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

[2024] SGHC 266

Originating Application No 642 of 2024 and Summons No 2328 of 2024

Between

STS Seatoshore Group Pte Ltd

… *Claimant*

And

Wansa Commodities Pte Ltd

… *Defendant*

JUDGMENT

[Arbitration — Restraint of proceedings — Foreign judicial]
[Arbitration — Agreement — Breach — Anti-suit injunction]
[Courts and Jurisdiction — Court judgments — Declaratory]

Version No 1: 22 Oct 2024 (12:41 hrs)

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STS Seatoshore Group Pte Ltd
v
Wansa Commodities Pte Ltd

[2024] SGHC 266

General Division of the High Court — Originating Application No 642 of 2024 and Summons No 2328 of 2024
Kristy Tan JC
3 October 2024

22 October 2024 Judgment reserved.

Kristy Tan JC:

Introduction

1 There are two applications before me: (a) HC/OA 642/2024 ("OA 642") and (b) HC/SUM 2328/2024 ("SUM 2328") in OA 642.

2 OA 642 is an application filed by STS Seatoshore Group Pte Ltd ("STS") on 3 July 2024 for:

> (a) a permanent anti-suit injunction restraining Wansa Commodities Pte Ltd ("Wansa") from pursuing legal proceedings in the Court of Appeal of Conakry (the "CCA"), Commercial Court of Conakry (the "CCC") and/or Court of First Instance of Boffa (the "BCFI") in the Republic of Guinea ("Guinea"), as well as any other proceedings in breach of the Arbitration Agreement (defined at [12] below) contained

in the Affreightment Contract (defined at [9] below) between the parties; and

(b) a declaration that Wansa's claims in legal proceedings in Guinea as well as any consequential proceedings (including appeals) were in respect of disputes between the parties that have arisen out of or in connection with the Affreightment Contract and in breach of the Arbitration Agreement.

3 On 3 July 2024, STS also filed HC/SUM 1844/2024 ("SUM 1844"), seeking the same relief as in OA 642 "pending the final resolution of [OA 642]". STS sought an urgent *ex parte* hearing of SUM 1844. On 9 July 2024, SUM 1844 was heard by a High Court Judge (the "Judge"), who made an order, HC/ORC 3396/2024 ("ORC 3396"), on the same day. By paras 1 and 2 of ORC 3396, the Judge granted STS an interim anti-suit injunction and declaratory relief in the terms sought, pending the final resolution of OA 642 (the "Interim Order").[1]

4 In its written submissions filed on 16 September 2024, STS added that, pursuant to the prayer in OA 642 for "[s]uch further or other relief as [the court] deems fit", it seeks a further order that Wansa be compelled to arbitrate and/or participate in the Arbitration (defined at [37] below) commenced by STS on 14 May 2024.[2]

5 SUM 2328 is an application filed by Wansa for:

(a) the setting aside of ORC 3396;

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1 2nd Affidavit of Wang Chuanyang filed on STS' behalf on 4 September 2024 ("Wang's 2nd Affidavit") at pp 30–31.

2 Claimant's (STS) Written Submissions dated 16 September 2024 ("CWS") at para 67.

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(b) an inquiry as to damages suffered by Wansa as a result of the interim anti-suit injunction ordered in ORC 3396, payable by STS; and

(c) the dismissal of OA 642.

6 Having considered the evidence and the parties' submissions, I dismiss OA 642; discharge the Interim Order; and decline to order an inquiry as to damages in Wansa's favour.

Facts

The parties

7 STS is a company incorporated in Singapore and is in the business of freight and marine logistics.[3]

8 Wansa is a company incorporated in Singapore and is in the business of commodities trading. In particular, Wansa trades in bauxite that is mined in Guinea. Part of its business involves selling bauxite mined in Guinea to buyers in the People's Republic of China.[4]

The Affreightment Contract

9 Pursuant to a Contract of Affreightment dated 1 March 2023 (the "COA") and a Side-Letter Agreement executed on or around 16 March 2023 amending and modifying certain terms in the COA (the "SLA") (together,

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[3] 1st Affidavit of Wang Chuanyang filed on STS' behalf on 3 July 2024 ("Wang's 1st Affidavit") at para 6.

