I. Supreme Court of Singapore - High Court

II. Car & Cars Pte Ltd v Volkswagen AG and Another - [2009] SGHC 77 (3 April 2009)

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[2009] SGHC 77

Suit No:	Suit 960/2008, SUM 261/2009
Decision Date:	03 Apr 2009
Court:	High Court
Coram:	Saqib Alam AR
Counsel:	Koh Kia Jeng and Vanessa Yong (Rodyk & Davidson LLP) for the plaintiff, Chan Kia Pheng and Ang Keng Ling (KhattarWong) for the second defendant

Subject Area / Catchwords

Arbitration

Judgment

3 April 2009

Judgment reserved.

Saqib Alam AR:

1 This is an application by the 2 nd defendant, Volkswagen Group Singapore Pte Ltd, to stay all further proceedings in the plaintiff's action that relate to itself, in favour of arbitration.

2 The plaintiff, Car & Cars Pte Ltd, is a company incorporated in Singapore which is in the business of automobile dealership. The plaintiff carried out its business at 247 Alexandra Road, Singapore ("the Premises"). The 1 st defendant, Volkswagen

Aktiengesellschaft is a German automobile manufacturing group, headquartered in Wolfsburg, Germany. Sometime in May 1999, the plaintiff and the 1st defendant entered into an agreement (the "Importer Agreement") where the plaintiff was granted the right to import into Singapore, and distribute products of the Volkswagen marque, including, but not limited to, Volkswagen passenger cars.

3 On 2 November 2004, the 1st defendant entered into a Memorandum of Understanding ("the MOU") with the plaintiff. The MOU outlined generally the principal terms of the plaintiff's role as importer that would be transferred from the plaintiff to the 2nd defendant. Clause 2 of the MOU provided that the plaintiff would be the single Volkswagen dealer with effect from 1 January 2005 and would get a standard Volkswagen dealer contract with agreed sales quotas subject to review based on market conditions. Clause 3 of the MOU provided that the parties would "on good faith and best endeavor basis *(sic)* negotiate and conclude all terms and condition *(sic)* and enter into a definitive agreement in respect hereof within 4 weeks from the date of [the MOU]", failing which the MOU would expire. The MOU also provided that upon expiry, the parties would be under no obligation to proceed further.

4 The MOU expired in due course and was superseded by a formal written agreement entered into by the plaintiff and the 1st defendant on 9th December 2004 (the "9th December Agreement"). Under the 9th December Agreement, the plaintiff and the 1st defendant mutually agreed to terminate the Importer Agreement with regard to Volkswagen passenger cars on the terms and conditions contained therein, which took effect on 31 December 2004. Accordingly, by the 9th December Agreement, the 2nd defendant, as of 1 January 2005 became the *importer* of Volkswagen passenger cars in Singapore and the plaintiff acted as the *authorised dealer* of Volkswagen passenger cars. This arrangement between the plaintiff and the 2nd defendant was partly by conduct and partly in writing (together, the "Dealership Agreement"). The Dealership Agreement only related to Volkswagen *passenger* cars: the plaintiff continued to import and distribute Volkswagen products other than passenger cars.

5 By a mutual agreement between the plaintiff and the 2nd defendant, the Dealership Agreement was terminated on 31 January 2007. The Importer Agreement was also terminated by mutual agreement between the plaintiff and the 1st defendant on 31 January 2007. Initially, the 2nd defendant gave the plaintiff a 12-month notice of termination for the Dealership Agreement (the "12-month notice period") by way of a letter dated 16 November 2006. However the plaintiff and the 2nd defendant mutually decided to terminate the Dealership Agreement before the expiry of the 12-month notice period. With the discontinuance of the Dealership Agreement and the Importer Agreement, the plaintiff was no longer going to import or deal with any products bearing the Volkswagen marque from 1 February 2007.

6 To this end, the 1st defendant and the 2nd defendant (collectively, the "defendants") and the plaintiff entered into four written agreements (collectively "the settlement agreements") to govern the amicable parting of ways between them. Two of the agreements (listed (c) and (d) below) had another Singapore company, Group Exklusiv Pte Ltd ("GEPL") as a party. The plaintiff is a subsidiary of GEPL. Mr Peter Kwee, one of the protagonists in this saga, who led the negotiations for the plaintiff,

is a director of both GEPL and the plaintiff. The settlement agreements were as follows:

(a) an agreement made between the plaintiff and the 1st defendant in respect of the termination of the Importer Agreement (the "Termination of Importer Agreement") dated 31 January 2007;

(b) an agreement made between the plaintiff and the 2nd defendant in respect of the termination of the Dealership Agreement (the "Termination of Dealership Agreement") dated 31 January 2007;

(c) a Sale of Assets and VW Parts Agreement (the "Sale of Assets and VW Parts Agreement") made between the plaintiff, GEPL and the 2nd defendant dated 31 January 2007;

(d) an Assignment of Lease (the "Assignment of Lease") of certain units in the Premises made between GEPL and the 2nd defendant dated 1 February 2007.

The settlement agreements were executed and the material term for payment of settlement sums was timed to take place on 1 February 2007 to coincide with the "clean break" timing and date of 2359 hours (Singapore time) on 31 January 2007. Accordingly, as of 1 February 2007, the 2nd defendant has been the importer and dealer of Volkswagen products in Singapore.

7 As part of the settlement, the 1st defendant was to pay the plaintiff $1.2m under the Termination of Importer Agreement, and the 2nd defendant was to pay the plaintiff $800,000 under the Termination of Dealership Agreement. By the payment of these sums, the parties agreed that "neither Party shall have any claim against the other Party for any breach, default, contravention or other non-observance of any nature whatsoever of any term…" (contained in cl 3 of Termination of Importer Agreement as between the plaintiff and the 1st defendant; and cl 3 of the Termination of Dealership Agreement as between the plaintiff and the 2nd defendant).

8 Clause 3 of the Termination of Importer Agreement and cl 3 of the Termination of Dealership Agreement also provided that the payment of the $1.2m and $800,000 respectively was to be made to Volkswagen Financial Services Singapore Pte Ltd ("VFS") to set off an outstanding sum owed by the plaintiff to VFS in the sum of $3 million.

9 On 2 February 2007, after the 1st defendant and the 2nd defendant did not make payment to VFS, the plaintiff made arrangements to pay $3m to VFS to settle the sum owed by the plaintiff to VFS. On 6 February 2007, the 2nd defendant paid S$800,000 to the plaintiff. The cheque for the sum of S$1.2million was not given by the 1st defendant to the plaintiff until 20 March 2007. By this time, the plaintiff had already elected to treat the 1st defendant's failure to render payment of the said sum as repudiatory conduct and did not present the cheque for payment [note: 1]

10 In the present action (Suit 960 of 2008), the plaintiff alleges that the failure of the 1st defendant to pay the S$1.2 million timeously was a repudiation of the "global

settlement" reached between the parties. As a result of this repudiation, the plaintiff alleges that its rights against the defendants before the "global settlement" was reached were restored *viz* it could, once again, make claims against the defendants because the terms of the settlement did not matter anymore. On this basis, the plaintiff mounts its claim for *inter alia* , loss and damages arising from the breach of the Importer Agreement and in the alternative, loss and damages arising from the breach of an agreement to appoint the plaintiff as exclusive/sole dealer. [note: 2]

11 I should add at this juncture that only the plaintiff referred to the settlement agreements as a "global settlement". The 2 nd defendant disagreed with the plaintiff's choice of nomenclature. The 2 nd defendant's position was that the four agreements did not amount to a "global settlement", and were merely four contracts entered into in order to effect a "clean break" between the parties.

