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

[2023] SGHC 281

Suit No 950 of 2020 (Registrar's Appeal No 27 of 2023)

Between

JE Synergy Engineering Pte Ltd

… *Plaintiff*

And

(1) Niu Ji Wei
(2) Chen Zhe

… *Defendants*

And

Sinohydro Corporation Limited (Singapore Branch)

… *Third Party*

And

Vico Construction Pte Ltd

… *Fourth Party*

GROUNDS OF DECISION

[Arbitration — Stay of court proceedings — Case management stay]

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JE Synergy Engineering Pte Ltd
v
Niu Ji Wei and another
(Sinohydro Corp Ltd (Singapore Branch), third party; Vico Construction Pte Ltd, fourth party)

[2023] SGHC 281

General Division of the High Court — Suit No 950 of 2020 (Registrar's Appeal No 27 of 2023)
S Mohan J
19, 20 April, 28 June 2023

5 October 2023

S Mohan J:

1 HC/RA 27/2023 ("RA 27") was the plaintiff's appeal against the orders made by the learned Assistant Registrar ("AR") in HC/SUM 3963/2022 ("SUM 3963"). In SUM 3963, the AR ordered that all further proceedings in HC/S 950/2020 ("S 950") be stayed under the inherent jurisdiction of the court and pursuant to its case management powers, pending the final determination of the claims brought by the plaintiff, in arbitration proceedings, against the third party in S 950.

2 I heard RA 27 together with another appeal brought by the plaintiff in HC/RA 26/2023 ("RA 26"). In RA 26, the plaintiff appealed against the order of the AR dismissing its application in HC/SUM 3899/2022 for S 950 to be

heard together with HC/OA 437/2022 ("OA 437") at the same time or one immediately after another before the same Judge, with evidence in one matter being admissible in the other. OA 437 is the plaintiff's application to, *inter alia*, set aside certain adjudication determinations issued against it under the Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed). I dismissed both RA 26 and RA 27 on 28 June 2023, providing brief oral grounds for my decisions in both appeals. As the plaintiff has appealed to the Court of Appeal against my decision in RA 27, these are my full grounds of decision for RA 27.

Background

Suit 950

3 The plaintiff in S 950, and appellant in RA 27, is JE Synergy Engineering Pte Ltd ("JEE"), a Singapore company that engages in the business of infrastructure engineering, procurement and construction management. JEE was the main contractor for building works for a Mechanical Biological Treatment facility at 97 Tuas South Avenue 2 (the "Building Works").[1]

4 The 1st defendant and 2nd defendant in S 950 (collectively, the "Defendants") are Niu Ji Wei ("Mr Niu") and Chen Zhe ("Ms Chen"), who were the Project Director and Senior Project Engineer of JEE respectively at the material time.[2] Mr Niu and Ms Chen are also husband and wife.

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1 Affidavit of Tan Kuen Jong in HC/S 950/2020 (HC/SUM 3963/2022) dated 2 November 2022 ("10-TKJ") at para 10.

2 Affidavit of Li Yi in HC/S 950/2020 (HC/SUM 3963/2022) dated 19 October 2022 ("3-LY") at para 6.

5 On 2 October 2020, JEE commenced S 950 against the Defendants, claiming that they had breached their contracts of employment and/or fiduciary duties owed to JEE.[3]

6 The dispute in S 950 centres around the awarding of a subcontract for a portion of the Building Works (the "Subcontract Works") to the third party in S 950, Sinohydro Corporation Limited (Singapore Branch) ("Sinohydro").[4] Sinohydro in turn engaged the fourth party in S 950, Vico Construction Pte Ltd ("Vico"), to perform part of the Subcontract Works.[5]

7 JEE's case in S 950 is that the Defendants had obtained bribes, kickbacks and/or secret profits from Sinohydro. In exchange, the Defendants ensured that Sinohydro would be awarded the Subcontract Works, and further, approved payment claims submitted by Sinohydro without conducting any or proper verification of the work done, leading to an over-certification of the value of the Subcontract Works that were carried out. JEE's case is that this bribery scheme was executed through a conduit company Shi Rong Technology Limited ("Shi Rong"). On 18 September 2018, Shi Rong was engaged to act as a consultant for the purposes of assisting Sinohydro in bidding for the Subcontract Works; if Sinohydro was successful in its bid, Shi Rong was to be paid a service and consultancy fee amounting to S$1,000,000 upon Sinohydro receiving payment for the Subcontract Works (the fee S$1,000,000 was to be paid in the form of instalments amounting to 5% of each progress payment received by Sinohydro from JEE). The Defendants had, through Shi Rong,

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3 10-TKJ at para 11; Statement of Claim (Amendment No. 1) in HC/S 950/2020 ("SOC-A1") at para 16.

4 SOC-A1 at paras 4 and 16; 10-TKJ at para 10.

5 3-LY at para 10.

transmitted to Sinohydro confidential information regarding the details of the Building Works project for the purposes of assisting Sinohydro in winning the tender for the Subcontract Works. On 30 November 2018, JEE awarded the Subcontract Works to Sinohydro. On or about 11 December 2018, Ms Chen acquired 12,000 shares of Shi Rong. As of 25 October 2019, Ms Chen was declared the ultimate beneficial owner of Shi Rong. Sinohydro further entered into an agreement with Shi Rong where Sinohydro allegedly agreed to purchase certain items (including what appeared to be construction apparatus – *eg*, "Overhead Crane Guiderail") for the price of S$1,950,000, and importantly, the delivery of which JEE stated it could not confirm.[6]

The Arbitration between JEE and Sinohydro

8 On 12 July 2022, JEE commenced arbitration proceedings against Sinohydro (the "Arbitration"),[7] in accordance with the arbitration agreement contained in the contract between JEE and Sinohydro for the Subcontract Works (the "JEE-Sinohydro Subcontract").[8]

9 JEE's case in the Arbitration is that the JEE-Sinohydro Subcontract was procured by bribery where Sinohydro had agreed to pay bribes and/or kickbacks to the Defendants (*ie*, Mr Niu and Ms Chen) in return for the Defendants ensuring that the Subcontract Works would be awarded to Sinohydro. In exchange for the said bribes and/or kickbacks and as part of the corrupt scheme, the Defendants also approved payment claims submitted by Sinohydro without conducting any or proper verification of the work done.[9]

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6 10-TKJ at paras 11–12; SOC-A1 at para 16.

