Ashlock William Grover *v* SetClear Pte Ltd and others
[2012] SGCA 20

Case Number	: Civil Appeal No 66 of 2011
Decision Date	: 19 March 2012
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; Andrew Phang Boon Leong JA; Tan Lee Meng J
Counsel Name(s)	: Kelvin Tan and Natasha Sulaiman (Drew and Napier LLC) for the appellant; Alvin Yeo SC, Sim Bock Eng and Lee Ee Yang (WongPartnership LLP) for the respondents.
Parties	: Ashlock William Grover — SetClear Pte Ltd and others

Contract

Conflict of Laws

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2011] SGHC 130.]

19 March 2012

Chao Hick Tin JA (delivering the grounds of decision of the court):

Introduction

1 This was an appeal against the decision of the High Court judge ("the Judge") in Originating Summons No 118 of 2011 ("the Singapore Action"): see *SetClear Pte Ltd and others v Ashlock William Grover* [2011] SGHC 130 ("the GD") where he ruled in favour of the plaintiffs on the construction of an agreement and in consequence thereof he issued an anti-suit injunction against the defendant. In the Singapore Action, William Grover Ashlock ("the Appellant") was the defendant while SetClear Pte Ltd, CLSA Limited, SetClear Inc, Credit Agricole Securities (USA) Inc (Formerly known as Caylon Securities (USA) Inc) and IX Net Holding Limited (individually the "1st Respondent", "2nd Respondent", "3rd Respondent", "4th Respondent" and the "5th Respondent" respectively, and collectively "the Respondents") were the plaintiffs.

2 The appeal was heard on 24 October 2011. After hearing submissions of the parties, we dismissed the appeal with costs. We now give the grounds for our decision.

The background to the dispute

3 In August 2005, the Appellant, together with one Jonathan Slone ("Slone"), were the co-founders of a start-up business operated in New York by the 5th Respondent. Although Slone and the Appellant each initially held 50% of the equity shares in the 5th Respondent, their equity shareholding was, for reasons which were immaterial to this appeal, subsequently diluted and agreed to be not less than 4% each ("the Founder's Equity" or, interchangeably, "the founder benefits"). [note: 1] The 2nd Respondent subsequently invested in the 5th Respondent's business on terms that Slone would be in the 2nd Respondent's employment while at the same time retaining his equity shares in the 5th

Respondent.

4 In March 2006, the Appellant was designated as Chief Operating Officer of the 5th Respondent and concurrently seconded to the 4th Respondent in New York. [note: 2] In a letter from the 1st Respondent dated 10 May 2007, the Appellant was offered to come under the employment of the 1st Respondent. [note: 3] The Appellant accepted the offer, as a result of which the Appellant re-located to Singapore but continued to shuttle between Singapore and New York from time to time. One of the provisions in the said letter stated:

> Founder Status: In light of your [*ie*, the Appellant's] effort and contribution to the initial set up and establishment of the [1st Respondent], you will be recognised as one of its founders and be eligible for consideration for additional "founder" benefits, if any, subject to negotiation with Bloomberg Tradebook. and on terms to be mutually agreed between you and the [1st Respondent].

5 In his first affidavit filed in the Singapore Action, the Appellant averred that the provision for "Founder Status" in the letter served to reiterate his original entitlement to the Founder's Equity. [note: 4] The Respondents, however, claimed that no agreement was reached or even alleged to be reached between the Appellant and the 1st Respondent as to the founder benefits. [note: 5]

6 In or around late June 2008, the Appellant was put on a few weeks' "leave" after a disagreement arose between him and Slone on certain plans regarding the 1st Respondent's business. On 17 July 2008, while the Appellant was on "leave", he was asked to meet one Mr Laurie James Young ("Young") who was then Acting on behalf of the 1st Respondent. At the meeting, the Appellant and Young signed an agreement providing for the cessation of the Appellant's employment with the 1st Respondent ("the 17 July 2008 Agreement"). [note: 6] Clause 14 of the 17 July 2008 Agreement ("cl 14") provided as follows:

> **14. Final Settlement**
>
> By signing this letter and accepting the abovementioned payments, this represents full and final settlement of all and any claims against [the 1st Respondent] and its affiliated companies.
>
> Additionally, it confirms that you [*ie*, the Appellant] agree not to pursue any future claim against [the 1st Respondent] and its affiliated companies.

7 Subsequent to the signing of the 17 July 2008 Agreement, the Appellant sent an email to Young on the same date stating: [note: 7]

> Laurie,
>
> I want to go on record with you that it is my understanding that by signing the resignation agreement today that I am Acting in good faith that a subsequent agreement will be reached in terms of my resignation with CLSA and insurance for 2009 as well as my founder status. I signed the agreement believing that Section 14 does not preclude an agreement or possible Actions

should we not be able to reach an agreement. Please let me know if this understanding differs from yours.

Regards,

Bill

To which Young replied: [note: 8]

Bill,

Sorry for the delay in responding; I was travelling back to Hong Kong.

I believe our conversations over the last few days have been conducted in a very constructive and cordial manner. I will continue to search for a mutually acceptable agreement covering a future relationship with CLSA and medical coverage in the US

Clause 14 of the separation agreement must stand on its merits Bill as was the intention of the document you signed.

