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

[2022] SGHC 206

Suit No 692 of 2021 (Summonses Nos 1092 and 1856 of 2022)

Between

Sophie Shen (formerly known as Sophie Luo)

… *Plaintiff*

And

(1) Xia Wei Ping
(2) Li Zhe
(3) Alpheus Management Limited

… *Defendants*

JUDGMENT

[Conflict of Laws — Jurisdiction]
[Conflict of Laws — Natural forum]
[Civil Procedure — Service — Service out of jurisdiction]

TABLE OF CONTENTS

Shen Sophie
v
Xia Wei Ping and others

[2022] SGHC 206

General Division of the High Court — Suit No 692 of 2021 (Summonses Nos 1092 and 1856 of 2022)
Goh Yihan JC
10 August 2022

29 August 2022 Judgment reserved.

Goh Yihan JC:

1 In HC/S 692/2021 ("Suit 692"), the plaintiff, Ms Sophie Shen, sued the defendants over their alleged misappropriation of her rightful share to the sale proceeds of a company called Western Water Corporation ("WWC").

2 In connection with Suit 692, there are two applications before me, namely, HC/SUM 1092/2022 filed on 18 March 2022 ("Summons 1092") and HC/SUM 1856/2022 filed on 17 May 2022 ("Summons 1856"). Given the similarity of the orders sought and the consistency of the facts, both Summonses were fixed to be heard before me in the same sitting. As such, I dealt with both Summonses collectively and heard counsel for the first and third defendants together.

3 Summons 1856 is the first defendant's application for the following primary orders:

(a) An order to set aside the service of the Writ of Summons dated 13 August 2021 ("the Writ") on the first defendant, and/or a declaration that the Writ has not been duly served on the first defendant pursuant to O 12 rr 7(1)(*a*) and 7(1)(*b*) of the Rules of Court (Cap 332, R 5, 2014 Rev Ed) ("the ROC");

(b) An order that paragraph 14 of the Order of Court HC/ORC 4728/2021 dated 20 August 2021 ("ORC 4728") be discharged/set aside pursuant to O 12 r 7(1)(*c*) of the ROC; and

(c) An order that ORC 4728 be discharged/set aside in so far as it prevents the first defendant from dealing with any of his property pursuant to O 12 r 7(1)(*f*) of the ROC.

4 Summons 1092 is the third defendant's application for the following primary orders:

(a) A declaration that the Writ has not been duly served on the third defendant pursuant to O 12 r 7(1)(*b*) of the ROC;

(b) An order that paragraph 14 of ORC 4728 giving leave to the plaintiff to serve the Writ on the third defendant out of jurisdiction be discharged pursuant to O 12 r 7(1)(*c*) of the ROC and consequently that the orders made to prevent any dealing with any property of the third defendant in the ORC 4728 be discharged pursuant to O 12 r 7(1)(*f*) of the ROC.

5 For ease of exposition, I briefly discuss the content of the plaintiff's claim in Suit 692, as well as the procedural history that led to Suit 692 and the Summonses before me.

The relevant background

The parties

6 The plaintiff is a citizen of the United States of America ("US"). She is, by her case against the defendants, the beneficial owner of around 70% of the shares in WWC.[1] WWC was incorporated under the laws of Samoa.[2]

7 The first defendant, Mr Xia Wei Ping, is also a US citizen and the plaintiff's younger brother.[3] The second defendant, Mr Li Zhe, is a citizen of Antigua and the first defendant's nephew.[4] The third defendant, Alpheus Management Ltd, is a company incorporated in the British Virgin Islands ("BVI").[5] The third defendant's registered agent as required under BVI company law is Vistra (BVI) Limited ("Vistra"). Accordingly, the third defendant's registered office is Vistra's address.[6] The legal representative of the third defendant, Ms Rina Charles, is an Australian citizen.[7]

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1 Statement of Claim (Amendment No 1) dated 4 October 2021 ("SOC") at [1].

2 SOC at [2].

3 SOC at [1] and [3]; Affidavit of first defendant dated 20 May 2022 ("D1's Affidavit") at [1].

4 SOC at [1]; D1's Affidavit at [10].

5 SOC at [5]; Affidavit of Rina Charles dated 6 April 2022 ("D3's Affidavit") at [5].

6 D3's Affidavit at [5].

7 D3's Affidavit at [1].

The plaintiff's claim in Suit 692

8 By the plaintiff's Statement of Claim (Amendment No 1) dated 4 October 2021 ("the SOC"), the first defendant is the founder of WWC, which was incorporated in 2002 under the laws of Samoa. WWC's primary business is the construction and operation of wastewater treatment facilities in China. [8]

9 The first defendant provided the initial capital injection into WWC of around US$500,000. However, the plaintiff alleges that this was insufficient for WWC to commence operations. The first defendant therefore approached the plaintiff for financial assistance. The plaintiff then invested about US$1.2m into WWC.[9]

10 Notwithstanding her investment, the plaintiff alleges that the first defendant never issued any share certificates to her. The first defendant allegedly assured the plaintiff that WWC was a family-run business based on trust and that the plaintiff was the largest shareholder in WWC. In particular, the first defendant represented to the plaintiff that she owned 45% of WWC because of her investment. However, the plaintiff disputes this and avers that she is beneficially entitled to around 70% of WWC based on her initial capital injection.[10]

11 Unbeknownst to the plaintiff, WWC was fully sold to Goldwind International Holdings (HK) Limited ("Goldwind") for approximately US$100m ("the Sale Proceeds") in 2017. Before this sale, the third defendant took over WWC's entire shareholding. This resulted in the second defendant

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8 SOC at [7].

9 SOC at [8].

10 SOC at [9].

being the only shareholder of the third defendant, which in turn owned 100% of WWC.[11]

12 The plaintiff allegedly only found out about the sale in 2018.[12] She asserts that the sale of the WWC shares to Goldwind was orchestrated by the defendants without any prior notification to, or consent from, her. The Sale Proceeds were then deposited into the third defendant's Oversea-Chinese Banking Corporation bank account ("the OCBC Bank Account") in Singapore. The plaintiff says that this was done to deprive her of her rightful share of the Sale Proceeds.[13]

13 The plaintiff further alleges that the first and second defendants came to Singapore in late 2019 to further their conspiracy against her, including discussing how to further dissipate the Sale Proceeds. The plaintiff avers that the Sale Proceeds (or part thereof) were transferred to another Singapore bank account with Goldman Sachs (Singapore) Pte Ltd ("Goldman Sachs").[14]

14 Accordingly, the basis of the plaintiff's claim against the defendants is that the third defendant owed a fiduciary duty to her in respect of the Sale Proceeds because of her majority shareholding in WWC.[15] The third defendant has breached its duty to the plaintiff by depriving the plaintiff of her rights to the Sale Proceeds.[16] Alternatively, the plaintiff alleges that the third defendant has knowingly dealt with the Sale Proceeds "in an unconscientious and/or

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11 SOC at [10].

12 SOC at [12].

13 SOC at [11].

14 SOC at [14].

15 SOC at [16].

16 SOC at [19].

unconscionable manner such that it would be inequitable" to allow the third defendant to assert beneficial ownership or knowingly retain the Sale Proceeds in a way that affects the third defendant's conscience.[17] This, according to the plaintiff, thereby gives rise to a constructive trust (institutional and/or remedial) over the Sale Proceeds in her favour.

15 Finally, the plaintiff alleges that the defendants all conspired to injure her by depriving her of her share of the Sale Proceeds.[18] In furtherance of this conspiracy, the defendants and/or their agents or representatives opened the OCBC Bank Account for the Sale Proceeds to be unlawfully transferred into.[19]

Procedural history

16 Having set out the plaintiff's claim in Suit 692, it is helpful to recount the procedural history leading not only to Suit 692 but also to the Summonses before me at present.

The US Proceedings

17 The plaintiff filed the first complaint in the Superior Court of California in the County of Santa Clara in Case No 18CV326555 on 13 April 2018 ("the 2018 Complaint").[20] This was a complaint against the first defendant and other persons unknown to the plaintiff for carrying out the acts in the complaint for nine causes of action. It is not necessary to set out the causes of action and it suffices to say that they concern the first defendant's alleged misrepresentations

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17 SOC at [17].

18 SOC at [20].

19 SOC at [21].

20 Affidavit of Chan Michael Karfai dated 17 May 2022, Exhibit CMK-1 ("CMK's Affidavit") at [12].

and various breaches of duties in his capacity as a director and purported majority shareholder of WWC.

18 The plaintiff eventually withdrew the 2018 Complaint because the first defendant had purportedly agreed, by way of a note, to make payment of US$10m in July 2018 on behalf of the second defendant.[21]

19 The plaintiff filed the second complaint in the Superior Court of California in the County of Santa Clara in Case No 19CV360975 on 30 December 2019 ("the 2019 Complaint"). This was the plaintiff's complaint against the first defendant and other persons unknown the plaintiff for 11 causes of action. The 2019 Complaint was largely similar to the 2018 Complaint save for two additional causes of action.[22]

20 The plaintiff then filed a third complaint in the Superior Court of California in the County of Santa Clara in Case No 20CV366271 on 27 April 2020 ("the 2020 Complaint"). This was a complaint against the same defendants in Suit 692 for 11 causes of action. Apart from the addition of the second defendant and third defendant, the 2020 Complaint is largely similar to both the 2018 Complaint and the 2019 Complaint.[23]

21 I will collectively refer to the 2018 Complaint, the 2019 Complaint and the 2020 Complaint as "the US Proceedings".

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21 CMK's Affidavit at [13]–[14].

