Trane US, Inc and Others v Kirkham John Reginald Stott and Others [2008] SGHC 240

Case Number : Suit 676/2007, SUM 5167/2007, 5248/2007, 5249/2007

Decision Date : 26 December 2008

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Niru Pillai (Niru & Co) for the plaintiffs; Chelva Rajah, SC and Chew Kei-Jin (Tan Rajah & Cheah) for the defendants

Parties : Trane US, Inc; Trane International Inc; Trane Export LLC — Kirkham John Reginald Stott; Solutions Pte Ltd; PT Tatasolusi Pratama

Civil Procedure

Courts and Jurisdiction

26 December 2008

Tay Yong Kwang J:

The plaintiffs' claim

1 The first plaintiff is a company incorporated in the State of Delaware, USA. It carries on the business of providing air conditioning systems and services under the Trane name ("Trane products"). The first and the second plaintiffs are wholly-owned subsidiaries of American Standard Companies Inc. The third plaintiff, a wholly-owned subsidiary of the second plaintiff, is a company incorporated in the State of Delaware, USA and is a provider of Trane products.

2 The first defendant is a director of the second and the third defendants. He is a Singapore citizen and is a shareholder of the third defendant and a director of Amazon Investments (Singapore) Private Limited ("Amazon"), the sole-shareholder of the second defendant. The plaintiffs aver that the first defendant is the *alter ego* of the second and the third defendants. The second defendant is a company incorporated in Singapore carrying on the business of an investment company and of the provision of management and administrative support services. The third defendant is a trading company incorporated in Indonesia with a branch registered here.

3 On or about 15 May 1990, the first plaintiff procured the incorporation of TAC Distribution Pte Ltd ("TAC") for the contemplated distribution of Trane products in Singapore, Malaysia, Indonesia and Brunei. On or about 23 July 1990, the first plaintiff and the second defendant entered into a shareholders' agreement in relation to TAC ("the shareholders' agreement"), which was to be governed by Singapore law and under which the parties submitted to the non-exclusive jurisdiction of the Singapore courts. Under this agreement, TAC would distribute and sell Trane products in Singapore. Separate subsidiaries of the first plaintiff were to be incorporated for the distribution of Trane products in Malaysia, Indonesia and Brunei. Once such subsidiaries were incorporated in Malaysia and Brunei, the shareholders' agreement would cease to apply to these countries.

4 The first plaintiff would hold no less than 30% of the share capital of TAC and the second defendant would hold up to 70% of the same. Pre-emptive rights were conferred on the parties should either of them decide to divest themselves of their shareholding.

5 On or about 17 August 1990, the first plaintiff and TAC entered into a distributor agreement for TAC to distribute and sell Trane products in Singapore, Malaysia and Brunei ("the distributor agreement"). Under this agreement, TAC was appointed the first plaintiff's exclusive authorised distributor of Trane products in these three countries. TAC's rights under this distributor agreement were non-transferable. All trade secrets and other intellectual property rights of the first plaintiff made available to TAC could not be disclosed to third parties. Like the shareholders' agreement, the distributor agreement was also governed by Singapore law.

6 On or about 8 November 1991, the first plaintiff and TAC entered into an amended distributor agreement ("the amended distributor agreement") which extended the territories covered by the distributor agreement to Indonesia. This agreement, which was also governed by Singapore law, had a clause which provided that the parties agreed to form a joint venture operating subsidiary in Indonesia only when it was permissible under Indonesian law for the first plaintiff's parent company to be shareholder in such an entity ("clause B"). The plaintiffs aver that clause B was never put into effect.

7 In October 1998, the second defendant transferred its shares in TAC to the first plaintiff which then became the sole shareholder of TAC. The plaintiffs contend that by reason of this, the shareholders' agreement ceased to have effect.

8 While no Indonesian entity was formally appointed distributor, TAC sold Trane products in Indonesia with the third defendant until the first plaintiff's acquisition of all the shares of TAC. The plaintiffs aver that the first plaintiff did not object to such an arrangement between TAC and the third defendant at that time because the first defendant was the *alter ego* of the second and the third defendants and the second defendant was a shareholder of TAC. They allege that the arrangement was informal and could be terminated at will by either TAC or the third defendant.

