Chan Chin Cheung v Chan Fatt Cheung and Others
[2009] SGHC 96

Case Number	: Suit 559/2007, RA 284/2008
Decision Date	: 21 April 2009
Tribunal/Court	: High Court
Coram	: Lai Siu Chiu J
Counsel Name(s)	: Chopra Sarbjit Singh and Cheryl Monteiro (Lim & Lim) for the plaintiff; Harpreet Singh Nehal SC and Lim Shack Keong (Drew & Napier LLC) for the defendants
Parties	: Chan Chin Cheung — Chan Fatt Cheung; Chan See Chuen; Chan Chee Chiu

Conflict of Laws

21 April 2009.

Lai Siu Chiu J:

1 Chan Chin Cheung ("the plaintiff") sued Chan Fatt Cheung, Chan See Chuen and Chan Chee Chiu ("the first, second and third defendants" respectively and collectively "the defendants") for defamation in this suit. The plaintiff had also sued the defendants in Malaysia in three actions, *viz* Suit S5-22-267-2002, Suit S-22-799-2003 and Originating Summons No.S1-24-1252-2005 (collectively "the Malaysian proceedings").

2 The defendants applied by Summons No. 1882 of 2008 ("the application") for a stay of this suit pending the outcome of the Malaysian proceedings. The court below dismissed the application against which decision the defendants appealed to a judge in chambers in Registrar's Appeal No. 284 of 2008 ("the Appeal"). I heard and allowed the Appeal with costs and granted a stay of this suit pending the outcome of the Malaysian proceedings. The plaintiff is dissatisfied with my orders and has filed a notice of appeal (in Civil Appeal No. 148 of 2008) against my decision.

The background

3 The background is extracted from the affidavits filed by the parties in relation to the application and exhibited affidavits filed by the parties in the Malaysian proceedings. The second defendant filed affidavits on behalf of the defendants.

4 The plaintiff is a brother or half brother of the first and the second defendants while the third defendant is the nephew of the plaintiff and a son of the plaintiff's brother Chan Chor Cheung. The plaintiff and the defendants are the beneficiaries under the Will, dated 5 February 1947 ("the Will"), of their late father Chan Wing ("the deceased") who passed away in February 1947. Probate of the estate of the deceased ("the Estate") was granted in Malaysia in April 1949 to four sons of the deceased, *viz* Chan Hin Cheung, Chan Tak Cheung, Chan Ting Cheung and Chan Kat Cheung, as the executors of the Estate. Chan Ting Cheung passed away on 21 December 1988, followed by Chan Hin Cheung on 1 July 1993 while Chan Tak Cheung died on 7 January 2002. Chan Kat Cheung resigned as executor on 7 January 1972. Chan Chak Cheung who was appointed a trustee on 1 June 1997, died on 7 May 2003. The defendants are the current trustees of the Estate with the second defendant being appointed in January 1973 while the first and third defendants were appointed on 5 January 2004.

5 The deceased, during his lifetime, was a founder of two Malaysian banks, Kwong Yik Bank (in 1913) and Lee Wah Bank (in 1931). He left substantial assets and properties upon his death in Malaysia (Kuala Lumpur), Singapore and Hong Kong. The bulk of the Estate (99%) according to the

second defendant is now in the United States and 1% is split between Singapore and Malaysia. The net assets of the Estate in Singapore were valued at $2,109,890 as of 31 December 2000 while the Malaysian assets (primarily cash) were valued at RM5,825,810 as of 31 December 1999 while the net assets in Hong Kong were valued at US$9,106,661 as of 31 December 2000.

6 There are other beneficiaries of the Estate besides the parties in this action. Eight of the beneficiaries (including the defendants) reside in Singapore, two (including the plaintiff) reside in Malaysia, two reside in Hong Kong, one resides in Canada and one resides in England. The office of the Estate is in Singapore.

7 The plaintiff alleged that the defendants' mismanagement of the Estate caused him concern as which result he commenced various actions in Malaysia *viz*, Suit No. S5-22-267-2002 ("the first Malaysian suit"), Suit No. S22-799-2003 ("the second Malaysian suit") and Originating Summons No. S1-24-1252-2005 ("the third Malaysian suit"). The Malaysian proceedings are contested by the various defendants in the actions and are still pending.

8 In the first Malaysian suit, the plaintiff sued the second defendant and another brother Chan Chak Cheung ("Chak Cheung") as the trustees of the Estate. (Since Chak Cheung passed away on 7 May 2003 (see [4]), that left the second defendant as the sole defendant in the action). The plaintiff alleged that the named defendants (now only the second defendant) had failed to give the plaintiff any information at all relating to the Estate's account. He asked for an account of the estate and for an investigative audit to be conducted on the accounts of the estate for the past six years by an accounting firm. The plaintiff applied to stay the first Malaysian action pending the disposal of this action. The second defendant opposed the plaintiff's application and it was dismissed by the Malaysian courts on 6 March 2008; the plaintiff did not appeal against the dismissal.

