and revised tender allegedly created the outcome that RLC's tender offer was the only tender offer left on the table and led to RLC's appointment as the main contractor for the Batam Project through a letter of award dated 15 October 2018 (the "Letter of Award") (the "Tender Issue").[note: 19]

(d) The piling method was allegedly changed by RLC to a wrong one without the knowledge or approval of PT KIB, and this resulted in costs savings for RLC (the "Piling Issue").[note: 20]

(e) RLC failed to provide PT OKIB with a performance bond in breach of the Letter of Award

(the "Performance Bond Issue").[note: 21]

(f) PT KIB pleaded extensive breaches of duties on the part of Wang and Aldrin (the "Breach of Duty Issue").[note: 22]

(g) PT KIB put in issue which party or parties should have the proper responsibility for the management of PT OKIB and the Batam Project (the "Project Management Issue").[note: 23] To this end, PT KIB alleged that it had no visibility on the Batam Project by virtue of, *inter alia*, misrepresentations of the effect of the JOA and the repeated assertion of OBPL's role as defined in the SHA.[note: 24] PT KIB also claimed that it was prevented from interfering with OBPL's and PT OKIB's supervision, direction, and control of the activities and services done or rendered in relation to the Batam Project.[note: 25]

(h) The execution of the sale and purchase agreements for units in the Batam Project was allegedly in breach of Indonesian law (the "Illegal Sale Issue").[note: 26]

(i) PT KIB alleged that by reason of the defendants' actions, buyers of the units in the Batam Project demanded full refunds of their monies (the "Refund Issue").[note: 27]

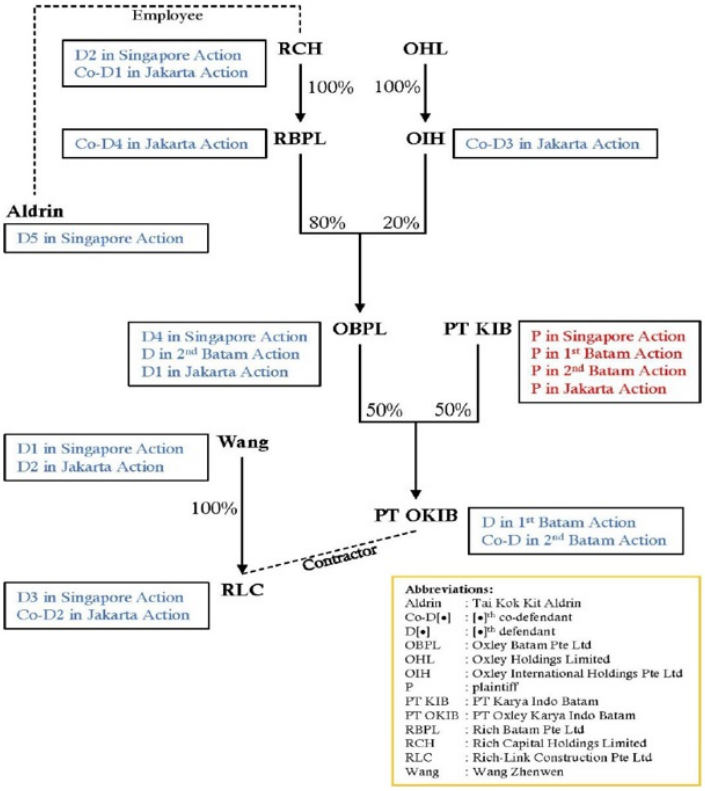
11 On 27 August 2020, PT KIB commenced an action against PT OKIB in the Batam District Court (the "1st Batam Action"). Parties reached a settlement on 9 September 2020[note: 28] and this action is not in issue for the present application.

12 Shortly after this settlement, PT KIB commenced an action against OBPL as defendant and PT OKIB as co-defendant in the Batam District Court (the "2nd Batam Action") on 21 September 2020.[note: 29]

13 On the next day, PT KIB commenced an action against OBPL and Wang as first and second defendants and against RCH, RLC, OIH, and RBPL as first to fourth co-defendants in the Central Jakarta District Court (the "Jakarta Action") on 22 September 2020.[note: 30]

14 In these written grounds, I will refer to the 2nd Batam Action and the Jakarta Action collectively as the "Indonesian Actions".

15 The chart below illustrates the relationship between the entities involved in the various actions and the shareholding that one entity has in another, that was set out in the preceding paragraphs:[note: 31]




16 OBPL brought the present application to restrain PT KIB from pursuing the 2nd Batam Action and the Jakarta Action, and from commencing or pursuing any other actions in any jurisdiction against the defendants of Suit 104, including their present or former agents and employees, in relation to the Batam Project.[note: 32]

**The applicable law**

17 The legal principles that govern anti-suit injunctions are relatively well established and uncontroversial (*Lakshmi Anil Salgaocar v Jhaveri Darsan Jitendra* [2019] 2 SLR 372 ("*Lakshmi*") at [49]):

(a) The jurisdiction is to be exercised when the "ends of justice" require it.

