Praptono Honggopati Tjitrohupojo and Others v His Royal Highness Tunku Ibrahim Ismail Ibni Sultan Iskandar Al-Haj
[2001] SGHC 377

Case Number	: Suit 217/2001, RA 152/2001
Decision Date	: 28 December 2001
Tribunal/Court	: High Court
Coram	: MPH Rubin J
Counsel Name(s)	: Suresh Damodara and K Sureshan (Colin Ng & Partners) for the plaintiffs/respondents; Raj Singam and Gopinath Pillai (Drew & Napier LLC) for the defendant/appellant
Parties	: Praptono Honggopati Tjitrohupojo — His Royal Highness Tunku Ibrahim Ismail Ibni Sultan Iskandar Al-Haj

Conflict of Laws – Natural forum – Defendant applying for stay of proceedings on grounds of forum non conveniens – Relevant considerations – Legal burden on defendant to show existence of another more appropriate forum – Evidential burden on plaintiff to show that Singapore more appropriate forum – Sch 1 para 9 Supreme Court of Judicature Act (Cap 322, 1999 Ed)

International Law – Sovereign immunity – Whether Singapore court has jurisdiction over independent foreign sovereign – s 17 State Immunity Act (Cap 313)

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Introduction

The first plaintiff, Praptono Honggopati Tjitruhopojo (`Praptono`), a principal figure in these proceedings, is an Indonesian entrepreneur, particularly in the Indonesian petroleum exploration sector. The other four plaintiffs are companies incorporated in the Republic of Indonesia and under his control. The defendant is the Crown Prince (`Tunku Mahkota`) of the State of Johor in Malaysia. None of the parties to the proceedings is resident in Singapore.

The claim, the court was told, was based on two oral agreements entered into, in the main, between the first plaintiff and the defendant on 27 November 1994 and 31 May to 1 June 1995, respectively in connection with a petroleum project in Indonesia in which the plaintiffs and the defendant were intending to participate. It was alleged that under these agreements, the defendant undertook to provide the entire financing for the said petroleum project in consideration for a substantial equity in the proposed project.

Alleging breach of the said oral agreements on the part of the defendant, which I shall amplify later the plaintiffs have commenced this action in Singapore on the basis that these two oral agreements emanated in Singapore.

The defendant, after entering appearance, applied to the court to stay proceedings on grounds of forum non conveniens under para 9 of the First Schedule to the Supreme Court of Judicature Act (Cap 322, 1999 Ed). He was unsuccessful before the learned assistant registrar. He appealed and after hearing arguments, I allowed the appeal and granted the stay requested. My reasons now follow.

Pleadings and averments

The background facts, insofar as they are material and as could be gathered from the statement of claim, affidavits filed and arguments presented, are as follows.

The first plaintiff is an Indonesian businessman, residing in Indonesia. He is the president director of the second defendants. The third, fourth and fifth defendants are the subsidiaries of the second defendants. The second to the fifth defendants are generally known as the `UPG` group of companies. The first plaintiff is said to be the authorised representative of the said UPG group.

The defendant as mentioned earlier, is the Crown Prince of Johor. Besides being a prince, he is also involved in many commercial ventures.

It would seem that in the course of 1992 and 1993, the UPG group entered into four Technical Assistance Contracts (`TAC`s`) with Indonesia`s national petroleum enterprise known as Perusahaan Pertambangan Minyak dan Gas Bumi Negara (`Pertamina`) by which the UPG group secured some exclusive concession rights to explore, develop, produce and sell oil and gas from different oil and gas concession areas for gain. Under the contracts, the UPG group also had the right to divest up to 49% of their rights to any third party.

The first plaintiff alleged that the defendant, having knowledge of the said impending petroleum venture, showed a keen interest to invest in the project. Consequently, the defendant, through his agent, one Datuk Hamzah bin Mohd Noor, obtained various due diligence reports and information on the concession areas from the chief executive officer of the UPG group. The upshot was that the first plaintiff was invited to attend the defendant`s birthday party at the Raffles Marina in Singapore on 26 September 1994.

