**IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE**

**[2021] SGCA(I) 1**

Civil Appeal No 38 of 2020

Between

Solomon Lew

… *Appellant*

And

(1) Kaikhushru Shiavax Nargolwala
(2) Aparna Nargolwala
(3) Quo Vadis Investments Limited
(4) Christian Alfred Larpin
(5) Querencia Limited

… *Respondents*

Civil Appeal No 126 of 2020

Between

(1) Kaikhushru Shiavax Nargolwala
(2) Aparna Nargolwala

… *Appellants*

And

Solomon Lew

… *Respondent*

Version No 1: 10 Feb 2021 (14:51 hrs)

In the matter of SIC Suit No 2 of 2019

Solomon Lew

… *Plaintiff*

And

(1) Kaikhushru Shiavax Nargolwala
(2) Aparna Nargolwala
(3) Quo Vadis Investments Limited
(4) Christian Alfred Larpin
(5) Querencia Limited

… *Defendants*

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# JUDGMENT

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[Agency] — [Construction of agent's authority]
[Contract] — [Formation]
[Trusts] — [Accessory liability]
[Conflict of Laws] — [Choice of law] — [Contract]
[Civil Procedure] — [Costs]

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# Lew, Solomon
# v
# Kaikhushru Shiavax Nargolwala and others and another appeal

**[2021] SGCA(I) 1**

Court of Appeal — Civil Appeals Nos 38 and 126 of 2020
Sundaresh Menon CJ, Andrew Phang Boon Leong JCA, and Lord Jonathan Hugh Mance IJ
25 November 2020

10 February 2021 Judgment reserved.

**Lord Jonathan Hugh Mance IJ (delivering the judgment of the court):**

## Introduction

1 Colloquially, these two appeals are about the sale of a villa. Legally, they are about the sale of shares in a company owning certain rights in relation to the villa. The key title rights consist of the lease of a plot of land, ownership of the building on it, a construction permit and house registration, together giving occupation rights. The villa, Villa 29 ("Villa 29"), built in 2007, is in the Andara Resort ("the Resort"), Phuket, Thailand. The Resort was developed by Mr Allan Zeman ("Mr Zeman"); its general manager was at all relevant times Mr Daniel Meury ("Mr Meury"); and it also had a sales manager, Mr Lyndon Phillips, until at least 26 October 2017, but he played no role in events. The company owning Villa 29 is the fifth respondent in Civil Appeal No 38 of 2020

("CA 38"), Querencia Limited ("Querencia"), incorporated in the British Virgin Islands ("BVI"). Querencia was the vehicle which the first and second respondents in CA 38, Mr Kaikhushru Shiavax Nargolwala and Mrs Aparna Nargolwala ("Mr Nargolwala" and "Mrs Nargolwala" respectively; "the Nargolwalas" collectively), residents of Singapore, used to acquire Villa 29 while it was being built in 2007. The Resort and the Nargolwalas used the Resort's lawyer, Mr Anurag Ramanat, jointly on the acquisition. The appellant in CA 38, Mr Solomon Lew ("Mr Lew"), resident in Melbourne, Australia, says that the Nargolwalas, in response to an offer he had made, communicated to him through Mr Meury their binding oral agreement to sell their shares in Querencia to him on or about 11 October 2017. The Nargolwalas deny this and say that they sold, and on 14 November 2017 transferred, their shares in Querencia to the third respondent in CA 38, Quo Vadis Investments Limited ("Quo Vadis"), a Hong Kong company controlled by the fourth respondent in CA 38, Mr Christian Larpin ("Mr Larpin"), and of which Mrs Dao Te Lagger ("Mrs Te Lagger") was a director.

2 In these circumstances, Mr Lew claims that the Nargolwalas acted in breach of their agreement for sale to him, and acted in breach of fiduciary duty in transferring the shares in Querencia to Quo Vadis. He further claims that Mr Larpin and hence Quo Vadis knew of the Nargolwalas' agreement to sell to him, and are liable for inducing its breach, and that Querencia itself was in breach of fiduciary duty and trust by dishonestly assisting the Nargolwalas' breach, in particular, by registering the transfer of its shares to Quo Vadis.

3 The judge, Simon Thorley IJ ("the judge"), after a nine-day trial, held that Mr Lew's claims failed in their entirety. They failed against Mr and Mrs Nargolwala because no binding agreement had been reached between them and Mr Lew, and they necessarily failed in consequence against all the other



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respondents. However, the judge also held that, had a binding agreement come into existence between the Nargolwalas and Mr Lew, then: (a) Mr Larpin would not have had sufficient knowledge of any sale to render him liable for inducing its breach, but (b) Querencia would had had sufficient knowledge through the Nargolwalas. The first appeal, CA 38, is by Mr Lew against the dismissal of all his claims against all the respondents.

4 In reaching his conclusions, the judge treated Singapore law as governing the issue of whether a binding agreement had been reached between the Nargolwalas and Mr Lew. That is the law for which Mr Lew had argued. The Nargolwalas argued on the other hand for Thai law. They did so because they further submitted that, under Thai law, the oral agreement alleged by Mr Lew would be unenforceable. Since Thai law would on this hypothesis be both the law of the State where the persons making the alleged oral agreement (Mr Lew and Mr Meury) were when it was made and the law governing the issue of whether they made any binding and enforceable oral agreement, the Singapore court should refuse to enforce it: see *Dicey, Morris and Collins on The Conflict of Laws* (Lord Collins of Mapesbury gen ed) (Sweet & Maxwell, 15th Ed, 2012) ("*Dicey, Morris and Collins*") at para 32R-127. The judge heard evidence about Thai law and concluded that "there would be no different outcome on the primary question of whether a binding oral contract was reached on 11 October 2017 if Thai law applied". However, he went on to hold that, under Thai law, any such oral contract, being a contract of a value exceeding 20,000 Bahts, would, as the Nargolwalas submitted, have been unenforceable in the absence of either (a) written evidence of it signed by either Mr or Mrs Nargolwala, (b) an earnest given, or (c) part performance. In these circumstances, when it came to costs, the judge ordered that, although the Nargolwalas should recover their reasonable costs of the proceedings generally, they should be deprived of their costs on the issue of whether Thai law applied,



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and they should bear Mr Lew's costs on that issue. The second appeal, Civil Appeal No 126 of 2020 ("CA 126"), is by Mr and Mrs Nargolwala against that latter aspect of the judge's costs order.

## The factual history and the judge's findings

5 Where there is a dispute as to whether a binding contract has come into existence, "the utmost attention has to be paid to the facts": *China Coal Solution (Singapore) Pte Ltd v Avra Commodities Pte Ltd* [2020] 2 SLR 984 at [2]. Where there is (as here) a significant volume of contemporary documentation bearing on that question, then, as the judge highlighted at [210] of his judgment, reported in *Lew, Solomon v Kaikhushru Shiavax Nargolwala and others* [2020] 3 SLR 61 ("Judgment"), it is understandable that the "first port of call for any court in determining the existence of an alleged contract and/or its terms would be the relevant *documentary* evidence", and that "*credible* oral testimony" will be most helpful where "given for the purpose of *clarifying the existing documentary evidence*" [emphasis in original]: *OCBC Capital Investment Asia Ltd v Wong Hua Choon* [2012] 4 SLR 1206 ("*OCBC Capital*") at [41]. As such, it is important to scrutinise the relevant documentary evidence in detail in this case.

6 An important feature of the case is that the Nargolwalas and Mr Lew did not at any relevant time, until a very late stage on 14 November 2017 (see [28] below), meet or communicate directly. Their main means of communication was the Resort's Swiss general manager, Mr Meury. Mr Meury was at the material times well acquainted with both the Nargolwalas and Mr Lew, and his "mercurial" role has given rise to much of the argument on the appeal. As the judge put it at [17] of his Judgment:



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> … As a hotel manager it is his job to keep guests happy and it is apparent from the facts of this case that one of the ways this is done is by ensuring, whenever possible, that the guests are told what they want to hear and, likewise, that they are not told what they do not want to hear. …

7 In or about 2015, the Nargolwalas purchased another villa on the Andara Signature estate and put Villa 29 at the Andara Resort up for rental and sale. A corresponding indication (with a reference to a price of US$8 million) appeared on the Resort's website. Mr Lew and his future wife stayed in Villa 29 in April 2017 and it acquired a special place in their affections, as he proposed to her there during this period. They learned then, if they did not already know, that Villa 29 was for sale. They returned to it in September 2017, when, during discussions and dinner with Mr Meury on 6 September 2017, Mr Lew learned that Villa 29 was owned by a BVI company. Mr Lew wrote to Mr Meury the next day:[1]

> Good morning Daniel,
>
> Thanks for joining us last night ! It's always fun !
>
> Re villa 29
>
> My offer of usa $5 million is for an immediate cash settlement. The offer is a walk in walk out basis.
>
> All chattels including crockery cutlery glassware cookware gym equipment TV screens stereo equipment furniture linen towels washing & dryer machines massage table ETC.
>
> Offer is open for 7 days only.
>
> Please advise soonest

Mr Meury replied that he would "try and do my best and get back to you as soon as possible."[2]

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1 RA VOL III (PART A) 21.

2 RA VOL III (PART A) 20.



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8 The judge then found at [25] of his Judgment that:

> A number of text messages passed between Mr Meury and Mr Lew over the next few days in which Mr Meury gave the impression that the Nargolwalas were considering the offer and Mr Lew then texted Mr Meury to say that he had:
>
> > … full proxy & authority to close the deal at [US$5m]. [I] can promise you [I] will not pay one cent more. [I]t's a walk in walk out take it or leave it deal! [T]he offer is open for exactly 7 days … don't forget I will be sending some chocolates to the family in Switzerland! (you know what I mean) …

9 Thereafter, Mr Meury gave Mr Lew the impression that the Nargolwalas were expecting a slightly higher offer and that he was hoping that Mr Lew would come back with a higher offer, though Mr Lew did not; Mr Lew on the other hand sought to put pressure on the Nargolwalas by telling Mr Meury that, since he was no longer under any "obligation" to the Nargolwalas, he was sending his property manager to Phuket, Thailand to review other opportunities and meet with a local agent. Neither was, the judge found, the fact. Mr Meury had actually agreed with Mr Zeman not to communicate Mr Lew's offer of US$5 million to the Nargolwalas, because they knew it would not be acceptable to the Nargolwalas. Mr Meury merely informed the Nargolwalas that there was "interest" in Villa 29. As for Mr Lew's statement, it was untrue "deal talk" (see Judgment at [26]–[27]).

10 On 28 September 2017, Mr Lew texted Mr Meury to book Villa 29 for a further four nights from 8 October 2017, on the purported basis that his manager had sourced a few opportunities. On 6 October 2017, Mr Meury informed Mr Nargolwala by email that "the Australian potential buyer has booked Villa 29", suggesting a chat and adding "I do feel if we come back with another offer for him, that he, and his soon-to-be new wife, would still be quiet



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[*sic*] keen on Villa 29".[3] A telephone conversation followed. The judge, having heard the evidence, accepted that Mr Meury's email was incorrect in so far as it suggested that the Nargolwalas had previously put forward any offer in relation to the possible sale of Villa 29 and that, whilst Mr Meury told them in the telephone conversation that the potential Australian buyer had a budget of US$5 million, they were not told that he had made an offer but that they did indicate that they were not interested in selling at that price (see Judgment at [34]).

11 After arriving at the Resort, Mr Lew met Mr Meury. Mr Meury then sent the Nargolwalas an email saying that Mr Lew "reiterated again that his offer was at US 5 [million]" and that "funds could be paid with 7 days", and commenting "[b]ut I do believe, that they do like Villa 29 a great deal … he would possible [*sic*] accept an asking price of US 5.5 [million] - do please let me have your thoughts on this".[4] Mr Meury invited the Nargolwalas to call him and concluded by saying that he was having dinner with Mr Lew that evening at 7.45pm. It was Mr Meury who in the event called and spoke to Mrs Nargolwala. The judge accepted that Mrs Nargolwala said that she was prepared to discuss the price with her husband, but only if there was a clear indication of what was being offered. At no point did she tell Mr Meury that he could put forward an offer on the Nargolwalas' behalf of US$5.5 million.

12 Nevertheless, at dinner that evening or during a meeting on 10 October 2017, Mr Meury told Mr Lew that the Nargolwalas were offering US$5.5 million for the sale. That led to further "deal talk" correspondence by Mr Lew to Mr Meury. Taking Phuket times, the first text message was on the evening of

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3 RA VOL V (PART A) 51.