22 CMK's Affidavit at [15].

23 CMK's Affidavit at [16].

The China Proceedings

22 On 30 July 2021, about a year after the 2020 Complaint was filed, the plaintiff filed a court case against the first and second defendants in the Intermediate People's Court, City of Hangzhou, Zhejiang Province, China ("the China Proceedings"). While the first defendant was never served with the relevant court papers, the first affidavit filed by Rina Charles on 6 April 2022 in Summons 1092 reveals that the China Proceedings are over the same dispute in Suit 692.[24]

23 On 1 March 2022, purportedly at the request of the Chinese court, the plaintiff applied to withdraw the China Proceedings. The Chinese court allowed the plaintiff's application to withdraw on 14 March 2022.[25]

The Singapore Proceedings

24 Shortly after the plaintiff had started the China Proceedings, she commenced Suit 692 on 13 August 2021. She also filed HC/SUM 3823/2021 ("Summons 3823") on the same day.[26]

25 Summons 3823 was the plaintiff's application for leave to serve the Writ on the defendants outside of Singapore. In the Summons 3823, the plaintiff also sought a worldwide Mareva injunction against the defendants. The Mareva injunction application sought to prevent the defendants from dealing with their assets up to the value of US$100m. On 20 August 2021, a Judge granted the Mareva injunction sought and gave leave to serve out of jurisdiction (within

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[24] CMK's Affidavit at [18].

[25] CMK's Affidavit at [19].

[26] CMK's Affidavit at [20].

30 days of the order) ("Service Out Order"). The Judge's decision is recorded as ORC 4728.

(1) Service on the first defendant

26 The plaintiff attempted service on the first defendant in the following ways. First, on 17 September 2021, the plaintiff instructed US process servers to effect personal service of the Writ on the first defendant.[27] The process server left a copy of the Writ and other supporting documents at "[US address redacted]" with "Jain Byi" as "Wife and Co-Resident".[28]

27 On 16 November 2021, the plaintiff filed HC/SUM 5220/2021 ("Summons 5220") for leave to effect substituted service of the Writ (which was amended pursuant to HC/SUM 4835/2021 to amend the first defendant's name[29]) and other supporting documents "by leaving a copy of the same at [the first defendant's] dwelling house in the presence of a member of the household at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the same to [the first defendant] at a place where a copy of the same were left".[30] On 17 November 2021, the General Division of the High Court ("the High Court"), through a Registrar's Direction, directed that the plaintiff's solicitors file a supplemental affidavit to set out (a) where the first defendant's dwelling house is, (b) why the specific method of substituted service is sought, and (c) an expert's opinion on how the method of substituted

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27 Wee Xunji's Affidavit dated 25 February 2022 (WX's Affidavit) at [4].

28 CMK's Affidavit at [22].

29 CMK's Affidavit at [23].

30 CMK's Affidavit at [24].

service does not contravene the laws of the jurisdiction where the first defendant was located.[31]

28 Pursuant to this direction, the plaintiff's solicitors filed an affidavit on 13 December 2021 stating that the first defendant's dwelling house address is "[US address redacted]". The affidavit also exhibited an expert opinion on the requirements of substituted service under the laws of California. In this regard, the expert opined that:[32]

> … it is an accepted practice of substituted service in California where the server tries for at least three times to serve the summons and complaint in person at the defendant's home or office address. On the third attempt, the server may leave the summons and complaint with an adult member of the home … After that, the server sends the summons and complaint by first class mail to the defendant at the address where the substituted service was conducted, which completes the service.

29 Subsequently, Summons 5220 was allowed by the assistant registrar. The resulting court order is recorded as HC/ORC 7088/2021.[33]

30 Following this, the plaintiff attempted personal service on the first defendant on various occasions in January 2022 at "[US address redacted]".[34] However, the first defendant avers that he was not at the address at the time and so was not aware of these attempts.[35] The plaintiff's process server then

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31 CMK's Affidavit at [25].

32 CMK's Affidavit at [26].

33 CMK's Affidavit at [29].

34 WX's Affidavit at p 7; CMK's Affidavit at [30].

35 CMK's Affidavit at [31].

attempted personal service of the documents in February 2022 but, as with the attempts in January 2022, the first defendant was not at the address.[36]

31 Eventually, on 25 February 2022, the plaintiff filed HC/SUM 744/2022 ("Summons 744") for leave to effect substituted service of the Writ, the SOC and the supporting documents (including ORC 4728, Affidavits filed in Summons 3823, copy of the Order to be made for Summons 744) ("the Summons 744 Service Documents") on the first defendant using the following methods:[37]

(a) posting a copy of the Summons 744 Service Documents on the front gate at "[US address redacted]";

(b) mailing the Summons 744 Service Documents by first class registered post to "[US address redacted]"; and/or

(c) publication of a notice of advertisement in one issue of the "The Sacramento Bee Newspaper", an English language newspaper circulating in California, USA.

32 The High Court then directed the plaintiff, by way of a Registrar's Direction on 28 February 2022, to provide certain clarifications.[38] The plaintiff provided the following clarifications on 4 March 2022:

(a) that the USA process servers had on 17 September 2021 served the Summons 744 Service Documents by leaving the "papers [with the first defendant's] wife instead of [the first defendant]

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36 CMK's Affidavit at [32]–[33].

37 CMK's Affidavit at [34].

38 CMK's Affidavit at [35].

personally" before the order of substituted service was obtained and before the Writ was amended to reflect the correct spelling of the first defendant's name; and

(b) that the aforesaid service, although defective, could be cured since the first defendant would not suffer any prejudice and that the first defendant had been duly notified and was fully aware of the proceedings because the first defendant had instructed solicitors in Singapore to inspect the case file.

33 The assistant registrar allowed Summons 744 on 4 March 2022. The court's order is recorded as HC/ORC 2217/2022 ("ORC 2217") in the following terms:

(a) service of the Summons 744 Service Documents be effected on the first defendant by:

(i) posting a copy of the Summons 744 Service Documents on the front gate at [US address redacted]; and/or

(ii) mailing the Summons 744 Service Documents by first class registered post to [US address redacted]; and/or

(iii) the time for entry of an appearance in this action by the first defendant be 21 days after service on him of the Writ (or as may be);

(b) service in the manner aforesaid shall be deemed good and sufficient service of the Summons 744 Service Documents on the first defendant; and

(c) the aforesaid is subject to the first defendant's right to set aside or challenge the propriety of service by way of an application in due course.

34 Subsequently, the plaintiff's process server on 9 March 2022 mailed the Summons 744 Service Documents to "[US address redacted]" by way of US Postal Service Certified Mail. A day later, on 10 March 2022, a notice was left at that address because there was apparently no authorised recipient present.[39]

35 On 11 April 2022, the plaintiff filed a memorandum of service which stated that the method of service on the first defendant was by US Postal Service Certified Mail.[40]

(2) Service on the third defendant

36 On 16 November 2021, the plaintiff filed an *ex parte* application in HC/SUM 5215/2021 for an extension of time to file her memorandum of service of the Writ on the third defendant. This was on the grounds that the Writ had been served by way of courier delivery to the third defendant at its office in the BVI on 20 September 2021 at 3pm, but the memorandum of service was not filed in time by 28 September 2021 due to an oversight.[41] Pursuant to HC/ORC 6688/2021, the plaintiff was ordered on 30 November 2021 to file the memorandum of service in respect of the service of the Writ on the third defendant within seven days by 7 December 2021.[42]

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39 CMK's Affidavit at [39]–[40].

40 CMK's Affidavit at [41].

41 Affidavit of Wee Xunji dated 26 November 2021 at [3].

42 D3's Affidavit at [17].

37 On 6 December 2021, the plaintiff filed a memorandum of service stating that the Writ was served on the third defendant at 3pm, 20 September 2021 at its BVI registered address by "registered courier". However, the third defendant's position is that it never received the Writ or any supporting documents relating to Suit 692 at its registered address.[43]

38 On 25 February 2022, the plaintiff filed an application for leave to enter judgment against the third defendant in HC/SUM 760/2022, on the basis that the memorandum of service was filed on 6 December 2021 and the third defendant had not entered appearance.[44] Subsequently, the third defendant found out about the present action and entered appearance on 4 March 2022 to contest the jurisdiction of the High Court over this matter.[45]

The parties' submissions

The plaintiff's arguments

39 The plaintiff argues that services was properly effected on both the first and third defendant.

40 In relation to the first defendant, while the plaintiff acknowledges that there were some hiccups, these were later resolved. In particular, while instructions were given to the private process server in the US to serve the Summons 744 Service Documents on the first defendant personally at his home address, the process server did not follow the instructions and gave the papers

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43 D3's Affidavit at [18].

44 Affidavit of Wee Xunji dated 4 March 2022 at [6]–[7].

45 D3's Affidavit at [19].

to the first defendant's wife instead.[46] Subsequent attempts were then made by the process server to serve the papers on the first defendant which were all unsuccessful, before an order for substituted service was obtained.[47] The method of substituted service under the order was to mail the court documents by first class registered post to "[US address redacted]", and this complied with California Code of Civil Procedure (US) (1872).[48]

41 For the third defendant, the plaintiff says that the court papers were delivered at its registered address and signed by the third defendant's agent.[49] The plaintiff argues that leaving these documents at the registered office of the company would suffice. There was no "official certificate" as the service was effected by private means and not by any consular, government or judicial authority.[50]

42 Next, on the issue of jurisdiction, the plaintiff submits that Singapore was the natural forum for the trial of the action. The factor of relevant witnesses points to Singapore as the arrangement between the plaintiff and first defendant was a family business, and the only relevant witnesses who can speak about the issue are their own family members.[51] The governing law of the dispute also points to Singapore. The act of conspiracy occurred in Singapore,[52] and as the plaintiff's other claim is based in equity, the choice of law rules of the *lex situs*

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46 Plaintiff's Written Submissions ("PWS") at [5].

