Petroval SA v Stainby Overseas Ltd and Others
[2008] SGHC 64

Case Number : Suit 103/2008, SUM 1016/2008, 1341/2008

Decision Date : 02 May 2008

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Vinodh Coomaraswamy SC, Marcus Yip and Georgina Lum (Shook Lin & Bok LLP) for plaintiff; Alvin Yeo SC, Jenny Tsin and Koh Swee Yen (Wong Partnership LLP) for 1st to 5th, 7th, 9th and 10th defendants; Deborah Liew (Rajah & Tann LLP) holding watching brief for Petroval Pte Ltd (non-party)

Parties : Petroval SA — Stainby Overseas Ltd; Norreys Worldwide Limited; John Frederick Peters Lush; Francois Ostinelli; Alexander Novoselov; Everon Associates Limited; Major Oil & Property Services Limited; Fiortino Investments Limited; Odey International Holdings Limited; Podium Capital Holdings Inc

Civil Procedure – Jurisdiction – Mareva injunctions – Court's jurisdiction to grant Mareva injunction – Whether Mareva injunction must be ancillary to claim for relief that would be granted by Singapore court – Section 4(10) Civil Law Act (Cap 43, 1999 Rev Ed)

Civil Procedure – Service – Service out of jurisdiction – Whether leave to serve out of jurisdiction should be set aside – Affidavit in support of application to serve out of jurisdiction failing to state which ground in O 11 r 1 Rules of Court (Cap 322, R 5, 2006 Rev Ed) being relied on – Whether there was breach of O 11 r 2 Rules of Court (Cap 322, R 5, 2006 Rev Ed)

Civil Procedure – Service – Substituted service – Substituted service on defendants who have their addresses in Switzerland – Whether leave for substituted service should be set aside – Presence of evidence of impracticability to effect personal service – Order 11 r 3(1), O 62 r 5 Rules of Court (Cap 322, R 5, 2006 Rev Ed)

Courts and Jurisdiction – Jurisdiction – Interlocutory – Mareva injunctions – Court's jurisdiction to grant Mareva injunction – Whether Mareva injunction must be ancillary to claim for relief that would be granted by Singapore court – Section 4(10) Civil Law Act (Cap 43, 1999 Rev Ed)

2 May 2008

Tay Yong Kwang J:

1 On Friday, 15 February 2008, the plaintiff, which has its address in France, commenced this action ("the Singapore action") against the ten defendants. The addresses of the defendants were stated in the writ of summons to be in the British Virgin Islands ("BVI") in respect of the 1st, 2nd, 6th to 10th defendants and in Switzerland where the 3rd to 5th defendants were concerned. The "endorsement of claim" in the writ of summons reads as follows:

I The Plaintiff, Petroval SA, claims:

1 As against the First Defendant, a declaration that it holds the shares in Petroval Singapore and any dividends received or due from Petroval Singapore on trust for the Plaintiff;

2 As against the Second Defendant, an account of all and any profits it has made as a result of the bunker oil transactions concluded between itself, the Plaintiff and the Second

Defendant;

3 As against the Third and Fourth Defendants, damages for fraudulent misrepresentation;

4 As against all the Defendants:

a To the extent not provided for by paragraphs 1 and 2 above, declarations that each Defendant holds on trust for the Plaintiff the Singapore Specific Assets enumerated against that Defendant's name in Column B of Schedule 1 to this endorsement of claim;

b An account of all monies knowingly received at the Plaintiff's expense;

c Tracing relief;

d Interest (to the extent not already included in paragraphs 4(a) and 4(c) above);

e Such further or other relief as the Court in its discretion thinks fit;

f Costs.

II The claim against the Defendants is based on the fact that during and after the time that the Third and Fourth Defendants were engaged as managers of the Plaintiff, they personally, and through corporate entities controlled and/or owned by them (namely the First, Second, Fifth, Sixth and Seventh Defendants), engaged in activities which caused loss and damage to the Plaintiff. Specifically, such conduct included:

1 transferring their shares in Petroval Pte Ltd to the Third and Fourth Defendants in breach of trust;

2 diverting business opportunities properly belonging to the Plaintiff to Petroval Pte Ltd;

3 making fraudulent representations to the Plaintiff regarding the Plaintiff's bunkering business and thereafter taking over those bunkering activities for their own benefit; and

4 causing the Plaintiff to repurchase fuel oil from the Second Defendant at greatly inflated prices.