4 RA VOL V (PART A) 52.



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10 October 2017 in which Mr Lew said that Mr Meury had "just given [him] a big headache", because he now had to decide which of the three properties would be best, and the second was sent early on 11 October 2017 in which Mr Lew said that, after "a sleepless night" he was:[5]

> … prepared to agree today to split the difference on a walk in walk out basis (everything stays) presume take over the company on a 14 day settlement for usa $ 5,250,000….

13 There followed three emails and conversations which are critical to the issue of whether a final and binding agreement was reached. At the time, Mr Lew and Mr Meury were in Phuket, Mr Nargolwala was in New York, and Mrs Nargolwala was in Singapore but about to take an afternoon flight on 11 October 2017 to Delhi to be with her seriously ill mother. The first email by Mr Meury to both the Nargolwalas' email addresses relayed Mr Lew's offer, as follows:[6]

> They went to see to 2 or 3 other Villa's [*sic*] yesterday – and one of them they have put in an offer yesterday.
>
> He told me yesterday evening, that he needs to sleep over it, as he was already kind of focus [*sic*] on this other Villa.
>
> He has now reached out to me, and he would agree today to split the difference on walk in, walk out basis – and offer US 5'250'000.-- in your accounts, with a settlement within 14 days.
>
> He would need an answer today, as he likes to leave back to Melbourne tomorrow, with a closed deal.
>
> Thank you [for] reconsidering his offer, given the present market situation, and the limited number's [*sic*] of serious offer we had.
>
> Looking forward to hear from you soon …

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5 RA VOL V (PART D) 230.

6 RA VOL III (PART AA) 19.



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Mr Nargolwala did not immediately see this email as he was about to retire to bed in New York. Mrs Nargolwala did, but any detailed consideration of its terms by her was overtaken by a telephone call from Mr Meury. The judge found it apparent that Mr Meury's recollection of this call was "even more hazy than that of Mrs Nargolwala", who, about to depart to India to see her ill mother, must herself have had other matters on her mind (see Judgment at [50]). Although the judge did not find it possible to reach any definitive conclusion as to what she said to Mr Meury, the judge found on a balance of probabilities that the substance of the conversation was that she "told Mr Meury that [she] needed an '*offer letter in writing*' with '*details*' so that [Mr Nargolwala] and [her] could discuss the proposal" [emphasis in original], and that "Mr Meury would have been left in no doubt that any agreement on price was subject to knowing exactly what the offer meant and that Mrs Nargolwala expected Mr Lew to clarify his position" (see Judgment at [51]). The judge repeated these findings in [60] and [61] of the Judgment, adding that Mr Meury may have been under a misapprehension as to the details required.

14 In [62] of his Judgment, the judge went on:

> Third, so far as concerns the acceptability of the price to the Nargolwalas, I accept that Mrs Nargolwala did not expressly tell Mr Meury that the price of US$5.25m was acceptable. … I therefore doubt that Mr Meury's recollection that Mrs Nargolwala actually said that they were agreeable in principle is correct but she must have said something during the conversation which led Mr Meury to believe that this was the case. He could not in good faith have acted as he did subsequently if he had not formed the belief that the sum was, or, possibly, would be acceptable to the Nargolwalas once the details (which he saw as being minor) were sorted out by the lawyers. I do not consider that Mr Meury ever acted in bad faith.

The last sentence needs to be read with the judge's findings, quoted at [18] below, as to Mr Meury's actual attitude and approach.



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15 In the second email, seen by her husband when he woke up the next morning in New York, Mrs Nargolwala told him:[7]

> Daniel called to say that the buyer has agreed to the sale. I asked for an offer letter with details including name and contact details of the buyer. Also steps for proceeding. Apparently Solomon? Has a lawyer in Singapore but may be best to use Anurag in BKK. Leaving for the airport now. Talk from Delhi.

16 In the third email to both the Nargolwalas, and seen by Mr Nargolwala at about the same time as the second email, Mr Meury wrote as follows:[8]

> This is to confirm that our return guest, Mr Solomon Lew, has agreed on the offer for US 5'250'000.- in your accounts, On the walk in – walk out basis – and he confirms that the funds can be in your account within the next 14 days.
>
> We will pass him a copy of the BVI and all other documents later today.
>
> At the same time we will introduce him to Khun Anurag's law firm – and suggest strongly that he will use his services.
>
> As you aware [*sic*], Allan knows him very well too over many years, and we trust that this can be a very smooth transaction.
>
> Do pls advise us on your Bank account details, so we can forward that to him.
>
> Appreciate your support, thank you.

17 The judge saw this as very much a repeat of the first email, saying that (Judgment at [56]):

> … The important part is the first sentence. This does no more to confirm the fact, contained in the first e-mail that Mr Lew has agreed on the offer for US$5.25m. It does not record Mr Meury's belief that Mrs Nargolwala had agreed (in principle) to this figure. Further it does not contain any contact details for Mr Lew nor does it outline the proposed future steps other than the provision of some documents to Mr Lew. The Nargolwalas did not regard this e-mail as being the 'offer letter in writing'

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7 CB VOL II 230.

8 CB VOL II 231.



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> which Mrs Nargolwala had requested and this is understandable.

Mr and Mrs Nargolwala gave evidence that, after her arrival in Delhi (and possibly before she had seen the third email), they spoke and agreed that the next step was to get the further details of the offer, after which they would be able to discuss it and the price.[9]

18 Mr Meury saw the matter, or at least acted, on a very different basis. As he accepted under cross-examination on behalf of Mr Lew, he told Mr and Mrs Lew that the Nargolwalas had accepted their offer, congratulated them, welcomed them to the Andara family, shook hands with Mr Lew and hugged his fiancée, and Mr and Mrs Lew were delighted.[10] The judge summarised the position as follows in [71] to [73] of his Judgment:

> 71 Having heard all the witnesses, I have come to the conclusion that this was an occasion where Mr Meury acted as a hotel manager and not as a real estate agent. At the time, he felt in his own mind that the Nargolwalas had agreed in principle or at the least would agree to the deal once their concerns were met. He felt no need to speak to Mr Lew before sending the third e-mail and he trusted that the information that he gave the Nargolwalas in that e-mail would assist in moving matters forward. He realised that lawyers would have to be involved and that he would then cease to play a part and that thereafter the Nargolwalas' concerns would be dealt with by the lawyers.
>
> 72 When dealing with the Lews, he told them what they wanted to hear and thus told them that the Nargolwalas had agreed to Mr Lew's proposal, again assuming that the lawyers would sort things out in due course. He repeatedly emphasised in evidence that he was not a property agent and I doubt he appreciated at the time that there was any difference between an agreement in principle and a binding agreement. Subsequently he has become aware and has sought to convince himself that he did tell the Lews that the Nargolwalas had only

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9 RA VOL III (PART HH) 76–78; RA VOL III (PART II) 123–124.

10 RA VOL III (PART GG) 20–21.



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> agreed in principle but on this aspect of the case I prefer the evidence of the Lews that he did not. I shall have to consider below what the legal effect was in all the circumstances of Mr Meury's statement that the Nargolwalas had agreed to Mr Lew's offer.
>
> 73 By the end of 11 October 2017 therefore, Mr Lew believed that the next step would be that contract documents would be supplied to his lawyers by the Nargolwalas' lawyers, but of course, the pre-requisite to this was that he had to instruct appropriate lawyers and inform the vendors of this so that the lawyers could be put in touch. On the other hand, the Nargolwalas were waiting for the offer letter in writing from Mr Lew's lawyers. I shall therefore consider the subsequent events first by reference to the Nargolwalas and then the Lews.

These paragraphs effectively undermine a submission by Mr Lew that Mr Meury's conduct after his conversation with Mrs Nargolwala shows that she must have authorised him to accept Mr Lew's offer.

19 During the evening of 11 October 2017, Mr Lew evidently also telephoned Mr Zeman to say that he had bought Villa 29, because Mr Zeman then emailed Mr Nargolwala to say:[11]

> Congratulations! I hear you sold Villa 29 to my friend. He is definitely not an easy guy but at least it's done. Allan

To this, Mr Nargolwala's response was:[12]

> Greetings from NY. I am not sure congratulations are in order yet. It will be interesting to see if he comes through as promised.
>
> Still some details to be worked out. I will be back this weekend and then will speak to Daniel to see how things are progressing.
>
> The price is significantly below what I think is reasonable but I have agreed on the basis that I am not into owning and managing multiple properties. So if he can do a clean and swift deal it will be good. Daniel has been great but as you say the

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11 CB VOL II 232 and 236.

12 CB VOL II 236.



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> buyer is not the most easy guy so lets [*sic*] see how serious he is.

20 At around the same time, it appears, Mr Nargolwala also emailed Mr Meury to say:[13]

> I will be back in Singapore and will call you then. Hopefully by then we will have a better idea on progress. I can then pass the bank details to you.

21 Mr Meury responded:[14]

> Good to hear from you -
>
> The buyer has just left Andara and will pass on the copy of the documents to his Lawyer in Singapore, and they will be in touch with Khun Anurag for any queries.
>
> He aims to have all settled soonest.

22 Mr Meury did pass some documents to Mr Lew before he left the Resort on 12 October 2017 and did mention both Singapore lawyers as well as Mr Anurag Ramanat's Thai firm. At the same time, Mr Meury gave Mr Lew details of a Swiss bank to receive any "chocolates" which Mr Lew was minded to transfer to Mr Meury. As to the reference to Mr Anurag Ramanat, the judge found that Mr Lew formed the view that this indicated that the Nargolwalas intended to instruct Mr Anurag Ramanat, and that Mr Lew should also instruct Thai lawyers (see Judgment at [107]). As to the passing over of copy documents, the judge said (at [80] of the Judgment):

> … Some of these documents were documents held by the Resort but others were obtained by the Property Estate Manager, Khun Koy, from Villa 8. The Nargolwalas were unaware what documents had been passed over and did not authorise the documents from their villa to be removed. This was an occasion where Mr Meury unilaterally acted as he thought to be in the

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13 CB VOL II 237.

14 CB VOL II 237.



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> best interests of the parties but which possibly contributed to a further measure of misunderstanding between them.

23 The Nargolwalas were however aware that Mr Meury was going to pass to Mr Lew copies of the BVI and "other" documents, presumably title documents relating to Villa 29 and its occupation. In that sense, the judge's finding here appears questionable. But whether or not the Nargolwalas accepted the passing over of copy documents from Villa 29 does not affect the judge's finding that, at this stage, the Nargolwalas did not see themselves as having reached any agreement, but were rather waiting for an offer letter with further details clarifying Mr Lew's position, which they would then consider.

24 After returning to Singapore, Mr Nargolwala telephoned Mr Meury on 14 October 2017 and, as the judge found (at [85] of the Judgment), made four points as follows:

> (a) The price was in principle acceptable subject to the other terms being acceptable to both sides.
>
> (b) His Singapore lawyers were to act on his behalf and would do so when there was more clarity on the terms Mr Lew had in mind.
>
> (c) Mr Lew's lawyers should get in touch with him so that he could put them in touch with his lawyers.
>
> (d) When he might expect to hear from Mr Lew's lawyers.

25 Then and thereafter, the Nargolwalas' attitude was that any next step was for Mr Lew to take. On 16 October 2017, Mr Meury texted Mr Lew: "pls [*sic*] let us know if we hear from you or your lawyer in Singapore about the next step in the sale for the wonderful villa".[15] Around 23 October 2017, Mr Nargolwala asked Mr Meury whether he had heard further from Mr Lew, which

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15 RA VOL III (PART M) 256.



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was probably why Mr Meury texted Mr Lew on that date asking whether he or his lawyer needed any further information. Unbeknown to Mr Meury as well as to the Nargolwalas, Mr Lew's in-house lawyer, Mr Stephen Kenmar ("Mr Kenmar"), did on 24 October 2017 approach a Thai law firm, Siam Law, but he received no response from Siam Law despite follow-up emails on 25 and 27 October 2017. On 26 October 2017, Mr Larpin was shown Villa 29 through an independent estate agent (who happened to be Mr Lyndon Phillips' brother), and that same evening Mr Meury texted Mr Lew to say:[16]

> … understand another offer has come up … like to inform you confidentially … I think we really need to get back to the owner tomorrow … as the 2 weeks period is up already … thank [you] for looking into this urgently …

26 This no doubt led to Mr Meury emailing Mr Nargolwala on 27 October 2017, saying that Mr Lew was "ready to settle" and would be sending his lawyers' details. An email on 27 October 2017 from Mr Meury's assistant then gave details, not of Singapore lawyers, but of DLA Piper (Thailand) Ltd, Bangkok.[17] Mr Nargolwala deduced correctly that Mr Lew was aware that a new potential purchaser had come on the scene, and, the judge found, concluded after reading the emails he had received that Mr Lew was not a serious buyer and that any potential deal was dead (see Judgment at [98]). On 5 November 2017, Mr Meury spoke to Mrs Nargolwala who informed him that the Nargolwalas were no longer interested in dealing with Mr Lew. Mr Meury happened at the time to be visiting Melbourne and had lunch with Mr Lew that day. During the lunch, it appears that he told Mr Lew that Mrs Nargolwala "might have a second buyer but [that he, Mr Meury, did not] think it was going to be an issue" and

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16 RA VOL V (PART A) 48.

