Neutral Citation Number: [2022] EWHC 1806 (Comm)

Case No: CL-2018-000716

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/07/2022

Before :

MR JUSTICE CALVER

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Between :

(1) MR NOPPORN SUPPIPAT **(2) SYMPHONY PARTNERS LIMITED** **(3) NEXT GLOBAL INVESTMENTS LIMITED** **(4) DYNAMIC LINK VENTURES LIMITED**	**Claimant**
- and -	
(1) MR NOP NARONGDEJ **(2) MS EMMA LOUISE COLLINS** **(3) MR THUN REANSUWAN** **(4) MR AMAN LAKHANEY** **(5) MS KHADIJA BILLAL SIDDIQUE** **(6) COLOME INVESTMENTS LIMITED** **(7) KELESTON HOLDINGS LIMITED** **(8) ALKBS LLC** **(9) GOLDEN MUSIC LIMITED** **(10) SIAM COMMERCIAL BANK PUBLIC COMPANY LIMITED** **(11) MR ARTHID NANTHAWITHAYA** **(12) CORNWALLIS LIMITED** **(13) MR WEERAWONG CHITTMITTRAPAP** **(14) DR KASEM NARONGDEJ** **(15) MS KHUNYING KORKAEW BOONYACHINDA** **(16) MR PRADEJ KITTI-ITSARANON** **(17) MR NUTTAWUT PHOWBOROM**	**Defendant**

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Justin Fenwick QC, George Spalton QC and Lucy Colter (instructed by **Willkie Farr & Gallagher LLP**) for the **Claimants**

Tim Penny QC and Benedict Tompkins (instructed by **Harcus Parker Limited**) for the **First and Seventeenth Defendants**
Derrick Dale QC and Joseph Farmer (instructed by **Signature Litigation LLP**) for the **Second - Eighth Defendants**
Anna Dilnot QC, James Petkovic and Helen Morton (instructed by **CMS Cameron Mckenna Nabarro Olswang LLP**) for the **Ninth, Twelfth and Fifthteenth Defendants**
Jonathan Davies-Jones QC and David Simpson (instructed by **Reynolds Porter Chamberlain LLP**) for the **Tenth Defendant**
Ruth den Besten and John Robb (instructed by **Clyde & Co LLP**) for the **Eleventh and Thirteenth Defendants**

Hearing date: 8th July 2022

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Ruling

1. These claims concern an alleged fraudulent conspiracy to deprive the Claimants of shares with a value of US$1-2 billion in two Thai energy companies, Renewable Energy Corporate Co. Ltd ("REC"), which held shares in Wind Energy Holding Co Ltd ("WEH"). REC and WEH were founded by C1, Mr Suppipat. This is the Pre-Trial review of these claims.

2. The Trial has been listed for a 20 week hearing. The claim is complex and involves allegations brought under English, Thai, Chinese and/or Singaporean law.

3. The expert evidence process in the various disciplines has not yet closed. In particular, the process in respect of foreign law (Chinese law, Singapore law and Thai law) is expected to be completed by the end of July 2022.

4. The Claimants say that there is little room for slippage in the timetable.

5. Section H.3 of the 11th Edition of the Commercial Court Guide contains new provisions concerning the way in which the content of foreign law is to be proved at trial. It is essential that all parties in a case proceeding in the commercial court, where issues of foreign law arise, now give careful consideration to this section of the Guide as a matter of course. The flexible nature of procedures available for ascertaining the content of foreign law was emphasised by Lord Leggatt JSC in *Brownlie v FS Cairo (Nile Plaza) LLC* [2021] UKSC 45, [148]:

"I would add that it should not be assumed that the only alternative to relying on the presumption of similarity is necessarily to tender evidence from an expert in the foreign system of law. The old notion that foreign legal materials can only ever be brought before the court as part of the evidence of an expert witness is outdated. Whether the court will

require evidence from an expert witness should depend on the nature of the issue and of the relevant foreign law. In an age when so much information is readily available through the internet, there may be no need to consult a foreign lawyer in order to find the text of a relevant foreign law. On some occasions the text may require skilled exegesis of a kind which only a lawyer expert in the foreign system of law can provide. But in other cases it may be sufficient to know what the text says."

6. Paragraph H3.2 provides as follows:

As part of their preparations for any Case Management Conference at which directions for the filing of evidence are to be given, the parties should consider the approach to invite the Court to take to the proof of foreign law where disputed issues of foreign law will or may arise for determination at trial and be ready to discuss that question with the Court.

7. Paragraph H3.3 then provides:

The Court can limit the expert evidence to identification of the relevant sources of foreign law, and of any legal principles as to the interpretation and status of those sources, with the advocates making submissions at trial as to the relevant content of foreign law by reference to the sources thus identified.

8. In determining the approach to adopt, paragraph H3.4 of the Guide provides that the factors relevant to the court's decision include in particular:

(a) How much of the content of the relevant foreign law is in issue (as distinct from its application to the facts of the case, which is for argument not evidence).
…
(d) The nature of the issues and the legal sources in issue. For example, the approach in H3.3(c) may be more appropriate when the foreign law issues relate to a common law system or a system of law with which the Court has familiarity from other cases.

9. Finally, this is the Pre-Trial review. Paragraph H3.7 provides that:

Where there is a Pre-Trial Review, and directions have previously been given for there to be oral expert evidence of foreign law at trial, the parties should consider and be ready to discuss with the Court whether such evidence is still reasonably required.

10. This I have accordingly done with the advocates in this case. The legal system of *Singapore* has its origins in the English common *law* system. English Judges are well used to reading, analysing and applying (if appropriate) Singaporean case-law and statutory provisions, without the need for expert evidence on Singapore law. Provided the English Judge is supplied with the key sources of Singapore law which are relied upon (and, if necessary, any legal principles as to the interpretation and status of those sources), and with the benefit of the expert reports which have already been served, then the parties' advocates should confine themselves to making legal submissions at trial as to the effect of Singapore law, without the need to call oral expert evidence of Singapore law. This has the added advantage of freeing up some additional time in the trial timetable.

11. That this is the appropriate course to adopt is underscored by the fact that, upon analysis, the only issue (issue 129 in the List of Issues) of Singapore law between certain of the parties is narrow and is as follows:

    "Singaporean law
    Does s.191 of the Penal Code (Singapore) apply to evidence given outside of Singapore and/or unsworn statements made outside of Singapore for the purposes of an arbitration conducted under the laws of Singapore?"

12. I should add that whilst, in contrast, it is appropriate for the parties to call experts to give oral evidence at trial of Thai law and Chinese law (having exchanged expert reports), in order to assist the Judge with his pre-reading before the experts are called to give evidence, the parties should identify in a short written note for the benefit of Judge which Thai or Chinese law cases and statutory provisions it is *essential* for the Judge to pre-read (being *central* to the dispute between the relevant experts), rather than leaving the judge to read through the entirety of the voluminous expert reports in order to identify them for himself.