III The full facts and matters relied upon by the Plaintiff will be contained in a Statement of Claim which will be filed in the event that it is necessary.

2 Schedule 1 in the writ of summons sets out the "Singapore Specific Assets" in respect of each defendant. These assets include private apartments and accounts in banks in Singapore.

3 The plaintiff then took out summons no. 691 of 2008 and requested an urgent hearing date before the duty judge on Monday, 18 February 2008. That summons asked for injunctive relief against disposal of assets against all the defendants, receivership orders against the corporate defendants and, upon the grant of such relief and without prejudice to the parties to apply for variation or extension of such, a stay of the Singapore action until the final disposal of the action commenced in the High Court in the BVI by the plaintiff against the first four defendants and other defendants joined subsequently ("the BVI action"), including any appeals therefrom or until further order of this court.

4 The plaintiff's summons came before me for hearing on 18 February 2008 on an *ex parte* basis. Counsel for the plaintiff submitted that the Singapore action was commenced on the basis that the defendants have assets here. I was told that the BVI High Court has granted leave to commence the Singapore action using information obtained in the BVI action. Every defendant in the Singapore action is a defendant in the BVI action but not every defendant in the BVI action is a defendant here. Essentially, the plaintiff here was seeking to enforce the injunctive relief (freezing and receivership orders) granted on 7 December 2007 by the BVI court ("the BVI order"). Counsel for the plaintiff explained why the Singapore action was necessary in the following manner:

> (Tenders Second Affidavit of Julia Carlyon affirmed today and to be filed). Page 15 onwards – *interpartes* order after hearing substantive arguments from both sides.
>
> Defendants have been playing games in not recognizing BVI court order in respect of things to be done in Singapore. They have given disclosure but not delivered up the documents. We faced the risk of Singapore banks not recognizing the BVI Court order or defendants continuing to resist complying with their obligations.
>
> We are concerned with their movement of funds between banks. BVI granted full suite of orders. Defendants complied with some but not the crucial ones. Two orders were made by BVI court. Second order with the knowledge that First – Fourth defendants applied to discharge the 7 December 2007 order. Singapore entities have not recognized the BVI order. We are therefore compelled to come to Singapore. First, second, sixth to tenth defendants – we suspect they are mere shells to help dissipate assets. Ask for exhibits to Carlyon's first affidavit to be served by CD-ROM. Defendants have the documents in BVI proceedings anyway.
>
> Defendants have indicated they are defending the BVI action and have taken setting aside action applications in BVI.

5 Julia Carlyon, a solicitor in the firm of Byrne & Partners, London, solicitors for the plaintiff, affirmed two affidavits in support of the above application. She stated that the BVI action sought substantially the same final relief against the defendants as was being sought in the Singapore action. She added, however, that "the plaintiff does not seek to obtain substantive relief in Singapore". She was also authorised by the plaintiff to give the plaintiff's undertaking that it would be bound by the outcome of the BVI action insofar as the Singapore action was concerned. She explained that the application was being made without notice to the defendants because the plaintiff feared that the defendants, if they had not done so already, would try and move the Singapore assets out of Singapore if given notice of the application. She claimed that since the commencement of the BVI action, the defendants had sought to avoid complying with the BVI order by simply not doing so, by avoiding service, by providing only limited information, by raising the privilege against self-incrimination and then retracting it and, most recently, again claiming the same privilege. As a result of this, the BVI court made compliance orders on 31 January 2008 directing the first four defendants to give full and proper disclosure in accordance with the terms of the orders already granted in the BVI action. Julia Carlyon also alleged that there was evidence that the defendants had dissipated their assets after the BVI order was made and with knowledge of the order. She stated further that for the reasons given and the very strong evidence that the defendants had committed a major fraud against the plaintiff, the plaintiff had little faith that the defendants would not take steps to dissipate the assets.