17 CB VOL II 244–246.



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mentioned the need to instruct Singapore lawyers.[18] On 6 November 2017, Mr Meury texted Mr Lew to thank him for "a very nice lunch yesterday", and asked him to "pls [*sic*] call me back when u [*sic*] are free".[19] Early on the morning of 7 November 2017, however, Mr Anurag Ramanat, now acting for the Nargolwalas, informed Mr Lew's Thai lawyers, DLA Piper (Thailand) Ltd, that, after discussions with the Nargolwalas the previous night, he had been instructed to put the matter on hold, subject to any further instructions.[20] This was no doubt what led that morning to Mr Lew texting Mr Meury to complain of the time and money spent, and to say that he was asking his legal department to look into putting a stop to any transfer. Mr Zeman was evidently also involved in contacting the Nargolwalas on 7 November 2017 (rather than two days later as the judge thought).

27 Mr Lew then on 7 November 2017 wrote to Mr Zeman in intemperate and inappropriate terms, which it is only necessary to quote because the judge placed some reliance on them as indicating that Mr Lew never thought he had a binding agreement:[21]

> appreciate your assistance in this matter but let me assure you i will pursue this women [*sic*] for my expenses spent to date.
>
> i'm furious with her as it's her duty to prepare the contract of sale as agreed.
>
> the terms that Daniel confirmed was for a 14 day settlement walk in walk out. price for purchase of shares in off shore company was USA $ 5,250,000.
>
> we have never received the contract from her.

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18 CB VOL II 266.

19 RA VOL III (PART R) 156.

20 CB VOL II 257.

21 CB VOL II 266.



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> our lawyers DLA Piper Bangkok were appointed and have been chasing a contract.
>
> enclosed is an email sent to Kuhn Daniel with Lawyer info as requested by him.
>
> i will pursue this Bitch for my costs & non performance in Singapore.
>
> i had lunch with Daniel on Sunday & he advised me of 2 things. she doesn't like us you [*sic*] using a thai lawyer . daniel asked me on sunday if we can use a Singapore lawyer. So yesterday we appointed a Singapore Lawyer . we can settle in 48 hours.
>
> the second thing that daniel told me was that she might have a second buyer but daniel didn't think it was going to be an issue.
>
> i'm now hearing 3 things from you .
>
> price usa $8,250,000 . ( what drugs is she taking !)
>
> high season coming so income to be gained !!!
>
> potential buyer arriving 14 & 15 nov to view villa.
>
> i will be sending you an email received today from our thai lawyer saying that seller would like to put sale on Hold , not that she's not selling to us but she is putting the sale on Hold. not sure what on hold means.
>
> so notwithstanding our thai lawyer chasing daily she has never furnished us with a contract so that we could settle 14 days from receipt of contract.
>
> indians are known for being tricky. the hour you just spent with her was her trying to explain to you that she has done nothing wrong.
>
> i'm not joking i will pursue her vigorously!
>
> i'm sorry that i've got you involved but in the end that's why i bought the Villa.

28 After further communications with Mr Zeman and Mr Meury, Mr Lew for the first time contacted Mr Nargolwala directly on 14 November 2017 by email.[22] This happened to be the day of the sale and purchase agreement ("SPA") signed by the Nargolwalas with Mr Larpin. The SPA was signed by

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22 CB Vol II 270.



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Mr Nargolwala in Singapore and was taken by Mrs Nargolwala to Phuket where it was signed by Mrs Nargolwala and by Mrs Te Lagger on behalf of Quo Vadis late in the afternoon of 14 November 2017. Mr Lew suggested at trial that by the time of the SPA Mr Larpin knew or was on notice of a prior agreement with Mr Lew. The only basis for that suggestion was that Mr Larpin was told of "another offer". The judge held rightly that that was insufficient to constitute any relevant knowledge or notice (see Judgment at [287]–[290]). Alternatively, it was submitted, Mr Larpin acquired relevant knowledge or notice on 15 November 2017, when he was told the gist of Mr Lew's email to the Nargolwalas of 14 November 2017 and was, on enquiry, assured by Mr Nargolwala that he had never met Mr Lew, that no written offer had been forthcoming and that he had not signed any contract with Mr Lew. The judge rejected this submission on two grounds (see Judgment at [293]–[295]). The first (which, as will appear, we would not accept) was that the email did not suggest any binding agreement. The second was that Mr Lew was entitled to rely on Mr Nargolwala's assurances, and that may still stand. It will in the event be unnecessary to consider that further. The SPA provided for completion to take place, as it did, two days later, *ie*, on 16 November 2017. On that date, the share transfer, share certificates and letters of resignation from the Nargolwalas were handed over to Mr Larpin, and Mrs Te Lagger in her capacity as a director of Quo Vadis authorised the necessary alterations in respect of the shareholders and directors of Querencia to be made in the BVI. The judge held that, had there been any binding contract for sale to Mr Lew on or about 11 October 2017, (a) neither Mr Larpin nor Mrs Te Lagger could themselves be said to have had sufficient notice of it to engage their liability, but (b) Querencia, on the other hand, would have had sufficient knowledge by virtue of the knowledge which the Nargolwalas would, on that hypothesis, have had.



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**The issues**

29 Against that background, we turn to the issues in the appeal on liability. The first stage in relation to all of Mr Lew's claims is to consider whether on or about 11 October 2017 an agreement was reached between the Nargolwalas and Mr Lew which was intended to be binding. This in turn leads into questions of agency. The judge heard expert evidence of Thai law relating to the conclusion of contracts and to actual and ostensible agency. He discussed this at [257] to [266] of the Judgment. Section 366 of the Thai Civil and Commercial Code contains provisions regulating the making of binding contracts, but, as the judge held, these only apply in cases of doubt. The judge did not in any other respect identify, and it is not suggested on appeal that he should have found, any significant difference between the general approach and outcome to the making of contracts or agency under Singapore and Thai law in circumstances such as the present. Where a difference does exist on the judge's findings is at the next stage, if such an agreement was reached. Under Singapore law, any such oral agreement would, the judge found (contrary to a submission by the Nargolwalas), be valid and enforceable. Under Thai law, if that governed the formation of a valid and legally enforceable contract, the judge accepted the Nargolwalas' submission and held that any oral agreement reached would have been unenforceable. This finding regarding Thai law is challenged by Mr Lew in this appeal.

30 Taking the first stage, on the judge's findings, the Nargolwalas and Mr Lew had expressed to Mr Meury opposed positions. The Nargolwalas' attitude, expressed by Mrs Nargolwala, was that they needed an "offer letter in writing" with "details" so that they could discuss the proposal, and that she made clear to Mr Meury "that any agreement on price was subject to knowing exactly what the offer meant and that Mrs Nargolwala required Mr Lew to



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clarify his position" (see Judgment at [51]). In contrast, Mr Lew's position was, the judge accepted, that he had given Mr Meury, for communication to the Nargolwalas, the proposal set out in his text message of 11 October 2017 (that is, "to agree today to split the difference on a walk in walk out basis (everything stays) presume take over the company on a 14 day settlement for usa $ 5,250,000"); and that Mr Meury came back later that day to say that the Nargolwalas had accepted it, and had congratulated him and welcomed him to the Andara family.

**Mr Lew's appeal in CA 38**

31 Before addressing the substantive merits of the issues in CA 38, we make a preliminary point about the governing law. CA 38 raises two primary issues: a contractual issue as to whether the alleged oral contract was formed on 11 October 2017, and an agency issue as to whether Mr Meury was authorised to convey the Nargolwalas' acceptance of Mr Lew's offer on the same date. It is common ground that the judge was correct to treat Singapore law as governing the latter agency question. As for the contractual issue, the judge held that Singapore law applied to determine the issue. Since it is not suggested that Singapore and Thai law differ in any relevant respect regarding the making, as distinct from validity and enforceability, of an oral contract (see [29] above), we can in the first instance address both the contractual and agency issues with reference to Singapore law, as the parties did before us, and only consider the position regarding validity and enforceability under Thai law if we conclude that, under Singapore law, an agreement intended to be binding was reached on 11 October 2017.



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***Did Mrs Nargolwala agree to Mr Lew's proposal on 11 October 2017?***

32 On this appeal, Mr Lew contends that the judge's findings (at [13] above) about the conversation between Mrs Nargolwala and Mr Meury on 11 October 2017 cannot stand, and that Mrs Nargolwala must have indicated to Mr Meury her and her husband's agreement to accept Mr Lew's offer, the nature of which she knew from the first email sent by Mr Meury on that day. It is trite law that an appellate court will be slow to interfere with a finding of fact made by a trial judge on the basis of oral evidence: *Simpson Marine (SEA) Pte Ltd v Jiacipto Jiaravanon* [2019] 1 SLR 696 at [59]. We see no basis for such interference here, especially when (as here) the judge's findings are also consistent with the Nargolwalas' subsequent documented attitude to what had occurred.

***Did Mr Meury lead Mr Lew to believe that Mrs Nargolwala had agreed to his proposal?***

33 Despite his finding that Mr Lew had given Mr Meury his proposal to communicate to the Nargolwalas and was led by Mr Meury on 11 October 2017 to believe that it had been accepted, the judge went on to conclude that the proposal was not one that was objectively a proposal for a binding agreement, capable of acceptance. Further, the judge found that, although Mr Lew had now convinced himself to the contrary (see Judgment at [211]):

> … consideration of the contemporaneous documents points clearly to the conclusion both that Mr Lew considered at the time that the alleged agreement was merely the precursor to completion at a later date and that an objective assessment of the documents leads to the same conclusion.

On this basis, the judge found that "[b]oth subjectively and objectively the correct conclusion was that the statements made at the meeting on 11 October



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2017 amounted at best to an agreement subject to contract" (see Judgment at [224]).

34 On this appeal, Mr Lew challenges both these findings and, in our judgment, with good reason. The contemporaneous documents on which the judge relied post-dated 11 October 2017, but the most material contemporary document was surely Mr Lew's texted proposal of 11 October 2017, which Mr Meury later informed him that the Nargolwalas had accepted. The proposal was, on its face and to our mind, clearly an offer aimed at reaching a binding agreement between Mr Lew and the Nargolwalas, just as Mr Lew's first offer a month earlier had also been. The terms "walk in walk out" and "14 day settlement" were quite capable of being given a legal meaning, especially as between Mr Lew and Mr Meury in the light of Mr Lew's more explicit previous explanation in his first offer in September (see [7] above). It was of course implicit in it that the title documents to Villa 29 would all be in order to enable an orderly completion within 14 days. But the fact that due diligence would ensue to check this, and that formal and more complex completion documentation might also come into existence through lawyers' agency, does not mean that a firm binding agreement was not or could not be both intended and achieved on 11 October 2017. It is entirely possible, and certainly not uncommon, for parties to conclude a simple form of contract while intending later to reduce their contract to writing and expecting that the written document should contain more detailed definition of the parties' commitment than had previously been agreed: see, *eg*, *OCBC Capital* at [59]; *Air Studios (Lyndhurst) Ltd T/A Entertainment Group v Lombard North Central Plc* [2012] EWHC 3162 (QB) at [5]; and *Bear Stearns Bank Plc v Forum Global Equity Ltd* [2007] EWHC 1576 (Comm) at [171]. Here, Mr Lew evidently decided by 24 October 2017 that he would or might wish completion to take place in favour of a company, rather than himself personally (see [35] below). But that too does not



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affect his evident intention to bind the Nargolwalas to sell to him personally by obtaining their acceptance of his texted proposal on 11 October 2017.

35 The contemporaneous documents analysed by the judge consisted of documents emanating from the in-house lawyer, Mr Kenmar, to whom Mr Lew entrusted the follow up of the transaction at some time after returning to Melbourne, as well as documents emanating from Mr Lew. Mr Kenmar, in approaching Siam Law on 24 October 2017, said that "our group" (itself an inaccurate statement in context) has been "negotiating" the acquisition of another villa in Phuket, and that "[w]e have not yet identified the entity which will undertake the purchase". In a later email, explaining that the "[v]endor advised that if [they] did not provide them with the name of a lawyer who was acting for [them], the sale would not proceed",[23] and in approaching DLA Piper (Thailand) Ltd, Mr Kenmar said that "[a] member of the family that controls our Group wishes to acquire a villa in Phuket".[24] Mr Kenmar was not called as a witness at the trial, but the language he used seems to us quite understandable in a context where lawyers were for the first time being involved and any agreement previously reached was going to be put on a fresh and more formal footing. That this was occurring, and that a company, rather than Mr Lew, might be going to be put forward as purchaser does not in our view shed any real light on the proper interpretation of what had been proposed and accepted on 11 October 2017.