9 In the second Malaysian suit, the plaintiff again sued Chak Cheung and the second defendant. The plaintiff alleged he was unaware when Chak Cheung was appointed a trustee, that the Estate was a Malaysian trust with its place of administration in Malaysia and that the defendants 'moved' the Estate's office out of Malaysia to Singapore. As the defendants were permanent residents of Singapore and had remained out of Malaysia for more than twelve months, the plaintiff contended they ought to be removed as trustees. The plaintiff asked that he be appointed a trustee of the Estate.

10 In the third Malaysian suit, the plaintiff along with his sons Chan Kam Kew and Chan Kam Ming (collectively "the sons") sued the three defendants asking that the first and second defendants concur with the plaintiff and he sons in appointing the sons as trustees of the Estate in place of the first and third defendants and that the property of the Estate be transferred to the sons who would be allowed to charge remuneration for their services as such trustees according to what was set out in the Will of the deceased. The Malaysian court has dismissed the third Malaysian suit against which ruling the plaintiff and the sons have filed an appeal which is pending.

11 To complete the picture, the defence filed by the defendants pleaded that the plaintiff filed a fourth suit against the second defendant personally in 2007 in D3-29-153-2007, seeking payment of his share of the 2006 annual distribution from the Estate. Payment of the same was withheld by the defendants as the plaintiff had failed (despite a request from the defendants' Malaysian solicitors) to give his acknowledgment of receipt to the Annual letter of distribution 2006 and its enclosed audited accounts without which the beneficiaries (including the plaintiff) well-knew that no payment could be released.

Events which led to the commencement of this suit

12 According to the second defendant, the dispute between the parties centred on the interpretation of a clause in the Will. The clause in question was clause 14 which sub-clauses stated as follows:

> (4) My Trustees shall pay all necessary expenses of educating all my grandsons in the male line, maintain any helpless widow in our said family and also pay all necessary expenses in administering my said shares. Provided however, that all such payments as are named in this sub-clause must be first be passed by a meeting of my male descendants in the male line and can be revoked by them at any time.
>
> (5) My Trustees shall also pay the expenses of the Ching Ming Ancestral worships of our said family.
>
> (6) And the balance of the income of the said remaining shares in my Estate shall be divided among my sons and grandsons in the male line then living in Ching Ming, the 3rd moon of the Chinese Calendar, each year.
>
> And I declare that upon the death of the last survivor of my said wives and sons my Trustees shall divide the said remaining shares of the Estate among all my grandsons in the male line then living.

13 On 1 May 2001, the plaintiff wrote to the defendants and requested that they obtain DNA certification that all grandsons listed as beneficiaries were the natural and biological sons of their respective fathers. The plaintiff further warned the defendants that "the trustees who fail to carry out their duties will have to face legal consequences".

14 The defendants replied on 10 May 2001 expressing surprise, stated that the legitimacy of each grandson's claim was based on strict conventional legal merit and not by the DNA method, named the deceased's twelve existing grandsons, invited the plaintiff to share any special information which was not available to them as to why the DNA method was superior to the conventional method and stated that in the absence of any better suggestions supported by facts and reasons, the defendants as trustees would maintain their present procedure for determining the legitimacy of each grandson's claim.

15 The plaintiff repeated his request to the defendants for DNA certification in his letter dated 25 May 2001.

16 The defendants informed the plaintiff by letter dated 10 June 2001 that the defendants had sent to every beneficiary the legal opinion they had obtained from their professional advisers in Singapore, Hong Kong and Malaysia for the legal determination of which "grandsons" qualified as beneficiaries under the Will and the lawyers had unanimously opined that for a grandson to qualify as a beneficiary under the Will, that grandson must be born to a son of the deceased and the son's legal spouse within legal wedlock. The defendants pointed out that they had already rejected two previous claims by persons purporting to qualify as "grandsons" under the Will on the basis that the latter did not satisfy the legal requirement. The defendants again invited the plaintiff to share any authentic legal documents which questioned the legitimacy of any of the twelve grandsons and described DNA tests as "nonsensical" since there were so many blood relatives of the deceased and it would be an irresponsible and offensive witch hunt.