9 After the first plaintiff became the sole shareholder of TAC, the first plaintiff proposed a formal arrangement with the third defendant to appoint it directly as a non-exclusive distributor in Indonesia. In October 1999, the first plaintiff sent a draft distributor agreement between the third plaintiff and the third defendant to the first and the second defendants. This provided for a non-exclusive and non-transferable distributorship for five years to be followed thereafter by automatic one-year renewals. It could be terminated by either party upon giving 12 months' written notice and upon termination, all proprietary information would be returned to the third plaintiff with no right to retain any copy of the same.

10 Although this draft distributor agreement was not signed, the plaintiffs regarded the third defendant as the first plaintiff's non-exclusive distributor in Indonesia, with such distributorship renewable annually at the first plaintiff's sole discretion. The plaintiffs contend that the informal distributorship thus created was also governed by Singapore law.

11 The first plaintiff decided not to renew the distributorship arrangement after June 2004. Any further distribution of Trane products by the third defendant thereafter was on an *ad hoc* basis. The plaintiffs discovered that the third defendant was also distributing a direct competitor's (McQuay) products. By its solicitors' letter dated 4 October 2005, the first plaintiff terminated the *ad hoc* arrangements with the third defendant with immediate effect with provisions for an orderly wind-down of existing orders. All outstanding arrears due from the third defendant to the first plaintiff or its related company would have to be paid within 30 days from 4 October 2005 ("the accounts receivable claim"). Under this claim, the plaintiffs the third defendant was also to return to the first plaintiff all documents, contract and material in relation to the third defendant's list of customers for Trane products and to cease using the plaintiffs' trade mark and logo ("the intellectual property claim"). The

plaintiffs claim that the third defendant continues to use the second plaintiff's trade mark and logo.

12 Accordingly, the first plaintiff claims a declaration that the defendants do not have any proprietary or other interests or rights in the distribution of Trane products, whether arising from the shareholders' agreement, the distributor agreement or the amended distributor agreement. The first plaintiff also seeks an injunction to restrain the defendants from commencing or continuing with any proceedings in Indonesia or elsewhere, directly or indirectly relating to the sale and distribution of Trane products or to any rights of any kind whatsoever arising out the said three agreements or otherwise, including the court action already filed in Indonesia. Under the intellectual property claim, the second plaintiff claims against the first and/or the third defendants damages and an injunction restraining them from using its trade mark and logo. The third plaintiff claims against the same defendants the sum of US$1,249,632.46 under the accounts receivable claim and an order for delivery up of its hardware and software relating to Trane products and an injunction restraining the said defendants from using such hardware and software under the intellectual property claim.

The interlocutory applications

13 SUM No. 5167 of 2007 is an application by the defendants for an order that all further proceedings in this action be stayed on the ground of *forum non conveniens*. This application was dismissed in circumstances which will be elaborated on later in this judgment.

14 SUM No. 5248 of 2007 is an application by the first plaintiff for an order that the defendants be restrained from commencing or continuing with the court proceedings in Indonesia (Majlis Hakim Perkara No. 804/Pdt.G/2007/PN.Jak.Sel) or elsewhere, directly or indirectly relating to the sale, distribution or dealings in Trane products or relating to any rights of any kind whatsoever arising out the shareholders' agreement, distributor agreement and/or the amended distributor agreement or otherwise, pending the trial of the present action or until further order. I granted the order sought subject to the usual undertaking as to damages.

15 SUM No. 5249 of 2007 is an application by the first and the second plaintiffs for an order that the first and/or the third defendants deliver up within 14 days the materials under the intellectual property claims, that they be restrained from using the same and the second plaintiff's trade mark and logo directly or indirectly pending trial of this action or until further order and from holding themselves out as being authorised to represent Trane products. This application was granted on the basis that the intellectual property sought be delivered up to the defendants' solicitors as stakeholders pending appeal. The circumstances leading to this order will also be explained subsequently.

16 By consent, SUM No. 5248 of 2007 was heard first out of the three applications listed above. This application was heard in the afternoon after two other applications by the parties (SUM No. 5624 of 2007 and SUM No. 2258 of 2008) were heard and dealt with in the morning. As the hearing lasted until 6.45pm that day, SUM No. 5167 of 2007 and SUM No. 5249 of 2007 were adjourned and heard on another day.