(b) Where the court decides to grant an anti-suit injunction, its order is directed not against the foreign court but against the parties so proceeding or threatening to proceed.

(c) An injunction will only be issued to restrain a party who is amenable to the jurisdiction of the court, against whom an injunction will be an effective remedy.

(d) Since such an order indirectly affects the foreign court, the jurisdiction is one which must be exercised with caution.

18 The Court of Appeal in *Lakshmi* has identified (at [50]) five specific factors that are relevant to the court's determination of whether to grant an anti-suit injunction (citing *John Reginald Stott Kirkham v Trane US Inc* [2009] 4 SLR(R) 428 ("*Trane*") at [28]–[29] with approval):

(a) Whether the injunction respondent is amenable to the jurisdiction of the Singapore court.

(b) The natural forum for resolution of the dispute between the parties.

(c) The alleged vexation or oppression to the injunction claimant if the foreign proceedings are to continue.

(d) The alleged injustice to the injunction respondent as an injunction would deprive it of the advantages sought in the foreign proceedings.

(e) Whether the institution of the foreign proceedings is in breach of any agreement between the parties.

19 In the present matter, PT KIB did not dispute that: (a) it is amenable to the jurisdiction of the Singapore court, (b) the natural forum for the resolution of the dispute is Singapore, and (c) if the 2nd Batam Action and the Jakarta Action are found to be vexatious or oppressive, the granting of the anti-suit injunction would not cause it injustice.[note: 33] I also noted that the last factor, *ie*, whether the institution of the foreign proceedings is in breach of any agreement between the parties, is not in issue. The applicant merely stated that the respondent commenced the *Singapore Action* despite the presence of an arbitration agreement in the SHA, and not the Indonesian Actions.[note: 34]

20 I also pause to detail my reasoning for two legal points.

21 Firstly, the principles and factors set out in *Lakshmi* are well-settled law, so the respondent's submissions regarding the granting of injunctions under the principles set out in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 were clearly irrelevant to the present matter.[note: 35]

22 Secondly, the applicant submitted that even though the present application would benefit entities that are not party to the Singapore Action, there was no issue of whether the applicant had the *locus standi* to make the present application.[note: 36] As the respondent did not contest this point, I make the following observations.

23 In *PT Sandipala Arthaputra v STMicroelectronics Asia Pacific Ltd and others* [2015] 5 SLR 873 ("*PT Sandipala*"), the injunction respondent had commenced an action in Singapore and in Indonesia over matters relating to the same commercial project. The injunction respondent objected to the application for an anti-suit injunction because, *inter alia*, it would benefit an entity, STMicroelectronics NV ("ST-NV"), that was neither a proper party to the action in Singapore nor a party to the application for the anti-suit injunction itself: at [42]. Accordingly, the injunction respondent argued that the applicants did not have the *locus standi* to apply for one. Notwithstanding this objection, the High Court granted the anti-suit injunction and stated that:

> 60 I start with the preliminary observation that, contrary to the plaintiff's submissions, ST-AP and Mr Cousin [*ie*, the applicants] were not applying for the anti-suit injunction on *behalf* of ST-NV. Rather, they were applying for the anti-suit injunction on the basis that ***they themselves*** had a ***real and legitimate interest in protecting the integrity of the Singapore proceedings***.
>
> 61 In *Turner v Grovit* [2002] 1 WLR 107 ("*Turner*"), the House of Lords held (at [27]) that under English law the applicant for an anti-suit injunction must have a legitimate interest in making his application and the protection of that interest must make it necessary to make the order. Where the applicant has a contractual right not to be sued abroad, that contractual right is the legitimate interest. But where the applicant was relying upon the conduct of the other person, which is unconscionable for some noncontractual reason, English law required that ***the***

***legitimate interest must be the existence of proceedings in this country*** which need to be protected by the grant of a restraining order.

…

63 As shall be explained later on, I found that there was a serious risk of conflicting decisions. It would suffice to note, for the purposes of the issue of *locus standi*, that the underlying bedrock of facts and the alleged wrongful acts were similar if not the same. In short, I was not convinced that a clear distinction may be drawn between the Jakarta Action and Singapore Action. Consequently, the Applicants, who are defendants to the Singapore Action, had a real and legitimate interest in protecting the proceedings in Singapore.

[emphasis added in bold italics; emphasis in italics in original]

24 I agreed with this holding in *PT Sandipala*. It has to be borne in mind that the anti-suit injunction is *granted* on the basis of the injunction applicant's *own legitimate interest* in protecting the integrity of the proceedings in Singapore, and is *directed* against "the parties so proceeding or threatening to proceed" (as stated in *Lakshmi* at [49]), *ie*, the injunction respondents. The effect of restraining the injunction respondents is that third parties who are involved in the foreign proceedings (*ie*, entities that are neither party to the action in Singapore nor a party to the application for the anti-suit injunction) can benefit from the anti-suit injunction, even though the application and the granting of the anti-suit injunction were not premised on their benefit. Hence, any issue regarding the injunction applicant's *locus standi* does not arise by virtue of the presence of such third parties.

