

## Client Alert

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The Singapore High Court decides that location of a Singapore bank account is insufficient to show that “*damages were suffered in Singapore*”

### Key Points

- a) In *Nippon Catalyst Pte Ltd v PT Trans-Pacific Petrochemical Indotama and PT Pertamina* [2018] SGHC 126 (“**Nippon Catalyst**”), the Singapore High Court had the opportunity to decide for the first time, that location of a plaintiff’s Singapore bank account is insufficient to show that the plaintiff’s claim is for the recovery of “*damages suffered in Singapore*” under Order 11 rule (1)(f)(ii) of the Rules of Court.
  - The Court agreed with the 2nd Defendant’s submissions that the fact that the ultimate financial loss may have been felt by the Plaintiff in its principal place of business, where its bank accounts are located, does not mean that damage had occurred in that jurisdiction for the purpose of satisfying Order 11 rule (1)(f)(ii).
- b) Further, given the unique factual matrix where the Plaintiff’s claims against the two Defendants were not the same and where the two Defendants applied for different Court orders, this case presents an example of how the Singapore High Court took the lead in ensuring the efficient and fair resolution of the dispute as a whole.

Wong & Leow LLC successfully represented the 2nd Defendant in this case.

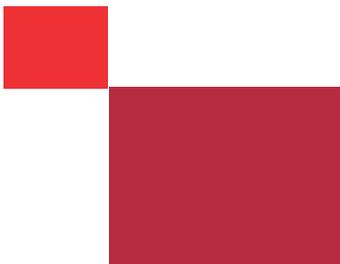
### Background Facts

*Nippon Catalyst* arose from the Plaintiff’s appeal against the Assistant Registrar’s (“**AR**”) decision granting the 1st Defendant a stay of proceedings in favour of arbitration and to set aside the *ex parte* order granting the Plaintiff leave to serve its writ on the 2<sup>nd</sup> Defendant out of jurisdiction (the “**Ex Parte Order**”).

The facts are briefly as follows. The Plaintiff and the 1st Defendant entered into a Lease Agreement (“**LA**”). Under the LA, the Plaintiff leased various catalysts (the “**Catalysts**”) to the 1st Defendant for installation in its refinery in Indonesia.

The LA contained an arbitration clause. The parties disagreed as to whether the LA had expired. In the meantime, the 1st Defendant continued its use of the Catalysts. As such, the Plaintiff commenced action and claimed against the Defendants as follows:

- a conversion and/or detinue claim against the 1st Defendant for the continued use of the Catalysts (“**Conversion Claim**”);
- a claim against the 2nd Defendant as a joint tortfeasor (“**Joint Tortfeasor Claim**”); and
- a claim against both Defendants in the tort of unlawful conspiracy (the “**Conspiracy Claim**”).





The Plaintiff also obtained the *Ex Parte* Order granting it leave to serve the writ out of jurisdiction. Subsequently, the 2nd Defendant applied to: (a) set aside the *Ex Parte* Order; (b) alternatively, stay the proceedings on the basis that Singapore is not the proper forum; or (c) alternatively, stay the proceedings based on the Court's case management powers. The AR set aside the *Ex Parte* Order against the 2nd Defendant.

## **Decision with respect to the 2nd Defendant**

### **a) The Joint Tortfeasor Claim and Conspiracy Claim**

The Plaintiff contended that it satisfied the requirement in Order 11 rule (1)(f)(ii) because it is a Singapore entity with a Singapore bank account, and all payments by the 1st Defendant were to be made to its Singapore bank account.

For the first time, the Court had to consider whether the location of the Plaintiff's Singapore bank account would be sufficient to conclude that damages had been suffered in Singapore. The Court agreed with the 2nd Defendant's submissions that the fact that the ultimate financial loss may have been felt by the Plaintiff in its principal place of business, where its bank accounts are located, does not mean that damage had occurred in that jurisdiction.

### **b) Orders granted**

The Court was of the view, given the applications from the 1st and 2nd Defendants, that this was a case in which it ought to take the lead in ensuring the efficient and fair resolution of the dispute as a whole, by granting to the 2nd Defendant a permanent stay in relation to the Joint Tortfeasor and Conspiracy Claims.

## **What this means for you**

- a) To obtain leave for service out of jurisdiction, it is insufficient for a plaintiff to merely show that it has a Singapore bank account. The Court takes a holistic approach in determining the place where damages were suffered.
- b) Where there is more than one defendant and the defendants apply for different stay orders in light of their circumstances, the parties ought to be mindful of the possibility that the Court may take the lead in directing and managing the resolution of the dispute between the parties.

Should you wish to discuss the impact of this development and how to manage the dispute resolution process efficiently, please do contact the team at Baker McKenzie Wong & Leow.

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