First oral agreement

The first plaintiff`s averment was that on 27 September 1994, whilst at the Raffles Marina in Singapore, both he and the defendants entered into an oral agreement in relation to the said petroleum venture. The terms of that agreement according to the first plaintiff were as follows:

> *(a) that in consideration of the plaintiffs agreeing to sell to the defendant forty-nine per cent (49%) of the rights and interests in the TACs from the second to the fifth plaintiffs (hereinafter referred to as the `farm-out rights`) the defendant agreed to expeditiously arrange for the* ***entire financing of and technical assistance for the petroleum operations*** *; and*
>
> *(b) further in consideration of the first plaintiff procuring for the defendant, from the second to the fifth plaintiffs, an exclusive option (for a period of time to be agreed upon) to purchase the said farm-out rights, the defendant agreed to pay to the benefit of the second to the fifth plaintiffs initial working capital for the petroleum operations; and*
>
> *(c) to execute, at a later stage, a formal written agreement for the purchase from the plaintiffs of the farm-out rights upon, inter alia, the aforesaid terms.*

[Emphasis is added.]

According to the first plaintiff, following the said first oral agreement, parties entered into a series of agreements, one oral and the rest written. From particulars provided, the following chronology appears to emerge:

Chronology

27 November 1994	:	(1)	between the defendant and the first plaintiff (for and on behalf of UPG Group) under which:	
			-	the defendant reportedly promised to provide the entire financing of the project and in return the first plaintiff promised 49% concession rights to the defendant.
27 November 1994	:	(2)	First Loan Agreement between the defendant, UPG Group and the first plaintiff.	
24 December 1994	:		Second Loan Agreement between the defendant, UPG Group and the plaintiff.	

25 February 1995	:		Confidentiality Agreement between the defendant and one Canadian Occidental Petroleum Ltd (COPL).	
17 March 1995	:		Third Loan Agreement between the defendant, UPG Group and the first plaintiff.	
30 April 1995	:		Fourth Loan Agreement between the defendant, UPG Group and the first plaintiff.	
31 May 1995	:		between the first plaintiff together with UPG Group, COPL and the defendant (unsigned).	
1 June 1995	:		between the defendant and the first plaintiff under which	
			-	the defendant reportedly again promised to procure the entire financing for the impending project from a third party, ie Prince Jefri of Brunei and in return, the first plaintiff promised

				(a)	not to sign the Master Agreement; and
				(b)	to give the defendant 100% concession rights.

The first alleged oral agreement Master Agreement The second alleged oral agreement
Digressing a little for the time being from the alleged oral agreements - which are in any event being denied by the defendant - the court`s attention was drawn by counsel for the contestants to the four written loan agreements entered into between the parties. It would appear from these agreements that they were in relation to the provision of interim working capital for the UPG Group. Under these four agreements, the defendant undertook to provide interim working capital to the UPG Group in the form of loans. Altogether four loans were admittedly provided: US$6m under the first loan agreement; US$9m (in two tranches of US$4m and US$5m respectively) under the second loan agreement; US$4m under the third loan agreement; and US$7.5m under the fourth loan agreement. The total sum of the loans granted was US$26.5m and the loan undertakings by the defendant had apparently been fulfilled by the defendant before the alleged second oral agreement.