36 As to Mr Lew, the judge thought that, "if he had genuinely believed at that time that there was a concluded contract, he would have expressed himself

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23 RA VOL IV (PART Q) 7.

24 RA VOL V (PART A) 93.



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in far more forceful terms" than he did to Mr Zeman and Mr Meury on 7 November 2017 (see Judgment at [217] and [218]). We do not think that this is a justified comment in the light of the terms of Mr Lew's morning text to Mr Meury (at [26] above). Mr Lew was, after all, indicating that he would seek a stop order, and was clearly also intending Mr Meury and/or Mr Zeman to pursue the matter with the Nargolwalas. The judge (as noted at the end of [26] above) also overlooked the fact that Mr Zeman was immediately involved to follow the matter up. As soon as he had done so and confirmed the Nargolwalas' stance, Mr Lew's reaction was the furious and intemperate email to Mr Zeman. Despite the final sentence of that email, set out in [27] above, the judge thought that the "tenor of the document" read as a whole was that there was no concluded contract. He commented that "the one thing [that Mr Lew] does not say is that there was a concluded contract", and that Mr Lew (merely) referred to an agreement that a contract of sale would be prepared, and that he would pursue Mrs Nargolwala for costs and non-performance (see Judgment at [218]). We do not consider that any of these points suggests that Mr Lew did not regard Mrs Nargolwala as breaching a definite binding agreement. He spoke of "her duty to prepare the contract of sale as agreed"; of her "non performance"; of her "trying to explain … that she has done nothing wrong"; and of his having "bought the Villa". Further, if he was to "pursue [her] for [his] costs & non performance", that must have been on some legal basis. What the judge's approach overlooks is what we regard as the clear effect of Mr Lew's offer of 11 October 2017 as an offer to be bound, which Mr Lew was informed had been accepted. There is, as we have said, nothing inconsistent between that and a conclusion that the parties also contemplated that it would be replaced by more formal contractual or completion documentation prepared by lawyers.

37 The judge also read a text of 11 November 2017 and emails of 13 and 14 November 2017 as inconsistent with a belief by Mr Lew in the conclusion of



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any binding contract. Again, to our mind, this is not a justified reading of those documents, let alone a compelling indication of the objective effect of what occurred between Mr Lew and Mr Meury (believed to be conveying the Nargolwalas' acceptance) on 11 October 2017.

38 Mr Lew's text, somewhat of a stream of consciousness, read, *inter alia*:[25]

> …. I have already prepared a very strong legal demand to our friends in Singapore in the event they try & deny the transaction. As we both know settlement was to take place after receipt of contract of sale. No such contract was ever received by me.
>
> So I will be claiming Misleading & Deceptive conduct and Non Performance !
>
> I will also claim my legal costs to date plus future costs for remedy of agreement. Don't you just love her lawyers advise [*sic*] to us to just put the transaction on hold !
>
> She is not saying it's no deal what she is saying is ive [*sic*] potentially got another buyer so let's see if he will pay more then I can create an auction between the 2 buyers ! She is sneaky …

39 The judge quoted the last full sentence as "wholly inconsistent with there being an antecedent concluded contract" (see Judgment at [219]). But the rhetorical flourish with which Mr Lew described his view of Mrs Nargolwala's motives does not appear to us to be any real indication of what Mr Lew himself thought, especially following reference to her "deny[ing] the transaction", to "Non Performance", and to a claim to "my legal costs to date plus future costs for remedy of agreement". Again, his reference to "settlement … to take place after receipt of contract of sale" is in no way inconsistent with a belief in a prior binding oral agreement.

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25 CB VOL II 235.



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40 Mr Lew's email to Mr Zeman and Mr Meury on 13 November 2017 is no different. It contains references to the Nargolwalas "not saying that they are reneging on this transaction", but wanting to put it "on HOLD!", and to Mr Lew having a claim for not delivering a contract as well as costs and compensation. The long first direct communication which Mr Lew then made on 14 November 2017 with Mr and Mrs Nargolwala by email was in our view also clear in its assertion of a binding and enforceable agreement. It stated *inter alia* that:[26]

> we now potentially have a major dispute between us.
>
> your wife via the Andara group sold Villa 29 to me under specific terms and conditions.
>
> we via the Andara group agreed to buy villa 29 on a walk in walk out basis for USA $ 5,250,000.
>
> your wife agreed to furnish us with a contract which had shares in a Cayman Island Company which owned The rights to Villa 29.
>
> Settlement was to take place 14 days after receipt of contract. we had already spoken to the staff together with Daniel Meury to advise them that we had agreed to purchase Villa 29.
>
> we had hired Lawyers DLA Piper thailand to review the documents handed to us by the Andara group on behalf of the owners describing the property plus the Cayman Island registration and copies of Cayman island share certificates. DLA piper were in due diligence as well as calling or emailing daily to your appointed Thai lawyers Kuhn Anurag for the contract. …
>
> …
>
> … we are now faced with a major impass [*sic*] where you and your Cayman Island company is potentially going to reneg [*sic*] on an agreed transaction.
>
> we are now fully aware of the behind the scenes moves from various discussions from Meury and Zeman on behalf of the Andara group who were acting as your selling agents.
>
> Now the reason I'm writing to you and not our Lawyers is to head off our claims against you and your Cayman Island

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> company as well as the Andara group. I believe we are both reasonable and sensible individuals and cherish our reputations.
>
> I'm aware we are both not short of a dollar but for me it's now a point of principle and I will pursue rectification and performance of our agreement regardless of costs in all three jurisdictions.
>
> …
>
> in the event i don't receive a response from you in the next 24 hours we will immediately notify our legal department to take action in three jurisdictions namely thailand, singapore and Cayman Islands.

Far from suggesting an absence of belief in the existence of a binding oral agreement reached on 11 October 2017, to our mind both these communications are entirely consistent with such a belief.

41 In what follows, we shall therefore proceed on the basis that the judge was wrong in this connection, and that Mr Lew understood from Mr Meury on 11 October 2017 that a legally binding contract for sale had been achieved, even though it was also contemplated that it would or might later be put on the more formal basis of documentation drafted by lawyers. On this basis, the judge's finding that the statements made on 11 October 2017 only amounted to an agreement "subject to contract" is also incorrect.

42 Mr Lew's unilateral understanding is not however sufficient. It takes two to agree to contract: see *Tan Swee Wan and another v Johnny Lian Tian Yong* [2018] SGHC 169 at [222]. The critical question is whether Mr Meury was speaking with the authority of or in a way which bound the Nargolwalas. As the Judge noted at [174] in his Judgment, an agent may have "actual authority, either express or implied, or … ostensible, sometimes called apparent authority".



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***Mr Meury's status and authority***

43 As the previous paragraph indicates, whether any agreement intended to be binding was in the circumstances reached with the Nargolwalas depends on the status of Mr Meury. If he were seen as acting for Mr Lew, there could be no such agreement, because Mr Lew would through him be taken to have known of Mrs Nargolwala's reservation of the Nargolwalas' position in her telephone conversation with Mr Meury on 11 October 2017.

44 Mr Lew's case was, necessarily, that Mr Meury was acting as agent for the Nargolwalas. The judge's findings (which we uphold: see [32] above) regarding the exchanges between the Nargolwalas and Mr Meury meant that Mr Meury cannot have had any actual authority to communicate acceptance by the Nargolwalas of Mr Lew's offer. Mr Lew's primary case is therefore that Mr Meury was an agent with either (a) implied authority to act generally in relation to the sale of the Querencia shares or, as a minimum, (b) authority to receive and convey messages on their behalf, and on that basis to convey their acceptance of Mr Lew's offer to Mr Lew. The judge concluded that, in the light of his findings and the way that Mr Meury acted as a go-between, Mr Meury was to be regarded as acting as an agent of the Nargolwalas, "entrusted … to act on their behalf in seeking to facilitate a deal with Mr Lew". But the judge did not accept that his authority extended any further than that "conferred on a properly appointed real estate agent who would only have authority to take matters forward to the stage where it was appropriate to pass the matter into the hands of lawyers", and he "would not have implied authority to take the matter any further than a non-binding agreement in principle" (see Judgment at [194]). As to the minimum alternative authority, on which Mr Lew relied, that is to receive and convey messages, the judge said that that could not assist Mr Lew's



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case unless Mr Meury "had ostensible authority to bind the Nargolwalas by way of an oral contract" (see Judgment at [196]).

*Actual, implied and usual authority*

45 The judge seems to have regarded Mr Meury as an agent for the Nargolwalas alone (though an agent of a limited sort, with authority not to bind but to negotiate and to receive and convey messages). It is not clear to us on what basis the judge took this view. There seems much to be said for viewing Mr Meury as a mere intermediary or agent for each party in conveying their messages to the other – in the manner of a postman – coupled at best perhaps with an understanding on each side that he might seek to persuade the other of the good sense of a deal – in the manner of a mediator, without any authority to bind. Mr Meury's role as resort manager was explored in evidence before the judge, but was relied on in only general terms on this appeal, for example as involving oversight of "all aspects including sales", as Mr Lew submitted.[27] In fact, the resort had a sales manager, Mr Lyndon Phillips, at least until 26 October 2017 when he resigned, and it was open to villa owners to make a sales agreement with the sales manager under which the Resort would seek potential buyers on behalf of a villa owner for a commission.[28] There had in 2015 been a one-year sales agreement with the Resort, but there was no such agreement or authority thereafter, and Mr Lyndon Phillips was not asked to, and did not, have anything to do with Mr Lew or the Nargolwalas or any discussions between them.

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27 Solomon Lew's skeletal arguments dated 26 October 2020 at para 6.

28 See RA VOL III (PART FF) 133 line 18–134 line 14.



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46 What Mr Meury accepted did probably happen is that, already during the first visit by Mr Lew and his wife-to-be to Villa 29 in April 2017, either Mr Meury or perhaps Mr Zeman mentioned to Mr Lew that Villa 29 was for sale. This was seen by Mr Meury as something that was in the Resort's interest to mention, in case Mr Lew was interested; it was all part of making sure the Resort did well, and making sure that it had guests who are coming back and returning again. It is also clear that Mr Meury and Mr Lew developed good personal relations. During the second visit, they had dinner together on 6 September 2017, and first thing the next morning Mr Lew was giving Mr Meury "full proxy and authority to close the deal" at US$5 million within seven days, on (by implication in view of their previous exchanges) a "walk in walk out" basis. This was accompanied by the promise of "chocolates" in Switzerland (presumably, if Mr Meury was able to persuade the Nargolwalas to accept). So here it was Mr Lew who was seeking to use Mr Meury's skills of persuasion to achieve a deal (although, despite the language, it seems unlikely that Mr Lew was conferring on Mr Meury any discretion as to the terms of the deal). This is part of the background to what happened in October 2017. It is not easy in our view to reconcile this with a conclusion that Mr Meury was seen as the Nargolwalas' agent, rather than simply as general manager or indeed as someone who Mr Lew hoped would assist him.

47 However, even if one looks at the position solely as the judge did, and treats Mr Meury as a one-sided agent on the Nargolwalas' behalf, with authority to discuss with Mr Lew non-binding terms and to receive and convey messages on the Nargolwalas' behalf, the judge was in our opinion correct to conclude that Mr Meury's role and authority went no further. The scope of an agent's implied authority depends on the circumstances of each case, including the parties' words and conduct towards each other: *Alphire Group Pte Ltd v Law Chau Loon and another matter* [2020] SGCA 50 at [7]. Where authority is



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implied it is usually because it is "necessary to enable the agent to effectively perform the task for which the agent had been appointed": *Singapore Salvage Engineers Pte Ltd v North Sea Drilling Singapore Pte Ltd* [2016] SGHC 5 at [14]. Thus, an agent with authority (actual or ostensible) to make general representations pertaining to a certain transaction (*eg*, about the condition of goods to be sold) does not thereby have the authority "to make the specific representation that the principal has approved that transaction", if the agent did not in fact possess authority (whether actual or ostensible) to enter into the said transaction on the principal's behalf: *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and another and another appeal* [2011] 3 SLR 540 ("*Skandinaviska*") at [59]. Here, the Nargolwalas said and did nothing to confer on Mr Meury any implied, let alone any express, authority to make a contract on their behalf, or to convey messages in terms which they did not specifically authorise but which committed them contractually, or, as the judge saw it, to act as more than a go-between entrusted at most to facilitate, but not to conclude, a deal with Mr Lew.

