



SUCCESSFULLY RESISTED JURISDICTIONAL CHALLENGE

Work Highlight

Our Partners, **Chuck Siew Ka Wai** and **Tan Soo Yew** had successfully represented a Singapore global provider for a subsea solutions company ("**Client**") in resisting an application by the Defendant that sought to set aside a suit initiated by our Client, in the High Court of Malaya in Terengganu. The application was filed by the Defendant challenging the jurisdiction of the High Court, contesting that the Singapore Court is the proper forum to hear the matter.

Allegations raised by the Defendant are, among other things:

- The Plaintiff's Quotation provides an exclusive jurisdiction clause where parties agreed to submit to the courts of Singapore; and
- There are no special circumstances in warranting a refusal to be subjected to the Exclusive Jurisdiction Clause.

The High Court disagreed with the Defendant's position. In rejecting the Defendant's application for a stay of the proceedings, the High Court adopted our submissions as follows:

- The Defendant's revised Purchase Order, which was issued after the Plaintiff's Quotation, supersedes the Plaintiff's Quotation. The Purchase Order contained a separate set of terms and did not contain any exclusive jurisdiction clause.
- Applying the doctrine of forum non conveniens, the dispute may be tried more suitably by the High Court of Malaya where, among other factors, the Defendant's registered and business addresses are in Selangor.

This decision signifies the importance of the fundamental principles on the formation of contract, as well as the established law in determining the appropriate jurisdiction of a dispute. The High Court's decision is in line with the following cases:

- ***Synergy Spectacular Sdn Bhd v Deleum Primeria Sdn Bhd [2022] MLJU 216***, which held that in the event there are a quotation and a subsequent purchase order containing conflicting terms, the purchase order is deemed to be a counter-offer to the quotation. Performance of the contract thereafter would then amount to an acceptance of the counter-offer. Therefore, the contract was formed based on the terms as stated in the counter-offer (the Purchase Order) upon the acceptance.
- ***American Express Bank Ltd v Mohamed Toufic Al-Ozier & Anor [1995] 1 MLJ 160***, which laid out the fundamental principles for the test of forum non conveniens. This principle is typically applicable in cases where two tribunals have competent jurisdiction in adjudicating a matter and in the absence of an exclusive jurisdiction clause. It involves determining whether there is some other tribunal, in which the case may be tried more suitably for the interests of the parties and for the ends of justice.

For more insights into the areas of law discussed by the judgment, please contact our Partners:

Chuck Siew Ka Wai

Partner

kwsiew@tsl-legal.com

Tan Soo Yew

Partner

sytan@tsl-legal.com