**My decision**

25 Having disposed of the issues above, it follows that the main issue here was whether the Indonesian Actions are vexatious or oppressive to the applicant. The respondent also submitted that: (a) it would be a breach of comity for me to grant the anti-suit injunction[note: 37] and (b) the applicant made the application in bad faith.[note: 38]

26 I detail my reasoning for these three issues in turn.

***Whether the Indonesian Actions are vexatious or oppressive***

27 I was satisfied that the respondent's pursuit of all three actions was vexatious and thus an anti-suit injunction should be granted. The applicant has proven that the actions constitute duplicitous proceedings. As I explain below, this finding shifted the burden onto the respondent to show "very unusual circumstances" that justify the continuance of the concurrent proceedings, which the respondent could not discharge.

*Duplicitous proceedings*

28 A *lis alibi pendens* properly refers to simultaneous actions pending in the local court and in a foreign country between the same parties and involving the same or similar issues: *Virsagi Management (S) Pte Ltd v Welltech Construction Pte Ltd and another appeal* [2013] 4 SLR 1097 ("*Virsagi*") at [26]. In other words, this term properly connotes a *duplicity* of proceedings and not a mere *multiplicity* of proceedings.

29 The presence of a *lis alibi pendens* is relevant to the inquiry of whether the foreign proceedings are vexatious or oppressive to the injunction applicant. Its relevance is summarised in *PT Sandipala* at

[112]:

> Where the proceedings are duplicitous, the law recognises the undesirable consequences that may arise given the risk of conflicting judgments. Beyond this, it is unfair or unconscionable for the defendant to have to fight the same battle twice. Thus, where a party to litigation in one country begins proceedings in another country on the same subject matter, his conduct may be regarded as a "vexatious harassing of the opposite party": see *Stichting Shell Pensioenfonds v Krys* [2015] AC 616 at [18]. That said, there is no presumption that a multiplicity of proceedings is vexatious: per Lord Goff, *Société Nationale Industrielle Aerospatiale v Lee Kui Jak* [1987] AC 871 at 894.

30 A *lis alibi pendens* may arise in two types of factual situations: first, where the same plaintiff sues the same defendant in Singapore and abroad; and second, where the plaintiff sues the defendant in Singapore and the defendant sues the plaintiff abroad, or vice versa: *Virsagi* at [27]. The Court of Appeal in *Virsagi* termed the former as a "common plaintiff" situation and the latter as a "reversed parties" situation.

31 In determining the existence of a *lis alibi pendens*, the court in *Virsagi* elucidated at [47] that:

> We are of the view that in deciding whether there is a *lis alibi pendens*, the first legal port of call ought to be the identity of the parties and the causes of action concerned. This will enable the court to identify whether there are same or similar issues arising from the same factual matrix which are before both the local and foreign court(s), and, if so, the extent of these similarities. The nature of the reliefs sought will be relevant to the analysis, given that in most cases the reliefs sought and the causes of action concerned will be inextricably linked with each other. However, the court ought not to hold, without more, that the local and foreign court(s) are faced with the same or similar issues by focusing merely on the reliefs sought – for example, whether the claimant is entitled to the same quantum of damages as a remedy. As for the degree of similarity necessary, the party seeking to demonstrate that there is a *lis alibi pendens* need not show a total correspondence of issues, but the court will be more likely to find a *lis alibi pendens* where the issues are of a greater degree of similarity.

32 Building on the proposition in *Virsagi* that the court ought not to hold that the issues are brought before both the local and foreign court are similar simply because the reliefs sought are similar, the Court of Appeal in *Lakshmi* added at [65] that the converse is also true: the fact that different reliefs are sought does not necessarily mean that the issues that arise for determination by both courts are different.

33 Accordingly, having regard to the parties, causes of action, and reliefs sought by PT KIB, I examined whether the issues in the three actions are similar. Counsel for the applicant has provided a useful summary, and I reproduce the material information here:

| **Action** | **Plaintiff** | **Defendant(s) and Co-defendant(s)** | **Issues and relief sought** |
|---|---|---|---|
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|---|---|---|---|
| Singapore Action | PT KIB | **Defendants:**<br>(1) Wang<br>(2) RCH<br>(3) RLC<br>(4) OBPL<br>(5) Aldrin | **Issues:**<br>(1) Validity<br>(2) Conspiracy<br>(3) Tender<br>(4) Piling<br>(5) Performance Bond<br>(6) Breach of Duty<br>(7) Project Management<br>(8) Illegal Sale<br>(9) Refund<br>(10) …<br>**Relief:**<br>(1) Damages |
| 2nd Batam Action | PT KIB | **Defendant:**<br>(1) OBPL<br>Co-defendant:<br>(1) PT OKIB | **Issues:**<br>(1) Validity<br>**Relief:**<br>(1) Avoidance of the SHA |
| Jakarta Action | PT KIB | **Defendants:**<br>(1) OBPL<br>(2) Wang<br>**Co-defendants:**<br>(1) RCH<br>(2) RLC<br>(3) OIH<br>(4) RBPL | **Issues:**<br>*As against OBPL*:<br>(1) Piling<br>(2) Project Management<br>(3) Tender<br>(4) Breach of SHA<br>**Relief**:<br>(1) Avoidance of the SHA<br>*As against OBPL*:<br>(2) Value of land<br>(3) Cost of normalising land<br>(4) Value of Batam Project |

34 The present case concerned a common plaintiff situation (see [30] above), since PT KIB commenced the Indonesian Actions on top of the Singapore Action.

