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Case Update

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The "Sea Justice" [2024] SGCA 32

Introduction

The Singapore Court of Appeal (the "**CA**") has made it clear in its recent decision in *The "Sea Justice"* [2024] SGCA 32 that where admiralty *in rem* proceedings in Singapore have been stayed on the ground of *forum non conveniens* (a "***forum non conveniens* stay**") a claimant which has previously obtained a security against arrest will not be allowed to retain it with a view to taking advantage of the higher limits on liability that may be available in Singapore.

While the decision was rendered in the context of admiralty proceedings, it suggests that any party seeking to impose conditions on a *forum non conveniens* stay of Singapore proceedings will have its arguments carefully scrutinized by the Singapore courts.

Relevant Background

The appellant was the owner of the vessel *A Symphony* and the respondent was the owner of the vessel *Sea Justice*. On 27 April 2021 a collision occurred between the two vessels off the coast of Qingdao, China, in Chinese territorial waters. The collision caused substantial damage to *A Symphony* and resulted in a marine pollution incident.

On 22 October 2022 the *Sea Justice* was arrested in Singapore by the appellant pursuant to its claim in HC/ADM 61/2021("**ADM 61**") for collision damage and consequential losses, including a declaration for an indemnity against oil pollution claims.

By the time of the arrest, several proceedings were already on foot in the Qingdao Maritime Court, including the respondent's constitution of a limitation fund pursuant to the tonnage limitation regime under the Maritime Law of the PRC.

The *Sea Justice* was subsequently released on 18 November 2022 upon the respondent providing security in the form of payment into court and a letter of undertaking issued by the appellant's P&I Club (the "**SG Security**"). The combined quantum of the SG Security was pegged to the maximum permissible under Singapore's limitation regime. Significantly, the limits under the Singapore regime were much higher than those under the regime in the PRC.

The respondent subsequently applied for a *forum non conveniens* stay of ADM 61 and consequently for the SG Security to be returned. The assistant registrar (the "**AR**") hearing the stay application granted it after consideration of the two-stage test in *Spiliada Maritime Corporation v Cansulex* [1987] AC 460 (the "***Spiliada* test**"). In coming to this decision, the AR concluded under the first stage of the *Spiliada* test that the Qingdao Maritime Court was *prima facie* the more appropriate forum. Applying the second stage of the *Spiliada*, test, the AR rejected the appellant's argument that it would lose a juridical advantage in the form of the SG Security if ADM 61 was stayed.

On appeal from the AR's decision, the appellant did not challenge the grant of the *forum non conveniens* stay. Instead, the appellant argued that the court should grant a "conditional stay" which allowed it to retain the SG Security. The appellant also sought to rely on *The Rena K* [1979] QB 377 ("***The Rena K***") to argue that it should be entitled to retain and call on the SG Security in the event that the respondent was unable to satisfy the PRC judgment in full. The appeal judge dismissed the appeal (see *The "Sea Justice"* [2024] SGHC 37).

Decision on Appeal to the CA

The CA dismissed the appellant's further appeal on the basis that:

- The appellant's submission for the *forum non conveniens* stay to be made conditional upon the retention of the SG Security was effectively a request to review the application of the second stage of the *Spiliada* test. Therefore, the question was whether the loss of the SG Security could be considered the loss of a legitimate and important juridical advantage which it would be unjust to deprive the appellant of.

- In answer to the above, the CA took the view that the SG Security was *not* a legitimate juridical advantage and further, that the appellant's attempt to retain the SG security was a *"thinly veiled attempt"* to circumvent the shipowner's choice of the PRC as the forum to limit its liability. This would contravene the overriding principle that only the shipowner has the right to choose the forum for limitation (*Evergreen International SA v Volkswagen Group Singapore Pte Ltd and others* [2004] 2 SLR(R) 457).

- The appellant was effectively arguing that it should not lose access to the Singapore limitation regime which had higher limits. However, it was trite that the existence of different limitation regimes did not constitute a legitimate juridical advantage under the *Spiliada* test (*The "Reecon Wolf"* [2012] 2 SLR 289). Therefore, there was no valid ground to impose the condition that the appellant retain the SG Security, nor was this warranted by considerations of justice.

Although the above-stated reasons were sufficient to decide the appeal, the CA also went on to make the following useful observations:

- *The Rena K* was not relevant to the present case as it involved a mandatory stay of proceedings under the Arbitration Act 1975 (UK). In any event, the principle in *The Rena K* was redundant in the Singapore context as section 7(1) of the International Arbitration Act 1994 gave the Singapore courts express statutory power to retain security for the satisfaction of any arbitral award.

- The appellant had contended that its intention was to retain the SG Security with a view to lifting the *forum non conveniens* stay after obtaining a judgment from the Qingdao Maritime Court in case the respondent was unable to satisfy the PRC judgment in full. However, this intention was likely to fail because the fact that any PRC judgment might not be fully satisfied would *not* constitute exceptional circumstances such as to trigger the Court's discretion to lift a *forum non conveniens* stay (*Rotary Engineering Ltd and*

others v Kioumji & Eslim Law Firm and another and another appeal [2017] 1 SLR 907).

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How DennisMathiew can help

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