17 The defendants then received the plaintiff's letter dated 1 March 2002 forwarding the claims of the sons in [10] who asserted they were grandsons of the deceased under cll 14(4) and (6) of the Will (see [12]) and qualified as beneficiaries to the residue of the Estate. The plaintiff also enclosed the DNA tests of the sons which confirmed he was their "putative" father together with their birth certificates which stated that Chan Kam Kew and Chan Kam Ming were born to him by a woman called Chan Ah Mooi on 26 October 1974 and 27 July 1979 respectively.

18 By a letter dated 4 March 2002, the defendants informed the plaintiff that it was the first time they were informed of the existence of the two sons and the deceased's "grandsons", that as advised by the trustees' professional advisors, for a grandson to qualify as a beneficiary under the Will, that grandson must be born to a son of the deceased and that son's spouse within legal wedlock. The defendants accordingly requested the plaintiff to furnish the marriage certificate between himself and Chan Ah Mooi. As far as the defendants were aware, the plaintiff was married to Madam Lee Moi Yin in 1958 (Madam Ho) at Westminster, England and there were two daughters but no sons from the marriage. The defendants were not aware of any dissolution of the plaintiff's marriage to Madam Ho.

19 The plaintiff's response was to file the first Malaysian suit on 19 March 2002 (see [7]) wherein the second defendant was alleged to have failed to render the plaintiff any information at all relating to the Estate's accounts, despite the plaintiff's requests.

20 The first Malaysian suit was followed by the filing of the second Malaysian suit on 11 July 2003 which was followed in turn on 22 July 2005 by the filing of the third Malaysian suit.

21 What triggered this suit was the defendants' act of informing the beneficiaries of developments in the Malaysian proceedings. After filing their defences to the three suits, the defendants periodically sent circulars to the beneficiaries to update the latter on the status quo of the Malaysian proceedings. In particular the defendants sent to the beneficiaries three circulars one dated 5 April 2006 ("the first circular"), another dated 16 May 2007 ("the second circular") and the third dated 25 May 2007 ("the third circular"). The three circulars were exhibited as "CSC 16", "CSC 17" and "CSC 18" in the second defendant's affidavit filed on 25 April 2008 in support of the application.

22 The first circular was headed 'Annual Distribution 2006 (y/e 31/12/2005)' and was signed by the defendants. The second circular was intituled 'Annual Distribution 2007 "AD" (y/e 31/12/2006)' and was signed by the defendants. The third circular was headed 'Annual Distribution 2007 "AD" (y/e 31/12/2006) payment US$113,046' and was signed by the second and third defendants.

23 The second circular contained, as attachments, four lists that commented on the Malaysian proceedings and which contained (according to the plaintiff) defamatory comments that formed the basis of his action for defamation. The second circular itself contained words which the plaintiff found objectionable, in particular, the following:

> 2(iv) …To prevent any member of our family falling prey to "CCC's" [the plaintiff's] deceptive lies, we enclose [sic] list of his blatant lies & perjured statements filed in his 3 above suits. These are over and above his other despicable acts that we had already informed you. Everyone must know how base & ruthless Chan Chin Cheung can be.

24 The first and second lists referred to the second Malaysian suit, the third list referred to the third Malaysian suit while the last list referred to the second Malaysian suit.

25 A sampling of the statements in the four lists that the plaintiff considered to be defamatory of his reputation and good standing in Malaysian society are as follows:-

(a) "CCC's" 2 alleged sons claimed to become "Beneficiaries of ECW [estate of Chan Wing] as well as for inheritance" – Shows greed, personal gain & ulterior motive. Both not qualified to be Beneficiaries.

(b) His [the plaintiff's] mental instability is best defined in the Oxford Dictionary as, quote:-

1 "paranoia": – mental derangement with delusions of grandeur, persecution, etc, abnormal tendency to suspect & mistrust of others.

2 "schizophrenia" – mental disorder marked by disconnection between intellect, emotions etc & actions.

(c) It is to be noted that Suit S-22-799-2003 and Suit S1-24-1252-2005 are very similar in nature. Both had petitioned the Court to remove "serving Trustees" & to appoint "CCC" or "his 2 alleged sons' to replace the removed Trustees.

(d) untrue – Plaintiff is both dishonest & untruthful.

(e) Chan Chin Cheung is most unsuitable to serve as a Trustee of the ECW. He had misappropriated money from both of our family companies; Chan Wing Holdings "CWH" in 1973 & from Happy Homes "HH" in 1974. Plaintiff only returned the money misappropriated from CWH in 1975 despite constant demands from Members of the Companies. Despite all demands, the money taken from HH was returned after he was sued in High Court, commercial Division Suit C8 of 1983. Currently, "CCC" is also sued for a debt, money allegedly owing by him to his niece in case S3-22-1124-2004.

The list of perjuries committed by "CCC" alone speaks volumes on his character and suitability to be a Trustee.

