# MANN HOLDINGS PTE LTD & ANOR

**v.**

# UNG YOKE HONG

Court of Appeal, Putrajaya
Abdul Rahman Sebli, Kamardin Hashim, Mary Lim Thiam Suan JJCA
[Civil Appeal No: J-02-(IM)-1509-07-2018]
29 January 2019

***Civil Procedure:*** *Res judicata — Principles — Appeal against order of High Court to set aside order for enforcement of foreign judgment on basis of res judicata and/or estoppel — Whether principle of res judicata applicable on facts and in law — Whether enforcement of foreign judgment contrary to public policy — Whether any abuse of process by appellants — Reciprocal Enforcement of Judgments Act 1958, s 3(3)*

This was an appeal by the appellants against the order granted by the High Court pursuant to s 5 of the Reciprocal Enforcement of Judgments Act 1958 ('the Act'), to set aside an earlier order of the High Court. By that earlier order, a judgment pronounced by the High Court of Singapore ('Singapore judgment') was registered pursuant to s 4 of the Act. At the High Court, the judge had decided that the registration of the Singapore judgment was contrary to public policy by virtue of the principle of *res judicata* and/or estoppel, because of the outcome of the two stay applications filed by the appellants which had been dismissed by the High Court. The stay applications were in relation to a suit filed by the respondents against the appellants ('JB Suit') which were concurrent to the Singapore Suit, which led to the Singapore judgment. In this appeal, the main issue to be decided was whether the principle or doctrine of *res judicata* was applicable.

**Held** (allowing the appeal with costs):

**(1)** In the present appeal, while the two actions, the Singapore Suit and the JB Suit involved the same parties over essentially the same dispute, the uncontroverted fact was that any of the two or both decisions which were relied on by the respondent related to the applications for stay of proceedings. The object of such applications which were moved by the appellants was always to stay the JB Suit in favour of the Singapore Suit, on the basis that the High Court of Singapore was a competent court which had more appropriate jurisdiction to hear and determine the dispute. At no time could it be said that the consideration of the application for stay would involve a consideration of the merits of the dispute in the substantial action. To say so, under the guise of *res judicata* issue estoppel would be disastrous for the administration of justice; and quite outside the understanding of the doctrine. (paras 41 & 43)

**(2)** What was imperative and highly material was the fact that at the relevant time of either applications for stay, the issue of registration, enforcement or the setting aside of the Singapore judgment did not arise, and could not

arise. The *lis* was still *lis pendens* and was yet to be determined, and it was that determination that rendered the *lis res judicata*. Hence, the principle of *res judicata* was not applicable on the facts and in law in the instant appeal. (paras 46 & 57)

**(3)** It could not be disputed that the Singapore judgment in this appeal met the terms of s 3(3) of the Act for registration in that it was a final and conclusive judgment as between the parties to the Singapore Suit. Therefore, based on the evidence adduced, the Singapore judgment was not at all inflicted by the doctrine of *res judicata*. There was no evidence adduced before the court that may be said to properly satisfy the court that the enforcement of the Singapore judgment would be contrary to public policy in Malaysia. For the same reasons, the appellants could not be said to have been in abuse of process. (paras 67, 72 & 74)

**Case(s) referred to:**

*Affin Bank Berhad (Formerly known as Perwira Habib Bank Malaysia Berhad) v. Lee Hai Pey & Another [2007] 3 SLR 218 (refd)*

*American Express Bank Ltd v. Mohamad Toufic Al-Ozeir & Anor [1994] 1 MLRA 439 (refd)*

*Anthinarayana Mudaliar v. Ajit Singh [1953] 1 MLRH 441 (refd)*

*Asia Commercial Finance (M) Berhad v. Kawal Teliti Sdn Bhd [1995] 1 MLRA 611 (refd)*

*Banque Nationale De Paris v. Ting Kai Hoon [2001] 4 MLRH 542 (refd)*

*Carl-Zeiss-Stiftung v. Rayner and Keeler Ltd & Ors (No 2) [1966] 2 All ER 532 (refd)*

*Chee Pok Choy & Ors v. Scotch Leasing Sdn Bhd [2001] 1 MLRA 98 (refd)*

*Commerzbank (South East Asia) Ltd v. Dennis Ling Li Kuang [2000] 1 MLRH 155 (refd)*

*Commonwealth Of Australia v. Midford (M) Sdn Bhd & Anor [1990] 1 MLRA 364 (refd)*

*Dato' Sivananthan Shanmugam v. Artisan Fokus Sdn Bhd [2015] 4 MLRA 674 (refd)*

*DHL Global Forwarding (Malaysia) Sdn Bhd v. Mactus (Malaysia) Sdn Bhd & Others [2013] 4 SLR 781 (refd)*

*Golden Vale Golf Range & Country Club Sdn Bhd v. Hong Huat Enterprise Sdn Bhd & Another Appeal [2008] 2 MLRA 161 (refd)*

*Goodness For Import And Export v. Phillip Morris Brands Sarl [2016] 5 MLRA 181 (refd)*

*Government Of India v. Petrocon India Limited [2016] 4 MLRA 361 (refd)*

*Government Of Malaysia v. Dato Chong Kok Lim [1973] 1 MLRH 318 (refd)*

*Hap Seng Plantations (River Estates) Sdn Bhd v. Excess Interpoint Sdn Bhd & Anor [2016] 3 MLRA 345 (refd)*

*Hartecon JV Sdn Bhd & Anor v. Hartela Contractors Ltd [1995] 2 MLRA 505 (refd)*

*Henderson v. Henderson [1843] 3 Hare 100 (refd)*

*Hoystead & Others v. Commissioner of Taxation [1926] AC 155 (refd)*

*Huang Min & Ors v. Malaysian Airline System Berhad & Ors [2017] MLRAU 260 (refd)*

*Hunter v. Chief Constable of West Midlands and Another [1981] 3 All ER 727 (refd)*

*Infineon Technologies (M) Sdn Bhd v. Orisoft Technology Sdn Bhd [2010] 18 MLRH 370 (refd)*

*Johnson v. Gore Wood & Co (a firm) [2002] 2 AC 1 (refd)*

*Kerajaan Malaysia v. Mat Shuhaimi Shafiei [2018] 2 MLRA 185 (refd)*

*Liao Eng Kiat v. Burswood Nominees Ltd [2004] 4 SLR (R) 690 (refd)*

*Madihill Development Sdn Bhd & Another v. Sinesinga Sdn Bhd (Transferee to part of the assets of United Merchant Finance Bhd [2012] 1 SLR 169 (refd)*

*Malayan Banking Bhd v. Ng Man Heng [2004] 3 MLRH 154 (refd)*

*MMC Engineering Group Bhd & Anor v. Wayss & Freytag (Malaysia) Sdn Bhd & Anor [2015] MLRHU 514 (refd)*

*Nand Kishore v. State of Punjab [1995] 6 SCC 614 (refd)*

*Open Type Joint Stock Company Efirnoye ("Efko") v. Alfa Trading Limited [2012] 1 MLRH 50 (refd)*

*Peter Ola Blomqvist v. Zavarco Plc & Ors And Other Appeals [2016] 5 MLRA 41 (refd)*

*Petrodar Operating Co Ltd v. Nam Fatt Corporation Berhad & Anor & Another Appeal [2014] 2 MLRA 21 (refd)*

