Rickshaw Investments Ltd and Another v Nicolai Baron Von Uexkull
[2006] SGHC 70

Case Number : Suit 426/2005

Decision Date : 27 April 2006

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Cavinder Bull and Henry Heng (Drew & Napier LLC) for both plaintiffs; Leung Wing Wah and Jonathan Lim (Sim & Wong LLC) for the defendant

Parties : Rickshaw Investments Ltd; Seabed Exlorations GBR — Nicolai Baron Von Uexkull

Conflict of Laws – Choice of jurisdiction – Action commenced in Germany by defendant against first plaintiff – Plaintiffs commencing action against defendant in Singapore – Whether clause stipulating Germany as jurisdiction to resolve disputes between first plaintiff and defendant amounting to exclusive jurisdiction clause – Whether first plaintiff's German lawyer agreeing to confer exclusive jurisdiction on German courts to resolve all disputes between plaintiffs and defendant

Conflict of Laws – Natural forum – Forum non conveniens – Action commenced in Germany by defendant against first plaintiff – Plaintiffs commencing action against defendant in Singapore – Actions in Germany and Singapore overlapping on facts and issues – Whether action commenced in Singapore should be stayed on ground German courts more appropriate forum – Whether plaintiffs deprived of juridical advantages if Singapore action stayed

27 April 2006

Woo Bih Li J:

Background

1 In 1998, the second plaintiff, Seabed Explorations GbR ("Seabed"), discovered the Belitung/Batu Hitam wreck in Indonesian waters. The wreck contained thousands of artefacts from the Tang Dynasty period ("the Tang cargo").

2 In 2001, Seabed appointed the defendant, Nicolai Baron Von Uexkull ("Nicolai"), to market the Tang cargo. According to Nicolai, it was Tilman Walterfang ("Walterfang") and Matthias Draeger ("Draeger"), who are both German nationals and equal partners of Seabed, who appointed him. Seabed said it was Walterfang who appointed him. The discrepancy is immaterial for present purposes. There is also some dispute as to the scope of Nicolai's efforts. Seabed asserted that Nicolai had actively marketed the Tang cargo in Singapore only, whereas Nicolai asserted that he actively marketed the Tang cargo in various countries including Singapore, Brunei, China, Hong Kong SAR, Taiwan, Malaysia, United States of America, United Arab Emirates, Qatar and Kuwait.

3 According to Seabed, Nicolai's appointment was terminated by a letter dated 28 August 2002 with effect from 31 October 2002. He was re-appointed by a letter dated 27 January 2003 with retrospective effect from 1 December 2002 up to 28 February 2003. However, Nicolai continued to market the Tang cargo after 28 February 2003.

4 Furthermore, Seabed subsequently entered into a written agreement with Nicolai on 30 June 2003 regarding his appointment ("the 30 June 2003 agreement"). There was no specific duration therein for Nicolai's appointment. The 30 June 2003 agreement set out, *inter alia*, a basic remuneration of DM8000 (€4,090.24) per month plus expenses for Nicolai and an additional 4% of the sale price of the Tang cargo.

5 The plaintiffs allege that, in or about October 2003, the business of Seabed, including all rights, assets, contracts and agreements previously held by Seabed, was transferred to the first plaintiff, Rickshaw Investments Limited ("Rickshaw"), a company incorporated in the Cayman Islands.

6 By a letter dated 9 June 2004 ("the 2nd Termination Letter"), on Rickshaw's letterhead, to Nicolai, Nicolai's appointment was terminated with immediate effect for breach of duty.

7 On 8 September 2004, Nicolai commenced action in Germany against Rickshaw to claim various reliefs:

(a) payment of his basic remuneration and of expenses and of other moneys outstanding;

(b) a declaration that the termination of 9 June 2004 was invalid; and

(c) information about the sale of the Tang cargo which had apparently been sold by then.