7 2nd Agreed Bundle of Documents ("2 AB") at pp 462–471.

8 3-LY at paras 37–38; 1st Agreed Bundle of Documents ("1 AB") at p 399.

9 3-LY at para 39; 2 AB 732 (para 7).

SUM 3963 & RA 27

10 On 19 October 2022, Sinohydro (as the third party in S 950) filed an application for all further proceedings in S 950 to be stayed under the inherent jurisdiction of the court and pursuant to its case management powers pending the final determination in the Arbitration.

11 The AR below ruled in Sinohydro's favour, granting a stay of the proceedings in S 950. As mentioned at [1] above, RA 27 was JEE's appeal against the AR's decision.

12 Sinohydro's case in SUM 3963 and RA 27 was identical. In brief, Sinohydro argued for the proceedings in S 950 to be stayed for the following reasons:[10]

(a) There is a material overlap between the parties to S 950 and the parties in the Arbitration.

(b) JEE's allegations in S 950 and the Arbitration are identical.

(c) The issues in S 950 and the Arbitration are common and the proper ventilation of the issues in S 950 is dependent on the resolution of those issues in the Arbitration.

(d) There is a material overlap in the remedies sought in S 950 and in the Arbitration.

(e) There is a real and practical risk of inconsistent findings of fact and law and/or double recovery.

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[10] Sinohydro's Written Submissions for HC/RA 27/2023 at paras 21–72; Sinohydro's Written Submissions for HC/SUM 3963/2022 at paras 14–70.

(f) There would be a duplication of witnesses and evidence.

(g) There is no bar to the claims in S 950 being pursued in the Arbitration.

(h) The parties have agreed to resolve their disputes by arbitration and not through the court process.

13 JEE's arguments in SUM 3963 and RA 27 were also largely similar. In brief, JEE argued against the stay of the proceedings in S 950 for the following main reasons:[11]

(a) There is no relevant overlap of parties in S 950 and the Arbitration as Sinohydro is a third party to S 950 and third party proceedings are independent of the main action.

(b) There is no relevant overlap of issues between JEE's claims in S 950 and in the Arbitration; further, the issues in S 950 do not depend on a resolution of those issues in the Arbitration.

(c) There is no real risk of overlapping reliefs leading to double recovery.

(d) Allowing a case management stay of S 950 would cause severe prejudice to JEE as it would have the effect of stifling JEE's claims against the Defendants in S 950 indefinitely when S 950 was at the doorstep of the trial.

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[11] JEE's Written Submissions for HC/RA 27/2023 ("PWS") at paras 80–166; JEE's Written Submissions for HC/SUM 3963/2022 at paras 119–195.

(e) The case management stay proposed by Sinohydro was meant to stymie, delay, and ultimately deny the reliefs sought for by JEE.

(f) JEE was not improperly circumventing the arbitration agreement – this argument was only raised in RA 27.

(g) The court could, in the exercise of its case management powers, sever the third party proceedings in S 950 instead of staying the whole action – this argument was also only raised in RA 27.

General principles on case management stay

14 For the court to grant a case management stay of the court proceedings in favour of arbitration, the fundamental prerequisite is the existence or at least the imminence of arbitration proceedings giving rise to a real risk of overlapping issues between the actual (or putative) arbitration and the court proceedings: *Rex International Holding Ltd and another v Gulf Hibiscus Ltd* [2019] 2 SLR 682 ("*Rex*") at [11].

15 The court, in deciding whether to exercise its discretion to stay the court proceedings, seeks in every case to strike a balance between three higher-order concerns: first, a plaintiff's right to choose whom he wants to sue and where; second, the court's desire to prevent a plaintiff from circumventing the operation of an arbitration clause; and third, the court's inherent power to manage its processes to prevent an abuse of process and ensure the efficient and fair resolution of disputes. The balance that is struck must ultimately serve the ends of justice: *Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals* [2016] 1 SLR 373 ("*Tomolugen*") at [188].

16 Based on the case authorities, the court may consider a variety of *non-exhaustive* factors to determine where the balance lies (*Tomolugen* at [140], [179]–[180]; *Danone Asia Pacific Holdings Pte Ltd v Fonterra Co-Operative Group Ltd* [2014] NZHC 1681 ("*Danone*") at [56]; *Rex* at [11]). In addition to these cases, I also found the factors considered by the Court of Appeal in *CSY v CSZ* [2022] 2 SLR 622 ("*CSY*") at [25] to be instructive and relevant to this exercise. This was notwithstanding that *CSY* related, not to a case management stay, but to a stay application made under s 6 of the Arbitration Act 2001 (2020 Rev Ed). Nonetheless, the factors that were referred to in *CSY* are, in my view, also relevant and may be considered in the context of a "case management quandary" faced by the court when it is asked to exercise its powers of a case management stay. These factors may, compendiously, be summarised as follows:

(a) the degree of overlap in the parties to the arbitration (or putative arbitration) and the parties to the court proceedings;