Have a good weekend Bill; I'll be in touch with you in the coming weeks.

Laurie

8 The Appellant subsequently reaffirmed the terms and conditions set out in the 17 July 2008 Agreement by signing two letters (dated 9 October 2008 and 28 February 2009) sent by the 1st Respondent. [note: 9] The letter dated 9 October 2008 stated: [note: 10]

Dear Bill,

Further to our letter dated 17 July 2008, I am writing to confirm the following:

- You will remain on the SetClear Pte. Ltd. payroll through until 30 June 2009;
- The Company will continue to reimburse you the cost of maintaining your Cobra medical insurance up to and including 30 June 2009 as per Cobra Scheme rules.

These additional arrangements are provided to you in good faith by the Company to assist you as you work through this difficult period.

We are proposing this strictly on condition that you confirm that the terms and conditions which have been previously agreed by you, per your separation agreement dated 17 July 2008, remain in full force and effect and are re-confirmed by you.

Yours sincerely,

[signature]

Toni Carroll

For and on behalf of

SetClear Pte. Ltd.

I hereby agree and accept the terms and conditions as set out above:

[signature]

Name: Mr. Bill Ashlock

Date:

9 The letter dated 28 February 2009 stated: [note: 11]

Dear Bill,

Following your recent conversation with Laurie Young I am writing to confirm that your final day of employment with SetClear Pte Ltd will be 28 February 2009.

As agreed, your salary and benefits have been calculated and paid up to 31 December 2008 and you have been on unpaid leave up to and including 28 February 2009.

All other terms agreed with you and confirmed in our letters dated 17 July 2008 and 9 October 2008 remain unchanged.

Yours sincerely,

[signature]

Toni Carroll

For and on behalf of

SetClear Pte Ltd

I hereby understand and agree to the terms and conditions that are set out above.

Signed: [signature] Date: 28/02/09

Bill Ashlock

10 On 20 January 2010, the Appellant commenced proceedings ("the American Action") against the Respondents and Slone in the United States District Court, Southern District of New York ("the New York court") claiming "violations of New York State Labor Laws, breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, quantum meruit, breach of fiduciary duty, promissory estoppel, constructive trust, and for an Accounting". [note: 12] Essentially, the American Action was brought to seek relief in respect of the founder benefits.

11 On 17 February 2011, the Respondents commenced the Singapore Action with the following prayers: [note: 13]

1. A declaration that the [Appellant] is not entitled, under a severance agreement dated 17 July 2008 entered into between the [1st Respondent] and the [Appellant] and reaffirmed by way of two letters from the [1st Respondent] to the [Appellant] dated 9 October 2008 and 28 February 2009 (collectively the "Severance Agreement"), to bring any claim against the[1st Respondent and/or its affiliated companies, including but not limited to the 2nd to 5th Respondents], in connection with and/or in relation to the [Appellant's] employment and/or association with the [1st Respondent] and its affiliated companies, such claims including but not limited to a claim for "founder" benefits which the [Appellant] alleges were conferred upon him by the [1st Respondent] and/or its affiliated companies;

2. A declaration that the [Appellant] breached the Severance Agreement by commencing and maintaining Civil Action No. 10-CV-0453(GBD) against the [Respondents] in the United States District Court, Southern District of New York ("US Proceedings") in respect of the [Appellant's] alleged "founder" benefits;

3. An order that the [Appellant] do pay the [Respondents] damages to be assessed in respect of all costs, expenses and losses incurred by the [Respondents] arising out of or in connection with the [Appellant's] breach of the Severance Agreement;

4. An order restraining the [Appellant] from continuing the US Proceedings or commencing any further or other proceedings in the United States of America or elsewhere against the [Respondents] in respect of his alleged "founder" benefits;

5. An order that the costs of and incidental to the application be paid by the [Appellant] to the [Respondents]; and

6. Such further reliefs that [the High Court] deems fit.

12 The Judge who heard the Singapore Action ordered prayers 1, 2 and 4 in terms and with costs fixed at $15,000 inclusive of disbursements. [note: 14] As regards prayer 4, the Judge further clarified that "[f]or the avoidance of doubt, nothing in these orders prohibits the [Appellant] from commencing or continuing any Action against Jonathan Slone". [note: 15] As a result of the Judge's decision, the Appellant was restrained from continuing the American Action or commencing any further or other proceedings in the United States of America or elsewhere against the Respondents in respect of the founder benefits. Dissatisfied with the Judge's decision, the Appellant appealed.

The decision below

13 In the GD, the Judge dealt mainly with the issue of whether cl 14 should be construed to mean that the Appellant had agreed thereunder not to pursue any claims in the future against the Respondents, including the Appellant's claim for the founder benefits in the American Action. The Judge held that the terms of cl 14 were simple and clear and that under it the parties had effected a full and final settlement of all claims by the Appellant against the Respondents. As such, the former was not entitled to commence or continue with the American Action against the latter (see [36] of the GD). Following from the construction which the Judge had placed on cl 14, and as the Appellant had submitted to the jurisdiction of the Singapore courts, the Judge held that in those circumstances

an anti-suit injunction should, generally speaking, be granted to enforce cl 14.