[4] 1st Affidavit of Craig Coughlan filed on Wansa's behalf on 28 August 2024 ("Coughlan's Affidavit") at para 8.

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the "Affreightment Contract"),[5] Wansa engaged STS to provide, *inter alia*, barging / transportation services in respect of bauxite at the Alufer barge terminal in Guinea.[6]

The Arbitration Agreement

10 Clause 21 of the COA provides:[7]

> **21 Governing law and jurisdiction**
>
> This Agreement and any non-contractual obligations connected with it shall be governed by, and construed in accordance with, English law.
>
> Any dispute arising out of or in connection with this Agreement or any non-contractual obligations connected with it, then the Parties will resolve the disputes by means of an amicable settlement. [*sic*]
>
> In case both parties cannot reach an amicable settlement, the Parties agree to resolve disputes by arbitration in Singapore. The arbitration shall be conducted in English and in accordance with the [Singapore Chamber of Maritime Arbitration (the "SCMA")] terms currently in force.

11 Clause 6 of the SLA provides:[8]

> 6. Dispute Resolution: Any dispute arising out of the formation, performance, interpretation, nullification, termination or invalidation of this Side-Letter, or arising therefrom, or related thereto in any manner whatsoever, shall be submitted to arbitration pursuant to Article 21 of the [COA].

12 It is undisputed that cl 21 of the COA read with cl 6 of the SLA contains an agreement for the parties to submit, *inter alia*, disputes arising out of the

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5 Wang's 1st Affidavit at pp 25–50.

6 Wang's 1st Affidavit at para 8; Coughlan's Affidavit at para 10.

7 Wang's 1st Affidavit at p 41.

8 Wang's 1st Affidavit at p 48.

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Affreightment Contract to arbitration seated in Singapore (the "Arbitration Agreement").

The proceedings between the parties

13 Multiple court proceedings, commenced by Wansa and STS, have taken place and/or are underway in Guinea. These have been interspersed with STS' commencement of an arbitration against Wansa, and STS' filing of OA 642. I will first present the different sets of proceedings (assigning the various sets of Guinean court proceedings a set number, for easy reference) in the approximate order they were commenced, before arranging the events (across the different sets of proceedings) in chronological sequence in Table 1 at [66] below.

Guinea Set 1: Conakry proceedings commenced by Wansa to compel STS to perform the Affreightment Contract, leading to ORD 96 and JUD 178

14 On 4 April 2024, Wansa applied to the CCC for an injunction to compel STS to perform its obligations under the Affreightment Contract to load bauxite for transhipment at the minimum loading rate of 25,000 tonnes of bauxite per day (the "loading obligations"). Specifically, Wansa alleged that STS had failed to achieve the contractually stipulated minimum loading rate, and was using its (*ie*, STS') equipment in Guinea, which was dedicated to the execution of the Affreightment Contract, to engage in services for other companies. Wansa also sought a provisional penalty of US$1,615,500 per day of delay (being Wansa's calculation of its loss of revenue per day) until STS resumed loading bauxite according to the minimum loading rate.[9]

15 It is undisputed by Wansa in OA 642 that:

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9 Coughlan's Affidavit at pp 280–282.

