IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHCR 24

Admiralty in Rem No 61 of 2021 (Summons No 4434 of 2022)

Between

Owner and/or Demise Charterer of the vessel A SYMPHONY (IMO No. 9249324)

… *Plaintiff*

And

Owner and/or Demise Charterer of the vessel SEA JUSTICE (IMO No. 9309514)

… *Defendant*

GROUNDS OF DECISION

[Admiralty and Shipping — Practice and procedure of action in rem — Duty of disclosure]
[Conflict of Laws — Natural forum]

TABLE OF CONTENTS

The "Sea Justice"

[2023] SGHCR 24

General Division of the High Court — Admiralty in Rem No 61 of 2021 (Summons No 4434 of 2022)
AR Nicholas Lai
3, 16 March 2023, 27 April 2023, 28 June 2023, 13 September 2023, 3 November 2023

29 December 2023

AR Nicholas Lai:

Introduction

1 HC/SUM 4434/2022 ("SUM 4434") is an application by the defendant ("the Defendant") to (a) stay the Singapore proceedings on the ground of *forum non conveniens* in favour of court proceedings in the People's Republic of China ("PRC") ("Stay Application"), (b) set aside the warrant of arrest against the Defendant's vessel due to alleged material non-disclosures by the plaintiff ("the Plaintiff") when the warrant of arrest was obtained, (c) for the partial security furnished by the Defendant to the Plaintiff by way of payment of S$ 8,846,383 into Court be returned to the Defendant, and (d) for the partial security furnished in the form of a Letter of Undertaking dated 17 November 2022 be returned to the Defendant for cancellation.

2 On 3 November 2023, I saw the parties and made the following orders in SUM 4434, with brief grounds provided: (a) the Stay Application is granted,

(b) the application to set aside the warrant of arrest is dismissed, (c) the partial security furnished by the Defendant to the Plaintiff by way of payment of S$ 8,846,383 into Court be returned to the Defendant, and (d) the partial security furnished by the Defendant to the Plaintiff by way of a Letter of Undertaking is to be returned to the Defendant for cancellation.

3 I now set out my full grounds below.

Facts

4 On 27 April 2021, a collision between two shipping vessels, i.e. the "A Symphony" and the "Sea Justice" occurred off the coast of Qingdao, PRC (the "Collision"). The Collision substantially damaged the hull, cargo, and equipment of the "A Symphony" and led to a significant marine pollution incident.[1]

The parties

5 The Plaintiff, Symphony Shipbuilding SA, is a company incorporated in the Republic of Liberia. They were the owner of the vessel "A Symphony".[2]

6 The Defendant, Sea Justice Ltd, is a company incorporated in the Republic of the Marshall Islands. It was the owner of the Panamanian-flagged vessel "Sea Justice" at the time of the collision.[3]

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1 Plaintiff's written submissions dated 28 February 2023 ("Plaintiff's Written Submissions") at [13] to [14].

2 Plaintiff's Written Submissions at [11].

3 Plaintiff's Written Submissions at [12].

7 For completeness, and as submitted by the parties, I note that both the "A Symphony" and the "Sea Justice" were, at different times, sold and renamed after this Admiralty action, HC/ADM 61/2021 ("ADM 61") was filed.[4] Both parties are pursuing their claims as the former owners of the two vessels.

Background to the dispute

8 On 28 April 2021, the Plaintiff filed ADM 61 against the Defendant in Singapore, claiming that the Collision was caused by the negligent navigation, control, and/or management of the Defendant and/or their servants or agents of the "Sea Justice".

Procedural history

9 Apart from filing ADM 61 in Singapore, legal proceedings were also commenced in Qingdao, PRC, as well as in the Marshall Islands (which was an action by the Plaintiff against the Defendant *in personam*, since the Defendant was incorporated there).[5] To better understand the present claim, I set out the salient facts relating to the Qingdao proceedings and the Marshall Islands proceedings, as well as what led to the arrest of the "Sea Justice" in Singapore.

The proceedings in Qingdao, PRC

10 On 30 April 2021, the Defendant applied to the Qingdao Maritime Court ("Qingdao Court") in the PRC to constitute a limitation fund for all maritime claims arising from the Collision (the "187 Application").[6]

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4 Plaintiff's Written Submissions at [11] and [12].

5 Plaintiff's Written Submissions at [16] to [19]; Defendant's written submissions dated 28 February 2023 ("Defendant's Written Submissions") at [7] to [18].

6 Defendant's Written Submissions at [7].

11 On 8 May 2021, the Defendant commenced a claim against the Plaintiff to determine the Collision liability between the parties, and for the Plaintiff to compensate the Defendant's loss as per the apportioned collision liability (the "Defendant's Inter-Ship Claim").[7]

12 From 27 to 29 May 2021, the Qingdao Court published notices in the People's Court Daily calling for interested parties to object to the 187 Application within 30 days of the Notices or, for those who have received a written notice from the Qingdao Court, within 7 days upon receipt of such written notice, in accordance with Article 106.1 of the Special Maritime Procedure Law of China. No objections were filed, whether by the Plaintiff or any other parties.[8]

13 On 25 June 2021, the Plaintiff's North of England Protection and Indemnity ("P&I") Club ("NEPIA") commenced proceedings in the Qingdao Court to constitute a limitation fund for its own liability arising out of the Collision. This limitation fund was constituted to protect the Plaintiff against third-party claims for damages caused by the oil spill, under the 1992 International Convention on Civil Liability for Oil Pollution Damage (to which the PRC is a contracting state) ("AS CLC Limitation Fund").[9]

14 On 12 July 2021, the Qingdao Court issued a civil ruling and approved the 187 Application creating what parties refer to as the "SJ Limitation Fund".

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7 Defendant's Written Submissions at [8].

8 Defendant's Written Submissions at [9].

9 Defendant's Written Submissions at [10].

The SJ Limitation Fund was constituted for all maritime claims arising from the Collision.[10]

15 On 26 or 27 July 2021, the Plaintiff and NEPIA applied to register its claims against the SJ Limitation Fund,[11] and this application was granted by the Qingdao Court on 27 August 2021.[12]

16 On 18 August 2021, the Qingdao Court approved the AS CLC Limitation Fund, which, as alluded to above was constituted to protect the Plaintiff from third-party claims for damages caused by the oil spill.[13]

17 On 6 September 2021, the Plaintiff and NEPIA jointly commenced an action against the Defendant in the Qingdao Court to determine the collision liability between the parties and to compensate the losses and costs suffered by the Plaintiff (the "Plaintiff's Inter-Ship Claim").[14]

18 On 18 April 2022, the Plaintiff and the Defendant filed their evidence in respect of the Plaintiff's Inter-Ship Claim and the Defendant's Inter-Ship Claim.[15]

19 On 19 April 2022, the Court heard and directed the Inter-Ship Claims to be consolidated. At the said hearing, the Plaintiff's PRC lawyers made oral

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10 Defendant's Written Submissions at [11].

11 2nd Affidavit of Eleftherios Tsouris at [20]; 1st Affidavit of Corinne Lam at p. 27 to 29.

12 2nd Affidavit of Eleftherios Tsouris at [20].

13 Defendant's Written Submissions at [13].

14 Defendant's Written Submissions at [15].

15 Defendant's Written Submissions at [16].

submissions on the Plaintiff's defence on the liability for the Collision and on the evidence tendered by the Defendant (the "19 April 2022 Hearing").[16]

20 On 27 May 2022, the Plaintiff's and the Defendant's lawyers conferred on the evidence tendered by the parties and jointly confirmed in writing to the Qingdao Court on the authenticity of the evidence.[17]

The proceedings commenced in the Marshall Islands

21 The Plaintiff also commenced an action *in personam* against the Defendant in the Marshall Islands on 6 May 2021 (the "Marshall Islands Claim").[18] The Defendant applied to stay the Marshall Islands proceedings on the grounds of *forum non conveniens* and its application was granted.[19] At the hearing on 16 August 2023, the Defendant's counsel informed me that the Plaintiff's appeal against the stay order was dismissed.

Application for a world-wide behaviour preservation order in the Qingdao Court

22 On 12 October 2021, the Defendant applied to the Qingdao Court for a worldwide behaviour preservation order against the Plaintiff (the "ASI Application").[20] This order is, in essence, similar to an anti-suit injunction,[21] and I will refer to it as such. The ASI Application contained, *inter alia,* prayers that

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16 Defendant's Written Submissions at [17].

17 Defendant's Written Submissions at [18].

18 Plaintiff's Written Submissions at [16].

19 Plaintiff's Written Submissions at [17].

20 The translated version of the application can be found in the 2nd Affidavit of Tam Kin Man.

21 Plaintiff's Written Submissions at [19].

the Plaintiff be prohibited from initiating any form of legal proceedings against the Defendant in the courts of the PRC or other countries and regions, and that the Plaintiff withdraw, terminate, or not proceed with the claims filed against the Defendant in the Marshall Islands.

23 The ASI Application was dismissed by the Qingdao Court on 17 February 2022. The Court held that the act of first filing a lawsuit in the Marshall Islands did not violate the laws and regulations of the PRC, and in any case, found that there was no evidence to show that the Plaintiff's behaviour had made it difficult to enforce the judgment of the Chinese court or to cause the legal rights and interest of the Defendant to be violated.[22]

The warrant of arrest and release of the "Sea Justice" in exchange for security being put up in Singapore

24 On 19 October 2022, the Plaintiff got wind that the "Sea Justice" was about to enter Singapore waters. On the same day, the Plaintiff applied for a warrant of arrest against the "Sea Justice" under s 4(3) High Court (Admiralty Jurisdiction) Act 1961 (2020 Rev Ed) ("HCAJA"), based on a maritime lien arising out of the Collision ("Lien"). The Plaintiff's application was granted on 19 October 2022.[23] The "Sea Justice" was arrested on 20 October 2022 after entering Singapore port limits.[24]

25 The "Sea Justice" was released on 19 November 2022,[25] following an agreement between the parties that the Defendant would provide security for the

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22 Plaintiff's Written Submissions at [105].

23 Defendant's Written Submissions at [19].

24 Plaintiff's Written Submissions at [15]; Defendant's Written Submissions at [20].

25 Plaintiff's Written Submissions at [22]; Defendant's Written Submissions at [21].

claim in Singapore. The parties agreed on the form and quantum of security to be provided as follows:[26]

(a) partial security in the form of a Letter of Undertaking issued by The Swedish Club dated 17 November 2022 as security for the maximum aggregate sum of US$ 13.5 million; and,

(b) partial security by way of payment into the Court on 30 November 2022 of the SGD equivalent of US$ 6.5 million.

The parties' positions

26 The Defendant's case, in a nutshell, is that the Stay Application ought to be granted because the Collision took place off the coast of Qingdao, PRC, and Chinese law ought to be the *lex loci delicti*. The PRC should therefore be the natural forum. Further, save for the fact that the "Sea Justice" was arrested in Singapore, there are no other connecting factors to Singapore such that the dispute over liability (and damages) should be heard here. The Defendant further contends that there were material non-disclosures made by the Plaintiff in its application for the warrant to arrest of the "Sea Justice", and the said warrant should accordingly be set aside. For the two reasons mentioned above, the Defendant submits that the security obtained in exchange for the release of the "Sea Justice" should therefore be returned in full.