47 PWS at [6].

48 PWS at [7].

49 PWS at [12].

50 PWS at [13].

51 PWS at [20].

52 PWS at [24].

are to apply.[53] There is also a sufficient degree of merit in the claim as the evidence shows that the predominant purpose of opening the OCBC Bank Account was to deprive the plaintiff of her sale proceeds and dissipate the same.[54]

43 Lastly, the plaintiff submits that she made full and frank disclosure of the material facts at the *ex parte* hearing. The plaintiff did not disclose the China Proceedings as the issues therein related to a separate handwritten note issue (as mentioned below at [53]). The parties in the China Proceedings were also different and did not involve the third defendant.[55] All material facts in relation to the US Proceedings were also duly brought to the court's attention.[56]

The first defendant's arguments

44 The first defendant argues that the requirements to obtain leave of court for service out of Singapore have not been met.[57] He submits that the US is the more appropriate forum for the dispute than Singapore.[58] This is because there is a high degree of overlap between the US Proceedings and Suit 692 as the identities of the parties and issues raised are identical (amongst other reasons), and the US Proceedings have progressed far ahead.[59] Further, none of the parties in Suit 692 have any connections with Singapore as they are domiciled, resident

53 PWS at [21].

54 PWS at [30].

55 PWS at [27].

56 PWS at [28].

57 First Defendant's written submissions ("D1WS") at [5].

58 D1WS at [43].

59 D1WS at [44]–[53].

or incorporated abroad.[60] The relevant witnesses are also not located in Singapore.[61]

45 The first defendant further argues that the place of the tortious cause of action is in the US (as the *lex loci delicti*), which would *prima facie* be the natural forum for the dispute. The parties involved in the conspiracy have no connection to Singapore, the place of the alleged acts of conspiracy was not in Singapore, and the plaintiff did not suffer loss in Singapore.[62]

46 The governing law of the causes of action in Suit 692 is also not Singapore law but Californian law.[63] In relation to the conspiracy claim, the *lex loci delicti* is the place where the substance of the tort took place, which is California. In this regard, the first defendant says that the double actionability rule does not apply in determining the natural forum as it is conceptually distinct from the latter question.[64] The governing law for the breach of fiduciary duty claims is premised on how the fiduciary obligation arises. This is based either on the governing law of the equity sale and purchase agreement of WWC, or the law governing the plaintiff's shareholder relationship with WWC, which is WWC's place of incorporation – both pointing to the laws of China.[65] I pause to note that there was probably an oversight made by the first defendant in his written submissions, as WWC was incorporated in Samoa and not China (see

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60 D1WS at [54]–[55].

61 D1WS at [70]–[73].

62 D1WS at [56]–[63].

63 D1WS at [65].

64 D1WS at [66]–[67].

65 D1WS at [68]–[69].

[8] above). Nonetheless, this is not material as both these places of incorporation points away from Singapore being the natural forum.

47 Further, the plaintiff has failed to demonstrate a good arguable case that Suit 692 falls within one of the categories in O 11 r 1 of the ROC. At the outset, the plaintiff did not even address the heads of jurisdiction requirement in Summons 3823. None of the supporting affidavits filed had identified the heads of O 11 r 1 of the ROC being relied upon and this was also not addressed at the *ex parte* hearing.[66]

48 Apart from this procedural irregularity, the first defendant argues that, substantively, the present claim does not fall within O 11 r 1(*f*)(i) of the ROC. The plaintiff has failed to show that she had a good arguable case of a cause of action in tort and that there is an act or omission committed by the first defendant in Singapore.[67] The documentary evidence shows that the plaintiff was not entitled to the sale proceeds of WWC and there is no evidential basis that (a) there was any conspiracy to open the OCBC Bank account in Singapore, (b) that the sales proceeds were deposited into the OCBC Bank Account, and (c) the first defendant met the second defendant in Singapore.[68] The head of O 11 r 1(*f*)(ii) of the ROC also does not apply as the plaintiff suffered damage in the US instead of Singapore.[69] Lastly, O 11 r 1(*o*) of the ROC is inapplicable as no restitution-based claim was being made against the first defendant.[70] Additionally, there is no serious issue to be tried in Suit 692. There is no

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66 D1WS at [81]–[85].

67 D1WS at [88].

68 D1WS at [86]–[96].

69 D1WS at [97]–[99].

70 D1WS at [100]–[104].

foundation to the allegations made for the conspiracy claim, and this was the case for the breach of fiduciary duty claim as well, since no particulars were provided.[71]

49 In relation to the duty to make full and frank disclosure in *ex parte* hearings, the first defendant submits that, with regard to the US Proceedings, the plaintiff had failed to disclose (a) key overlapping facts underlying the 2020 Complaint,[72] (b) that she took the position that California was the natural forum for the dispute,[73] and (c) a supplemental brief which stated that the first defendant's positive defence was that the plaintiff was not an equity owner of WWC when it was sold (amongst other defences).[74] The plaintiff also failed to disclose the China Proceedings which had overlapping issues with Suit 692.[75]

50 In relation to the Summons 744 Service Documents, the first defendant argues that the service should be set aside as it contravened California law, which is a defect that cannot be cured by the exercise of the Singapore court's discretion. In this regard, the first defendant also submits that the plaintiff failed to comply with the California Code of Civil Procedure (US) (1872) as the sequence for substituted service was not strictly complied with and the court documents were not successfully mailed to [US address redacted].[76]

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71 D1WS at [105]–[107].

72 D1WS at [113]–[115].

73 D1WS at [116]–[118].

74 D1WS at [119]–[122].

75 D1WS at [127]–[133].

76 D1WS at [136]–[145].

The third defendant's arguments

51 The third defendant argues that the Service Out Order should be discharged as it was irregularly obtained. The plaintiff had failed to state in her supporting affidavit the relevant limbs of O 11 r 1 of the ROC which her claim came under, and there was also nothing in the affidavits which established why Singapore was the natural forum for the trial.[77]

52 Next, the third defendant says that the plaintiff had failed to show a good arguable case that the claim fell within one or more of the jurisdictional gateways in O 11 r 1 of the ROC.[78] Regarding O 11 r 1(*f*)(i) and r (*f*)(ii) of the ROC, the plaintiff's allegations that there is a conspiracy are completely bare and baseless and not supported by a shred of documentary evidence. There is also contradictory evidence present against such a conspiracy. The damage, if any, was also likely suffered in California and not Singapore.[79] The ground of O 11 r 1(*o*) of the ROC is also inapplicable. The plaintiff had not established any basis that the third defendant owed a fiduciary duty to the plaintiff, let alone the scope and content of this duty. The requirements for an institutional constructive trust to arise were also not met since the plaintiff has not alleged any facts to show how the third defendant could have known of any factor(s) that affected its conscience as any beneficial ownership that she had in WWC was a matter between her and the first defendant (amongst other reasons).[80]

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77 Third Defendant's Written Submissions ("D3WS") at [25]–[32].

78 D3WS at [36]–[38].

79 D3WS at [39]–[51].

80 D3WS at [52]–[59].

53 The third defendant also says that Singapore was also not the natural forum for the dispute.[81] The plaintiff's commencement of parallel proceedings in the US and China is a crucial factor weighing against Singapore being the more appropriate forum for the trial.[82] The US Proceedings had issues which overlapped with Suit 692 and was at the doorstep of trial.[83] There would be a risk of inconsistent findings if the Singapore court assumes jurisdiction.[84] The China Proceedings were based on essentially the same alleged facts as Suit 692, despite the slight difference in issue about the handwritten note signed by the first defendant on 25 April 2018 which the plaintiff alleged to form a legally binding settlement in respect of the dispute (the "Handwritten Note").[85]

54 Indeed, the third defendant argues that the personal connections of the parties, location of relevant witnesses and connections to relevant events also point away from Singapore as being the natural forum. None of the parties are citizens, residents, or incorporated in Singapore. The potential key witnesses are also located in the US and/or China.[86] The connections to the relevant events of the dispute took place abroad, such as the setting up of WWC to operate water projects and contract negotiation for the sale of WWC from the third defendant to Goldwind.[87]

55 The third defendant also submits that the governing law of the various causes of action is not Singapore law. In relation to the tort of conspiracy, and

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81 D3WS at [60].

82 D3WS at [65].

83 D3WS at [68].

84 D3WS at [72]–[77].

85 D3WS at [78]–[86], [93(h)].

86 D3WS at [87]–[92].

87 D3WS at [93].

in contrast from the submissions of the first defendant, the third defendant argues that the double actionability rule would have to be considered when considering the governing law of the tort claim, and as for the equitable claims, the applicable law would be the law governing the underlying relationship (*eg*, in contract or tort).[88] Accordingly, foreign law (US and/or China) would likely apply.[89] Further, the applicable law of certain contractual documents, likely governed by US or China law, would have an impact on whether the plaintiff has any subsisting causes of action against the third defendant.[90] These documents consisted of the Handwritten Note which potentially constituted a settlement absolving the third defendant of liability, and a purported declaration of waiver document dated 1 August 2019 where the plaintiff agreed to "forever give up all the claims and rights of the benefits such as shares or profits of [the third defendant]" (the "Waiver Document").[91]

56 Further, the third defendant argues that the Service Out Order should also be set aside as the plaintiff failed to give full and frank disclosure of material facts at the *ex parte* hearing, in failing to disclose the China Proceedings commenced by the plaintiff and the existence of the Waiver Document.[92]

57 Lastly, the third defendant submits that the Writ and other documents relating to Suit 692 were not duly served on the third defendant.[93] The third

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88 D3WS at [96].

89 D3WS at [97].

90 D3WS at [98]–[101].

91 D3WS at [93(i)].

92 D3WS at [108].

93 D3WS at [114].

defendant has adduced documentary evidence to show that throughout the whole period, the third defendant had only received documents relating to the US Proceedings and none pertaining to the Singapore Proceedings.[94] Conversely, the plaintiff failed to discharge her burden of showing that the Writ and/or documents for Suit 692 were validly served on the third defendant in BVI.[95]

The relevant issues

58 From the parties' submissions, although not necessarily ordered as such, there are essentially two issues in relation to the Summonses. First, whether the Service Out Order should be set aside for failure to comply with the three necessary requirements for the Service Out Order to be made in the first place. There is also the ancillary issue of whether the Service Out Order should be set aside on the additional ground that the plaintiff had not made full and frank disclosure of the material facts at the *ex parte* stage. If the Service Out Order were to be set aside, it follows that the Mareva injunction also falls away since it is the Service Out Order that confers the requisite jurisdiction in the first place.