48 To the extent that Mr Meury told Mr Lew on 11 October 2017 that an agreement had been reached with the Nargolwalas, Mr Meury was therefore acting without any actual authority, whether express, implied or usual, and no agreement can have come into existence, unless upon some other conceptual basis applicable in the circumstances. We turn therefore to the other possibilities on which Mr Lew relies.

*Ratification*

49 Various other conceptual bases were relied on by Mr Lew to seek to establish a binding agreement. The judge addressed them under the heads of (a) apparent or ostensible authority, (b) ratification, and (c) estoppel. It is



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convenient to take ratification first. This was not pleaded and, as the judge said, should have been. But the judge preferred to deal with it on the substance, since it had been covered in opening submissions and cross-examination (see Judgment at [234]–[238]), and we agree with him. The submission was that Mrs Nargolwala had accepted in cross-examination that she had known from Mr Zeman's email of congratulations (at [19] above) that Mr Meury had told Mr Lew that Mr Lew's offer had been accepted,[29] and, by failing to correct this, had ratified the acceptance purportedly conveyed to Mr Lew by Mr Meury on the Nargolwalas' behalf. The judge was unable to find on the basis of Mrs Nargolwala's cross-examination "any evidence, far less clear evidence, of an intention to adopt the act in question", and said, on the contrary, that "[s]he made it plain that she was leaving matters to her husband" and that Mr Nargolwala's response (at [19] above) would have left Mr Zeman in no doubt that he was not ratifying any deal (Judgment at [237]). Having considered the transcript of Mrs Nargolwala's evidence and Mr Nargolwala's response to Mr Zeman, we see no basis for disturbing the judge's findings on this aspect. The plea of ratification thus fails on the facts. The same facts are relied on in the context of ostensible authority, but are even less convincing in that guise, since Mr Lew was not party to the exchanges between Mrs Nargolwala (and later Mr Nargolwala) and Mr Zeman, and Mr Lew thus could not have relied on any representation (if any had been made) by the Nargolwalas or either of them to Mr Zeman: see also [54] below.

*Apparent or ostensible authority and estoppel by representation*

50 The other possibilities, apparent or ostensible authority and estoppel by representation have, as the judge noted, a similar conceptual underpinning.

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[29] CB Vol II 194–195.



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Apparent or ostensible authority is in this sense the conceptual opposite of actual authority because, where it exists, the agent in fact has no authority. The judge correctly identified the principles relevant to apparent or ostensible authority, citing, at [198] of his Judgment, from Diplock LJ's judgment in *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480 ("*Freeman & Lockyer*") at 503:

> An 'apparent' or 'ostensible' authority … is a legal relationship between the principal and the contractor created by a representation, made by the principal to the contractor, intended to be and in fact acted upon by the contractor, that the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the 'apparent' authority, so as to render the principal liable to perform any obligations imposed upon him by such contract. To the relationship so created the agent is a stranger. He need not be (although he generally is) aware of the existence of the representation but he must not purport to make the agreement as principal himself. The representation, when acted upon by the contractor by entering into a contract with the agent, operates as an estoppel, preventing the principal from asserting that he is not bound by the contract. It is irrelevant whether the agent had actual authority to enter into the contract. …

51 The judge rejected the submission that, because there was never any direct contact between the Nargolwalas and Mr Lew prior to 11 October 2017 (or indeed until 14 November 2017), there was no scope for the doctrine to apply. He cited in this connection a later passage in *Freeman & Lockyer* (at 503) to the effect that:

> The representation which creates 'apparent' authority may take a variety of forms of which the commonest is representation by conduct, that is, by permitting the agent to act in some way in the conduct of the principal's business with other persons.

The judge went on (at [200] of the Judgment):

> The representation which creates 'apparent' authority may take a variety of forms of which the commonest is representation by conduct, that is, by permitting the agent to act in some way in the conduct of the principal's business with other persons. The



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> correct approach in a case such as the present was explained by Steyn LJ (as he then was) in *First Energy (UK) Ltd v Hungarian International Bank Ltd* [1993] 2 Lloyd's Rep 194 at 201 which reads:
>
> > It is common ground that a plea of apparent authority can only be based on a holding out, or representation, as to authority of the agent by the principal sought to be held bound by the particular act. Our law does not recognize, in the context of apparent authority, the idea of a self-authorizing agent. See *Armagas Ltd. v. Mundogas S.A.*, [1986] 2 Lloyd's Rep. 109; [1986] 1 A.C. 717.

52 The judge also further considered the unpleaded possibility that the Nargolwalas' conduct might estop them from denying the existence of an agency relationship, even if this only occurred by taking into account their or Mr Lew's conduct subsequent to 11 October 2017 (see Judgment at [240]–[241]). He noted in this context the discussion by this Court in *The "Bunga Melati 5"* [2016] 2 SLR 1114 at [12] of the concept of unconscionability underpinning both the doctrine of ostensible authority and estoppel by representation generally.

53 The judge saw the question of ostensible authority as "inextricably intertwined" with the question of whether any binding oral contract was entered into on 11 October 2017. Since he held (wrongly, as we consider) that Mr Lew's interchanges with Mr Meury on that date were not such as could objectively involve any such contract, that was effectively the end of the matter. However, in the course of considering whether the Nargolwalas were estopped from denying agency, the judge did also briefly make the following points, which would by themselves negative any ostensible agency as well as any such estoppel. He said (at [242]–[245] of the Judgment):

> 242 In his opening written submissions the Plaintiff puts his case in two ways. First, he asserts that the fact that Mr Meury was carrying on negotiations and conveying information from the Nargolwalas constituted a representation that he was acting



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> as their agent. It is said that, relying on that, Mr Lew called off his initial purchase of another villa and took steps towards the purchase of Villa 29. We now know that the former of these assertions was "deal talk" and the latter involved, on Mr Lew's part, the minimum of effort.
>
> 243 For the reasons given above, I do not consider that the mere fact that Mr Meury was carrying on negotiations and conveying information constituted a representation that he was acting as their agent with authority to bind them by way of an oral agreement so the requisite representation does not arise. Further, I am not satisfied that Mr Lew took such steps as he did in reliance upon a belief that a binding oral contract had been concluded. Such steps as Mr Lew did take are equally consistent with taking the steps with a view to progressing matters to completion without there being an antecedent oral contract. This submission thus fails.
>
> 244 Secondly, it is said that by reason of Mr Zeman's e-mails of 11 October 2017, which were sent after the alleged agreement was said to have been made, the Nargolwalas knew that he was acting on the basis that he had purchased Villa 29.
>
> 245 I have already considered these e-mails under Issue 5 at [234] and [237]. By parity of reasoning, this way of putting the case on estoppel cannot succeed.

54 There are two strands to this reasoning. The first is that the Nargolwalas did nothing to represent to Mr Lew that Mr Meury had, or to hold him out as having, any authority other than his actual authority; and that that was limited to conveying, receiving and communicating messages, and perhaps discussing, without commitment on either side, possible terms. The second is that Mr Lew did not in any event rely on any representation which may have been made to him, because (a) he did not ever believe that a binding oral contract had been concluded and also, it appears, (b) because the judge regarded the steps taken in alleged reliance as involving a minimum of effort. The first part of the second theme must be put aside on the basis of what we have said in [33] to [41] above. As to the second part, we would simply put a question-mark against a proposition that the making of a contract in reliance on ostensible authority could properly be disregarded because it involved a minimum of effort. We see



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no basis however for disagreeing with the judge on his first theme. That is so, taking account both of Mr Meury's role and of such part as Mr Zeman played. As we have noted at the end of [49] above, Mr Lew was not party to and, so far as appears, was unaware of the exchanges between Mrs Nargolwala (and then), Mr Nargolwala and Mr Zeman on 11 and 12 October 2017, and so cannot have relied on any representation made (if any) by the Nargolwalas or either of them to Mr Zeman.

55 Mr Lew submits nonetheless that Mr Meury in particular, but also Mr Zeman, was held out by Mr and Mrs Nargolwala as having authority to deal with the sale, by virtue of their standing by and allowing him to negotiate on their behalf. Reliance is in this connection placed on the decision of Gibson J in *A Nesbitt & Co Ltd v McClure* [1971] Lexis Citation 22 ("*Nesbitt*") as well as the decision in *JES International Holdings Ltd v Yang Shushan* [2016] 3 SLR 193. Neither establishes any new law nor is more than an exemplification of well-established principles. Both involved circumstances very different from the present. Nothing in them assists Mr Lew in the present case where there was no representation or holding out by the Nargolwalas to Mr Lew, by words or conduct, direct or indirect, to the effect that either Mr Meury or Mr Zeman had any authority greater than that actually possessed. That authority was, as we have said, to act as intermediaries, without power to bind either party.

56 Taking *Nesbitt*, on which reliance was principally placed, to illustrate why it does not assist Mr Lew, in it the defendant liquidator of a company was necessarily dependent on the knowledge and skill of the company's directors (Acheson and Wright), one of whose service contracts was still continuing. The liquidator authorised them to negotiate with third parties interested in purchasing any of the assets and to submit offers in writing to him, as well as to complete outstanding orders. The liquidator and directors met together on



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2 November 1970 with a potential purchaser (Nesbitt, a director of the plaintiff company), who knew nothing of the limitation of the directors' authority. The directors commenced negotiations, while the liquidator stood by, taking little part apart from asking whether Nesbitt would require credit facilities. Nesbitt saw the position as being that the liquidator had deputed to the directors the task of negotiating a sale, it being also obvious that the liquidator had no option but to rely on their experience and skill in the transaction. A purchase was not concluded on that date, but it was understood that the potential purchaser was very interested and would return for further negotiations. This he did and, at a meeting which took place with the directors in the liquidator's absence, a deal was struck. Gibson J held that, although the directors had somewhat vague and varying views as to the authority they had been given, the evidence as a whole pointed to their having no actual authority to conclude a sale. But he went on:

> … The question resolves itself into an enquiry whether the defendant had put Acheson and Wright into such a relationship with Nesbitt as to induce in him the reasonable belief that they had the power to contract for the sale of these goods. I think he did. On 2nd November he so to speak sto[o]d by and allowed them to assume control of the discussions which he and they knew were designed to lead to a sale. I find as a fact that he did not specifically or by indirect means bring to the notice of Nesbitt that they were not authorised to accept offers. The fact that they were authorised to offer for sale and to negotiate a price for the goods in question seems to me to raise the reasonable inference that they were authorised also to accept an offer which they should consider reasonable. That was the inference which Nesbitt in fact drew and it follows that he relied on the representation and was induced by it to contract as he thought with the defendant.

*Nesbitt* was therefore a case where the principal stood by in circumstances which were calculated to and did give the impression to Nesbitt that the directors would have authority to conclude a sale at the further meeting which in the event took place, even though they had not in fact been given such authority. In contrast, in the present case, there was no direct communication at all between



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the Nargolwalas and Mr Lew, and the nature of Mr Meury's and Mr Zeman's involvement does not involve or imply that either of them had any authority to act other than as an intermediary between the parties, loyally transmitting messages and perhaps making helpful suggestions to each without commitment. It is not without interest that, when asked originally for particulars of his pleaded case that it was represented to him that Mr Meury and Mr Zeman acted as the agents and/or representatives for the Nargolwalas in relation to the sale, the response given on his behalf was that Mr Meury through his conduct and Mr Zeman through his conduct made such representations. But, as the judge correctly identified by his quotation of Steyn LJ's dicta in *First Energy (UK) Ltd v Hungarian International Bank Ltd* [1993] 2 Lloyd's Rep 194 at 201 (see [51] above), "[o]ur law does not recognize, in the context of apparent authority, the idea of a self-authorizing agent" (see also *Skandinaviska* at [38] and [59]). There must be, in other words, some representation, direct or indirect, by conduct or words, by the suggested principal to the third party in order to cloak a person with an authority as agent beyond that which he or she actually has. A contrary conclusion would lead to a situation in which anyone engaged as a mere messenger or intermediary could of his initiative confer on himself additional authority to enter into an otherwise unauthorised contract on his employers' behalf (see also *Spooner v Browning* [1898] 1 QB 528; *Marme Inversiones 2007 SL v NatWest Markets Plc and others* [2019] EWHC 366 (Comm) at [421]–[447] and [457]–[479]).

***Decision in CA 38***

57 Mr Lew's appeal therefore fails. Mr Meury had no authority from the Nargolwalas to conclude a contract with Mr Lew either on his own or telling Mr Lew that the Nargolwalas had agreed to this. No contract was therefore objectively concluded between the Nargolwalas and Mr Lew, although Mr Lew



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was led by Mr Meury to understand that one had been. The appeal in CA 38 fails accordingly as against Mr and Mrs Nargolwala. As the judge held, it therefore also fails as against all the other respondents in CA 38, whose liability depended on knowledge of an actual binding contract between the Nargolwalas and Mr Lew.