12 For the plaintiff to be able to mount its claim against the defendants, the issue to be determined was whether the late payment of the $1.2m constituted a repudiation of the settlement agreements which restores the plaintiff's rights against the defendants as they were before they entered the settlement agreements.

13 In the present summons, the issue I have to determine is whether the alleged repudiation, as it relates to the 2 nd defendant only, should be referred to arbitration under the arbitration agreement in the Termination of Dealership Agreement. This was the 2 nd defendant's application; the 1 st defendant was not represented at the hearing. In fact, the plaintiff had only just been granted leave to serve the writ on the 1 st defendant in Germany about 2 weeks before the hearing.

14 Before determining whether the current proceedings should be stayed in favour of arbitration, I shall first examine the dispute resolution clauses in detail.

The dispute resolution clauses

15 Of the four agreements entered into, only two agreements (namely, the Termination of Importer Agreement and Termination of Dealership Agreement listed (a) and (b) at [6] above) are relevant for present purposes. The "Sale of Assets and VW Parts Agreement and the Assignment of Lease continue to form the backdrop of the settlement reached between the parties; however as they involved GEPL (who was not a party to the present proceedings), the parties only made passing references to them in their submissions before me.

16 Interestingly, the Termination of Importer Agreement and Termination of Dealership Agreement contained different dispute resolution clauses. For clarity, I shall reproduce them:

(a) In the Termination of Importer Agreement, the relevant clause is cl 6. Clause 6 reads:

This agreement herein shall be governed by and its provision interpreted in accordance with the law of the Federal Republic of Germany. The courts in Wolfsburg shall have exclusive jurisdiction of any disputes arising out of or in connection with the agreement herein.

(b) In the Termination of Dealership Agreement, the relevant clause is cl 6 (the "arbitration agreement"). Clause 6 reads:

This agreement herein shall be governed by and its provision interpreted in accordance with the law of Singapore. Any disputes arising out of or in connection with this agreement herein shall be referred to arbitration in the Singapore International Arbitration Centre in accordance with the Rules of the Singapore International Arbitration Centre for the time being in force.

17 The plaintiff and the 2nd defendant were not in dispute that the arbitration clause contained in the Termination of Dealership Agreement was not void, inoperative or incapable of being performed. However, the plaintiff's position was that, by the arbitration agreement, the parties had agreed to domestic arbitration and accordingly, the Arbitration Act (Cap 10, 2002 Rev Ed) (the "AA") would be the governing regime. The plaintiff argued that, as the parties had agreed to domestic arbitration, a stay of proceedings was not mandatory. Under s 6 of the AA, the court has a discretion whether or not to stay proceedings in favour of arbitration. Under s 6 of the IAA, the International Arbitration Act (Cap 143A, 2002 Rev Ed) (the "IAA") the court must stay proceedings in favour of arbitration as long as the arbitration agreement is not null and void, inoperative or incapable of being performed: (see [21] below where the relevant provisions are reproduced). The plaintiff argued that the court should exercise its discretion in the plaintiff's favour and should not refer the matter to arbitration because it would lead to a multiplicity of proceedings and possible inconsistent findings as a result. For this reason, the plaintiff argued that the matter should not be referred to arbitration and should be determined by the courts, together with the plaintiff's claim against the 1st defendant.

18 The 2nd defendant argued that the IAA would apply in this case because the parties had intended that this was going to be an international arbitration when they entered into the arbitration agreement. As the IAA was the governing regime, a stay of the proceedings in favour of arbitration was mandatory under s 6 of the IAA. For this reason, the 2nd defendant argued that all proceedings relating to itself should be stayed in favour of arbitration.

19 Based on the position adopted by the parties, it is evident that the plaintiff had a more onerous hurdle to cross to defeat this application. The plaintiff had to establish: first, that the arbitration agreement was governed by the AA; and second, that I should exercise the discretion afforded by the AA and refuse a stay because of multiplicity of proceedings and the possibility of inconsistent findings by the court and arbitration tribunal.

The law

20 In Singapore, there are two legal regimes that govern arbitration. International arbitration is governed by the IAA (*supra* at [17]) and domestic arbitration is governed by the AA (*supra* at [17]).

21 The two legal regimes are mainly similar but one of the areas they differ is in the extent of curial intervention the courts can exercise when faced with an application to

stay court proceedings in the face of an arbitration agreement. Section 6 of the IAA provides:

6.— (1) Notwithstanding Article 8 of the Model Law, where any party to an arbitration agreement to which this Act applies institutes any proceedings in any court against any other party to the agreement in respect of any matter which is the subject of the agreement, any party to the agreement may, at any time after appearance and before delivering any pleading or taking any other step in the proceedings, apply to that court to stay the proceedings so far as the proceedings relate to that matter.

(2) The court to which an application has been made in accordance with subsection (1) **shall** make an order, upon such terms or conditions as it may think fit, staying the proceedings so far as the proceedings relate to the matter, unless it is satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed.

[…]

(emphasis mine)

The corresponding provision in the AA, also s 6, provides:

Stay of legal proceedings

6.— (1) Where any party to an arbitration agreement institutes any proceedings in any court against any other party to the agreement in respect of any matter which is the subject of the agreement, any party to the agreement may, at any time after appearance and before delivering any pleading or taking any other step in the proceedings, apply to that court to stay the proceedings so far as the proceedings relate to that matter.

(2) The court to which an application has been made in accordance with subsection (1) **may** , if the court is satisfied that —

(*a*) there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement; and

(*b*) the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration,

make an order, upon such terms as the court thinks fit, staying the proceedings so far as the proceedings relate to that matter.

[…]

(emphasis mine)

22 Thus, where the IAA is the governing regime, a stay of proceedings is mandatory where a party to an arbitration agreement institutes court proceedings against

another party to the agreement if the matter falls within the scope of the agreement, and the agreement is not null and void, inoperative or incapable of being performed (see *Coop International Pte Ltd v Ebel SA* [1998] 3 SLR 670 at [99] and *Dalian Hualiang Enterprise Group Co Ltd v Louis Dreyfus Asia Pte Ltd* [2005] SGHC 161; [2005] 4 SLR 646 at [75]). In contrast, under the AA, a stay will be given at the discretion of the court if the court is satisfied that the conditions in s 6(2) of the AA are met.

23 In *NCC International AB v Alliance Concrete Singapore Pte Ltd* [2008] SGCA 5; [2008] 2 SLR 565 (" *NCC International* "), V K Rajah JA, who delivered the decision of the Court of Appeal, discussed the different levels of curial intervention in international and domestic arbitration. Rajah JA observed that the court would "play a relatively more interventionist role in domestic arbitration as compared to international arbitration" (*NCC International* at [51]). Rajah JA added later that the greater scope for intervention would be based on the principle that the court must intervene only in limited circumstances where curial intervention will support arbitration.