59 Second, if the Service Out Order is not set aside, whether the service of the Summons 744 Service Documents was still validly effected. If the service was not validly effected, then the Writ could still be set aside on the ground that it had not been duly served on the defendants.

60 I consider each of these issues in turn.

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94 D3WS at [115].

95 D3WS at [120].

Whether the Service Out Order should be set aside

General overview

61 In general, the extra-territorial *in personam* jurisdiction of the High Court is founded on s 16(1)(*a*)(ii) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed). Thus, pursuant to O 11 of the ROC, where a defendant is based overseas and the High Court's jurisdiction cannot be established as of right, the plaintiff can apply for leave to serve on the defendant outside Singapore. To obtain leave to serve out of Singapore, there are three requirements the plaintiff must satisfy:

(a) a good arguable case that its claim comes within one of the heads of jurisdiction (or jurisdictional gateways) under O 11 r 1 of the ROC;

(b) there is a serious issue to be tried on the merits of its claim; and

(c) Singapore is the natural forum for the trial of the action.

In examining these requirements, a court is not to consider them in isolation but must consider whether its findings in relation to one requirement is consistent with its findings in relation to the other requirements (see the decision of the Court of Appeal in *Recovery Vehicle 1 Pte Ltd v Industries Chimiques Du Senegal and another appeal and another matter* [2021] 1 SLR 342 ("*Recovery Vehicle*") at [51]).

62 In addition to these requirements, given the *ex parte* nature of the application to serve out of jurisdiction, the plaintiff is required to give full and frank disclosure of material facts (see the decision of the Court of Appeal in *Shanghai Turbo Enterprises Ltd v Liu Ming* [2019] 1 SLR 779 ("*Shanghai Turbo*") at [105]). Accordingly, the plaintiff's failure to give full and frank

disclosure of all material facts may be a ground to impugn the Service Out Order, provided that the defendant has not waived its right to contest the court's jurisdiction.

63 Since the Writ has purportedly been served overseas on the defendants in the present proceedings, the first and third defendants are making the present applications pursuant to O 12 r 7(1) of the ROC to challenge the existence of the High Court's jurisdiction. It is important to note that, at this *inter partes* stage, the plaintiff still bears the burden of demonstrating the three requirements discussed above at [61]. As the Court of Appeal held in *Zoom Communications Ltd v Broadcast Solutions Pte Ltd* [2014] 4 SLR 500 ("*Zoom Communications*") at [72], this is considered fair and just because the court's exercise of extraterritorial jurisdiction over an overseas defendant is "an imposition on him … and there is no justice in adding to his troubles the further burden of proof". At this stage, in the absence of abuse of process, the plaintiff may rely on a new cause of action and/or additional O 11 r 1 heads of jurisdiction that was not included in the *ex parte* application, without the need to file a fresh originating process in respect of the same (see the UK Supreme Court decision of *NML Capital Ltd v Republic of Argentina* [2011] 2 AC 495 at [74]–[75] as well as the High Court decision of *IM Skaugen SE and another v MAN Diesel & Turbo SE and another* [2018] SGHC 123 ("*IM Skaugen (HC)*") at [184]–[189]). But given that the burden is on the plaintiff, the onus falls on the plaintiff to raise such new causes of action or grounds. Furthermore, at the *inter partes* stage, the court can consider subsequent developments that are relevant to the *forum non conveniens* analysis and which occurred after the *ex parte* leave to serve out of Singapore was granted (see the decision of the Court of Appeal in *MAN Diesel & Turbo SE and another v IM Skaugen SE and another* [2020] 1 SLR 327 ("*IM Skaugen (CA)*") at [50]–[55]).

Whether the tort choice of law rules apply

64 Apart from the general observations above, I must also answer a specific question in relation to the plaintiff's claims in tort. This concerns the logically anterior question of whether the tort choice of law rules (*ie*, the double actionability rule in Singapore) factors into the analysis for whether leave should be granted for service outside of jurisdiction. The double actionability rule has been described as such (see the decision of the Court of Appeal in *JIO Minerals FZC and others v Mineral Enterprises Ltd* [2011] 1 SLR 391 ("*JIO Minerals*") at [88]):

> The choice of law rule that Singapore courts apply for torts is the double actionability rule (see *Rickshaw Investments* ([63] supra) at [53]). The double actionability rule provides that the tort must be actionable under both the *lex fori* and the *lex loci delicti*. Exceptionally, the double actionability rule may be displaced such that the tort may be actionable in Singapore even though it is not actionable under either the *lex loci delicti* or the *lex fori*. The exception may even be applied to provide that the law of a third country is the applicable law for the tort (see *Rickshaw Investments* at [56]).

65 The first defendant and third defendant had taken opposing views in their submissions, with the first defendant arguing that the double actionability rule being irrelevant in relation to the present proceedings, while the third defendant asserting that it should be applied (see above at [46] and [55]). But what is in common to both the first and third defendants is that they dispute the applicability of the double actionability rule only within the sub-requirement of whether Singapore is the natural forum for the trial of the action (the "Natural Forum Stage"), and not whether there is a good arguable case that the claim comes within one of the heads of jurisdiction under O 11 r 1 of the ROC (the "Jurisdictional Gateway Stage") (see above for the three sub-requirements at [61]). At the oral hearing before me, Mr Wee Xunji ("Mr Wee") for the plaintiff accepted that the double actionability rule should apply, contrary to the first

defendant's position.[96] The parties' differing submissions therefore compelled me to consider this issue carefully.

66 However, being mindful of the scope of the parties' submissions, I limit my substantive comments to only the applicability of the double actionability rule at the Natural Forum Stage. However, quite inevitably, my discussion of the applicability of the double actionability rule at the Natural Forum Stage will also touch on its application at the Jurisdictional Gateway Stage.

67 I start with a survey of the relevant cases. Here, there are High Court authorities in Singapore that seemingly point in both directions. In *IM Skaugen (HC)*, Vinodh Coomaraswamy J opined that the double actionability rule is relevant for service out of jurisdiction applications. More specifically, Coomaraswamy J held that if the tort was committed in a foreign jurisdiction, the court must take the further step of analysing whether the tort satisfies the double actionability rule, *ie*, "that it is actionable both under the law of the jurisdiction in which the tort was committed, *ie*, the *lex loci delicti*, and also under the substantive law of the *lex fori*" (at [82]), thereby finding the double actionability rule applicable at the Jurisdictional Gateway Stage. This is because the plaintiff cannot establish a good arguable case in tort if it cannot establish a good arguable case that it satisfies the double actionability rule (at [85]), and that would be the end of the inquiry. Further, the double actionability rule was also found to be relevant in determining the governing law of the tortious claim (*ie*, the *lex loci delicti*) as part of inquiry at the Natural Forum Stage (at [210]).

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96 Minute Sheet at p 2.

68 Separately, in the High Court decision of *Nippon Catalyst Pte Ltd v PT Trans-Pacific Petrochemical Indotama and another* [2018] SGHC 126 ("*Nippon Catalyst*"), Audrey Lim JC observed that the double actionability rule is irrelevant for service out of jurisdiction applications. This is because the "rule is conceptually distinct from the question of whether Singapore is the proper forum … [and] is not intended to assist the court in locating the proper forum; the object of the rule is one of fairness" (at [60]). Indeed, Lim JC had rejected the plaintiff's reliance on the double actionability rule in that case as it had made the misplaced argument that the rule refers to Singapore law and thus the natural forum is Singapore. This was misplaced because, as Lim JC, with respect, rightly points out, the double actionability rule refers partially to the law of the forum. That, in and of itself, certainly cannot point to Singapore as the natural forum.

69 But more broadly, the applicability of the double actionability rule considered in *Nippon Catalyst* related to the Natural Forum Stage (at [55]), instead of at the Jurisdictional Gateway Stage (as was done in *IM Skaugen (HC)* at [82]). This tracks more closely to disagreement that the first defendant and third defendant have on the double actionability rule in the present case (see above at [65]). For completeness, *Nippon Catalyst* was a case dealing with O 11 r 1(*f*)(ii) of the ROC only (at [50]), while *IM Skaugen (HC)* dealt with both limbs of O 11 r 1(*f*)(i) and O 11 r 1(*f*)(ii) (though it was found that the double actionability rule was relevant to both limbs at [85]).

70 *IM Skaugen (HC)* and *Nippon Catalyst* therefore differ in two ways: (a) the *general* applicability of the double actionability rule for service out of jurisdiction applications, and (b) the *specific* stage at which to consider the potential applicability of the double actionability rule (whether at the Jurisdictional Gateway Stage, the Natural Forum Stage, or both). Technically,

should the double actionability rule be relevant to the issue of whether leave ought to be granted for service out of jurisdiction, then it would permeate *both* the Jurisdictional Gateway Stage *and* the Natural Forum Stage, albeit for different purposes. It is relevant at the Jurisdictional Gateway Stage as the non-justiciability of the tort in Singapore means that there is no good arguable case that the claim falls within O 11 r 1(*f*)(i) or O 11 r 1(*f*)(ii) of the ROC (unless the flexible exception to the rule were to apply), whereas it is relevant at the Natural Forum Stage as a finding that the *lex loci delicti* is foreign law might point away from Singapore being the natural forum for trial. Nevertheless, the overall question remains the same: is the double actionability rule relevant for determining if leave should be granted for service out of jurisdiction applications?