8 The German action is continuing. However, about nine months later, Rickshaw and Seabed commenced action in Singapore on 10 June 2005 against Nicolai in respect of the Tang cargo. Subsequently, Nicolai applied on or about 8 August 2005 to stay the Singapore action. The stay application was heard on 9 December 2005 and was dismissed with costs. Nicolai then filed an appeal on 21 December 2005. On 24 February 2006, I allowed the appeal of Nicolai and stayed the Singapore action. Rickshaw has appealed against my decision. I set out below my reasons and conclusions.

The court's reasons and conclusions

9 The first ground which Nicolai relied on was that the 30 June 2003 agreement contained a provision which provided for the exclusive jurisdiction of the German courts to hear disputes between the parties. The 30 June 2003 agreement was drafted by Nicolai's German lawyer in the German language.

10 In his first affidavit of 11 August 2005, Nicolai's German lawyer, Albrecht Graft Von Reichenbach ("Reichenbach"), said he was fully conversant in English although his mother tongue is German. He referred to the 30 June 2003 agreement and he interpreted the relevant provision to mean:

> The parties agree to act under German law for this contract and the exclusive competence of German courts.

11 However, the plaintiffs obtained an English translation of the entire 30 June 2003 agreement from Jorn Gaedcke ("Gaedcke"), a translator with Asian-Link Translation Services. His English translation of the provision in question stated:

> The parties agree on German law for this contract and the competence of the German courts.

12 The material difference was the absence of the word "exclusive" from Gaedcke's translation. In Reinchenbach's second affidavit of 13 October 2005, he accepted that the word "exclusive" was not in the relevant provision. However he said that he did not give a translation of the words literally but a translation of the meaning. I did not accept that explanation. His first affidavit had purported to give the translation of the relevant provision as he had put the words in inverted commas.

13 Paragraphs 7 and 8 of Reichenbach's second affidavit then sought to explain why he had said

that the relevant provision referred to the "exclusive competence of German courts". He said:

> 7. If the court of a case stands in Germany and the case belongs to a German court, it follows that the case does not stand outside Germany and it does not belong to another court but a German court. The meaning of "exclusive" is in my opinion conveyed by the sentence. Therefore, I translated its meaning as "The parties agree to act under German law for this contract and the exclusive competence of German Courts".
>
> 8. In considering the meaning of the sentence, I also considered other factors such as the contract was in German, made between 2 German parties and it was stated in the contract that parties agree on German law for the contract. Secondly, the Defendant herein resides in Bonn, Germany. Seabed Explorations GbR's representatives Draeger and Walterfang are both German. Draeger resides in St Goar, Germany and Walterfang resides in New Zealand. Finally, the currency for remuneration payable to the Defendant was specified in German Deutschmark and Euros.

14 I found it difficult to appreciate those two paragraphs. Just because a case is filed in or belongs to a German court does not mean that it cannot also be brought in another jurisdiction. Also, the factors which Reinchenbach had raised were relevant in determining the governing law but not the jurisdiction of the German court, let alone whether it has exclusive jurisdiction over the disputes.

15 In the appeal before me, Nicolai's Singapore counsel, Leung Wing Wah, accepted that the translation obtained by the plaintiffs was accurate. Nevertheless, he argued that the relevant provision still provided for the exclusive jurisdiction of the German courts to hear disputes arising under the 30 June 2003 agreement. In so far as Mr Leung was relying on subsequent conduct to interpret the relevant provision, such an argument was not permissible.

16 I noted that Reichenbach did not assert that the words he used, as he had drafted the 30 June 2003 agreement, was standard or common drafting terminology in German legal practice to confer exclusive jurisdiction. While it is not necessary for an exclusive jurisdiction provision to contain the word "exclusive", it was clear to me that the relevant provision did not confer such jurisdiction.

17 In any event, if there was any ambiguity, I would have construed the relevant provision against Nicolai under the *contra proferentum* rule since it was his lawyer who had drafted it.