The plaintiffs' arguments in SUM No. 5248 of 2007

17 This is essentially an application for an anti-suit injunction to restrain the defendants from proceeding with the Indonesian court action (see [14] above).

18 The plaintiffs' case is that the second and the third defendants are merely corporate manifestations of the first defendant. All three agreements (the shareholders' agreement, the distributor agreement and the amended distributor agreement) were reached and drawn up in

Singapore and provided that Singapore law would be the governing law.

19 The shareholders' agreement constituted the complete agreement between the first plaintiff and the second defendant. It provided for the non-exclusive jurisdiction of the Singapore courts and the parties further agreed specifically that the courts of the United Kingdom shall have jurisdiction over any dispute arising from this agreement. This agreement was between the first plaintiff and the second defendant as shareholders of TAC. It provided no substantive rights to the second defendant and certainly none to the third defendant which did not even exist at the material time.

20 The third defendant was appointed as distributor for Trane products on an annual and non-exclusive basis. This was evidenced by the annual certificates issued which would typically provide as follows:

> To Whom It May Concern
>
> This is to certify that Trane Indonesia (PT Tatasolusi Pratama) is a representative of the Trane Company in Indonesia, and as such, subject to Trane policies and procedures, is tasked to handle the Sales and after Sales Service of Trane equipment as well as parts in Indonesia.
>
> This certification is valid until June 2001.

The words "a representative" mean that other representatives could be appointed and hence demolish any claim about an exclusive distributorship. The annual certificates also show that there could be no claim to perpetual rights.

21 The second and the third defendants have commenced an action in tort in Indonesia for losses allegedly emanating from the shareholders' agreement. The plaintiffs submit that they have done so knowing that they have no possible rights against the plaintiffs. The Indonesian action therefore has no realistic prospects of success and is merely a tactical ploy to force the plaintiffs into a settlement.

22 In the Indonesian action, the claim appears to flow from the contractual relationship between the first plaintiff and the second defendant in the shareholders' agreement and that the third defendant, although not a party to this agreement, somehow derived rights under it anyway. The second and the third defendants claim damages of US$69m because of wrongful termination of their rights. The third defendant's claim that it was the plaintiffs' exclusive and perpetual distributor in Indonesia must fail because there was no privity of contract and no documentary proof of any such appointment has been referred to. Likewise, the second defendant, having suffered no loss, cannot sue the first plaintiff. As a shareholder, the second defendant cannot recover damages merely because the company in which it is interested has suffered damage (*Townsing Henry George v Jenton Overseas Investment Pte Ltd (in liquidation)* [2007] 2 SLR 597).

23 Without the alleged exclusive and perpetual distributorship rights, there would be no valid cause of action in Indonesia at all. It is not enough for the defendants to show that they did distribute Trane products from time to time. The claim to exclusive and perpetual rights contradicts the written documents. The fact that the certificates were issued annually (see [20] above) and the terminology used in such certificates show clearly that the claim to exclusivity and perpetuity cannot stand. The defendants' assertion that, notwithstanding the lack of written documentation, they have been advised by their Indonesian solicitors that the third defendant has acquired "various rights" from the plaintiffs as their distributor under Indonesian law does not identify what these rights are or what the primary facts are for sustaining such a conclusion.

24 The plaintiffs also contend that the Singapore court is the natural forum for trying this dispute between the parties. All the agreements listed out earlier are governed by the laws of Singapore. The defendants have agreed to submit to either Singapore's or United Kingdom's jurisdiction for the determination of any disputes arising from the parties' relationship. The defendants' alleged claim in tort in Indonesia is founded on the substratum of the agreements which are not to be construed according to Indonesian law. To allow the defendants to continue with their action in Indonesia will result in two decisions in two jurisdictions, a result to be eschewed.

The defendants' arguments in SUM No. 5248 of 2007

25 The defendants submit that the third defendant was the exclusive authorised distributor of Trane products in Indonesia from 1993 until October 2005 when the plaintiffs wrongfully terminated its distributorship. The second defendant, a Singapore company, is wholly owned by Amazon and is the majority shareholder (about 89%) of the third defendant. The remaining 11% of the shares are held by four individuals who are not resident in Singapore. The first defendant is the majority shareholder of Amazon, owning slightly more than 56% of its shares. The other shareholders are the family members of the first defendant. The first defendant is also a director of the second defendant and a Commissioner of the third defendant. Contrary to the plaintiffs' allegations, the first defendant was never a director or shareholder of the third defendant.