*PNG Oxygen Limited v. Lim Kok Chuan [2018] 3 MLRH 343 (refd)*

*Portcullis Trustnet (Singapore) Pte Ltd & Ors v. Cardiff Ltd & Anor [2015] 4 MLRA 436 (refd)*

*Reichel v. Magrath [1889] 14 App Cas 665 (refd)*

*Residence Hotels And Resorts Sdn Bhd v. Seri Pacific Corporation Sdn Bhd [2016] 5 MLRA 249 (refd)*

*Richardson v. Mellish [1824] 2 Bing 229 (refd)*

*Sarawak Timber Development Corp & Another v. Asia Pulp & Paper Co Ltd [2014] 1 SLR 776 (refd)*

*Standard Chartered Bank (Singapore) Limited v. Pioneer Smith (M) Sdn Bhd [2015] 6 MLRH 742 (refd)*

*State of Haryana v. State of Punjab & Anor [2004] 12 SCC 673 (refd)*

*Superintendent Of Pudu Prison & Ors v. Sim Kie Chon [1986] 1 MLRA 131 (refd)*

*The Abidin Daver [1984] HL 398 (refd)*

*The Aspinall Curzon Ltd v. Khoo Teng Hock [1991] 4 MLRH 583 (refd)*

*Tong Lee Hwa & Anor v. Lee Yoke San [1978] 1 MLRA 340 (refd)*

*Tsang & Ong Stockbrokers (Pte) Ltd v. Joseph Ling Kuok Hua [2000] 4 MLRH 406 (refd)*

*World Triathlon Corporation v. SRS Sports Centre Sdn Bhd [2018] 5 MLRA 80 (refd)*
*Yat Tung Investment Co Ltd v. Dao Heng Bank Ltd and Another [1975] AC 581 (refd)*
*Yusof Sudin v. Suruhanjaya Perkhidmatan Polis & Anor [2012] 3 MLRA 637 (refd)*

**Legislation referred to:**

Arbitration Act 2005, ss 37, 39
Courts of Judicature Act 1964, s 96
Federal Constitution, art 121
Reciprocal Enforcement Of Judgments Act 1958, ss 3(2), (3)(a), (4), 4(2), 5(1)(a)(v), (b), 6(1), (2), 8, 9(1), First Schedule
Rules of Court 2012, O 45
Sedition Act 1948, s 3

**Counsel:**

*For the appellants: Wong Guo Bin (Lim Kong Soon with him); M/s Izral Partnership*
*For the respondent: Justin Voon (Chiam Jia Yan with him); M/s Law Associates*

*[For the High Court judgment, please refer to Mann Holdings Pte Ltd & Anor v. Ung Yoke Hong [2018] MLRHU 1510]*

**JUDGMENT**

**Mary Lim Thiam Suan JCA:**

**[1]** Pursuant to s 5 of the Reciprocal Enforcement of Judgments Act 1958 [Act 99] ("the Act"), the respondent successfully applied, vide encl 10, to set aside an earlier order of the High Court made on 29 January 2018. By that earlier order, a judgment pronounced by the High Court of Singapore in Case No: HC/JUD 742/2017 on 15 December 2017 was registered pursuant to s 4 of the Act. This appeal is in respect of that decision made under s 5 of the Act.

**[2]** After hearing extensive submissions from the parties, both oral and written, and upon careful consideration of those submissions, the grounds of decision and the records of appeal, and the applicable law, we were unanimous in our decision that the learned judge had plainly erred in granting the order sought. The appeal was consequently allowed with costs, and the decision of the High Court dated 4 June 2018 was thereby set aside. These are our reasons in full.

**Chronology Of Events**

**[3]** The background events leading up to the registration of the judgment are necessary for a proper understanding and appreciation of the arguments canvassed in this appeal.

**[4]** On 19 June 2015, the appellants sued the respondent before the High Court in the Republic of Singapore for the recovery of RM4 million pursuant to a loan agreement dated 6 January 2015 entered into between the parties [Singapore Suit]. On 18 September 2015, the respondent filed an application before the High Court in Singapore to stay those proceedings on the ground of *forum non conveniens*.

**[5]** The respondent's application was dismissed by the Assistant Registrar on 23 December 2015. The respondent's appeal was dismissed by the High Court, Singapore on 1 February 2016. The respondent then appealed to the Court of Appeal. On 29 November 2016, the Court of Appeal of Singapore dismissed the appeal, holding that the proper forum to hear the dispute between the parties is the High Court of Singapore.

**[6]** Following that decision, the respondent filed his defence. The case then proceeded to full trial and a decision was rendered on 15 December 2017, in the appellants' favour. The High Court of Singapore declared the loan agreement as enforceable and the respondent was ordered to repay the appellants the sum claimed, that is, RM4 million together with interest and costs [Singapore judgment].

**[7]** The respondent appealed against that decision on 10 January 2018. On 16 November 2018, the Court of Appeal of Singapore dismissed the respondent's appeal, and affirmed the decision of the High Court of Singapore in respect of the Singapore judgment.

**[8]** Concurrently with the Singapore Suit, on 27 April 2016, the respondent sued the appellants before the High Court sitting in Johor Bahru vide High Court Civil Suit No: JA-22NCvC-91-04-2016 [JB Suit]. In this suit, the validity and enforceability of the loan agreement was challenged together with the question of whether the appellants' entitlement to the repayment of the same sum of RM4 million. The respondent claimed *inter alia* that the loan agreement was a sham, and that the RM4 million was actually part payment of a deposit for the purchase of shares in Metahub Industries Sdn Bhd by the appellants.

**[9]** On 10 May 2016, the appellants filed an application to stay the JB Suit pending the determination and disposal of the Singapore Suit, arguing on the principle of *forum non conveniens*, that Singapore High Court was the more appropriate forum to hear the same dispute between the parties. This has been described by the respondent as the "forum stay". The application was dismissed on 14 February 2017.

**[10]** On 14 June 2017, the appellants filed a second similar application under O 45 of the Rules of Court 2012, this time relying on matters that had occurred since the date of the court's decision on 14 February 2017; alternatively, to strike out the respondent's claim so as to protect the integrity of the Singapore Suit. This has been described by the respondent as the "*lis alibi pendens* stay" or "*lis* stay".

**[11]** Both applications were dismissed on 6 September 2017; and these decisions were affirmed by the Court of Appeal on 30 November 2017. The JB Suit then proceeded to full trial.

**[12]** On 15 December 2017, the appellants filed an *ex parte* application to register the Singapore judgment pursuant to s 4 of the Act. The application was allowed and the Singapore judgment was registered on 29 January 2018.

**[13]** On 6 March 2018, the respondent applied vide encl 10 to set aside the order granted on 29 January 2018 on *inter alia* the ground of *res judicata* and/or issue estoppel. The application was allowed on 13 August 2018 and the registration of the Singapore judgment was consequently set aside.

**[14]** Meanwhile, the trial in the JB Suit proceeded to completion and on 31 October 2018, the High Court dismissed the respondent's claim with costs.

**Decision Of The High Court**

**[15]** Although the respondent had cited several grounds for the setting aside of the Singapore judgment, that the judgment was not final and conclusive, that there was an abuse of process, and that the registration of the Singapore judgment was contrary to public policy by virtue of the principle of *res judicata* and/or estoppel; the learned judge only accepted the last ground, finding it as the 'primary ground'.