71 The apparent deadlock between the two High Court authorities has yet to be broken, though it appears that the general position in *Nippon Catalyst* has been favoured in some High Court Registry decisions (see, for example, the decision of *Vibrant Group Ltd v Tong Chi Ho and others* [2022] SGHCR 8 at [33(a)], again only in relation to the Natural Forum Stage). On the other hand, it appears that some academic authorities take the view that the Singapore tort choice of law rules do apply at Jurisdictional Gateway Stage (see, for example, *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) at para 11/1/30), citing *IM Skaugen (HC)* without criticism. Thus, *Halsbury's Laws of Singapore – Conflict of Laws* Vol 6(2) (LexisNexis, 2020 Reissue) ("*Halsbury's Laws*") states the following at para 75.054:

> It has been held [in *IM Skaugen (HC)*] that Singapore choice of law rules applies to determine whether a justiciable tort is made out under Order 11 rule 1(1)(*f*). It should follow that whether the plaintiff's claim is in 'tort' raises a characterisation question for choice of law …

72 In considering the approach in Singapore, it is useful to consider the position taken in England. In England, a predecessor rule in Ord 11 r 1(1)(f) of the Rules of the Supreme Court 1965 (SI 1965 No 776) (UK) required that the claim be "founded on a tort". This has been interpreted to require that there be an actual tort ascertained by reference to rules of English law including its rules on the conflict of laws (see Adrian Briggs, *The Conflict of Laws* (Oxford University Press, 4th Ed, 2019) at pp 112–113; see also, *Dicey, Morris and Collins on the Conflict of Laws* vol 1 (Lawrence Collins gen ed) (Sweet & Maxwell, 15th Ed, 2012) at para 11-215). In this connection, in *Metall und Rohstoff AG v Donaldson Lufkin & Jenrette Inc* [1990] 1 QB 391, the English Court of Appeal (at p 446) opined that the double actionability rule as laid down by the House of Lords in *Boys v Chaplin* [1971] AC 356 was indeed relevant to the analysis of whether a claim comes under the tort jurisdictional gateway in Ord 11 r 1(1)(f) (except where the *lex loci delicti* was already found to be in England).

73 Treading water in this sea of myriad views, what I have found helpful was to refer to the commentary made in another academic article. The learned authors acknowledged that the identification of the *lex loci delicti* and application of the double actionability rule in *IM Skaugen (HC)* might have been unnecessary, whilst also recognising that it may be sensible to apply it in any event (see Joel Lee & Joel Leow, "Conflict of Laws" (2018) 19 SAL Ann Rev 273 at 283):

> 11.32 … First, it is *interesting that the court felt*, in the face of a possible foreign tort, *that it had to embark on* the substance of the tort test and *the accompanying double actionability analysis before considering the two limbs of O 11 r 1(f).*
>
> 11.33 It is *possible to argue that this is unnecessary.* The *language of O 11 r 1(f) does not technically require* the identification of the location of the tort. Order 11 r 1(f)(i)

> provides for service out where "the claim is founded on a tort, wherever committed, which is constituted, at least in part, by an act or omission occurring in Singapore". Order 11 r 1(f)(ii) provides for service out where "the claim is wholly or partly founded on, or is for the recovery of damages in respect of, damage suffered in Singapore caused by a tortious act or omission wherever occurring". *On the face of it, both limbs appear agnostic* about needing to identify the location of the tort.
>
> …
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> 11.35 *Having said that* (and putting aside the conceptual criticism that applying the double-actionability rule is to essentially import a choice of law rule into a jurisdictional question), from a *practical perspective*, it may be sensible for the court to identify the location of the tort *and apply the double-actionability rule now rather than to let the matter pass through at the jurisdictional stage only to fail the double-actionability rule at trial.*
>
> [emphasis added]

I can see the force in applying the double actionability rule at the jurisdictional stage as it will weed out claims which might eventually fail at trial. There would be savings of time and costs. The flipside of this, however, is that there is nothing in the text of O 11 r 1(*f*) of the ROC which mandates identifying the *lex loci delicti* which accompanies the double actionability rule analysis. Another concern might be that at the jurisdictional stage, this might require substantial expert evidence on foreign law to be produced at an early stage to determine whether the tort in question is also actionable abroad (should the *lex loci delicti* be foreign law). Indeed, it is apposite to note at this juncture that in the present case, there has not been any submissions made whatsoever on the actionability of the tort in a foreign jurisdiction, and no expert evidence on foreign law has been produced.

74 In my respectful view, the broad approach in *IM Skaugen (HC)*, that the double actionability rule is applicable to service out of jurisdiction applications,

should be followed. Apart from the reasons of economy mentioned above, I note that the location of the place of the tort is useful in aiding the court to locate the natural forum for the dispute. It is trite that the place where the tort is committed has residual relevance at the jurisdictional stage as a good indication of the *prima facie* natural forum: "for tort claims, the place of the tort is *prima facie* the natural forum" unless it was merely fortuitous (see *JIO Minerals* at [106]). This means that the court will ordinarily have to identify the location of the tort in any case in assessing whether it is the natural forum for the dispute. In fact, while Lim JC declined to apply the double actionability rule at the Natural Forum Stage in *Nippon Catalyst*, regardless, she conducted the necessary pre-requisite exercise of locating the *lex loci delicti* when noting that the place of the tort is *prima facie* the natural forum for the trial (at [55]–[58]).

75 In so concluding, I must emphasise that I express my views mainly in relation to the relevance of the double actionability rule at the Natural Forum Stage, since this is where the first defendant and third defendant, as well as the plaintiff, have differed in their submissions. Hence, I say no more about this point in so far as it concerns the application of the double actionability rule at the Jurisdictional Gateway Stage, and I only return to mentioning the double actionability rule below at [116]–[122].

Whether the plaintiff has established a good arguable case that her claim falls within one of the specified grounds of O 11 of the ROC

Overview

76 With the above discussion in mind, I turn to consider the first requirement for leave to serve out of jurisdiction, which is that the plaintiff must establish a good arguable case that her claim falls within one of the specified grounds of O 11 of the ROC.

77 In considering these three heads of jurisdiction relied on by the plaintiff, I consider that the "arguable case" standard in O 11 of the ROC requires the plaintiff to have "the better of the argument", which is more than "a mere *prima facie* case, but is different from the standard of a balance of probabilities given the limits inherent in the stage at which the application is being heard" (see the decisions of the Court of Appeal in *Vinmar Overseas (Singapore) Pte Ltd v PTT International Trading Pte Ltd* [2018] 2 SLR 1271 ("*Vinmar Overseas*") at [45] and *Shanghai Turbo* at [49]). In this regard the court may grapple with questions of law but should not delve into contested factual issues (see *Vinmar Overseas* at [46]).

78 Initially, as highlighted by the first defendant and third defendant (see [47] and [51] above), respectively, none of the affidavits filed by the plaintiff in support of Summons 3823 identified the relevant grounds under O 11 of the ROC that the plaintiff was relying on. It was only after a Registrar's Direction dated 16 November 2021 under HC/SUM 5024/2021 was issued that the plaintiff's solicitors filed an affidavit on 29 November 2021 identifying O 11 r 1(*f*)(i), O 11 r 1(*f*)(ii) and/or O 11 r 1(*o*) of the ROC as the heads of jurisdiction that Suit 692 fell within. These remain the only grounds raised by the plaintiff. Mr Wee confirmed that he was only relying on these heads of jurisdiction.[97] Given that the burden remains on the plaintiff to demonstrate the three requirements for leave to serve out of jurisdiction, including the relevant head of jurisdiction, I will confine my consideration to these heads only.

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97 Minute Sheet of 10 August 2022 hearing ("Minute Sheet") at pp 2–3.

Claim in tort: Act or omission occurring in the jurisdiction

79 The first head of jurisdiction which the plaintiff relies on is that in O 11 r 1(*f*)(i) of the ROC, which states, "the claim is founded on a tort, wherever committed, which is constituted, at least in part, by an act or omission occurring in Singapore". It is not necessary to demonstrate that every element of the tort was established in Singapore. Instead, it is sufficient to show that at least an act or omission occurred in Singapore, and that the cause of action in tort is founded at least in part on such act or omission (see *Halsbury's Laws* at para 75.050).

(1) The plaintiff's cause of action in tort

80 It is unclear from the SOC, which had focused on the third defendant's breach of its fiduciary duties and/or trust to the plaintiff, what the exact cause of action in tort is supposed to be. Perhaps, the best hint of this is at paragraph 20 of the SOC, which states that "the [defendants] had conspired to injure the [p]laintiff by depriving her of her share of the Share Proceeds". Further, at paragraph 21, the SOC provides that "[i]n furtherance of the conspiracy, the [defendants] and/or their agents and/or representatives opened [the] OCBC Bank [A]ccount for the Sales Proceeds to then be unlawfully transferred into".

81 The clearest intimation of the tortious cause of action that the plaintiff relies on is found in the plaintiff's written submissions, where the plaintiff appears to rely on both lawful means conspiracy and unlawful means conspiracy. The plaintiff argues that there was a predominant purpose of opening the OCBC account to deprive her of the WWC sales proceeds, or that the way the OCBC account was opened was unlawful as it was procured by deceit. At the oral hearing before me, Mr Wee submitted that the plaintiff was relying primarily on unlawful means conspiracy as the plaintiff alleged that the

opening of the OCBC Bank Account was an unlawful act due to certain false declarations being made.[98]

(2) Act or omission occurring within jurisdiction

82 The question is whether a good arguable case has been shown by the plaintiff that an act or omission occurred in Singapore (based on a tort wherever committed), and that the cause of action in tort is founded at least in part on such act or omission under O 11 r 1(*f*)(i) of the ROC.

83 Mr Wee placed heavy emphasis on the fact that the relevant and material act which occurred in Singapore is the opening of the OCBC Bank Account. However, Mr Wee candidly conceded at the hearing that there was no documentary evidence available pointing to the existence of this bank account, and that the plaintiff only possessed anecdotal evidence.[99] The problem here is that the plaintiff cannot simply rely on bare assertions to be made good later as she still bears the burden of proof at the *inter partes* stage (see *Zoom Communications* at [72]). Further, given that discovery has already been obtained in the US Proceedings which has progressed much further, it is rather surprising that the plaintiff's powder keg remains empty even until now. If information was still lacking, then, as Mr Nicholas Poon ("Mr Poon") and Mr Julian Tay ("Mr Tay") (who appeared for the first defendant and third defendant, respectively) argued strenuously, it was certainly open to the plaintiff to engage in pre-action discovery procedures to gather the necessary information.[100]

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98 Minute Sheet at pp 3, 8.