(b) the degree of overlap in the issues, both factual and legal, that will be engaged in the arbitration (or putative arbitration) and those that will be engaged in the court proceedings;

(c) the degree of overlap in the remedies that the arbitral tribunal (or putative tribunal) may grant, as compared to those which the court may grant;

(d) the degree to which proper ventilation of the issues in the court proceedings depends on the resolution of the related arbitration (or putative arbitration);

(e) the scope of the parties' agreement to arbitrate and whether continuation of the court proceedings would result in a circumvention of the arbitration agreement;

(f) the likelihood of issue estoppel arising in either the court proceedings or the arbitration (actual or putative);

(g) the risk of inconsistent findings between the two sets of proceedings;

(h) the likelihood of duplication of witnesses and evidence between the arbitration (actual or putative) and the court proceedings;

(i) the likelihood of injustice in having the same witnesses deal with the same factual issues before two different *fora*;

(j) the risk of delay of resolution of the court proceedings;

(k) the relative prejudice to the parties;

(l) the possibility of an abuse of process; and

(m) the incurring of costs.

17 Some of these factors are clearly interrelated and do not stand alone, in that the existence of one may support or almost guarantee the existence of another (for instance, a greater overlap in the issues almost inexorably increases the risk of inconsistent findings between the two sets of proceedings). To be clear, this *non-exhaustive* list of factors above is not to be treated as a mechanical checklist or "tick box" exercise; rather, the court should adopt a commonsense approach and assess them in the round.

18 As the court is exercising a broad discretionary power when deciding whether or not to grant a case management stay, the relevant factors and the appropriate order to be made must necessarily depend on the particular facts and circumstances of each case, bearing in mind that the court's ultimate goal is that of ensuring the efficient and fair resolution of the dispute as a whole: *Tomolugen* at [186].

The appropriate order to be made in this case

19 Having considered the relevant factors at play in this case, I dismissed the plaintiff's appeal against the orders made below for the proceedings in S 950 to be stayed pending the final determination of the dispute in the Arbitration.

20 I will address in turn each of the relevant factors that I considered in arriving at my conclusion to uphold the grant of a stay of the proceedings in S 950. I begin by examining whether the fundamental prerequisite of overlapping issues between S 950 and the Arbitration was met (see [14] above).

Overlap of issues

21 I was satisfied that there is a significant overlap in the issues in both proceedings.

22 JEE's claim against the Defendants in S 950 for breaches of their contracts of employment and/or fiduciary duties is premised on the allegation that the Defendants had obtained bribes, kickbacks and/or secret profits from Sinohydro in exchange for JEE awarding the Subcontract Works to Sinohydro (see [5]–[7] above). JEE's claim against Sinohydro in the Arbitration is for a rescission of the JEE-Sinohydro Subcontract (or, alternatively, damages *in lieu*

of rescission) on the basis that the JEE-Sinohydro Subcontract was procured by bribery (see [9] above).[12]

23 Evidently, JEE's claims in S 950 and the Arbitration turn, in substance, on the identical factual issue, namely whether Sinohydro had paid bribes and/or kickbacks to the Defendants in exchange for being awarded the Subcontract Works. This remains the case notwithstanding that the claims may be brought under different causes of action against different parties, *viz*, against the alleged briber in the Arbitration and against the Defendants in S 950 as the alleged bribees. It is indisputable that the factual contention against both briber and bribees is identical for all intents and purposes.

24 Further, the issue of whether there was any corrupt over-certification of the value of the Subcontract Works (as a result of the Defendants allegedly approving payment claims made by Sinohydro without conducting any or proper verification of the work done) is also common to, and indeed identical in, both proceedings (see [7] and [9] above).

25 Having established that there is indeed an overlap in at least the factual issues in both sets of proceedings, I turn to consider the other relevant factors in this case.

Overlap of parties

26 In my view, there is some overlap in the parties to both proceedings. JEE, which is the plaintiff in S 950, is also the claimant in the Arbitration with Sinohydro. Admittedly, the defendants in both sets of proceedings are different – the Defendants in S 950 are not parties to the Arbitration; and Sinohydro (the

[12] 2 AB 732–737 (paras 7–8, 22).

respondent in the Arbitration) is only the third party in S 950 and not a direct defendant *vis-à-vis* the plaintiff. Nevertheless, I was satisfied that there is a sufficient overlap in the parties, such as to point in favour of granting a stay of the court proceedings. Let me elaborate.

27 First, all that is required is for there to be *some* overlap in the parties, as opposed to a complete overlap: *Rex* at [11]. This was not seriously disputed.

28 Second, contrary to the submission of counsel for the plaintiff, Mr Colin Liew, Sinohydro can be considered a party to the main action in S 950, at least for the purposes of an application for a case management stay. Mr Liew argued that third party proceedings are, juridically, separate and independent proceedings from the main action between the plaintiff and the defendants, and accordingly there is no relevant overlap of parties being sued in the main action in S 950 and the Arbitration as Sinohydro is not a party to the main action in S 950.[13] I disagreed with this submission.

29 As noted by the Court of Appeal in *Ng Kit Har v Yii Chee Ming* [2008] 2 SLR(R) 587 ("*Ng Kit Har*") at [19], [22]–[23], once a third party notice is served, the third party becomes a party *to the main action*:

> 19 A plain reading of O 16 r 1(3) [of the Rules of Court 2014] suggests that once the third-party notice is served, the third party becomes a party *to the main action* …
>
> 22 The objectives of O 16 of the Rules have been adverted to earlier (at [1] above). *Singapore Court Practice 2006* ([13] *supra*), at para 16/1/1, states as follows:
>
> > The objective of the procedure is to enable the parties to raise all issues in relation to the subject-matter of the dispute for the adjudication of the court *in* ***one set of proceedings (whether the third party appears in the***

[13] PWS at paras 50–52, 64.

