# Societe Generale v Tai Kee Sing @ Tai Hean Sing
# [2003] SGHC 139

**Case Number** : Suit 666/2002, RA 52/2003

**Decision Date** : 26 June 2003

**Tribunal/Court** : High Court

**Coram** : Tan Lee Meng J

**Counsel Name(s)** : Kannan Ramesh and Eddee Ng (Tan Kok Quan Partnership) for the respondents/plaintiffs; Jeffrey Beh (instructed) and Sheila Lopez (Sheila Lopez & Co) for the appellant/defendant

**Parties** : Societe Generale — Tai Kee Sing @ Tai Hean Sing

*Conflict of Laws – Natural forum – Principles – Contract containing clause submitting to jurisdiction of Singapore courts – Allegation of that agreement was illegal in Malaysian – Whether action should be stayed in Singapore.*

1. The respondents, Societe Generale ("SG"), a foreign bank in Singapore, sued the appellant, Mr Tai Kee Sing @ Tai Hean Sing ("TKS"), a Malaysian property developer, to recover the sum of US$4,845,066.92. TKS sought to have the action stayed on the ground that Malaysia is the more appropriate forum for the action to be tried. His application was dismissed by the Assistant Registrar on 5 February 2003. I affirmed the Assistant Registrar's decision and now give the reasons for my decision.

2. SG's claim arises out of loans made to TKS pursuant to three credit facility letters dated 23 June 1995, 24 January 1997 and 13 April 1998, which were subject to the former's standard terms and conditions. Under the agreed terms, SG granted to TKS credit facilities of up to US$7m for the purchase of securities. TKS, who utilised the credit facility to finance the purchase of various securities, made huge losses on the Malaysian stock market. In a letter dated 21 March 2001, SG informed TKS that a sum of US$5,163,75.89, exclusive of interest, was due and owing as at 12 March 2001 and demanded that this sum be paid within 10 days. As TKS did not respond to SG's demand, the securities deposited by him with the bank in accordance with the terms of the credit facility granted to him were sold and the proceeds were applied to reduce the sum owed by him to the bank.

3. The sale of the securities did not extinguish the debt owed by TKS to the bank. SG claimed that TKS owed them US$4,845,066.92 as at 23 April 2002. On that day, SG issued TKS a certificate evidencing his indebtedness. When TKS did not pay the amount claimed, SG's solicitors, M/s Tan Kok Quan Partnership, wrote to him on 26 April 2002 to demand the payment of the amount set out in the certificate of indebtedness as well as interest and costs. The letter made it clear that legal proceedings would be commenced against TKS without further reference if the sum claimed was not paid. On 17 May 2002, TKS's Malaysian solicitors, replied and claimed that as TKS did not receive a detailed breakdown of the outstanding amount due to SG, he did not understand why such a huge sum was claimed from him.

4. On 6 June 2002, SG commenced legal proceedings against TKS. As TKS's Malaysian solicitors stated that they would accept service on his behalf, SG had to obtain leave to serve the writ abroad. Such service was eventually effected on 13 November 2002. A month later, on 12 December 2002, TKS commenced proceedings against SG in Malaysia. In his Malaysian action, he alleged that : -

(a) The credit facilities were "not enforceable, illegal and against public policy and consequently … invalid and void";

(b) SG had misrepresented and misled and/or deceived and induced him to accept the invalid, illegal and void credit facilities;

(c) SG acted with "calculated indifference" to his interest and were negligent and in breach of their general duty of care and their fiduciary duty.

(d) SG failed to manage his share trading facility prudently and/or to realise his assets at the best possible price.

5. On 16 December 2002, TKS applied through Summons in Chambers No 5444 of 2000/Y to have the proceedings in Singapore stayed on the ground that Malaysia is the more appropriate forum for resolving his dispute with the bank regarding his utilisation of the credit facilities offered to him.

