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PRIVATE INTERNATIONAL LAW IN THE SINGAPORE COURTS

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In this third annual survey of conflict of laws cases in the Singapore Year Book of International Law, six cases[1] and one subsidiary legislation note[2] will be considered. Before looking at these cases, it is useful to make three preliminary comments. First, generally, only cases from the High Court and Court of Appeal will be considered. Secondly, conflict of laws cases often relate to other areas of law. In these situations, this survey will only consider those parts of the case that relate to conflict of laws. Finally, two cases reported in 2005, *Ang Ming Chuang v Singapore Airlines Ltd (Civil Aeronautics Administration, Third Party)*[3] and *Herbst Ehud v Sampoerna Putera and Another*[4] have already been considered in the previous year's survey.[5]

I. DISCOVERY, RELEASE FROM UNDERTAKING, FACTORS: *BECKKETT PTE LTD V DEUTSCHE BANK AG*[6]

A loan made to Asminco by the respondents was secured by the appellant's shares in another company and Asminco's shares in Adaro. Asminco defaulted on the loan and the respondents sold the shares to DSM. An order for discovery of certain documents was obtained by the appellants subject to the usual implied undertaking not to use the documents for purposes other than in the initial suit. The appellants subsequently applied to be released from the implied undertaking and to be allowed to use the discovered documents to apply for an injunction in Indonesia to restrain DSM from selling the Adaro shares. At first instance, the assistant registrar allowed the application. On appeal, Woo J reversed the assistant registrar's decision. His concern was that disclosing the documents in Indonesia could expose the respondents to the risk of criminal prosecution there. The appellants appealed against Woo J's decision.

As a starting point, the court reviewed the principle that where a party to litigation has been ordered to give discovery, the discovering party may not use the discovered documents, and the information obtained, for a purpose other than pursuing the action in respect of which discovery is obtained.[7] This implied undertaking is owed to the court and allows for a balance between the public interest that there should be full and complete disclosure in the interest of justice and that of protecting the individual's interest of privacy. Where

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1 These cases have also been considered in the "Conflict of Laws" *Annual Review of Singapore Cases* 2005 (Singapore: Singapore Academy of Law, 2006).

2 While this survey's primary focus is on cases in the Singapore Court, it will, from time to time, cover legislation pertinent to private international law.

3 [2005] 1 Sing.L.R. 409. See Joel Lee "Private International Law in the Singapore Courts" (2005) 9 S.Y.B.I.L. 243, 244.

4 [2005] 1 Sing.L.R. 82. See "Private International Law in the Singapore Courts", *ibid.* at 247.

5 This is due to these judgments being delivered in late 2004 and therefore being "officially" reported in 2005.

6 [2005] 3 Sing.L.R. 555 (Court of Appeal: H.T. Chao J.A., Y.K. Tay J.).

7 *Riddick v Thames Board Mills Ltd* [1977] Q.B. 881.

exceptional circumstances exist, the implied undertaking can be modified. However, two conditions must first be satisfied. First, cogent and persuasive reasons must be furnished for the request. Second, it must not give rise to any injustice or prejudice to the party who had given discovery.

The court opined that the appellants had not satisfied either of these two conditions. On the first condition, the court was of the view that there was relatively little chance for DSM to sell the pledged shares to a *bona fide* purchaser for value without notice. By writing to potential buyers and placing notices in major newspapers, the appellants had given notice of its interest in the shares.

This by itself is unremarkable. The more interesting question is the basis upon which the court applied the *bona fide* purchaser principle. On the assumption that this principle forms part of Singapore law, it is not clear why Singapore law should be applied in this case. On one analysis, the application of Indonesian law would have been more appropriate.[8] A possible explanation is that, in the absence of proof of Indonesian law, the courts presumed Indonesian law to be the same as that of Singapore.