***Other issues if the appeal had not already failed***

*Querencia*

58 We should not part with the appeal in CA 38 without addressing a word to the judge's approach to the liability of Querencia. The judge accepted that the general rule is as laid down in *Sinclair Investments (UK) Ltd v Versailles Trade Finance Ltd* [2011] Bus LR 1126 at [123]–[128]: "it is wrong for a person controlling a company to be ascribed with knowledge that he or she does not actually have unless as a matter of principle or policy such a person should be treated as knowing something that they did not". However, the judge held that the reasoning in *El Ajou v Dollar Land Holdings Plc* [1994] 2 All ER 685 ("*El Ajou*") "identifies a justifiable policy reason for an exception to the general rule" (see Judgment at [304]–[305]). In particular, the judge quoted Hoffmann LJ's holding in *El Ajou* (at 706H) that:

> Nor do I think it matters that by the time [Dollar] acquired Yulara's interest in the Nine Elms project … Mr Ferdman had ceased to be a director. Once his knowledge is treated as being the knowledge of the company in relation to a given transaction, I think that the company continues to be affected with that knowledge for any subsequent stages of the same transaction. …

59 The judge found the facts of the present case to be analogous to those in *El Ajou* because there was a "continuing transaction" from the time Mr Larpin entered the Reservation Agreement to purchase the Querencia shares until the entry of Quo Vadis into Querencia's register of members, and it would be



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"unrealistic" to consider that Querencia's knowledge of this transaction "suddenly ceased to be its knowledge" because one of the anticipated events in the transaction resulted in the cessation of the Nargolwalas as Querencia's controlling mind (see Judgment at [306]–[307]). Therefore, the judge considered that, had there been a binding contract between the Nargolwalas and Mr Lew, Querencia would have been in breach of fiduciary duty and trust by dishonestly assisting the Nargolwalas' breach by registering the transfer of its shares to Quo Vadis. In this appeal, Mr Lew agrees with and adopts the judge's reasoning.

60 We disagree. The critical question here is whether Querencia is, when registering the transfer of the Nargolwalas' shares to Quo Vadis, to be attributed with the knowledge and state of mind allegedly possessed by the Nargolwalas, the transferors who were parting with the shares. The flaw in the judge's approach is, with respect, that he failed to recognise that a company cannot be imputed with the knowledge of a, or the, shareholder, held purely in his capacity as a shareholder. This is the key distinguishing factor between *El Ajou* and the present facts. In *El Ajou*, Mr Sylvain Ferdman ("Mr Ferdman") was a director of the first defendant, Dollar Land Holdings plc ("DLH"), who entered into an agreement with Yulara Realty Ltd ("Yulara") on behalf of DLH, but Mr Ferdman resigned before DLH purchased Yulara's interest in that transaction. *El Ajou*, therefore, involved a case of a director's knowledge of entering a transaction on behalf of the company with another party. The present case is very different, because it involves a company's shareholders entering a transaction not on behalf of the company but on behalf of themselves *qua* shareholders. Any relevant knowledge and state of mind possessed by the Nargolwalas would have been acquired and held by them only as shareholders, not in any capacity on behalf of Querencia. Their disposition of their shares was likewise undertaken by them as shareholders, not in any capacity on behalf of



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Querencia. On the hypothesis of a binding contract between the Nargolwalas and Mr Lew, Querencia should not and would not have been liable to Mr Lew.

*Thai law*

61 It has not been necessary, in order to dispose of the appeal in CA 38, to determine Mr and Mrs Nargolwala's cross-appeal to the effect that (a) Thai law governs the question of whether any binding and enforceable contract was made on 11 October 2017, and that, (b) as the judge found, Thai law would regard any such oral contract as unenforceable. It is equally unnecessary to consider Mr Lew's counter submission that the judge was wrong to hold that Thai law would regard any such oral contract as unenforceable.

62 Some consideration is however necessary of the merits of Mr and Mrs Nargolwala's submission that Thai law governs the issue of whether any binding and enforceable contract was made on 11 October 2017 ("the Thai law issue"). That is for the purposes of the Nargolwalas' appeal in CA 126 against the judge's order that they should bear and pay all the costs of that issue.

**The Nargolwalas' appeal on costs in CA 126**

***The judge's approach***

63 The judge started by identifying the well-established three-stage approach to identifying the governing law, where it is clear that a contract has been made. He referred in this connection to *JIO Minerals FZC and others v Mineral Enterprises Ltd* [2011] 1 SLR 391 ("*JIO Minerals*") at [79], where this Court said that:

> … At the first stage, the court considers if the contract expressly states its governing law ('the Express Law'). If the contract is silent, the court proceeds to the second stage and considers whether it can infer the governing law from the intentions of the



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> parties ('the Implied Law'). If the court is unable to infer the parties' intentions, it moves to the third stage and determines the law which has the closest and most real connection with the contract ('the Objective Law').

64 The judge then referred on the issue before him to the judgment of Mavis Chionh Sze Chyi JC in *Pegaso Servicios Administrativos SA de CV and another v DP Offshore Engineering Pte Ltd and another* [2019] SGHC 47 ("*Pegaso*"), against which an appeal was lodged but dismissed by this Court (without issuing written grounds) on 30 October 2019. Chionh JC said at [72]–[73] of her judgment:

> 72 Having regard to the formulation of the three-stage test, it would not make sense to apply the test in a case where one party denies altogether the existence of any agreement. In such a case, it would be illogical to apply the first stage of the test and to look at what the express provisions of the contract say – since one party disputes that there is any contract to look at. Nor would it make sense to apply the second stage of the test and to ask whether the parties' intention as to the governing law of the contract can be inferred from the circumstances. …
>
> 73 From the (admittedly insubstantial) case law available, it would appear that judicial views have been divided as to whether the *lex fori* (see *Oceanic Sun Line Special* Shipping *Co Inc v Fay* [1988] 79 ALR 9 at 55) or the "putative proper law" test (see *The Parouth* [1982] 2 Lloyd's Rep 351 at 353) should apply in considering whether a contract has been formed. As I indicated in delivering oral judgement, I favoured the application of the *lex fori* in a case like the present, where the existence of the entire contract is disputed, since it seemed to me to avoid the circularity of the "putative proper law" test which "assumes that a contract has been formed, and then determines the proper law on that basis in order to determine whether the contract has been formed" (Professor Yeo Tiong Min, S.C, *Private International Law: Law Reform in Miscellaneous Matters* (unpublished). To this finding I would add two other observations. First, I did not think an application of the "putative proper law" test would have led me to a different view about the applicability of Singapore law. …

*Compania Naviera Micro SA v Shipley International Inc (The Parouth)* [1982] 2 Lloyd's Rep 351 ("*The Parouth*") is a decision of the Court of Appeal of



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England and Wales, one of three English decisions cited in *Dicey, Morris and Collins* at para 32-110 *et seq* as authority in favour of the use of the "putative proper law" to determine whether a concluded contract has come into existence. On that approach, identification of the law governing an issue as to the existence of a contract therefore involves a three-stage test analogous to that applicable (as set out in [63] above) to determine the governing law of the contract. Where, by definition, the issue is whether a valid contract had been made, this means (necessarily) considering at each stage not the "contract", but the negotiation or transaction which has allegedly given rise to a contract.

65 Having considered the authorities and articles relied upon by the parties (Yeo Tiong Min, *Private International Law: Law Reform in Miscellaneous Matters* (unpublished) ("*Yeo*"); Tan Yock Lin, "Good Faith Choice of a Law to Govern a Contract" [2014] Sing JLS 307), the judge concluded that there was a division of both judicial and academic opinion on the correct approach to the issue before him. Professor Yeo Tiong Min SC, on whose article Chionh JC relied in *Pegaso* (see [64] above), discusses the issue instructively in section 4.1.4 (*Yeo* at paras 192 to 203). His own preference is for a differentiated approach: where parties had agreed to negotiate on the basis of, or with reference to, a certain law, then as a matter of reasonable expectation, that law should apply "not as a matter of principle, but on purely pragmatic grounds". In other circumstances, the court should "look to the objective connections to determine which law should govern", but "[t]his test, however, would not be applicable where the entire contract is disputed. In this case, the court has nothing left but to apply the law of the forum": see *Yeo* at para 200. Summarising this view in *Yeo* at para 202, he therefore said:

> It is suggested that, as a compromise between principles and practical considerations, the following approach be taken towards the issue of formation of contracts: If the parties have negotiated their contract with reference to a particular legal



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> system or have agreed on a law to apply to the issue of formation of their putative contract, that law will govern whether that putative contract has been formed. Otherwise, the issue should be determined by the law of the country with the closest connection with so much of the putative contract that is not disputed between the parties. If the entire contract is disputed, then the issue should be determined by the law of the forum.

66 Another notable protagonist in the field is Professor Adrian Briggs QC. In Adrian Briggs, "The Formation of International Contracts" [1990] LMCLQ 192 ("*Briggs*"), he stressed that the process of identifying a proper law starts necessarily with the *lex fori*, and that at common law any contract must have a proper law from its inception: see, *eg*, *Armar Shipping Co Ltd v Caisse Algerienne d'Assurance et de Reassurance* [1981] 1 WLR 207 at 215, per Megaw LJ. Professor Briggs suggested as the right approach to ask the following questions (*Briggs* at 198):

> … First, does the defendant deny the existence of contractual agreement? Yes. Second, according to the (English) *lex fori*, was there contractual agreement? Yes. Third, what was the proper law of that agreement? Because, if English law sees a contract, it necessarily follows that it has a proper law. Fourth, according to that proper law, were the parties in contractual agreement?

On this approach, Professor Briggs continued, once the *lex fori* finds present the basic components of contractual agreement (*viz*, at common law, an accepted offer, some consideration, an intention to create legal relations and the absence of any factor nullifying consent) then:

> …. there is full and sufficient contractual agreement which at the time of the agreement gave rise (expressly or otherwise) to a proper law for the contract. This proper law will then govern all issues of validity and, even if it be argued that under English law one party would have been entitled to avoid the contract, for misrepresentation, undue influence or whatever, this will be irrelevant. A proper law was chosen; at the instant of choice it supplants the *lex fori* as the law governing contractual validity. There is therefore no difficulty in concluding that the (real) proper law of the (putative) contract governs the formation of the alleged contract.



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67 Where Professor Briggs takes issue with academic orthodoxy is where the existence of any contract is disputed and there is no identifiable choice by the alleged parties of any law by reference to which to determine that dispute. In that situation, Professor Briggs argues, the existence of any contract must and can only be determined by the *lex fori*, rather than some other legal system with which the circumstances might be said to have the closest and most real connection. However, this argument depends on Professor Briggs's insistence that "the proper law of the contract is a subjective idea, dependent upon the choice of the parties"; it is a law which the parties "must have chosen, or must at any rate be taken to have chosen", and, where this is not the case, there is no proper law, and no contract: see *Briggs* at 197 and 200. Reference to a putative proper law "assumes what it sets out to prove" (*Briggs* at 201) and use in this context of an "objectively determined proper law" is indefensible "because it separates the idea of a proper law from its roots in the freedom of parties to choose the law which governs their contract" (*Briggs* at 201). As Professor Briggs notes, there may therefore be cases, on his approach, where the absence of any true "choice" of a proper law by the parties will lead to a conclusion that they reached no contract, even though reference to the law with the closest connection to their negotiations would have led to an opposite conclusion (*Briggs* at 200):

> If the absence of agreement upon a proper law means that there is no proper law, it follows that there can be no contract, notwithstanding any submission that a system of law with which 'the transaction' has its closest and most real connection would lead to a different view.

In Professor Briggs's view, the *lex fori* is nonetheless the best choice (in the absence of any real or identifiable choice of a proper law) because "it offends the requirements of clarity, logic and reason less than the offered alternatives". Finally, *The Parouth*, in Professor Briggs's view, is an "unconvincing"



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authority in favour of a general putative proper law test, although justifiable in its own narrow context of an application for leave to serve out of jurisdiction (*Briggs* at 202).