6 Julia Carlyon also explained why the plaintiff was asking the court to order service of the documents in the Singapore action on the 3rd to 5th defendants to be effected by way of substituted service. She stated that she believed it was impracticable for the plaintiff to serve these three

defendants personally. The plaintiff had real difficulty serving the 3rd and 4th defendants and, until recently, the 5th defendant had avoided being notified of the BVI order. Following service on the 3rd and 4th defendants, they said that service had not been effected but now appeared to accept service for some purposes but not others. These three defendants are resident in Switzerland and have to be served under the Hague Convention. She explained that under Swiss law, it is an offence personally to serve anyone within Switzerland other than by the Hague Convention. However, such service would often take several months to effect. For instance, the plaintiff was (in February 2008) still in the process of serving the BVI order granted on 7 December 2007. The three defendants have instructed lawyers in the BVI action, with the 3rd and 4th defendants being represented by solicitors from London, Singapore and the BVI and the 5th defendant being represented by solicitors from the BVI. The plaintiff proposed to serve the writ of summons and other documents in the Singapore action on these three defendants by transmitting them by facsimile or overnight courier to each of the law firms involved. The BVI law firms were also actively involved in the BVI action and must be in regular communication with the respective defendants and also be familiar with the factual background and documents used in the Singapore action. There could not, therefore, be any serious detriment caused if substituted service as proposed was ordered.

7 I granted the plaintiff an injunction restraining the disposal of assets by the defendants and an order appointing receivers over all the assets of the 1st, 2nd, 6th to 10th defendants. I also granted orders for service out of jurisdiction on the defendants and for substituted service on the 3rd to 5th defendants as prayed for in Julia Carlyon's affidavit. I further ordered a stay of the Singapore action until the final disposal of the BVI action. These orders will be referred to collectively as "the Singapore order". The Singapore order was granted on the basis that it mirrored the BVI order and would stand only so long as the BVI order was in force.

8 On 20 February 2008, the 1st, 3rd and 4th defendants applied (by summons no. 760 of 2008) for the receivership orders to be suspended or held in abeyance pending the final disposal of their proposed application to set aside the Singapore order. I heard the parties on 21 February 2008 and granted the orders sought by the said defendants but the stay was ordered to continue until further order so as to await the outcome of the application by the defendants to set aside the BVI order, which, I was informed, would be heard by the BVI court on or about 17 March 2008. This, as I explained to the parties, was because the Singapore order was granted on the premise that it mirrored the BVI order and that there should not therefore be repetition here of the arguments on the merits of the BVI order.

9 The present summonses taken out by the defendants (other than the 6th and 8th defendants) sought the following orders:

1 A declaration that the court has no jurisdiction over the defendants in respect of the subject matter of the claim or the relief or remedy sought in the action;

2 That paragraph 11 of the order of court dated 18 February 2008 (relating to the injunction) granting leave to the plaintiff to serve the writ of summons out of jurisdiction on the defendants, be set aside;

3 That paragraph 11 of the order of court dated 18 February 2008 (relating to the injunction) granting substituted service of the writ of summons on the defendants, be set aside;

4 That the writ of summons, the service of the writ of summons and all subsequent

proceedings thereto be set aside;

5 That the plaintiff be ordered to pay the defendants' costs of this application and the action; and

6 Such further or other relief or order as the court deems fit.

I was informed that the application on the merits of the BVI order was heard from 17 to 19 March 2008 before the BVI court and that a decision has not been given yet. The plaintiff submitted that the defendants' summonses ought to be adjourned till after the outcome of the hearing before the BVI court was known since the Singapore order "flows from" the BVI order. The defendants argued that their applications concerned the question of jurisdiction of the Singapore court to make the Singapore order and was therefore independent of the merits of the BVI order. I agreed to hear the above summonses as they pertained to the issue of jurisdiction and did not depend on the merits of the BVI order.

10 The plaintiff has commenced the Singapore action for the sole purpose of obtaining interim relief, mirroring that given in the BVI action, against the defendants who are known to have assets in Singapore. This is evident from its application to ask for a stay of the Singapore action concurrently with the grant of the interim relief. It wants the merits of its claims against the defendants adjudicated in the BVI, not here. The plaintiff has acknowledged (in Julia Carlyon's affidavit) that it was doing no more than securing in a form readily enforceable in Singapore the orders that have already been granted in its favour in the BVI action and that it was not seeking substantive relief here.

