IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA 32

Court of Appeal / Civil Appeal No 11 of 2024

Between

Owner and/or Demise Charterer of the vessel "A SYMPHONY"

… *Appellant*

And

Owner of the vessel "SEA JUSTICE"

… *Respondent*

In the matter of Admiralty in Rem No 61 of 2021 (Registrar's Appeal No 246 of 2023)

Between

Owner and/or Demise Charterer of the vessel "A SYMPHONY"

… *Plaintiff*

And

Owner of the vessel "SEA JUSTICE"

… *Defendant*

JUDGMENT

[Admiralty and Shipping — Admiralty jurisdiction and arrest — Stay of action proceedings]
[Conflict of Laws — Natural forum]

The "Sea Justice"

[2024] SGCA 32

Court of Appeal — Civil Appeal No 11 of 2024
Tay Yong Kwang JCA; Belinda Ang Saw Ean JCA
4 June 2024

26 August 2024

Belinda Ang Saw Ean JCA (delivering the judgment of the court):

1 CA/CA 11/2024 ("CA 11") is an appeal against the decision of a judicial commissioner in the General Division of the High Court (the "Judge") in HC/RA 246/2023 ("RA 246"). The full facts of the case may be found in the Judge's decision in *The Sea Justice* [2024] SGHC 37 (the "Judgment"), and we restate only what is necessary for the context of this appeal.

Background

2 On 27 April 2021, a collision occurred between the vessels *A Symphony* and *Sea Justice* off the coast of Qingdao, China, in Chinese territorial waters. The collision caused substantial damage to the *A Symphony* and resulted in a marine pollution incident as oil carried on board spilled into the sea. Subsequently, on 20 October 2022, the *Sea Justice* was arrested in Singapore by the appellant, who was the owner of the *A Symphony*. The arrest was made pursuant to the appellant's claim in HC/ADM 61/2021 ("ADM 61") for

collision damage and consequential losses, including a declaration for the appellant to be indemnified against oil pollution claims.

3 By the time of the arrest, several sets of proceedings had already been commenced in the Qingdao Maritime Court in relation to the collision. These included (a) the appellant's constitution of a limitation fund for oil pollution damage compensation liability pursuant to the International Convention on Civil Liability for Oil Pollution Damage 1992 (the "CLC Limitation Fund"), (b) the claims made by both parties in respect of collision liability (the "Inter-Ship Claims"), and (c) the respondent's constitution of a limitation fund pursuant to the tonnage limitation regime under the Maritime Law of the People's Republic of China (the "SJ Limitation Fund"). An examination of the appellant's statement of claim in the Qingdao Maritime Court, which is exhibited in its arrest affidavit in ADM 61, reveals its claim to include losses and costs arising from the oil pollution incident, including an indemnification for moneys paid into the CLC Limitation Fund. The appellant also registered itself as a claimant against the limitation fund constituted by the respondent (see [13] below).

4 The *Sea Justice* was subsequently released on 18 November 2022, upon the respondent furnishing security (under protest) in the form of payment into court of S$8,846,383 and a letter of undertaking issued by The Swedish Club for a sum of up to US$13.5m (the two modes of security are collectively referred to as the "SG Security"). It is not disputed that the combined quantum of this SG Security is pegged to the maximum permissible under Singapore's limitation regime under the Merchant Shipping Act 1995 (2020 Rev Ed) ("the MSA"), which adopts the limits under the Convention on Limitation of Liability for Maritime Claims 1976 ("1976 CLLMC"), as amended by the Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims.

It is also not disputed that these limits are a much higher quantum compared to those under the limitation of liability regime in the PRC.

The respondent's stay application

5 The respondent subsequently applied in HC/SUM 4434/2022 ("SUM 4434") for ADM 61 to be stayed on the grounds of *forum non conveniens* and consequently for the SG Security to be returned. The application was heard by an assistant registrar (the "AR"), whose grounds of decision may be found in *The Sea Justice* [2023] SGHCR 24. In determining the stay application, the AR applied the well-established two-stage test in *Spiliada Maritime Corporation v Cansulex* [1987] AC 460 (the "*Spiliada* test"). In the first stage of the *Spiliada* test, the court must determine, on a *prima facie* basis, whether there is some forum other than Singapore which is clearly or distinctly more appropriate for the trial of the action. If the court concludes that another forum is *prima facie* the appropriate forum, then the analysis moves to the second stage, under which a stay will ordinarily be granted unless there are circumstances by reason of which justice requires that a stay should nevertheless not be granted. In this second stage, the court considers, among other things, whether the claimant has some legitimate personal or juridical advantage in the Singapore proceedings that is of such importance that it would cause injustice to deprive the plaintiff of it: *Spiliada* at 482; *The "Reecon Wolf"* [2012] 2 SLR 289 ("*The Reecon Wolf*") at [18].

6 In his analysis under the first stage of the *Spiliada* test, the learned AR determined, among others, that the tort had taken place in Chinese territorial waters, that the applicable law was Chinese law, that vital witnesses and evidence would be available only in the PRC, and that proceedings were already underway in the Qingdao Maritime Court. As such, the AR concluded that the

Qingdao Maritime Court was *prima facie* the clearly or more distinctly appropriate forum.