On the second condition, taking into account the conduct of the appellants and its lawyers as well the likely actions of the Indonesian authorities, the court expressed concern that the respondents would be exposed to a real risk of prosecution in Indonesia should the implied undertaking be waived. This therefore constituted a prejudice to the respondents and leave was denied.[9]

II. Mareva Injunction, Setting Aside, Scope: *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and Another Appeal*[10]

As a result of the termination of two contracts between the appellant plaintiff and Pertamina, an Indonesian state oil company, the appellants obtained an arbitration award against Pertamina and proceeded to enforce the award against the first respondent, a Hong Kong subsidiary of Pertamina. In the ensuing inquiries, it was suspected that US$36 million had been sent from Hong Kong to the second respondent[11] in Singapore to evade enforcement proceedings. The appellant obtained in Singapore, *inter alia*, a Mareva injunction against both respondents. The respondents were successful in their application to the High Court to discharge the Mareva injunction.

The matter was appealed on three grounds. The first two grounds were matters relating to procedure and will not be considered in this survey. The third ground was that the court had the jurisdiction to grant the Mareva injunction.[12] The crux of the appellant's argument was that it was permissible for the Singapore court to grant a Mareva injunction in aid of proceedings in a foreign court.[13] On this point, the court first examined the three legal

[8] On the assumption that the pledged shares are Indonesian, matters relating to priority of titles to shares would be governed either by the law of the place where the transactions took place or the *lex situs*. Both point to Indonesian law. See *Macmillan Inc* v *Bishopsgate Investment Trust Plc (No.3)* [1995] 1 W.L.R. 978; [1995] 3 All E.R. 747 (Ch D); [1996] 1 W.L.R. 387 (Court of Appeal).

[9] As a point of interest, by taking into account the possibility of foreign prosecution in deciding whether to order a release from an implied undertaking, the court, while not extending the forum's principle of privilege against self-incrimination to the possibility of foreign criminal prosecution, is nonetheless applying this principle extra-territorially through its general discretion.

[10] [2005] 2 Sing.L.R. 568 (High Court: H.T. Choo J.), [2006] 1 Sing.L.R. 112 (Court of Appeal: P.H. Yong C.J., H.T. Chao J.A., J Prakash J.).

[11] The second respondent is a wholly owned subsidiary of the first respondent.

[12] Apart from these three grounds, there were two other grounds of appeal which were not necessary for the court to consider because of the way the court decided on the other issues.

[13] In making this argument, the court was essentially being asked not to follow the principle established by *Siskina v Distos Compania Naviera SA* [1979] AC 210 [The Siskina], that a Mareva injunction could be granted only when the plaintiff had a substantive claim over which the court had jurisdiction.

principles established in *Siskina v Distos Compania Naviera SA*[14] and went on to apply the relevant principle to each of the respondents.

With regard to the first respondent, a foreign entity, the court observed that after *The Siskina*, it was clear that that a plaintiff could never obtain a Mareva order which was essentially ancillary to proceedings that were pending in a foreign court where the defendant was not within the *in personam* jurisdiction of that court. In other words, an English court would only grant a Mareva injunction in respect of a dispute which was being substantially litigated in England in which some legal or equitable right of the plaintiff was being invaded and which could be protected and enforced within England by a final judgment in England. As such, the court opined that it did not have jurisdiction over the first respondent to grant the Mareva injunction.[15]

With regard to the second respondent, a Singapore entity and therefore one over which the court had jurisdiction, the court held that in order for the appellant to satisfy the second principle, it was necessary for it to have accrued a cause of action against the second respondent at the time of the application. The court found that it had not done so and as such it could not grant Mareva relief over the second respondent.