The issues on appeal

14 The Appellant relied on two main grounds in his appeal. First, the Appellant contended that the Judge erred in his construction of cl 14. In particular, the Appellant argued that: [note: 16]

> Readin the context of the [17 July 2008 Agreement] as a whole, the reference in clause 14 is obviously only to claims arising from the employment relationship between the Appellant and the 1st Respondent. Where clause 14 was intended to benefit more than just the 1st Respondent, this was made clear by the express reference to the 1st Respondent's affiliated companies. If it was intended by the parties that clause 14 should have effect in respect of all claims, whether arising from the Appellant's employment relationship or not, the parties would have so provided in clear terms, as they did in respect of the parties who are entitled to rely on clause 14.

15 Second, the Appellant argued that given that the ultimate relief sought by the Respondents in the Singapore Action was Actually an anti-suit injunction, the Judge was wrong to begin his analysis of the matter with a determination on the *substantive* reliefs prayed for by the Respondents in the Singapore Action (see [11] above). Instead, the Judge in his analysis ought to have first directed his mind to the private international law principles applicable in respect of interlocutory anti-suit injunctions in the present case. This, the Appellant contended, would lead to a result that is different from that arrived at by the Judge in his decision. He also asserted that besides cl 14, the Judge should also have considered other relevant factors, *eg*, the New York court was the natural forum for the dispute; while the Appellant's employment contract provided for jurisdiction before the Singapore courts, it was expressly stated to be non-exclusive; the 3rd and 4th Respondents had submitted to the jurisdiction of the New York court; and the delay in the institution of the Singapore Action and the failure of the Respondents to apply for a stay of the American Action, was contrary to international comity.

16 In light of the arguments raised by the Appellant, the issues in the appeal were essentially twofold:

(a) Whether the Judge erred in his construction of cl 14; and

(b) Whether the Judge was wrong to determine the case before him on its merits first before concluding as a matter of consequence that an anti-suit injunction was justified.

The decision

Interpretation of cl 14

17 Mr Kelvin Tan ("Mr Tan"), Acting for the Appellant, raised a preliminary point in his written submissions that cl 14 was not apt for summary determination. In particular, he contended that cl 14: [note: 17]

> ... cannot be properly interpreted summarily in an originating summons and needs to be interpreted at a full trial having regard to the full evidence surrounding the making of the Agreement and the parties' conduct. Given that the Agreement has been long pleaded as a defence in the [American Action], the interpretation of clause 14 ought to be tried in the [American Action].

18 He further argued that cl 14 was not free of ambiguity such that it was apt for summary determination in the Singapore Action which was commenced by way of an originating summons. In that vein, Mr Tan also pointed out that the preamble of the 17 July 2008 Agreement referred to the cessation of the Appellant's employment without any reference to the founder benefits. The preamble read: [note: 18]

> …
>
> Dear Bill,
>
> We write following recent discussions regarding your resignation from employment with SetClear Pte Ltd …
>
> In consideration of your acceptance of the terms within this letter, *detailed below are the arrangements for your cessation of employment as mutually agreed*:
>
> …
>
> [emphasis added]

19 Mr Tan then drew our attention to the closing words of the 17 July 2008 Agreement which only referred to the termination of the Appellant's employment and payments associated thereof, without reference to the founder benefits. This, he claimed, further demonstrated that the parties in signing the 17 July 2008 Agreement had not intended the scope of cl 14 to be as wide as the Respondents contended it to be. He underscored the following closing words: [note: 19]

> In acknowledgement of the above *termination and associated payments*, please sign the duplicate of this letter and return to me.
>
> …
>
> [emphasis added]

20 Mr Tan also alluded to the factual matrix leading up to, and subsequent to, the signing of the 17 July 2008 Agreement which he claimed rendered a summary determination of the construction of cl 14 in the Singapore Action inapt. Accordingly, he argued that cl 14 ought to be determined at a full trial in the American Action instead. In his written submissions he stated: [note: 20]

> 68. In the present case, it is submitted that this Honourable Court should give due consideration to the matrix of facts leading up to and subsequent to the signing of the termination agreement.
>
> 69. The first set of relevant facts relates to the circumstances in which the Appellant became involved in the business. In particular, the Appellant had only agreed to establish the start-up with Slone if he was given equal equity participation by way of the Founder's Equity. Subsequently, even when the Appellant entered into an employment relationship with the 5th Respondent, the Appellant continued to maintain an equity interest in the business.
>
> 70. Despite the Appellant's subsequent entry into contracts of employment, the Appellant's Founder's Equity remained separate and distinct from his employment relationships with the

5th Respondent and subsequently the 4th and 1st Respondents.

71. Secondly, it is important to consider the circumstances leading to the 17 July 2008 meeting when the Agreement was entered into. The Appellant was on "leave" since his disagreement with Slone and received a call from Young, who works for the Human Resources Department of the 2nd Respondent, requesting for the meeting. It was only natural for the Appellant to assume that this meeting concerned his employment with the 1st Respondent. Therefore, the Appellant signed the Agreement, believing that it was applied to the termination of his employment, and not his Founder's Equity.

72. Thirdly, consideration should be given to the fact that the discussions between the Appellant and Young, during the time of the signing of the Agreement itself or over the course of the 6-month long e-mail, did not indicate that the Appellant's claim for his Founder's Equity was to be subsumed within the ambit of clause 14.