18 However, Mr Leung also submitted that there was, in any event, a subsequent agreement by the plaintiffs' German lawyer to submit disputes arising under the 30 June 2003 agreement to the exclusive jurisdiction of the German court. This submission was based on developments arising from the termination of Nicolai's appointment under the 2nd Termination Letter. As mentioned earlier, arising from that termination, Nicolai commenced an action in Germany. The defendant in that action is Rickshaw. Upon or prior to the commencement of the German action, Reichenbach had contacted Rickshaw's German lawyer, Dr Gramlich ("Gramlich") on 7 September 2004 to ask if he would agree to the action being filed in Frankfurt. Gramlich agreed in a letter dated 7 September 2004. Again, according to Reinchenbach, the relevant sentence in Gramlich's letter stated:

> I accept your offer that the exclusive domicile for the claim is in Frankfurt …

19 However, Gramlich disagreed, saying that the word "exclusive" was not contained in the relevant sentence. According to Gaedcke's translation, the relevant sentence reads:

> I agree to the court of jurisdiction Frankfurt/Main that you suggested …

Again Mr Leung did not dispute Gaedcke's translation, which did not have the word "exclusive". More importantly, Gramlich explained that the conversation he had had with Reichenbach on 7 September 2004 was in the context of Nicolai's claims against Rickshaw only and not in the context of any claim by either Rickshaw or Seabed against Nicolai. Furthermore, the conversation focused on which city in Germany, either Kublenz or Frankfurt, Nicolai's action should be filed. They had not discussed which country that action should be filed in. Gramlich said that therefore his agreement to Frankfurt was as opposed to other German courts, especially Kublenz. The main substance of Gramlich's version of the background leading to his letter was not disputed by Reichenbach.

20 In the circumstances, I agreed with counsel for the plaintiffs, Mr Bull, that Gramlich's letter did not constitute an agreement by both plaintiffs to confer exclusive jurisdiction on the German courts for their claims against Nicolai. It was a limited agreement as to which German city Nicolai's action should be filed in.

21 However, Reichenbach took yet another point. He said that in the 2nd Termination Letter, Rickshaw had clearly intended that a German court of law should decide should a dispute arise. I will come back to the relevant part of the 2nd Termination Letter. Suffice it for me to say here that an intention that a German court of law should decide is quite different from conferring exclusive jurisdiction on a German court.

22 In the circumstances, I was of the view that there was no agreement to confer exclusive jurisdiction on a German court to hear all disputes arising from the agreement to appoint Nicolai. The burden was therefore on Nicolai to persuade me that Germany was clearly a more appropriate forum to hear the claims of the plaintiffs, having regard to the interests of all the parties and the ends of justice, *per* Chao Hick Tin JA in *PT Hutan Domas Raya v Yue Xiu Enterprises (Holdings) Limited* [2001] 2 SLR 49 ("*PT Hutan Domas Raya*"). In so far as Mr Bull stressed that the plaintiffs were suing in Singapore as of right, this did not advance the plaintiffs' position any further. It was because the plaintiffs were suing in Singapore as of right that the burden was on Nicolai to obtain a stay.

23 Mr Leung cited the following factors in support of the stay application:

(a) The 30 June 2003 agreement was in the German Language.

(b) It was executed in Germany.

(c) Nicolai is a German citizen and resides in Germany. The latter point is disputed as the plaintiffs say he resides in Singapore.

(d) Seabed is a partnership formed under the German Civil Code and carried on business in Germany. Although Rickshaw is incorporated in the Cayman Islands, it is the legal successor of Seabed. Neither Seabed nor Rickshaw maintain a presence in Singapore.

(e) The two owners and directors of Rickshaw are also the partners of Seabed and both of them are German nationals. While Walterfang resides in New Zealand, Draeger resides in Germany.

(f) The basic monthly wage of Nicolai was denominated in German currency.

(g) Documents in the German language would have to be translated into English whereas relevant documents in the English language had already been translated into the German language.

(h) The parties' respective German law experts would have to travel to Singapore. This point assumed that the governing law for the plaintiffs' claims was German law.