(f) "CCC" is malicious, vindictive & and is full of hatred.

(g) "CCC" is consumed by greed, self interest, conflict of interest & contempt for all members of the family.

(h) "CCC" contemptuously sponsored his 2 alleged sons to become Beneficiaries of the ECW & claimed inheritance knowing that they are not qualified as claimed. When rebuffed, 'CCC" demands a DNA test for all grandsons & threatens. To take revenge, he filed 3 High Court Cases ("grand schemes") in anger & in rapid succession.

(i) "CCC" is an unreliable witness and his word is worthless.

The application

26 The plaintiff filed his writ of summons on 31 August 2007 which was followed by an amended statement of claim on 3 September 2007. On 14 September 2007 the plaintiff applied under Order 29 rule 2 of the Rules of Court for an order (which he obtained on 18 October 2007) that the defendants preserve all documents relating to the financial records of the Estate pending the outcome of this action ("the preservation order"). The defendants filed their common Defence on 19 October 2007. The plaintiff's Reply was filed on 6 November 2007. The first defendant filed a Notice of Change of Solicitors on 13 February 2008. On 6 March 2008, the plaintiff applied to court for discovery of specific documents under Summons No. 1061 of 2008 ("the discovery application"). A Notice of

Change of Solicitors was then filed by the second and third defendants on 12 March 2008. On 2 April 2008, the first defendant filed a second Notice of Change of Solicitors so that all the defendants were again represented by the same firm of solicitors. The application was filed by the defendants' present solicitors on 24 April 2008 after the plaintiff failed in his attempt to stay the first Malaysian suit on 6 March 2008 (see [8]). The discovery application was then granted on 15 July 2008.

27 In support of the application, the second defendant filed an affidavit wherein he deposed to facts/reasons why this action should be stayed on the ground that Singapore was the *forum non conveniens* because the connecting facts were all in favour of Malaysia and the Malaysian courts were the more appropriate forum to try the plaintiff's claim.

28 The second defendant's reasons were:

(a) the background of this suit related to and was a continuation of the several disputes which are the subject of the Malaysian proceedings.

(b) the plaintiff was seeking redress for the alleged damage to his reputation arising out of the defendants' comments in the circulars (see [25]). As evidence of his good standing in Malaysian society, the plaintiff had pleaded (at para 31 of his statement of claim in the second Malaysian suit) his curriculum vitae as well as the various/many public offices he held/had held over the years.:

Year	Positions held
1963	Founder trustee, Malaysian National Art Gallery.
1966-1970	President of the Selangor Shooting Association.
1968-1974	Member of Board of Trustees of Employees' Provident Fund ("EPF").
1972-1981	Director of Bank Negara Malaysia.
1972-1982	Treasurer of National Scouts Association.
1976-1981	Member of Board of Governors of Lady Templar Hospital.
1974-1992	Director of Malaysian public company Sime Darby Bhd.
1982-1984	Member of Advisory Panel of EPF.
1984-1986	Director of Bank Bumiputra Malaysia.
1989-1999	Director of Malaysian public company Renong Bhd.
2000	Chairman of Malaysian public company Multi-Purpose Holdings.

(c) the plaintiff had also stated that many of his appointments, particularly his directorships in Malaysian public companies and banks, were made on the recommendation of the Malaysian government. He added that he had also been awarded an honour for public service by the Malaysian king in 1977. The plaintiff further described himself in the same pleadings as "a person of good standing financially and socially in Malaysia".

(d) in the second Malaysian suit the plaintiff had also pleaded that he was born in Malaysia, was/is a citizen of Malaysia and remained a resident of Malaysia throughout his life. The sons and their mother, Madam Chan Ah Mooi, also lived in Malaysia and so too did Madam Ho. Consequently, the plaintiff's roots were in Malaysia and it was the country where his reputation required protection.

(e) some of the beneficiaries resided in Malaysia. Of the six who resided in Singapore, they had indicated to the second defendant that they would attend the trial if this suit was stayed and the plaintiff commenced his defamation action afresh in Malaysia. Of the remaining two beneficiaries, one was the plaintiff's full brother who may wish to remain neutral for that reason, while the other beneficiary spent most of his time in Thailand doing missionary work.

(f) the alleged publication of the alleged defamatory statements took place in Malaysia.

(g) if a stay was not granted, there was a danger of inconsistent findings by the Malaysian and Singapore courts in relation to the same or similar facts.

(h) the defendants had pleased justification and qualified privilege in relation to the alleged libellous statements. The defence of justification related to the Malaysian proceedings which the defendants contended the plaintiff had started in bad faith, prompted by self interest or ulterior motives.