…

73. For the above reasons, it is respectfully submitted that there are real and substantial questions of law and fact in respect of whether clause 14 of the Agreement provides a defence to the Appellant's claim or whether the Agreement only pertains to the Appellant's employment relationship with the 1st Respondent.

21 On the other hand, counsel for the Respondents, Mr Alvin Yeo SC, argued that the Judge was correct in interpreting cl 14 in the way he did and in holding that it precluded the Appellant from continuing the American Action and/or commencing any further or other proceedings in the United States of America or elsewhere against the Respondents. The primary basis for Mr Yeo's case for the Respondents lay in the words "full and final settlement of *all and any claims*" and "not to pursue *any future claim* against SetClear Pte Ltd and its affiliated companies" [emphasis added] in cl 14 which undoubtedly indicated that the Appellant's alleged entitlement to the founder benefits was within the knowledge of the 1st Respondent [note: 21] when setting out cl 14. This, among other things, Mr Yeo reasoned, demonstrated that the parties had unambiguously contemplated and intended cl 14 of to "achieve finality in settling all claims which the Appellant had or may have against the Respondents" which would naturally include the Appellant's claim for the founder benefits. [note: 22]

22 We do not propose to belabour what is very much a straightforward point. Contrary to the Appellant's submission, we agreed with the Respondents that cl 14 was not ambiguous. On a plain reading of cl 14, it could not have been clearer that it provided for the full and final settlement of all and any of the Appellant's claims, future or existing, against the Respondents. This would include whatever claims the Appellant might have against each of the Respondents, irrespective of their nature. Another significant factor which was incompatible with the submission of the Appellant was that if it was indeed the case that cl 14 was concerned only with his entitlement or benefits in relation to his employment – and here we would note that his employment was with the 1st Respondent – why would it also cover "all and any claims" he might have against the other Respondents?

23 It seemed to us clear that the "matrix of facts" which Mr Tan had sought to rely in support of the Appellant's case principally pertained to the Appellant's subjective belief as to the Actual ambit of cl 14 (see [20] above). As rightly pointed out by Mr Yeo, a court in undertaking a contextual approach in the construction of a contract "does not inquire into the parties' subjective states of

mind but makes an objective judgment based on the materials already identified": [note: 23] see *Bank of Credit and Commerce International SA v Ali and others* [2002] 1 AC 251 at 258. The "matrix of facts" brought up by Mr Tan were, therefore, for the most part irrelevant. In the result, we did not see any merit in the Appellant's contention that a summary determination on the ambit of cl 14 in the Singapore Action was inapt.

24 Accordingly, we agreed with the Judge that this was a proper case for summary determination and that there was really nothing to go for trial. In passing, we would only add that, while generally subsequent conduct should not be relied upon to construe a document, in this case the Appellant's acceptance of the two letters (see [8]-[9] above) certainly confirmed what, in our view, was the correct construction of cl 14.

The propriety of the Judge's approach in deciding the Singapore Action

25 We now turn to consider the second issue. It was true that the Judge first determined the case before him on its merits before holding that, in consequence, an anti-suit injunction should be granted. To better appreciate the approach of the Judge, we set out his reasoning below (see [41]-[42] of the GD):

> 41 In the present case, [the Appellant] had agreed under cl 14 not to pursue any future claim against the [1st Respondent] and its affiliated companies. This was a consequence of the full and final settlement of all his claims... Moreover, the cases which [counsel for the Appellant] relied on were cases in which the court was asked to grant an interlocutory anti-suit injunction to restrain a party from proceeding with a foreign Action pending the outcome of the proceedings in the jurisdiction from which the injunction was sought. In the case before me, the plaintiffs [*ie*, the Respondents] were not seeking an interlocutory anti-suit injunction but a permanent one on the premise that the court would be able to and would make a finding in their favour on the interpretation of cl 14.
>
> 42 I agreed with [counsel for the Respondents] that if I were to interpret cl 14 in the [Respondents'] favour, then an anti-suit injunction ought, generally speaking, to be granted to enforce my ruling since [the Appellant] had submitted to the jurisdiction of the Singapore courts. Indeed he is currently working in Singapore. The general rule is subject to [the Appellant] showing a special or exceptional reason why the injunction should not be granted. No such reason was shown. All [counsel for the Appellant] could say was that the American Action was at an advanced stage but that was no reason to allow [the Appellant] to continue with it once a final ruling was given by a competent court whose jurisdiction he had submitted to. In the light of my ruling on the interpretation of cl 14, the American Action against the [Respondents] was both in breach of cl 14 and vexatious and oppressive.

26 Clearly, the Appellant had submitted to the jurisdiction of the Singapore courts. The Appellant could have, but did not make any application for a stay of the Singapore Action. Instead, he was content to enter his appearance unconditionally and defend the Singapore Action in the hearing before the Judge. Coupled with the fact that the Respondents did not make any application for an *interlocutory* anti-suit injunction pending the final determination of the substantive matters engendered by the Singapore Action, this showed that the Judge was merely dealing with the Singapore Action as per the manner it was pleaded and contended by the Respondents.