**[16]** It was the specific finding of the learned judge that the registration of the Singapore judgment is contrary to public policy because of the outcome of the two stay applications which had been dismissed by the High Court. The principle of *res judicata* was understood as a "facet of public policy", citing *Asia Commercial Finance (M) Berhad v. Kawal Teliti Sdn Bhd* [1995] 1 MLRA 611. In the first stay application, the High Court had *inter alia* held that "the decision of the Singapore Suit will not bind Malaysia". In the subsequent stay application, the judge had also said that he was "truly not able to appreciate the arguments why it must be the decision of the Singapore Court which would bind the parties to this Suit".

**[17]** According to the learned judge:

> "This thus meant the JBHC had decided on two occasions the Singapore Suit cannot prevail over the JB Suit. Otherwise the JBHC and the Court of Appeal which confirmed the 2nd stay and striking out decision would have allowed the stay and/or striking out of the JB Suit and allowed the Singapore Suit to continue to its conclusion and determination."

**[18]** The learned judge agreed with the respondent's submissions that there was "no difference between JBHC and the Court of Appeal disallowing the Singapore Suit from prevailing over the JB Suit before the Singapore judgment is given and after the Singapore Suit judgment is given. This is because the Singapore Suit and Singapore judgment cannot prevail over the JB Suit and

any ensuing judgment. It follows that *res judicata* and/or issue estoppel applies as the same issue is being canvassed here which is the earlier decision that the Singapore Suit cannot prevail over the JB Suit". The learned judge further opined that "the fact that the JBHC recognised that the Singapore Suit cannot prevail over the JB Suit meant that the Singapore judgment is not final and conclusive as required under s 3(3)(a) of the Act, and that s 8 does not apply "as that judgment for it to be recognised in Malaysia and to be conclusive presupposes that judgment to be final and conclusive, which in this instance, it is not".

**Our Analysis & Deliberations**

**[19]** The principal issue in this appeal concerns the application or otherwise of the principle or doctrine of *res judicata*. The principle was applied under the wider concept of issue estoppel or constructive *res judicata;* that not only was the issue canvassed before the High Court this time round was the same as that raised in the two earlier decisions relating to the applications for stay of proceedings, those two decisions themselves had already decided that the Singapore Suit will not bind and cannot prevail over the JB Suit. Public policy does not permit arguments which are barred by the doctrine of *res judicata* to be reargued or re-litigated; there must be finality and no litigant should be vexed whether twice or over and over again, in respect of the same cause or dispute. Consequently, the terms of s 5(1)(a)(v) were met and the registration order was set aside.

**[20]** With respect, we disagree. We are of the view that the principle of *res judicata* not only cannot be invoked in this case but is inapplicable in the instant appeal. For broadly the same reasons, we find that there was no abuse of process by the appellants and that the learned judge was plainly erroneous in allowing the application to set aside the registration of the Singapore judgment.

**[21]** Dealing first with the doctrine of *res judicata*. Most common law systems subscribe to the principle of *res judicata* or the rule in *Henderson v. Henderson* [1843] 3 Hare 100. In that decision, Sir James Wigram VC expounded at p 115 this celebrated elaboration of the meaning of *res judicata*:

> "I believe I state the rule of the court correctly, when I say, that where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in context, but which was not brought forward only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special-case, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time."

**[22]** This view was endorsed and followed by the House of Lords in *Hoystead & Others v. Commissioner of Taxation* [1926] AC 155, where Lord Shaw delivering the judgment of the House was of the view that "if in any court of competent jurisdiction a decision is reached, a party is estopped from questioning it in a new legal proceeding. But the principle also extends to any point, whether of assumption or admission, which was in substance the ratio of and fundamental to the decision. The rule on this subject was set forth in the leading case of *Henderson v. Henderson* by Wigram VC". Similar views were expressed by Lord Kilbrandon in *Yat Tung Investment Co Ltd v. Dao Heng Bank Ltd and Another* [1975] AC 581.

**[23]** That doctrine has not only far reaching implications but is suggested to have also wide application, even to matters in arbitration - see commentary on the "*Application of the Henderson v. Henderson rule in International Arbitration*" by Williams & Tushingham reported in the Singapore Academy of Law Journal [2014] 26 SAcLJ 1036. That same rationale, that public interest and public policy requires that litigation cannot be run in instalments, and that there must be finality in litigation, has been subscribed by our courts, up and down the hierarchy.

**[24]** One of the most illuminating deliberations on the principle of *res judicata* is to be found in the decision of *Asia Commercial Finance (M) Berhad v. Kawal Teliti Sdn Bhd* [1995] 1 MLRA 611, where the Supreme Court explained the basic elements of the principle, how that principle has been expanded, the different schools of thought on that expansion, before finally giving its opinion of the preferred direction of expansion. That decision has been often cited in decisions at all levels. It was recently reaffirmed in *Kerajaan Malaysia v. Mat Shuhaimi Shafiei* [2018] 2 MLRA 185.

**[25]** For the purposes of the present appeal, as we see it, the Federal Court's recent decision is important in two respects: the doctrine of *res judicata* itself and, its close relation with the doctrine of abuse of process. Both these doctrines are relevant in the instant appeal.

**[26]** Now, on the first doctrine of *res judicata*. One of the questions upon which leave under s 96 of the Courts of Judicature Act 1964 [Act 91] was granted in the Federal Court was this: whether a challenge to the constitutionality of s 3 of the Sedition Act 1948 [Act 15] made in civil proceedings is *res judicata* in view of a prior challenge in criminal proceedings by the same applicant. One of the arguments articulated by learned counsel for the accused was that the doctrine of constructive *res judicata* had no application to a challenge on the constitutionality of a statute, citing the Indian Supreme Court's decision in *Nand Kishore v. State of Punjab* [1995] 6 SCC 614; and that as observed by Chang Min Tat FJ in *Tong Lee Hwa & Anor v. Lee Yoke San* [1978] 1 MLRA 340, the earlier judgment must "necessarily and with precision" determine the point in issue.

**[27]** The Federal Court overruled the decision of the Court of Appeal holding that the doctrine of constructive *res judicata* applied even in cases where constitutional provisions are under challenge. The Federal Court reminded that the "basis on which the doctrine of *res judicata* rests is founded on the consideration of public policy that it is in the public interest that there should be finality in litigation and decisions made by courts of competent jurisdiction, and that no one should be vexed twice for the same kind of litigation. Therefore, we see no reason why the doctrine of constructive *res judicata* should not apply to a challenge on the constitutionality of a statute". The Federal Court cited the Indian Supreme Court's decision in *State of Haryana v. State of Punjab & Anor* [2004] 12 SCC 673 in support.