99 Minute Sheet at p 2.

100 Minute Sheet at p 5.

84 While the plaintiff pleads that the defendants had come to Singapore in late 2019 to further their conspiracy against the plaintiff and to discuss how to further dissipate the sale proceeds,[101] the evidence for this is scant. There is nothing to show that the first defendant and second defendant met in Singapore. If indeed the plaintiff's claim in tort is founded on a conspiracy (whether lawful or unlawful) between the defendants to cause damage to her, then she bears the burden of showing that she has good arguable case that her claim falls within O 11 r 1(*f*)(i) of the ROC. However, I cannot see such an arguable case based on the affidavits filed by the plaintiff. There is nothing exhibited in those affidavits that point to anything more than bare assertions that a tortious act or omission had taken place in Singapore. Indeed, Mr Wee could not point me to any material document exhibited in the affidavits that supported the plaintiff's assertions. In fact, Mr Poon helpfully highlighted that the first defendant had only travelled to Singapore once between 2003 and 2020, in December 2019, but the second defendant was in China during this period, making it physically impossible for them to have met.[102]

85 Furthermore, as both Mr Poon and Mr Tay highlighted, the plaintiff's own case is contradictory. The plaintiff deposed in her affidavit that the first and second defendants had travelled to Singapore in late December 2019 and early January 2020 to discuss the plaintiff's claims and to discuss possible actions to transfer the Sale Proceeds to new accounts.[103] However, if this were the case, it would make no sense for the second defendant to have told the plaintiff in November 2019 that he was going to Singapore. That would have unravelled

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101 SOC at [14].

102 D1WS at [63].

103 Plaintiff's affidavit dated 3 August 2021 ("Plaintiff's Affidavit") at [15].

their plot entirely.[104] If the purpose was to *conceal* and *secretly dissipate* the plaintiff of her share of the sale proceeds, then, as Mr Poon pointed out, the second defendant would also not have told the plaintiff in early 2018 that the Sale Proceeds had been transferred to Singapore, and the second defendant would not have provided the plaintiff with information regarding the third defendant's OCBC Bank Account and Goldman Sachs account in Singapore. I agree with Mr Poon's characterisation that this would be a rather curious conspiracy. The plaintiff's explanations in her affidavit dated 27 April 2022 also does not address these contradictions.

86 Accordingly, I find that the plaintiff has not made out an arguable case that her claim falls within O 11 r 1(*f*)(i) of the ROC.

Claim in tort: Damage suffered in the jurisdiction

87 The second head of jurisdiction which the plaintiff relies on is that in O 11 r 1(*f*)(ii), which states, "the claim is wholly or partly founded on, or is for the recovery of damages in respect of, damage suffered in Singapore caused by a tortious act or omission wherever occurring". The provision therefore allows the High Court to assume jurisdiction based on damage suffered in Singapore.

88 As Professor Yeo Tiong Min ("Professor Yeo") points out, this sub-rule identifies two kinds of claims: claims founded on damage and claims for the recovery of damages (see *Halsbury's Laws* at para 75.051). This therefore reflects difference in the domestic common law between torts where damage is part of the cause of action and torts where the damage is not. In this regard, the tort of conspiracy is only actionable on proof of damage. There will be no basis

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104 D3's Affidavit at p 48 at [33] and pp 117–119.

for recovery if the plaintiff is unable to show that she has suffered some pecuniary loss.

89 The problem for the plaintiff in relation to O 11 r 1(*f*)(ii) of the ROC is that she has not made out an arguable case that she has suffered damage in Singapore, which is essential in establishing the tortious cause of action to begin with. The plaintiff pleads in the 2020 Complaint of the US Proceedings that the "[p]laintiff was harmed by failing to receive her share of dividends and profit distributions and the proceeds of the sale of WWC and failing to receive full payment of the $902,000 of loans she provided to WWC".[105] It was also stated that as a result of the actions of the defendants as alleged conspirators, "their actions would have consequences in California".[106] By the plaintiff's own case in the US proceedings, the plaintiff's loss is therefore suffered at the location of her bank accounts in the US, and not Singapore (see also [119] below).

90 Accordingly, I find that the plaintiff has not made out an arguable case that her claim falls within O 11 r 1(*f*)(ii) of the ROC.

Restitutionary, equitable and other related relief

91 The third head of jurisdiction which the plaintiff relies on is that in O 11 r 1(*o*) of the ROC, which states, "the claim is a restitutionary one (including a claim for *quantum meruit* or *quantum valebat*) or for an account or other relief against the defendant as trustee or fiduciary, and the defendant's alleged liability arises out of any act done, whether by him or otherwise, in Singapore". Two types of claims are referred to: first, restitutionary claims and second, claims for

105 Plaintiff's Affidavit at p 32 at [71].

106 Plaintiff's Affidavit at p 24 at [9].

an account or other relief against a defendant as trustee or fiduciary (see *Halsbury's Laws* at para 75.055).

92 While the plaintiff's claims are not based in restitution, there are elements of her claim that allege the defendants to be acting as trustees or fiduciaries. These are founded on the third defendant's breach of fiduciary duties and/or trust in the way it dealt with the Sale Proceeds.[107]

93 The hallmark of a fiduciary obligation is that the fiduciary is to act in the interests of another person and must not exploit the relationship for his own benefit. The fiduciary nature of an obligation would be a conclusion reached after it was determined that particular duties were owed (see the decision of the Court of Appeal in *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 at [192]–[193]). It appears that the plaintiff is arguing that fiduciary obligations have arisen as the third defendant was holding the WWC shares on constructive trust (institutional or remedial) for the plaintiff.[108]

94 Putting aside the controversial dichotomy between institutional and remedial constructive trusts (for a fuller discussion under Singapore law, see Alvin See, Yip Man and Goh Yihan, *Property and Trust Law in Singapore* (Wolters Kluwer, 2018) at pp 393–394), the plaintiff has not provided sufficient facts to show that either a remedial or institutional constructive trust has arisen.

95 In the first place, it is unclear to me if the Sale Proceeds were ever deposited in the OCBC Bank Account, as alleged by the plaintiff. It appears that the strongest evidence adduced by the plaintiff is the Bank of America

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107 SOC at [14]–[19].

108 Plaintiff's Affidavit at [17].

documents that purportedly show the dissipation of funds from the third defendant's bank account into the second defendant's Bank of America account of which the first defendant has power of attorney over.[109] The plaintiff asserts that the monies must have come from the accounts opened in Singapore that received and dealt with the Sale Proceeds. But this says nothing about the OCBC Bank Account in Singapore. Also, an examination of the Bank of America account statements that were exhibited do not show monies being deposited from accounts based in Singapore. Indeed, Mr Wee could not point me to any documentary evidence or reference indicating so.

96 Moreover, the plaintiff has not alleged any facts to show how the third defendant could have known of any facts that would have affected its conscience. On the plaintiff's own case, any alleged beneficial ownership that she had in WWC was a matter between her and the first defendant. There is nothing provided by the plaintiff which shows that the third defendant knew about the plaintiff's investment made in or around 2002 when WWC was incorporated.

97 Accordingly, I find that the plaintiff has not made out an arguable case that her claim falls within O 11 r 1(*o*) of the ROC.

98 Since the plaintiff has not established a good arguable case on the heads of jurisdiction she has relied on, it must follow that the Service Out Order should be set aside. Notwithstanding that, I continue to examine the second and third requirements needed for leave to serve out of jurisdiction.

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109 Plaintiff's Affidavit at pp 61–74.

Whether the plaintiff's case has a serious question to be tried on the merits

99 The second requirement is that the plaintiff must establish that there is a serious question to be tried on the merits. In other words, there must be a substantial question of fact or law that the plaintiff has a genuine desire to be tried. This is a lower standard of proof than a "good arguable case" (see the decision of the Court of Appeal in *Bradley Lomas Electrolok Ltd and another v Colt Ventilation East Asia Pte Ltd and others* [1999] 3 SLR(R) 1156 at [18]).

100 Given my conclusion earlier in relation to O 11 r 1(*f*)(i), O 11 r 1(*f*)(ii) and O 11 r 1(*o*) of the ROC, all of which are concerned with the merits of the claim, I likewise conclude that the plaintiff has not shown a serious issue to be tried on the merits. This is all the more so since in examining the requirements for service out of jurisdiction, a court is not to consider them in isolation but must consider whether its findings in relation to one requirement is consistent with its findings in relation to the other requirements (see *Recovery Vehicle* at [51]).

Whether Singapore is the natural forum

The relevant law

101 I turn then to the last requirement, which is whether Singapore is the natural forum to hear the case. In this regard, Singapore law applies the common law principles of *ad hoc* allocation of jurisdiction enunciated in the leading UK House of Lords decision of *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460, also commonly referred to as the *Spiliada* test. The *Spiliada* test entails a two-stage evaluation.

102 At the first stage, the court considers general connecting factors to identify the forum with the most real and substantial connection with the dispute ("Stage One"). The connecting factors include personal connections, connections to events and transactions, governing law, other proceedings, and the shape of the litigation. In *Rappo, Tania v Accent Delight International Ltd and another and another appeal* [2017] 2 SLR 265 ("*Rappo Tania*"), the Court of Appeal reiterated that Stage One of the *Spiliada* test is not a mechanistic exercise concerned only with the quantity of connecting factors pointing to the competing fora; the quality of connecting factors is crucial. As the Court of Appeal explained (at [70]):

> … Parties in modern commercial litigation are often well connected, with relational and business ties to many different jurisdictions. The task of the court in this context is not to draw up a balance sheet of tenuous or insubstantial points of contact with different fora in the expectation that the jurisdiction with the largest number on its side prevails at the close of the analysis. Rather, the search is for those incidences (or connections) that have the *most relevant and substantial associations* with the dispute.
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> [emphasis in original]

103 It is conventional to group the connecting factors into the five categories of personal connections, connections to events and transactions, governing law, other proceedings, and shape of the litigation (see *JIO Minerals* at [42]).