35 I first noted that the respondent has raised several issues that it claimed are part of the Indonesian Actions, *viz*, (a) its claim that OBPL failed to provide the funding towards the construction cost and all costs relating thereto up to the amount of S$21,000,000 in breach of the SHA, (b) its

claim that OBPL failed to inject paid-up capital for the operations of PT OKIB in breach of the SHA and Indonesian law, and (c) its allegation that PT OKIB's director had breached his duties in failing to ensure that the design of the Batam Project complied with the Indonesian National Standard.[note: 39] As pointed out by OBPL, these issues are *not* part of the Indonesian Actions.[note: 40] These issues were simply set out in a letter to OBPL that was issued subsequent to the commencement of the Indonesian Actions and there was no indication as to whether PT KIB intended to take any further action.[note: 41] Hence, these issues are not relevant for the present analysis and are not reflected in the above table.

36 In respect of the 2nd Batam Action, I was satisfied from the pleadings adduced that the sole issue, *viz*, the Validity Issue, features in both the 2nd Batam Action and the Singapore Action.[note: 42] I do, however, note that PT OKIB is a party to the former and not to the latter. In this regard, the applicant argued that since PT OKIB's only role as the co-defendant is simply to comply with the Batam District Court's decision should it be made in favour of PT KIB,[note: 43] PT OKIB's role in the 2nd Batam Action is therefore parasitic on OBPL's role as the defendant in the same action.[note: 44] I agreed with this reasoning and found that the addition of PT OKIB as co-defendant in the 2nd Batam Action does not meaningfully differentiate this action from the Singapore Action.

37 The respondent claimed that the relief sought in the 2nd Batam Action, *viz*, a declaration that the SHA is "invalid and does not have any binding legal force or null and void by law",[note: 45] is different to that sought in the Singapore Action, *viz*, damages, and can only be awarded by an Indonesian court.[note: 46] First of all, I do not see why this declaration cannot be obtained in a Singapore court. A Singapore court would simply require expert evidence on Indonesian law to be adduced. Curiously, even the respondent acknowledged this point in its own submissions.[note: 47] Given that this declaration can be obtained in Singapore, I was inclined to infer that PT KIB simply chose not to do so and deliberately sought different reliefs across different *fora*.

38 It was therefore clear that the 2nd Batam Action is simply a subset of the Singapore Action.

39 In respect of the Jakarta Action, all of the issues, save an issue regarding the breach of the SHA (underlined in the table at [33] as "Breach of SHA"), have already been raised in the Singapore Action.[note: 48] This issue relates to an allegation that OBPL negligently breached certain provisions of the SHA, which led to RCH's acquisition and, in turn, RLC's appointment ("Breach of SHA Issue").[note: 49] I find that this issue is related to the Conspiracy Issue, which is present in the Singapore Action but not in the Jakarta Action. To recapitulate, the Conspiracy Issue (see [10] above) relates to PT KIB's claim that OBPL and other parties had conspired with OBPL's shareholders to vote in favour of RLC's appointment as the main contractor, in return for RCH's investment in OBPL.[note: 50] At their heart, both issues concern RLC's appointment, and I do not see why PT KIB could not have pleaded both issues in the Singapore Action.

40 Also, since the crux of the present inquiry relates to whether the *issues* are duplicated across the different actions (see [31] above), I agreed with the applicant that it is immaterial that some causes of action relating to the same issues are different.[note: 51]

41 The involvement of OIH and RBPL, who are not parties to the Singapore Action, as co-defendants in the Jakarta Action was also immaterial. It is not apparent from the pleadings why the

four co-defendants, including OIH and RBPL, were involved since no relief is sought against any of them.[note: 52] Hence, OIH's and RBPL's involvement did not weigh against finding that the Jakarta proceedings are duplicitous.

42 It was also clear to me that the reliefs sought in the Jakarta Action were not reliefs that could only be granted by the court there.

43 In the Jakarta Action, the pleadings show that PT KIB seeks "[t]o punish [OBPL] to pay all the losses suffered by [PT KIB] with a total of Rp. 1,710,000,000,000", comprising: (a) the actual value of the selling price of PT KIB's land according to the fair market value, (b) the normalisation fee for PT KIB's land condition, and (c) the immaterial losses suffered by PT KIB.[note: 53] This claim for monetary relief is plainly covered by the claim for damages in the Singapore Action,[note: 54] especially since PT KIB did not plead its loss suffered and damages sought with precision.[note: 55]

44 The respondent submitted that only the Indonesian courts can award the relief of "criminal penalties" for the Illegal Sale Issue.[note: 56] In the first place, this relief was not pleaded in the Jakarta Action.[note: 57] In the absence of expert evidence, I cannot determine if such relief can indeed be granted by the Indonesian court *in the Jakarta Action itself* (*ie*, not in some other criminal action that PT KIB could possibly commence against OBPL in Indonesia). Hence, I dismiss the respondent's submission on this point.