> ***main action or his dispute with the defendant is determined immediately after the main action)***, thereby avoiding delay resulting from separate suits, and saving costs which would otherwise be occasioned by a multiplicity of actions.
>
> 23 The constitution of a third-party action before the conclusion of the main action squares precisely with this aim: ***it brings the third party in as a party to the main action, thereby allowing the court to adjudicate in one action on all the issues in a way which it deems fit***. This would help to save the time and the costs which would otherwise be occasioned by a multiplicity of actions.
>
> [emphasis in original in italics; emphasis added in bold italics]

30 The effect of this in S 950 is that Sinohydro is allowed to fully participate in the main action, and the court may adjudicate on all the issues in dispute between not only the plaintiff and the Defendants, but also as between the "main parties and the third party" (*ie*, Sinohydro): *Ng Kit Har* at [24].

31 Thus, in my view, there is, at least in the context of a case management stay application, a clear overlap in the parties being sued in both proceedings, to the extent that JEE and Sinohydro are in substance parties in both S 950 and in the Arbitration, even if not *direct* adversaries in both sets of proceedings.

32 Extrapolating from this, the flipside (and corollary) is that the third party can therefore, in principle, bring an application to stay not only the third party proceedings but the whole action including the "main claim". In that regard, the plaintiff's contention that the main action and third party proceedings are to be treated as separate (see [13(a)] above) was not, strictly speaking, completely accurate for the purposes of considering the case management stay application brought by Sinohydro.

33 That third party proceedings may be considered separate proceedings to the main action in *other* contexts (for instance, a third party cannot obtain

security for costs from the plaintiff, or advance a counterclaim against the plaintiff, or obtain judgment directly against the plaintiff)[14] misses the point. I reiterate that, based on the observations of the Court of Appeal in *Ng Kit Har* and in the context of a case management stay application, I saw no reason why a third party cannot in principle be taken into account by the court in an appropriate case when determining if there is an overlap in the parties in the court and arbitral proceedings (actual or putative).

34 Third, I did not think that the analysis should be restricted to a formulaic examination of the parties in the strict sense of plaintiff/claimant and defendant/respondent. In considering whether there is an overlap in the parties, the court may have regard more generally to the persons who will be involved in resolving the disputes, including the fact that a person who is party to only one proceeding may likely be called as *a witness* to give evidence in the other. This was the case in *CJY v CJZ and others* [2021] 5 SLR 569 ("*CJY*"), which involved parallel proceedings in court and in arbitration, and where some of the defendants in the suit were not named as respondents in the arbitration. Nonetheless, the court found that there was an overlap in the parties as the defendants were involved in the underlying matters forming the subject matter of the arbitration, and "one would also expect them to be involved in resolving the disputes over these matters" (at [22]).

35 Applying the analysis in *CJY* to the present case, the Defendants in S 950 are, as far as the pleaded claims of JEE are concerned, centrally involved in the matters forming the core of the dispute in the Arbitration between JEE and Sinohydro, particularly so with respect to the allegations of bribery and kickbacks. The S 950 Defendants can therefore be expected to be involved in

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[14] PWS at para 53.

the resolution of those disputes in the Arbitration, at the very least as key witnesses. Therefore, I was of the view that there is a substantial enough overlap in the parties in both proceedings.

36 Before I leave this point, the plaintiff also argued that taken to its logical conclusion, if it was right to order a case management stay in this case, it would mean that fourth or fifth parties or even non-parties could obtain a case management stay even though a plaintiff is not pursuing any claim against them in the court proceedings. JEE contended that this would be an absurd result. In my view, this submission was somewhat sweeping and exaggerated.

37 Given that a court's case management powers are broad, discretionary, and exercised by it in the context of a fact-specific inquiry, the conclusions I arrived at in this appeal were specific to the facts of this case. The suggestion that it would result in a slew of applications by fourth, fifth or even non-parties was, in my view, an overstatement. If indeed the court is faced with such applications in the future, they will be dealt with in accordance with the established legal principles applicable to a case management stay together with a close examination of the factual contours in those applications (see [14]–[18] above).

Overlap of remedies

38 In my judgment, there is also an overlap in the remedies sought in both proceedings. In both S 950 and the Arbitration, JEE seeks to claim (a) the amount of the alleged bribes received by the Defendants in S 950 and allegedly

paid by Sinohydro;[15] and (b) the amounts by which the payment claims for the Subcontract Works were allegedly over-certified.

39 The latter amounts are claimed against the Defendants in S 950 by way of an indemnity;[16] and against Sinohydro in the Arbitration by way of an order seeking a return of all sums paid by JEE to Sinohydro following the rescission of the JEE-Sinohydro Subcontract (which would encompass the allegedly over-certified payments), or in the alternative, damages *in lieu* of rescission accounting for the alleged over-certification of any payment claims.[17] Therefore, there is an overlap of remedies, as correctly noted by the AR.

Circumvention of the arbitration agreement

40 At least one factor in the plaintiff's favour is that JEE's commencement of S 950 cannot be said to be in *direct* contravention of any arbitration agreement.

41 As summarised above at [5]–[7], S 950 is essentially a claim by an employer against two of its former employees (*ie*, the Defendants) centred around their receiving bribes and/or kickbacks from Sinohydro. It is not in dispute that there is no arbitration agreement between JEE and the Defendants.

42 While there is an arbitration agreement between JEE and Sinohydro in the JEE-Sinohydro Subcontract, Sinohydro's involvement in S 950 was not the result of a claim made by JEE in breach of that arbitration agreement. Rather, it was the Defendants who brought Sinohydro into S 950 through the issuance of

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15 SOC-A1 at para 20; 2 AB 736 (para 22).