It is clear from this case that the Singapore court has endorsed the principles[16] from *The Siskina* and *Mercedes*[17] and has taken the position, and it is submitted correctly, that the Mareva injunction is an instrument that should be confined to proceedings properly founded under the jurisdiction of Singapore.[18] It also seems fairly clear that the court was willing to exercise jurisdiction only where there was an executable, as opposed to a prospective, foreign judgment.[19]

III. Service out of Jurisdiction, Agreeing on Accepted Mode of Service, Service through Private Agent, Validity: *Pacific Assets Management Ltd and Others v Chen Lip Keong*[20]

The plaintiffs commenced action in Singapore for the defendant's failure to redeem conversion shares under a convertible loan agreement and permission to serve the writ on the defendant in Malaysia was obtained. The defendant's Malaysian solicitors wrote confirming its authority to accept service, and service pursuant to this agreement to accept service was duly effected through a private agent, such service being duly acknowledged by the defendant's solicitors. The documents served were subsequently returned and the acknowledgement stamp at the back of the documents cancelled. The defendant went on to obtain an *ex parte* declaration from the Malaysian courts that the service of the writ was irregular

[14] *The Siskina*,*ibid*. These principles are: (1) a court could not assume jurisdiction against a foreign defendant on the merits of a claim just because the defendant had assets in England and the plaintiff had asked for a Mareva injunction against these assets; (2) there was no jurisdiction to grant Mareva relief unless and until the plaintiff had an accrued right of action; (3) there was no jurisdiction to preserve assets within the jurisdiction of the court which would be needed to satisfy a claim against a defendant, if it eventually succeeded, regardless of where the merits of a substantive claim were to be decided.

[15] The court approved of the principles stated in *The Siskina* and also in *Mercedes Benz AG* v *Leiduck* [1996] AC 284 [Mercedes] where Lord Mustill held that a Mareva injunction is an ancilliary matter that does not impinge upon substantive rights and cannot justify the extension of the court's jurisdiction.

[16] Of the three principles from *The Siskina*, the court elected to reserve its opinion on the third principle until a more appropriate time.

[17] It is useful to note that in the UK, *The Siskina* and *Mercedes* have been superseded by Section 25 of the *Civil Jurisdiction and Judgments Act 1991* (UK) and Rule 6.20(4) of the *Civil Procedure Rules* (UK).

[18] The court seems to have hinted however that it might be inclined to grant a Mareva injunction in support of declaratory relief. Of course, presumably, the applicant must still satisfy the principles from *The Siskina*.

[19] By doing so, the court rejected Lord Nicholls' minority opinion in *Mercedes* that the court could grant a Mareva injunction when the cause of action was one that could have been brought in the courts of the forum or if the prospective judgement was one that would have been recognised and enforceable in the courts of the forum.

[20] [2005] S.G.H.C. 228 (High Court: S.E. Ang J.).

and applied in the Singapore courts to set aside service. The defendant contended that the method of service used was not in accordance with Malaysian law.

The court was therefore faced with the question of whether a writ served pursuant to an *ad hoc* agreement to accept service was sufficient to invoke the court's jurisdiction under Order 11 of the Rules of Court.[21] The court opined that service according to the terms of an *ad hoc* agreement would be sufficient to invoke the jurisdiction of the Singapore courts under Order 11. They found that such an agreement existed in the form of the defendant's Malaysian solicitors' letter confirming its authority to accept service. Further, service had been effected according to its terms, thereby invoking the jurisdiction of the Singapore courts.

This finding was sufficient to dispose of the defendant's application. However, the court went on to consider the alternative argument of the *ad hoc* agreement not constituting an agreement as to the manner of service. The defendant's argument was that service had to be conducted in accordance with Malaysian law in order to be valid and this had to be done in accordance with Order 65 of the Malaysian Rules of the High Court. As service through a private agent was not prescribed by Order 65, service in this case was therefore not in accordance with Malaysian law.[22] The argument was also made that service through a private agent was an exercise of the judicial powers of a foreign court beyond its territorial limits and an encroachment on the sovereignty of Malaysia.