6. Whether or not an action should be stayed on the ground of *forum non conveniens* has been considered by our courts on innumerable occasions. In *Oriental Insurance Co Ltd v Bhavani Stores Pte Ltd* [1998] 1 SLR 253, 257, Yong Pung How CJ summed up the approach of the Singapore courts in the following terms:

> The principles governing this matter are clear and established. The approach suggested by Lord Goff in *The Spiliada* [1987] 1 Lloyd's Rep 1 has since been approved and applied by the Court of Appeal in *Brinkerhoff Maritime Drilling Corp & Anor v PT Airfast Services Indonesia and another appeal* [1992] 2 SLR 776. We set out the relevant passages from the judgment of Lord Goff:
>
> > In my opinion, the burden resting on the defendant is not just to show that England is not the natural or appropriate forum for the trial, but to establish that there is another available forum which is clearly or distinctly more appropriate than the English forum. In this way, proper regard is paid to the fact that jurisdiction has been founded as of right….
> >
> > Since the question is whether there exists some other forum which is clearly more appropriate for the trial of the action, the court will look first to see what factors there are which point in the direction of another forum… and these will include not only factors affecting convenience or expense (such as availability of witnesses), but also other factors such as the law governing the relevant transaction … and the places where the parties respectively reside or carry on business….
> >
> > If the court concludes at that stage that there is no other available forum which is clearly more appropriate for the trial of the action, it will ordinarily refuse a stay….
> >
> > If however the court concludes at that stage that there is some other available forum which prima facie is clearly more appropriate for the trial of the action, it will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should nevertheless not be granted.

7. As TKS sought to have the proceedings in Singapore stayed, he had the task of establishing that Malaysia is the more appropriate forum. For this purpose, he must show "exceptional circumstances amounting to a strong cause for him to succeed in support of the application for a stay" (*per* Yong Pung How CJ in *Bambang Sutrisno v Bali International Finance Ltd & Ors* [1999] 3 SLR 140). His task is made more difficult because the parties had agreed in their contract to submit to the non-exclusive jurisdiction of the Singapore courts. As such, he is, in principle, not in a position to object to legal proceedings being instituted in Singapore since he has acknowledged the jurisdiction of the Singapore courts (see *S & W Berisford Plc v New Hampshire Insurance Co Ltd* [1990] 2 All ER

321).

8. TKS asserted that he had good grounds for the Singapore action to be stayed. First, he pointed out that SG approached him in Malaysia, negotiations ensued there and the loan was disbursed in Kuala Lumpur in Malaysian currency. Secondly, he alleged that a question arises as to the legality of the transactions as SG were operating as bankers in Malaysia without a licence in contravention of the Malaysian Banking and Financial Services Act. Thirdly, he claimed that material witnesses were in Malaysia. These include expert witnesses on Malaysian law and officials from regulatory bodies.

9. SG pointed out that the credit facilities in question were granted by their Singapore Branch and that the relevant account operated by TKS for the purpose of utilising the credit facilities granted to him, namely Account No 43885, was maintained at their Singapore branch. Furthermore, the bank officers who dealt with TKS were predominantly from the bank's Singapore branch and it had been agreed in the contract that the laws of Singapore will govern the contract between the parties.

10. As far as the question of illegality is concerned, it is worth noting that neither TKS nor his solicitors had alleged in the past that the granting of the credit facilities contravened Malaysian laws. His solicitors had ample opportunities to deal with this question. Instead, they had, on his instructions, attempted to stave off legal proceedings by the bank by offering additional security for their client's debts. For instance, on 28 August 1998, his solicitors, M/s Scully & Yoon, wrote to SG as follows:

> Our client has purchased five (5) bungalows ….. at a total consideration of RM5,020,800. Our client has agreed to assign the Sale and Purchase Agreement for the above properties … to you as additional collateral for the above Facility extended to our client by you SUBJECT ALWAYS to your agreement that the Sale and Purchase Agreement shall be reassigned by you to our client upon settlement of our client's account with you.

11. In any case, the scope and effect of the Malaysian Banking and Financial Institution Act and the Malaysian Exchange Control Act, and the right of a foreign bank operating outside Malaysia to lend money to a Malaysian have been considered by the Malaysian courts on a number of occasions. There is thus no reason for the action in Singapore to be stayed merely because TKS has asserted that SG's loan to him is illegal.

12. It should not be overlooked that the Malaysian action was instituted on 12 December 2002, more than 6 months after SG commenced the Singapore action on 6 June 2002 and long after the service of SG's writ of summons. If all the circumstances of the case are taken into account, SG's assertion that TKS commenced his Malaysian suit for the sole purpose of thwarting the Singapore proceedings is not without foundation. There being no good reason for staying what is essentially a straightforward claim by SG for money handed over to TKS under the terms of the credit facilities offered to him, I dismissed the latter's appeal with costs.