45 It was therefore clear to me that, like the 2nd Batam Action, the Jakarta Action was also, in substance, a subset of the Singapore Action. I thus found that there was a *lis alibi pendens* on the facts.

46 Indeed, the facts of the present case show that this was not a case where the issues in the various actions were merely "inextricably intertwined" (*PT Sandipala* at [126]), falling short of duplicity. Instead, this was a *clear case* of duplicity, since: (a) nearly all of the issues in the Indonesian Actions were similar, (b) co-defendants were added in the Indonesian Actions without explanation, and (c) the reliefs sought in the Indonesian Actions could be obtained in Singapore. This duplicity is compounded by the fact that the respondent chose to commence *two* such foreign proceedings. The attendant risks of conflicting judgments and unfairness to the applicant are thus multiplied twofold.

*Burden of proof*

47 Because the applicant has shown that the Indonesian Actions are duplicitous, the issue of whether the burden of proving that they are vexatious or oppressive remains with the applicant arises.

48 It is uncontentious that the applicant should bear the burden of proving that the foreign proceedings are vexatious or oppressive. This legal proposition follows from first principles, since it is axiomatic that he who asserts should prove: *Trane* at [33]. In this regard, it is also apposite to note that there is no presumption that a multiplicity of proceedings is vexatious (*Trane* at [48], citing *Société Nationale Industrielle Aerospatiale v Lee Kui Jak* [1987] AC 871 at 894 with approval).

49 However, as I elaborate below, the Court of Appeal in *Virsagi* has expressly left the position open as to whether the burden of proving that the foreign proceedings are vexatious or oppressive can shift to the injunction respondent where a *lis alibi pendens* is shown in the context of granting an

anti-suit injunction.

50 As I have stated above at [30], the court in *Virsagi* distinguished between a "common plaintiff" situation and a "reversed parties" situation. Where there is a *lis alibi pendens*, it is *only* in the common plaintiff situation that the court will generally compel the plaintiff to make an election between the local and foreign proceedings, unless the circumstances are "very unusual": *Virsagi* at [28]–[30]. In other words, the burden shifts to the common plaintiff to justify the continuation of proceedings by showing very unusual circumstances. The court in *Virsagi* termed this as the doctrine of forum election.

51 Importantly, the Court of Appeal in *Virsagi* went on to observe at [43] that:

> However, some aspects of the doctrine of forum election and its relationship to the principles in relation to *forum non conveniens* as well as anti-suit injunctions do raise some issues of concern. Does a ***common plaintiff situation*** where the plaintiff is **unable to show unusual circumstances** mean that there is, ***prima facie*, vexation and oppression to the defendant**? Should this have an effect on ***how vexation and oppression operate in the context of anti-suit injunctions*** (see, for example, *Koh Kay Yew* ([32] *supra*) as well as the Singapore High Court decision of *Beckkett Pte Ltd v Deutsche Bank AG* [2011] 1 SLR 524)? … We need not address these (problematic) questions in the context of the present appeal, given our decision on *the facts of the present appeal* (*ie*, that the doctrine of forum election could not have resulted in a stay of proceedings, and that there was no *lis alibi pendens* on the facts of the present case although the doctrine of *forum non conveniens* nevertheless applied in favour of the Respondents). These questions can be dealt with when they next arise directly for decision by the court.
>
> [emphasis added in bold italics; emphasis in original in italics]

The Court of Appeal clearly alluded to the possibility that in the context of granting anti-suit injunctions, where there is a common plaintiff situation, there is *prima facie* vexation and oppression to the defendant if the plaintiff is unable to show unusual circumstances justifying the continuation of duplicitous proceedings. However, unlike the facts of the present case, the court could not address this point because, *inter alia*, there was no *lis alibi pendens* on the facts of *Virsagi*.

52 The allusion to such an interface stems from the fact that the concerns presented by a common plaintiff situation features in both the legal contexts of forum election and the granting of anti-suit injunctions.

53 In the context of an application for an anti-suit injunction, the Court of Appeal in *Koh Kay Yew v Inno-Pacific Holdings Ltd* [1997] 2 SLR(R) 148 ("*Koh Kay Yew*") noted at [22]:

> … where the appellant had only started proceedings in one jurisdiction, the courts should be more cautious than not in granting injunctions compared with situations, in which a party had commenced actions concurrently in two jurisdictions. *In the latter situations, it is understandable that any court should feel uncomfortable about allowing both actions to go on*. Not only would the same issue be litigated twice but there would also be the risk of having two different results, each conflicting with the other. And *these problems would have arisen simply because one party decided to sue in one place too many*. In such circumstances, courts, including those in Singapore, should prevent the inherent abuse of the different judicial systems in different jurisdictions by compelling that party to choose the jurisdiction that he wants to litigate in. The underlying need to prevent a multiplicity of similar proceedings justifies the courts being *more*

*prepared to grant an injunction*.