The Singapore court considered Syed Ahmad Helmy J's judgment in *Malayan Banking Berhad* v *Ng Man Heng*[23] and concluded that service of a writ in Malaysia through a private agent was in accordance with Malaysian law and therefore valid.[24] Further, it was not an encroachment on the sovereignty of Malaysia as serving a writ outside Singapore was merely a notification to the defendant that an action has been commenced against him in Singapore. Any concerns regarding the encroachment upon the sovereign rights of a foreign country were addressed by the safeguards in the form of Order 11 of the Singapore Rules of Court.

In coming to this conclusion, it is clear that in determining the question of validity of service, the court considered this a matter of evidence and procedure and the Singapore court as the forum would apply the *lex fori*, *i.e.*, Singapore law in answering this question.[25]

It is also useful to note that the court essentially dealt with the validity of service from the Singapore perspective. Validity of service clears the way for the plaintiffs to continue its action in the Singapore courts and eventually obtain a judgment. The problem arises when seeking to enforce this judgment in Malaysia[26] as it is at this point that the validity of service will be called into question by the Malaysian Court. This means that a finding that service was valid from the Singapore court's perspective is a pyrrhic victory if the Malaysian courts do not come to the same finding.[27] It is hoped that with the dissenting judgment of Abdul Aziz JCA in *Ngan Chin Wen* v*Panin International Credit (S) Pte Ltd* and the decision of Syed Ahmad Helmy J in *Malayan Banking Berhad* v *Ng Man Heng*, the Malaysian courts will adopt a similar analysis and bring resolution to this issue.

[21] Cap. 332, R5, 2004 Rev. Ed. Sing.

[22] The defendant relied upon a Malaysian Court of Appeal decision *Ngan Chin Wen v Panin International Credit (S) Pte Ltd* [2003] 3 M.L.J. 279. See A Sharom, "Private International Law in the Malaysian Courts" (2005) 9 S.Y.B.I.L. 253 at 254 for a brief commentary on this case.

[23] [2005] 1 M.L.J. 470.

[24] Syed Ahmad Helmy J in *Malayan Banking Berhad v Ng Man Heng* opined that Order 65 of the Malaysian Rules of the High Court only operated when a request is received from a foreign tribunal requesting assistance to effect service. It did not however prohibit service of foreign process by a private agent.

[25] Any consideration the Singapore court had of Malaysian law was in so far as the Singapore Rules of Court providing that service had to be in accordance with Malaysian law.

[26] Whether in common law enforcement or by registering the judgment under the Malaysian Reciprocal Enforcement of Judgements Act 1958.

[27] Of course, this is not something that is within the control of the Singapore courts.

IV. Choice of Law, Succession, Muslim Law: *State of Johor and Another v Tunku Alam Shah ibni Tunku Abdul Rahman and Others*[28]

In 1895, the late Sultan Abu Bakar of Johor made a testamentary disposition of Tyersall a property in Singapore, as "State Property" to his son Tunku Ibrahim (later Sultan Ibrahim). Tyersall was compulsorily acquired and the sum of $25 million was awarded as compensation in June 2004. The first and second plaintiffs[29] argued that by conveying Tyersall as "State property" in his will, Sultan Abu Bakar had intended that the property was to pass with the throne of Johor upon the death of a reigning ruler. It should therefore not devolve to the estate of any ruler upon his death and compensation from compulsory acquisition should be paid to them.

The first defendant claimed a share of the compensation on the ground that he was one of the beneficiaries of Sultan Ibrahim's estate. He argued that Tyersall did not become "State property" because the bequest of Tyersall contravened Muslim law either because Sultan Abu Bakar's will was governed by the law of Johore or that even if Singapore law applied, Muslim law applied as part of Singapore law.

The court opined that the law of Johor did not apply as the *lex situs* applies to testamentary dispositions over immovables, *i.e.*, the law of Singapore.[30] On the argument that Muslim law applied as part of Singapore law, the court concluded that it was bound by the Court of Appeal judgment of the Straits Settlements in *Sheriffa Fatimah binte Aboobakar bin Mahomed Al Mashoor* v*Syed Allowee*[31] and opined that Muslim law on succession was not part of the *lex situs* in 1895.[32] Therefore, the court found Sultan Abu Bakar's will valid and the second plaintiff entitled to compensation.