104 At the second stage, the court considers primarily if substantial justice may be obtained in the *prima facie* natural forum ("Stage Two"). All factors will be examined, and the court is to balance between justice to the parties and considerations of international comity. Whilst the two stages are analysed separately and sequentially, some aspects of the case may be analysed at either Stage One or Stage Two. Importantly, the court is to bear in mind that the aim of the whole exercise is to determine whether the case should be heard in the

jurisdiction which is more suitable for the interests of the parties and the ends of justice (see *Rappo Tania* at [72]).

Application to the present case

105 Applying these principles to the present case, I am of the view that Singapore is not the natural forum.

(1) Stage One of the *Spiliada* test

106 In relation to Stage One of the *Spiliada* test, most of the connecting factors point to the US courts as the natural forum.

(A) PERSONAL CONNECTIONS AND LOCATION OF WITNESSES

107 First, it is undisputed that none of the parties in Suit 692 have any connection with Singapore. The plaintiff and first defendant are both citizens of the US and reside there. The second defendant is a citizen of Antigua and purportedly resides in China, while the third defendant is a BVI-incorporated company. However, in disputes involving well-heeled parties who have a high degree of mobility, the current domicile of the parties may be of little legal significance (see the decision of the Court of Appeal in *Ivanishvili, Bidzina and others v Credit Suisse Trust Ltd* [2020] 2 SLR 638 ("*Ivanishvili Bidzina*") at [83]).

108 Turning to the location of witnesses, the locations of relevant witnesses is a factor to be considered in the determination of the natural forum for the dispute. The significance of this factor will turn on whether the main dispute is largely factual in nature (see the decisions of the Court of Appeal in *Rickshaw Investments Ltd and another v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 ("*Rickshaw Investments*") at [19] and *Lakshmi Anil Salgaocar v Jhaveri Darsan*

Jitendra [2019] 2 SLR 372 ("*Lakshmi Anil*") at [73]). Another equally important, if not more important consideration, is the compellability of key witnesses who reside abroad (see *Rickshaw Investments* at [23] and [25]). This is because a Singapore court cannot compel a foreign witness to testify in Singapore Proceedings (see O 38 r 18(2) of the ROC).

109 Mr Wee argued before me that it was important for the trial to take place in Singapore because of the issue relating to the OCBC Bank Account, where the bank's employees would have to be cross-examined on how the account was opened (in relation to the tort of conspiracy). The plaintiff asserts that this rationale applies equally to need to hear the testimonies of the Goldman Sachs employees.

110 However, the plaintiff has eluded the point that the crux of the analysis centres around the *key witnesses* to the dispute. Those key witnesses consist primarily of the plaintiff, the first defendant, the second defendant and the parties involved in the sale of WCC to Goldwind – all of whom either reside in the US or China. These are the persons who can give evidence as to the circumstances of the sale which the plaintiff has alleged as improper. In contradistinction, any testimony from the employees of OCBC and Goldman Sachs, while somewhat relevant, would only be peripheral to the main dispute.

111 In conducting the analysis, the court's focus should not lie mainly on the evidence the plaintiff needs to establish its allegations since it is the plaintiff who wishes to pursue the claims in Singapore, and the court must instead also consider the potential prejudice to the defendants in running their defence (see, in the context of a stay, *Ivanishvili Bidzina* at [86]). Thus, the fact that the plaintiff claims that she requires the testimony from the employees of OCBC and Goldman Sachs to establish her claim should be given less weight.

112 In totality, the personal connections of the parties and locations of relevant witnesses point away from Singapore.

(B) GOVERNING LAW

113 In general, at the interlocutory stage and before all the evidence is taken, I am entitled to decide the present Summonses based on a *prima facie* view on the governing law (see the High Court decision of *Yeoh Poh San and another v Won Siok Wan* [2002] SGHC 196 at [15]). The basic premise behind the governing law as a connecting factor is that it is generally preferable for an action to be tried in the jurisdiction whose law would apply to it (see *Rickshaw Investments* at [42]). The Singapore courts have taken notice, at least for jurisdictional purposes, that the contents of foreign law may differ from the law of the forum even in the absence of proof (see the decisions of the Court of Appeal in *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 ("*EFT Holdings*") at [57]; *JIO Minerals* at [96] as well as the High Court decision of *Multi-Code Electronics Industries (M) Bhd and another v Toh Chun Toh Gordon and others* [2009] 1 SLR(R) 1000 at [49]–[50]).

114 The governing law is a significant factor in Stage One of the *Spiliada* test. This flows from the argument that in general, the court which will be called on to apply its own law is in a better position to do so for many reasons (see *Halsbury's Laws* at para 75.093). It is naturally most familiar with its own law and least likely to get it wrong; it will be able to determine the contents of the applicable at least cost and expense; and it will not have to deal with conflicting expert witnesses on foreign law and translations of foreign law from foreign languages since a foreign court will be more adept in dealing with its own law than Singapore courts, *etc*. The importance of the governing law may be

calibrated downwards where the issues at play are mostly issues of fact or whether the foreign law is not that different from Singapore law. For example, in *Lakshmi Anil*, the governing law being BVI was given little weight since it was also a common law jurisdiction and because the key issues in dispute were factual in nature (at [55]).

115 In the present case, the issues at play are a mix of factual and legal issues as the factual basis underlying the tortious and equitable claims must be ascertained, but so too must the legal principles on establishing each legal requirement. The case at hand also deals potentially with Chinese law which is a civil law jurisdiction, and this court (or even the Singapore International Commercial Court) would be less familiar to deal with that aspect (see the High Court decision of *Sinco Technologies Pte Ltd v Singapore Chi Cheng Pte Ltd and another* [2017] SGHC 234 at [67]).

116 In relation to the conspiracy claim, I have found above that the double actionability rule is relevant to identify the *lex loci delicti* (see above at [74]). I must first identify the place of the tort. To do this, I apply the "substance test" which requires the court to "look at the events constituting the tort and ask where, in substance, the cause of action arose" (see *JIO Minerals* at [90] and *IM Skaugen (HC)* at [87]).

117 The application of the "substance test" to the tort of conspiracy is not as straightforward as there may be "many points of contact" (see *Halsbury's Laws* at para 75.378). The key factors to consider for the tort of conspiracy include the "identity, importance and location of the conspirators, the locations where any agreements or combinations took place, the nature and places of the concerted acts or means, the location of the plaintiff and the places where the plaintiff suffered losses" (see *EFT Holdings* at [53] and the High Court decision

of *Wing Hak Man and another v Bio-Treat Technology Ltd and others* [2009] 1 SLR(R) 446 at [26]).

118 Both alleged conspirators here have no connection to Singapore. The first defendant is a US citizen resident in the US, while the second defendant is an Antiguan citizen (see [7] above) (for completeness, the third defendant is a BVI-incorporated company, though no arguments on attribution of knowledge was made by the plaintiff). As the alleged conspirators were located abroad, it naturally follows that any agreement forming the alleged conspiracy would have taken place outside of Singapore (see *Nippon Catalyst* at [58]).

119 The place where the plaintiff would have suffered losses would also likely be in the US and not Singapore as that was where she was resident and where the monies from the proceeds should have gone into (*ie*, her US bank accounts). As the loss here was framed as the plaintiff not receiving her share of the sale proceeds, the place of damage would be the location of her bank accounts, presumably in the US. As an aside, as noted in *IM Skaugen (CA)* at [78] (a case concerning corporate entities), in the absence of any evidence to the contrary, it can be assumed that the damage for the claim "is suffered in the jurisdiction where the relevant entity is incorporated". There is no such default rule for natural persons, and I say no more about this.

120 Additionally, the place where the acts of the alleged conspiracy took place was not in Singapore. The plaintiff pleaded that the defendants had conspired to injury the plaintiff by depriving her of her share of sale proceeds. These acts included: (a) the first defendant not issuing any share certificates to her whilst representing to her that she owned 45% of WWC due to her investment, (b) the defendants conspiring to allow the third defendant to take over the entire shareholding of WWC, and (c) the defendants orchestrating to

sell WWC to Goldwind for US$100m in 2017 without notifying the plaintiff.[110] However, these pleaded acts point to locations outside Singapore. For example, the sale of WWC to Goldwind would have taken place in Hong Kong as Goldwind is in and incorporated under the laws of Hong Kong SAR, and that was where the due diligence and contract negotiation took place for the sale. The sale contract itself was executed in Hong Kong.[111]

121 Indeed, Mr Wee accepted at the hearing before me that any potential agreement forming part of the conspiracy would have taken place outside of Singapore.[112] However, Mr Wee argued instead that the material part of the conspiracy relates to the coming to Singapore by the first and second defendants to further the conspiracy and the dissipation of sale proceeds in Singapore by opening the OCBC Bank Account. The problem with this submission is that there is little evidential basis (if at all) that this actually occurred, which I have already addressed above at [83]–[85].

122 Applying the "substance test", the place of the tort is either in the US or China. Without having to pinpoint the *lex loci delicti* definitively, what is at least clear is that Singapore law is not the governing law for the tort claim and this factor points away from Singapore being the natural forum for the dispute. Further, in addition to the fact that the governing law is a foreign law, it is trite that the place of the tort is *prima facie* the natural forum for trial unless it is merely fortuitous (see above at [74]), and this is a "weighty factor pointing in favour of that jurisdiction" (see *Rickshaw Investments* at [40]). The place of tort

110 SOC at [9]–[11].

111 CMK's Affidavit at [64(a)]; D3's Affidavit at [39(d)] and pp 104, 121 (at [8]).

112 Minute Sheet at p 8.

being abroad is not fortuitous here and is unsurprising given that substantially all the relevant events and parties do not have any connections with Singapore.