[emphasis added in italics]

The court appreciated that where a plaintiff concurrently commenced actions in two jurisdictions that concern the same issues, the court should be "more prepared to grant an [anti-suit] injunction" to prevent both actions from going on. This is unlike the case where the plaintiff had commenced proceedings in one jurisdiction only.

54 The distinction set out in the above passage is plainly the same as that between the common plaintiff situation and the reversed parties situation stated in *Virsagi* (see [50] above). Indeed, the court in *Virsagi* cited this same passage as providing the "reason why a plaintiff should be compelled to elect in a *common plaintiff situation*" [emphasis added] where there is a *lis alibi pendens*: at [32]. In the same vein, the Court of Appeal in the earlier case of *Yusen Air & Sea Service (S) Pte Ltd v KLM Royal Dutch Airlines* [1999] 2 SLR(R) 955 ("*Yusen Air*") cited the same passage for the proposition that the "principle of election" was endorsed by the Court of Appeal in *Koh Kay Yew*: at [22]. Accordingly, this line of authority shows that in our local jurisprudence, the basis for differentiating between a common plaintiff situation and a reversed parties situation in the context of forum election, stemmed from *Koh Kay Yew*, a case that concerned the granting of an anti-suit injunction. Hence, the concerns pertaining to a common plaintiff situation, such as the wasting of judicial resources and the risk of conflicting decisions, apply equally in both legal contexts of forum election and the granting of anti-suit injunctions.

55 In *Beckkett Pte Ltd v Deutsche Bank AG and another* [2010] 1 SLR 524 ("*Beckkett*"), the dispute concerned whether the Singapore and Indonesian actions commenced by a common plaintiff were concurrent and duplicate proceedings. The High Court held that the Assistant Registrar was correct in finding that they were indeed concurrent and duplicate, and held that where duplicate proceedings are conducted concurrently in two different courts or two different jurisdictions by the same plaintiff, that plaintiff bears the burden of justifying the continuance of the concurrent proceedings: at [28]–[29]. It was therefore "always vexatious for a plaintiff to start concurrent proceedings in different jurisdictions against the same defendant for the same reliefs arising out of the same cause of action": at [40].

56 In my decision, I agreed with the holding in *Beckkett* and did not see why a disparity should exist between the law on granting anti-suit injunctions and that on forum election where there is *both* (a) a *lis alibi pendens* and (b) a common plaintiff situation, as alluded to in *Virsagi* (see [51] above). I did note that the facts in *Beckett* were slightly different, as the common plaintiff there had commenced the Indonesian action after it had a full trial of its claim in Singapore and presented its appeal: *Beckkett* at [40]. Here, the respondent had commenced the Indonesian Actions where the Singapore Action was in its early stages. Nevertheless, in my view, this difference is immaterial. In my analysis above at [54], the common plaintiff situation carries the same undesirable consequences in both the legal contexts of forum election and the granting of anti-suit injunctions. The law on anti-suit injunctions should thus prevent these consequences from occurring, and it was likely in recognition of this concern that the Court of Appeal in *Koh Kay Yew* observed at [21] that "it may be right, to say that if proceedings were commenced concurrently in two jurisdictions, one set of actions would be more likely than not to be vexatious or oppressive". I therefore held that in an application for an anti-suit injunction, where the applicant can show the existence of a *lis alibi pendens*, the burden of proof would shift to the respondent to prove the existence of very unusual circumstances showing that the concurrent proceedings are *not* vexatious or oppressive, to displace the *prima facie* finding that the concurrent proceedings are vexatious or oppressive.

57 To be clear, like in the context of forum election, the burden of proof only shifts in this context where a *lis alibi pendens*, *ie*, a duplicity of proceedings, is first found. This must be the case since there is no presumption that a multiplicity of proceedings is vexatious (see [48] above); however, a *duplicity* of proceedings is different from a *multiplicity* of proceedings. Unlike the former, the latter does not necessarily connote any similarities between the parties and the issues in the proceedings. Moreover, the purpose of the concepts of vexation and oppression is to set a high threshold for the grant of an anti-suit injunction: *Lakshmi* at [117]. In this regard, proof of a *lis alibi pendens* requires a great degree of similarity in the issues in the concurrent proceedings: *Virsagi* at [47]. Hence, the standard of proof that the applicant must discharge before the burden of proof shifts to the respondent is high, which accords with the *raison d'etre* of the concepts of vexation and oppression. I have alluded to this point above at [46].

58 On the present facts, since there is a *lis alibi pendens* (see [45] above), I found that the burden shifted to the respondent to show that the Indonesian Actions were *not* vexatious and oppressive to the applicant. Having scrutinised the evidence and the respondent's submissions, I found that the respondent could not. I thus found that the Indonesian Actions were vexatious and oppressive to applicant.