16 SOC-A1 at para 20.

17 2 AB 736–737 (para 22).

a third party notice; this was also not done in breach of any arbitration agreement since it was undisputed that none exists as between the Defendants and Sinohydro.

43 JEE's cause of action against the Defendants for breaches of their employment contracts and/or fiduciary duties is also, strictly speaking, legally distinct from its claim against Sinohydro in the Arbitration under the JEE-Sinohydro Subcontract for rescission and/or damages *in lieu* of rescission,[18] although they both share the underlying factual substratum pertaining to the alleged bribery.

44 However, this does not mean that the facts did not engage the higher-order concern of circumvention of an arbitration agreement (see [15] above). Let me elaborate.

Element of dependency

45 The question of dependency (*ie*, the degree to which proper ventilation of the issues in S 950 depended on the resolution of issues in the Arbitration first) (see [16(d)] above) was one of the main points of contention in RA 27, and counsel devoted considerable attention to it at the hearing before me.

46 Where there is an overlap in issues, the court must consider whether the determination of the issues to be decided in the court proceedings depends (whether wholly or in part) on the resolution of those issues (also, whether wholly or in part) in the arbitration: *Rex* at [11]–[12]; *CJY* at [44]. In other words, after identifying the issues to be decided in each *fora* and determining that there is an overlap, the court must go further to assess whether any of the

[18] 2 AB 732–737 (paras 7–8, 22).

issues in the court proceedings requires an issue to first be decided in the arbitration. If so, that would be a strong factor in favour of a case management stay to achieve the efficient and fair resolution of the dispute as a whole: *Rex* at [11]. This would also ensure that there is no indirect circumvention of the arbitration agreement.

The case law

47 Numerous cases were raised in parties' submissions which illustrate situations of dependency. For example, in the *locus classicus*, *Tomolugen*, the Management Participation Allegation (the "MPA") in the case was one of several issues pleaded by the plaintiff in the court proceedings. However, that issue in turn rested on the interpretation of a shareholder agreement which was subject to arbitration (at [136]–[137]). The Court of Appeal explained that the plaintiff was bound to arbitrate at least one of the issues in the court proceedings (the MPA issue), and thus the element of dependency existed (at [187]). That also explains the Court of Appeal's observations on circumventing the arbitration agreement; if the court refused to stay the proceedings and heard all the claims (including the MPA issue), it would allow Silica Investors to circumvent the arbitration agreement and litigate in court the interpretation of the shareholder agreement (by virtue of making arguments on the MPA issue) (at [142]).

48 Similarly, in the New Zealand case of *Danone*, a weighty consideration in favour of granting the stay was that the dispute essentially centred around a supply agreement between Danone AP and Fonterra, which contained an arbitration clause. The claims brought in court were in substance derivative of the contract claim based on the supply agreement: *Danone* at [84] and [96].

49 In the Canadian case of *Dawson (City) v TSL Contractors Ltd et al* [2003] YKCA 3, which strictly speaking involved an application for a stay of proceedings to give effect to an arbitration agreement, the court also found that the case before it was "primarily a contract case" that was subject to an arbitration clause and thus granted the stay (at [14]).

50 That, in essence, also explains the outcome in *CJY*, where the High Court upheld the order made below for a case management stay. The focus of the dispute was the plaintiff's claims (as main contractor) against the employer under the contract between them, those claims being subject to arbitration, with the tortious claims brought in court by the plaintiff being derivative of those contractual claims against the employer (at [26]–[29]). In my view, that is how the case is to be properly understood. Indeed, this issue of dependency was also clear in *CJY* as the question of whether the call by the employer on the performance bond was bad and whether there were defects could only be resolved in the arbitration between the plaintiff and the employer. The resolution of the overlapping issues in the court proceedings thus depended on the resolution of at least those issues first in the arbitration between the plaintiff and the employer.

51 The case of *Parastate Labs Inc v Wang Li and others* ("*Parastate*") [2023] SGHC 48 can also be explained in that way; in *Parastate*, the main claim was a *contractual* one against Babel Asia and that claim was subject to an arbitration agreement. Andre Maniam J found that the contractual claim was "foundational" to *all* the tortious claims advanced against the other defendants in the suit. The suit was accordingly stayed on case management grounds (at [26]–[28]).

Application to the facts

52 Turning to the present case, there is in my view a clear element of dependency, at least with respect to the plaintiff's over-certification claims in S 950. Those claims have their factual and evidential centre of gravity in the JEE-Sinohydro Subcontract. The quantum of Sinohydro's payment claims certified by JEE as opposed to the value of the work done is central to this claim, not just on issues of quantum but on liability as well. That is an issue that is squarely engaged by the terms of the JEE-Sinohydro Subcontract which govern the contractual arrangement between JEE and Sinohydro in relation to the Subcontract Works, and disputes arising out of the said contract are to be resolved by arbitration pursuant to the arbitration agreement. The resolution of the issue will involve factual and expert evidence to, *inter alia*, value the work done and then assess whether the difference, if any, may be attributable to the alleged bribery/kickbacks scheme involving the Defendants and Sinohydro.

53 Therefore, even if the bribery allegation (in relation to the awarding of the JEE-Sinohydro Subcontract) may not depend on the Arbitration for its resolution, I found that there is an element of dependency at least on the *over-certification* issue. This element of dependency was sufficient to attract consideration of the court's case management stay powers, since the case before me was not one of mere overlapping allegations due to a series of common events. Similar to *Tomolugen*, even if only some (and not all) issues in S 950 are dependent on the Arbitration being resolved first, that would weigh in favour of a case management stay being granted.