24 In relation to the court's power to grant a stay under the Arbitration Act, *Halsbury's Laws of Singapore* vol 2 (LexisNexis, 2003 Reissue) (" *Halsbury's Singapore* ") states at para 20.031:

The power to grant a stay under the Arbitration Act is discretionary. The burden initially lies with the applicant to show the existence of the [conditions laid out in s6 AA]. This burden is discharged upon the court being satisfied that there is a prima facie case that there is a valid arbitration agreement between the parties which covers the subject matter in dispute before the court. The burden then shifts on to the party who has commenced the action to 'show sufficient reason why the matter should not be referred to arbitration'. The application may be made even if the court proceedings were commenced after commencement of the arbitration.

25 At the hearing before me, the plaintiff argued vigorously that a stay should not be granted because of multiplicity of proceedings and the possibility of inconsistent findings by the court and the arbitration tribunal. Counsel for the plaintiff also submitted that there were very few local cases on this issue and cited a string of commonwealth cases that discuss the principle. For this reason, I shall deal with this issue first, even though my determination of the second issue *i.e* . the governing regime for the arbitration agreement proved to be the decisive ground for my decision.

Multiplicity of proceedings

26 The plaintiff's primary argument against granting a stay of proceedings was that there would be multiplicity of proceedings and a possibility that the court and the arbitration tribunal would reach inconsistent findings. The plaintiff alleged that the plaintiff and the defendants had entered into a "global settlement". The plaintiff's claim was premised on the fact that the 1 st defendant's failure to pay the $1.2 million timeously was a repudiation of the "global settlement" and as a result, the plaintiff's rights against the defendants before it entered into the "global settlement" were restored; meaning, the plaintiff could now initiate claims against the 1 st defendant

and 2 nd defendant. If this issue went before both the courts and the arbitration tribunal, there was a possibility that the court and the tribunal would reach inconsistent findings. Also, the plaintiff argued that time and expense could be saved if the two proceedings were heard together. For this reason, the plaintiff argued, it was desirable to have the matter heard before a court of law. After all, there was no arbitration agreement between the plaintiff and the 1 st defendant. Counsel for the plaintiff submitted that refusing a stay on the ground of multiplicity of proceedings was not unusual. He brought to my attention a passage in *Halsbury's Singapore* which stated at para 20.029:

Applications for stay have been resisted on many varied grounds including: […]

(10) there are concurrent proceedings relating to the same subject matter and there is a possibility that inconsistent findings may result.

27 In support of this proposition, counsel for the plaintiff also cited, *inter alia* , the case of *Taunton-Collins v Cromie* [1964] 1 WLR 633 (" *Taunton-Collins"*), *Berkshire Senior Citizens Housing Association Limited v. McCarthy E Fitt Limited and National Westminster Bank Ltd (Trustees of the Estate of Anthony Cripps, Deceased)* [1981] WL 187862 (CA (Civ Div)) (" *Berkshire* "), *Bond Corporation Pty Ltd v Theiss Contractors Pty Ltd and Others* [1987] 71 ALR 125 (" *Bond Corporation* "), *Yukon Energy v Chant Construction* [2007] Y.J No. 16 (" *Yukon Energy* ") and *Dawson (City) v TSL Contractors Ltd* [2003] B.C.J No. 512 (" *Dawson* "). I discuss these cases in detail below.

28 It is generally recognised that multiplicity of proceedings is an important, but not a decisive ground for refusing a stay of proceedings. Mustill & Boyd in *Commercial Arbitration* , 2 nd Ed, Butterworths, 1999 at 477 (" *Mustill & Boyd* ") state:

Where a grant of a stay would involve one of all of the parties in the delay and extra expense involved in having the same issues debated in one jurisdiction, this is a strong ground – albeit not a decisive ground – for refusing a stay.

29 *Mustill and Boyd* then list some situations where this principle is applied *e.g* . where part of the relief claimed is outside the powers of the arbitrator; where proceedings between the same parties, in relation the same or related issues are already in progress in the High Court or in another jurisdiction; and where one of the parties to the arbitration agreement is or will be involved with other parties in High Court proceedings in respect of the same or related issues (see *Mustill & Boyd* at 478). These principles have been applied by courts across the Commonwealth and I shall discuss them here.

30 In *Taunton-Collins* (*supra*), the plaintiff employed an architect and contractors to build him a house. The agreement contained an arbitration clause. The plaintiff found the house unsatisfactory and sued the architect who in his defence blamed the contractors. The action was referred to an official referee. The plaintiff then added the contractors as co-defendants to the action. The contractors applied for a stay of proceedings and a stay was refused. On appeal, the Court of Appeal dismissed the appeal and found that it was undesirable that there should be two proceedings before two different tribunals (the official referee and an arbitrator) who might reach

inconsistent findings; accordingly there were special reasons for the exercise of the discretion to refuse a stay. Lord Denning MR, affirming *The Pine Hill* [1958] 2 Lloyd's Rep. 146 explained his reasoning as follows (at 635 – 636):

The matter is of considerable importance. There are a great number of contracts in the R.I.B.A. form, but there is very little authority on this point. It seems to me most undesirable that there should be two proceedings in two separate tribunals -- one before the official referee, the other before an arbitrator -- to decide the same questions of fact. If the two proceedings should go on independently, there might be inconsistent findings. The decision of the official referee might conflict with the decision of the arbitrator. There would be much extra cost involved in having two separate proceedings going on side by side; and there would be more delay. Furthermore, as Mr. Finer pointed out, if this action before the official referee went on by itself -- between the building owner and the architect -- without the builders being there, there would be many procedural difficulties. For instance, there would be manoeuvres as to who should call the builders, and so forth. All in all, the undesirability of two separate proceedings is such that I should have thought that it was a very proper exercise of discretion for the official referee to say that he would not stay the claim against the builders. Everything should be dealt with in one proceeding before the official referee.

Pearson LJ in *Taunton-Collins* (at 637) noted: “in this case there is a conflict of two well-established and important principles. One is that parties should normally be held to their contractual agreements. […] That is one principle. The other principle is that a multiplicity of proceedings is highly undesirable for the reasons which have been given. It is obvious that there may be different decisions on the same question and a great confusion may arise.” On the facts, Pearson LJ agreed with Denning LJ and dismissed the application for stay of proceedings.

31 In *Bulk Oil (Zug) A.G v Trans-Asiatic Oil Ltd SA* [1973] 1 Lloyd’s Rep 129 (“ *Bulk Oil* ”), the defendants agreed to transport the plaintiff’s oil, under a transportation agreement which provided for arbitration in Geneva. The parties then entered into a charterparty where the plaintiffs chartered a vessel to the defendants, for the purpose of transporting the oil. The charterparty did not contain an arbitration clause; the charterparty provided that disputes were subject to the jurisdiction of the English Courts. The plaintiff alleged that the defendant had repudiated both agreements and commenced proceedings in Geneva and England. The defendants relied on events arising out of the transportation agreement by way of defence as well as by way of counterclaim. The plaintiff then applied to stay the counterclaim in favour of arbitration. Kerr J granted a stay of the counterclaim only, noting that although the most sensible course would be to have all the disputes determined by the same tribunal, he noted that the plaintiffs had themselves created the risk of multiplicity and inconsistent decisions by entering into two contracts with the defendants, with related subject matter but different jurisdiction clauses. The learned Judge was of the view that a stay was still appropriate because the parties had expressly arranged their affairs in this fashion.