V. Stay of Proceedings, Forum Non Conveniens, Definition of Alternative "Fora", Argument of "No Defence": *The "Rainbow Joy"*[33]

The appellant plaintiff, a Filipino engineer, was employed on board the "Rainbow Joy"[34] owned by the respondent defendants under two employment contracts. The first was in the Philippines Overseas Employment Administration (POEA) standard form which provided for the choice of Philippines law and the exclusive referral of all disputes to the National Labour Relations Commission (NLRC) or arbitration in the Philippines for determination. The second was to comply with the laws of Hong Kong.

In the course of his work, the appellant suffered an injury to his right eye and arbitral proceedings were commenced before the NLRC against the respondent for US$80,000. Proceedings against the respondents in the Singapore courts for US$460,000 were subsequently commenced by the appellant and the initial arbitral proceedings were withdrawn.

The respondents applied for a stay of proceedings on, *inter alia*,[35] the ground of *forum non conveniens* arguing in favour of the Philippines. This was granted at first instance and on appeal to the High Court, upheld. The appeal went to the Court of Appeal.

[28] [2005] 4 Sing.L.R. 380 (High Court: L.M. Tan J.).

[29] The State of Johor and the present ruler of Johor respectively.

[30] This statement must be correct. It is useful to note that the court referred to the choice of law rules of the *lex situs*. This suggests that the court was applying some form of renvoi.

[31] (1883) 2 Kyshe (Eccles) 31.

[32] While the likelihood of encountering legal issues of this nature is low, it is still useful to have clarified that Muslim Law, at least as it relates to wills executed by Muslims, did not form part of Singapore law until 1968.

[33] [2005] 3 Sing.L.R. 719 (High Court: L.M. Tan J.); [2005] S.G.C.A. 36 (Court of Appeal: H.T. Chao J.A., V.K. Rajah J.).

[34] Flying the flag of Hong Kong.

[35] There were 2 other grounds. The first was that the appellant was required to resolve the dispute through arbitration in the Philippines. The second was that there was an exclusive jurisdiction clause in favour of the Philippines and the appellant was required to proceed there.

The first ground of appeal was that *forum non conveniens* did not apply where the adjudicating body referred to in the Philippines was not a "court of law". After referring to the principles in *The Spiliada*,[36] the court emphasised the principle of comity upon which the doctrine of *forum non conveniens* was based. This involved the recognition that while a competing forum would normally be a court of law, each nation is free to create and prescribe special forums to resolve some or all disputes and these alternative fora should be recognised. It followed that the application of *forum non conveniens* was not limited to situations where the competing forum is a court of law[37] but clearly included arbitration boards and specialised tribunals.[38]

The second ground of appeal was that even if *forum non conveniens* did apply, the circumstances in this case did not justify a stay because the respondent had no real defence to the claim. This was rejected by the court because there were clearly issues of liability and quantum of damages to be addressed and this was not an open and shut case. Further, the court held that the argument of "no defence" was not relevant as the juridical basis for a stay of proceedings based on *forum non conveniens* was different from that of a stay based on an exclusive jurisdiction clause.[39] At this jurisdictional point in the proceedings, the court should not have to go into the merits of the case.

While the writer agrees with the decision of the court, it is not clear why a distinction should be drawn between the two forms of stay. While they require the satisfaction of different tests, both are jurisdictional questions asking the court to stay the exercise of its jurisdiction and questions of merit should not be considered here. If the argument of "no defence" was not relevant in a stay of proceedings based on *forum non conveniens*, it should equally not be relevant in a stay of proceedings based on an exclusive jurisdiction clause.[40]

Before concluding the discussion on this case, one point deserves brief mention. As part of submissions on connecting factors, the court concluded that the tort claim was governed by Philippines law. While the law of the flag country[41] would ordinarily apply in relation to a tort committed on board a vessel on the high seas, the court opined that where there is a specification of a governing law in the contract of employment, this should prevail. It is not

[36] [1987] A.C. 460.