11 In a recent decision in *Swift-Fortune Ltd v Magnifica Marine SA* [2007] 1 SLR 629 ("*Swift-Fortune*"), where a Mareva injunction granted in aid of pending arbitration proceedings in London was set aside by Judith Prakash J in the High Court, the Court of Appeal had this to say (at [4], [62], [64], [66], [67], [92] to [94] and [96]):

4 With respect to s 4(10) of the [Civil Law Act], Prakash J proceeded on the basis that in *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd* [2006] 1 SLR 112 ("*Karaha Bodas*") this court had applied the principle in *Siskina v Distos Compania Naviera SA* [1979] AC 210 ("*The Siskina*") which, in the context of Singapore, is to the effect that a Singapore court has no power to grant Mareva relief in respect of the Singapore assets of a foreign defendant if the only purpose of such relief is to support foreign *court* proceedings. However, in this appeal, counsel for Swift-Fortune has sought to distinguish *Karaha Bodas* following the decision of Belinda Ang Saw Ean J ("Ang J") in *Front Carriers Ltd v Atlantic & Orient Shipping Corp* [2006] 3 SLR 854 ("*Front Carriers*") which was given before the hearing of this appeal. The distinction is that *Karaha Bodas* was not concerned with giving assistance to foreign arbitrations as distinguished from foreign court proceedings.

…

62 It follows that the court's power under s 12(7) has to be found in another statutory source. In the context of this case, that source can only be s 4(10) of the [Civil Law Act], read with s 18(1) of the [Supreme Court of Judicature Act]. This means that for the purposes of s 12(7) of the [International Arbitration Act], we must look to s 4(10) as the source of statutory power for the court to grant interlocutory relief, including Mareva injunctions, in aid of foreign proceedings. If the court has such power with respect to foreign court proceedings, then it has similar power with respect to arbitral proceedings governed by the IAA. We should add that this

conclusion is also consistent with the general understanding in 1994, *i.e.*, the decision of the House of Lords in *Channel Tunnel* ([47] *supra*) that *The Siskina* doctrine contemplated that the substantive claim must not only be justiciable in an English court but should also terminate in an English judgment: see *Karaha Bodas* ([4] *supra*) at [38].

…

64 In respect of court proceedings, the source of the court's power to grant interlocutory injunctions is s 4(10) of the [Civil Law Act] ([2] *supra*). …

…

66 In *Karaha Bodas* ([4] *supra*), this court applied the principle in *The Siskina* that a court had no power to grant Mareva interlocutory relief unless the defendant was "amenable to the jurisdiction of the court" in respect of a substantive cause of action. …

67 In *Karaha Bodas*, the court did not have to consider the question whether a Singapore court had the power to issue a Mareva injunction in aid of a foreign arbitration. However, the court adverted to the issue with this observation (at [45]):

> There has been considerable debate on the extent to which this principle [that the court had no jurisdiction to preserve assets within England in order to support the plaintiff in a claim he was making in a foreign arbitration] *is still in force*. [emphasis added]

The implication of this statement is that this court understood that there was such a principle under English law.

…

92 We may summarise our view of the state of the law on Mareva injunctions in aid of foreign proceedings in the context of s 4(10) of the [Civil Law Act]. First, given the facts of the present case, our decision in this appeal will not take the law beyond *The Siskina* doctrine as applied in *Karaha Bodas*, and confirmed in *Mercedes Benz*. Secondly, the decision in *Front Carriers*, following *Channel Tunnel*, has amplified or extended the scope of s 4(10) to apply to foreign arbitrations where the plaintiff has a recognisable cause of action under Singapore law and the court has personal jurisdiction over the defendant (in Singapore by reason of the defendant having assets within the jurisdiction: see O 11 r 1(1)(a) of the Rules of Court).