32 *Taunton-Collins* and *Bulk Oil* have been approved by Goff LJ in *Berkshire* (*supra*) and by Hirst LJ in *Palmers Corrosion Control Ltd v Tyne Dock Engineering Ltd* [1997] APP.L.R 11/20 (“ *Palmers Corrosion* ”). In the latter two cases, a stay was

refused on the facts. It is pertinent to note, however that both *Berkshire* and *Palmers Corrosion* did not involve separate claims against each defendant based on alleged wrongs. The cases concerned claims arising from work done under one contractual relationship and indemnity claims by the defendants against third parties to the proceedings based on sub-contracts.

33 In *Halsbury's Laws of Australia* , Vol 1(2), Butterworths, 1999 (*"Halsbury's Australia"*), the following passage appears in para 25-205:

The desirability of avoiding such a plurality of proceedings and the possibility of inconsistent findings of fact by different tribunals **may be an important factor** *which bears upon the discretion to order a stay*

(emphasis mine)

At footnote 19 of para 25-205, the learned authors of *Halsbury's Australia* state "the ultimate question is whether it would be just to hold the parties to the agreement": see also *W Bruce Ltd v J Strong* [1951] 2 KB 447 (" *W Bruce Ltd")*

34 In *Tasmanian Pulp & Forest Holdings Ltd v Woodhall Ltd* [1971] TASStRp 32; [1971] Tas SR 330 (" *Tasmanian Pulp* "), the plaintiff was a mill owner who was dissatisfied with the way his mill was built. The plaintiff sued the engineers, builders, suppliers and machine installers. The builders applied for a stay of proceedings pursuant to an arbitration agreement in the building contract. The judge granted a stay, but on appeal, the judge's order was revoked. The Supreme Court (Full Court) of Tasmania held that all three defendants had complex factual issues involving lengthy and detailed technical evidence in common between them; the time, energy and costs in deciding these issues once would be heavy enough. At 346, Neasey J (with whom Burbury CJ agreed) held that the issues raised by the plaintiff against the builders were very closely connected with the resolution of issues between the engineers and the builders; meaning, once responsibility was determined as between the engineers and the builders, resolution of the issues between the mill owner and the engineers would be materially affected. For these reasons, the court did not grant a stay.

35 In *Bond Corporation (supra)* , a developer (the applicant) was aggrieved over time and costs overruns in a building project and sued his civil engineer (the first respondent) for the conduct of the works and the consulting and supervising engineers (the second respondent) over their design, cost and time estimates. Earlier, the first respondent had referred a claim for shortfall in payment to arbitration pursuant to an arbitration agreement between itself and the applicant. The applicant and the first respondent then entered into discussions on whether to join the second respondent as a party to the arbitration or as a third party in judicial proceedings. These discussions later fell apart and the applicant began court proceedings against them both. The applicant then moved for an order to restrain the first respondent from prosecuting the arbitration. The first respondent applied to have the court proceedings stayed until arbitration was concluded. The Federal Court of Australia followed *Tasmanian Pulp* and observed that "the factual considerations [were] not completely straightforward" in this case and held that the issues between the applicant and the respondent were closely related, if not common to the issues

raised between the applicant and the second respondent; allowing the arbitration and court litigation to proceed side by side in this case could lead to inconsistent findings of fact. However, in deciding that the courts would be the appropriate forum to hear the entire claim, the Court found “that this was not a case where the resolution of the arbitration proceedings would lead to a resolution of issues in this litigation … There were issues of law raised in the proceedings in [the present case] which are closely related to some of the questions that may arise in arbitration and which cannot be resolved by the arbitrator”: at 143.

36 It appears from Australian jurisprudence that the way the plaintiff frames its claim is also relevant; the plaintiff cannot frame its claim in a way that attempts to evade the arbitration agreement. *Morrison v Inmode Developments Pty Ltd* 1990 WL 1035578 (“ *Morrison* ”) is authority for the proposition that if the plaintiff frames its claim in a way to avoid arbitration, the parties should not be made to pursue their claim in court instead. In *Morrison* , the plaintiff sought an injunction on arbitration proceedings because it argued that the remedy it was seeking under the Fair Trading Act was only available through procedures applicable in court, and as such, proceeding with arbitration would result in the dispute being heard both in arbitration and in the courts. The Supreme Court of Victoria held: “the provisions of the Fair Trading Act should not be used as a flocculent to launder the Commercial Arbitration Act of potency and to suspend the arbitration process in a wash of legalism”; Nathan J, delivering the judgment of the court found that the plaintiff had clothed the dispute within the terms of the Fair Trading Act to obscure the real nature of the dispute and dismissed the application for the injunction.

37 For the position in Canada, the decisions of *Yukon Energy* (*supra*) and *Dawson* (*supra*) are instructive. In *Dawson* , the parties had commenced arbitration proceedings, which later fell into difficulties because of disputes over the admissibility of an expert report and the scheduling of counsel’s time. Months later, the plaintiff commenced an action in the courts. The British Columbia Court of Appeal granted a stay of proceedings in favour of arbitration because “a considerable amount of time, effort and money had been expended” in instituting arbitration proceedings which were “virtually ready for hearing”; Hall J.A delivering the judgment of the court found that “it would be unjust to now require [the defendant] to now suddenly shift from the arbitration process that has proceeded so far and to undertake new proceedings under the court process” (see *Dawson* at [18] ; the principles are also discussed in *Yukon Energy* at [50]).

38 In *Yukon Energy* , the plaintiff, YEC, entered into a Design-Build Agreement with Chant for a hydroelectric power line which was not completed on time. YEC commenced a claim against Chant, which Chant sought to refer to arbitration. The Yukon Territory Supreme Court declined to stay proceedings in favour of arbitration citing a “significant overlap” (at [42]) of the issues between YEC and Chant and third party actions taken out by YEC. In *Yukon Energy* , there were some ten third party consultants whom YEC was going to prosecute its third party claims against (see [50] and [53]) and by the time YEC had commenced proceedings against Chant, YEC had also already commenced about five third-party actions with sub-contractors and professionals. Gower J was of the view that if the arbitration were to proceed, YEC would have to deal twice over with all of the facts and law relevant to the issues which was common to the parties. YEC had also indicated that if the stay was

refused, it would seek to consolidate the third party actions with the present action, or alternatively seek an order that they be heard together (at [55]). For these reasons, the court declined to grant a stay in favour of arbitration.

39 In *Prestige Pools International Ltd v Yan Oi Tong Ltd & Anor* [1985] HKCFI 419; [1985] 2 HKC 116 (" *Prestige Pools* "), the Hong Kong High Court refused to grant a stay citing multiplicity of proceedings as a factor. Applying *Taunton-Collins* and *The Jade* [1976] 1 All ER 441, Hunter J noted that in this case there was a "real risk of a lay arbitrator and a judge reaching different conclusions" and that "all the parties [were] going to be in difficulty if this hearing [was] split into two" (at 122). Hunter J emphasised that this case was not one where one party to the contract had "dragged [another party] into the proceedings with a view to defeating the arbitration clause" (at 121), and that "not only justice but the interests of all parties required one hearing" (at 122). In *Well Hoped Ltd & Anor v Nippon Yusen Kaisha & Anor* [1982] HKCFI 133; [1982] 1 HKC 155 (" *Well Hoped Ltd")* , the Hong Kong High Court said that it was generally undesirable to have separate proceedings, but in this case, the issues to be determined were different and did not overlap; the evidence against the first defendant was different than that to be adduced against the second defendant – for this reason, there was no multiplicity of proceedings. Jones J, granting a stay on the facts, also observed that the plaintiff could have easily awaited the result of the proceedings against the first defendant before suing the second defendant: it was not necessary to sue the second defendant at this early stage ([1982] HKCFI 133; [1982] 1 HKC 155 at 159).