27 In response, the Plaintiff contends that the Stay Application should not be granted as, amongst other arguments made, the Defendant has not shown that the PRC is clearly or distinctly a more appropriate forum such that substantial justice cannot be obtained by the Plaintiff in the PRC, and that there are, in any

[26] Plaintiff's Written Submissions at [21]; Defendant's Written Submissions at [2.3] to [2.4].

case, no concerns of infringing international comity since the Qingdao Court has denied the Defendant's application for a worldwide behaviour preservation order to restrain parties like the Plaintiff from commencing legal proceedings against the Defendant in a foreign jurisdiction.

28 As regards the alleged material non-disclosures, the Plaintiff submitted that full and frank disclosure has been made and the warrant of arrest should not be set aside. Accordingly, the Plaintiff should not be ordered to return the security obtained from the Defendant.

29 During the course of hearings, the Plaintiff's counsel, Mr Timothy Tan, made an alternative submission. He submitted that should the Court decide to grant the Stay Application, the Court should also grant a "case management stay" or a "conditional stay". The gist of such a stay is as follows: The proceedings in Singapore be stayed in favour of Qingdao Court on condition that (a) the security obtained from the Defendant remains with the Plaintiff, and (b) liberty be granted to the Plaintiff to lift the stay to enforce the Chinese judgment (assuming it prevails in Qingdao Court), to claim damages it could not have claimed against the security obtained from the Defendant. The Plaintiff argued that it would not be doubly compensated because the amount which the Plaintiff had claimed against the Defendant was over US$ 112.3m, and the SJ Limitation Fund was only just over US$ 6.1m.

Issues to be determined

30 The issues that the Court have to determine are as follows:

(a) **First,** whether the Court should grant a stay of the Singapore proceedings in favour of the proceedings in the Qingdao Court?

(b) **Second**, whether the warrant of arrest granted on 19 October 2022 should be set aside for material non-disclosure?

(c) **Third**, if the Court decides to grant a stay of the Singapore proceedings, what order should the Court make with respect to the security that was furnished by the Defendant to secure the release of the "Sea Justice"? Should a "case management stay" or a "conditional stay" be ordered?

Issue 1: Whether Singapore or the PRC is the more appropriate forum for the dispute

The parties' cases

31 The Defendant made the stay application on the basis that the Qingdao Court is clearly and distinctly the more appropriate forum.[27] The Defendant cited three factors in favour of the Qingdao Court:

(a) First, the Collision occurred in Chinese territorial waters and therefore the governing law of the tort is Chinese law (*lex loci delicti*). Further, the PRC is a legal system that uses civil law, making it hard for a Singapore court to apply Chinese law even if it could accurately be interpreted into English;[28]

(b) Second, there are concurrent proceedings before the Qingdao Court that significantly overlaps with the Singapore proceedings and it

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27 Defendant's Written Submissions at [30] and [31].

28 Defendant's Written Submissions at [34] to [39].

was clear, at least to the Defendant, that the Plaintiff had submitted to the jurisdiction of the Qingdao Court;[29] and

(c) Third, the relevant witnesses and evidence would be more accessible by the Qingdao Court. Specifically, these would be the Chinese marine surveyors, personnel from the Chinese Marine Authority who investigated the Collision, personnel from the Chinese governmental ministries who investigated the impact of the oil pollution, and all 16 crew of the "Sea Justice".[30]

32 In response, the Plaintiff made several submissions in favour of hearing the claim in the Singapore courts:

(a) First, and as a starting point, the Singapore Court has jurisdiction as of right over the action under s 3(1)(*d*) and s 4 of the HCAJA, which the Defendant does not dispute;[31]

(b) Second, since the Qingdao Court declined to grant the anti-suit injunction, it was not estopped from pursuing the claim in the Singapore courts.[32] Pertinently, the ASI Application was declined without any qualifications or carve outs.[33] Furthermore, in its view, submission to the jurisdiction of a foreign court is not a relevant factor for the Court to consider.[34] The Defendant also argued that there was no real risk of

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29 Defendant's Written Submissions at [40] to [61].

30 Defendant's Written Submissions at [62] to [71].

31 Plaintiff's Written Submissions at [46].

32 Plaintiff's Written Submissions at [48(a)].

33 Plaintiff's Written Submissions at [48(a)(i)].

34 Plaintiff's Written Submissions at [47].

conflicting decisions: the limitation proceedings do not involve the same issues, the limitation decree in the PRC only has domestic effect, and the Inter-Ship Claims in the PRC are not at an advanced stage[35]; and

(c) Third, the location of parties, vessels, and likely witnesses are not an issue for Singapore proceedings.[36] Notwithstanding that the 16 crew members of the "Sea Justice" are ordinarily resident in the PRC, the 25 crew members of the "A Symphony" are ordinarily resident in India and the Philippines. As they do not speak the Mandarin language, the language of proceedings in the Qingdao Court, the Qingdao Court is a less appropriate forum. It is also unnecessary to call in the marine surveyors as the parties could get documentary records of their findings, and they can travel to Singapore if need be. Although the Chinese Maritime Authority ("CMA") had investigated the Collision and had produced an investigation report (the "CMA Investigation Report"), and the impact of the oil pollution was investigated and documented by various Chinese government ministries (the "Oil Pollution Report"), the reports stemming from these investigations were, in the Plaintiff's view, irrelevant to the dispute.[37]

33 The Plaintiff further submitted that it would not be able to obtain substantive justice in the PRC, and its sole reason was that it would be deprived of the security it had obtained in Singapore for the portion of its claim that exceeded the limitation amount under the Chinese limitation regime, which

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35 Plaintiff's Written Submissions at [48(e)].

36 Plaintiff's Written Submissions at [48(d)].

37 Plaintiff's Written Submissions at [48(d)(viii)].

included oil pollution indemnity claims.[38] In other words, the Plaintiff would lose its ability to claim against the security it had obtained from the Defendant in Singapore if the proceedings in Singapore were stayed and the security returned.

34 Counsel for the Plaintiff took pains to emphasise that the SJ Limitation Fund limits the maximum quantum of damages that the Plaintiff can claim against the Defendant at approximately US$ 6.1m considering that the Plaintiff's Inter-Ship claim amounts to approximately US$ 112.3m.[39] The Plaintiff averred that this figure was derived from best available estimates in July 2021, although the final claim may be higher than this amount.[40] The Plaintiff further relied on the evidence from their expert, Professor Chu Beiping ("Prof Chu"), that the limitation decree obtained by the Defendant in the PRC does not constrain the Plaintiff from suing in another jurisdiction to obtain security for its claim.[41]

***The law on* forum non conveniens**

35 It is trite that a stay on the ground of *forum non conveniens* will only be granted if the two-stage test in *Spiliada Maritime Corporation v Cansulex* [1987] AC 460 (the "*Spiliada* test") is satisfied.

36 Briefly, stage 1 requires the Court to determine whether, *prima facie,* there is some other available forum that is "clearly or distinctly more appropriate" for the case to be tried. At this stage, the burden of proof is on the

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38 Plaintiff's Written Submissions at [54].

39 Plaintiff's Written Submissions at [54(a)] and [54(b)].

40 Plaintiff's Written Submissions at [54(b)].

41 Plaintiff's Written Submissions at [54(e)].

party seeking the stay, *ie*, the Defendant in the present case. If the court concludes that there is a *prima facie* more appropriate alternative forum, the analysis moves to stage 2. At stage 2, the Court will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should nonetheless not be granted. At this stage, the burden of proof is on the party resisting the stay application (see *Best Soar Ltd v Praxis Energy Agents Pte Ltd* [2018] 3 SLR 423 ("*Best Soar v Praxis Energy Agents"*) at [15], citing *Rappo, Tania v Accent Delight International Ltd and another and another appeal* [2017] 2 SLR 265 ("*Tania Rappo*") at [68]–[69] and *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 ("*Rickshaw Investments*") on the application of the *Spiliada* test).

37 I now summarise the factors that the court must consider at each stage.

Stage 1

38 While not cited by the parties, I find that it is useful to consider the factors listed in *The Eleftheria* [1969] 1 Lloyd's Rep 237 (the "*Eleftheria* factors"). The *Eleftheria* factors remain both relevant and good law in Singapore when deciding whether to grant a stay application on the ground of *forum non conveniens* (see *Bunge SA and another v Indian Bank* [2015] SGHC 330 at [35]). The *Eleftheria* factors are as follows:

(a) in what country is the evidence on the issues of fact situated or more readily available, and the effect of that on the relative convenience and expense of the trial as between the Singapore and the foreign court;

(b) whether the law of the foreign court applies, and, if so, whether it differs from Singapore law in any material respects;

(c) with what country either party is connected, and if so, how closely;

(d) whether the defendants genuinely desire trial in the foreign country, or are only seeking procedural advantages; and

(e) whether the plaintiffs would be prejudiced by having to sue in the foreign court because they would:

(i) be deprived of security for their claim;

(ii) be unable to enforce any judgment obtained;

(iii) be faced with a time bar not applicable here; or

(iv) for political, racial, religious or other reasons be unlikely to get a fair trial.

39 Other general factors the Court should consider are the personal connections of the parties and witnesses, connections to relevant events and transactions, applicable law, *lis alibi pendens* (through the risk of overlapping judgments), and the shape of litigation, though these factors should not be applied mechanically (see *Tania Rappo* at [71]). As a general principle, the place where a tort was committed is *prima facie* the natural forum for that tortious claim (see *The "Reecon Wolf"* [2012] 2 SLR 289 ("*The Reecon Wolf*") at [16] and *JIO Minerals FZC and others v Mineral Enterprises Ltd* [2011] 1 SLR 391 ("*JIO Minerals*") at [106], citing *Rickshaw Investments* at [39]).

40 Furthermore, in an admiralty claim, the nature and existence of multiple or concurrent proceedings and the weight to be given to this factor will depend on all the circumstances of the case, including how advanced the other foreign action is, consequences of ongoing proceedings in terms of inconvenience,

expenses, and other matters such as the risk of conflicting judgments (see *The Reecon Wolf* at [17]). The risk of conflicting judgments arising from concurrent proceedings is not necessarily a decisive factor in determining whether a stay should be ordered, and this must be weighed against the other factors in the overall *forum non conveniens* analysis (see *Rickshaw Investments* at [90]).

Stage 2

41 At the second stage, the main consideration is whether substantial justice can be obtained in the foreign court (see *JIO Minerals* at [43]). The question is whether the foreign court would be able to try the dispute in a manner which is procedurally and substantively fair (see *Tania Rappo* at [110]). The burden lies on the plaintiff to establish "objectively by cogent evidence" that there is some personal or juridical advantage available to the plaintiff in the Singapore proceedings, and that it is of such importance that it would cause injustice to the plaintiff to deprive the plaintiff of it (see *The Reecon Wolf* at [18]).