68 The judge's own view (see Judgment at [162]–[164]) was that Chionh JC in *Pegaso* was:

> 162 … not seeking to lay down a hard and fast rule that the *lex fori* should apply in all cases where the existence of a contract was in issue. This would, to my mind, be to introduce an approach which constitutes too much of a blunt instrument to serve the interests of justice. There will be cases where it is the appropriate course to take, as in the *Pegaso* case, but there will be others where the facts are sufficiently clear that justice can better be done by approaching the matter by reference to the three-stage test in *JIO Minerals*, with necessary adjustments to take into account that there is the fundamental dispute as to the existence of the contract in the first place.
>
> 163 With regard to the first stage, it may be unlikely that the Express Law will be stated in the case of a putative contract. However, the Implied Law stage is just as applicable to a putative contract as it is to a concluded contract. If the facts as found allow the court to reach a clear conclusion as to what would have been the parties' common intention as to the governing law of the contract if the same was concluded, then it would be unrealistic to disregard that and to determine that the proper law was in conflict with that common intention. Equally, the Objective Law stage may, in an appropriate case, lead the court to the clear conclusion that a particular law was the one that had the closest connection with the putative contract rather than the *lex fori*.
>
> 164 In both cases however, I consider that the court should reach a clear conclusion that a particular law should be applied rather than the *lex fori*. In cases of doubt, the counsel of prudence would be to apply the *lex fori*.

69 When it came to applying this approach, the judge (at [165]–[169] of the Judgment) reached the following conclusions:

> 165 In the present case, I consider that the facts as found above do enable me to reach a clear conclusion by applying the second stage test, the Implied Law stage. …



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> …
>
> 167 Having reached this conclusion, it is, strictly speaking, unnecessary for me to consider the third stage, the Objective Law stage. However, in case the matter goes further, I shall do so. …
>
> …
>
> 169 Taking all these matters into account I do not consider that it is possible by considering only the third stage to reach a clear conclusion which law, Thai or Singapore, has the "the closest and most real connection with the contract" although I incline to the view that the weight of the relevant factors tends to favour Singapore law. Accordingly, if this had been the only consideration, I would have decided that it was correct to apply the *lex fori*. However, for the reasons given I have concluded on the basis of the second stage approach that the clear intention of the parties was that Singapore law should apply. Accordingly, the proper law of the contract is Singapore law.

***Analysis of the principles***

70 Where the issue is whether a binding and enforceable contract has been made, the following considerations seem to us in principle relevant.

(a) It is, by definition, not going to be possible to refer to any contractually binding selection of a law to determine that issue. It is theoretically possible, but in practice highly unlikely, that two parties sitting down to contractual negotiations might agree between themselves that the issue should, in the event that it arose, be determined under a particular law.

(b) Much more likely is the situation where parties have agreed on some, though not all, of the suggested or necessary terms, and those which have been agreed include what law will govern the contract, if and when it is agreed.

(c) In some circumstances it may also be obvious what law should govern the contract if and when any is made, even though nothing has



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> been said about this. Take the extreme case of an issue arising as to whether a domestic contract was made between domestic parties about a domestic subject matter. That particular issue might still arise for consideration in litigation before a foreign court. If one takes other circumstances, for example where there are significant cross-border elements in interchanges between parties who later find themselves in dispute about whether a contract has been concluded, courts are accustomed in various legal contexts to considering with which legal system a factual complex or issue is most closely connected. Determination of the governing law of a contract is one example (see [64] above), and determination of the legal system with the closest connection to an issue for the purposes of the doctrine of *forum conveniens* is another.

In all these circumstances, one must question the appropriateness of a rule which would automatically assign the determination of the issue of whether a binding and enforceable contract had been made to the law of the forum. If the "attainment of uniform solutions [i]s the chief purpose of private international law" (Ernst Rabel, *The Conflict of Laws: A Comparative Study* vol 1 (The University of Michigan Press, 2nd Ed, 1958) at p 87), the selection of the *lex fori* would fail to achieve that purpose.

71 With this purpose in mind, common law rules of private international law aim, in an internationalist spirit, to identify the most appropriate law to govern any particular issue. The identification of this law normally involves another three-stage process (though this should not be seen as a rigid straitjacket): (i) characterisation of the relevant issue – whether it be as an issue of contract, tort, unjust enrichment, revenue, public law, crime, marriage, divorce, civil procedure or any other of the manifold possibilities; (ii) selection



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of the rule of conflict of laws which lays down a connecting factor for that issue; and (iii) identification of the system of law which is tied by that connecting factor to that issue (see also *JIO Minerals* at [76]). Sometimes, of course, as in relation to matters of pure procedure, that process leads to the court of the forum identifying its own law as the appropriate law. That is because procedure governs conduct of a case and the case is being conducted procedurally before it. (Nevertheless, care needs to be – and, as illustrated by some debatable decisions on matters like onus of proof and limitation, may not always have been – taken to ensure that too large an ambit is not given to what is for this purpose appropriately regarded as "procedural".)

72 In our judgment, the judge was right to take a three-stage approach, analogous to that set out in [63] above, to the issue before him. Properly understood, this is not illogical and does not beg any questions. It is to give effect by analogy to what can or would be regarded as the reasonable expectations of the parties in all the circumstances with regard to the issue before them, which is whether they made any contract. Professor Yeo touches on this aspect in his unpublished article: see [65] above. But he gave it only limited effect, and, unlike him, we see it as a principled, not simply a pragmatic, approach. The law is shaped to serve and give effect to the reasonable expectations of its users.

73 What would be illogical would be to apply the law of the forum to the issue of whether a contract had been made, regardless of whether the forum had anything to do with the parties or the subject matter, other than the fact that proceedings happened to be brought in it. The judge was right that the first stage will rarely be relevant, but in theory it could be, as we have indicated in [70(a)] above. In other circumstances, such as those within [70(b)] above, it will be easy to identify an implied choice of the law to govern not only the contract when



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made, but also the issue of whether any contract has been made. Finally, there will be circumstances where the court will have to undertake the not unfamiliar third stage exercise, indicated in [70(c)] above, of determining with which system of law the circumstances and issue may objectively be said to be most closely connected. While it is convenient to identify the three-stage approach indicated in [63] above, the law approaches each stage objectively and the reality is that the stages (particularly the second and third) lie closely together on a spectrum.

74 The existence of this spectrum was pointed out as long ago as 1987 by Dr F A Mann in F A Mann, "The proper law in the conflict of laws" (1987) 36 ICLQ 437 at 445, written in honour of the lately deceased Dr J H C Morris, editor of the then *Dicey and Morris on The Conflict of Laws* (6th to 10th Editions), where the same point was made (*Dicey and Morris on the Conflict of Laws* (J H C Morris gen ed) (Stevens & Sons, 10th Ed, 1980) at 276), citing a statement by Lord Wright (in *Mount Albert Borough Council v Australasian Temperance and General Mutual Life Assurance Society Ltd* [1938] AC 224 at 240) that the third stage means that:

> … the Court has to impute an intention or to determine for the parties what is the proper law which, as just and reasonable persons, they ought or would have intended if they had thought about the question when they made the contract.

75 The point is expanded on with clarity in the current edition of *Dicey, Morris and Collins* at para 32-007, noting that the second and third stages often merge into each other in the authorities, with courts not infrequently omitting the second stage altogether, for the very reason that at the second stage "the test of inferred intention was in truth an objective test designed not to elicit actual intention but to impute an intention which had not been formed" (see also para 32-060).



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76 Common law courts, including in Singapore, are very familiar with the exercise of identifying the law with the objectively closest connection to a concluded contract, in the absence of any express or inferred choice by the parties: see, *eg*, in addition to *JIO Minerals*, *Wasa International Insurance Co Ltd v Lexington Insurance Co; AGF Insurance Ltd v Same* [2010] 1 AC 180 at [90] (citing *Whitworth Street Estates (Manchester) Ltd v James Miller and Partners Ltd* [1970] AC 583; *Compagnie Tunisienne de Navigation SA v Compagnie d'Armement Maritime SA* [1971] AC 572; *Amin Rasheed Shipping Corp v Kuwait Insurance Co* [1984] AC 50). We consider this approach well capable of general application in circumstances where the issue is whether any contract has been concluded at all. The court can and should then adopt a three-stage approach analogous to that applicable where there is no dispute about the existence of a contract, focusing necessarily on the circumstances of the transaction or relationship alleged to have given rise to a concluded contract.

77 The only caveat that might be made relates to a possibility raised in *Dicey, Morris and Collins* at para 32-113 of an extreme case in which the application of the putative proper law might give rise to grave injustice. As we have noted in [71] above, private international law rules are a means to achieve justice, not a straitjacket. *Dicey, Morris and Collins* gives the example of negotiations between A in England and B in State X, where the putative proper law is the law of State X under which silence in response to an offer amounts to consent (*Dicey, Morris and Collins* at paras 32-113 and 32-114, pointing to Art 10(2) of the European Union's Rome I Regulation (EC) No 593/2008 of 17 June 2008, as covering such a case). If a caveat needs to be made for such a case (about which we express no opinion), it is we think a very small caveat, very rarely applicable. Its effect (in the example given) would moreover be that no contract at all came into existence under any law, not that the *lex fori* applied.



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Understandably, this extreme possibility was not, and could not on the facts of this case have been, canvassed or relied upon before us.

78 We are not persuaded that the correct or preferable approach lies in any of the other directions pointed by either Professor Yeo or Professor Briggs. The former starts with propositions that correspond with those which we accept, but then carves out situations in which the "entire" contract is disputed. Whether the "entire" contract was disputed would itself become a source of dispute, but is not in any event in our view a reason for resorting to the *lex fori*. The approach we adopt provides a framework to address such a dispute which is, we consider, coherent as well as analogous to that which applies to undisputed contractual situations.

79 Professor Briggs's approach is in our view no more satisfactory as a matter of principle or practice. As a matter of principle, it does not in our view recognise the role of the law in giving effect to reasonable expectations, objectively ascertained. This role is as relevant and defensible in circumstances outside contract, or where the existence of a contract is in dispute, as it is once the existence of a contract is agreed or established. We do not therefore agree with his premise that the governing law is a subjective idea, dependent on the parties' choice, whether express or implicit. This seems to us no more true here than it is when a contract has undoubtedly been made. Where a contract has been made, then, the courts look, in the absence of any express or implied choice of law by the parties, at the law with the objectively closest connection to the contract. So here, where the court is concerned with a transaction or some form of relationship, and a dispute as to whether this has given rise to a contract, we consider it both understandable and appropriate that the court should, absent any express or implied choice, identify as relevant the law which has objectively the closest connection to the relevant circumstances, to determine that dispute.



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80 Finally, but importantly, we add that, although not cited to the judge or before us, there is already authority in this Court endorsing the application in Singapore of the approach taken in *The Parouth* and to the same effect as the foregoing paragraphs: see *CIMB Bank Bhd v Dresdner Kleinwort Ltd* [2008] 4 SLR(R) 543, where this Court said at [30] that:

> In our opinion, a distinction ought to be drawn between a case where the parties are agreed that there is no agreement at all, and a case where the parties are in dispute as to the existence or validity of the agreement (*eg*, due to fraud or misrepresentation). *It is settled principle that, in the latter situation, the dispute as to the existence or the validity of the contract would be construed in accordance with the law that governs that contract as if the contract were valid*: see *The Parouth* [1982] 2 Lloyd's Rep 351 at 353 per Ackner LJ, and Rules 203 and 206 of *Dicey, Morris and Collins* (at paras 32R-061 and 32R-154 respectively). Such a rule makes good practical sense because otherwise it would mean that a mere allegation on the part of the defendant that there was fraud would suffice to neutralise the effect of the jurisdiction or choice of law clause in the agreement. … [emphasis added]

***A fall-back role for the* lex fori*?***

81 Our reservation about the judge's approach is (therefore) whether there is any room for the law of the forum to apply as such (rather than as a result of the proper application of the three-stage test). In our opinion, there is no room for the *lex fori* to apply. Whenever there is an allegation of a binding agreement, it will necessarily be between parties in some context and language(s) in relation to some purpose(s) and/or place(s). The types of connecting factors which courts are used to analysing and weighing will be present. Sometimes, the balance is in one direction, rather than another or others, and it may be slight, but courts do not in practice declare ties. The judge's suggestion – that, in cases of doubt where the court could not reach a "clear" conclusion as to the governing law, the *lex fori* should apply – would, with respect, itself only lead to lack of clarity and argument about how much doubt or clarity was required. Further,



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what approach to apply cannot be as a matter of choice or discretion or even of "prudence", as the judge's remarks in [162] and [164] of his Judgment might be read as suggesting. For practical purposes, and bearing in mind the object of identifying the most appropriate law to determine the relevant issue, the three-stage approach should apply and suffice. The courts of England and Wales have not, in any similar context, found it necessary to have a fourth residual category of cases where the *lex fori* can or should be invoked.

82 In the present case, the judge considered that the facts he found enabled a clear conclusion by applying the second stage test, the Implied Law stage. In short, Singapore law applied "because of the Nargolwalas' insistence, at the time that the alleged contract was made that Singapore lawyers should be instructed and, hence, that Singapore law should apply" (see Judgment at [165]). The judge noted that "Mr Lew initially misunderstood that the Nargolwalas wanted Thai lawyers to be instructed", but pointed out that:

> … once the preference for Singapore lawyers was drawn to his attention at the lunch on 5 November 2017 … he readily agreed to the change and in doing so was, as his wife put it, both pleasant and obliging.