40 Recently, the Malaysian High Court in *Sunway Damansara Sdn Bhd v Malaysia National Insurance Bhd & Anor* [2008] 3 MLJ 872 (" *Sunway Damansara* ") granted a stay of proceedings in favour of arbitration because the court found that the multiplicity of proceedings was induced by the plaintiff's own action. The High Court was of the view that the plaintiff could not come to court and object to the second defendant's exercise of its right to stay proceedings under the arbitration agreement in favour of arbitration by relying on grounds that the plaintiff itself had created. The plaintiff was pursuing claims against two parties on two separate agreements in one action and therefore, the perceived "multiplicity" was induced by the way the plaintiff initiated its case. In *Sunway Damansara* , Aziah Ali J also found that there was no multiplicity per se because the findings in the claim against the first defendant may not be necessarily applicable in the claim against the second defendant: they were two separate causes of action based on two separate agreements (see [2008] 3 MLJ 872 at [14] , [18] and [19])

41 In Singapore, the High Court has stayed proceedings in favour of arbitration despite the risk of multiplicity of proceedings stating "that justice would be best served if the three parties proceeded to arbitration to determine their respective claims, defences and counterclaims if any" (see *Yee Hong Pte Ltd v Tan Chye Hee Andrew (Ho Bee Development Pte Ltd, Third Party)* [2005] SGHC 163; [2005] 4 SLR 398 at [43]).

42 Having discussed the cases across the Commonwealth, I shall attempt to crystallise the relevant factors taken into consideration when a judge exercises his or her discretion in deciding to stay arbitration proceedings on the ground that there will be multiplicity of proceedings. The factors are not exhaustive and in no way

conclusive. Based on commonwealth jurisprudence, a stay of proceedings in favour of arbitration will *not* be granted if:

(a) the issues for determination in court and arbitration are closely related, such that the resolution of one issue will materially affect the other; in particular, if the evidence adduced in both proceedings is similar (discussed in *Yukon Energy; Bond Corporation; Taunton-Collins; Tasmanian Pulp; Well Hoped Ltd; Prestige Pools*);

(b) the plaintiff 'induces' the multiplicity *(* discussed in *Bulk Oil; Morrison; Sunway Damansara; Well Hoped Ltd)* ;

(c) the court proceedings have progressed beyond a preliminary stage *(* discussed in *Yukon Energy; Dawson)* ;

(d) it is in the interests of justice that a stay should not be granted *(* discussed in *Taunton-Collins; Dawson; Prestige Pools; Yee Hong Pte Ltd; W Bruce Ltd)*

43 Applying these factors to the present case, I did not see any reason why the plaintiff should not be held to the arbitration agreement. I was not convinced that there would be any risk of inconsistent findings if the plaintiff proceeded against the 1 st defendant in the courts, and against the 2 nd defendant in arbitration proceedings.

44 In my view, the issues that are to be determined in arbitration between the plaintiff and the 2 nd defendant are not similar to the issues for trial in the plaintiff's case against the 1 st defendant. There is only one alleged repudiation in the present case: the 1 st defendant's failure to pay the $1.2 million timeously. Before the court, the issue to be determined is whether the 1 st defendant's failure to pay timeously is a repudiation of the Termination of Importer Agreement, and whether this repudiation restores the rights of the plaintiff against the 1st defendant. The issue before the arbitration tribunal will be whether the 1 st defendant's alleged repudiation of the Termination of Importer Agreement (if found by the court) restores the rights of the plaintiff against the 2 nd defendant. This is a case of two separate causes of action, based on two separate agreements that provided for two different procedures for dispute resolution.

45 The evidence against the 1 st defendant at the trial (essentially, evidence of the 1 st defendant's repudiatory conduct) is also different from the evidence that is to be adduced against the 2 nd defendant at arbitration (presumably, to show the relationship between the 1 st defendant and the 2 nd defendant, and that the parties had entered into a "global settlement"). For this reason, as there is little overlap between the issues and evidence, I was of the view that there is no prima facie multiplicity of proceedings.

46 The issues to be determined only overlap in relation to the plaintiff's allegation that the parties entered into a "global settlement". Only the arbitration tribunal will rule on this issue. As I have noted above, the arbitration tribunal will not be deciding *whether* the 1 st defendant's failure to pay timeously is a repudiation of the Termination of Importer Agreement. The arbitration tribunal will be deciding whether, on the facts, the 1 st defendant's failure to pay timeously under the Termination of Importer Agreement, restores the plaintiff's rights against the 2 nd defendant.

Whichever way the tribunal rules on this, I do not see any risk of inconsistent findings, because the fact remains, the arbitration tribunal will only be deciding the issue in relation to the 2 nd defendant only. In no way will the arbitration tribunal's decision have a bearing on the plaintiff's rights against the 1 st defendant, or on the 1 st defendant's culpability, because that matter, which is part of a separate agreement altogether, will be decided by the courts.

47 The plaintiff has framed its claim in a way that creates an illusion that there will be a multiplicity of proceedings. By choosing to pursue its case against both the 1 st defendant and the 2 nd defendant as one action, using the umbrella of a "global settlement" to tie the claims together, the plaintiff has moulded its claim in such a manner that having them heard in two different forums gives an *appearance* that there is a multiplicity of proceedings. In fact, there are two separate issues arising from two different agreements. For this reason, the plaintiff cannot now come to court and point to a potential prejudice on its part if the claims are not heard together.

48 I should also add at this juncture that I feel that it may not even be necessary to sue the 2 nd defendant at this stage. As the alleged repudiation only relates to the 1 st defendant, the plaintiff could have proceeded against the 1 st defendant first, before commencing proceedings against the 2 nd defendant. Here, the plaintiff brought proceedings against the 2 nd defendant at a very early stage, even before documents have been served on the 1 st defendant in Germany. Nevertheless, I should also add that as the issues are unrelated, there is no reason why the plaintiff cannot first seek a *declaration* from the arbitration tribunal, that a repudiation of the Termination of Importer Agreement by the 1 st defendant (if found by the court) will restore the plaintiff's rights against the 2 nd defendant.

49 Also, the present court proceedings are not in an advanced stage. In fact, they have barely started. As I have mentioned above, the plaintiff had only just been granted leave to serve the writ on the 1 st defendant in Germany about 2 weeks before this hearing. As a result, there would not be a significant dissipation of time and costs if the proceedings in relation to the 2 nd defendant are referred to arbitration at this juncture. Both the court and the arbitration tribunal will be able to hear the plaintiff's cases against the 1 st defendant and 2 nd defendant respectively from the very beginning. There would also be no prejudice to any party because their preparations up to this stage have been minimal.

50 Lastly, I did not see any interests of justice that would lead the courts to refuse a stay of proceedings in favour of arbitration. In fact, I am of the view that it would be an injustice, if based on these facts, the plaintiff was released from its obligation to comply with the valid arbitration agreement it entered itself into with the 2 nd defendant.