7 Under the second stage of the test, the AR rejected the appellant's argument that it would lose a juridical advantage in the form of the SG Security if ADM 61 was stayed. The AR recognised, rightly in our view, that this was an attempt to undermine the respondent's choice of the PRC as its limitation forum, on the ground that the limits of liability under the PRC's limitation regime are lower than the Singapore limits.

8 The AR therefore stayed ADM 61 in favour of the proceedings in the Qingdao Maritime Court, and ordered the appellant to return the SG Security. The AR also rejected the appellant's alternative argument for a "conditional stay" or "case management stay" which would allow the SG Security to be retained.

The appeal in RA 246

9 The appellant chose *not* to appeal the AR's order for ADM 61 to be stayed on grounds of *forum non conveniens*. Instead, the appellant challenged only the AR's decision for the SG Security to be returned. The appellant repeated its submission that the court should grant a "conditional stay" or "case management stay" with the retention of the SG Security, so that it could return to lift the stay after obtaining judgment in the Chinese proceedings, and rely on the Qingdao Maritime Court's findings to establish liability in the Singapore proceedings by way of *res judicata*.

10 The Judge questioned whether the appellant could, as a matter of procedure, argue in RA 246 that the *forum non conveniens* stay order should have been made on condition that the SG Security be retained given that it was

not appealing against the stay order itself. Nevertheless, the Judge dealt with the application on the assumption that this was permissible, but nonetheless declined to make the conditional stay order sought. The Judge's four main reasons are broadly outlined in [62] of her judgment. On the appellant's alternative submission for the grant of a case management stay, the Judge rightly observed that such a stay involved the court staying proceedings for case management purposes. We agree that a case management stay is not the same as a *forum non conveniens* stay, and the appellant's argument below for the former was simply a non-starter. The Judge also rejected the appellant's last-minute argument that relied on the principle in *The Rena K* [1979] QB 377 ("*The Rena K*") as an alternative legal basis to persuade the Judge to order a retention of the SG Security. Briefly, the appellant's contention was that the stay of ADM 61 would be lifted in the likely event that the respondent is unable to satisfy in full a judgment of the Qingdao Maritime Court in the appellant's favour, and that the SG Security is then called upon to respond to a Singapore judgment *in rem.*

The Appeal

11 We turn to the present appeal. The appellant no longer contends for a case management stay but repeats its submission that the court should grant a conditional stay with the SG Security to be retained. The appellant appears to approach the appeal framing the following arguments in support:

(a) The court has an inherent power to impose conditions where a *forum non conveniens* stay is granted, including ordering the retention of security furnished, as established by *The Rena K*. In this regard, it is not usual to order an *in rem* claimant to give up security which it has obtained.

(b) The appellant is not constrained by the limitation decree which the respondent has obtained in the Qingdao Maritime Court. This decree is purely domestic and has no effect outside the PRC. The appellant can seek a retention of the SG Security in the Singapore proceedings and in doing so does not undermine the respondent's choice of forum for its limitation action; the respondent must take the consequences arising from its choice.

(c) Since the limitation decree obtained in the Qingdao Maritime Court is purely domestic, it would not be contrary to international comity to retain the SG Security, as the Judge had suggested.

(d) For the same reason, the appellant would not be "doubly secured" if the SG Security was retained.

Our Decision

12 With respect, we find the appellant's arguments to be akin to disparate waypoints on a chart without painting a definitive and identifiable punchline to prevail in this appeal. The appellant's submission for the *forum non conveniens* stay to be made conditional upon the retention of security is in effect a request to this court to review the application of the second stage of the *Spiliada* test. In our view, the sole basis upon which this determination turns is whether the loss of SG Security obtained in ADM 61 (*ie*, the return of the SG Security to the respondent) is tantamount to a loss of a legitimate juridical advantage of such importance that it would be unjust if the appellant was deprived of it. If the answer is in the affirmative, then there will be every reason to make the *forum non conveniens* stay conditional upon its retention.

13 We accept, as the AR did, that the loss of security obtained in ADM 61 is not a legitimate juridical advantage. The reason is simple – there is already a limitation fund available for the appellant's claims that mirror those in ADM 61 (*ie*, the SJ Limitation Fund constituted by the respondent), and the appellant has already lodged a claim against that fund. The limitation regime in PRC is derived from its domestic legislation and it is not material to our analysis that the PRC is not a signatory to the 1976 CLLMC in a *forum non conveniens* contestation. The appellant had not challenged the limitation regime that is applicable in the *lex fori*; neither did the appellant take issue with the constitution of the limitation fund in the PRC.