The judge then said (at [166] of the Judgment):

> … I have no doubt that had he understood that the Nargolwalas wished the matter to be dealt with by Singapore lawyers from the outset, he would likewise readily have agreed. It is thus clear on the facts of this case that both parties would have intended the governing law of the alleged oral contract to be the law of Singapore. There is therefore no circularity in this case of applying the Implied Law stage.

83 Having decided on this basis that Singapore law applied, it was unnecessary to consider the third stage, but the judge did so, *obiter*, nonetheless, as set out in [69] above. Expressing himself as unable to "reach a clear conclusion", but inclined to the view that the weight of relevant factors tended



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to favour Singapore, he indicated that he would have fallen back on the *lex fori*. We have already indicated why we consider that that was incorrect. Here, of course, it can be said that the law of the forum, Singapore, happened to have at least a respectable claim to be relevant on ordinary private international law reasoning (applying the three-stage test set out in [63] above). It was the place of the Nargolwalas' residence and there was at least reference to use of Singapore lawyers. But such connecting factors would by no means necessarily be present. Suppose that the Nargolwalas had lived in Australia or Delhi, and had suggested the use of Australian or Indian lawyers, but had later moved to Singapore and been sued there; or suppose the present facts, but a move from Singapore to Australia or India and a suit is brought there against them. In such cases, the *lex fori* would have no logical claim to determine the issue of whether a contract had been made in Phuket on or about 11 October 2017.

### *Application of the relevant principles to the circumstances*

84 A problem, as we see it, about the judge's reliance on an implied choice of Singapore law to govern the making of any oral agreement is that the judge in the passages quoted above based his view mainly, if not exclusively, on matters post-dating the making of any such agreement. The texted offer which Mr Lew sent to Mr Meury on 11 October 2017 did not mention any law or lawyers; and it was this offer which Mr Meury later that day told Mr Lew had been accepted. It appears from the second of the 11 October 2017 emails, sent by Mrs Nargolwala to her husband, that Mr Lew must at least have mentioned to Mr Meury when speaking on 11 October 2017 that he had a Singapore lawyer. Mrs Nargolwala's evidence was that Mr Meury had suggested what she wrote to her husband, namely: "but may be best to use Anurag in BKK", meaning that



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it may be best for Mr Lew to use Mr Anurag Ramanat.[30] Mr Meury's memory about this aspect was patchy; but, consistently with Mrs Nargolwala's evidence, it is clear that Mr Meury did mention Mr Anurag Ramanat to Mr Lew on the next morning when handing over copies of the villa documents. He reported this to Mr Nargolwala by emailing:[31]

> … The Buyer has just left Andara and will pass on the copy of the documents to his Lawyer in Singapore, and they will be in touch with Khun Anurag for any queries.

85 Mr Meury was cross-examined as to whether he was sure he had talked about a lawyer in Singapore "because at the same time [he was] giving him the details of a Thai lawyer", to which his answer was:[32]

> Exactly. That was for his lawyer that he's going to use. He can reference anything about Thai laws and the Thai technical set-up in the set-up of the Andara property.

A text on 16 October 2017 confirms that Mr Meury was expecting Mr Lew to instruct Singapore lawyers. But the judge found at [107] of his Judgment that Mr Lew, as a result of his conversations with Mr Meury on 11 and/or 12 October 2017:

> … undoubtedly formed the view that the reference to Mr Anurag was an indication that the Nargolwalas intended to instruct him in relation to the transaction and thus that Mr Lew should also appoint a Thai lawyer. The reference to a Singapore lawyer in the text message of 16 October 2017 did not serve to alert Mr Lew to the misunderstanding.

In the event, Mr Lew chose to use his group's in-house lawyers to instruct a Thai law firm.

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30 CB VOL II 230.

31 CB VOL II 237.

32 RA VOL III (PART GG) 27.



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86 Untangling these strands is not easy in circumstances where the judge did not focus closely on the position as at the date of the putative agreement, *ie*, 11 October 2017. Mr Lew's reference, when speaking to Mr Meury on 11 October 2017, to having a Singapore lawyer might be regarded as a pointer towards Singapore law. But the Nargolwalas had not at that stage given any indication that that was their intention, and Mrs Nargolwala's actual reaction (albeit only to Mr Meury, so far as can be seen) was that it might be better for Mr Lew to instruct Mr Anurag Ramanat in Bangkok. On the next day, when Mr Meury and Mr Lew met again, Mr Lew took Mr Meury to be saying that he should instruct Thai lawyers, although Mr Meury appears to have suggested using Singapore lawyers who would in turn instruct Thai lawyers. Bearing in mind that the Thai lawyers' assistance would be of obvious relevance on substantive legal as well as technical issues, as Mr Meury said during cross-examination, the reference to using Singapore lawyers does not appear as a conclusive indication of implied intention. Applying the three-stage test indicated in [63] above, we question whether it is possible in this case to speak of any implied choice of the law to govern any oral agreement reached between the Nargolwalas through Mr Meury and Mr Lew.

87 That being so, we think that the judge was also right to regard the question of which law the parties' interchange and putative agreement had the closest connection with as a difficult one in this case. As we have held, he was however wrong to suggest that this meant that he could or should fall back on the *lex fori*. A decision would, if necessary, have had to be made as to the relative weight of the connections with Thai and Singapore law. However, on neither of the appeals before us is it actually necessary to make that decision. It is sufficient for present purposes that it is highly arguable that the decision should on proper analysis have been in favour of Thai law. Villa 29 was in Thailand. Mr Lew and Mr Meury, between whom any agreement is said to have



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been made, were in Thailand. The shares being sold were in a BVI company, but any buyer would probably be much more concerned to know and take account of the Thai legal position regarding the title held by that company in respect of the construction, leasing and occupation of the villa when tying up the legal formalities to complete the oral agreement. Indeed, the entire structure of the transaction could be said to be derived from Thai law: it is Thai law that prohibits foreign nationals from owning property in Thailand, and Mr Lew would need to check the Thai legal position in this respect in order to ensure that he indirectly "owned" Villa 29. This is also evident from Mr Kenmar's email to DLA Piper (Thailand) Ltd on 29 October 2017, which read:[33]

> Taking into consideration *Thai law and practice*, particularly in the areas of land law and taxation law, we need your urgent advice as to who should undertake the purchase. Should it be an Australian company, a BVI company or some other entity? [emphasis added]

88 DLA Piper (Thailand) Ltd's reply is correspondingly focused on the proposed transaction under Thai law:[34]

> … If you wish to use a foreign company to buy the shares, the nationality of such company will not make any difference *under Thai laws*.
>
> *Under Thai land laws*, only Thai national, whether individual or majority Thai owned company ('Thai'), is allowed to own the title of land. As such, a foreigner, a company incorporated under foreign laws, or a foreign majority owned company ('Foreigner') cannot hold the ownership of land in Thailand. The laws only allow a Foreigner to lease the land for the maximum terms of 60 years (i.e. a lease term of 30 years with an option to renew for another 30 years). However, both Thai and Foreigner are allowed to build and owned [*sic*] the building on the land, whether they own or lease such land, provided that a construction permit must be granted from the government

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33 RA VOL V (PART D) 222.

34 RA Vol V (PART B) 77–78.



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> authority. The only different [*sic*] between Thai and Foreigner therefore is that the ownership of land belongs to Thai.
>
> In considering our case, we learned from the documents provided that Querencia Limited leases the land from Thai company for 30 years. Querencia therefore is allowed to renew the lease, once expired, for another 30 years *according to the law*. As for the building/ villa which is currently owned by Querencia Limited, it can be sold/ transferred as 'building' under the sale purchase transaction. However, we understand that you intend to purchase the shares of Querencia Limited, not the villa directly.
>
> …
>
> [emphasis added]

89 The Nargolwalas' residence in Singapore is, in our view, by itself of no real significance. The reference as early as the conversation between Mrs Nargolwala and Mr Meury on 11 October 2017 to Singapore lawyers is relevant, but was made in conjunction with a further reference to use of Thai lawyers, and the position in that regard as stated and understood in the critical conversation also on 11 October 2017 between Mr Meury and Mr Lew is more than a little obscure. All that matters for present purposes, however, is that it was properly and eminently arguable that Thai law would govern any oral contract made on 11 October 2017.

### *Decision on the appeal on costs in CA 126*

90 That resolves Mr and Mrs Nargolwala's cross-appeal on costs in CA 126. In his Judgment at [157], the judge said that:

> Somewhat surprisingly, having regard to the fact that at all times in their dealings both with Mr Lew and Mr Larpin the Nargolwalas had insisted on using Singapore lawyers and that the agreements that were reached with Quo Vadis were all expressly governed by the law of Singapore, counsel for the Nargolwalas contended that the proper law was Thai law.



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91 But this is again to look at the matter with the benefit of hindsight, not as it stood on 11 and/or 12 October 2017. The same view is also reflected by the judge's remarks in giving judgment on costs, where he said (at [6] of the judgment on costs delivered on 23 March 2020):

> … Before and during the trial it was pointed out to the Nargolwalas' counsel, both by counsel for Mr Lew and by the court, that the position being taken with regard to Thai law was inconsistent with the evidence which was adduced as to the Nargolwalas' position at the time that Singapore lawyers should be engaged to complete the purchase. In the course of oral submissions, counsel for Mr Lew referred to the argument as being 'opportunistic'. I agree. I consider that it was unreasonable for this argument to be raised and pursued and, accordingly, it is appropriate that Mr Lew should not have to pay the Nargolwalas' costs of this issue. Mr Lew however further contends that the conduct was such that not only should the Nargolwalas be deprived of their costs; they should pay Mr Lew's costs of this issue on the basis that the costs will not be insubstantial and they should never have been incurred. Again I agree. When a party's attention has been drawn specifically to the illogicality of an argument and that argument is nonetheless pursued unsuccessfully, it should pay a penalty in costs. The Nargolwalas will therefore pay Mr Lew's costs of the Thai law issue.

92 Costs should generally follow the event, even where a successful party does not succeed on every aspect of its pleaded claim, as long as the party succeeds on the "fundamental issue" in the suit. This default rule should only be departed from if it appears to the court that in the circumstances of the case some other order should be made; an example is when issues were raised unreasonably by the successful party that caused a significant increase in the length (or costs) of the proceedings: *Senda International Capital Ltd v Kiri Industries Ltd and others* [2020] 2 SLR 1 at [48]; O 110 r 46(1), Rules of Court (Cap 322, R 5, 2014 Rev Ed). It is a yet firmer principle that an appellate court will not lightly interfere with a judge's discretionary decision as to the appropriate costs order. However, if satisfied that the judge proceeded on a false



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premise or was plainly wrong, it may then do so: *Tullio Planeta v Maoro Andrea G* [1994] 2 SLR(R) 501 at [22].

93 Here, in our judgment, the judge erred in focusing on later developments and the Nargolwalas' subjective state of mind to identify the law governing the existence and validity of any alleged earlier oral agreement. His view that the case advanced on Thai law was unreasonable and merely "opportunistic" was unjustified. It went to a point – the unenforceability under Thai law of any oral agreement – which the judge actually accepted. That point would, by itself, have been fatal to Mr Lew's whole case. On that basis, the judge's order on costs cannot be sustained. The Nargolwalas should have been awarded their costs including those of the Thai law issue, and their appeal in CA 126 succeeds.

**Conclusion**

94 Mr Lew's appeal in CA 38 therefore fails (see [57] above). Mr and Mrs Nargolwala's appeal against the judge's decision that they bear and pay the costs of the Thai law issue succeeds (see [93] above), and Mr Lew will be ordered both to bear his own costs and to pay Mr and Mrs Nargolwala's reasonable costs of that issue. Unless the parties are able to reach an agreement as to the costs of these appeals, the parties are, within ten days from the date of this judgment, to file written submissions limited to ten pages regarding the appropriate costs orders.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Justice of the Court of Appeal



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Lord Jonathan Hugh Mance
International Judge

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Ramesh Kumar s/o Ramasamy, Tan Shu-Ning Alyssa, Lim Min Li Amanda and Edmond Lim Tian Zhong (Allen & Gledhill LLP) for the first and second respondents in CA 38/2020 and appellants in CA 126/2020;
Christopher Anand s/o Daniel, Harjean Kaur and Keith Valentine Lee Jia Jin (Advocatus Law LLP) for the third and fourth respondents in CA 38/2020;
Chua Han Yuan Kenneth and Hannah Alysha binte Mohamed Ashiq (TSMP Law Corporation) for the fifth respondent in CA 38/2020.

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