51 For these reasons, I was of the view that there was no reason why a stay of proceedings in favour of arbitration should be refused on the grounds of multiplicity of proceedings and the possibility of inconsistent findings. However, as we will see below, it was my finding on the governing regime behind the arbitration agreement that was the decisive factor in my decision.

The governing regime: AA or IAA

52 The next issue relates to whether the AA or the IAA was the governing regime for the arbitration agreement between the parties. Having established earlier that the courts, when faced with a valid arbitration agreement have to mandatorily grant a stay when the IAA is the governing regime (as compared to the AA, where there is a discretion), the issue to determine now is which governing regime the plaintiff and the 2 nd defendant elected to govern the arbitration agreement. Both the plaintiff and the 2 nd defendant had their places of business in Singapore. Singapore is also the place where a substantial part of the contractual obligations were to be performed and the place with which the dispute is most closely connected with. These factors would point towards domestic arbitration (see the dicta of Lai Kew Chai J in *Jurong Engineering Ltd v Black & Veatch Singapore Pte Ltd* [2003] SGHC 292 (" *Jurong Engineering (High Court)* " at [42] and [43] , and when the facts of the case are referred to generally, " *Jurong Engineering* "); see also s 5(2) of the IAA).

53 Notwithstanding this, under Singapore law, parties to an arbitration agreement can elect between the AA and the IAA to govern their arbitration agreement. In *NCC International* , V K Rajah JA made the following observation (at [52]):

[N]otwithstanding that domestic arbitration does not fall within the ambit of "international" arbitration as defined under the IAA, the parties can expressly opt to have the IAA apply by either agreeing in writing to this effect or adopting institutional rules which expressly stipulate that the IAA shall apply (see *Halsbury's* ([20] *supra*) at para 20.013). One instance of such an institutional rule is r 32 of the SIAC Rules 2007 (3 rd Ed, 2007), which provides that where the seat of arbitration is Singapore, the law of arbitration conducted under the auspices of the Singapore International Arbitration Centre shall be the IAA.

Rule 32 of the Arbitration Rules of the Singapore International Arbitration Centre, SIAC Rules (3rd Edition, 1 July 2007) (the "SIAC Rules 2007") states:

Where the seat of arbitration is Singapore, the law of the arbitration under these Rules shall be the International Arbitration Act (Chapter 143A, 2002 Ed, Statutes of the Republic of Singapore) or its modification or re-enactment thereof.

The remarks made by Rajah JA, reinforce the proposition that where the SIAC Rules 2007 are adopted, the arbitration in question will be treated as an international arbitration and by the operation of Rule 32 of the SIAC Rules 2007, the IAA will be the governing regime. Therefore, parties who agree to adopt the SIAC Rules 2007 (without any further qualifications) elect to have their arbitration treated as an international arbitration, with the IAA as the governing regime.

54 Counsel for the 2 nd defendant highlighted that when the plaintiff and the 2 nd defendant entered into the Termination of Dealership Agreement on 31 January 2007, the Singapore International Arbitration Centre ("SIAC") had two sets of rules in place: the SIAC Domestic Arbitration Rules, 2nd Edition, 1 September 2002 (the "SIAC Domestic Arbitration Rules") and the SIAC Rules 2 nd Edition, 22 October 1997 (the "SIAC Rules 1997").

55 Today, only one set of rules remain viz. the SIAC Rules 2007 (see above). Article 1 of Schedule 1 of the SIAC Rules 2007 expressly repeals the SIAC Domestic Arbitration Rules. The SIAC Rules 2007 have also replaced the SIAC Rules 1997.

56 The 2 nd defendant's Argument was simple. The 2 nd defendant argued that the words "the Rules of the Singapore International Arbitration Centre" contained in cl 6 of the Termination of Dealership Agreement were a reference to the SIAC Rules 1997 and accordingly, the IAA would be the governing regime. The 2 nd defendant contended that if the parties wanted the arbitration to be a domestic arbitration, they would have expressly referred to "the Domestic Arbitration Rules of the SIAC"; in which case, the AA would be the governing regime.

57 The plaintiffs argued that cl 6 was equivocal because the clause merely stated "Rules of the SIAC" and not "Arbitration Rules of Singapore International Arbitration Centre" as it is referred to in the preamble to the SIAC Rules 1997. Counsel for the plaintiff then highlighted Rule 1 of the SIAC Domestic Arbitration Rules which provided:

Rule 1 Scope of Application

1.1 These Rules apply to all cases:

(a) where the parties have agreed in writing that their dispute is to be submitted or referred for arbitration under these Rules and where the case is a domestic case; or

(b) where the parties have agreed in writing that their dispute is to be submitted or referred to the Centre for arbitration under rules of the Centre generally and where the case is a domestic case; or

(c) where the parties have agreed in writing that their dispute is to be submitted or referred to the centre for arbitration without specifying any particular set of rules and where the case is a domestic case.

58 Rule 1.2 of the SIAC Domestic Arbitration Rules states that a case is a domestic case for the purposes of these rules when all parties to the arbitration at the conclusion of the arbitration agreement had their places of business in Singapore and where a where a substantial part of the obligations of the commercial relationship was to be performed in Singapore or where the subject matter of the dispute is most closely connected with Singapore. The plaintiff re-iterated that both the plaintiff and the 2nd defendant were Singaporean companies with their place of business in Singapore and the dispute was also closely connected to Singapore; this would make the arbitration a domestic one under Rule 1 the SIAC Domestic Arbitration Rules which were in force when the parties entered into their arbitration agreement.

59 Lastly, counsel for the plaintiff also referred to the Sale of Assets and VW Parts Agreement and highlighted that by cl 15 of the Sale of Assets and VW Parts Agreement, the parties had expressly agreed that the AA would apply (see [70] below). In his view, as the contracts formed part of a "global settlement", cl 15 of the Sale of Assets and VW Parts Agreement could shed light on the arbitration

agreement in the Termination of Dealership Agreement. He submitted that the drafters of the Termination of Dealership Agreement could have had an oversight and failed to expressly state that the AA would apply.

60 Was it the parties' intention that the SIAC Rules 1997 would apply, and accordingly, by virtue of Rule 32 of the SIAC Rules 1997 (which is in pari materia with Rule 32 of the SIAC Rules 2007), the IAA would be the governing regime? Or did the circumstances dictate that the arbitration would be a domestic one with the AA as the governing regime? At the time the parties entered into the arbitration agreement, there were two sets of SIAC rules in place, as noted above. Now, at the point of submission to arbitration, only one set of SIAC rules are in place. Having been repealed, did the SIAC Domestic Arbitration Rules matter at all?

61 The key to these questions lies in the words "for the time being in force". The parties agreed that the dispute "shall be referred to arbitration … in accordance with the Rules of the SIAC for the time being in force". In *Jurong Engineering (High Court*), Lai Kew Chai J noted at [14] :

I took the view that the parties had agreed to submit to an SIAC arbitration, and generally, to the most appropriate institutional rules existing **at the time of the submission** , regardless of whether those rules were in existence at the time of the Contract.