59 Having made this finding, it was unnecessary for me to examine if PT KIB had pursued the Indonesian Actions in bad faith.[note: 58] Bad faith is merely a factor that can be taken into account in making this finding: *PT Sandipala* at [135].

***Would granting the anti-suit injunction breach comity?***

60 The respondent submitted that the granting of an anti-suit injunction would lead to a breach of comity, because it would prevent the Indonesian courts from first deciding whether the Indonesian Actions ought to be stayed.[note: 59] It argued that the proper action was for the applicant to apply for a stay of the Indonesian Actions in Batam and Jakarta (as the case may be).[note: 60]

61 To this end, the respondent has cited several foreign authorities in support. These authorities are irrelevant since the local position is clear.

62 In *Lakshmi* at [129], the Court of Appeal held that *even where the foreign court has declined to stay its proceedings*, it would not invariably be a breach of comity for the domestic court to grant an anti-suit injunction if it finds that: (a) it is clearly the more appropriate forum for the dispute and (b) the injunction respondent has acted in a vexatious or oppressive manner in commencing the foreign proceedings. Here, as I have stated above, these two factors are satisfied on the facts (see [19] and [58] above). Moreover, since the applicant has not even been served in the 2nd Batam Action or the Jakarta Action,[note: 61] the Indonesian courts have not even had the chance to decide on whether to stay the proceedings in respect of the two actions. *A fortiori*, there can be no breach of comity.

63 Furthermore, as stated in *Koh Kay Yew* at [22] (see [53] above), since the present facts involve a common plaintiff situation, courts are more willing to stay the foreign proceedings since it was the respondent who caused problems by choosing to sue in one place too many.

64 I therefore found that there is no breach of comity in granting this anti-suit injunction.

***Did OBPL make this application in bad faith?***

65 On 17 November 2020, the applicant filed a request with the Batam City Land Office ("BCLO") through an Indonesian provider of legal support services, Lawyerindo Legal Support Centre, to temporarily block the land forming the subject of the Batam Project (the "Request").[note: 62] This request was rejected.

66 The respondent submitted that the Request was an injunction application or tantamount to one.[note: 63] As such, the Request showed that the applicant has submitted to the jurisdiction of the Indonesian courts.[note: 64] It thus claimed that the application for the anti-suit injunction was made in bad faith.

67 The respondent also submitted that by not disclosing this alleged injunction application to the court, the applicant has breached a purported duty of full and frank disclosure to the court.[note: 65]

68 In totality, the respondent claimed that since the applicant has not come with clean hands, the application for an anti-suit injunction must fail.[note: 66]

69 Having examined the expert evidence on this point, I understand the nature of the Request to be the following. Firstly, the Request would be granted by the BCLO, not the Indonesian courts, as an administrative action. Indeed, a land blocking request is defined under the relevant regulation as an administrative action undertaken by the head of the relevant land office to declare a temporary status quo against a land title, pending the resolution of a dispute concerning that land title by the relevant court.[note: 67] The BCLO does not adjudicate or otherwise make any determination on the merits of the dispute.[note: 68] Secondly, the procedures for obtaining an injunction in an Indonesian court are different from that pertaining to the Request.[note: 69] Accordingly, I find that the Request is neither an injunction application nor equivalent to one. Insofar as the respondent relied on this point to argue that the applicant had submitted to the Indonesian courts, their argument must fail.

70 Lastly, the present application for an anti-suit injunction was not made on an *ex parte* basis.[note: 70] The applicant therefore did not bear a duty of full and frank disclosure.

71 I therefore held that OBPL did not make the present application in bad faith.

**Conclusion**

72 For the reasons above, I allowed OBPL's application for an anti-suit injunction and made the following orders:[note: 71]

(a) The Plaintiff shall forthwith withdraw and be restrained from pursuing, or continuing to pursue, the claim which it has filed against OBPL as defendant and against PT OKIB as co-defendant in the Batam District Court on 21 September 2020 under Case Number 263/Pdt.G/2020/PN Btm in its entirety.

(b) The Plaintiff shall forthwith withdraw and be restrained from pursuing, or continuing to pursue, the claim which it has filed against the OBPL and Wang as defendants and against RCH, RLC, OIH, and RBPL as co-defendants in the Central Jakarta District Court on 22 September 2020 under Case Number 539/Pdt.G/2020/PN Jkt.Pst in its entirety.

(c) The Plaintiff forthwith withdraw and/or be restrained from commencing, pursuing or continuing to pursue, any further and/or other proceedings of any nature in Indonesia or

anywhere else in the world against OBPL, RCH, RBPL, PT OKIB, OIH, RLC, Wang, or any of their present or former agents and/or employees in relation to the Batam Project.

73 Although OBPL submitted that indemnity costs should be awarded, I was not satisfied it was justified on the present circumstances. Since the hearing for this matter was rather short, I ordered fixed costs of S$17,000 to OBPL, inclusive of disbursements.

74 I also declined to order a stay of execution pending an appeal. At the time of my decision, it was likely that OBPL would be served with the originating process for the Indonesian Actions, so a stay of execution would deprive it of the benefits sought under this anti-suit injunction.