93 As this appeal is not against the decision of Ang J in *Front Carriers* (against which a separate appeal has been filed) it would not be prudent for this court to say anything that may be interpreted as either approving or disapproving it as a s 4(10) decision. However, we think we are entitled to observe that given the differences in the legal framework in Singapore and in England relating to the power of the court to grant interim measures to assist foreign court and arbitral proceedings, there are arguments for and against construing s 4(10) of the [Civil Law Act] to restrict or broaden the types of cases in which the court could or could not grant Mareva interlocutory relief to assist foreign court proceedings or foreign arbitral proceedings. In *Karaha Bodas*, it was not necessary for this court to decide whether the court has the power under s 4(10) of the [Civil Law Act] to grant an injunction in aid of foreign court proceedings where the plaintiff has a pre-existing cause of action against the defendant who has property in Singapore. In that case, the plaintiff did not even have a pre-existing cause of action. Likewise in the present case, *Front Carriers* is the first time a Singapore court has decided that given the two

preconditions, *viz*, personal jurisdiction over the defendant and a pre-existing cause of action subject to Singapore law, a court has the power to grant a Mareva injunction under s 4(10) of the [Civil Law Act] in aid of foreign arbitral proceedings. …

94 We have pointed out earlier that s 4(10) of the [Civil Law Act] has remained unchanged since it was enacted in 1878, and that therefore the legislative intent of s 4(10) has also not changed. The meaning of s 4(10) does not change because social or political conditions have changed. … It is therefore open to argument in a future case whether in the context of the political and commercial conditions existing in Singapore in1878, the legislature of the Straits Settlements had intended s 4(10) to give power to the court to grant interlocutory injunctions in aid of foreign court proceedings, or even less likely in aid of foreign arbitral proceedings.

…

96 In summary, our findings are as follows:

(a) Section 12(7) of the [International Arbitration Act] does not apply to foreign arbitrations but applies to Singapore international arbitrations.

(b) Section 12(7) does not provide an independent source of statutory power for the court to grant the orders and reliefs set out in s 12(1) of the [International Arbitration Act]; it draws its power from s 4(10) of the [Civil Law Act] and 18(1) of the [Supreme Court of Judicature Act].

(c) Section 4(10) of the [Civil Law Act] does not confer any power on the court to grant a Mareva injunction against the assets of a defendant in Singapore unless the plaintiff has an accrued cause of action against the defendant that is justiciable in a Singapore court.

(d) Where the plaintiff has such a cause of action against the defendant who is subject to the personal jurisdiction of the Singapore court (as, e.g., where he has assets in Singapore), *Front Carriers* ([4] *supra*) has decided that the court has power under s 4(10) of the [Civil Law Act] to grant a Mareva injunction in aid of the foreign arbitration to which the substantive claim has been referred in accordance with the agreement of the parties, and by implication, where the substantive claim is tried in a foreign court.

(e) The existence of the court's personal jurisdiction over the defendant in itself does not give power to the court to grant a Mareva injunction in aid of a foreign arbitration.

12 The Court of Appeal dismissed the appeal accordingly. At the time of the hearing of the appeal in *Swift-Fortune*, the appeal in *Front Carriers* was pending hearing before the Court of Appeal. The Court of Appeal was therefore careful in its choice of language so as not to prejudice the appeal in the later decision. That task was made all the more delicate by the fact that the later decision was cited and arguments were made thereon by the parties. It is clear from the above passages that the Court of Appeal's comments on *Front Carriers* were confined to stating as a matter of fact what that case decided without approving or disapproving it unless the Court of Appeal stated so expressly, for instance, at [61] of the Court of Appeal's judgment, concerning the interpretation of s 12(7) of the International Arbitration Act, which need not concern us here. Unfortunately, the appeal in *Front Carriers* was subsequently withdrawn and we therefore do not have the benefit of the Court of Appeal's views on the decision of the High Court there.

13 In my view, the Court of Appeal was re-affirming and applying the principles in *The Siskina*, one

of which is that "*The Siskina* doctrine contemplated that the substantive claim must not only be justiciable in an English court but should also terminate in an English judgment" (at [62] of the Court of Appeal's judgment). The Court of Appeal, in dismissing the appeal against Prakash J's decision to set aside the injunction, obviously felt that there was no power under s 4(10) of the Civil Law Act (Cap 43, 1999 Rev Ed) to grant the injunction in aid of foreign court proceedings and hence no power to do the same in aid of foreign arbitral proceedings. This flows logically from the judgment at [62] quoted above that "[i]f the court has such power with respect to foreign court proceedings, then it has similar power with respect to arbitral proceedings governed by the IAA".