(i) on the loans the plaintiff had taken from family companies *viz* from Chan Wing Holdings Sdn Bhd and Happy Homes Sdn Bhd, both were Malaysian companies and maintained their records in Malaysia.

(j) the plaintiff had allegedly made false reports to Bank Negara Malaysia in respect of alleged breaches by the defendants of the Malaysian Exchange Control Act 1953 and the Malaysian Trustees Act 1949 and to the Malaysian Registrar of Companies of breaches of the Malaysian Companies Act.

29 As the Malaysian courts were already seized of jurisdiction in relation to the various disputes and they had rejected the plaintiff's application to stay the Malaysian proceedings, it made sense for this suit to be stayed for the plaintiff to commence defamation proceedings in Malaysia.

30 Not unexpectedly, the plaintiff objected to the application. In his affidavits filed to oppose the application, the plaintiff:

(a) contended that the offending circulars originated from Singapore where the defendants and eight of the beneficiaries reside;

(b) revealed that when the defendants objected to the stay of the Malaysian proceedings, the second defendant had deposed in his opposing affidavit that the issues in the first Malaysian suit and this suit were completely different, separate and distinct and so too were the parties to the actions. The same point was made in the defendants' submissions in relation to the preservation application.

(c) deposed that in rejecting the plaintiff's application for a stay, the Malaysian court hearing the same had accepted the second defendant's arguments.

(d) contended it was therefore untenable of the defendants to take a contradictory stand in the application.

(e) pointed out that the first and third defendants were not parties to the first and second Malaysian suits nor were they involved in the management and administration of the Estate nor were they trustees at the material time.

(f) noted that in the Malaysian proceedings (which were still pending more than six years after the time of filing of the first Malaysian suit) the Malaysian courts would not make a finding as to whether he had made false statements under oath in Malaysia or whether he had made false reports to various Malaysian authorities as these issues were not relevant to the Malaysian proceedings but were only pertinent to the defence of justification in this suit. Most of the issues prayed for in the Malaysian proceedings related to questions of Malaysian law.

(g) deposed that whether the trustees in the Malaysian proceedings were in breach of the relevant Malaysian statutes raised by the second defendant in his supporting affidavit was not an issue in this suit and cannot support the defendants' application.

(h) contended that the background to this suit related solely to the defamatory comments about him published by the defendants to all the beneficiaries and whether they could rely on the defence of justification at the time of making them and had nothing to do with the Malaysian proceedings.

(i) complained that his reputation had been tarnished by the defendants amongst all the beneficiaries the majority of whom lived in Singapore.

(j) pointed out that if he commenced his defamation action in Malaysia and succeeded, he would have to face the cumbersome burden of having to register the judgment in Singapore for enforcement against the defendants who are residents of Singapore.

(k) pointed out that in this action, he had prayed for an order for an apology from the defendants to be advertised in English and Chinese in the Malaysian and Singapore daily newspapers.

(l) alleged that the real motive behind the application was an attempt to avoid giving specific discovery of documents in the discovery application.

(m) prior to the filing of the application, the defendants had led him and the court to believe that this action would proceed to be tried here for which he had incurred considerable legal fees and disbursements to-date. Indeed, trial dates had been fixed in November 2008 (against the wishes of the defendants whose counsel informed the Registrar at a pre-trial conference that no trial dates should be fixed pending the outcome of the appeal).

(n) pointed out time was not on his side because of his age (73 years).

The Submissions

31 The arguments tendered by the parties were essentially a repeat of the points made in their respective clients' affidavits.

The defendants' arguments

32 Counsel for the defendants pointed out that nothing on the face of the alleged defamatory circulars/lists suggested that they referred to events in Singapore apart from the fact that five of the circulars reached the beneficiaries in Singapore. On the contrary, everything related to Malaysian suits or misdemeanours in Malaysia – even the alleged defamatory comments affected the plaintiff in the eyes of Malaysian society as his reputation was established in Malaysia. He pointed out that the core issue of the defendants' defence of justification was whether the plaintiff had commenced the Malaysian proceedings in bad faith causing the defendants to have to incur unnecessary expense to defend the same using the funds of the Estate. Counsel informed the court that the first Malaysian suit had been fixed for hearing from 9 to 12 December 2008 while the second Malaysian suit would be heard in 2009.

33 Counsel for the defendants submitted that the court below fell into error in concluding that this suit was for defamation whereas the Malaysian proceedings related to breaches of trust and hence no stay should be granted. The pleadings show that our courts cannot deal with this suit in isolation without stepping on what is rightly within the jurisdiction of the Malaysian courts in the Malaysian proceedings and that would be inappropriate on the basis of the international rules on comity of nations. All the Malaysian witnesses would also have to be brought to Singapore if this suit was not stayed. The court should follow the Court of Appeal's decision in *Good Earth Agricultural Co Ltd v Novus International Pte Ltd* [2008] 2 SLR 711 ("*Good Earth*") which reaffirmed the two stage test in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 ("*Spiliada*") for stay of proceedings.