Counsel for the defendant invited the court`s attention to a significant feature in those four written loan agreements entered into between the defendant of the first part, the UPG Group (the second to fifth plaintiffs in these proceedings) of the second part, collectively described as the borrowers and the first plaintiff as being the guarantor for the said loans of the third part. The said agreements included a dispute resolution provision. Clause 14 of each agreement provided that the:

> ***agreement[s] entered into between the parties shall be governed and construed in all respects in accordance with the laws of Malaysia and the parties hereto shall submit to the jurisdiction of the courts of the States of Malaysia in all matters connected with the obligation and liabilities of the parties****. [Emphasis is added.]*

Then came this master agreement dated 31 May 1995. The proposed parties to this agreement were the defendant, the Canadian Occidential Petroleum Ltd and the first plaintiff along with his UPG Group of Companies. In brief, the purport of this proposed master agreement was to bring in the said Canadian Occidential Petroleum Ltd as a joint venture partner in the contemplated petroleum project. Admittedly, this agreement had not been fully executed by the parties. The reason, according to the first plaintiff, was that the defendant persuaded him not to sign the agreement in consideration of the terms of the second oral agreement.

The court was informed by the plaintiffs` counsel that the significance of this yet to be executed master agreement lay in the clause relating to arbitration proceedings. In this regard, the relevant part of art XXI reads as follows:

> *21.01 Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at*

present in force. The number of arbitrators shall be three. The place of arbitration shall be Singapore. The arbitration shall be administered by The Singapore International Arbitration Centre (`SIAC`) and the appointing authority shall be the Chairman of SIAC. The language to be used in the arbitral proceedings shall be English.

No doubt, this master agreement contained another article: art XXII (22.02) which provided that the said agreement would constitute the entire agreement between the parties and would supersede all previous agreements. But the admitted fact was that this agreement had not been fully executed.

Next came the alleged second oral agreement. In this regard, it would be necessary to reproduce paras 25 to 33 of the plaintiffs` statement of claim which set out the background to the alleged second oral agreement.

25 From on or about early March 1995 onwards, the Defendant told the 1st Plaintiff that he wanted a tri-partite agreement to be executed (hereinafter referred to as the "Master Agreement") so as to include COPL as a party to the agreement for the purchase of the Farm-Out Rights. The Defendant eventually proposed that COPL and the Defendant be granted a larger share in the Petroleum Operations in that COPL be granted a thirty-five per cent (35%) share of the Petroleum Operations, the Defendant be granted a thirty-five per cent (35%) share of the Petroleum Operations and the Plaintiffs be granted a thirty per cent (30%) share of the Petroleum Operations. It was further proposed by the Defendant that he would purchase a beneficial interest in two-thirds of the Plaintiffs` share of thirty per cent (30%) of the Petroleum Operations, leaving the Plaintiffs with effectively a ten per cent (10%) interest in the Petroleum Operations.

26 Given the fact that the Plaintiffs were absolutely reliant on the Defendant to provide technical assistance and the entire financing for the Petroleum Operations, the 1st Plaintiff had no choice but to accept the Defendant`s proposal as set out in the paragraph above.

27 The Master Agreement was to have been executed by, inter alia, the Plaintiffs, the Defendant and COPL on or before the 7th day of June 1995.

28 The Defendant and COPL signed the Master Agreement on the 31st day of May 1995.

29 Subsequently, however, the Defendant, instructed the Plaintiffs on the 31st day of May 1995 not to execute the Master Agreement as he did not want COPL as a partner in the Petroleum Operations and instead had arranged for financing from His Royal Highness Pengiran DiGadong, Prince Jefri Bolkiah of Negara Brunei Darussalam (hereinafter referred to as "Prince Jefri") for the entire Petroleum Operations.

30 Pursuant to the Defendant`s instructions as set out in the paragraph above, the Plaintiffs did not sign the Master Agreement.

31 On or about the 1st day of June 1995, the Defendant met the 1st Plaintiff in Jakarta, Indonesia. In light of the Defendant`s aforesaid instructions to the Plaintiffs, the 1st Plaintiff and the Defendant entered into a second oral agreement (hereinafter referred to as the "Second Oral Agreement"), the salient terms of which are as follows:

(a) In consideration of the Plaintiffs refraining from executing the Master Agreement until the 7th day of June 1995, the Defendant would ensure that the Petroleum Operations were entirely financed by Prince Jefri;

(b) The funds to be obtained from Prince Jefri would be sent to the Defendant personally to be paid to the Plaintiffs;

(c) In consideration of the Defendant obtaining from Prince Jefri the estimated entire working capital for the Petroleum Operations, the Defendant would obtain one hundred per cent (100%) interest in the Petroleum Operations and the Defendant would give to the Plaintiffs a ten per cent (10%) beneficial interest in the same;

(d) Due to the escalating expenditure requirements of the Petroleum Operations, the Defendant would make arrangements for the immediate payment of the sum of US$2 million as further interim working capital.