Risk of inconsistent findings

54 The conclusion that there are overlapping issues in both proceedings in turn raised the question of whether there would be a risk of inconsistent findings

on the same or similar factual or legal issues, and the concomitant disrepute that may bring to the administration of justice – bearing in mind that the overarching objective of the court is to seek to achieve a balance that (while not perfect) best serves the ends of justice.

55 As to what constitutes a risk of inconsistent findings, while *Danone* (at [89]) and *Maybank Kim Eng Securities Pte Ltd v Lim Keng Yong and another* [2016] 3 SLR 431 (at [37(c)(iii)]) refer to a "practical risk", the Court of Appeal has referred to a "real prospect of inconsistent findings" (*CSY* at [31]). Notwithstanding the apparent difference in terminology, in essence, the court would need to consider what the risk of inconsistent findings would be where a case management stay is refused, and conversely where it is granted (especially in situations like the present case, which strayed from the straightforward, where the defendants in the court proceedings are not party to the parallel arbitration proceedings). In carrying out this exercise, the court should adopt a commonsense approach.

56 In the present case, if a case management stay were to be refused, there would undoubtedly be parallel proceedings in arbitration and in court. This would, by definition, carry the risk (real or practical) of the arbitral tribunal and the court coming to different conclusions on material issues of fact for both the bribery and over-certification allegations. This risk may possibly be mitigated insofar as any findings made by the court would bind JEE and Sinohydro in the Arbitration, as well as the Defendants if they participate in the Arbitration. However, that would only be the case if the court proceedings were concluded, and judgment was issued in S 950 before the Arbitration was properly in motion and proceeded to an award. Such an assumption could not readily be made, especially since S 950 was still only at the stage of general discovery and not at the doorstep of trial as asserted by the plaintiff.

57 The court must then consider the risk in the converse situation where the court proceedings are stayed pending the Arbitration. On this question, a relevant factor for consideration is whether the finding of the tribunal would have any binding effect in S 950. In *CSY*, the Court of Appeal made clear that an arbitral tribunal's findings are not binding on the court (at [33]). But even if *the court* itself is not bound, the question arises as to whether the findings of the arbitral tribunal may nevertheless apply to bind *the parties* by way of issue estoppel or the extended doctrine of abuse of process espoused in *Henderson v Henderson* (1843) 3 Hare 100. The difficulty here was whether *the Defendants* could be bound since they are not parties to the Arbitration. There was therefore some risk that if the bribery allegations and over-certification allegations were decided one way in the Arbitration, the Defendants (and to a lesser extent, perhaps Sinohydro also) could seek to relitigate those issues in S 950 on the basis that the Defendants were not parties to the Arbitration, and seek to persuade the court to come to a different conclusion on materially the same evidence. That would draw into sharp focus the concern expressed in *CSY* of bringing the administration of justice into disrepute because of the real risk of inconsistent findings being arrived at by the court and the tribunal (see *CSY* at [34]).

58 However, as noted in *Tomolugen* at [142], in such a scenario, issue estoppel would likely stand in the way of Sinohydro. As for the Defendants, they too could be held to be seeking to relitigate the issues in the wider sense as discussed by the Court of Appeal in *Tomolugen*, even though strictly speaking the Defendants are not parties to the Arbitration.

59 From the discussion above, it can be seen that either course of action would carry some risk of inconsistent findings, albeit that the risk *might* be

slightly lower if the case management stay were refused and S 950 allowed to proceed.

The appropriate forum for "ground-clearing"

60 Given the overlap of issues, the existence of the element of dependency and the risk of inconsistent findings, these factors gave rise to the question of where the "ground-clearing" (to borrow the phrase used by Walker J in *Swallowfalls Ltd v Monaco Yachting & Technologies S.A.M. and another* [2013] EWHC 236 (Comm) at [139]) should take place.

61 While both sides agreed in principle that it made sense for the ground-clearing to take place in one forum, they were diametrically opposed as to which forum that should be. The factors were delicately balanced in this case, but weighing the overall circumstances, I was ultimately of the view that it should take place in the Arbitration where the Defendants are, at the very least, likely to be material witnesses (see above at [34]–[35]), or in a multi-party arbitration where the parties (*ie*, JEE, the Defendants and Sinohydro) agree to a tripartite arbitration. There are a number of reasons for why I arrived at this view.

62 First, while all the relevant parties (*ie*, JEE, the Defendants and Sinohydro) are currently before the court, these parties had also indicated either their consent to arbitration as a forum for the resolution of the dispute or willingness to participate in the Arbitration – JEE and Sinohydro via the arbitration agreement in the JEE-Sinohydro Subcontract and the Defendants via the confirmation given by their counsel to the AR below.[19]

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19 Notes of Evidence ("NEs") in HC/SUM 3899/2022 dated 12 January 2023 at p 2 ln 27–29; p 3 ln 21–25.

63 Second, there is a possibility that issue estoppel may nevertheless arise against the Defendants even if they are not party to the Arbitration (see [58] above), regardless of what the Defendants say they are willing to be bound by. On this point, I noted that the Defendants had stated to the AR below that they were prepared to be bound by the findings in the Arbitration only if they are a party to the Arbitration.[20] This in turn depended on whether the parties can agree to a multi-party arbitration; as things stood, there was no such agreement when RA 27 was heard by me. The proposals were stated to be in principle, on best endeavours basis and subject to the court's determination in SUM 3963.[21] Nonetheless, I did not see this as a reason to overturn the AR's decision below.