27 Indeed, there would have been little difficulty for this court to accept the Appellant's complaint if the Respondents had Actually applied for an *interlocutory* anti-suit injunction while the determination on the merits of the Singapore Action was still pending. This is illustrated by the

Australian case of *CSR Ltd v Cigna Insurance Australia Ltd* (1997) 71 ALJR 1143 (HCA) ("*CSR Ltd v Cigna Insurance Australia Ltd*"), where the appellants had sued their insurers, the respondents, in the United States of America claiming indemnity in respect of certain third-party asbestos claims brought against the appellants in the United States of America. In response, the respondents commenced proceedings in New South Wales against the appellants seeking, *inter alia*, (a) negative substantive declarations to the effect that the respondents were not liable to indemnify the appellants, and (b) permanent anti-suit injunctions restraining the appellants from taking further steps in the American proceedings. However, the respondents later sought an interlocutory anti-suit injunction when the appellants applied for a stay of the New South Wales proceedings subsequently. It was against such a backdrop that the High Court of Australia decided the appeal applying the legal principles governing the grant of interlocutory anti-suit injunctions. However, in the present case, the Respondents had not applied for an interlocutory anti-suit injunction pending the determination of the Singapore Action.

28 In this regard, we would cite the following two passages from Steven Gee QC, *Commercial Injunctions* (Sweet & Maxwell, 5th Ed, 2004) at p 416 to show that the approach taken by the Judge is correct:

> *The English [ie, domestic] court may grant an injunction to prevent a party bound by the res judicata or issue estoppel effect of an English judgment relitigating the underlying dispute or issue abroad.* This extends to litigating abroad matters which could and should have been litigated as part of the original Action. *Granting an anti-suit injunction for this purpose both forwards an important English public policy of preventing collateral attack on a final judgment by a disappointed litigant, and gives effect to a substantive right not to be sued which has been created by the relevant judgment. This is very different from an alternative forum case where the English court has not yet rendered a judgment on the merits.* On the other hand in *E.D. & F Man (Sugar) Ltd v Haryanto (No. 2)* the public policy was not so strong as to justify an injunction against a party relying in any court worldwide upon a foreign judgment which was inconsistent with an English one. The granting of a declaration established the position in English law, whereas a worldwide injunction would have been an illegitimate intrusion on the processes of courts throughout the world.
>
> The application can be made by application notice issued in the original proceedings. This is because *the purpose of the anti-suit injunction is in effect to uphold and enforce the judgment given in the Action. Proceedings to do this are within the scope of the original Action for which both parties have submitted to the English jurisdiction*. A Mareva injunction in aid of execution would be a matter within the scope of the proceedings in which a final judgment had been obtained and this can be sought by application in those proceedings. It is not necessary to bring separate proceedings for the purpose of enforcing the judgment or obtaining relief in aid of execution. *Likewise where the purpose of the injunction is to prevent litigation abroad of a point covered by that judgment*.
>
> [emphasis added; footnotes omitted]

29 It is also apposite to note that there is nothing irregular or improper in the Respondents commencing the Singapore Action seeking (as an alternative strategy to an outright anti-suit injunction application) a negative declaration of non-liability which in turn could lead to the grant of an anti-suit injunction in accordance with the views expressed in the passages quoted above. In *Halsbury's Laws of Singapore vol* 6(2) (Butterworths Asia, 2009) at para 75.140, it is stated:

> …

Another alternative strategy is to pre-empt the foreign judgment by obtaining a judgment (usually a declaration of non-liability) in another forum which will be recognised under the law of the enforcing forum as creating a *res judicata* effect between the parties.

30 In the present case, the Respondents commenced the Singapore Action *after* the Appellant instituted proceedings in the American Action which was still pending final determination in the United States (see [10]-[11] above). Despite this, not only did the Appellant fail to take steps to challenge the local court's jurisdiction in the Singapore Action, he had made a conscious decision to participate in the hearing of the Singapore Action before the Judge. As observed earlier, the Appellant had chosen to resist the Singapore Action on the substantive and not the jurisdictional front despite the fact that he could have pursued the latter course (see [26] above). It was not in dispute that the Appellant had not taken out any stay of proceedings application in relation to the Singapore Action.

31 In our judgment, parties to a dispute who have entered into parallel proceedings in more than one national court take the risk of being bound by the decision of the court which first renders its decision and, subject to the rules on the doctrine of *res judicata*, being barred by way of a permanent anti-suit injunction from prosecuting further any pending proceedings in the other national courts once that decision is rendered. This is so regardless of whether the decision of the deciding court is appealable under the laws of that country. In such a situation, the parties can only either seek recourse via appellate review of the deciding court's decision in that country or continue to be bound by the deciding court's ruling on the dispute. It would be highly unsatisfactory if the position were to be otherwise as that would effectively spell no conclusive end to the resolution of disputes between parties embroiled in parallel proceedings in more than one national court.

The grant of the anti-suit injunction following the Judge's construction of cl 14

32 Following from the above, it seemed to us entirely logical for the Judge, after holding that cl 14 did preclude the Appellant from claiming against the Respondents for the founder benefits, to proceed to grant the anti-suit injunction in the present case.