32 Notwithstanding the fact that the Defendant had received from Prince Jefri the sum of US$45 million, the Defendant failed, refused and/or neglected to disburse the said sum or any part thereof to the Plaintiffs.

33 Despite repeated requests from the 1st Plaintiff to the Defendant to:

(a) expeditiously arrange for the entire financing of the Petroleum Operations; and

(b) enter into a formal written agreement with the Plaintiffs for the purchase of the Farm-Out Rights,

the Defendant failed, refused and/or neglected to do the same.

As could be gathered from the foregoing averments, the alleged second oral agreement sprang from the instructions the first plaintiff reportedly received from the defendant on 31 May 1995 when the former was in Singapore. According to the first plaintiff, the said instructions to him on that day were conveyed to him by one Md Salleh bin Sadijo, a representative of the defendant.

It must be presently mentioned that the plaintiffs` action was solely and exclusively based on the alleged breaches of the said two oral agreements and nothing else. It must also be stated at this juncture that the plaintiffs caused the writ of summons herein to be issued against the defendant on 24 February 2001 and thereafter on 12 March 2001, they also caused to be issued a similar writ in Malaysia against the defendant in relation to the same claim.

Application for stay of proceedings

In the context of the foregoing factual scenario, the stay of proceedings application was being prosecuted and contested.

In his affidavit, the defendant denied the two oral agreements ascribed to him. Having denied the existence of the said oral agreements, he averred that Singapore could not be the appropriate forum to deal with the plaintiffs` claim since all the major connecting factors to the subject matter of the plaintiffs` claim would point to Malaysia or even Indonesia as being the most appropriate forum for the hearing of the plaintiffs` claims.

A table setting out the connecting factors to the purported jurisdictions as prepared and produced on behalf of the defendant, is reproduced below:

Table of Connecting Factors		
Malaysia	Indonesia	Singapore
The defendant is a Malaysian, resident in Malaysia.	The plaintiff is an Indonesian, resident in Indonesia.	
	The companies involved in the project are Indonesian companies.	
Witnesses in Malaysia:	Witnesses in Indonesia:	
- Defendant	- The first plaintiff	
- Datuk Captain Hamzah	- Helmy G Shebubakar	
	- Dody Nawangsidi	
	Most of the key players in the Petrogas Project are Indonesians.	
The laws of Malaysia govern the loan agreements and the parties submit themselves to the jurisdiction of the courts of Malaysia.	Petrogas project is an Indonesian project.	
The project is to be performed in Indonesia.		
The defendant`s assets are substantially located in Malaysia.	The plaintiff`s assets must be located in Indonesia.	The defendant`s HSBC bank current account.

As mentioned earlier, the defendant did not succeed before the learned assistant registrar. In the appeal before me, counsel for the defendant argued that the connecting factors set out in the table referred to, would not, in logic and in law, make Singapore the appropriate forum. He emphasised that, except for the fact that the defendant operated a current bank account in Singapore which was used to disburse the loans mentioned in the four loan agreements, the rest of the factors most certainly favoured the conclusion that either Malaysia or Indonesia would be the most appropriate forum for the disputed issues to be tried and determined. Counsel for the defendant underscored the following aspects: (1) the defendant is resident in Malaysia; (2) the plaintiffs had commenced identical proceedings in Malaysia; (3) apart from the defendant, seven witnesses, namely, Datuk Captain Hamzah, Mrs Halimah, Mrs Tan, Datuk Raman, Yip Wai Ming, Datuk Ungku Captain Faisal and Salleh Sadijo, all of whom would be likely to testify in these proceedings, are Malaysian residents; (4) the first plaintiff is an Indonesian resident; (5) the second, third, fourth and fifth plaintiffs are Indonesian entities; (6) there are three witnesses, namely, Praptono, the first plaintiff, Helmy Shebubakar and Dody Nawangsidi are all resident in Indonesia; (7) the petroleum project envisaged was to be preferred in Indonesia; and (8) most of the key figures in the petroleum project are all Indonesians.