42 As to what constates a personal or juridical advantage, the High Court in *The Reecon Wolf* held (at [37]) that "[i]t would be contrary to *The Spiliada* principles to look favourably upon a party who selected a forum based solely upon the level of damages that could be awarded or higher limits of liability". The court therefore concluded (at [55]) that the existence of different limitation regimes is not considered a personal or juridical advantage under Stage 2. This is important and I will come back to this in my analysis.

Analysis

43 In the present case, I am of the view that the dispute was not sufficiently connected to Singapore for the following reasons:

Preliminary Issue: Does the Spiliada *test apply to an action in personam*?

44 ADM 61 started out as an action *in rem*. However, as the Defendant had entered an appearance in ADM 61 and has provided security for the release of the "Sea Justice", ADM 61 is now an action *in personam*. The parties did not dispute that the *Spiliada* test applies to an action *in personam*. For completeness, and in any case, the *Spiliada* principles and the Court's discretion are not affected by the fact that the proceedings are *in rem* (see *The Reecon Wolf* at [19]).

Stage 1 Analysis

(1) Where did the tort take place, and which law should apply?

45 I start by considering where the tort took place, and what the applicable law of the tort is.

46 Undisputedly, the tort — that is, the Collision — took place in Chinese territorial waters. Therefore, the PRC is the natural forum, and the applicable law of the tort is Chinese law. It is also undisputedly Chinese law that would be better applied in the Chinese courts. The PRC's legal system is one of civil law, as opposed to the common law legal system which the Singapore courts use.

47 The Plaintiff argued in its oral submissions that the Singapore court would have no issue applying Chinese law, as both the PRC and Singapore have acceded to the 1972 Convention on the International Regulations for Preventing Collisions at Sea (the "COLREGS"). However, the Plaintiff placed no material before me stating that the manner in which the COLREGS are interpreted and applied is the same in PRC as it is in Singapore.

48 In any case, the invocation of the COLREGS is in relation to the issue of apportioning liability of the parties in the Collision. In this regard, the issue of damages will be based on the prevailing laws of each jurisdiction, and again, no material has been placed before me as to whether the courts in the PRC assess damages in the same way as the Singapore courts.

49 At present, Singapore is a party to the 1976 Convention on Limitation of Liability for Maritime Claims (the "1976 LLMC"), as amended by the Protocol of 1996 ("1996 Protocol"). The 1976 LLMC and 1996 Protocol were incorporated into Singapore's domestic law by way of the Merchant Shipping Act 1995. The 1996 Protocol raises the limits of liability of the shipowner for maritime claims covered under the 1976 LLMC.

50 In contrast, the PRC is not a state party to the 1976 LLMC or the 1996 Protocol. Instead, its limitation regime is based on domestically enacted laws being Chapter 11 of the Maritime Code on the rights and conditions of the limitation of liability for maritime claims. While it was not submitted by either party how different the limitation regime domestically enacted in the PRC is vis-à-vis the limitation regime the 1996 Protocol which Singapore recognises, it was undisputed between parties that the 1996 Protocol provided for a *much higher* limitation liability quantum wise as compared to the regime in the PRC.

51 In sum, there was no evidence before the court to conclude that the laws on apportioning liability for maritime collisions or calculating the damages that would arise from such a collision as applied in the PRC is the same as how it is applied in Singapore. Further, how liability and damages are to be decided in respect of the environmental impact caused by the oil spill following the Collision was also not placed before me. Even if the Singapore courts can determine the issue of liability on the assumption that the COLREGS in both

countries are interpreted and applied in the same manner, how should the damages caused to the environment be quantified and apportioned? These are all questions that the Chinese courts will be better placed to answer considering that Chinese law will be applicable.

52 I pause to deal with one of the Plaintiff's objections at this juncture. At the hearing, the Plaintiff attempted to argue a version of the presumption of similarity; that since the Defendant had not argued that the COLREGS were applied different in the PRC, it had to be presumed that the COLREGS applied similarly in both Singapore and the PRC. The Plaintiff submitted that if the Defendant says that there are differences, the burden of proof lies with the Defendant to prove otherwise and they have not discharged their burden (see *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 ("*EFT Holdings*") at [60] and [63]).

53 Apart from the fact that this submission is very much technical in nature and sheds no light on whether there indeed are differences as to how both jurisdictions apply and interpret the COLREGS, the Plaintiff's submission ignores the fact that the Defendant did plead one fundamental fact: the fact that the legal system in the PRC is a civil law system and Singapore's is a common law one.[42] This, taken together with the fact that the limitation regimes in the PRC and Singapore are based on different sets of laws, shifts the burden of proof to the Plaintiff. The Plaintiff has to show that the manner in which liability and damages are assessed in both countries are the same or at the very least largely similar. As I alluded to above, the Plaintiff tendered no material to this effect. I was therefore not persuaded that the Singapore courts will have no issue

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42 Defendant's Written Submissions at [39].

applying Chinese law purely because both the PRC and Singapore have acceded to the COLREGS. Such an argument is too simplistic.

(2) Where are the evidence and the witnesses located?

54 While I note that parties have submitted that the crew from both vessels can travel to testify if required, my concern is not so much with where the crew are located but whether the various Chinese authorities and ministries, whose personnel had investigated the Collision, will allow their personnel to travel to a foreign court to testify and give evidence.

55 Based on the investigation report dated 21 January 2022 issued by the PRC Maritime Safety Administration ("MSA")[43], shortly after the Collision, the Qingdao Marine Rescue Centre (Emergency Response Department of Marine Oil Spill Accident) and the Shandong Marine Rescue Centre (Emergency Response Center of Marine Oil Spill Accident) responded immediately. The Ministry of Transport and Ministry of Ecology and Environment sent expert groups to guide the emergency response action and oil clean-up action. The emergency response action lasted 54 days, including rescue and lightering, marine clean-up, shore protection and clean-up.

56 Considering the substantial damage suffered by both vessels and the oil leak that resulted, the evidence of the various personnel that were involved in the rescue and clean-up operations, together with those who had investigated the Collision from the MSA, will be vital at trial, both at the liability and damages stage.

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[43] 2nd Affidavit of Liao Yanting; paragraph 8 of Eleftherios Tsouris' affidavit.

57 Mere adduction of their investigation reports is not enough. It is a matter of evidence law that the maker of the document be present in court to testify if a party has issues with its authenticity or has questions about the conclusions reached.

58 Another related, but less important factor, is the fact that the documents such as the CMA Investigation Report and the Oil Pollution Report are likely to be in Mandarin. While the documents can be translated, there will also be the risk of errors. Considering that the agencies involved are all based in the PRC, it would be administratively more efficient and convenient to have the issue of liability and damages determined by the Qingdao Court.

(3) Will there be multiplicity of proceedings?

59 Multiplicity of proceedings is a factor to be considered in order to (a) guard against inconsistent judgments, (b) ensure that parties do not need to incur unnecessary costs to defend proceedings on the same issues in another jurisdiction, and (c) adhere to international comity (see *Tania Rappo* at [65] and *The Reecon Wolf* at [24]). The underlying concern is the need to ensure the efficient and fair resolution of the dispute as a whole (see *Best Soar v Praxis Energy Agents* at [39], citing *BNP Paribas Wealth Management v Jacob Agam and another* [2018] 3 SLR 1 at [35]).

60 On point (a), in my view, there is a significant overlap between the claims before the Qingdao Court and the Singapore court. As both proceedings concern liability for the Collision, i.e., which vessel was at fault which ultimately led to the Collision, the same facts would be in issue and the testimony of the same witnesses will be required. It would therefore follow that there will be a real risk of conflicting decisions in respect of the present action

and the Chinese proceedings if both proceedings are allowed to continue concurrently (see *The Reecon Wolf* at [17], quoting Dicey, Morris & Collins on *The Conflict of Laws,* Vol 1 (Sweet & Maxwell, 14th Ed, 2006) at [12-036] that "if genuine proceedings have been started and had some impact on the dispute between the parties…then this may be a relevant (but not necessarily decisive) factor whether the foreign jurisdiction provides the appropriate forum").

61 As for point (b), the dispute as to Collision liability would involve the same witnesses testifying at both the Qingdao Court and the Singapore court. This is more likely to inconvenience parties, as it duplicates the time, costs, and efforts. Having duplicate proceedings would be of great inconvenience to the witnesses, which should be given some weight (see *The Reecon Wolf* at [42], adopting Sheen J's observations in *The Wellamo* [1980] 2 Lloyd's Rep 229 that "the convenience of those who are professionally interested in litigation should carry little weight in comparison with the convenience of those whose normal occupation in life will be interrupted by attendance in court to give evidence").

62 With respect to point (c), the Plaintiff argued that because the Qingdao Court denied the Defendant's ASI Application, allowing the Singapore proceedings to continue is not at odds with international comity. The Plaintiff goes one step further. They argued that staying the proceedings in Singapore would be *against* the principles of international comity, since the denial of the Defendant's ASI Application makes clear that the Qingdao Court permits proceedings elsewhere in the world to take place, concurrent to the proceedings at the Qingdao Court.

63 With respect, I disagree with the Plaintiff's submission. First, nothing in the court's judgment said anything to that degree. For clarity, I reproduce the relevant portion of the Defendant's English translation of the Qingdao Court's

Civil Ruling on the ASI Application (which translation is substantially similar to the Plaintiff's[44]):[45]

> The Applicant, Sea Justice Ltd. (hereinafter referred to as Sea Justice Company) filed an application for behaviour preservation with this court, requesting that, 1. Order Symphony Shipholding S.A. (hereinafter referred to as Symphony Company) to immediately withdraw the disputes arising from the ship collision accident between "Sea Justice" and "A Symphony" in the waters near Qingdao Port on April 27,2021, in the High Court of the Republic of the Marshall Islands (hereinafter referred to as Marhsall High Court) against Sea Justice Company 2. Order to prohibit Symphony Company from initiating any form of legal proceedings against the applicant in the Courts of China or other countries and regions for the disputes arising from the collision involved in the case, and shall not exercise any seizure or other obstructive measures against the Applicant's property.
>
> …
>
> This Court holds that:
>
> …
>
> Sea Justice Company applied for the conduct preservation of Symphony Company in accordance with the provisions of Article 100 of the Civil Procedure Law that came into effect on January 1,2022) and Article 51 of the Special Maritime Procedure Law in effect at that time. The legitimate rights and interests of the Sea Justice Company may make it difficult to enforce the judgment of our court. In this case, Symphony Company's act of ***first filling*** a lawsuit in the Marshall High Court did not violate the laws and regulations of our country. At the same time, the amount that Sea Justice Company appealed to Symphony Company was RMB 5 million. ***At present,*** there is no evidence to show that the behaviour of Symphony Company has made it difficult to enforce the judgment of the Chinese court or caused the legal rights and interests of Sea Justice Company to be violated. Therefore, Sea Justice Company's application does not meet the conditions

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44 2nd Affidavit of Eleftherios Tsouris at p. 106 to 112.

45 2nd Affidavit of Zhao Jinsong at p. 110 to 114.