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(a) the "contract entered into on 26 March 2023" mentioned in Wansa's 4 April 2024 application[10] referred to the Affreightment Contract, notwithstanding the discrepancy in dates;[11]

(b) the claims made in Wansa's 4 April 2024 application fell within the scope of the Arbitration Agreement;[12] and

(c) Wansa's 4 April 2024 application was filed in breach of the Arbitration Agreement.[13]

16 On 9 April 2024, the CCC made an order ("ORD 96") directing STS to perform its contractual obligations to Wansa under the Affreightment Contract.[14]

17 On 15 April 2024, STS filed its opposition to, and sought the revocation of, ORD 96 ("STS' 15 April 2024 Opposition"):[15]

(a) STS argued that Wansa had failed to first proceed by "amicable means" to settle the parties' dispute, as required in "one of the clauses" in the Affreightment Contract. STS thus requested the CCC to rule that the parties must resolve their dispute "in accordance with the contractual mechanisms".[16] As seen in [10] above, there are three parts to cl 21 of the COA: the first relates to the governing law; the second provides for

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10 Coughlan's Affidavit at p 280.

11 Notes of Arguments of the OA 642 hearing on 3 October 2024 ("NA") at p 12:9–18.

12 NA at pp 12:29–13:6.

13 NA at p 2:18–19.

14 Coughlan's Affidavit at p 79.

15 Coughlan's Affidavit at pp 81–85.

16 Wang's 1st Affidavit at pp 70 and 73; Coughlan's Affidavit at pp 83 and 84.

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the parties to resolve their disputes by "amicable settlement"; and the third states that it is only in the event that the parties cannot reach an amicable settlement that they shall resolve their disputes by arbitration. Notably, in STS' 15 April 2024 Opposition, STS did not name or reproduce cl 21 of the COA or make any mention of "arbitration".

(b) STS also argued that there was no urgency warranting Wansa's resort to an injunction. Wansa had been regularly informed of possible disruptions to loading operations, and remedial measures had been taken ahead of ORD 96 to minimise the impact on Wansa's business. Replacement equipment arrived between 6 and 9 April 2024, and loading operations resumed on 10 April 2024. STS continued to perform its obligations even though it had not been paid by Wansa for certain operations.[17]

18 On 25 April 2024, a hearing before the CCC took place at which both parties' Guinean counsel presented their arguments.[18]

19 On 30 April 2024, STS filed submissions[19] arguing, *inter alia*, that:

(a) The CCC did not have jurisdiction to hear the dispute because, pursuant to cl 21 of the COA, the parties had agreed to submit their disputes to arbitration.[20]

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17 Coughlan's Affidavit at pp 83–84; Wang's 1st Affidavit at pp 71–73.

18 Affidavit of Aboubacar Sidiki Kante filed on Wansa's behalf on 10 September 2024 ("Aboubacar's Affidavit") at para 9; NA at p 20:26.

19 Coughlan's Affidavit at pp 119–124.

20 Coughlan's Affidavit at p 122.

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(b) There was no exclusivity clause in the Affreightment Contract that prevented STS from offering its services to third parties.[21]

(c) The loading delays / low loading rates were due to operational inefficiencies attributable to Wansa, such as lack of cargo, port blockages, unsafe port conditions and tidal restrictions. In particular, STS complained that the inadequate depth of the port waters made it difficult for its barges to operate.[22]

20 On 9 May 2024, another hearing before the CCC took place at which both parties' Guinean counsel presented their arguments.[23] The CCC adjourned the matter for a ruling on 23 May 2024.[24]

21 On 23 May 2024, the CCC issued a judgment ("JUD 178").[25] Under JUD 178:

(a) The CCC found that STS' objection that the CCC lacked jurisdiction because of the Arbitration Agreement was raised after STS had presented arguments on the merits. The CCC thus declared this objection inadmissible due to tardiness under Guinean law.[26] In other words, the CCC decided that it had jurisdiction to determine the matter.

(b) The CCC found that STS was not performing its loading obligations, without valid reason. All the facts to which STS attributed

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21 Coughlan's Affidavit at p 123.