33 At [40] of the GD, the Judge applied his mind to the principles applicable to the grant of anti-suit injunctions, having regard to the case of *John Reginald Stott Kirkham and others v Trane US Inc and others* [2009] 4 SLR(R) 428 ("*John Reginald Stott Kirkham*") and other cases cited therein. The fact that the Judge was conscious of those principles can be found in [42] of the GD where some considerations, reminiscent of those highlighted in what may be considered the *locus classicus* on anti-suit injunctions (*ie*, *Société Nationale Industrielle Aérospatiale v Lee Kui Jak* [1987] AC 871), could be detected:

> 42 I agreed with [counsel for the Respondents] that if I were to interpret cl 14 in the [Respondents'] favour, then an anti-suit injunction ought, generally speaking, to be granted to enforce my ruling since [the Appellant] had submitted to the jurisdiction of the Singapore courts. Indeed he is currently working in Singapore. The general rule is subject to [the Appellant] showing a special or exceptional reason why the injunction should not be granted. No such reason was shown. All [counsel for the Appellant] could say was that *the American Action was at an advanced stage* but that was no reason to allow [the Appellant] to continue with it once a final ruling was given by a competent court whose jurisdiction he had submitted to. In the light of my ruling on the interpretation of cl 14, the American Action against the [Respondents] was both in breach of cl 14 and *vexatious and oppressive*.
>
> [emphasis added]

34 The question that remained was therefore whether there were any other reasons or grounds upon which the Judge should, nevertheless, not have exercised his discretion to grant the anti-suit injunction after deciding on the merits in respect of cl 14.

35 One of the trite principles as regards *interlocutory* anti-suit injunction is that the court's jurisdiction in respect of such remedies should only be exercised sparingly and with great caution: see *Halsbury's Laws of England vol* 2 (LexisNexis, 5th Ed, 2008) p 938 at para 1224; *Dicey, Morris and Collins on the Conflict of Laws vol* 1 (Sweet & Maxwell, 14th Ed, 2006) at pp 502-7. However, the principles governing *interlocutory* anti-suit injunctions do not apply unmodified to cases where a permanent injunction is sought after a judgment on the merits. In *National Westminster Bank plc v Utrecht-America Finance Co* [2001] CLC 1372, the plaintiff in an Action in England complained, *inter alia*, that the defendant had initiated proceedings in California in breach of a contract (*ie*, there was no alleged breach of an arbitration agreement or any jurisdiction clause). The judge at first instance made an order restraining the proceedings brought by the defendant in California. The defendant's appeal to the English Court of Appeal was dismissed. In dismissing the appeal, Clarke LJ (with whom Laws and Aldous LJJ agreed) stated (at [29]-[35]) the following which is necessary to be quoted at length:

> [After setting out the principles that apply to the grant of *interlocutory* anti-suit injunctions]
>
> 29. I accept that those are among the considerations which are relevant to the question whether an injunction should be granted at an interlocutory stage. I am also conscious of the principle stated by the Supreme Court of Canada in *Amchem Products Inc v British Columbia (Workers Compensation Board)* [1993] 1 SCR 897, which was quoted with approval by Lord Goff in the Airbus Industrie case at p. 713; 139:
>
> > '… the domestic court as a matter of comity must take cognisance of the fact that the foreign court has assumed jurisdiction. If, applying the principles relating to forum non conveniens … the foreign court could reasonably have concluded that there was no alternative forum that was clearly more appropriate, the domestic court should respect that decision and the application should be dismissed.'
>
> 30. *It is common ground that those principles require significant modification where the foreign proceedings are brought in breach of an English jurisdiction clause because the English court will readily grant an injunction restraining a party from commencing or continuing foreign proceedings which are in breach of contract*: see e.g. *Continental Bank NA v Aeakos Compania Naviera SA* [1994] 1 WLR 588, *The Angelic Grace* [1995] 1 Ll Rep 87 and *Donohue v Armco Inc* [2000] CLC 1090. Mr Brindle submitted that those principles have no application here because the TOA does not contain an exclusive jurisdiction clause.
>
> 31. *Equally, in my opinion, the principles identified above require significant modification in a case where a permanent injunction is sought after a judgment on the merits. If the English court gives judgment for the claimant on the merits and the judgment includes a declaration that the defendant has brought foreign proceedings in breach of contract, and it is asked to exercise its equitable jurisdiction to grant a permanent injunction to restrain a continued breach of contract by further pursuing such foreign proceedings, different considerations arise from those which arise at an interlocutory stage.*
>
> 32. *Indeed it seems to me that the principles which then become applicable are very similar to those which apply in the case where an interlocutory judgment is sought on the ground that*

the foreign proceedings are in breach of contract. The relevant principles in that class of case can be seen from the judgments in The Angelic Grace [1995] 1 Ll Rep 87. Although that was a case in which the clause provided for arbitration in London and not for the exclusive jurisdiction of the English courts, it is plain that the same principles apply to both classes of case. Thus in *The Angelic Grace* Leggatt LJ (at p. 94) followed this statement of principle from the judgment of Steyn LJ in *Continental Bank NA v Aeakos Compania Naviera SA* (as reported in [1994] 1 Ll Rep 505 at p. 512 — where the report is more accurate than in the WLR):

> 'In our view the decisive matter is that the bank applied for the injunction to restrain the defendants' clear breach of contract. In the circumstances, a claim for damages for breach of contract would be a relatively ineffective remedy for the defendants' breach of contract. If the injunction is set aside, the defendants will persist in their breach of contract, and the bank's legal rights as enshrined in the jurisdiction agreements will prove to be valueless. Given the total absence of special countervailing factors, this is the paradigm case for the grant of an injunction restraining a party from Acting in breach of an exclusive jurisdiction agreement. In our judgment the continuance of the Greek proceedings amounts to vexatious and oppressive conduct on the part of the defendants. The judge exercised his discretion properly.'