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[note: 1]4th Defendant-Applicant's Written Submissions dated 4 February 2021 ("AWS") at para 4; 3rd Affidavit of Ong Eng Hock Simon dated 13 November 2020 at para 7.

[note: 2]AWS at para 7; 3rd Affidavit of Ong Eng Hock Simon dated 13 November 2020 at para 8.

[note: 3]Respondent's Written Submissions dated 4 February 2021 ("RWS") at para 3.

[note: 4]RWS at para 4.

[note: 5]AWS at para 8.

[note: 6]AWS at para 8.

[note: 7]Amended SOC at para 6; RWS at para 8.

[note: 8]Amended SOC at para 6; RWS at para 8.

[note: 9]RWS at para 8; 3rd Affidavit of Ong Eng Hock Simon dated 13 November 2020 at para 10.

[note: 10]RWS at para 8; Amended SOC at para 13.

[note: 11]RWS at para 9; Amended SOC at para 30.

[note: 12]RWS at para 9; Amended SOC at para 4.

[note: 13]AWS at para 5; 3rd Affidavit of Ong Eng Hock Simon dated 13 November 2020 at para 12.

[note: 14]AWS at para 10.

[note: 15]RWS at para 14; Statement of Claim (Amendment No. 1) dated 20 July 2020 ("Amended SOC") at para 78.

[note: 16]AWS at para 18.

[note: 17]AWS at para 18(a); Amended SOC at paras 15 to 15b.

[note: 18]AWS at para 18(b); Amended SOC at para 30.

[note: 19]AWS at para 18(c); Amended SOC at paras 36, 78(a), and 78(b).

[note: 20]AWS at para 18(d); Amended SOC at paras 68, 78(e), and 80(b).

[note: 21]AWS at para 18(e); Amended SOC at paras 55 to 59.

[note: 22]AWS at para 18(f); Amended SOC at paras 72 to 77.

[note: 23]AWS at para 18(g); Amended SOC at paras 42, 62, and 78(d).

[note: 24]AWS at para 18(g)(i); Amended SOC at paras 13, 62, and 78(d).

[note: 25]AWS at para 18(g)(ii): Amended SOC at para 42.

[note: 26]AWS at para 18(h); Amended SOC at para 70(b).

[note: 27]AWS at para 18(i); Amended SOC at para 69.

[note: 28]AWS at para 23; 3rd Affidavit of Ong Eng Hock Simon dated 13 November 2020 at paras 27 to 29.

[note: 29]AWS at para 25.

[note: 30]AWS at para 27.

[note: 31]AWS at p 12.

[note: 32]Summons No 4991 of 2020 filed on 13 November 2020.

[note: 33]AWS at para 43.

[note: 34]AWS at para 11.

[note: 35]RWS at para 42.

[note: 36]AWS at para 58.

[note: 37]RWS at para 59.

[note: 38]RWS at paras 69 to 76.

[note: 39]RWS at para 34; AWS at paras 14 and 37.

[note: 40]AWS at paras 37 and 38.

[note: 41]AWS at paras 37 and 38.

[note: 42]AWS at para 26; 5th Affidavit of Ong Eng Hock Simon dated 29 December 2020 at p 35 to 50.

[note: 43]5th Affidavit of Ong Eng Hock Simon dated 29 December 2020 at p 50.

[note: 44]AWS at para 50.

[note: 45]5th Affidavit of Ong Eng Hock Simon dated 29 December 2020 at p 50.

[note: 46]AWS at para 35.

[note: 47]RWS at para 36.

[note: 48]AWS at para 51.

[note: 49]AWS at para 82(2).

[note: 50]AWS at para 82(1).

[note: 51]AWS at para 51(1).

[note: 52]AWS at paras 29 and 51(2); 5th Affidavit of Ong Eng Hock Simon dated 29 December 2020 at p 78.

[note: 53]5th Affidavit of Ong Eng Hock Simon dated 29 December 2020 at p 77.

[note: 54]Amended SOC at para 81.

[note: 55]AWS at para 51; Amended SOC at paras 71, 80, and 81.

[note: 56]RWS at paras 34 to 35.

[note: 57]5th Affidavit of Ong Eng Hock Simon dated 29 December 2020 at p 77 to 78.

[note: 58]AWS at paras 76 to 79.

[note: 59]RWS at para 59.

[note: 60]RWS at para 53.

[note: 61]AWS at para 99.

[note: 62]AWS at para 92; RWS at para 69.

[note: 63]RWS at paras 71 to 73.

[note: 64]RWS at paras 71 and 75; AWS at para 98.

[note: 65]RWS at para 70.

[note: 66]RWS at para 70.

[note: 67]1st Affidavit of Tony Budidjaja at paras 16, 18, and 21.

[note: 68]1st Affidavit of Tony Budidjaja at para at 21.

[note: 69]1st Affidavit of Tony Budidjaja at paras 23 to 24.

[note: 70]AWS at para 102.

[note: 71]HC/ORC 826/2021.