123 Turning next to the breach of fiduciary duty or breach of trust claim, despite the lack of clarity in her pleaded case, the gravamen of the plaintiff's complaint here essentially centres on her alleged beneficial interest in the shares (which were then sold for the share proceeds). Any claim in the monies in the OCBC Bank Account thereafter (if this is even true), is merely part of the traceable proceeds flowing from the property rights in the shares. Thus, the law governing the equitable ownership of the shares, *ie*, the law of incorporation of the company, is likely to be the relevant choice of law rule here (see *Halsbury's Laws* at para 75.324, citing the English Court of Appeal decision of *Macmillan Inc v Bishopsgate Investments plc (No 3)* [1987] 1 WLR 387 and the English High Court decision in *Re Harvard Securities Ltd* [1997] 2 BCLC 369). The governing law would be Samoan law as WWC was incorporated under the laws of Samoa. Mr Wee did not seriously dispute this point in oral submissions and accepted that the issue of ownership of the shares should be dealt with by Samoan law. Again, the governing law for this part of the claim points away from Singapore being the natural forum.

(C) CONNECTIONS TO EVENTS AND TRANSACTIONS

124 As to connections to events and transactions, the premise behind this category is that it is assumed that evidence would typically be found where these events or transactions occur. This allows the trial to be held at the place with the least expense and inconvenience (see the High Court decision of *Best Soar Ltd v Praxis Energy Agents Pte Ltd* [2018] 3 SLR 423 at [19]). Thus, in so far as torts are concerned, the place where the tort occurred is *prima facie* the natural forum for the tort claim (see *Rickshaw Investments* at [39]–[40]), and this is a

weighty though not decisive factor, unless it is shown that the place of the tort was merely fortuitous (see *JIO Minerals* at [106]–[107]). This presumption can be displaced when necessary, *eg*, where the tortious claim is parasitic on other non-tortious claims to be determined in a different fora (see the decision of the Court of Appeal in *Oro Negro Drilling Pte Ltd and others v Integradora de Servicios Petroleros Oro Negro SAPI de CV and others and another appeal (Jesus Angel Guerra Mendez, non-party)* [2020] 1 SLR 226 ("*Oro Negro*") at [90]–[91]). In this regard, as I have already found above at [122], applying the "substance test" in relation to the conspiracy claim, the place of tort is either in the US or China.

125 Conversely, in relation to the plaintiff's case on breach of fiduciary duties/trust, the breach would have occurred on the alleged opening of the OCBC Bank Account in Singapore and the deposit of monies within. However, I give little weight to this factor ultimately given my conclusions in relation to the merits of the plaintiff's case.

(D) RELATED PROCEEDINGS

126 The presence of related proceedings is relevant to the natural forum analysis where there is a risk of inconsistent findings or judgments if overlapping proceedings take place in multiple jurisdictions. The weight to be given to this factor will depend on how far along the related proceedings have been advanced (see *IM Skaugen (CA)* at [154] and *Lakshmi Anil* at [59]).

127 In my view, there is a high degree of overlap between the US Proceedings and Suit 692. Not only are the parties identical in the 2020 Complaint and Suit 692, the relevant background facts underlying both proceedings are similar. While the pleadings in the US Proceedings do not

explicitly refer to a cause of action in the tort of conspiracy as such, as Mr Poon and Mr Tay helpfully brought me through, there were references littered throughout relating to conspiracy such as: alleging that the defendants were "co-conspirators" and that "pursuant to [the first defendant's] conspiracy with [the second defendant] and [the third defendant], [the first defendant] acted tortiously in California".[113] Thus, great weight should be given to the fact that there are related proceeding abroad.

128 Indeed, I find it significant that the plaintiff had agreed to give an undertaking to stay or *discontinue* the US Proceedings entirely if she is allowed to continue with her claims in Singapore.[114] I agree with Mr Poon that this essentially amounts to an admission that there is a high degree of overlap between the US Proceedings and Suit 692, and that there is a presence of a multiplicity of proceedings, which is undesirable. One can derive assistance by drawing an analogy to the Court of Appeal's observations in *IM Skaugen (CA)* (at [125]):

> … it is telling that the respondents had initially offered, in respect of the present appeal, to stay the Singapore proceedings in favour of the Norwegian proceedings. While the offer was subsequently withdrawn as the liquidator of the second respondent did not agree with it, the initial offer is revealing. It shows that the respondents themselves appear to acknowledge that it is undesirable for there to be parallel proceedings in both Singapore and Norway in the light of the developments in the Norwegian proceedings after the Judge's decision. The Norwegian proceedings have reached an advanced stage and *concern the same claim, issues and parties.*
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> [emphasis in original]

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113 Plaintiff's Affidavit at pp 23–24, at [6], [8].

114 Plaintiff's affidavit dated 4 May 2022 at [9].

As the observation was made in the context of the plaintiff offering to *stay* the proceedings, the rationale would apply *a fortiori* in the present case where the plaintiff goes one step further in potentially *discontinuing* the US Proceedings.

129 Since the plaintiff is responsible for the existence of parallel proceedings by instituting proceedings in both Singapore and the US (and failing to stay the US Proceedings), the plaintiff cannot now claim that the parallel proceedings abroad is a relevant factor in the *Spiliada* exercise which points towards Singapore being the natural forum (see *IM Skaugen (CA)* at [158]).

130 Given that the US Proceedings would be ready for trial very soon on 10 October 2022,[115] the US courts would be the more appropriate forum for the trial since they have reached a very advanced stage as compared to the present Singapore Proceedings which are just beginning. The plaintiff had made her bed by choosing to sue in the US and allowing the proceedings to advance to the doorstep of trial. The plaintiff is *solely* responsible for the current situation resulting in parallel proceedings as she is the plaintiff in both the Singapore and the US Proceedings (*ie*, a "common plaintiff scenario") and created the risk of inconsistent judgments (this is similar to the situation in *IM Skaugen (CA)* at [158]). This factor of related proceedings therefore points away from Singapore as the natural forum.

(E) CONCLUSION UNDER THE FIRST STAGE

131 Given the totality of factors examined above, I conclude that Singapore is not the natural forum.

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115 D1WS at [7].

(2) Stage Two of the *Spiliada* test

132 There has been some controversy as to whether Stage Two of the *Spiliada* test applies to service out of jurisdiction cases where the plaintiff is unable to show that Singapore is the *prima facie* natural forum under Stage One (see *Oro Negro* at [80(d)]; *cf*, the High Court decision of *Allenger, Shiona (trustee-in-bankruptcy of the estate of Pelletier, Richard Paul Joseph) v Pelletier, Olga and another* [2022] 3 SLR 353 at [158]). Since a foreign forum is shown to be clearly and distinctly more appropriate than Singapore for the trial of the action, the plaintiff needs to show that there is "a real and material risk of injustice" if the parties were to go to that foreign forum to have their dispute resolved.

133 I accept Professor Yeo's argument that, as a matter of principle, and subject to procedural constraints arising from burden of proof that give rise to some technical distinction in application, the *Spiliada* test should apply in the same way in both service within and service outside jurisdiction (see Yeo Tiong Min, "Exit, Stage 2, for the Plaintiff in Service out of Jurisdiction?" (2021) 33 SAcLJ 1237). As he explains, there are two normative justifications for this. First, access to justice is "an important consideration" in both service in Singapore cases and service out of Singapore cases. This consideration justifies the Singapore court hearing a case even though it is not the *prima facie* natural forum, if it is shown that substantial justice would otherwise be denied. Second, the *Spiliada* test requires an "even-handed treatment of the plaintiff and the defendant". More broadly, Professor Yeo points out that "the modern global trend in common law systems is to enlarge the scope of extraterritorial jurisdiction, subject to control by the natural forum doctrine", and any asymmetric application of the *Spiliada* test would thus require justification beyond mere procedural constraints.

134 However, even if I accept that Stage Two applies in the present circumstances, the plaintiff has not shown why substantial injustice would be occasioned to her if the action were to be tried abroad. In any event, the court must proceed cautiously before it pronounces that a litigant will experience a deprivation of substantial justice if left to seek recourse in an appropriate foreign forum (see the decision of the Court of Appeal in *Good Earth Agricultural Co Ltd v Novus International Pte Ltd* [2008] 2 SLR(R) 711 at [27]). This is particularly so where the foreign forum operates a well-established and well-recognised system of justice (see *Rappo Tania* at [110]), in line with the principle of international comity. Here, even if there was a suggestion made by the plaintiff that the US or China courts will be unable to try the dispute in a manner which is fair, what can be observed is that these two jurisdictions operate well-established and well-recognised courts of justice which should not be lightly impugned.

135 For all these reasons, I agree with the defendants that Singapore is not the natural forum. Accordingly, I find that the plaintiff has not discharged the burden of demonstrating the three requirements to serve out of jurisdiction. It follows that I set aside the Service Out Order.

136 Given my conclusion, I need not consider if the plaintiff had made full and frank disclosure at the *ex parte* application.

Whether the Writ was validly served

137 Likewise, I also do not need to consider if the Writ was validly served on the first and third defendants, even as I note that both parties have adduced conflicting expert opinion in favour of their respective cases.

Conclusion

138 For all these reasons, I set aside the Service Out Order contained in ORC 4728. It therefore follows that the Mareva injunction in ORC 4728 is similarly of no effect since the High Court's power to grant the injunction is conditional upon the court having *in personam* jurisdiction over the foreign defendant in the first place (apart from the plaintiff having a reasonable accrued cause of action in Singapore) (see the decision of the Court of Appeal in *Bi Xiaoqiong (in her personal capacity and as trustees of Xiao Qiong Bi Trust and the Alisa Wu Irrevocable Trust) v China Medical Technologies, Inc (in liquidation) and another* [2019] 2 SLR 595 at [62]).

139 I am grateful to all parties, especially Mr Poon and Mr Tay, and their respective teams who did not address me, for their helpful oral and written submissions. Unless the parties can agree on the appropriate cost order, they are invited to write in with their submissions on costs within seven days of this judgment.

Goh Yihan
Judicial Commissioner

Tan Cheng Kiong and Wee Xunji (CK Tan Law Corporation) for the plaintiff;
Poon Guokun Nicholas and Chan Michael Karfai (Breakpoint LLC) for the first defendant;
The second defendant unrepresented and absent;
Tay Wei Loong Julian, Wong Wai Keong Anthony and Kang Su-Lin (Lee & Lee) for the third defendant.