26 The second defendant had a joint venture relationship with the first plaintiff in TAC in Singapore and in another joint venture company in Malaysia. These relationships arose of the shareholders' agreement. The distributor agreement provided for exclusive distribution of Trane products for an indefinite term unless terminated on account of a material breach or upon 12 months' notice. Indonesia was not included in the distributor agreement at that time because another company had the rights to distribute Trane products in Indonesia then. However, it was intended even then that Indonesia would be included as one of the territories under the distributor agreement.

27 The third defendant was incorporated in Indonesia in 1993 pursuant to TAC's obligations under the amended distributor agreement and it became the exclusive distributor of Trane products in that country since that year. Although it was envisaged that a separate written distributor agreement would be entered into for Indonesia, that was not done. The first plaintiff did not take up any shares in the third defendant.

28 No dispute arises out of the shareholders' agreement, the distributor agreement or the amended distributor agreement as none of them conferred distribution rights on the third defendant. The dispute relates to the rights acquired by the third defendant under Indonesian law in relation to the distribution of Trane products in Indonesia. The appropriate forum for trying the dispute is therefore Indonesia.

29 In August 2005, the first plaintiff, in its bid to wrest distributorship from the third defendant, among other things, made a public announcement to the third defendant's customers that the third defendant was never a distributor of Trane products in Indonesia. This led to notices from the third defendant's Indonesian lawyers placing on record the plaintiffs' wrongful conduct. On 4 October 2005, the plaintiffs' solicitors wrote to the third defendant to declare that the distributorship was terminated, referring for the first time to the distribution arrangement as an "annual appointment" and an "*ad hoc*" arrangement. The second and the third defendants therefore commenced the Indonesian action to enforce their rights under Indonesian law in relation to the third defendant's distribution of Trane products in Indonesia. More than five months after that, the plaintiffs commenced the present action in Singapore in a clear attempt to usurp the defendants' legitimate claims in the Indonesian action. It was the defendants' concerns about how the first plaintiff would deal with the third

defendant that led the third defendant to explore arrangements relating to the sale of other air conditioning products (such as McQuay).

30 Although no formal distribution agreement was signed between the first plaintiff and the third defendant, various rights were acquired by the third defendant under the laws of Indonesia, being the place of performance of its obligations as the distributor of Trane products. The plaintiffs have always acknowledged that the third defendant was their exclusive distributor in Indonesia until a meeting in April 2004. The third defendant was treated no differently from any other Trane distributor and was privy to all information made available to such distributors. It was not true that TAC sold Trane products in Indonesia with the third defendant. After the incorporation of the third defendant, TAC played no further material role in the distribution of Trane products there. TAC and the third defendant were separate entities distributing Trane products in Singapore and Indonesia respectively.

31 The 1999 draft distributor agreement was not consistent with the existing arrangements. It was not signed because it provided for non-exclusive distributorship but is important for one aspect – it stated that the governing law was to be Indonesian law, just as Malaysian law was the governing law for the distributor agreement for Malaysia.

32 The annual certificates were issued only because the third defendant requested them as they were required as a pre-condition for certain tenders. Such certificates were issued well before 1999 and even in 2005. The plaintiffs' characterization of the distributorship arrangement with the third defendant is therefore not credible and should not be accepted by the court.

33 The plaintiffs' contentions that the first defendant was the *alter ego* of the other defendants are wholly without merit. Although the first defendant was one of the people responsible for incorporating the second defendant (which is wholly owned by Amazon, the family investment company), he has not been involved in the day-to-day operations of the second defendant since 2000. There is an independent board of five directors which manage the third defendant. The board of Commissioners, of which the first defendant is a member, merely supervises the board of directors. As stated earlier, the first defendant was never a shareholder of the third defendant. The contentions about *alter ego* have not been substantiated and are, at best, a triable issue. No injunction should therefore be made against the first defendant at this stage.