> stipulated in the Civil Procedure Law and the Special Maritime Procedure Law.
>
> To sum up, in accordance with Article 103 of the Civil Procedure Law of the People's Republic of China and Article 51 of the Special Maritime Procedure Law of the People's Republic of China, the ruling is as follows:
>
> The application for behaviour preservation of the applicant Sea Justice Ltd was rejected.
>
> [emphasis added]

64 In rejecting the ASI Application, the Qingdao Court held that (a) the Marshall Islands Claim was commenced first and did not violate Chinese laws, and (b) there was no evidence that the Plaintiff's behaviour, at the time when the ASI Application was made, made it difficult to enforce the judgment of the Chinese Court. Pertinently, the Qingdao Court gave no reasons as to why the ASI Application in respect of proceedings in *other countries* was rejected.

65 In my view, the Qingdao Court's ruling in the ASI Application seems to concern itself only with the Marshall Islands Claim and whether the jurisdiction of the Qingdao Court would be affected in any way. While I accept that the ruling allows parties like that the Plaintiff to commence legal proceedings against the Defendant in other jurisdiction, nowhere in the grounds explicitly encourages the Plaintiff to do so. The submission by the Plaintiff that staying the Singapore proceedings would *go against* international comity is, with respect, pitching its case too high. At best, the Singapore proceedings does not *contravene* international comity.

66 Second, even if I were to take the Plaintiff's case on this point at its highest, international comity goes further than whether a certain jurisdiction permits parallel proceedings to commence somewhere else. International comity is not premised on mere courtesy, but rather, the recognition which one

nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws (see *The Reecon Wolf* at [23]). Put simply, even though the ASI Application was denied, international comity requires the Court to recognise the right of the Qingdao Court to adjudicate fault for the Collision and the Defendant's right to limit claims made as a result of the Collision.

67 Not only is it oppressive for the Defendant to defend themselves on two fronts and for the parties to expend double the amount of time and resources over the same Collision (see *Tania Rappo* at [65]), parallel proceedings are inherently undesirable as it increases the risk of inconsistent judgments, which goes against international comity. Furthermore, inconsistent judgments may create friction between different jurisdictions. As noted in *The Reecon Wolf* at [24], this has been judicially acknowledged by the concept of comity as a discretionary power for a judge to stay proceedings on the ground that there should not be "an unseemly race to be the first to obtain judgment…between two civilised and friendly states" (see *The Abidin Daver* [1984] 1 Lloyd's Rep 339 at 344).

68 While the multiplicity of proceedings is not determinative, it is one of the many factors to be considered by the Court (see *Rickshaw Investments* at [90]).

69 The Plaintiff cited the Hong Kong cases of *The "CF Crystal" and The "Sanchi"* [2018] HKCFI 2474 ("*The CF Crystal"*) and *Shijiazhuang Iron & Steel Co Ltd & Ors v Hui Rong NAV Corp SA & Ors* [2008] HKCU 1326 ("*Shijiazhuang*") for the proposition that multiplicity of proceedings should not be considered a weighty factor. These were cases where the Court had dismissed

the defendant's application to stay the proceedings commenced in one court in favour of another court, and had instead allowed both proceedings in both courts to continue concurrently, i.e. the parties were allowed to continue having their claims heard in Hong Kong instead of an alternative maritime court elsewhere in the PRC. In my view, these two cases can be distinguished from the present case on the facts. I explain.

(A) THE CF CRYSTAL

70 In *The CF Crystal*, a collision on 6 January 2018 between the defendant's cargo vessel, "CF Crystal" and the plaintiff's tanker, "Sanchi", led to the "Sanchi" exploding and sinking. The collision took place in the East China Sea which was outside the PRC territorial waters but within the PRC's exclusive economic zone ("EEZ"). It bears mentioning that the point of collision also lay within the EEZ of South Korea and Japan.

71 On 9 January 2018, the plaintiff, Bright Shipping, commenced legal proceedings against the defendant, Changhong, in the Hong Kong Court. On the same day, Changhong commenced legal proceedings against Bright Shipping in the Shanghai Maritime Court ("SMC"). Two limitation funds were subsequently constituted in the SMC. Changhong applied to stay the proceedings in the Hong Kong Court on grounds of *lis alibi pendens* and submitted that the matter should be tried in Shanghai since the proceedings in the SMC were on-going. The Court of First Instance dismissed the application and the decision was upheld by the Hong Kong Court of Appeal ("HKCA").

72 In coming to its decision, the HKCA held that that "as the PRC is not a state party to the LLMC, there is no statutory bar on Bright Shipping [the plaintiff] bringing this action against Changhong [the defendant] in Hong Kong,

notwithstanding the constitution of the limitation fund by Changhong in the SMC" (see *The CF Crystal* at [26]). In light of the court's acceptance that proceedings can take place simultaneously in two courts, the Plaintiff submits that the multiplicity of proceedings factor should not be given much weight.

73 I disagree. In my view, *The CF Crystal* can be distinguished on two grounds. First, as the collision took place in a EEZ shared by Japan, Korea and the PRC, and not in the PRC territorial waters, there was no *prima facie* natural forum for the collision claim unlike in the present case. This meant that the place of the tort was a neutral factor. Second, the HKCA placed weight on the fact that Bright Shipping did not accept service of Changhong's proceedings in the SMC and that those proceedings did not move beyond the stage of the initiating process (see [32] of *The CF Crystal*). The Court further held in the same paragraph that "as Bright Shipping has not submitted and does not intend to submit to the jurisdiction of the SMC, the possibility of conflicting decisions and the problem relating to estoppel per rem judicatam and issue estoppel will not arise". This is pertinent.

74 In the present case, it was undisputed that the Plaintiff actively participated in the Qingdao Court proceedings. Not only did it file a claim against the SJ Limitation Fund set up by the Defendant, it has also filed its own inter-ship claim against the Defendant. The Plaintiff's PRC lawyers had also made oral submissions on the Plaintiff's defence on the issue of liability for the Collision and on the evidence tendered by the Defendant at the 19 April 2022 Hearing. Further, the Plaintiff's and the Defendant's lawyers had also conferred on the evidence tendered by the parties and jointly confirmed in writing to the Qingdao Court on the authenticity of the evidence.

75 There is no evidence that the Plaintiff intends to stop participating in the Qingdao Court proceedings. If the proceedings in the Qingdao Court continue, the Qingdao Court will arrive at a decision on liability and damages. There will therefore be a real risk of inconsistent judgments, and for the reasons explained above, this should be avoided.

(B) SHIJIAZHUANG

76 In *Shijiazhuang*, the plaintiffs were the owners of the cargo on board the cargo vessel, "Hui Rong". On 17 March 2007, the "Hui Rong" collided with the "Peng Yen" in PRC waters and the "Hui Rong", together with the goods she was carrying, sank. The plaintiffs commenced legal proceedings against the owners of "Peng Yen" (the "Owners") in the Hong Kong Court. On 12 May 2007, "Peng Wei", a sister ship of "Peng Yen", was arrested in Hong Kong but was released shortly thereafter against the security of a Letter of Undertaking from the Owner's insurers.

77 In March 2008, other claimants commenced proceedings against the Owners in the Ningbo Maritime Court ("NMC"). On 30 April 2008, the Owners applied to constitute a limitation fund there and its application was approved. The Owners then applied to stay the Hong Kong Court proceedings in favour of proceedings in the NMC. The Court dismissed the application after it found, *inter alia*, that the Owners, having freely made the choice to constitute a limitation fund in NMC despite the fact that litigation before the Hong Kong Courts have commenced should "also take any consequences" which may flow from their decision (see *Shijiazhuang* at [38]).

78 *Shijiazhuang* can be distinguished from the present case on the ground that the Owners in *Shijiazhuang* had constituted the limitation fund in NMC

almost 10 months *after* the arrest of the "Peng Wei" in Hong Kong, when proceedings in the Hong Kong Court had already commenced. It was therefore unsurprising that the Hong Kong Court held that the Owners must bear the consequences of their choice since they knew that proceedings in the Hong Kong Court was on-going before they commenced proceedings in NMC.

79 In our present case, although ADM 61 was filed before the SJ Limitation Fund was constituted on 12 July 2021, the writ was never served on the "Sea Justice". It was only served when the "Sea Justice" was arrested on 20 October 2022, more than one year *after* the SJ Limitation Fund was constituted. Hence, it cannot be said that the Defendant had constituted the SJ Limitation Fund knowing that litigation before the Singapore courts was afoot.

(4) Has the Plaintiff submitted to the jurisdiction of the Qingdao Court?

80 As a starting point, whether a party submitted to the jurisdiction of another court is not *determinative* of whether a stay should be immediately ordered. The presence of concurrent proceedings in another jurisdiction heightens the risk of inconsistent judgments and goes against the grain of international comity. This point was undisputed by the parties.

81 The parties' experts took opposite positions on whether the Plaintiff had submitted to the jurisdiction of the Qingdao Court. Professor Zhao Jinsong ("Prof Zhao"), who was the Defendant's expert on Chinese maritime law, took the view that the Plaintiff has submitted to the jurisdiction of the Qingdao Court. Prof Chu, who was the Plaintiff's expert on Chinese maritime law, took the converse view, i.e. that the Plaintiff cannot be said to have submitted to the jurisdiction of the Qingdao Court.

82 The questions that were posed to them were as follows, does the:

a. Plaintiff's claim against the SJ Limitation Fund;

b. Plaintiff's participation in the Defendant's Inter-Ship Claim;

c. filing of the Plaintiff's Inter-Ship Claim in the Qingdao Court; and

d. the constitution of the AS CLC Limitation Fund by the Plaintiff and NEPIA,

collectively referred to as the Four Concurrent Proceedings in the Qingdao Court, constitute the Plaintiff submitting to the jurisdiction of the Qingdao Court under Chinese Law?

(A) THE PLAINTIFF'S VIEW: PROFESSOR CHU'S OPINION

83 A summary of Prof Chu's findings, pertinent to the present issue, is as follows:

a. the Plaintiff's participation in the Four Concurrent Proceedings does not (i) prevent the Plaintiff from suing elsewhere to obtain security, and (ii) mean that the Plaintiff has *clearly* and *unconditionally* submitted to the jurisdiction of the Qingdao Court; and[46]

b. Neither the Maritime Procedure Law nor any Chinese Law explicitly limits or excludes the rights of a maritime claimant to take legal action against the Defendant under the laws of another country.[47]

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46 1st Affidavit of Chu Beiping; Expert Opinion at [6(a)].

47 1st Affidavit of Chu Beiping; Expert Opinion at [11].

84 Prof Chu starts his analysis by first stating that his understanding of the meaning of the said term is that *a party accepts the jurisdiction of a court on its own initiative*.[48] He did not elaborate on this further but what I gather was that his view entailed "submission to jurisdiction" as being a full and voluntarily participation of the proceedings by either party.