24 Mr Leung also stressed that the parties had agreed to German law as the governing law and to the jurisdiction of the German court. He also submitted that there was an overlap of issues between Nicolai's German action and the plaintiffs' Singapore action and it was desirable to avoid the possibility of conflicting decisions, citing Sir Peter North & J J Fawcett, *Cheshire and North's Private International Law* (Butterworths, 13th Ed, 1999) at p 347 and various cases including *The El Amria* [1981] 2 Lloyd's Rep 119 and *PT Hutan Domas Raya*. Mr Leung added that it would be an unnecessary waste of time and costs to have witnesses attending both actions, rather than one action in Germany. Mr Leung stressed that the German action had progressed beyond the initial stages. Pleadings had been filed and Nicolai had obtained consent judgment for his claim for basic remuneration and expenses. The court had begun to take evidence.

25 Mr Bull, however, submitted that there was no duplicity of proceedings because the parties in the Singapore action are not identical to those in the German action and the issues in the Singapore action are distinct from those in the German action.

26 On the first point, Mr Bull submitted that the second plaintiff in the Singapore action, Seabed, is not a party to the German action in which only Rickshaw is the defendant. However, it was not disputed that Seabed could be joined as a plaintiff in a counterclaim if Nicolai consented to the same and Nicolai was prepared to consent.

27 On the second point, Mr Bull stressed that the plaintiffs' causes of action in the Singapore action were not based on contract but on tort and equity, that is:

(a) conversion by Nicolai of 25 pieces of the Tang cargo;

(b) breach of Nicolai's equitable duty of confidentiality;

(c) breach of Nicolai's fiduciary duties; and

(d) deceit arising from misrepresentations made by Nicolai.

28 As regards the plaintiffs' allegation of breach of equitable and fiduciary duties and deceit, the plaintiffs asserted, *inter alia*, that Nicolai had withheld information from his principal and had also disclosed price-sensitive information to the Singapore Tourism Board ("STB"), which was the eventual buyer of the Tang cargo.

29 As regards the plaintiffs' allegation of conversion, the plaintiffs asserted that Nicolai was given 25 pieces of the Tang cargo to assist him in his marketing activity. When his appointment was terminated, he was required to return the 25 pieces but had failed to do so.

30 As regards Nicolai's claim for his basic renumeration and expenses, the explanation of Rickshaw was that the expenses were paid once the receipts were produced. Apparently, the basic remuneration had also been paid or was in the process of being paid. In any event, this was not an issue in the Singapore action. As for the other monetary claims of Nicolai, the plaintiffs asserted they were in respect of loans to Walterfang and have nothing to do with the Singapore action.

31 As for Nicolai's claim for disclosure of information about details relating to the eventual sale of the Tang cargo, the plaintiffs asserted that the information had been provided, although I gather that

there is still some residual dispute on this. Nevertheless, Mr Bull's point was that the information is not in issue in the Singapore action.

32 As for Nicolai's claim that the notice of termination under the 2nd Termination Letter was invalid, Mr Bull asserted that this has nothing to do with the Singapore action. He said that that claim was to establish that the notice under the 2nd Termination Letter was invalid but the Singapore action is concerned with Nicolai's conduct prior to 9 June 2004, which has nothing to do with the validity of that termination.

33 I did not agree with Mr Bull's assertion with respect to Nicolai's challenge to the validity of that termination. The validity of that termination is likely to depend in turn on the validity of the allegations about Nicolai's misconduct. Indeed it was his misconduct which was stated as the reason for that termination although not all the reasons might have been stated in the 2nd Termination Letter. Mr Leung also pointed out that Rickshaw's defence in the German action was raising similar misconduct as was asserted in the Singapore action although the plaintiffs had not asserted a counterclaim in the German action. The German court is looking into allegations about Nicolai's misconduct. To me, there was an overlap of issues and not just some overlap of facts as Mr Bull was suggesting.