**[28]** It was the view of the Federal Court that "the Latin term "*res judicata*" literally translated means 'a matter adjudged'. The full maxim is *res judicata pro veritate accipitur* which means 'a matter adjudged is taken as truth'." The Federal Court cited and followed with approval the extensive expositions on the doctrine by Peh Swee Chin SCJ in *Asia Commercial Finance (M) Berhad v. Kawal Teliti Sdn Bhd (supra)*:

> "What is *res judicata?* It simply means a matter adjudged, and its significance lies in its effect of creating an estoppel *per rem judicatum*. When a matter between two parties has been adjudicated by a court of competent jurisdiction, the parties and their privies are not permitted to litigate once more the *res judicata*, because the judgment becomes the truth between such parties, or in other words, the parties should accept it as the truth; *res judicata pro veritate accipitur.* The public policy of the law is that, it is in the public interest that there should be finality in litigation-interest *rei publicae ut sit finis litium*. It is only just that no one ought to be vexed twice for the same cause of action - *nemo debet bis vexari pro eadem causa*. Both maxims are the rationales for the doctrine of *res judicata*, but the earlier maxim has the further elevated status of a question of public policy.
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> Since a *res judicata* creates an estoppel *per rem judicatum*, the doctrine of *res judicata* is really the doctrine of estoppel *per rem judicatum*, the latter being described sometimes in a rather archaic way as estoppel by record. Since the two doctrines are the same, it is no longer of any practical importance to say the *res judicata* is a rule of procedure and that an estoppel *per rem judicatum* is that of evidence. Such dichotomy is apt to give rise to confusion.
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> The starting point ought to be the celebrated passage by Wigram VC in the case of *Henderson v. Henderson* [1843] 3 Hare 100 at p 115 which is:
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> > The plea of *res judicata* applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence might have brought forward at the time."

**[29]** The Federal Court acknowledged that there are in fact two kinds of estoppel *per rem judicatum*. The first is cause of action estoppel and the second, issue estoppel, which according to the Federal Court, "is a development from

the first". Explaining on the two types of estoppel, it was noted by the Federal Court in *Kerajaan Malaysia v. Mat Shuhaimi Shafiei* that the Supreme Court in *Asia Commercial* said:

> "The **cause of action estoppel** arises when rights or liabilities involving a particular right to take a particular action in court for a particular remedy are determined in a final judgment and such right of action, ie the cause of action, merges into the said final judgment; in layman's language, the cause of action has turned into the said final judgment. The said cause of action may not be re-litigated between the same parties because it is *res judicata*. In order to prevent multiplicity of action and also in order to protect the underlying rationales of estoppel *per rem judicatum* and not to act against them, such estoppel of cause of action has been extended to all other causes of action (based on the same facts or issues) which should have been litigated or asserted in the original earlier action resulting in the final judgment, and which were not, either deliberately or due to inadvertence ... On the other hand, **the issue estoppel** literally means simply an issue which a party is estopped from raising in a subsequent proceeding. However, the issue estoppel, in a nutshell, from a consideration of case law, means in law a lot more, ie that neither of the same parties or their privies in a subsequent proceeding is entitled to challenge the correctness of the decision of a previous final judgment in which they, or their privies, were parties. This sounds like explaining a truism, but it is the corollary from that statement that is all important and that could have given birth to the controversies alluded to above; the corollary being that neither of such parties will be allowed to adduce evidence or advance any argument to contradict such decision. In this respect, we respectfully agree with Peter Gibson J in *Lawlor v. Gray* [1984] 3 All ER 345 at p 350, who said:
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> > 'Issue estoppel ... prevents contradiction of a previous determination, whereas cause of action estoppel prevents reassertion of the cause of action.' It is important to bear in mind the manner in which the issue estoppel operates in preventing such contradiction of the previous judgment ... There is one school of thought that issue estoppel **applies** only to issues actually decided by the court in the previous proceedings and not to issues which might have been and which were not brought forward, either deliberately or due to negligence or inadvertence, while another school of thought holds **the contrary view that such issues which might have been and which were not brought forward as described, though not actually decided by the court, are still covered by the doctrine of *res judicata*, ie doctrine of estoppel *per rem judicatum***.
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> **We are of the opinion that the aforesaid contrary view is to be preferred**; it represents for one thing, a correct even though broader approach to the scope of issue estoppel. It is warranted by the weight of authorities to be illustrated later. It is completely in accord or resonant with the rationales behind the doctrine of *res judicata*, in other words, with the doctrine of estoppel *per rem judicatum*. It is particularly important to bear in mind the question of the public policy that there should be finality in litigation in conjunction with the exploding population; the increasing sophistication of the populace with the law and with the expanding resources of the courts being found always one step behind the resulting increase in litigation."
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> [Emphasis In Original]

**[30]** The Federal Court in *Kerajaan Malaysia v. Mat Shuhaimi Shafiei* further relied on the comments made by Sharma J in *Government Of Malaysia v. Dato Chong Kok Lim* [1973] 1 MLRH 318, that "the rule of constructive *res judicata* is really a rule of estoppel".

**[31]** It would appear that with this proposition, the authorities of *Residence Hotels And Resorts Sdn Bhd v. Seri Pacific Corporation Sdn Bhd* [2016] 5 MLRA 249; *Government Of India v. Petrocon India Limited* [2016] 4 MLRA 361; *Chee Pok Choy & Ors v. Scotch Leasing Sdn Bhd* [2001] 1 MLRA 98 may have to be relooked and properly understood.

**[32]** In *Chee Pok Choy & Ors v. Scotch Leasing Sdn Bhd*, the Court of Appeal citing *Carl-Zeiss-Stiftung v. Rayner and Keeler Ltd & Ors (No 2)* [1966] 2 All ER 532, held that the doctrine of *res judicata* is not an inflexible rule; that the court could still decline to apply it where to do so would lead to unjust result, and that the doctrine is... "merely equity in action in procedural arena".

**[33]** In *Residence Hotels and Resorts*, the Court of Appeal acknowledged that *res judicata* is a rule of substantive law and that the matter cannot be re-litigated between the parties who are bound by the judgment. In that regard, the earlier judgment must necessarily and with precision determine the point in issue to constitute *res judicata*, following *Hoystead v. Taxation Commissioner (supra)*; *Carl-Zeiss-Stiftung v. Rayner & Keeler Ltd & Ors (No 2) (supra)*; *Tong Lee Hwa & Anor v. Lee Yoke San (supra)*; *Asia Commercial (supra)*; *Golden Vale Golf Range & Country Club Sdn Bhd v. Hong Huat Enterprise Sdn Bhd & Another Appeal* [2008] 2 MLRA 161. However, where *res judicata* is not "strictly established or where estoppel *res judicatum* is not made out but nevertheless, the circumstances are such as to render any re-litigation of the questions formerly adjudicated upon, a scandal and an abuse, the court would not hesitate to dismiss the action, relying on *Superintendent Of Pudu Prison & Ors v. Sim Kie Chon* [1986] 1 MLRA 131 and *Hartecon JV Sdn Bhd & Anor v. Hartela Contractors Ltd* [1995] 2 MLRA 505.

**[34]** As for the second doctrine of abuse of process which the Federal Court concluded was erroneously overlooked by the Court of Appeal in that case but was a doctrine "which is separate and distinct" from the doctrine of *res judicata* "although both rest on the same underlying public-interests – namely that there should be finality in litigation and that a person should not be vexed twice in the same matter"; must be addressed together with the doctrine of *res judicata*. It was the view of the Federal Court that "even if *res judicata* is not applicable to bar encl 1, it still cannot stand if it is found to be an abuse of the process".