64 Third, as discussed above (see [56]–[59]), there might be a slightly lower risk of inconsistent findings if the ground-clearing took place in S 950. However, in my view, that was also not a sufficient reason to refuse a stay. As a case management stay is only suspensory, the court can lift the stay if it deems it appropriate to do so. In this case, I was minded to and did make further orders that the parties are to discuss and agree within a timeframe to an arbitration agreement that also binds the Defendants as parties, and to update the court on the progress of the arbitration. If parties drag their feet, the court may lift the stay as Aedit Abdullah JC (as he then was) held in *Gulf Hibiscus Ltd v Rex International Holding Ltd and another* [2017] SGHC 210 at [53].

65 Fourth, and relatedly, there was nothing to stop JEE, the Defendants and Sinohydro from agreeing to a tripartite arbitration and the court would urge the parties to behave sensibly. That would put an end to the multiplicity of

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20 Notes of Evidence ("NEs") in HC/SUM 3899/2022 dated 12 January 2023 at p 20 ln 21–25.

21 2 AB 938–940.

proceedings. If RA 27 were allowed and the case management stay refused, the result would be arbitration and court proceedings running in tandem; this would lead to duplication of time, costs, witnesses and evidence, and possibly enhance the risk of inconsistent findings. In my judgment, such a scenario would not best serve the ends of justice and would not "ameliorate the complications that are bound to arise by reason of the overlapping proceedings" (*Tomolugen* at [2]). In a broader sense, the court in that event may also be permitting some level of indirect circumvention of the arbitration agreement by allowing factual disputes that are clearly within the ambit of the arbitration agreement in the JEE-Sinohydro Subcontract to be pursued on two fronts, and thereby also potentially encouraging a rush to judgment ahead of the arbitration.

66 Fifth, a case management stay would prevent fighting on several fronts, and thereby allow the ground-clearing to take place in the Arbitration or the putative multi-party arbitration. Whilst the Defendants were ambivalent and took the position that they were equally happy to have the issues decided in S 950[22] and the fourth party (Vico) took no position as far as the main suit and the third party proceedings are concerned, since the Defendants were also amenable to entering into a multi-party arbitration agreement, that is an avenue that parties should be exploring to bring to fruition. The objection JEE raised that the allegations against the Defendants as its ex-employees are serious and involve public interest/possible criminal conduct, and thus should be litigated in court, was not convincing; even if JEE's allegations were eventually made out and there was to be any action taken by the prosecuting authorities, those actions would in time be made public and transparent.

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[22] 2 AB 816–817.

67 Sixth, given the stage at which S 950 was at the point of the hearing of RA 27, compared to the Arbitration between JEE and Sinohydro, I could not conclude that any delay in the Arbitration would be such as to irreparably prejudice JEE. As noted in *Danone*, ultimately the reliefs sought by JEE are primarily financial reparation. The prejudice, if any, to JEE of being kept out of its money for longer as a result of any delay, may be ameliorated by an award of interest.

68 Seventh, I disagreed with the plaintiff that in exercising my case management powers, it would be open to me, on my own motion, to sever or set aside the third party notice (see [13(g)] above). The court's inherent powers extend only to staying the proceedings and making consequential orders to *support* the case management stay; it does not, in my judgment, extend to making such draconian orders such as setting aside the third party proceedings whilst *refusing* a case management stay.

69 As explained in *Ng Kit Har*, once the third party notice is issued and served, the third party becomes a party *to the main action* and may be permitted to participate in the main action (see *Ng Kit Har* at [19] and [22]–[24]). Absent an application to set aside the third party notice, it is not for the court to do so in the exercise of its case management powers, assuming it even has the power to do so in the first place. *A fortiori* when it is being asked to set aside a third party notice as an ancillary order to the *refusal* of a case management stay. Such an outcome is unprecedented and no authority was cited by Mr Liew where a court had made such or similar orders. The plaintiff also did not explain what would happen to the *fourth party* proceedings if the court were to take up the plaintiff's suggestion and "excise" the third party proceedings. In any event, given my decision to dismiss RA 27, this issue did not, strictly speaking, arise for my consideration and I did not need to say more on it.

Abuse of process

70 Finally, the plaintiff also argued that the case management stay application was a tactical abuse of process on the part of Sinohydro. JEE's case in this regard was that (a) Sinohydro had participated in S 950 for over a year, without challenging its addition as a third party, thereby opportunistically obtaining disclosure of JEE's documents in discovery in relation to the dispute on over-certification;[23] (b) by virtue of being a third party to S 950, Sinohydro commenced fourth party proceedings against Vico for an indemnity or contribution in respect of any sums Sinohydro might be found liable to pay in S 950, despite already having counterclaimed for the same relief in arbitration proceedings between Sinohydro and Vico – this was so that Sinohydro could contrive what it alleged to be overlaps between S 950 and the aforementioned arbitration proceedings, so as to seek a stay of S 950;[24] (c) despite its claim of being forced to fight on multiple fronts as a result of S 950 and the Arbitration, Sinohydro made no attempt to set aside the third party order or stay the third party proceedings, and instead applied to stay the main action;[25] and (d) Sinohydro rejected JEE's case management proposals, which were intended to allow JEE and Sinohydro to resolve all of their disputes in S 950.[26]

71 On the evidence before me, and given the procedural history of this case, it was not clear to me that the conduct of Sinohydro could be characterised as a tactical abuse of process. I recall the key points of the procedural history. On 6 September 2021, the third party notice was issued, in which the Defendants

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23 PWS at para 154.