34 Mr Leung also said that once Nicolai has obtained adequate information about the eventual sale, he intends to make a claim, in Germany, for his commission. That claim in turn is likely to be affected by the allegations of misconduct.

35 As for the plaintiffs' claim for conversion, Nicolai was taking the position that until he was paid all that was due to him he was entitled under German law to retain the 25 pieces. In any event, the claim for conversion appeared to be relatively minor compared to the other claims. Indeed, it can perhaps be resolved by some interim agreement to secure any claim of Nicolai in respect of his appointment in return for the release and return of the pieces.

36 Mr Bull submitted that Germany does not have the concept of equity and thus does not recognise the plaintiffs' causes of action in so far as they are based on equity. However, that does not mean the plaintiffs are without remedy. The evidence so far suggested that the plaintiffs do have their remedies under German law even though the label of the cause of action may be different.

37 Mr Bull also submitted that the existence of proceedings in a different jurisdiction on the same disputes did not necessarily mean that a stay should be granted. He cited a number of cases where a stay was refused in such circumstances, for example, *Transtech Electronics Pte Ltd v Choe Jerry* [1998] 3 SLR 272 and *The Kapitan Shvetsov* [1998] 1 Lloyd's Rep 199. I accepted that general proposition. Nevertheless, the existence of such proceedings was still a factor not to be ignored.

38 As regards the risk of conflicting decisions, Mr Bull submitted that there would be no such risk as the first decision in either jurisdiction would amount to issue estoppel. That submission assumed that the German court would recognise that concept and would accept a Singapore court's decision on issues even if those issues are governed by German law. In any event, litigants should not be encouraged to proceed in a forum which may give a quicker decision in the face of existing proceedings in another jurisdiction which is clearly the more appropriate forum to hear the disputes. Furthermore, Mr Bull's argument about issue estoppel did not address the point that until a substantive decision is reached by either court, parties and their witnesses may have to travel to and fro between the two jurisdictions.

39 Mr Bull then submitted that the governing law of the various torts was Singapore law as the alleged torts were committed in Singapore. This point took much time during arguments and in my consideration of the arguments.

40 It is not disputed that the general principle is that where a tort is committed in Singapore the governing law is the law of Singapore. However, the plaintiffs' claims were not pure tortious claims. Indeed, the very duties which the plaintiffs claim Nicolai owed to them arose because of his contract of appointment and that contract is governed by German law. Thus, for example, para 7 of the plaintiffs' statement of claim states:

> As the 2nd Plaintiff's agent, the Defendant owed the following fiduciary duties …

41 Likewise, assuming such duties existed, any breach thereof would have occurred whilst Nicolai was a contractual agent and in the course of his performance of his obligations as such. For example, para 24 of the plaintiffs' statement of claim starts with the following phrase, "In breach of his duties as an agent …".

42 In such circumstances, I did not think it was sufficient for Mr Bull to rely on the principle that it was for the plaintiffs to choose whether to sue in contract or tort. The real issue was whether the plaintiffs can avoid the governing law provision in the 30 June 2003 agreement by couching their causes of action outside of contract even though the duties allegedly owed by Nicolai arose from his contractual appointment and the alleged breaches arose in the course of his performance of his contractual obligations.

43 On this point, Mr Bull relied on *Coupland v Arabian Gulf Oil Co* [1983] 1 WLR 1136 ("*Coupland*"). In that case the plaintiff was domiciled in Scotland. He was employed to work in Libya by a Libyan nationalised oil company which had a registered office in England. He met with a serious accident at work in Libya. He commenced action in England on three grounds: the first was based on negligence on the part of his employer, the second was on the basis of breach of contract and the third was on the basis of breach of statutory duty. A preliminary issue arose as to which law was applicable in respect of the claim in tort and in contract. As regards the claim in tort, the Court of Appeal held that the existence of the contract was only relevant to the claim in tort if it had the effect of excluding or restricting the claim in tort. As there was no provision excluding or restricting the claim in tort, the Court of Appeal held that that claim only had to satisfy the principles in *Chaplin v Boys* [1971] AC 356 and, having done so, Libyan law was irrelevant to the claim in tort even if it was the proper law of the contract.