As to the argument by plaintiffs` counsel that the defendant, being the Crown Prince of Johor, would in future be entitled to ascend the throne of Johor and in such an event the plaintiffs would be disadvantaged under the existing Malaysian laws in that he would be granted Ruler`s immunity from suits by non-Malaysians (see: **Faridah Begum bte Abdullah v Sultan Haji Ahmad Shah** [1996] 1 MLJ 617), counsel for the defendant submitted that this was a long shot and the prospect sketched out had not materialised. Counsel for the defendant further urged the court to bear in mind the feature that the defendant had at all times been willing to defend the proceedings in Malaysia.

The plaintiffs` counsel`s submission was best stated in his own words. The key segments of his written submissions, in so far as they are material, are as follows:

> *11 The Master Agreement that was prepared for execution by COPL, the Plaintiffs and the Defendant clearly indicated the intention of the Defendant as to the chosen forum for the adjudication of disputes, being Singapore. The Defendant had indeed signed this Master Agreement.*
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> ...
>
> *12 The Defendant has failed to show any or substantial connecting factors to an alternative jurisdiction other than Singapore. The key witness [Datuk Captain Hamzah] has deposed to the fact that he is ready able and willing to give evidence in Singapore. This witness will be able to give testimony to the existence of the respective oral agreements and the Defendants subsequent breaches. For the avoidance of doubt, it is clear that there are three pivotal figures who will feature in the Plaintiffs` claims and they are the 1st Plaintiff, the Defendant and Datuk Hamzah.*
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> ...
>
> *14 The provision of interim working capital for the project (which was disbursed to the Plaintiffs pursuant to the terms of the first oral agreement) was done via the Defendant`s bank account in Singapore.*
>
> ...
>
> *15 The parties have shown that the Singapore Jurisdiction was the Jurisdiction of choice. As mentioned above, the Master Agreement is conclusive of this. The Defendant himself chose Singapore to negotiate the terms of the respective agreements, evidencing the fact that he frequents the jurisdiction regularly and in this regard the argument of residence of witnesses would not hold water. The main parties are that of the 1st Plaintiff, the Defendant and Datuk Hamzah.*
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> ...
>
> *18 The Defendant is the crown prince of Johor. He would in future be entitled to ascend the throne of Johor. In this regard the Plaintiffs would be disadvantaged as the Defendant would enjoy immunity from claims of non-residents. The Plaintiffs would not face this disadvantage in Singapore.*

Conclusion

The principles of law which are to be borne in mind as regards applications for stay of proceedings on

grounds of forum non conveniens are set out by Lord Goff of Chiveley in **The Spiliada** [1987] AC 460[1986] 3 All ER 843. These are well restated in the Third Cumulative Supplement to ***Dicey & Morris on Conflict of Laws*** (11th Ed) at paras 393-395 as follows:

> *(a) the basic principle is that a stay will only be granted on the ground of forum non conveniens where the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action, ie in which the case may be tried more suitably for the interest of all the parties and the ends of justice;*
>
> *(b) the legal burden of proof is on the defendant, but the evidential burden will rest on the party who asserts the existence of a relevant factor;*
>
> *(c) the burden is on the defendant to show both that England is not the natural or appropriate forum, and also that there is another available forum which is clearly or distinctly more appropriate than the English forum;*
>
> *(d) the court will look to see what factors there are which point to the direction of another forum, as being the forum which the action has the most real and substantial connection, eg factors affecting convenience or expense (such as availability of witnesses), the law governing the transaction, and the places where the parties reside or carry on business;*
>
> *(e) if at that stage the court concludes that there is no other available forum which is clearly more appropriate, it will ordinarily refuse a stay;*
>
> *(f) if there is another forum which prima facie is clearly more appropriate the court will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should not be granted, and, in this inquiry the court will consider all the circumstances of the case. But the mere fact that the plaintiff has a legitimate, personal or juridical advantage in proceeding in England is not decisive; regard must be had to the interests of all the parties and the ends of justice.*

In Singapore, both at the first instance and at the appellate level, the courts have consistently applied the foregoing principles (see **The Vishva Apurva** [1992] 2 SLR 175 , **Brinkerhoff Maritime Drilling Corp v PT Airfast Services Indonesia** [1992] 2 SLR 776 , **Oriental Insurance Co v Bhavani Stores** [1998] 1 SLR 253 and **Datuk Hamzah bin Mohd Noor v Tunku Ibrahim Ismail Ibni Sultan Iskandar A-Haj** [2001] 4 SLR 396).

What is clear from the abovementioned cases is that in exercising its discretion, the court should take into account all the circumstances of the case and in particular, the country where the evidence is most readily available or in other words the location of the witnesses who would testify to the facts; the place where the underlying transaction and the cause of action arose; the residence of the contestants and the law governing the dispute. Above all, all the reported cases enjoin the courts to balance the competing justice between the parties. In this context, I would like to add a little allonge, that is, if the balance were to remain at the mid-point and tilts to neither side, the action must generally follow the defendant.

In the appeal before me, the undisputed features are: (1) the parties to the action are not resident in Singapore: the plaintiffs are resident in Indonesia whereas the defendant is resident in Malaysia; (2) the petroleum project for which the parties had apparently entered into the said four loan agreements, was to be carried out in Indonesia; (3) the key witnesses to the action are all either in Malaysia or Indonesia; (4) the law governing the dispute according to the four written loan agreements is that of Malaysia: (5) and even according to the unexecuted master agreement the

applicable law for any prospective arbitration is English law.

Given the foregoing setting, a primary question seemed to arise. Had the defendant discharged his legal burden in establishing that Singapore was not the natural or appropriate forum and that there was another available forum which was clearly or distinctly more appropriate than Singapore? In my view, he had.

The plaintiffs` action, as could be seen from the pleadings, was founded in the main, on two alleged oral promises made by the defendant to the first plaintiff in relation to the petroleum project in Indonesia. The allegation was that, in consideration of the plaintiffs selling to the defendant a certain percentage of their concession rights, the defendant agreed to arrange for the entire financing for the proposed petroleum project. It was said that the first such oral promise was made on 27 November 1994 - on the occasion of the defendant`s birthday party at Raffles Marina, Singapore - and the second oral promise was made on 31 May as well as 1 June 1995. On the second occasion, the promise was reportedly conveyed to the first plaintiff by the defendant through an intemediary known as Mohd Salleh Sadijo. This had been vigorously denied by the defendant. The first plaintiff averred that the intention of the parties at all times was to subject themselves to the jurisdiction of the Singapore courts. This assertion was robustly contested by the defendant and in this counsel for the defendant invited my attention to the four written loan agreements entered into by the parties upon the subject matter respectively on 27 November 1994, 24 December 1994, 17 March 1995 and 30 April 1995. In these four agreements, parties had no doubt after legal advice and with much deliberation, expressly elected to submit themselves to the jurisdiction of the Malaysian courts and to the laws of that country.

In reviewing all the evidence including affidavits by Datuk Captain Hamzah, I found it strange why parties chose to opt for Malaysian laws and the jurisdiction of Malaysian courts, if their intention had all along been to subject themselves to the jurisdiction of Singapore courts. In my finding, the plaintiffs had not, in their endeavours, come anywhere near discharging even the elementary evidential burden required of them in this regard.