(emphasis mine)

Later (at [16] – [17]), Lai Kew Chai J re-iterated the English position and added that if the parties had chosen to do so, they could have confined themselves to the rules that existed at the time of the contract:

16 The English Court of Appeal in *Perez v John Mercer & Sons* [1922] 10 LIL Rep 584, which the plaintiffs referred me to, took a similar view. The clause in question, which was similarly general, read:

All disputes to be referred to the Tribunal of Arbitration of the Manchester Chamber of Commerce, to be determined in accordance with the rules of the Tribunal.

Were the rules which existed at the time of the contract or those which existed at the time of submission to arbitration to apply? The court construed the clause to read "according to the rules *for the time being* of the Tribunal", as opposed to the rules which already existed at the time of the Contract.

17 If more specific words had been used in the arbitration clause, the defendants could possibly have effectively confined themselves to those rules that already existed at the time of the Contract. But that was not the case here.

62 In *Jurong Engineering* , the parties entered into a contract which stated, *inter alia* , that "…any arbitration will be conducted in English in Singapore under and in accordance with the rules of arbitration promulgated by the [SIAC]". At the time of the contract, the SIAC had only one set of rules: the SIAC Rules 1997 (as stated above, the SIAC Domestic Arbitration Rules were introduced later). After differences

arose between the parties, the plaintiff commenced arbitration proceedings under the SIAC Domestic Arbitration Rules. The defendant objected, contending that the rules at the time of the contract, the SIAC Rules 1997, should apply instead. If the SIAC Rules 1997 applied, the IAA would be the governing regime. However, if the Domestic Arbitration Rules applied, the AA was the governing regime. At the High Court, Lai Kew Chai J held that the SIAC Domestic Arbitration Rules applied because the nature of the parties and the nature of the dispute meant that the matter was a domestic one, based on the rules that were *in force at the time the matter was referred to arbitration* viz. the Domestic Arbitration Rules. The defendant appealed to the Court of Appeal.

63 On appeal, in *Black and Veatch Singapore Pte Ltd v Jurong Engineering Ltd* [2004] 4 SLR 19 (" *Jurong Engineering (CA)")* , Justice Woo Bih Li, delivering the judgment of the Court of Appeal laid out the rationale behind applying the rules which were in place at the time the dispute was submitted for arbitration. Woo J noted that although it was a principle of interpretation that contractual provisions should be interpreted as at the date when the contract was made, the question still remained whether the arbitration agreement referred to rules of the SIAC in force and applicable as at the date of the contract or rules of the SIAC in force and applicable as at the date when arbitration commenced. Woo J considered the English position as laid out by Brandon J in *Bunge SA v Kruse (No.2)* [1979] 1 Lloyd's Rep 279, and held that there was a prima facie inference that if the rules contained mainly procedural provisions, then the rules in force at the time of commencement of arbitration would be the ones that applied to the arbitration. However, if the rules contained mainly substantive provisions, then those in force as at the date the contract was entered into would apply. At [19] – [20] of *Jurong Engineering (CA)* , Woo J wrote:

In *Bunge SA v Kruse* [1979] 1 Lloyd's Rep 279 (affirmed on other grounds in [1980] 2 Lloyd's Rep 142), a question arose as to whether a provision providing for any dispute to be settled by arbitration in accordance with the rules of an association meant that the rules of the association at the date the contract was entered into applied or the rules in force at the date of commencement of arbitration applied. In the view of Brandon J, at 286, there was a *prima facie* inference that where the rules contained mainly procedural provisions, then the rules in force at the time of commencement of arbitration would be the ones that applied to the arbitration. However, if the rules contained mainly substantive provisions, then those in force as at the date the contract was entered into would apply.

20 This decision was followed by Robert Goff J in *Peter Cremer v Granaria BV* [1981] 2 Lloyd's Rep 583 where Goff J said, at 592–593:

Indeed, if one looks at it as a matter of common-sense, I do not think it can be expected that arbitrators in any particular case should have to look at the date of the contract, ascertain the relevant procedure for arbitrations which were in force as at the date and then, regardless of the fact that new procedures, which may or may not be fundamental, may have been introduced and applicable and keing [sic: being] applied at the date when the arbitrators were appointed, go back to and apply the old procedure in force as at the date when the contract was made.

64 The Court of Appeal was of the view that even if there were substantive differences between the IAA and the AA, the arbitration clause in *Jurong Engineering* did not refer directly to primary legislation but to rules promulgated by the SIAC which were clearly procedural in nature, and therefore the rules at the time the dispute was submitted to arbitration would be applicable (see *Jurong Engineering (CA)* at [22] – [23]).

65 The facts in *Jurong Engineering* and the present case are not dissimilar. In both cases, the SIAC's rules changed in between the time the parties entered into the arbitration agreement and the time the matter was submitted to arbitration. In *Jurong Engineering* , the SIAC Domestic Arbitration Rules came into force in between the time the contract was entered into and the matter was submitted for arbitration. In the present case, the SIAC Domestic Arbitration Rules were repealed in the period between the arbitration agreement was made and the matter was submitted to arbitration. Also, within this period, the SIAC Rules 2007 had replaced the SIAC Rules 1997.

66 Following *Jurong Engineering (CA)* , the principle to be applied in both cases is the same: where rules are mainly procedural, the rules in force at the time of commencement of arbitration will apply. In this case, the arbitration agreement referred to the SIAC rules for the time being in force. The parties did not contract to adopt the SIAC rules in force at the time of the contract. As such, the rules to be applied are the rules in force at the time the matter is referred to arbitration: viz. the SIAC Rules 2007.

67 This does not mean that just because the SIAC Domestic Arbitration Rules have been repealed, all arbitration agreements where the parties chose to adopt SIAC rules will be converted into international arbitrations under the new SIAC Rules 2007 (read with Rule 32). Article 2 of Schedule 1 of the SIAC Rules 2007 is a transitional provision which states:

Article 2 - Transitional Provision

1. Where parties **have by agreement expressly referred to arbitration under the SIAC Domestic Arbitration Rules** , the agreement shall be deemed to be a reference to arbitration under these Rules and to this Schedule.

2. Notwithstanding Rule 32, the law of the arbitration to which this Schedule applies shall be the Arbitration Act (Chapter 10, 2002 Ed, Statutes of the Republic of Singapore) or its modification or re-enactment thereof.

(emphasis mine)

68 This means that, at present, only where the parties have by agreement expressly referred to arbitration under the SIAC Domestic Arbitration Rules, Schedule 1 of the SIAC Rules 2007 will apply, and the arbitration will be governed by the AA. The SIAC Rules 2007 will apply to all other arbitration agreements which adopt SIAC rules and do not expressly refer to the SIAC Domestic Arbitration Rules 2002. On reading the SIAC Rules 2007, it appears that if a party today wants to incorporate SIAC rules but retain the status of the arbitration as a domestic arbitration, it must

expressly refer to arbitration under “SIAC Domestic Arbitration Rules” so as to trigger the operation of Schedule 1, SIAC Rules 2007; alternatively, the parties can expressly adopt the SIAC Rules 2007 and expressly stipulate that the AA shall apply accordingly.

69 In the present case, the arbitration agreement does not expressly refer to the SIAC Domestic Arbitration Rules. For this reason, Article 2 of Schedule 1 of the SIAC Rules 2007 (being the SIAC rules in force at the time the matter is submitted to arbitration) will not apply. The parties also did not expressly state that the AA would apply. Therefore, this arbitration will be governed by the SIAC Rules 2007. Rule 32 of the SIAC Rules 2007 will apply, and the governing regime will be the IAA.