The plaintiff's submissions

34 Counsel for the defendants did not disagree with the *Spiliada* test nor with the principles cited by his opponent for the exercise of the court's discretion in granting a stay of proceedings in favour of another and more appropriate foreign forum. He cited other (earlier) local cases that had applied the *Spiliada* test in particular *Brinkerhoff Maritime Drilling Corp & PT Airfast Services Indonesia* [1992] 2 SLR 776, *Eng Liat Kiang v Eng Bak Hern* [1995] 3 SLR 97 as well as *Rickshaw Investment Ltd & Anor v Nicolai Baron von Uexkull* [2007] 1 SLR 377.

35 Counsel for the plaintiff however took a stand contrary to the defendants' and argued that

applying the *Spiliada* test would mean that no stay should be granted as all connecting factors pointed to Singapore being the more appropriate forum particularly (i) the jurisdiction in which the tort occurred; (ii) the applicable law; (iii) the location of witnesses; (iv) the defendants' place of residence and that of the majority of the beneficiary witnesses and (v) the location of the Estate's documents.

36 He pointed out that it was for the court to determine what meaning should be attached to the defamatory words – whether they should be the natural and ordinary meaning and/or innuendo meaning pleaded by the plaintiff or the alternative meaning pleaded by the defendants, *viz*, that the plaintiff had commenced the Malaysian proceedings in bad faith motivated by self interest, the defendants as trustees were forced to incur unnecessary expenses for the Estate in defending the Malaysian proceedings, that the plaintiff had made false statements on oath in the Malaysian proceedings and the plaintiff was seeking to take control of the Estate and its assets.

37 Consequently, if the court granted the stay application, which was premised on the defendants' alternative meanings, it meant this court would essentially be holding that the alternative meanings were the correct meanings to attach to the defamatory words, a finding which was within the sole purview of the trial judge after hearing the evidence of the parties. In any event, counsel submitted, the defendants had failed to show that their alternative meanings were issues relevant to the Malaysian proceedings, either in relation to the plaintiff's request for an account from the defendants and an investigative audit of the Estate (the first Malaysian suit) or for the removal of the defendants as trustees (the second Malaysian suit). The defendants' allegation that the plaintiff had perjured himself in the Malaysian proceedings had not resulted in contempt proceedings being taken against him by the defendants nor was a police report lodged by them. The allegation of perjury was not dependant on the outcome of the Malaysian proceedings nor was it an issue therein.

38 Counsel also complained of the lateness of the application which fact I did consider and for reasons which I will set out later, I did not consider fatal to the defendants. He opined that the defendants' ulterior motive for the application was to avoid giving specific discovery to the plaintiff.

The decision

39 I reversed the decision of the court below and allowed the appeal as I was of the view that the Assistant Registrar had erred in taking too restrictive a view that the issues in this action related strictly to defamation and had nothing to do with the Malaysian proceedings and/or the Estate.

40 At this juncture, it would be appropriate to consider what the two stage test in *Spiliada* (see [33]) entails. Lord Goff of Chieveley spelt out the test as follows (at p 476):

> (a) the basic principle is that a stay will only be granted on the ground of forum non conveniens where the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action, i.e. in which the case may be tried more suitably for the interest of all the parties and the ends of justice.. ..in general, the burden of proof rests on the defendant to persuade the court to exercise its discretion to grant a stay…
>
> (b) Furthermore, if the court is satisfied that there is another available forum which is prima facie the appropriate forum for the trial of the action, the burden will then shift to the plaintiff to show that there are special circumstances by reason of which justice requires that the trial should nevertheless take place in this country.

41 I turn next to the facts of this case. It is noted that although this claim is the tort of defamation, its genesis was the Estate and the facts were similar to, if not the same, as those pleaded in the Malaysian proceedings launched by the plaintiff. To quote from the appellate court's decision in *Good Earth* (see [46] *infra*), this suit was effectively a continuation of the parties' dispute arising directly from the Malaysian proceedings and the plaintiff's obvious unhappiness over the defendants' refusal (as trustees) to recognise the sons born outside wedlock as beneficiaries of the Estate.