22 Coughlan's Affidavit at p 123.

23 Aboubacar's Affidavit at para 12; Coughlan's Affidavit at p 72.

24 Aboubacar's Affidavit at para 12; Coughlan's Affidavit at p 68.

25 Coughlan's Affidavit at pp 68–76.

26 Coughlan's Affidavit at pp 73–74 and 75.

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its partial non-execution (by loading less than the amount provided) were hardly insurmountable. The debates at the hearings demonstrated that STS' non-performance exposed Wansa to enormous direct costs and lost profits. The CCC thus ordered STS to fulfil its loading obligations, under penalty of a US$1,615,000 fine for each day of delay.[27]

(c) The CCC held that STS was obliged to pay damages to Wansa, which had suffered significant losses due to STS' failure to fulfil its loading obligations. Wansa had claimed compensation of US$145,842,141.89 but this amount appeared excessive, and the claim should be lowered to a reasonable amount. The CCC thus ordered STS to pay compensation of FG5bn (approximately US$577,000[28]) to Wansa.[29]

22 On or around 27 May 2024, STS filed an appeal to the CCA against JUD 178, which is pending.[30]

Guinea Set 2: Boffa proceedings commenced by Wansa to stop STS from working for other companies, leading to ORD 11, ORD 5, ORD 41 and JUD 279

23 According to Wansa, notwithstanding ORD 96 made on 9 April 2024, STS still did not comply with its loading obligations and used its equipment to

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27 Coughlan's Affidavit at pp 74 and 76.

28 NA at p 18:27.

29 Coughlan's Affidavit at pp 75–76.

30 Aboubacar's Affidavit at para 17; Wang's 1st Affidavit at para 34.

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carry out work, within the jurisdiction of Boffa, for other companies.[31] The Affreightment Contract is to be performed in the Boffa region of Guinea.[32]

24 On 18 April 2024, Wansa thus applied to the BCFI for an order that STS cease all work in the territorial waters of Boffa on behalf of any company other than Wansa and its affiliate. On the same day, the BCFI made an order in these terms ("ORD 11").[33]

25 On 24 April 2024, STS filed a summons seeking a retraction of ORD 11. STS cited the following reasons in support of its application:[34]

(a) The BCFI lacked jurisdiction given the Arbitration Agreement.

(b) The loading delays / low loading rates were due to operational inefficiencies attributable to Wansa, such as lack of cargo, port blockages, unsafe port conditions and tidal restrictions, and not to STS' breach of contract.

(c) The slowdown in activity caused financial loss for STS due to the non-use of its equipment. STS was not engaged in any activity that harmed Wansa. There was no exclusivity clause in the Affreightment Contract preventing STS from offering services to third parties.

(d) STS disputed the contract duration and freight rate cited by Wansa and suspected that the Affreightment Contract could be used for deceptive purposes.

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31 Coughlan's Affidavit at p 134.

32 Coughlan's Affidavit at para 16.

33 Coughlan's Affidavit at p 88.

34 Coughlan's Affidavit at pp 126–130.

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(e) The Affreightment Contract did not require the use of specific equipment. STS sought appropriate equipment for the inadequate conditions at the port. A complete set was operational by 9 April 2024, but Wansa's affiliate was not ready to start loading.

(f) The ban under ORD 11 had financial consequences, affected the processing of requests from other service providers, and risked degenerating into a social dispute between STS and its employees or between STS and its partners.

26 On 30 April 2024, Wansa filed a summons to request the BCFI to, *inter alia*, note STS' continued violation of ORD 11 to stop work for other companies; order the handover of work equipment used in violation of ORD 11; and order STS to pay a penalty of US$1,615,500 per day.[35]

27 STS' 24 April 2024 application and Wansa's 30 April 2024 application were heard together.[36]

28 On 9 May 2024, the BCFI rendered its decision ("ORD 5") on the applications:[37]

(a) The BCFI noted that Wansa's Guinean counsel had argued that: (i) the stop work measure was provisional in nature, and, under Guinean law, the existence of an arbitration agreement did not preclude the Guinean courts from granting provisional or protective measures; (ii) no arbitral tribunal had been constituted and maintaining the provisional

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35 Coughlan's Affidavit at pp 132–136.