24 PWS at paras 155–158.

25 PWS at paras 159–162.

26 PWS at paras 163–166.

claimed against Sinohydro for, amongst others, any amount that may be found due from the Defendants to JEE relating to the over-certification claims.[27] On 3 November 2021, the Defendants served its Statement of Claim on Sinohydro, praying for reliefs only in relation to the alleged over-certification of the payment claims; there was no relief sought regarding the bribery claims *per se*.[28] On 12 July 2022, JEE commenced the Arbitration against Sinohydro, making claims against Sinohydro of both bribery and over-certification (see [8]–[9] above). On 13 July 2022, JEE amended its Statement of Claim to include "Payment Claim No. 16", which was a cumulative sum and included part of the over-certification claims.[29] I agreed with counsel for the defendant, Mr Koh Kia Jeng, that the latter two developments changed the complex of the claims faced by Sinohydro in S 950, such that the allegation of bribery against Sinohydro came to the fore. Prior to July 2022, the nature of the third party proceedings was that Sinohydro misrepresented its claims in Payment Claims No. 1 – 15, and the allegation of bribery *as against Sinohydro* had not yet been surfaced although it operated in the factual matrix of the main claim by JEE against the Defendants.[30] Given that Sinohydro was only aware of the full extent of the claim against it in S 950 in July 2022, and the Arbitration was only commenced against Sinohydro in July 2022, its purported "delay" in applying for a case management stay was not really a delay and in any case could not, in my view, be deemed an abuse of process. It was not unreasonable, in my judgment, for Sinohydro to have applied for a stay of the main action in S 950 in October

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27 Third Party Notice in HC/S 950/2020 dated 6 September 2021.

28 Statement of Claim by the Defendants against the Third Party dated 3 November 2021 at para 12.

29 SOC-A1 at para 16(xii).

30 Minute sheet dated 19 April 2023 at pp 12–13.

2022. Neither could it be said that Sinohydro's conduct in S 950 prior to July 2022 amounted to a tactical abuse of process.

72 As for Sinohydro commencing fourth party proceedings against Vico for an indemnity or contribution in respect of any sums Sinohydro might be found liable to pay in S 950, I was not convinced that this amounted to an abuse of process. Sinohydro was, not on its own accord, included as a third party in S 950; it was not unreasonable for Sinohydro to seek to pass liability down to Vico in the fourth party proceedings, notwithstanding that there was a *counterclaim* seeking the same relief in the arbitration proceedings between Sinohydro and Vico. In a sense, Sinohydro's claims against Vico were reactive and responsive to the claims instituted against Sinohydro, by way of third party proceedings in S 950 and Vico's claim in arbitration against Sinohydro respectively.

73 Finally, the fact that Sinohydro chose not to set aside or stay the third party proceedings and the fact that Sinohydro rejected JEE's case management proposals did not suggest to me that there was an abuse of process. How Sinohydro chose to deal with the two proceedings against it was well within Sinohydro's prerogative. Choosing to apply for a stay of the main action, as opposed to other alternatives, could not seriously be faulted since a stay, if granted, would effectively shift the entire fight between the parties to arbitration. There was no suggestion by the Defendants in S 950 that they would be pushing ahead with the third party proceedings even if a case management stay of the main claim was ordered. As I mentioned above at [62] and [63], the indications from the Defendants were that they are prepared to have the JEE claims resolved in arbitration.

Conclusion

74 In summary, this was not a straightforward case to manage given its numerous moving parts. However, weighing all of the factors discussed above and placing them in the balance, in my judgment, the best option to resolve the case management quandary in this case was to affirm the AR's order below granting a case management stay, in order to allow the "ground-clearing" to take place in the Arbitration or a multi-party arbitration involving JEE, the Defendants and Sinohydro.

75 The arbitration forum can conveniently bind all the relevant parties – JEE, the Defendants, and Sinohydro – especially since the allegations of over-certification of payment claims fell squarely to be decided in arbitration proceedings (see [52]–[53] above). That issue alone would clear a significant amount of the ground for S 950 (if there are still issues to be decided thereunder), and would either assist in the resolution of any remaining disputes in S 950 or whittle down the scope of the remaining disputes for resolution in the suit. This outcome, while not perfect, would in my judgment best serve the ends of justice as it prevents multiplicity of proceedings running in tandem, reduces costs, duplication of time and evidence, and the risk of inconsistent findings, and avoids any (even if indirect) circumvention of the existing arbitration agreement between JEE and Sinohydro.

76 Ultimately, I was of the view that affirming the AR's grant of a case management stay would best promote an efficient, fair and orderly resolution of the overall dispute between the parties, the *raison d'etre* for the court's exercise of its case management powers (*Tomolugen* at [186]).

77 For the reasons above, and taking into account particularly the existence of dependency at least as far as the over-certification claims against the Defendants are concerned, I urged JEE to reconsider its rejection of Sinohydro's proposal for a multi-party arbitration. In the circumstances of this case, it was potentially a practical means by which to avoid multiplicity of proceedings and the attendant risks, and yet preserve the sanctity of the arbitration agreement as between JEE and Sinohydro.

78 For the foregoing reasons, I dismissed RA 27 and made the following ancillary orders:

(a) The plaintiff, Defendants, and third party were to exercise their best endeavours to agree to a tripartite arbitration agreement with the same tribunal to be appointed to hear all the claims between the plaintiff, Defendants, and the third party.

(b) The parties were to update the court, by way of a letter from the plaintiff's solicitors, within 8 weeks from the date of my decision, on the progress of the parties' negotiations regarding the matters in para (a) above.

(c) There be liberty to apply.

79 Finally, after hearing the parties, I fixed the costs of RA 27 in the sum of S$18,000 (including disbursements) to be paid by JEE to Sinohydro.

S Mohan J
Judge of the High Court

Liew Wey-Ren Colin (Colin Liew LLC) (instructed), Cephas Yee Xiang (Yi Xiang) and Matthew Tan Jun Ye (Aquinas Law Alliance LLP) for the plaintiff;
Koh Kia Jeng, See Kwang Guan (Xu Guangyan) and Ng Guo Xi (Wu Guoxi) (Dentons Rodyk & Davidson LLP) for the third party.