42 Consequently, applying stage 1 of the *Spiliada* test, the defendants had successfully discharged the burden and proven that Malaysia was a more appropriate forum for the trial of this action. Indeed, this dispute between the parties should preferably be dealt with by the same court that would hear the first and second Malaysian suits. The plaintiff's insinuation (in the defendants' word) of an inefficient Malaysian judicial system was baseless and not to be considered in the light of the rule on the comity of nations (see [48] *infra*). Issues involving Malaysian companies (Chan Wing Holdings Sdn Bhd and Happy Homes Sdn Bhd) and Malaysian law (alleged breaches of the Malaysian Exchange Control Act, Malaysian Trustees Act and Malaysian Companies Act) should best be decided by Malaysian courts.

43 I was of the view that the location of the Estate's office (and its documentation) and the residence of the defendants being in Singapore were at best a neutral factor. The defendants were still Malaysian citizens albeit permanent residents of Singapore while the Estate's office had previously been sited in Kuala Lumpur before its relocation to Singapore. Moreover, as the Malaysian courts had dismissed the plaintiff's application to stay the Malaysian proceedings against which dismissal he did not appeal, it would be best to avoid duplicity of proceedings and inconsistent judicial findings by having a Singapore court determine this dispute. Equally, the location of the witnesses or beneficiaries was not a critical factor, be they in Singapore or in Malaysia. In any case, if necessary, the plaintiff could have recourse to the Evidence (Civil Proceedings in Other Jurisdictions) Act (Cap 98, 1985 Rev Ed),which s 4(1) states:

> **Power of High Court to give effect to application for evidence**.
>
> 4 — (1) Subject to this section, the High Court shall have power, on any such application as is mentioned in section 3, by order to make such provision for obtaining evidence in Singapore as may appear to the High Court to be appropriate for the purpose of giving effect to the request in pursuance of which the application is made; and any such order may require a person specified therein to take such steps as the High Court may consider appropriate for that purpose.

while the plaintiff's suspicions that the application was an attempt by the defendants to avoid giving specific discovery and that they intended to destroy documents, would be allayed by s 4(2) of the same Act; which states:

> (2) Without prejudice to the generality of subsection (1) but subject to this section, an order under this section may, in particular, make provision —
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> (a) for the examination of witnesses, either orally or in writing;
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> (b) for the production of documents;
>
> (c) for the inspection, photographing, preservation, custody or detention of any property;
>
> …

44 As the defendants had crossed the threshold of stage 1, I moved on to consider stage 2 of the *Spiliada* test. Under this stage, the burden shifted to the plaintiff to persuade the court that notwithstanding Malaysia being the more appropriate forum, there were special circumstances by reason of which justice required that the trial should nevertheless take place in Singapore. I was of the view that the plaintiff had failed to discharge the requisite burden of proof. Consequently, I granted the application when I allowed the appeal.

45 In *Good Earth* (see [33]), the appellant Good Earth ("the plaintiff") sued the respondent Novus ("the defendant") in Hong Kong for wrongful termination of an oral contract. Judgment was given to the plaintiff which it registered and enforced in Singapore against the defendant. In the Hong Kong action, the defendant had tried unsuccessfully to file a counterclaim alleging that the plaintiff had made and retained secret profits by charging its end-customer a higher price than that agreed between the parties ("the Hong Kong counterclaim"). Its application in September 2006 was dismissed as it was deemed to be made too late, given that trial had been set down to commence on 4 December 2006. The defendant then filed a fresh action in Singapore to recover the alleged secret profits ("the Singapore action"). The plaintiff applied for a stay of the Singapore action (which was disallowed) on the ground that Hong Kong would be the natural or more appropriate forum to hear the defendant's claim for secret profits.

46 The plaintiff's appeal was allowed and a stay was granted by the Court of Appeal, *inter alia*, on the basis that the Singapore action was effectively a continuation of the parties' disputes arising from the termination of the oral contract. The Singapore action was in substance and effect the Hong Kong counterclaim in another guise and was the most compelling factor in favour of Hong Kong being the natural or more appropriate forum.

47 It was held to be not a significant factor that the defendant did not have a presence in Hong Kong as, if it succeeded in its claim for secret profits in Hong Kong, enforcement would be facilitated by the fact that the plaintiff was a Hong Kong company with assets there. The plaintiff had named four witnesses who resided in Hong Kong while the defendant had one Singapore-based witness. The appellate court held that Hong Kong appeared to be the natural or more appropriate forum in terms of location of witnesses.