85 He then submitted that there is no term or provision in the PRC's Civil Procedure Code (the "CPC") that concerns such submission to the jurisdiction of the Chinese courts.[49] In his view, there could be no such "submission to jurisdiction" so long as (a) the jurisdiction was acquired over the case mandatorily, (b) the parties can still file cases elsewhere, and (c) the Plaintiff's reservation of rights only reserves the right to raise possible jurisdictional defences (even though its reservation did not expressly address jurisdictional issues or any waiver of the foreign court's jurisdiction).

86 In relation to the Plaintiff's act of registering its claim against the SJ Limitation Fund, Prof Chu submitted that the Plaintiff did not submit to the jurisdiction of Qingdao Court as the Qingdao Court was not the Court chosen by the Plaintiff on its own initiative.[50] In other words, what Prof Chu seems to suggest is that because the Plaintiff had to protect its interests after the Defendant had commenced legal proceedings against the Plaintiff in the Qingdao Court, the Plaintiff's act of registering its claim against the SJ Limitation Fund was not voluntary and therefore does not mean that it had submitted to the jurisdiction of the Qingdao Court.

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48 1st Affidavit of Chu Beiping; Expert Opinion at [24].

49 1st Affidavit of Chu Beiping; Expert Opinion at [26].

50 1st Affidavit of Chu Beiping; Expert Opinion at [21].

87 According to him, under the Maritime Procedure Law, the establishment of a limitation fund, the registration of claims by creditors, and the filing of confirmation proceedings by creditors are basic procedures regarding the limitation of liability for maritime claims; the Plaintiff's act of registering the claim was simply what the Plaintiff was required to do in order for it to bring a claim against the limitation fund that the Defendant constituted, and not a decision to submit to the jurisdiction of the Qingdao Court on its own accord.[51]

88 Second, he submitted that the action of affirming rights under the Maritime Procedure Law is different from general civil proceedings as (a) the jurisdiction of affirming rights is attached to the jurisdiction established in respect of the limitation fund, (b) there is a time limit to register claims against that fund, and (c) it is a procedure of first instance with no right of appeal accorded to the parties.[52] This is according to Article 109 of the Maritime Procedure Law, and Articles 89–90 of the Interpretation of Maritime Procedure Law. Therefore, the Plaintiff's registration of its claims against the SJ Limitation Fund was based on special provisions that granted mandatory jurisdiction to the QMC over the Plaintiff. Put simply, once the Plaintiff had registered it claims against the SJ Limitation Fund, the QMC had jurisdiction over the Plaintiff in so far as its claim was concerned.

(B) THE DEFENDANT'S VIEW: PROFESSOR ZHAO'S OPINION

89 In contrast, the Defendant's expert, Prof Zhao, submitted that by choosing not to file any objection in writing to the QMC, the Plaintiff is deemed, under Chinese law, to have no objection to the 187 Application, which had the

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51 1st Affidavit of Chu Beipeing; Expert Opinion at [18].

52 1st Affidavit of Chu Beiping; Expert Opinion at [19].

legal implication of, *inter alia,* the Plaintiff being deemed to have recognised that the Qingdao Court has jurisdiction over the matters in question.[53] He specifically cites Article 4.1 of the Several Provisions of the Supreme People's Court on the Trial of Cases of Disputes over the Limitation of Liability for Maritime Claim (the "SPC Rules on Limitation of Liability), which I reproduce for clarity below:

> Upon the constitution of the fund for limitation of liability for maritime claims, the maritime court in which the fund has been constituted ***shall have the jurisdiction*** over a lawsuit filed by the maritime court in which the fund has been constituted shall have the jurisdiction over a lawsuit filed by the maritime claimant against the liable part on the relevant disputes over the maritime accident.
>
> [emphasis added]

90 However, as pointed out by the Plaintiff's counsel, Prof Zhao's opinion in the present case on this issue seemed to be contrary to the previous opinion he expressed in an Australian case of *CMA CGM SA v Ship Chou Shan* [2014] FCA 74(2014) ("*The Chou Shan*").

91 In *The Chou Shan*, the defendant ship, the "Chou Shan" collided with the plaintiff ship, the "MV CMA CGM Florida" ("CCF") in the EEZ of the PRC. Three weeks after the collision, the owners of the CCF commenced proceedings in the Australian court. About a month thereafter, the owners of the "Chou Shan" applied to the Ningbo Maritime Court ("NMC") to establish a limitation fund under Chinese law. Claims against the fund were made by the owners of "CCF" in NMC.

92 The "Chou Shan's" interests subsequently applied to the NMC for a warrant to arrest the "CCF" in NMC. The "CCF's" interests also applied to the

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[53] 2nd Affidavit of Zhao Jinsong; 2nd Expert Report at [8(2)].

Australian court for a warrant to arrest the "Chou Shan". It transpired that the "CCF" was later arrested in the PRC and so did the "Chou Shan", which was later was arrested in Port Hedland, Western Australia. The "Chou Shan's" interests applied to the Australian court to stay the Australian proceedings in favour of the NMC proceedings on two grounds. The first is that Australia is a clearly inappropriate forum for the hearing and determination of the dispute. The second is that the existence of the Chinese proceeding, in which the "CCF" interests are "actively and voluntarily participating", renders the continuation of the proceedings in Australia vexatious and oppressive (see *The Chou Shan* at [8]).

93 One issue that arose was whether "CCF's" act of making claims against the limitation fund in NMC amounted to "CCF" having submitted to the jurisdiction of China. Prof Zhao, who had testified on behalf of the owners of the "CCF" as an expert on Chinese maritime law submitted that the registration of claims against a limitation fund by a party did *not* constitute a submission to the jurisdiction of the PRC. I recount the relevant portion of that judgment here for clarity (see *The Chou Shan* at [97]):

> Professor Zhao expresses the view that as a matter of law, if the [plaintiff's] interests had failed to register their claim with the Ningbo Maritime Court, they would waive all rights to claim against the limitation fund constituted by the Chou Shan owner…It would only be by registering the claim against the limitation fund that the plaintiffs would be able to recover compensation from the Chou Shan owners in China arising from the collision.
>
> …
>
> Accordingly, if the plaintiffs do not want to lose any rights to recover compensation from the Chou Shan owners in China, and assuming all claims may be subject to limitation, they must register their claims with the Ningbo Maritime Court against the fund. The failure to do so would be a waiver of any right. ***The registration of the claim against the fund is only an expression to the court of willingness not to give up the***

> ***right to the claim against the fund; it does not constitute a submission to the jurisdiction of China, according to Professor Zhao.***
>
> [emphasis added]

94 Prof Zhao's evidence in *The Chou Shan* directly contradicts his expert opinion in the present case. The Defendant's counsel attempted to distinguish Prof Zhao's evidence in *The Chou Shan* by submitted that his evidence in *The Chou Shan* may have been given based on the state of the law then, and that the law, at present, may have since changed. This was however unconvincing and unpersuasive as no evidence was adduced before this Court to show that there was indeed such a change in the law.

(C) THE COURT'S PREFERRED VIEW

95 The Defendant argued that because the Court did not have the opportunity to hear from Prof Zhao as to why his opinion in the present case was diametrically opposite from what he had given before in *The Chou Shan*, his opinion, as given in the present case, should still be reliable. I disagree.

96 In *The Chou Shan,* Prof Zhao was asked the very same question: does the act of registering a claim against a limitation fund in the PRC amount to submitting to the jurisdiction where the fund had been constituted? His answer was no. There was therefore, in my view, no ambiguity that the view he had proffered in the present case is opposite from what he had proffered in *The Chou Shan*. If anything, Prof Zhao should have explained why he had reached a different conclusion in his report. This he did not do. Considering that no evidence has been put forth to support and justify Prof Zhao reaching a diametrically opposite opinion, I am of the view that his opinion on this issue is unreliable and place no weight on it.

97 Just because Prof Zhao's evidence on this issue cannot be relied upon does not mean that Prof Chu's evidence should automatically be accepted. The Court should still "examine the correctness of the expert's premises and reasoning process, as well as whether the expert is really purporting to address the issue or point on which his opinion has been sought" (see *Poh Soon Kiat v Desert Palace Inc (trading as Caesars Palace)* [2010] 1 SLR 1129 at [23]).

98 The crux of Prof Zhu's opinion, put simply, is that the filing of a claim against the SJ Limitation Fund is merely done to protect the Plaintiff's interest in the Qingdao Court. This lack of choice on the part of the Plaintiff to file the claim or risk the consequence of not being able to claim against the SJ Limitation Fund later cannot therefore be said to "submitting to jurisdiction".

99 On the assumption that Prof Chu is correct that both the Maritime Procedure Law and the CPC do not define what amounts to "submission to jurisdiction", I see force in Prof Chu's opinion, and accept that the Plaintiff, by participating in a claim against the SJ Limitation Fund set up by the Defendant, is, in and of itself, not submitting to the jurisdiction to the Qingdao Court.

100 The enquiry however does not end there. Filing a claim against the SJ Limitation Fund is but only one of the Four Concurrent Proceedings before the Qingdao Court. Unfortunately, Prof Chu's opinion does not cover whether each of the three other concurrent proceedings amount to a "submission to jurisdiction", and more crucially, whether the Four Concurrent Proceedings considered cumulatively would lead to the conclusion that the Plaintiff had indeed submitted to the jurisdiction of the Qingdao Court.

101 Indeed, one inference that may be drawn from the lack of any such analysis was that Prof Chu would have known that his opinion would be turned

on its head when trying to explain the Plaintiff's Inter-Ship Claim since the filing of the Plaintiff's Inter-Ship Claim was on the Plaintiff's own prerogative. I am therefore of the view Prof Chu's opinion, similarly, cannot be fully relied upon.

102 As I have expressed doubts as to how Prof Chu and Prof Zhao have reached the conclusions they did, I make no finding on whether the Plaintiff had submitted to the jurisdiction of the Qingdao Court. As highlighted earlier, whether a party submits to foreign jurisdiction is but one of the many factors to be considered and is not determinative in deciding whether there is some other available forum that is "clearly or distinctly more appropriate". Hence, there is no need for me to make any specific finding on this issue.

103 Apart from being involved in the Four Concurrent Proceedings (and not filing any objections whatsoever to the constitution of the SJ Limitation Fund or the Defendant's Inter-Ship Claim despite having been given notice of the 187 Application and the said claim), what is clear from the evidence presented (which remain undisputed), is that the Plaintiff had participated in the proceedings in the Qingdao Court without any reservation of jurisdiction:

(a) On 18 April 2022, both the Plaintiff and the Defendant filed evidence in respect of the Collision for their Inter-Ship Claims;[54]

(b) On 19 April 2022, the Plaintiff's PRC lawyers attended at a Qingdao Court hearing to hear issues in respect of the Collision including but not limited to factual issues and apportionment of liability, where I note that the Plaintiff's PRC lawyers participated without disputing the Qingdao Court's jurisdiction and made oral submissions

[54] Defendant's Written Submissions at [51.1].

on the Plaintiff's substantive defence and on the evidence tendered and exchanged by both parties;[55] and

(c) On 27 May 2022, the Plaintiff's PRC lawyers filed a joint confirmation in writing together with the Defendant's PRC lawyers on the authenticity of the evidence tendered by the parties for proceedings in the Qingdao Court.[56]

104 Furthermore, it is apposite to point out that the Plaintiff and NEPIA has set up its own limitation fund – the AS CLC Limitation Fund – to protect itself from third-party claims for oil spills. This shows that the Plaintiff was not merely participating in proceedings started by the Defendant, just so that they could put a stake on the SJ Limitation Fund; they had also set up their own limitation fund to protect their own interests.