14 The defendants in the Singapore action are all foreigners who, as the plaintiff claims, have assets here. That is the sole ground upon which the plaintiff bases its jurisdiction for the Singapore action. The claims made against the defendants are justiciable here in the sense that the causes of action are recognised under Singapore law. However, it is patently clear that the merits thereof will not be determined here and that there will therefore be no Singapore judgment. Singapore is neither the forum of choice nor the forum most appropriate to adjudicate on the dispute. In reality, save for the interlocutory relief, the Singapore action has already come to an end because the plaintiff does not want the Singapore court to do anything else besides maintaining the said relief. Any interlocutory relief granted here takes its life from the same or similar relief granted by the BVI court. If the plaintiff had applied for interlocutory relief here before it did in the BVI action, it would also have failed according to the principles enunciated by the Court of Appeal above. In my view, therefore, it makes no difference that the plaintiff has already obtained the same or similar relief in the BVI action or that it is asserting a proprietary interest over the assets which are in the names of the defendants.

15 The plaintiff invited me to take the path paved by *Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd* [1993] AC 334 where the House of Lords held that it was not a necessary condition for the grant of an interlocutory injunction that it should be ancillary to a claim for relief to be granted by an English court. The plaintiff submitted that it is sufficient to have a cause of action which is *potentially* justiciable in Singapore even if the adjudication will take place elsewhere. The plaintiff highlighted, amongst others, the words of Lord Browne-Wilkinson in the following passage (at 341D):

> Given the international character of much contemporary litigation and the need to promote mutual assistance between the courts of the various jurisdictions which such litigation straddles, it would be a serious matter if the English courts were unable to grant interlocutory relief in cases where the substantive trial and the ultimate decision of the case might ultimately take place in a court outside England.

16 My reading of the Court of Appeal's judgment in *Swift-Fortune* leads me to conclude that the Court of Appeal was sailing with *The Siskina* and decided not to travel the *Channel Tunnel* route. Besides the passages quoted earlier, the Court of Appeal also opined (at [80]):

> It seems clear to us that the House of Lords in *Channel Tunnel* was strongly influenced not only by their own worldview of the role of the English courts in international dispute resolution, but also by the judicial philosophy that curial assistance should be given to foreign court or arbitral proceedings to ensure that justice was done. …

Following the Court of Appeal, I similarly and respectfully decline "to take the law beyond *The Siskina* doctrine" (see [92] of the Court of Appeal's judgment).

17 The plaintiff emphasized that it had commenced an action here and submitted that was a distinguishing point from *Swift-Fortune* where, the plaintiff contended, no action was commenced. It could not be correct to say that no action was commenced in *Swift-Fortune* because the matter was

obviously before the High Court. In any event, I do not think that commencing the Singapore action and then voluntarily applying for a stay renders the plaintiff's cause of action justiciable within the doctrine of *The Siskina* because it is contemplated here that the Singapore court will not have any further role in the Singapore action anyway.

18 On the jurisdiction point therefore I decided that the Singapore court has no jurisdiction to grant the interlocutory relief sought by the plaintiff. The interlocutory relief was therefore set aside. As that was the only relief that the plaintiff wanted in the Singapore action, the writ of summons, the service thereof and all subsequent proceedings thereto were consequently also set aside.

19 There is no necessity to argue beyond this. However, the defendants went on to deal with a couple of minor ancillary matters in their arguments. These related to the issues of service out of jurisdiction under O 11 r 1 of the Rules of Court (Cap 322, R 5) and substituted service of the writ of summons on those defendants who are in Switzerland.

20 Where the O 11 point was concerned, the contention was that the plaintiff did not state in its supporting affidavits which particular ground in O 11 r 1 was being relied on. This would be contrary to O 11 r 2 which provides that an application for the grant of leave under r 1 must be supported by an affidavit stating the grounds on which the application is made. Compliance with O 11, the defendants contended, must be in spirit and in letter.