34 The Indonesian action was commenced by the second and the third defendants in June 2007 in the district court of South Jakarta against the first plaintiff and TAC and five other companies and individuals. The proceedings against the individuals have been discontinued. The Indonesian action arose out of the plaintiffs' wrongful unilateral termination of the third defendant as distributor after considerable sums had been expended by the second defendant to build up the market for Trane products and the conspiracy to take over the third defendant's customers in Indonesia. It was not initiated to oppress the plaintiffs or for any other ulterior motive. The action was still at an early stage.

35 The defendants have always regarded Indonesia as the appropriate forum for the resolution of the dispute. Their Indonesian solicitors have been in correspondence with the plaintiffs' solicitors in Singapore. The plaintiffs have also acknowledged Indonesia as the proper forum by announcing publicly that they intended to vigorously contest the allegations raised in the Indonesian action.

The decision of the court

36 In *Bank of America National Trust & Savings Association v Djoni Widjaja* [1994] 2 SLR 816, the Court of Appeal applied the principles relating to the grant of injunction to restrain a party to an

action from instituting or pursuing foreign proceedings set out in the Privy Council's decision in *Societe Nationale Industrielle Aerospeatiale v Lee Kui Jak* [1987] AC 871. The four principles are:

(a) the court's jurisdiction is to be exercised only when the ends of justice require it;

(b) where the court decides to grant an injunction restraining proceedings in a foreign court, its order is directed not against the foreign court but against the parties so proceeding or threatening to proceed;

(c) an injunction will only be issued restraining a party who is amenable to the jurisdiction of the court, against whom an injunction will be an effective remedy;

(d) since such an order indirectly affects the foreign court, the jurisdiction is one which must be exercised with caution.

The Court of Appeal elaborated on the above principles in the following manner (at 822B – C):

> Applying the principles here, if in this case the court in Singapore is the natural forum for the determination of the dispute, an injunction should only be granted if the pursuit of the proceedings by the respondent in Indonesia would be vexatious or oppressive and, in this connection, account must be taken of any injustice to the appellants if the respondent was allowed to pursue those proceedings and also of any injustice to the respondent if he was not allowed to do so,

37 In *Koh Kay Yew v Inno-Pacific Holdings Ltd* [1997] 3 SLR 121 ("*Koh Kay Yew*"), the same Court of Appeal applied the same principles stated above and considered two questions of fact, namely, whether the respondent was amenable to the jurisdiction of the court here and whether the foreign proceedings were vexatious or oppressive. The Court of Appeal said:

> 17 With regard to the first question of fact, LP Thean JA stated in the *Bank of America* case that, as long as a party submitted to the jurisdiction of the courts, by seeking relief in the local High Court or otherwise, this would answer the question whether the party was amenable to the jurisdiction of the court. In our opinion, the same would apply if the party was validly served with the required court documents as required by the present Rules of Court finding jurisdiction in Singapore (see s 16 of the Supreme Court of Judicature Act (Cap 322)). Being amenable to the jurisdiction of the local courts simply means being liable or accountable to this jurisdiction. As such, so long as any local courts have in personam jurisdiction over a party, either through the proper service of documents or through submission to the jurisdiction, this first criteria (*sic*) would be satisfied.
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> 18 However, in order to reach a conclusion on the second question of fact (i.e. whether the proceedings in the foreign jurisdiction were vexatious or oppressive), one would have to consider and analyse all the facts of the case objectively. In doing so, one would inevitably have to consider the natural and proper forum for the resolution of the dispute. As we mentioned earlier when citing LP Thean JA's judgment in the *Bank of America* case, the finding of a natural and proper forum for the determination of the dispute is a necessary condition precedent to the grant of an injunction restraining foreign proceedings. …
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> 19 But the analysis does not stop here. The natural and proper forum is but one of the factors to consider, although we have to qualify that by saying that it is a necessary condition to satisfy before an injunction can be granted. A court, when deciding on this second question of fact,

should also look at all the circumstances of the case. This would include taking into account all those relevant circumstances which have not been considered when one considers the natural and proper forum issue. One such example not previously considered would be the kind of remedy sought by the party proceeding in the foreign jurisdiction … Another could be the stage at which the foreign proceedings have progressed. In short, all relevant factors should be taken into account. Once all these other relevant circumstances have been considered, the court should then consider the injustice each party might suffer in determining whether the injunction should be granted or not. This would be the main consideration in determining whether or not the proceedings in the foreign court were vexatious or oppressive. Should the court then come to the conclusion that the foreign proceedings are indeed vexatious or oppressive, then the court should exercise its discretion to grant an injunction restraining the party who had commenced the foreign proceedings from continuing with it.