**[35]** The two doctrines were considered in *Dato' Sivananthan Shanmugam v. Artisan Fokus Sdn Bhd* [2015] 4 MLRA 674. In that case, the Court of Appeal held that the doctrine of issue estoppel also applies to a non-party, that it is not necessary for the parties to be the same in both actions; that "[25] ... what the doctrine seeks to prevent is an abuse of the process of the court by attempting to make a double claim as well as allowing the plaintiff to relitigate its cause for the same relief and based on the same subject matter for which judgment had

successfully been obtained in the HTF suit and to produce the same set of facts, the same witnesses and the same documents (see *Seruan Gemilang Makmur Sdn Bhd v. Badan Perhubungnan UMNO Pahang Darul Makmur*)."

**[36]** At paras 26 to 29, the Court of Appeal further observed:

> "[26] We would emphasis at this juncture that the present action could have been included in the HTF suit by reason of the fact that the relief, evidence relied on and the witnesses are the same ... The only difference lies in the cause of action...
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> [28] ...what the respondent had done in effect was to divide its case into two separate claims and in the process proceed in two stages in order to suit its convenience while in actuality it was claiming for the same relief based on the same facts for which judgment had already been obtained earlier in the HTF suit. It cannot be denied that both claims arose from the same one and only transaction and were undoubtedly interrelated. Therefore it would be unjust to permit the respondent to make double claim by filing two separate actions for the same relief. In our judgment the instant action is an abuse of the process of the court (see also *North West Water Ltd v. Binnie & Partners (a firm)*).
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> [29] We would add further at this point that, **even if there has been no actual decision as to the issues involved in the instant action, but if the respondent did not raise these issues in the earlier proceedings which it could and should have done so, in our view the plea of this doctrine of *res judicata* in its amplified and wider sense is available to the appellant to prevent an abuse of the process of the court**. We would refer to the Supreme Court's decision in *Superintendent Of Pudu Prison & Ors v. Sim Kie Chon* [1986] 1 MLRA 131 ..."
>
> [Emphasis Added]

**[37]** This doctrine of abuse of process which was applied in *Reichel v. Magrath* [1889] 14 App Cas 665 was also approved and applied in *Hunter v. Chief Constable of West Midlands and Another* [1981] 3 All ER 727; and restated by the House of Lords in *Johnson v. Gore Wood & Co (a firm)* [2002] 2 AC 1.

**[38]** In *Reichel v. Magrath*, Lord Halsbury LC was of the view that "... it would be a scandal to the administration of justice, if the same question having been disposed of by one case, the litigant were to be permitted by changing the form of the proceedings to set up the same case again ... I believe there must be an inherent jurisdiction in every Court of Justice to prevent such an abuse of its procedure ...".

**[39]** Similar views to like effect were expressed by Lord Diplock in *Hunter v. Chief Constable of West Midlands and Another (supra)*, that "... abuse of the process of the High Court ... concerns the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which,

although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied; those which give rise to the instant appeal must surely be unique. It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the court has a duty (I disavow the word discretion) to exercise this salutary power, ... The abuse of process which the instant case exemplifies is the initiation of proceedings in a court of justice for the purpose of mounting a collateral attack on a final decision against the intending plaintiff which has been made by another court of competent jurisdiction in previous proceedings in which the intending plaintiff had a full opportunity of contesting the decision in the court by which it was made, ...".

**[40]** Applying thus the above principles to the present appeal, and taking first the issue of *res judicata* in the wider or constructive sense, we are of the firm view that the principle of *res judicata* is not breached. In fact, we agree with the submissions of learned counsel for the appellants that *res judicata* does not arise on the facts.

**[41]** While the two actions, the Singapore Suit and the JB Suit may involve the same parties over essentially the same dispute, and that is the position of the RM4 million paid by the appellants in circumstances and conditions under substantial factual controversy between the parties, the uncontroverted fact remains this - that any of the two or both decisions which are relied on by the respondent relate to the applications for stay of proceedings. The object of such applications which were moved by the appellants was always to stay the JB Suit in favour of the Singapore Suit, on the basis that the High Court of Singapore is a competent court which has more appropriate jurisdiction to hear and determine the dispute, that is, the principle of *forum conveniens*. A grant of stay is often seen as averting potential conflicting decisions from both jurisdictions. The test, as propounded by the Supreme Court in *American Express Bank Ltd v. Mohamad Toufic Al-Ozeir & Anor* [1994] 1 MLRA 439, though dependent on a variety of factors, comes down to the balancing and proving of the most appropriate forum to hear the dispute in question, to establish the particular forum with which the action has the most real and substantial connection. See also *Peter Ola Blomqvist v. Zavarco Plc & Ors And Other Appeals* [2016] 5 MLRA 41; and *World Triathlon Corporation v. SRS Sports Centre Sdn Bhd* [2018] 5 MLRA 80.

**[42]** This principle of *forum conveniens* is sometimes also raised in applications for stay or transfer of actions where the actions are filed in two separate locations, say the High Court sitting in Johor Bahru and another action sitting in Penang. Either the two cases are transferred to be heard by a single court or there may be a stay granted to await the outcome or disposal of the other case. This may also operate in a situation where the two suits are filed before

the two High Courts, one before the High Court of Malaya, the other before the High Court in Sabah and Sarawak. Both courts may be competent and have the necessary jurisdiction to determine the respective actions, but a stay may nevertheless be ordered, pending disposal of the other; but a transfer or a consolidation is out of the question as both High Courts have coordinate jurisdiction under art 121 of the Federal Constitution - see for instance the Federal Court's decisions in *Hap Seng Plantations (River Estates) Sdn Bhd v. Excess Interpoint Sdn Bhd & Anor* [2016] 3 MLRA 345, and *Goodness For Import And Export v. Phillip Morris Brands Sarl* [2016] 5 MLRA 181; *Petrodar Operating Co Ltd v. Nam Fatt Corporation Berhad & Anor & Another Appeal* [2014] 2 MLRA 21.

**[43]** Now, it cannot be said that by virtue of the dismissal or even the grant of an order of stay, that either action is then caught by the principle of *res judicata*. While a second application on the same facts may well be caught by the principle, it cannot be said that the doctrine operates. The focus and arguments at the material time concern the merits of the application for stay, whether the applicable principles of *forum conveniens*, multiplicity of actions and the like, operate to allow or disallow such an application. The merits of any of the suits themselves are far from being the object of any attention, save to show elements of similarity or basis to support or dismiss the application. At no time can it be said that the consideration of the application for stay will involve a consideration of the merits of the dispute in the substantial action. To say so, under the guise of *res judicata* issue estoppel would be, in our view, disastrous for the administration of justice; and quite outside the understanding of the doctrine as expressed in the decisions discussed thus far.

**[44]** We observe that there were no remarks or deliberations on this in the second stay application, neither was it raised by the respondent; confirming our apprehension of the operation of the principle.

**[45]** We see no difference, significant or otherwise, if the stay applications were sought in respect of two suits filed in two different competent jurisdictions, as was the case here. The fact that the decision of the High Court dismissing the stay was affirmed on appeal does not change that construction or conclusion.

**[46]** What is imperative and highly material is the fact that at the relevant time of either applications for stay, the issue of registration, enforcement or the setting aside of any judgment rendered by the Singapore High Court simply did not arise, and could not arise. The lis was still *lis pendens* and was yet to be determined, and it is that determination that rendered the lis *res judicata*. What may have been caught by the principle of *res judicata* would have been another application for stay, had such an application been filed, especially on the same basis or grounds.