44 I note that *Coupland* did not involve a stay application and there was no governing law provision in the contract. Nevertheless, it did seem to support Mr Bull's contention that the governing law for the plaintiffs' claims is Singapore law.

45 However, I did not agree with the limited role of the contract as stated in *Coupland*. If the contract was so limited, then it would be simple to avoid a contractual provision on the governing law simply by couching the claims outside of contract. More significantly, such an approach would ignore the connection, as in the case before me, between the alleged duties and breaches and the contract.

46 Mr Bull also relied on *Sumitomo Bank Ltd v Kartika Ratna Thahir* [1993] 1 SLR 735 ("*Kartika*") where Lai Kew Chai J said from 789 to 790, [157]–[168]:

> Courts of equity will apply their own rules to determining whether there is an equity. In the present case, it would be a matter for Singapore law whether there is an equity or not.

…

Thus it was said that the equity court determines according to the lex fori whether an equity exists, its nature and the remedy available.

…

Equitable relief was thus administered according to the lex fori.

47 Lai J also said at 791, [171]–[172]:

Conclusion: From the authorities cited under this heading I am of the view that the forum will apply its own rules in deciding whether it has equitable jurisdiction: *Deschamps* and *De Beers*. Considering the lex causae: the forum will similarly apply its own law to determine the kind of equitable obligations that arise from the unconscionability of the defendant's acts: *Wimborne* and *US Surgical;* even in the case of moveable property: *Re Anchor*. It follows that as with the position at common law, Singapore law will necessarily govern. It is only logical that one should look at both the claims at common law and in equity by reference to the same system of law.

48 I noted that *Kartika* was a case where the claim was based on restitution whereas the claim of the plaintiffs before me was for damages. Furthermore, even as regards a claim for restitution, the applicable law is not necessarily the law of the *lex fori*.

49 Lawrence Collins *et al*, *Dicey & Morris, The Conflict of Laws* (Sweet & Maxwell, 13th Ed, 2000) ("*Dicey & Morris*") states at p 1485:

Rule 200 — (1) The obligation to restore the benefit of an enrichment obtained at another person's expense is governed by the proper law of the obligation.

(2) The proper law of the obligation is (*semble*) determined as follows:

(a) If the obligation arises in connection with a contract, its proper law is the law applicable to the contract;

(b) If it arises in connection with a transaction concerning an immovable (land), its proper law is the law of the country where the immovable is situated (*lex situs*);

(c) If it arises in any other circumstances, its proper law is the law of the country where the enrichment occurs.

50 Mr Bull contended that Rule 200 (2)(a) applies only if the claims are for restitution and since they are not, Rule 200 (2)(c) applied. Mr Leung contended that Rule 200 (2)(a) applied. It seemed to me that Rule 200 which comes under ch 34 on "Restitution" does not apply to a claim for damages and hence Rules 200 (2)(a) and 200 (2)(c) did not apply.

51 Nevertheless, in the light of the emphasis which Mr Bull placed on *Kartika*, I should mention that *Dicey & Morris* at para 34-032 states:

The application of the law of the place of enrichment, without significant modification, has been approved and applied in England and in Singapore, and may be considered the dominant view. But the slenderness of the authority for it has been judicially noticed [here, the footnote refers to

Macmillan Inc v Bishopsgate Investment Trust plc (No. 3) [1996] 1 WLR 387, 398, 408], and there is some judicial support for an approach, in some cases at least, which accords greater significance to the parallel with other causes of action to which different choice of law rules apply.

52 The textbook then cites *Arab Monetary Fund v Hashim (No 9)* The Times (11 October 1994) and *Her Majesty's Attorney-General in and for the United Kingdom v Heinemann Publishers Australia Proprietary Limited* (1988) 165 CLR 30 as illustrations where the proper law of the contract was taken into account in respect of a non-contractual relief.