The unsigned tri-partite master agreement involving the plaintiff and the defendant and the said Canadian Occidental Petroleum Ltd, relied on by the plaintiffs, was at best only in reference to arbitration proceedings and in my view, had little bearing to litigation in courts. Curiously, even in relation to the contemplated arbitration proceedings, art 21 of the unsigned master agreement provided not for the application of the laws of Singapore but for the application of the substantive laws of England. Although it could well be argued that the laws of England and Singapore in relation to the field of contract are similar, the specific reference to the laws of England and not the laws of Singapore was significant and could not be overlooked. The court was told that there were three main witnesses to the transaction under reference: the first plaintiff an Indonesian, the defendant a Malaysian and Datuk Hamzah also a Malaysian. None of them was reported to be resident in Singapore. Even the alleged intermediary Salleh Sadijo through whom the defendant had allegedly conveyed his instructions as regards the second oral agreement was said to be a Malaysian resident. Although it was claimed that the plaintiffs` witnesses would find it convenient to testify in Singapore, in my view, that alone could not make Singapore the most convenient forum.

Another point pressed on by plaintiffs` counsel was that the defendant being the Crown Prince of Johor may ascend the throne of Johor any time soon and as a result would enjoy sovereign immunity from proceedings in Malaysia (see ***Faridah Begum*** (supra)) thus prejudicing the plaintiffs` prospects of prosecuting their claim there. In my view, this argument did not avail the plaintiffs the mileage they hoped to gain since the defendant had not yet become a ruler and in any event, the fact that the defendant had been categorically maintaining his intention to accept service and defend the

proceedings already commenced in Malaysia, tended to take the wind out of the sails of the plaintiffs` arguments.

At this juncture, I must mention one other aspect. In the course of the arguments, in relation to the immunity issue, I asked counsel: Would not a Ruler of a Malaysian State be entitled to claim sovereign immunity in Singapore? I posed this question in view of an old English decision: **Mighell v Sultan of Johore** [1894] 1 QB 149, where the Court of Appeal in England had held that the courts in England had no jurisdiction over an independent foreign sovereign unless the sovereign submitted himself to jurisdiction. As was not unexpected, there were differing answers. Counsel for the plaintiffs argued that immunity no longer existed in the light of development of law since ***Mighell*** and the provisions of the State Immunity Act (Cap 313), 1979. Reference was made to ss 3, 5, 16 and 17 of the said Act. Counsel for the defendant on the other hand, contended that immunity still existed in relation to contracts entered into by a Ruler in his private capacity.

Having regard to my findings as to the appropriate forum, I felt that it was unnecessary for me to delve further into the issue of immunity in Singapore at this stage. At any rate, I was of the view that the plaintiff might still be unable to pursue a claim against a Malaysian Ruler if under s 17 of the State Immunity Act, the President of the Republic of Singapore, were to grant him such an immunity.

Reviewing all the facts, including the express mention of Malaysian laws and the preferred option to have all their disputes litigated in the Malaysian courts as stipulated in the four written loan agreements, I was persuaded to conclude that the intention of the parties had all along been to subject themselves to the jurisdiction of the Malaysian courts and not Singapore. In my view, the defendant had satisfied the court that overall, the oral agreements bespoken, if at all entered into between the parties, indeed had a closer connection with Malaysia or Indonesia than with Singapore. Even from the picture painted by the plaintiffs, by all measures, the gravitational pull is clearly away from Singapore and the centre of gravity appears to be located in Malaysia where the defendant and most material witnesses are resident. In my determination, the defendant had amply satisfied me that Malaysia was the most appropriate forum and in the premises the defendant`s appeal was allowed with costs, the stay applied for was granted and the order of the learned assistant registrar was set aside.

Outcome:

Appeal allowed.