**[47]** That, however, is entirely different from dealing with the particular facts in the present appeal. What was before the High Court was the setting aside of an order of registration of the Singapore judgment granted pursuant to specific provisions of the Act. Although the Supreme Court in *Asia Commercial* and

the Federal Court in *Kerajaan Malaysia v. Mat Shuhaimi Shafiei* have expressly indicated that the wider understanding of estoppel *per rem judicatum* is preferred, we are of the view that even then, the principle is not engaged. At the time of consideration or even any time thereafter, there was no judgment in the horizon of any of the two competent jurisdictions, particularly in the Singapore High Court or even the existence of a judgment in the appellants' favour to boot. The judgment may well have turned out to be in the respondent's favour, in which case, one can see the respondent seeking to register such a judgment before the High Court of Malaya. As it turned out, the judgment was rendered in the appellants' favour, long after the stay applications had been resolved.

**[48]** More importantly, and this appears overlooked, the principle of this amplified and wider sense *res judicata* or constructive *res judicata* deals with issues that the appellants did not raise in the earlier proceedings which the appellants could and should have done so. The matter of registration of a judgment rendered by the High Court of Singapore simply could not have been raised at the time of any of the applications for stay, as the trial proceedings had yet to take place and a judgment pronounced by the court.

**[49]** As for the remarks made by both judges at the stay applications, in the first stay application, the oral grounds were as follows:

(a) the *forum conveniens* in relation to the plaintiff's claim is in Malaysia;

(b) there is no issue of *res judicata*;

(c) there is no duplicity/multiplicity of proceedings;

(d) the decision of the Singapore Suit will not bind Malaysia; and

(e) grave injustice will be caused if the matter is heard in Singapore as part of the prayers sought by the plaintiffs are injunctive in nature and can only be effective in Malaysia.

**[50]** In the second stay application, the learned Judicial Commissioner said at para 34 of his grounds of judgment that he was "truly not able to appreciate the arguments why it must be the decision of the Singapore Court which should bind the parties to this Suit."

**[51]** It was these two remarks that led the learned judge to conclude that "*res judicata* and/or issue estoppel applies as the same issue is being canvassed here which is the earlier decision that the Singapore Suit cannot prevail over the JB Suit". In the learned judge's mind, since the two earlier judges had already pronounced that the Singapore Suit will not bind Malaysia, and why it must be the Singapore Suit which should bind the parties, then the registration of the Singapore judgment must be set aside.

**[52]** With respect, that is plainly erroneous. We are of the view that the learned judge failed to address the meaning of those remarks, that it was in the context of stay applications where the principle of *forum conveniens* was paramount. In our opinion, at best, these were obiter remarks, of no binding force as they do not form any part of the reasoning or *ratio decidendi* of the decision reached. It is the *ratio decidendi* which binds, not what was expressed as *obiter dictum*. Such *obiter dictum* are remarks or statements made by the judge on a point which was not directly relevant to deciding the case before the judge. They were really "remarks or comments made in passing" - see Federal Court's decision in *Yusof Sudin v. Suruhanjaya Perkhidmatan Polis & Anor* [2012] 3 MLRA 637.

**[53]** Having examined the remarks or comments relied on, we are of the view that those remarks and comments were made in relation to a stay of proceedings yet to commence, and not to the outcome of the decision reached. Those remarks do not form any fundamental part of the decision reached to dismiss the application for stay. In fact, if we examine the grounds relating to the second application for stay, it is observed that the learned JC acknowledged that "it would be premature to predict whether the outcome of this suit and that of Singapore would be in conflict. The application for stay under O 45 is specifically for stay of execution, and I do not find the provisions to be applicable for a stay of proceedings".

**[54]** In any case, the decision of the Singapore Suit does not bind Malaysia because it does not form part of the doctrine of *stare decisis* in this country. However, insofar as the parties to the suit is concerned, once judgment is pronounced by any superior court of competent jurisdiction, it binds the parties and forms the truth between the parties and their privies to the dispute.

**[55]** In the case of judgments from a superior court of another jurisdiction, the Reciprocal Enforcement of Judgments Act 1958 is a specific statute enacted to provide the mechanism for how such judgments from recognised jurisdictions such as the High Court of Singapore may be enforced in Malaysia. That specific mechanism involves a mandatory registration process with adequate timelines enacted for setting aside the registration, before such judgment may be enforced or executed. After such judgments are registered, it is the registration that is challenged and not the merits or propriety of the judgment. That exercise must necessarily be undertaken in the original jurisdiction where the judgment was pronounced.

**[56]** The reason relied on by the learned judge to set aside the registration granted on 29 January 2018, is erroneous. The application was made pursuant to s 5 of the Act. As recognised by the learned judge, following an earlier decision in *Malayan Banking Bhd v. Ng Man Heng* [2004] 3 MLRH 154, the registration of a foreign judgment should not be set aside on grounds outside s 5 of the Act. The learned judge set aside the registration granted earlier by Her Ladyship herself, on the ground that the application was caught by the principle of *res judicata*. Where the principle of *res judicata* applies, it follows that

it would be against public policy of Malaysia that the registration be allowed to stand. Such registration must thus be set aside under s 5(1)(a)(v) of the Act.

**[57]** We must, with respect, disagree. Not that we hold that *res judicata* is not part of public policy, for it is, even in the narrow sense as such a doctrine should properly be considered. Rather, for the reasons that we have already discussed above, the principle is not applicable on the facts and in law in the instant appeal.

**[58]** The learned judge had opined that public policy is to be interpreted narrowly, akin to "an unruly horse and once you get astride it you never know where it will carry you. It may lead you from the sound law' as per Borrough J in *Richardson v. Mellish* [1824] 2 Bing 229, and quoted with approval in *The Aspinall Curzon Ltd v. Khoo Teng Hock* [1991] 4 MLRH 583. See *Infineon Technologies (M) Sdn Bhd v. Orisoft Technology Sdn Bhd* [2010] 18 MLRH 370; *Open Type Joint Stock Company Efirnoye ("Efko") v. Alfa Trading Limited* [2012] 1 MLRH 50 and *MMC Engineering Group Bhd & Anor v. Wayss & Freytag (Malaysia) Sdn Bhd & Anor* [2015] MLRHU 514 [affirmed on appeal] for discussions on giving the public policy ground a narrow and restrictive construction and interpretation. Although these cases deal with the registration of foreign arbitral awards, one of the grounds for setting aside and/or recognition of such awards is that the award or the recognition would be contrary to the public policy of Malaysia [ss 37 and 39 of the Arbitration Act 2005], the approach in this regard is instructive. Similar views have also been expressed in *Liao Eng Kiat v. Burswood Nominees Ltd* [2004] 4 SLR (R) 690. Be that as it may, the principle is not breached for the reasons elaborated in these grounds.