53 I was of the view that the governing law of the plaintiffs' claims was German law as such claims arose in connection with the contract of appointment. Although a Singapore court may apply foreign law, it is preferable if the court most familiar with that law deals with the disputes. Accordingly, this was another factor in favour of the stay application.

54 In addition, when the 2nd Termination Letter was sent, Rickshaw had alluded to Nicolai's misconduct and then stated in the last paragraph thereof:

> In the event that this termination without notice should be declared to be invalid by a German court of law, we hereby declare only by way of replacement that we terminate the commercial agent contract with a notice period of 5 months as of the date of receipt of the notice of termination.

55 As I have mentioned, the alleged misconduct of Nicolai would be likely to be in issue in respect of the validity of the termination. It seemed to me that Rickshaw had itself envisaged in its own letter that the German court would be the court dealing with and ruling on the allegations of misconduct.

56 Mr Bull also relied on the following factors to establish that Germany was not clearly the more appropriate forum to Singapore:

(a) The facts pertaining to the alleged misconduct occurred in Singapore.

(b) The witnesses such as one Mr Koh Seow Chuan and one Mrs Pamelia Lee from STB would be in Singapore. Mr Bull also submitted that there would be no way to compel witnesses like Mr Koh or Mrs Lee to attend in Germany and, even if they were co-operative they would have to fly to Germany.

(c) Nicolai resides in Singapore.

(d) There are more documents in the English language that required translation.

57 In my view, even if the facts of the alleged misconduct occurred in Singapore, that did not carry much weight. As regards the point that witnesses like Mr Koh and Mrs Lee are not compellable to attend in Germany or would also have to fly to Germany, I noted that the German court had already sought the attendance of Mr Koh with regard to Nicolai's claims. If he chooses not to fly there, it does not mean all is lost for the plaintiffs because there should be avenues for his evidence to be taken in Singapore. Mr Bull did not suggest that such avenues are absent and I reiterate that Rickshaw itself had envisaged that allegations of Nicolai's misconduct be heard by a German court, although this was in the context of their defence to Nicolai's claims.

58 As for the point that Nicolai resides in Singapore, Draeger resides in Germany.

59 As regards the argument that more documents would have to be translated into the German language, this point did not carry much weight, even if it were true.

60 I would add that there was no explanation for the delay by the plaintiffs in commencing the Singapore action about nine months after the German action was commenced by Nicolai. I did not think it was sufficient for the plaintiffs to indicate that they had reserved their position in Germany to make their claims wherever they thought fit. There was some suggestion by Mr Bull that Nicolai was delaying the German proceedings, which Mr Bull submitted was not as advanced as Mr Leung was suggesting, but that was not a point specifically taken in the affidavits by the plaintiffs. I expected an assertion about delaying tactics in Germany to be stated clearly in an affidavit if it were the reason or one of the reasons for the commencement of the Singapore action. Besides, the plaintiffs or Rickshaw could presumably ask the German court to expedite matters if Nicolai was dragging his feet.

61 In the circumstances, I was of the view that Germany was clearly the more appropriate forum to hear the plaintiffs' claims. The ends of justice also pointed to all the disputes between the parties being heard in Germany.

62 Mr Bull, however, also submitted that even if Germany is clearly the more appropriate forum, a stay should be refused because the plaintiffs would be deprived of legitimate juridical advantages. The first was that the plaintiffs would not be able to bring their actions in equity in Germany because Germany does not recognise the concept of equity. However, that is not to say that the plaintiffs are without any remedy or relief. As I have said, the evidence for Nicolai shows that the plaintiffs may make their claims in Germany even though they may not be couched in equity.

63 The second advantage Mr Bull alluded to was that the plaintiffs would not be able to compel the attendance of Singapore witnesses in Germany. I have already dealt with this point in considering whether Germany is clearly the more appropriate forum.

64 Accordingly, I allowed Nicolai's appeal.