48 On international comity, the Court said at [27]:

> The Singapore courts have nothing but unreserved respect for the Hong Kong legal system. Indeed, it is not insignificant to note that English law constitutes the foundation of both legal systems. If Novus' claim for secret profits is heard in Hong Kong, any suggestion centring on the possibility of actual or apparent judicial bias is, in our view, wholly unjustified. Further, this court has in the past emphasised the high regard that it places on the maintenance of international comity. The words of Chao Hick Tin JA delivering the judgment of this court in *The Hung Vuong-2* [2001] 3 SLR 146 at [27] bear repeating:
>
> > We must point out at once that it is not for this court or any court in Singapore to pass judgment on the competence or independence of the judiciary of another country, all the more so of a friendly country. Comity between nations would be gravely undermined if such a wholly invidious pursuit is embarked upon.

49 The Court of Appeal then added at [29]:

> We would also like to take this opportunity to clarify that should a factor such as "judge shopping" ever become relevant in future cases, it should be considered at Stage 2 of the

Spiliada test.

There was no question of 'judge shopping' in our case.

50 The plaintiff had complained of the lateness of the application (which the defendants did not deny). However, one reason for the delay was obviously the need to know the outcome of the plaintiff's stay application in Malaysia. That was only known on 6 March 2008 (see [8]) while the application was filed on 24 April 2008. Although the application could indeed have been filed earlier, it would have made no sense to do so until after the Malaysian courts had decided on the plaintiff's own application to stay the first Malaysian suit. A further delay was necessary as the defendants had to wait to see if the plaintiff would file a notice of appeal against the dismissal of his stay application.

51 Counsel for the defendants pointed out that the plaintiff himself was guilty of delay as the plaintiff waited for over five years to file his stay application for the first Malaysian suit (which had been commenced in 2002). Apparently, the plaintiff had also failed to comply with case management directions issued more than a year ago by the Malaysian courts for the first and second Malaysian suits. This caused a delay in the trial of the second Malaysian suit.

52 I accepted the defendants' submission that the Malaysian courts' ruling in March 2008 finally settled the issue of where trial of the Malaysian proceedings should take place. Their counsel submitted, with which I agreed, that it changed the entire complexion of the case.

53 Another argument raised by the plaintiff was his age, which the defendants described as a ploy to gain the court's sympathy. The defendants pointed that the plaintiff's pious hope in his affidavit that he wished to be vindicated while he was fit mentally, physically and during his lifetime should be contrasted with his statement of claim in the second Malaysian suit where he pleaded [at para 31(c)] that he possessed good mental and physical health in his quest to remove the defendants and have himself and the sons replace them as trustees. In blowing hot and cold when it suited his purpose to do so, the plaintiff lost credibility. In any case, there was no medical evidence to support his alleged infirmities.

54 Yet another prong of attack from the plaintiff was the defendants' alleged inconsistent stand. Counsel for the plaintiff pointed out that before the court which granted the preservation order, the defendants took the stand that this suit had nothing to do with the financial records of the Estate and that the trust issue and this suit were wholly unrelated. However, in the submissions tendered by their counsel in Malaysia to oppose the plaintiff's stay application, the defendants had said:

> the subject matter and focus of [the first Malaysian suit] are completely different from the subject matter and focus of the Singapore suit. [The first Malaysian suit] has been filed by the plaintiff for relief pertaining to the accounts of the Trust, and is based on the second defendant's alleged wilful default as Trustee. The Singapore Suit on the other hand has been filed by the plaintiff for damages for alleged defamation by the second defendant and his co-Trustees. The causes of action, subject matter and focus of the 2 suits are therefore completely different.

55 Counsel for the plaintiff countered the above argument by pointing out that both sides said different things earlier on. He contended that the plaintiff had equally adopted an inconsistent stand in the Malaysian proceedings. There, the plaintiff had stated that the issues pleaded in the defence in this suit were also issues for determination in the first Malaysian suit and that it was apparent from the Singapore defence that the issues arising in the first Malaysian suit would be argued on the merits of this suit. The plaintiff argued for a stay of the first Malaysian suit to avoid a duplication of proceedings.

56 As both sides appeared to be inconsistent in their stands in relation to the Malaysian proceedings and the stay application for the first Malaysian suit, I decided it was best to ignore their previous conduct, focus on the legal position and determine whether the *Spiliada* test had been satisfied.

57 There was one very important consideration which the plaintiff did not consider – the plaintiff would do himself and his reputation an injustice if his claim for defamation was tried in Singapore. The plaintiff's impressive credentials set out in [26(b)] above had everything to do with Malaysia and nothing to do with Singapore. While I do not doubt his credentials, as far as I am aware, the plaintiff is not a well-known personality in Singapore. Should he pursue and succeed in his defamation suit in Singapore, the measure of damages he would obtain would be considerably less than what he would obtain had he sued in Malaysia.

58 For all the above reasons, I allowed the appeal with costs, reversed the decision of the court below and granted a stay of this suit pending the outcome of the Malaysian proceedings.

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