**[59]** Coming then to the Act itself and its operation. The Reciprocal Enforcement of Judgments Act 1958 is specific legislation enacted by Parliament to confer specific jurisdiction on the courts to register judgments given by superior courts of those reciprocating countries listed in the First Schedule to the Act. The whole basis of the Act starts with the concept or principle of comity and substantial reciprocity between nations. This is evident from the terms of s 3(2) which reads:

> "(2) The Yang di-Pertuan Agong may, if he is satisfied that in the event of the benefits conferred by this Part being extended to judgments given in the superior courts of any country or territory outside Malaysia, substantial reciprocity of treatment will be assured as respects the enforcement in that country or territory of judgments given in the High Court, by order extend this Part to that country or territory and may, by the same or a different order, amend the First Schedule to add that country or territory thereto and specify what courts of that country or territory shall be deemed to be superior courts for the purposes of this Part."

**[60]** Mohd Nazlan J has given a brief but helpful analysis of the history and background for the Act in *Standard Chartered Bank (Singapore) Limited v. Pioneer Smith (M) Sdn Bhd* [2015] 6 MLRH 742. According to His Lordship, the Act "enshrines legal reciprocity which arguably has a stronger theoretical affinity

with the concept of comity, and which is generally effective only to the extent that foreign judgments do not directly conflict with the other country's public policy (such as reflected in provisions contained in ss 3(2), 5(1)(a)(v) and 9(1) of REJA)". See *Anthinarayana Mudaliar v. Ajit Singh* [1953] 1 MLRH 441 for an authority pre-legislation, but revealing that the principle is nevertheless the same, that it is one of comity and reciprocity.

**[61]** The courts in Malaysia are no stranger to recognising and enforcing legislation or principles based on this doctrine of international comity and substantial reciprocity. See for instance the Supreme Court's decision in *Commonwealth Of Australia v. Midford (M) Sdn Bhd & Anor* [1990] 1 MLRA 364; and the Court of Appeal's decisions in *Huang Min & Ors v. Malaysian Airline System Berhad & Ors* [2017] MLRAU 260 [dissenting judgment of Vernon Ong JCA], and *Portcullis Trustnet (Singapore) Pte Ltd & Ors v. Cardiff Ltd & Anor* [2015] 4 MLRA 436. The principle of international comity is an internationally recognised and accepted concept, especially within the Commonwealth, with the courts striving to avoid conflicting decisions between civilised and friendly nations as amplified in the case of *The Abidin Daver* [1984] HL 398.

**[62]** Appreciating then the attending principles, we turn now to the specific provisions at play. These are the relevant provisions of the Act, of which s 3(2) has already been set out earlier:

> "3.(3) Any judgment of a superior court, other than a judgment of such a court given on appeal from a court which is not a superior court, shall be a judgment to which this Part applies, if:
>
> (a) it is final and conclusive as between parties thereto;
>
> (b) there is payable thereunder a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; and
>
> (c) being a judgment from a country or territory added to the First Schedule pursuant to subsection (2), it is given after that country or territory is added to that Schedule.
>
> (4) For the purposes of this section, a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court.
>
> Application for and effect of registration of judgment
>
> 4. (1) A person, being a judgment creditor under a judgment to which this Part applies, may apply to the High Court at any time within six years after the date of the judgment, or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings, to have the judgment registered in the High Court, and on any such application the court shall, subject to proof of the prescribed matters and to the other provisions of this Act, order the judgment to be registered:

Provided that a judgment shall not be registered if at the date of the application:

(a) it has been wholly satisfied; or

(b) it could not be enforced by execution in the country of the original court.

(2) Subject to the provisions of this Act with respect to the setting aside of registration:

(a) a registered judgment shall, for the purposes of execution, be of the same force and effect;

(b) proceedings may be taken on a registered judgment;

(c) the sum for which a judgment is registered shall carry interest; and

(d) the registering court shall have the same control over the execution of a registered judgment;

as if the judgment had been a judgment originally given in the registering court and entered on the date of registration:

Provided that execution shall not issue on the judgment so long as, under this Part and the rules of court made for the purposes thereof, it is competent for any party to make an application to have the registration of the judgment set aside, or, where such an application is made, until after the application has been finally determined.

(3) Where the sum payable under a judgment which is to be registered is expressed in a currency other than Malaysian currency, the judgment shall be registered as if it were a judgment for such sum in Malaysian currency as, on the basis of the rate of exchange prevailing at the date of the judgment of the original court, is equivalent to the sum so payable.

(4) If at the date of the application for registration the judgment of the original court has been partly satisfied, the judgment shall not be registered in respect of the whole sum payable under the judgment of the original court, but only in respect of the balance remaining payable at that date.

(5) If, on an application for the registration of a judgment, it appears to the registering court that the judgment is in respect of different matters and that some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments those judgments could properly have been registered, the judgment may be registered in respect of the provisions aforesaid but not in respect of any other provisions contained therein.

(6) In addition to the sum of money payable under the judgment of the original court, including any interest which by the law of the country of the original court becomes due under the judgment up to the time of registration, the judgment shall be registered for the reasonable costs of and incidental to registration, including the costs of obtaining a certified copy of the judgment from the original court.

Cases in which registered judgments must, or may, be set aside

5. (1) On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment:

(a) shall be set aside if the registering court is satisfied:

(i) that the judgment is not a judgment to which this Part applies or was registered in contravention of this Act;

(ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case;

(iii) that the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear;

(iv) that the judgment was obtained by fraud;

(v) that the enforcement of the judgment would be contrary to public policy in Malaysia; or

(vi) that the rights under the judgment are not vested in the person by whom the application for registration was made; and

(b) may be set aside if the registering court is satisfied that the matter in dispute in the proceedings in the original court had previously to the date of the judgment in the original court been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.

(2) For the purposes of this section the courts of the country of the original court shall, subject to subsection (3), be deemed to have had jurisdiction:

(a) in the case of a judgment given in an action *in personam*:

(i) if the judgment debtor, being a defendant in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings otherwise than for the purpose of protecting, or obtaining the release of, property seized, or threatened with seizure, in the proceedings or of contesting the jurisdiction of that court;

(ii) if the judgment debtor was plaintiff in, or counter-claimed in, the proceedings in the original court;

(iii) if the judgment debtor, being a defendant in the original court, had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings to submit to the jurisdiction of that court or of the courts of the country of that court;

(iv) if the judgment debtor, being a defendant in the original court, was at the time when the proceedings were instituted resident in, or being a body corporate had its principal place of business in, the country of that court; or

(v) if the judgment debtor, being a defendant in the original court, had an office or place of business in the country of that court and the proceedings in that court were in respect of a transaction effected through or at that office or place;

(b) in the case of a judgment given in an action of which the subject matter was immovable property or in an action in rem of which the subject matter was movable property, if the property in question was at the time of the proceedings in the original court situate in the country of that court; and

(c) in the case of a judgment given in an action other than any such action as is mentioned in paragraph (a) or (b), if the jurisdiction of the original court is recognized by the law of Malaysia.

(3) Notwithstanding anything in subsection (2), the courts of the country of the original court shall not be deemed to have had jurisdiction:-

(a) if the subject matter of the proceedings was immovable property outside the country of the original court;

(b) except in the cases mentioned in subparagraph (2)(a)(i), (ii), (iii) and para (c), if the bringing of the proceedings in the original court was contrary to an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of the country of that court; or

(c) if the judgment debtor, being a defendant in the original proceedings, was a person who under the rules of public international law was entitled to immunity from the jurisdiction of the courts of the country of the original court and did not submit to the jurisdiction of that court.