70 At this juncture, I should also deal with the argument raised by counsel for the plaintiff that the arbitration clause contained in the Sale of Assets and VW Parts Agreement could shed light on the arbitration clause contained in the Termination of Dealership Agreement because (as the plaintiff put it) the Termination of Dealership Agreement was one agreement out of a “global settlement”. The arbitration agreement in the Sale of Assets and VW Parts Agreement, read:

15 Arbitration

15.1 Any dispute between the parties arising out of or in relation to this Agreement, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in accordance with the Rules of the Singapore International Arbitration Centre (“SIAC Rules”) for the time being in force which rules are deemed to be incorporated by reference into this Clause. **The Arbitration Act in force in Singapore shall apply accordingly**

15.2 Arbitration shall take place in Singapore before an arbitrator, either mutually agreed upon by the parties or in the event that the Parties cannot agree appointed by the President of the SIAC.

[…]

(emphasis mine)

71 This happens often in the practice of international dispute resolution. More often than not, international transactions involve more than one contract. Sometimes, mechanisms and procedures for dispute resolution are only contained in one contract, and other contracts which are part of the transaction are silent on the issue. In other situations, different contracts provide for different means and procedures for dispute resolution – some contracts require the parties to submit to the jurisdiction of the courts in a certain state and other contracts require disputes to be referred to arbitration in a separate venue. In transactions like this, it may be unclear what the parties intended on how to settle disputes arising out of the whole contractual scheme. So, parties often resort to importing dispute resolution clauses from one contract into another to suit their tactical preferences, resulting in further disagreements between them.

72 In *Dalian Hualiang Enterprise Group v Louis Dreyfus Asia Pte Ltd* [2005] SGHC 161; [2005] 4 SLR 646 (" *Dalian* "), the first plaintiff, Dalian Hualiang Enterprise ("DHE") and the defendant entered into a contract (the "Armonikos Contract") which contained an arbitration clause. DHE then assigned it to the second plaintiff ("DJOM"). DHE and DJOM filed an action against the defendant for payments due. The defendant applied for a stay in favour of arbitration. The defendant then raised a set-off against DHE and DJOM in relation to a contract with a Guangdong company (the "Hanjin Tacoma Contract") alleging that the Guangdong company was part of the group of companies that included the plaintiffs. A stay of proceedings in relation to the set-off claim was ordered by an Assistant Registrar. On appeal, the issues before the court were whether the court had the jurisdiction to determine if there was in fact a dispute between the parties and if the issue of set-off was within the scope of the arbitration agreement. Justice Woo Bih Li allowed the appeal and held that as DHE and DJOM were not parties to the Hanjin Tacoma Contract and the disputes under the Armonikos Contract were unrelated to the disputes under the Hanjin Tacoma Contract, the setoff issue was not within the scope of the arbitration agreement contained in the Armonikos contract and thus would not be submitted to arbitration.

73 In summary, the High Court in *Dalian* held that the arbitration clause contained in one contract did not apply to the claims arising from another contract. Similarly, in this case, the arbitration clause contained in the Sale of Assets and VW Parts Agreement, which expressly provided that the AA would be the governing regime, cannot apply to claims arising out of the Termination of Dealership Agreement.

74 The situation is different when there is one "head" agreement, and the other agreements are supplemental to it. In such a situation, if supplemental agreements expressly refer to one head agreement, and the head agreement contains an arbitration clause, it can be surmised that the parties intention was to refer all disputes arising out of the whole set of contracts to arbitration. *Fouchard Galliard Goldman on International Commercial Arbitration* (Emmanuel Galliard and John Savage ed.s); Kluwer Law International: 1999 at para 520 states:

The first is where only the heads of agreement, or framework agreement, contains an arbitration clause to which the other related contracts refer. This case presents no difficulty. The parties intention is clear: they sought to refer all disputes arising out of the whole set of contracts to arbitration, before a single arbitration tribunal in accordance with the heads of the agreement.

75 In the present case, there was no head agreement that the other supplemental contracts referred to. Even if the plaintiff was of the impression that it was entering into a "global settlement", it chose to do so in separate contracts with separate and distinct procedures for dispute resolution provided for in the contracts. If the agreements were supplemental to one head agreement which contained a dispute resolution clause that applied generally to all the supplemental agreements, I would not have hesitated to apply the dispute resolution clause from the head agreement to all the supplemental agreements (provided the supplemental agreements did not contain their own dispute resolution clauses). For a discussion on this issue, see *Tjong Very Sumito and Others v Antig Investments Pte Ltd* [2008] SGHC 202

76 For this reason, as the two dispute resolution clauses were contained in different contracts, I was hesitant to import the dispute resolution clause contained in the Sale of Assets and VW Parts Agreement into the Termination of Dealership Agreement. I was also hesitant to use it to shed light on what the parties could have intended in the Termination of Dealership Agreement. I felt that it was possible that the parties could have intended for a separate regime for dispute resolution in the Termination of Dealership Agreement which was why the lawyers who drafted it did not expressly refer to the AA as the governing regime. After all, the Sale of Assets and VW Parts Agreement had GEPL as a party too, so it was possible that the parties agreed to a dispute resolution clause of a different nature altogether.

77 In the world of commercial arbitration, multiplicity of proceedings and uncertainty over the governing regime of the arbitration can easily arise out of the web of contracts in an international transaction that transcends geographical boundaries and an array of dispute resolution procedures. Arbitration clauses contained in various contracts could provide for arbitration under different seats, laws, languages, or institutional rules.

78 In the present case, the parties could have avoided any multiplicity of proceedings and uncertainty over the governing regime by putting the four settlement agreements under one head agreement with one clear dispute resolution clause as I have discussed above. In that way, all disputes arising out of the settlement agreements can be resolved according to the dispute resolution clause contained in the head agreement. Parties who want to avoid multiplicity of proceedings can also provide for multi-partite arbitration under one governing regime if the relationship between the parties allows for it. Further, the dispute resolution clause could also contain a provision that requires consolidation of arbitration proceedings under one tribunal and one governing regime for disputes that contain related issues or parties. I should also add at this juncture, that all this may be easy to propose in theory, but in practice, drafting such clauses will be highly technical and tricky. It may also lead to further litigation between the parties on the applicability of the clauses to the disputes that arise. Nevertheless, the inclusion of such clauses may, in most cases, avoid the inconvenience and uncertainty of having two proceedings side by side.

Conclusion

79 In light of my finding that the IAA is the governing regime for the arbitration agreement, I am bound to stay the proceedings in favour of arbitration in relation to all claims involving the 2 nd defendant under s 6 of the IAA. I should also add, for the reasons I have given above, that even if the court had the discretion to refuse a stay, I saw no reason to refuse a stay on the grounds that a multiplicity of proceedings would result. Either way, I am of the view that a stay of proceedings in favour of arbitration should be granted.

80 For these reasons, I allow the 2 nd defendant's application for a stay. I remain grateful to the counsel on both sides for their submissions before me. I shall hear the parties on costs.

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[note: 1] See page 10 of the affidavit of Peter Kwee Seng Chio dated 11 February 2009 and page 80 of the affidavit of Dr Olaf Duebel dated 25 February 2009

[note: 2] See the plaintiff's Statement of Claim at page 27