14 The appellant's attempt to retain the SG Security is, in our view, a thinly veiled attempt to circumvent the shipowner's choice of the PRC as the forum to limit its liability. This would contravene the *overriding* principle that the right to choose the forum for limitation belongs to the shipowner alone: *Evergreen International SA v Volkswagen Group Singapore Pte Ltd and others* [2004] 2 SLR(R) 457 ("*Evergreen*") at [47]. Having constituted a limitation fund in a forum of the owner of the *Sea Justice's* choice, the PRC, and the appellant having accepted the PRC as the more appropriate forum to determine the collision disputes, a retention of the SG Security would have the effect of undermining the purpose of the aforementioned overriding principle which is that a shipowner is only required to set up one limitation fund, out of which all claims, whether of the appellant's or others affected by the maritime casualty, are paid.

15 We add a further point. It is telling and significant that the total amount of security furnished to secure the release of the *Sea Justice* in ADM 61 is pegged to the maximum limit of liability which the appellant would be allowed to claim under Singapore's limitation framework – as the AR had found and

which the appellant does not deny. By seeking to retain the SG Security as pegged to the Singapore limits, the appellant is, in truth, arguing against the loss of access to a limitation regime with higher limits. It is trite law that the existence of different limitation regimes does not constitute a legitimate juridical advantage under the second stage of the *Spiliada* test. The court does not make comparisons between the laws of this country and that of another to do justice in this respect: *The Reecon Wolf* at [54]–[55]. We agree with the Judge's view expressed at [125] of the Judgment that the reality is that in permitting the appellant to retain the SG Security, the effect of that meant compelling the *Sea Justice* to constitute a limitation fund in Singapore thereby undermining the respondent's choice to pursue limitation in the PRC (see also [124] of the Judgment).

16 Therefore, the SG Security is not a legitimate juridical advantage, and we see no valid ground to make the stay order conditional upon its retention under the second stage of the *Spiliada* test. On this basis alone, we would affirm the Judge's conclusion that the effect and consequence of a stay of ADM 61 is an order for the return of the SG Security. As explained at [130] of the Judgment, justice did not warrant allowing the appellant to retain the SG Security following the *forum non conveniens* stay of ADM 61.

17 While this suffices to dispose of the appeal, we make the following observations in respect of the appellant's other contentions.

18 First, we agree with the Judge that *The Rena K* has no relevance to the present case. *The Rena K* was a case involving a mandatory stay of proceedings in favour of arbitration under s 1(1) of the Arbitration Act 1975 (UK). In that context, the court decided that security could be retained (or alternative security required) where it could be shown that any arbitral award made against the

defendant would be unlikely to be satisfied. It is clear that the juridical basis of the *Rena K* principle falls outside the context of a *forum non conveniens* stay. It should also be noted that even in the arbitration context, the principle has been rendered otiose in Singapore by s 7(1) of the International Arbitration Act 1994 (2020 Rev Ed), which gives the court an express statutory power to retain security for the satisfaction of any arbitral award. Therefore, *The Rena K* does not assist the appellant here.

19 Second, the appellant has contended repeatedly its intention to retain the SG Security with a view to lifting the *forum non conveniens* stay after obtaining a judgment from the Qingdao Maritime Court, and relying on the findings therein to establish liability in ADM 61. The appellant purports to undertake this course of action if the respondent is unable to satisfy in full any judgment obtained by the Qingdao Maritime Court. This argument assumes, without explanation, that such a course would be open to the appellant. We make three points in this regard:

(a) The proposed course of action is premised on the contention that the *Rena K* principle is first and foremost relevant to this case. As mentioned, we disagreed on its relevance to this case,

(b) The court's discretion to lift a *forum non conveniens* stay is only exercised where there are exceptional circumstances striking at the very basis on which the stay was granted: *Rotary Engineering Ltd and others v Kioumji & Eslim Law Firm and another and another appeal* [2017] 1 SLR 907 at [25]. As the Judge rightly observed, the *forum non conveniens* stay was not granted on any premise relating to whether the SJ Limitation Fund or the respondent would be able to satisfy any Chinese judgment; rather, it was granted on a multitude of factors

pointing to the conclusion that the Qingdao Maritime Court was clearly and more distinctly the appropriate forum for the trial of the action. The fact that any Chinese judgment might not be satisfied in full would not strike at the very basis on which the stay was granted, so as to justify a lifting of the stay in Singapore.

(c) The appellant appears to take conflicting positions on the extent to which it will be bound by any judgment of the Qingdao Maritime Court. On the one hand, the appellant argues that it will rely on and be bound by the Qingdao Maritime Court's findings on liability and quantum. In this scenario, limitation of liability as a defence would have been determined. On the other, the appellant clearly does not intend to abide by any findings on proportionate liability on account of the limitation fund. Such a position is unlikely to find favour with a court being asked to exercise its discretion to lift a *forum non conveniens* stay.

Conclusion

20 For the reasons above, the appeal is dismissed with costs fixed at $25,000 (all-in), The usual consequential orders will apply.

Tay Yong Kwang
Justice of the Court of Appeal

Belinda Ang Saw Ean
Justice of the Court of Appeal

Tan Thye Hoe Timothy, Goh Sze Kee and Liao Yanting (AsiaLegal LLC) for the appellant;
Loh Wai Yue, Seow Hwang Seng John, Ng Yuhui, Kunal Haresh Mirpuri and Zhang Zhen Rui Gerry (Incisive Law LLC) for the respondent.