105 From the above, it is clear to me that both the Plaintiff and the Defendant were (and continue to be) willing for the Four Concurrent Proceedings to proceed full steam ahead. The proceedings in the PRC are more advanced than the proceedings in Singapore as both parties have constituted limitation funds in China, tendered evidence to the court on their respective claims, and made written and oral submissions as to the merit of their claims.

106 As (a) the PRC is the *prima facie* natural forum, (b) that legal proceedings have commenced by both parties in the Qingdao Court and are in a more advanced stage than proceedings in the Singapore Courts, and (c) that there would be a risk of multiplicity of proceedings which would offend the

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55 Defendant's Written Submissions at [51.2].

56 Defendant's Written Submissions at [51.3]

principle of international comity, I find that the Qingdao Court is *prima facie* a "clearly or distinctly more appropriate" forum for the case to be tried. The only connecting factor to Singapore was that the ship, the "Sea Justice", was arrested within the jurisdiction of Singapore, which in my view, is insignificant compared to the three factors above.

Stage 2 Analysis

107 The Plaintiff submitted that the juridical advantage they would lose if these proceedings are stayed in favour of proceedings in the Qingdao Court is the *security* in Singapore which was legally obtained, and not that they are able to claim a higher amount under Singapore's limitation framework.

108 In my view, the practical effect of the Plaintiff losing the security it obtained is *no different* from losing the benefit of the higher limit that Singapore has to offer under her laws. This is because the security that was agreed upon by both parties for the release of the vessel was pegged to the maximum that the Plaintiff would be allowed to claim under Singapore's limitation framework.

109 Further, at the hearing, the Plaintiff clarified that after the legal proceedings before the Qingdao Court are completed, they intend to come back to Singapore not to enforce the Qingdao Court's judgment, but rather, to lift the stay of proceedings and apply to the Singapore court to issue a judgment in their favour on the grounds of *res judicata* or issue estoppel. This was, of course, on the assumption that the Qingdao Court finds that the Defendant was liable for the Collision. In doing so, the damages that can be obtained by the Plaintiff would correspondingly be subject to the limits which are applicable to the Singapore courts under the 1976 LLMC amended by the 1996 Protocol, which is higher than the limits applicable to the Qingdao Court under its own domestic

laws. This way, the Plaintiff would effectively be allowed to enjoy the full extent of the Singapore limitation framework. It bears pointing out that at [37] of *The Reecon Wolf,* Belinda Ang J (as she then was) foresaw such a situation and held that:

> It would be contrary to *The Spiliada* principles to look favourably upon a party who selected a ***forum based solely upon the level of damages that could be awarded*** or higher limits of liability.
>
> [emphasis added]

110 Put plainly, the Plaintiff's submission that it would lose the security it obtained from the Defendant if a stay is ordered is simply an attempt to sidestep the fact that the existence of different limitation regimes has previously been held not to be a personal or juridical advantage under Stage 2 on grounds of international comity (see *The Reecon Wolf* at [55]). Where a higher level of damages recoverable is the only reason for choosing Singapore as the forum for the claim, I cannot take this into consideration as a juridical advantage that the Plaintiff would lose.

111 If losing the security it had obtained is counted as a juridical advantage the Plaintiff stands to lose if this proceedings are stayed, this would inevitably force the Defendant to defend the claims in Singapore and to potentially set up a limitation fund in Singapore. This would be contrary to what the Court held in *Evergreen International SA v Volkswagen Group Singapore Pte Ltd and Others* [2003] 2 SLR(R) 457 ("*The Ever Glory*") at [47] that, "the right to claim limitation in any particular form is a right that belongs to the shipowner alone and that choice is not to be pre-empted by a claimant".

112 In *The Ever Glory*, a collision between "The Ever Glory" and the "Hual Trinita" happened in Singapore waters. The owner of "The Ever Glory"

commenced a limitation action in Singapore under the 1957 LLMC (which was the applicable tonnage limitation regime then) and obtained a declaration that its liability was limited to approximately S$ 2.4m. The defendants, the owner or insurers of the cargo on board "Hual Trinita", were aware that the limitation fund had been constituted but did not participate in the limitation action.

113 Subsequently, a sister ship of "The Ever Glory" was arrested in Belgium and the defendants commenced an action against the plaintiff in Belgium. It was clear that the reason for doing so was because Belgium had ratified the 1976 LLMC, which provided for a higher limitation limit of S$13.5m. The plaintiff applied to the Singapore court for an anti-suit injunction to restrain the defendants from continuing their action in Belgium.

114 The court granted the anti-suit injunction and made two findings that are pertinent to the present case. First, the court held that a claimant cannot dictate where the limitation fund is to be constituted, and the defendants' act of commencing proceedings against the plaintiff in Belgium is a means to frustrate or subvert the plaintiff's choice of forum for pursuing a limitation action (see *The Ever Glory* at [47] to [49]). In coming to this finding, the court referred to *The Volvox Hollandia* [1988] 2 Lloyd's Rep 361 ("*Volvox Hollandia*") and affirmed its proposition that it would be wrong for a claimant to seek to usurp a shipowner's choice of forum for his limitation action by seeking a negative declaration in the liability action to the effect that the shipowner is not entitled to limit (the "*Volvox Hollandia* principle"). The court held that, "where a higher limit is sought by the liability claimant like the defendants in contravention of the *Volvox Hollandia* principle, the court should not go to his assistance. The advantage of the 1976 Convention contended for by the defendants is not a legitimate consideration in the overall question of where the ends of justice lie" (see *The Ever Glory* at [50]).

115 Second, the Court explained that once a limitation fund has been constituted, the defendants' right to recover full compensation from the plaintiff is transformed into a right to payment of a proportionate amount of a limited fund, and the defendants are to share rateably with others in the amount of the owner's limited liability available for distribution. *The Ever Glory* (at [52]) states:

> 52 In Singapore, the decree of limitation conferred upon the plaintiffs a right to limit total liability. After the limitation fund is constituted, all claims arising out of the collision are to be brought against that fund. The defendants' right to recover full compensation from the plaintiffs is transformed into a right to payment of a proportionate amount of a limited fund (see *The Happy Fellow*). The defendants are to share rateably with others in the amount of the owners' limited liability available for distribution. In short, the plaintiffs are given a personal right to limit liability and protection from proceedings in rem after the decree is granted and the limitation fund constituted. It has been suggested in The Bowbelle [1990] 1 Lloyd's Rep 532 at 536 that the plaintiffs could enforce their rights by filing an appropriately worded caveat against arrest. The Belgium proceedings will alter those rights and obligations if the Singapore decree is not recognised. To that extent, the effect and consequence of the Belgium proceedings infringe or undermine the protection granted to the plaintiffs by the Singapore court.

116 The Court held that if the defendants were allowed to commence proceedings against the plaintiff in Belgium, the defendants will obviate the need to share rateably with others in the amount of the plaintiffs' limited liability available for distribution in Singapore, and this was obviously wrong, [47] of *The Ever Glory* is apposite:

> 47 The right to claim limitation in any particular forum is a right that belongs to the shipowner alone and that choice is not to be pre-empted by a claimant. **In other words, a claimant cannot dictate where the limitation fund is to be constituted.** See *The Volvox Hollandia*. Rix J in *Caspian Basin Specialised Emergency Salvage Administration v Bouygues Offshore SA (No 4)* with whom the Court of Appeal agreed with relied on *The Volvox Hollandia* for the proposition that it would

> be wrong for a claimant to seek to usurp a shipowner's choice of forum for his limitation action by seeking a negative declaration in the liability action to the effect that the shipowner is not entitled to limit. **In the same way, the effect and consequence of litigating in Belgium like the device of the negative declaration of non entitlement to limit is another means or way to frustrate or subvert the plaintiffs' choice of forum for pursuing a limitation action.** It purports to dictate the limitation forum and that is wrong in law. It is hence oppressive as the plaintiffs are compelled or coerced through the institution and continuation of foreign proceedings to set up another limitation fund in this case in Belgium when there is already an existing and properly constituted limitation fund in Singapore. **In addition, the defendants' election to have limitation determined under Belgium law is not only inconsistent with the *Volvox Hollandia* principle, it seeks to obviate the need to share rateably with others in the amount of the plaintiffs' limited liability available for distribution in Singapore.** That is obviously wrong not only as between the plaintiffs and defendants but also as between the defendants and other claimants to the limitation fund.
>
> [Emphasis added in bold]

117 In my view, what the Plaintiff in the present case is attempting to do what the defendants in *The Ever Glory* did when they arrested the plaintiff's sister ship in Belgium and commenced legal proceedings there so that they could enjoy a higher limitation limit. Litigating in Singapore is the Plaintiff's way of frustrating the Defendant's choice of pursing a limitation action in the Qingdao Court. Applying the principles espoused in *The Ever Glory*, the Plaintiff should not be allowed to dictate where the limitation fund should be constituted, and the Court should not go to the assistance of the Plaintiff where a higher limit is sought, in contravention of the *Volvox Hollandia* principle. The Plaintiff should share rateably with others in the amount constituted by the SJ Limitation Fund. Allowing the proceedings in Singapore to continue will alter the rights and obligations of the SJ Limitation Fund and will undermine and infringe upon the protection granted to the Defendant in the Qingdao Court.

118 I wish to point out that the Court in *The Ever Glory*, at [62], had also held that while the 1957 LLMC limit may well be a disadvantage to the defendants in Singapore, it cannot be properly termed an injustice. The court, at [61], noted that the limitation of liability is founded on public policy reasons. Quoting Lord Denning M.R. in *The Bramley Moore* [1963] 2 Lloyd's Rep. 429 ("*The Bramley Moore*"):

> The principle underlying limitation of liability is that the wrongdoer should be liable according to the value of his ship and no more…[L]imitation of liability is not a matter of justice. It is a rule of public policy which has its origin in history and its justification in convenience.

119 In *Pusan Newport Co Ltd v. Owners and/or demise charterers of the ships or vessels "Milano Bridge" and "CMA CGM Musca" and "CMA CGM Hydra"* [2022] HKCA 157 ("*Milano Bridge*"), the plaintiff tried to arrest the wrongdoing ship in Hong Kong, as they would benefit from a higher limitation figure as per Hong Kong's legislation. This contrasted with the lower amount that they could claim in South Korea, where the tort occurred. In granting a stay of proceedings, the HKCA found that there were public policy considerations on comity that militated towards doing so. It held that just because the competing jurisdiction as a lower limit does not mean that justice can never be found in the natural and more clearly appropriate forum. [61] of the court's judgment is apposite:

> If this action is allowed to proceed for the reason of the advantage relied on, ***it will be hard to imagine any case, where limitation has a significant impact, in which the Hong Kong court will not pronounce that justice is not obtainable in the natural and otherwise clearly more appropriate forum simply because that jurisdiction applies the unrevised 1976 Convention limit.*** In my opinion that would not be an approach in keeping with comity.
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> [emphasis added]

120 While I may sympathise with the Plaintiff for being only able to claim a fraction of its damages in comparison to its estimated alleged loss under the SJ Limitation Fund, this is not unjust to either party since the Qingdao Court had deemed it just to retain a lower limitation and the merits of that legislation are not justiciable before this court (see *The Owners of the Ship or Vessel Ming Galaxy v The Owners of the Ship or Vessel or Property Herceg Novi* [1998] SGHC 303).