33. In *The Angelic Grace* this court rejected in robust terms the argument that the grant of an injunction to restrain foreign proceedings which were in clear breach of contract would offend against comity. It did so on the basis that it is vexatious and oppressive for a party to maintain proceedings in breach of its agreement not to do so: see e.g. per Leggatt LJ at p. 96. Millett LJ expressed his views in the following passages (at p. 86) which have been much quoted since:

> '*In my judgment, the time has come to lay aside the ritual incantation that this is a jurisdiction which should only be exercised sparingly and with great caution. There have been many statements of great authority warning of the danger of giving an appearance of undue interference with the proceedings of a foreign Court. Such sensitivity to the feelings of a foreign Court has much to commend it where the injunction is sought on the ground of forum non conveniens or on the general ground that the foreign proceedings are vexatious or oppressive but where no breach of contract is involved. In the former case, great care may be needed to avoid casting doubt on the fairness or adequacy of the procedures of the foreign Court. In the later case, the question whether proceedings are vexatious or oppressive is primarily a matter for the Court before which they are pending. But in my judgment there is no good reason for diffidence in granting an injunction to restrain foreign proceedings on the clear and simple ground that the defendant has promised not to being* [sic] *them*.
>
> …
>
> *I cannot accept the proposition that any Court would be offended by the grant of an injunction to restrain a party from invoking a jurisdiction which he had promised not to invoke and which it was its own duty to decline*.
>
> …
>
> In my judgment, where an injunction is sought to restrain a party from proceeding in a foreign Court in breach of an arbitration agreement governed by English law, the English Court need feel no diffidence in granting the injunction, provided that it is sought promptly and before the foreign proceedings are too far advanced. I see no difference in principle

between an injunction to restrain proceedings in breach of an arbitration clause and one to restrain proceedings in breach of an exclusive jurisdiction clause as in *Continental Bank NA v Aeakos Compania Naviera SA*, [1994] 1 WLR 588. The justification for the grant of the injunction in either case is that without it the plaintiff will be deprived of its contractual rights in a situation in which damages are manifestly an inadequate remedy. The jurisdiction is, of course, discretionary and is not exercised as a matter of course, but good reason needs to be shown why it should not be exercised in any given case.'

34. In *Donohue v Armco* [2000] CLC 1090 Stuart-Smith LJ adopted those principles, although he said that he thought that we should adhere to the expressions 'strong cause' or 'strong reason' rather than good reason. *I should add that it seems to me that the English court should not feel diffidence in granting such an injunction in order to restrain a breach of contract whether or not it would be the duty of the foreign court to decline jurisdiction.*

35. Those principles apply to the granting of an interlocutory injunction to restrain foreign proceedings which are brought in breach of an exclusive jurisdiction clause. Mr Brindle correctly submitted that in this case cl. 8.2(d) is not an exclusive jurisdiction clause. However, once it is held that Utrecht were in breach of the TOA in commencing the Californian proceedings and that they remain in breach of the TOA in continuing to pursue them, as held by the judge, it seems to me that essentially the same principles apply. Thus it would be vexatious to allow Utrecht to continue its breach in circumstances where damages would not be an adequate remedy. As Millett LJ put it, there is no good reason for diffidence on the clear and simple ground that Utrecht promised not to do what it is now doing. I can see no reason in principle why comity should stand in the way of the granting of an injunction.

[emphasis added]

36 Having regard to the foregoing and the reasons given by the Judge at [41]-[42] of the GD, we did not see anything to suggest that the Judge had erred in his decision to grant the anti-suit injunction after deciding on the underlying merits of the Singapore Action.

37 For completeness, we wish to add that even assuming that the principles governing the grant of *interlocutory* anti-suit injunctions were to be applied *unmodified* in the present case, the grant of the anti-suit injunction would be justified. The general principles governing the grant of *interlocutory* anti-suit injunctions are set out at [35] above and will not be repeated here. As far as local authorities are concerned, the position has been established by this Court in *John Reginald Stott Kirkham* at [28]-[29] where the approach taken by the High Court in *Evergreen International SA v Volkswagen Group Singapore Pte Ltd* [2004] 2 SLR(R) 457 at [16] ("*Evergreen International SA*") was approved:

28 In *Evergreen International SA v Volkswagen Group Singapore Pte Ltd* [2004] 2 SLR(R) 457 ("*Evergreen International SA*"), Belinda Ang Saw Ean J ("Ang J") stated that she had to consider the following elements in determining whether an anti-suit injunction ought to be granted in the case (at [16]):

(a) whether the defendants are amenable to the jurisdiction of the Singapore court;

(b) the natural forum for resolution of the dispute between the parties;

(c) the alleged vexation or oppression to the plaintiffs if the foreign proceedings are to continue; and

(d) the alleged injustice to the defendants as an injunction would deprive the defendants of the advantages sought in the foreign proceedings.