[37] Quare whether there are any limitations imposed upon when a foreign body is available for consideration as an alternative forum. Should a foreign tribunal that does not observe the rule of law or natural justice or may be subject to political interventions be disqualified from stage 1 of the *Spiliada* test? To do so would seem to go against the tone of comity adopted in the judgment? It is suggested by Yeo that it would be more appropriate to assimilate this question into the second stage of whether the plaintiff will be denied substantial justice in the competing forum. See T.M. Yeo "Natural Forum and the Elusive Significance of Jurisdiction Agreements" [2005] Sing. J.L.S. 448 at 450.

[38] An interesting question arises as to whether the courts will stay proceedings in favour of *non-adjudicatory* processes elsewhere. It appears from the judgment that the courts would only stay proceedings in favour of another adjudicatory body elsewhere. However, it is submitted that as a matter of principle, the dictates of comity should require the extension of stays to processes which are non-adjudicatory. This would be in line with the world-wide trend towards alternative and appropriate forms of dispute resolution and this should include both adjudicatory and non-adjudicatory forms of dispute resolution.

[39] The latter involved a party seeking to be excused from a contractual obligation to an exclusive jurisdiction clause and to succeed, one had to show exceptional circumstances amounting to strong cause. The "no defence" argument goes towards establishing exceptional circumstances. This itself was a useful clarification by the court that the "no defence" argument was not a method of by-passing the exceptional circumstances test.

[40] It is submitted that the argument of "no defence" *is* relevant in a stay of proceedings based on an exclusive jurisdiction clause in so far as it goes to show that the defendant does not genuinely desire trial in the contractually chosen forum. This in turn constitutes exceptional circumstances amounting to strong cause. *The Jian He* [2000] 1 Sing.L.R. 8 would be an example of such a case. For a more in depth discussion on the "no defence" argument, see T.M. Yeo, *supra* note 37 at 452-458.

[41] *i.e.*, Hong Kong.

clear how the court arrived at this conclusion[42] but considering the challenges associated with applying the double-actionability rule, further illumination by the court on this point in the future would be welcome.

The appeal was dismissed.

VI. Stay of Proceedings, Forum Non Conveniens, Argument of "No Defence": *Q & M Enterprises Sdn Bhd v Poh Kiat*[43]

The plaintiff, a Malaysian registered company, commenced proceedings against the defendant, a Singapore national, in the Singapore courts for a sum due on the guarantee. The defendant applied for a stay of proceedings on the ground that the Malaysian courts were the more appropriate fora. The plaintiff appealed the decision to grant the stay of proceedings.

Counsel for the plaintiff conceded that the majority of connecting factors pointed to Malaysia as the natural forum and that his client was unlikely to succeed under the first limb of the test from *Spiliada Maritime Corporation v Cansulex Ltd*.[44] Instead, the argument was that under the second limb of the test, the defendant had no arguable defence to the action and therefore, the application for stay should be denied and judgment ought to be given for the plaintiff.[45] Put another way, the argument was that in circumstances where summary judgment would be granted under an Order 14 application, an action should never be stayed and judgment must be given in favour of the plaintiff.

The court observed that the argument of "no defence" is generally used in situations involving exclusive jurisdiction clauses and noted that in this case, there was no exclusive jurisdiction clause involved. The court went on to consider the recent Court of Appeal decision in *The Rainbow Joy*[46] and noted that the argument of "no defence" had no place in an application for a stay based on *forum non conveniens*. This was due to the different juridical bases governing stay of proceedings based on *forum non conveniens* and on an exclusive jurisdiction clause. This was sufficient to dispose of the appeal.