21 The plaintiff accepted that there was nothing in the supporting affidavits about the ground in O 11 r 1 that was relied on. However, it pointed out, correctly so, that it did disclose clearly to the court at the first hearing that the relevant ground was that the defendants have property in Singapore (*i.e.* O 11 r 1(a)) and it still relied on that particular ground. I note in passing here that the plaintiff in its written submissions stated that "it is clear from the facts of this case that this court has jurisdiction under each of the following heads" and then listed out paragraphs (a), (b), (f)(i), (f)(ii), (i) and (o) of O 11 r 1. I take this statement as having been superseded by the oral submission.

22 Form 7 of the Rules of Court provides that an affidavit in support of an application under O 11 should state:

> 2. This application is made pursuant to Order 11, Rule 1 (specify the paragraphs).
>
> 3. The facts in support of paragraph 2 are _____.

While it would make good practice to state the precise paragraphs of O 11 r 1 in an affidavit supporting an application under O 11, it is understandable if this is overlooked in urgent applications asking for more important matters to be granted by the court. The party applying must nevertheless state to the court the paragraph(s) relied on and ensure that the facts supporting its statement are set out in the affidavit(s). This the plaintiff has done in this case. I would not therefore set aside the grant of leave on this ground.

23 On the issue of whether this case is a "proper one for service out of Singapore under this Order" (see O 11 r 2(2)), it follows from my discussion on the jurisdiction point above that this case clearly does not satisfy this ground as it has been unequivocally acknowledged by the plaintiff that BVI, not Singapore, is the most appropriate forum to try this case. I should add that not all the defendants agree with the plaintiff on this point. The 1st to 5th and the 7th defendants take the position that Switzerland is the most appropriate forum. The setting aside on this ground has already been subsumed in my order relating to the jurisdiction point (at [18] above).

24 The defendants also argued that substituted service should not have been ordered in respect of the 3rd to 5th defendants. Citing *Singapore Civil Procedure* (2007 Ed) at page 91, paragraph 11/2/4, they submitted that the test for ordering substituted service was "practical impossibility of actual service" and not that actual service was "not practical". In any event, the defendants argued, by virtue of O 11 r 3(2), the mode of substituted service out of the jurisdiction must not contravene the law of the country where it is to be effected. Service on the 3rd to 5th defendants at their respective addresses or on their solicitors would contravene Swiss law as it was accepted by Julia Carlyon in her affidavit that it would be an offence to personally serve an individual in Switzerland without going through the mode provided in the Hague Convention.

25 The plaintiff contended that the test for substituted service was "impracticability" and not "impossibility" and that Swiss law did not say anything about service outside Switzerland. It was clear that the defendants in question were now aware of the Singapore action.

26 Order 11 r 3(1) makes O 62 r 5 applicable to the service of an originating process out of the jurisdiction. Under O 62 r 5(1), substituted service may be ordered where "it appears to the Court that it is *impracticable for any reason* to serve that document personally on that person" (emphasis is mine). Order 62 r 5(3) provides that such substituted service "is effected by taking such steps as the Court may direct to bring the document to the notice of the person to be served". The defendants have not adduced any material to rebut the plaintiff's contention that Swiss law does not make service outside that country on Swiss residents, without complying with the Hague Convention, illegal. For the reasons stated by Julia Carlyon (see [6] above), it would be impracticable to effect personal service of the writ of summons on the 3rd to 5th defendants bearing in mind the nature of the interlocutory relief. The mode of substituted service prayed for and ordered was obviously effective in notifying those defendants of the Singapore action and the Singapore order. I therefore saw no ground to set aside the order for substituted service.

27 Upon the setting aside of the Singapore action, at the request of the defendants, I also ordered that there be an inquiry as to damages in the event the defendants have suffered any. I ordered 90% of the costs of the two summonses before me to be awarded to the defendants (the deduction being in respect of the minor ancillary issues on which the defendants did not succeed). Costs of the rest of the Singapore action would be paid on a 100% basis by the plaintiff to the defendants.

28 The plaintiff has appealed (in CA 48 of 2008) against my decision setting aside the Singapore order and the Singapore action and the orders made as to costs. The defendants involved in these applications have lodged a cross-appeal (in CA 50 of 2008) against my decision on the O 11 and substituted service points and the consequential order on costs of the applications. On 23 April 2008, upon the application of the plaintiff, the Court of Appeal gave directions for an expedited appeal against my decision, scheduled for hearing in the week commencing on Monday 12 May 2008.