20 Counsel for the appellant sought to distinguish the *Aerospatiale* and the *Bank of America* cases on the basis that, in those two cases, the parties sought to be injuncted had commenced proceedings in two jurisdictions. In the present case, the appellant had only started his action in the US. …

21 We do not think that this is a valid argument. While it may be right to say that, if proceedings were commenced concurrently in two jurisdictions, one set of actions would be more likely than not to be vexatious or oppressive, this does not mean that an action commenced in one jurisdiction only could not be vexatious or oppressive. It could well be that, using the present case as an example, the appellant had no grounds whatsoever to commence his action in the US. …

22 Having said that, we have to remind ourselves that, while the same principles and approach apply to every case of this nature, each case turns strictly on its individual facts. Further, in dealing with cases such as the present one, where the appellant had only started proceedings in one jurisdiction, the courts should be more cautious than not in granting injunctions compared with situations, in which a party had commenced actions concurrently in two jurisdictions. …

23 … In such a case, we think that as long as the party who commenced the foreign proceedings was entitled to do so, whether or not the foreign courts recognise this, then our courts should be extremely cautious in granting an injunction. In other words, an injunction in this situation should not be given with the same degree of ease as compared with the latter scenario. For an injunction in these cases to be justified, there must be strong and compelling reasons why an action in the foreign courts should not be started or continued. …

38 The governing principles in deciding whether a particular jurisdiction is the natural forum for determining a dispute have been set out clearly by Andrew Phang JA in the Court of Appeal's decision in *Rickshaw Investments Ltd and another v Nicolai Baron von Uexkull* [2007] 1 SLR 377 ("*Rickshaw*"). The first issue that has to be decided is whether, *prima facie*, there is some other available forum which is more appropriate for the case to be tried ("stage one"). At this stage, the burden is on the defendant. If the court concludes that there is a more appropriate forum, the court would ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should nonetheless not be granted ("stage two"). Under stage one, general connecting factors, the jurisdiction in which the tort occurred, the choice of law and the effect of the concurrent proceedings in the foreign jurisdiction could be considered. As a general rule, the place where a tort occurred is *prima facie* the natural forum for determining the claim.

39 I acknowledge that the defendants have put forward a formidable list of connecting factors

seemingly pointing to Indonesia as the natural forum for trying this dispute. These include the following matters. The subject of the dispute relates to things done in Indonesia. The plaintiffs are foreign companies not incorporated in Singapore while the third defendant is an Indonesian company. The majority of witnesses reside in Indonesia. The commencement of the Singapore action is motivated solely by the Indonesian action. Both actions relate to the same issue of the third defendant's right to sell and distribute Trane products in Indonesia. There is no express choice of law governing the distributorship arrangements of the third defendant and since the place of performance is Indonesia, the governing law should be that of Indonesia. A significant number of the relevant documents of both parties are likely to be located in Indonesia. The defendants' claims are in tort and the general rule is that the place where the tort occurred is the natural forum. No dispute arises from the shareholders' agreement, the distributor agreement and the amended distributor agreement and the relevant clauses there on governing law and non-exclusive jurisdiction are therefore irrelevant. These agreements merely form the background facts. There are no connecting factors to Singapore besides the fact that the first defendant is a Singapore citizen and the second defendant is a Singapore company.

40 The Court of Appeal in *Rickshaw* (at [47] of that decision) noted that liability can exist concurrently in tort and in contract and, provided that the latter does not expressly limit or exclude the former, a party is free to choose whichever cause of action is more advantageous to him. However, when one examines the factual matrix in which the second and the third defendants launched their claims, the three agreements in question are inextricably linked to their claims. They are not merely backdrop issues but are integral to understanding and determining the relationships of the different parties involved. The court looking at these agreements would have to construe their proper meaning and effect and decide whether or not they could conceivably give life to any other legal rights not residing in these agreements before considering the factual evidence relating to such non-contractual rights. If the plaintiffs are correct in their contentions, the inquiry may not even proceed beyond this point. The governing law would therefore have a vital role to play and the governing law is Singapore law. There can be little doubt that the forum best suited to decide questions of Singapore law is the Singapore court. There is also the additional factor of Singapore having been named as one of the jurisdictions of choice in one of the agreements.