121 I therefore find that the PRC is the more appropriate forum and the Singapore proceedings should be stayed in favour of the proceedings in the Qingdao Court.

Issue 2: Whether the warrant of arrest should be set aside

The parties' cases

122 In respect of the application to set aside the warrant of arrest, the Defendant argued that the Plaintiff had failed to disclose four material facts at the Duty Registrar hearing, i.e., when the Plaintiff applied for the warrant of arrest. These are:

(a) The failure to disclose that the Plaintiff had relied on an erroneous translation of its affidavit in relation to the Plaintiff's reservation of its rights to submit to the jurisdiction of the Qingdao Court. The Plaintiff had misrepresented to the Duty Registrar that it had reserved its right to challenge the jurisdiction of the Qingdao Court by adding the non-existent phrase "or acceptance of jurisdiction of your court or application of law" in its in-house English translation of its application to the Qingdao Court to register its claims against the SJ Limitation Fund. This phrase was however never in the original Chinese

language document and it was only after the Defendant highlighted the glaring mistranslation that the Plaintiff admitted the error. The Defendant assert that the misrepresentation the Plaintiff made was a deliberate attempt by the Plaintiff to portray to the Court that the Plaintiff has not accepted and/or submitted to the jurisdiction of the Qingdao Court even though it has registered its claims against the SJ Limitation Fund ("Material Fact 1").

(b) The failure to disclose that the Plaintiff did not file any objection to the jurisdiction of the Qingdao Court within the statutory time limit ("Material Fact 2").

(c) The failure to disclose that it had taken part in a Qingdao Court hearing which was related to the Inter-Ship Claims ("Material Fact 3"); and.

(d) The failure to disclose that the AS CLC Limitation Fund had been constituted in the Qingdao Court, and that the Plaintiff had brought an indemnity claim against that fund in the Plaintiff's Inter-Ship Claim ("Material Fact 4").

123 The Plaintiff's response to Material Fact 1 was that they made full and sufficient disclosure of the existence of the two Inter-Ship claims in its affidavit filed in support of the application for the warrant of arrest, and at the arrest hearing itself. The Plaintiff also took pains to point out, in its written submissions and at the hearings, that the translation error was innocent and inadvertent. They submitted that the translation error was due to the Plaintiff's PRC solicitors having inadvertently provided their Singapore counsel with an outdated in-house translation of the Plaintiff's Application for Registration of Claim, at the time when the application for a warrant of arrest in Singapore was

filed.[57] Upon realising the error, they raised and explained the above by way of affidavit.[58]

124 Regardless, the Plaintiff submitted that all four alleged material facts are not relevant as the minutia of their claims were not relevant to the Duty Registrar's assessment of whether the warrant of arrest should have been granted. In their view, only the fact that proceedings were commenced in the PRC, and what those proceedings are, were relevant to the Duty Registrar's assessment. In any case, the Plaintiff's solicitors had brought the attention of the Duty Registrar to the proceedings in the Qingdao Court, including the Qingdao Court hearing relating to the Inter-Ship Claims, and the constitution of the AS CLC Limitation Fund. I pause here to highlight that having gone through the records, the Plaintiff's solicitor did not allude to the Inter-Ship Clams and the constitution of the AS CLC Limitation Fund at the hearing before the Duty Registrar.

The law on setting aside a warrant of arrest

125 When applying for a warrant of arrest, the Plaintiff is under a duty to disclose to the court hearing that application all matters within their knowledge which might be material, even if it may be prejudicial to their claim (see *The "Vasiliy Golovnin"* [2008] 4 SLR(R) 994 ("*The Vasiliy Golovnin*") at [83]). Whether a fact is material or not is an objective test of whether it is relevant (see *The Vasiliy Golovnin* at [87]; *The "Rainbow Spring"* [2003] 3 SLR(R) 362 at [33]). The Plaintiff must draw the attention of the judge to the relevant papers, and it is not sufficient to produce exhibits which contain the papers if no specific

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57 Plaintiff's Written Submissions at [30].

58 1st Affidavit of Wang Yongli.

reference is made to them; a failure to refer to material documents is a failure to disclose (see *The Vasiliy Golovnin* at [94]).

126 However, as restated in *The "Jeil Crystal"* [2021] SGHC 292 at [69] and [70], when the Court condemns material non-disclosure by setting aside the warrant of arrest obtained *ex parte*, it is doing so in the public interest to discourage the abuse of the procedure. It is therefore important whether the warrant of arrest was done in good faith (see *Treasure Valley Group Ltd v Saputra Teddy and another (Ultramarine Holdings Ltd, intervener)* [2006] 1 SLR(R) 358 at [23]).

127 Furthermore, the warrant of arrest need not always be set aside in cases of material non-disclosure. The Court always retains an overriding discretion whether or not to set aside a warrant of arrest (see *The "Fierbinti"* [1994] 3 SLR(R) 574 ("*The Fierbinti*") at [41]). In exercising this discretion, the Court often applies the principle of proportionality in assessing the sin of omission against the impact of such default, which requires an assessment of the material facts and the circumstances in which the application was made (see *The Vasiliy Golovnin* at [84]).

128 What then is the test for materiality for non-disclosure? The test was summarised in *The "Damavand"* [1993] 2 SLR(R) 136 at [30] (cited with approval in *The Vasiliy Golovnin* at [85]):

> ... [T]he test of materiality is whether the fact is relevant to the making of the decision whether or not to issue the warrant of arrest, that is, a fact which should properly be taken into consideration when weighing all the circumstances of the case, though it need not have the effect of leading to a different decision being made. ...

129 In *The Eagle Prestige* [2010] 3 SLR 294 ("*The Eagle Prestige*"), Belinda Ang J (as she then was) commented on the process of obtaining a warrant of arrest and observed that (see *The Eagle Prestige* at [74]):

> *…The concerns of the court at the application stage are firstly, with considerations of jurisdiction in rem (and generally not the merits of the claim) and secondly, disclosure of material facts which are germane to considerations of jurisdiction in rem and overlaying that is the absence of facts and circumstances suggesting an abuse of the arrest process.*
>
> [emphasis in original]

Facts brought to the attention of the Duty Registrar

130 A summary of the pertinent facts which the Plaintiff had informed the Duty Registrar at the warrant of arrest application on 19 October 2022 whether through the supporting affidavit or at the Duty Registrar hearing are as follows:

(a) The Collision took place of the port of Qingdao, PRC;

(b) "A Symphony" was damaged as a result of the Collision and details of the damage can be gleaned from the Marine Accident Report dated 27 April 2021 which was annexed to the supporting affidavit;

(c) A writ in rem against the "Sea Justice" was filed on 28 April 2021 in respect of the Collision, which was renewed for 12 months from 28 April 2022;

(d) The arrest was pursuant to s 4(3) of the HCAJA as the Plaintiff's claim is found on a Collision maritime lien over the "Sea Justice", which is the ship or vessel directly connected to the Plaintiff's claim.

(e) The Plaintiff's claim also falls within s 3(1)(d) or in the alternative, s 3(1)(e) of the HCAJA, being a claim for damage done or received by a ship respectively.

(f) The Plaintiff's claim for the loss of damage arising out of the Collision has not been satisfied and it has also not obtained security for the claim.

(g) On 30 April 2021, the Defendant had applied to the Qingdao Court to establish the SJ Limitation Fund and the Qingdao Court had approved the constitution of that fund on 12 July 2021. The total funds paid into court was RMB 39,536,501 (or approximately US$ 6,088,500);

(h) On 27 July 2021, the Plaintiff had registered its claims against the SJ Limitation Fund and sought a declaration that they are entitled to the claim against that fund, albeit with a reservation of rights; and

(i) There was nothing preventing the Plaintiff from bringing a suit anywhere else other than the PRC in light of the Defendant's unsuccessful ASI Application.

Parties' arguments

131 As a preliminary matter, I note that the Defendant has not challenged the *in rem* jurisdiction which the Plaintiff had relied on when applying for the warrant of arrest.

132 The crux of the Defendant's submission in respect of Material Fact 1 is the Plaintiff's misrepresentation to the Duty Registrar that the Plaintiff had reserved its right to challenge the jurisdiction of the Qingdao Court when it did

not in fact do so. At the hearing, the Plaintiff's counsel presented to the Duty Registrar its application for a warrant of arrest and a supporting affidavit which was made under the cover of a solicitor's affidavit.[59] At paragraphs 20 and 21 of the said affidavit, the Plaintiff stated that on 27 July 2021, it had applied to register a claim against the SJ Limitation Fund in the Qingdao Court and the application was made with a strict reservations of rights. It then quotes the relevant portion of the application to show this which is as follows:

> [t]his Application for Registration of Claim is a procedural application made in response to the application from Sea Justice Ltd for the constitution of a limitation fund for maritime claims. The Applicant hereby declares that all the matters described herein or referred hereto **shall not be construed as the Applicant's acknowledgement of any facts or liabilities, or acceptance of jurisdiction of your court or application of law, or waiver of any substantial or procedural defenses**. The Applicant also reserves the right to object to the right of the Respondent to limit its liabilities and the limitation amounts.
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> [emphasis in original]

133 It subsequently transpired (and this is undisputed by parties) that the words "**or acceptance of jurisdiction of your court or application of law**" [emphasis in original] (collectively referred to as the "Missing Words") was never on the said application. The Plaintiff explained that translator it had engaged had made a mistake and that these words were included inadvertently. Further, that they only knew of this error in December 2022.

134 The Defendant submits that the inclusion of the Missing Words was a "deliberate attempt to portray to this Honourable Court that the Plaintiff has not accepted or submitted to the jurisdiction of the Chinese Courts". Further, they highlight the fact that even though the Plaintiff claimed to have found out about the mistake in December 2022, they said or did nothing. It was only after the

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[59] 2nd Affidavit of Liao Yanting.

discrepancy was pointed out vide an affidavit by one of the Defendant's PRC lawyers filed on 18 January 2023[60] that the Plaintiff filed an affidavit on 25 January 2023[61] in response acknowledging the discrepancy.

135 In response, the Plaintiff submits that even without the Missing Words, the application should still be construed as one which was made with a strict reservation of rights as to jurisdiction. This is because the reservation of rights, without the Missing Words, allowed the Plaintiff to raise a "procedural defence". According to Prof Chu, the Plaintiff may challenge the jurisdiction of the Qingdao Court and choose not to submit to it by making a "procedural defence" under Chinese law.[62] Prof Chu made two further points.