The court went on to emphasise the distinction between matters of jurisdiction and matters of substantive merit. An application for a stay of proceedings is a matter of jurisdiction which comes prior to matters of merit. The plaintiff's "no defence" argument went to the substantive merits of the case and therefore had no place at the jurisdictional stage of the proceedings. This analysis also supported the rejection of the plaintiff's argument.[47]

While correct, it is interesting to note that the court did not question the appropriateness of the "no defence" argument as it relates to a stay of proceedings based on an exclusive jurisdiction clause. If the "no defence" argument has no place at the jurisdictional stage, and an application for a stay is a jurisdictional question, then it should not matter whether the application was based on *forum non conveniens* or an exclusive jurisdiction clause.[48]

[42] Possibilities include the application of some variation of the exception to the double-actionability rule or the *lex loci delictii* or a pure application of the choice of law applying to all tort claims arising from the relationship to that contract.

[43] [2005] 4 Sing.L.R. 494 (High Court: B.L. Phang J.C.).

[44] *Supra* note 36.

[45] In support of this proposition, counsel for the plaintiff relied on cases involving exclusive jurisdiction clauses.

[46] For a discussion of this case, see text accompanying *supra* notes 33 to 42.

[47] Part of the court's analysis included looking at the interaction between the doctrine of *forum non conveniens* and Order 14. In Singapore, an Order 14 summary judgment application is a matter of substantive merit and could not be made until after a defence had been filed by the defendant and served. Allowing the plaintiff's argument to succeed at this jurisdictional stage of proceedings was to allow the plaintiff to seek to obtain a summary judgment by the "backdoor".

[48] This is a different point from the argument of "no defence" going to show that the defendant did not genuinely desire trial in the contractually agreed forum. See *supra* note 40.

VII. Stay of Proceedings, Time Stipulation: Order 12 Rule 7(2)[49]

Order 12 Rule 7(2) is new to the Rules of Court. It provides:

> A defendant who wishes to contend that the Court should not assume jurisdiction over the action on the ground that Singapore is not the proper forum for the dispute shall enter an appearance and, within the time limited for serving a defence, apply to Court for an order staying the proceedings.

In the past, applications for a stay on this basis were not subject to a time limit. With this new rule, such applications are subject to the same time limit as that for an objection to jurisdiction.[50]

There are a number of implications for the defendant in an action commenced in Singapore. First, a defendant applying for a stay of proceedings is taken to have submitted to the jurisdiction of the court.[51] Secondly, the defendant is disadvantaged by having to dispute jurisdiction and apply for a stay within the same time frame. Ideally, an application for a stay should come after an application disputing jurisdiction. However, the time frame involved may not allow for this. Yet, a concurrent application for a stay would be self-defeating because even if the court were to rule in favour of the defendant on the disputing of jurisdiction, the application for the stay constitutes a submission to jurisdiction![52] Finally, the new rule will affect stays based on exclusive jurisdiction clauses. At common law, delays in applying for a stay were a factor in favour of the plaintiff only if it amounted to a waiver by the defendant of the rights under the exclusive jurisdiction clause.[53] Now, a delay beyond the prescribed time period (subject to any judicial extensions) would mean that the defendant would not be able to apply for a stay at all under the jurisdiction clause.[54]

[49] Rules of Court, *supra* note 21.
[50] Order 12 Rule 7(1).
[51] Order 12 Rule 7(6).
[52] It is not clear whether this effect was intended. Regardless, faced with this present incarnation of Order 12 Rule 7, a defendant is likely to have to apply for an extension of time for the application of a stay pending the outcome of the question of dispute of jurisdiction.
[53] *The "Vishva Apurva"* [1992] 2 Sing.L.R. 175; *The "Jian He", supra* note 40.
[54] Having said that, the defendant would presumably still be entitled to damages for the breach of the jurisdiction clause unless the plaintiff successfully argues that the delay amounts to a waiver of the clause.