Powers of registering court on application to set aside registration

6.(1) If, on an application to set aside the registration of a judgment, the applicant satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment, the court, if it thinks fit, may, on such terms as it may think just, either set aside the registration or adjourn the application to set aside the registration until after the expiration of such period as appears to the court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by the competent tribunal.

(2) Where the registration of a judgment is set aside under subsection (1), or solely for the reason that the judgment was not at the date of the application for registration enforceable by execution in the country of the original court, the setting aside of the registration shall not prejudice a further application to register the judgment when the appeal has been disposed of or if and when

the judgment becomes enforceable by execution in that country, as the case may be.

(3) Where the registration of a judgment is set aside solely for the reason that the judgment, notwithstanding that it had at the date of the application for registration been partly satisfied, was registered for the whole sum payable thereunder, the registering court shall, on the application of the judgment creditor, order judgment to be registered for the balance remaining payable at that date."

**[63]** Pursuant to s 3(2), the countries which have been accorded this benefit of substantial reciprocity of treatment are listed in the First Schedule to the Act. Singapore is one such country. Once registered under its equivalent legislation, which is, Reciprocal Enforcement of Commonwealth Judgments Act (Chapter 264), the judgment given by the High Court of Malaya will be treated as if it is a judgment given by the High Court of Singapore. Similarly, once a judgment, like the Singapore judgment, is properly registered by the High Court of Malaya, that judgment will be accorded the same treatment as if it was a judgment given by the High Court of Malaya - see s 4 above.

**[64]** Once the judgment from the superior court of a listed reciprocating country is registered, the setting aside of that registration must be undertaken under the terms of s 5 of the Act. It is evident that a setting aside must be ordered under the circumstances set out in s 5(1) while the court retains a discretion when it is an application made under s 5(1)(b). When determining the application to set aside, the court must take into consideration the powers expressly set out in s 6. From the terms of ss 6(1) and (2), it is apparent that a second application to set aside may be made subsequently.

**[65]** The courts here have registered and also considered applications to set aside registrations. See for instance, *The Aspinall Curzon Ltd v. Khoo Teng Hock (supra)*; *Commerzbank (South East Asia) Ltd v. Dennis Ling Li Kuang* [2000] 1 MLRH 155; *Banque Nationale De Paris v. Ting Kai Hoon* [2001] 4 MLRH 542; *Tsang & Ong Stockbrokers (Pte) Ltd v. Joseph Ling Kuok Hua* [2000] 4 MLRH 406; *PNG Oxygen Limited v. Lim Kok Chuan* [2018] 3 MLRH 343.

**[66]** A quick examination of the authorities from Singapore reveal the same; see for instance Perwira *Affin Bank Berhad (Formerly known as Perwira Habib Bank Malaysia Berhad v. Lee Hai Pey & Another* [2007] 3 SLR 218; *Madihill Development Sdn Bhd & Another v. Sinesinga Sdn Bhd (Transferee to part of the assets of United Merchant Finance Bhd* [2012] 1 SLR 169; *DHL Global Forwarding (Malaysia) Sdn Bhd v. Mactus (Malaysia) Sdn Bhd & Others* [2013] 4 SLR 781; *Sarawak Timber Development Corp & Another v. Asia Pulp & Paper Co Ltd* [2014] 1 SLR 776.

**[67]** It cannot be disputed that the Singapore judgment in this appeal meets the terms of s 3(3) of the Act for registration in that it is final and conclusive judgment as between the parties to the Singapore Suit; that it is a money judgment and the sum payable is not in respect of taxes or other charges of like nature or in respect of a fine or penalty; and it is a judgment from the High Court

of Singapore, a country named in the First Schedule to the Act. Furthermore, the judgment has not been wholly satisfied and there is no suggestion that the Singapore judgment could not be enforced by execution in Singapore. See the proviso to s 4(1) and the decision of *Standard Chartered Bank (Singapore) Ltd v. Pioneer Smith (M) Sdn Bhd (supra)* on the meaning of the second proviso that it "only concern the legal status or character of the finality of judgment, and not the circumstances affecting the debtor or defendant which may, if at all be relevant purely to the issue of their submission to the jurisdiction of the original court in making the judgment".

**[68]** The fact that there is an appeal by the respondent at the material time of consideration of the application to register the Singapore judgment does not render the judgment any less final and binding due to the deeming terms in s 2(4) which reads as follows:

> "(4) For the purposes of this section, a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court."

**[69]** Upon registration on 29 January 2018 and subject to setting aside applications, s 4(2) provides that the Singapore judgment shall, for the purposes of execution, be of the same force and effect as if the judgment was one originally pronounced and entered on the date of registration by the High Court of Malaya at Johor Bahru. Proceedings may then be taken on the registered judgment; and the sum for which judgment was registered shall carry interest; and the registering court, that is, the High Court of Malaya at Johor Bahru, shall have the same control over the execution of the registered judgment.

**[70]** For the record, it is clear that the High Court of Singapore had jurisdiction in respect of the Singapore Suit since the respondent, *inter alia* had submitted to its jurisdiction. The respondent filed his defence, took part in the trial, and has since appealed to the Court of Appeal of Singapore against the Singapore judgment given against him. The Singapore judgment has also since been affirmed on appeal by the respondent.

**[71]** We further note that s 5(1)(a)(v) requires the respondent to satisfy the court that the enforcement of the Singapore judgment would be contrary to the public policy in Malaysia. Other than the grounds of *res judicata* and abuse of process which rely on the same reasons, the respondent alleged that the Singapore judgment is not final and binding. We are of the view that such basis does not fall within the two earlier grounds relied on; and in the light of the express provision in s 3(4) that a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending in Singapore, and the now disposed of appeal; as well as the specific powers in ss 6(1) and (2) to deal with cases of appeal, this ground is of no merit.

**[72]** For all the reasons discussed above, the Singapore judgment is not at all inflicted by the doctrine of *res judicata*. There was, therefore, no evidence adduced before the court that may be said to properly satisfy the court that the enforcement of the registered judgment would be contrary to public policy in Malaysia.

**[73]** The concept of public policy is a narrow and restrictive doctrine; and we cannot see how the registration of the Singapore judgment in the High Court of Malaya, could be said to be contrary to the public policy of this country. In fact, it may even be said that the converse to be true, that the non-recognition of the Singapore judgment would be in violation of the principle of international comity and substantial reciprocity as statutorily provided under the Reciprocal Enforcement of Judgments Act 1958, rendering the setting aside of the registration on 29 January 2018 to be an exercise which is contrary to public policy.

**[74]** For the same reasons, the appellants cannot be said to have been in abuse of process. The mechanisms of registration of a foreign judgment is part of the administration of justice of this country. Until and unless Parliament sees it fit to repeal the Act, we are of the unanimous view that the learned judge was plainly in error when Her Ladyship acceded to the application of the respondent. The Singapore judgment is final and conclusive and does not suffer any of the inflictions complained of. It certainly is not a judgment which can be properly ascribed as being contrary to public policy. We do not see, though we must hasten to add that it is not the function of the registering country which Malaysia is, in the facts of this appeal, to examine the merits of the Singapore Suit; or even to criticise the Singapore judgment.

**Conclusion**

**[75]** For all the reasons adumbrated above, the appeal is therefore allowed with costs; the decision of the High Court to set aside the Singapore judgment is hereby set aside.