29 In our view, this is as good a list as any with only one qualification, which would constitute a fifth element - whether the institution of the foreign proceedings is in breach of any agreement between the parties (see *South Carolina Insurance Co v Assurantie Maatschappij "De Zeven Provincien" NV* [1987] AC 24). Where there is such an agreement, the court may not feel diffident about granting an anti-suit injunction as it would only be enforcing a contractual promise and the question of international comity is not as relevant (see *The Angelic Grace* [1995] 1 Lloyd's Rep 87 at 96 and *WSG Nimbus Pte Ltd v Board of Control for Cricket in Sri Lanka* [2002] 1 SLR(R) 1088 at [91]). However, as far as the present case was concerned, this element did not come into play as there was no such agreement between the parties. That said, we will now examined each of these elements in relation to the facts and circumstances of the present case, although one could say that the third and fourth elements are really quite closely related, being two sides of the same coin.

38 In line with the approach elaborated in *John Reginald Stott Kirkham* quoted above, we also saw a preponderance of factors which weighed in favour of granting an anti-suit injunction in our present case. These factors were:

(a) The Appellant was at the material time amenable [note: 24] to the jurisdiction of the local courts because he was working in Singapore at the time the Singapore Action was commenced. Further, the Appellant had submitted to the jurisdiction of the Singapore courts by not making any application for a stay of that Action;

(b) There were strong reasons to believe that the natural forum for the resolution of the underlying dispute between the Appellant and the Respondents was Singapore given that (i) the 1st Respondent was a company incorporated in Singapore and the Appellant was stationed in Singapore while he was employed by the 1st Respondent; [note: 25] (ii) the 17 July 2008 Agreement was discussed and signed in Singapore; [note: 26] (iii) the Appellant was residing in Singapore; [note: 27] (iv) there was a non-exclusive jurisdiction clause in favour of the Singapore courts under the letter from the 1st Respondent dated 10 May 2007 which was linked to the 17 July 2008 Agreement; and (v) the governing law in respect of the matters covered in the letter dated 10 May 2007 was expressed to be Singapore law (see [33] of the GD);

(c) There would be vexation or oppression to the Respondents if the American Action were to continue because the American Action would, for the reasons stated at [17]-[24] above indicating that the Appellant had breached cl 14 by commencing the American Action, likely be "bound to fail": see *Dicey, Morris and Collins on the Conflict of Laws vol* 1 (Sweet & Maxwell, 14th Ed, 2006) at pp 504-5;

(d) The Appellant had not pointed out any potential advantage sought in the American Action which he would be deprived of if the anti-suit injunction were to be granted;

(e) Contrary to what the Appellant submitted, the American Action was not at an advanced stage. No doubt certain interlocutory motions arising from the American Action had already been argued before in the United States of America and discovery was already underway in the American Action, [note: 28] the trial had yet commenced. Furthermore, the Appellant had, so far, still not effected service of the legal documents on the 1st and 5th Respondent in respect of the

American Action; and

(f) An anti-suit injunction in the present case would not, strictly-speaking, offend against the notion of international comity because the injunction would effectively be no more than an *in personam* order made against the Appellant following his breach of a specific contractual promise encapsulated in cl 14: see *Bank of America National Trust and Savings Association v Djoni Widjaja* [1994] 2 SLR(R) 898 at [11] and [24] and *The Angelic Grace* [1995] 1 Ll Rep 87 quoted in [35] above.

Conclusion

39 For all the reasons given above, the appeal was dismissed.

[note: 1] Appellant's Core Bundle Vol II, pp 8-9.

[note: 2] Appellant's Core Bundle Vol II, p 27.

[note: 3] Appellant's Core Bundle Vol II, p 30.

[note: 4] Appellant's Core Bundle Vol II, p 11 para 32.

[note: 5] Respondent's Case, p 11 para 11.

[note: 6] Appellant's Core Bundle Vol II, pp 50-3.

[note: 7] Appellant's Core Bundle Vol II, p 54.

[note: 8] Ibid.

[note: 9] Respondent's Core Bundle, pp 1 and 3.

[note: 10] Respondent's Core Bundle, p 1.

[note: 11] Respondent's Core Bundle, p 3.

[note: 12] Appellant's Core Bundle Vol II, p 62.

[note: 13] ROA Vol II, pp 5-7.

[note: 14] Appellant's Core Bundle Vol I, pp 4-5.

[note: 15] ORC 2282/2011 (Order Made In Chambers), Order 3.

[note: 16] Appellant's Skeletal Submissions, [9].

[note: 17] Appellant's Case, pp 22-3.

[note: 18] Appellant's Core Bundle Vol II, p 50.

[note: 19] Appellant's Core Bundle Vol II, p 53.

[note: 20] Appellant's Case, pp 30-2.

[note: 21] Respondents' Case, p 41.

[note: 22] Respondents' Case, pp 40-1.

[note: 23] Respondents' Case, p 50.

[note: 24] On meaning of "amenable" to a jurisdiction, see *Koh Kay Yew v Inno-Pacific Holdings Ltd* [1997] 2 SLR(R) 148 at [17].

[note: 25] Respondents' Case, p 76.

[note: 26] Ibid.

[note: 27] Ibid.

[note: 28] Appellant's Case, pp 49-51.