136 First, even if an express reservation of jurisdiction was included in the Plaintiff's application to register its claim against the SJ Limitation Fund, it remains unclear under Chinese procedural law what legal effect that has on the exclusion of a foreign court from exercising jurisdiction based on its own laws.[63] Second, the Plaintiff's application to register its claim against the SJ Limitation Fund does not constitute submitting to the jurisdiction of the Qingdao Court.[64]

Analysis

137 As a starting point, whether the Plaintiff raised the issue of a reservation of rights when it registered its claim against the SJ Limitation Fund is relevant when considering granting a warrant of arrest. The reservation of rights signals

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60 1st Affidavit of Yu Changqing.

61 4th Affidavit of Liao Yanting.

62 1st Affidavit of Chu Beipeing; Expert Opinion at [37] to [41].

63 1st Affidavit of Chu Beipeing; Expert Opinion at [40].

64 1st Affidavit of Chu Beipeing; Expert Opinion at [38].

to both the Qingdao Court and the Singapore court that the Plaintiff is intent to proceed with the legal action in the Singapore court and not the Qingdao Court. The fact that the Plaintiff had participated in the legal proceedings commenced in the Qingdao Court without any express reservation or objection to the Qingdao Court's jurisdiction is therefore inconsistent with what the Plaintiff told the Court during the warrant of arrest application.

138 Further, I note that by 19 October 2022 (which was when the application for a warrant of arrest was made), apart from the fact that the SJ Limitation Fund had been constituted and that the Plaintiff had registered its claim against the Fund, other proceedings in the Qingdao Court have also by then commenced and they are as follows:

(a) the Inter-Ship Claims on liability had been filed by both parties;

(b) NEPIA had filed, and the Qingdao Court had approved, for a limitation fund to be set up to protect the Plaintiff from 3rd party claims (Material Fact 4);

(c) parties have filed their evidence in relation to their respective Inter-Ship Claims (Material Fact 3); and

(d) the Plaintiff's and the Defendant's lawyers had conferred on the evidence tendered by the parties and jointly confirmed in writing to the Qingdao Court on the authenticity of the evidence.

139 For reasons only known to the Plaintiff, these were not disclosed to the Duty Registrar.

140 The picture that was painted to the Duty Registrar was that (a) a SJ Limitation Fund was set up in the Qingdao Court, (b) the Plaintiff has registered its claims against the said fund albeit with a reservation of rights, and (c) the Defendant's ASI Application was rejected, and therefore the Plaintiff can continue with proceedings commenced in Singapore.

141 This was somewhat different from what had transpired in reality, i.e. that the Plaintiff did not object to the jurisdiction to the Qingdao Court in not one but four applications, and that proceedings in the Qingdao Court had begun and progress more than just the fact that the SJ Limitation Fund had been constituted and the Plaintiff registering their claims against the said fund had been made.

142 While I was not entirely convinced with the Plaintiff's argument that the application should still be construed as one which was made with a strict reservation of rights as to jurisdiction even without the Missing Words (since no reasons were proffered to explain why the Missing Word had to be included in the first place if that was the case), the Defendant had offered no expert opinion to rebut the Prof Chu's opinion on this. Accordingly, the court only has Prof Chu's opinion to rely on.

143 Since it was still possible, in substance, for the Plaintiff not to submit to the jurisdiction of the Qingdao Court under Chinese law by challenging its jurisdiction by making a "procedural defence", and that the Plaintiff did draw the Duty Registrar's attention to fact that the Defendant's ASI Application was denied by the Qingdao Court, I find that the lack of the Missing Words in the reservation of rights clause was, in the overall circumstance, not material to the granting of the warrant of arrest.

144 As alluded to above, the Court always retains an overriding discretion whether or not to set aside a warrant of arrest (see *The Fierbinti* at [41]). In exercising this discretion, the Court often applies the principle of proportionality in assessing the sin of omission against the impact of such default.

145 The "sin" in the present case is the limited extent of the disclosure made by the arresting solicitor at the hearing before the Duty Registrar. In my view, every proceeding before the Qingdao Court preceding the hearing before the Duty Registrar should have been disclosed. That said, the impact of not disclosing more was not significant considering that the Plaintiff would still be able to challenge the jurisdiction of the Qingdao Court even if it did not expressly reserve its rights on jurisdiction. I therefore exercise my discretion not to set aside the warrant of arrest. For completeness, I note that a reservation of rights on jurisdiction is not the same as a rejection of jurisdiction. Had the Plaintiff stated on its affidavit accompanying the application for the warrant of arrest that it had rejected the Qingdao Court's jurisdiction even though it applied to register its claims against the SJ Limitation Fund, the outcome would have been different.

Issue 3: Whether the security should be returned to the Defendant

146 As I have decided not to set aside the warrant of arrest, it remains for me to determine whether (a) the two partial securities furnished to the Plaintiff in exchange for the release of the "Sea Justice" should be returned to the Defendant, and (b) in the alternative, the Court should grant a case management stay or a conditional stay on the terms proposed by the Plaintiff.

Security should be returned to the Defendant

147 In my judgment, granting the Stay Application necessarily requires that the security should be returned to the Defendant, as there would no longer be a basis for maintaining the security in Singapore without a pending claim against the Defendant in this jurisdiction.

148 As a starting point, the UK Court of Appeal in *The "Putbus"* [1969] P 136 ("*The Putbus*") ruled that a shipowner, having limited his liability by constituting a limitation fund to answer collision claims, should not be compelled to put up further security in another country for the same collision claims. The following extract at 149E is apposite:

> "…If a ship is involved in a collision in circumstances to which the owner is entitled to limit his liability, then he should only be compelled to provide a limitation fund once and for all. If he makes it available in one country to meet all the limited claims, he should not be compelled to put up security for those claims in another country: or if he is compelled to do so, he should be able to get the additional security released…"

149 This is consistent with the position in Singapore. In *The Ever Glory*, the court endorsed the starting position that a limitation decree not set aside is good against the world (at [44]):

> Sheen J in *The Falstria* [1988] 1 Lloyd's Rep 495 at 497 explained that "[t]he essence of a limitation action is that the plaintiffs in that action seek a decree, which is valid against all possible claimants, that a limit is set upon the eventual liability of the plaintiffs to all those claimants." **A limitation decree not set aside, as was the case here, is good against the world**: See *The Volvox Hollandia* [1988] 2 Lloyd's Rep 361; *The Happy Fellow*.
>
> [Emphasis added]

150 In the present case, the SJ Limitation Fund has not been set aside and is good against the world. Further, as I had explained above (at [117]–[120]), the

Defendant retains the inalienable right to choose the forum to limit its liability. To allow the security to be retained in Singapore is to allow the Plaintiff to usurp the Defendant's choice of forum for its limitation action. As such, upon the Stay Application being granted, the security ought to be returned to the Defendant in full.

A case management stay or conditional stay should not be granted

151 The Plaintiff had suggested a form of a case management stay or a conditional stay to be imposed should this Court take the view that the issue of liability and damages should dealt with by the Qingdao Court. I disagree. Ordering a case management stay or conditional stay is, in substance, allowing the Plaintiff to be doubly secured, which goes against international comity and should not be allowed.

152 The Plaintiff relied on *Spiliada*, specifically where the court there held that a plaintiff should not be deprived the benefit of security in a country, even though proceedings should be stayed on the ground of *forum non conveniens,* to do "practical justice" by the plaintiff. In my view, *Spiliada* can be distinguished.

153 Lord Goff of Chieveley was writing in *obiter dicta,* and in any case, *The Reecon Wolf* showed that the tide has turned against this "practical justice" approach. Belinda Ang J in *The Reecon Wolf* at [37] noted the turn from judicial chauvinism towards judicial comity, which based on the force of case law and public policy, should prevail in this case.

154 Even though the Plaintiff has argued at lengths that there is no double security as the SJ Limitation Fund in the PRC was constituted pursuant to a domestic decree, respectfully, that argument misses the point. To allow the

security to subsist in Singapore would effectively allow the Plaintiff to be doubly secured in Singapore and the PRC.

155 Similar to what I explained above (at [118]) regarding *The Ever Glory* and *The Bramley Moore,* allowing the Plaintiff to maintain its security in Singapore and claim against it at a later date would go against considerations of comity. By ordering that security be maintained here, it would be tantamount to making a finding that the legislative provisions in the PRC – which it had every sovereign entitlement to enact – were inadequate in comparison with our local legislation.

156 This is the exact situation that *The Reecon Wolf* foresaw, and the court very prudently closed the door on such situations (see *The Ever Glory* at [62]). Quoting the decision of GP Selvam J in *The Herceg Novi* (unreported decision dated 10 September 1998 in Admiralty in Rem No. 514 of 1996) with approval, the Court cannot stay an action legitimately brought before it on the ground that there is "*something wanting in its system of justice and that better justice will be done in another jurisdiction*".

157 Applying this to the present case, where the PRC legislature had deemed it just to impose a regime that provided for a lower limitation as compared to Singapore, the Singapore court must give effect to that legislation. The merits of that legislation cannot be justiciable before this court.

Indemnity for oil pollution

158 For completeness, the Plaintiff argued that it is unclear whether indemnity for oil pollution, which makes up the bulk of their claim in damages against the Defendant, should fall within the limitation fund. They submit that

if it does not, they should be allowed to come to Singapore to claim against the local security for this.

159 Again, the issue is whether the Plaintiff would be doubly secured. In my view, they would be, and this should not be allowed. Furthermore, they have not discharged their burden of proving that these claims are not subject to the SJ Limitation Fund in the PRC; their argument, without the requisite evidence, was speculative at best. In any case, they have already registered this claim against the SJ Limitation Fund.

Conclusion

160 In conclusion, as (a) the PRC is the natural forum, (b) that legal proceedings have commenced by both parties in the Qingdao Court and are in a more advanced stage than proceedings in the Singapore Courts which include the constitution of two limitation funds, (c) that there would be a risk of multiplicity of proceedings which would offend the principle of international comity since parties remain resolute in litigating their claims filed before the Qingdao Court, and (d) that the Plaintiff having to return the security is not a juridical advantage it would lose, I find that the Qingdao Court is "clearly or distinctly more appropriate" a forum for this case to be tried. I therefore order that the present proceedings be stayed unconditionally.

161 Further, as I have also found that the non-disclosures by the Plaintiff were, although relevant, were immaterial, I dismiss the Defendant's application to set aside the warrant of arrest.

162 Finally, I am of the view that the security should be returned to the Defendant in full and that no case management stay in the terms proposed by the Plaintiff ought to be granted.

163 It leaves me to thank counsel from both sides for their arduous work, both written and oral, from which I greatly benefitted from.

Nicholas Lai
Assistant Registrar

Timothy Tan, Gho Sze Kee and Liao Yanting (AsiaLegal LLC) for the Plaintiff;
Tan Xue Ting, C Sivah and Loh Wai Yue (Incisive Law LLC) for the Defendant.