41 The fact that the second defendant is a Singapore company while the third defendant is an Indonesian one more or less cancels each other out. The plaintiffs are foreign companies with a presence here and in Indonesia and so this factor is also neutral. The second and the third defendants are the plaintiffs in the Indonesian action while the first plaintiff is but one of several defendants there. However, all the other defendants there are related to the plaintiffs here. Essentially, therefore, the same parties are before the courts in both jurisdictions and it cannot be said that some third party who has not been heard will be affected if an injunction of the nature sought is granted here.

42 It is apparent from the documents that the first defendant is the key man in these proceedings and that he played a pivotal role in the entire relationship between the parties, whether or not he is eventually found to be the *alter ego* of the other two defendants. As acknowledged by the defendants, he is the one with intimate knowledge of all the goings-on between the parties. He is a Singapore citizen and has a residence here.

43 Looking at all the relevant factors here, I am of the view that the most appropriate forum is the Singapore court. As stated earlier, should the court here decide that no other rights could emanate from outside the parameters of the three agreements, the inquiry need go no further. Accordingly, it would not be appropriate for the Indonesian court to have to decide the contention whether liability exists independently of contract. This issue would have to be determined first before proceeding to

the question whether a tort has indeed been committed on the facts and the court most suited to try this precedent issue is the Singapore one. It would be highly undesirable if different conclusions are reached by the two jurisdictions. It would therefore be vexatious or oppressive for the plaintiffs in this case to have to content with the defendants' allegations in the Indonesian action concurrently with the claims in the Singapore action.

44 I bear in mind what the Court of Appeal said in *Koh Kay Yew* (at [22] and [23] of that decision set out earlier) concerning a case where only one set of proceedings has been commenced by the party who is the subject of an application for an injunction, particularly where the foreign action was started several months before the present action here. It is not in dispute that the Indonesian action is still at a very early stage and substantial energy and time have not yet been expended in its pursuit. Further, the injunction sought is only up to the time the Singapore court gives its decision in this action or until further order. There is therefore no real prejudice to the defendants if the Indonesian action is put on hold temporarily. In the circumstances here, I think the reasons for granting the injunction are sufficiently strong and compelling ones and I grant the injunction to the plaintiffs accordingly.

SUM No. 5167 of 2007 and SUM No. 5249 of 2007

45 As stated earlier (see [13], [15] and [16]), these two applications were heard some time after SUM 5248 of 2007 was determined. Written submissions for these two applications had been filed by the parties but in the light of my decision in SUM 5248 of 2007, it was agreed that it would be pointless to argue the *forum non conveniens* issue in SUM No. 5167 of 2007. The parties therefore agreed that this application be deemed heard and dismissed with costs to be taxed or agreed to be paid by the defendants. Where SUM No. 5249 of 2007 was concerned, the defendants agreed that the orders sought be granted on the basis of the decision that Singapore is the appropriate forum for trying the disputes between the parties. They agreed that the intellectual property in issue be delivered up within 30 days by the defendants to their solicitors as stakeholders pending the outcome of the defendants' appeal to the Court of Appeal and that the costs for this application be taxed or agreed and be paid by the defendants to the plaintiffs. If the Court of Appeal allows the appeal in SUM 5248 of 2007, then the orders granted in SUM No. 5249 of 2007 are discharged. Should any Indonesian action (the Indonesian action in question has since been dismissed by the Indonesian court as a result of the developments here) and the Singapore action be allowed to proceed concurrently (*i.e.* no stay of the Singapore action on ground of *forum non conveniens*), the plaintiffs are to be at liberty to re-apply for the orders sought in SUM No. 5249 of 2007. If the Court of Appeal dismisses the said appeal, the defendants' solicitors will hand over the intellectual property in issue to the plaintiffs or their solicitors.