36 Coughlan's Affidavit at p 139.

37 Coughlan's Affidavit at pp 138–151.

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stop work order would not prejudice the merits of the dispute; and (iii) STS had asserted its defence on the merits of the parties' dispute in STS' 15 April 2024 Opposition filed with the CCC (see [17] above) and had thus failed to raise its jurisdictional objection based on the Arbitration Agreement *in limine litis*, as required under Guinean law.[38] The BCFI held that it had jurisdiction to make ORD 11 as this was a provisional decision that did not affect the substance of the dispute over which only the arbitral tribunal had jurisdiction.[39]

(b) The BCFI found that the documents in the file and the debates highlighted repeated and deliberate violations by STS of its contractual obligations, resulting in significant economic damage, estimated at US$1,615,500 per day. The BCFI thus rejected STS' request for the withdrawal of ORD 11; maintained ORD 11; and imposed a fine of US$1,615,500 per day on STS.[40]

29 On 9 May 2024, STS appealed to the CCA against ORD 5.[41]

30 On 13 May 2024, STS applied to the CCA for a stay of execution of ORD 5 (and consequently, ORD 11).[42]

31 It appears that, on 21 May 2024, a precautionary seizure of certain property of STS was carried out by Wansa in execution of ORD 5.[43]

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38 Coughlan's Affidavit at pp 145–146.

39 Coughlan's Affidavit at pp 148–149 and 151.

40 Coughlan's Affidavit at pp 150–151.

41 Coughlan's Affidavit at pp 156, 162, 166 and 175.

42 Coughlan's Affidavit at pp 153–162.

43 Coughlan's Affidavit at para 16 on p 17 and p 186.

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32 On 12 June 2024, the CCA made an order ("ORD 41") rejecting STS' 13 May 2024 application to stay the execution of ORD 5.[44] The CCA held that the measures ordered by the BCFI were provisional and not prohibited by law. STS also did not justify that the orders risked excessive consequences for it.[45]

33 On 20 June 2024, the CCA issued a judgment ("JUD 279") on STS' 9 May 2024 appeal against ORD 5, upholding ORD 5 (and consequently, ORD 11).[46] The CCA held that the measures prescribed under ORD 5 were provisional in the sense that STS' performance of its contractual obligations "may end there". The measures were within the jurisdiction of the BCFI and in accordance with the relevant provisions of Guinean law.[47]

34 On 25 June 2024, STS appealed to the Supreme Court of Guinea (the "GSC") against JUD 279; the appeal is pending.[48] STS also applied to the GSC for a stay of execution of JUD 279 pending appeal.[49]

35 On 25 June 2024, STS also applied to the CCC to lift the precautionary seizure on 21 May 2024 of STS' equipment.[50]

36 In August 2024, bailiffs and an auctioneer in Conakry took steps towards selling seized property of STS in execution of JUD 279.[51]

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44 Coughlan's Affidavit at pp 164–171.

45 Coughlan's Affidavit at pp 170–171.

46 Coughlan's Affidavit at pp 173–183.

47 Coughlan's Affidavit at pp 180–181.

48 Coughlan's Affidavit at pp 292–297.

49 Coughlan's Affidavit at pp 288–291.

50 Coughlan's Affidavit at pp 185–192.

51 Wang's 2nd Affidavit at pp 202–209; Defendant's (Wansa) Written Submissions dated 16 September 2024 ("DWS") at p 39.

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Arbitration proceedings commenced by STS claiming breaches by Wansa of the Affreightment Contract

37 On 14 May 2024, STS' Singapore solicitors from Robert Wang & Woo LLP ("RW&W") served a Notice of Arbitration ("NOA") on Wansa,[52] copied to the SCMA, thereby commencing an arbitration against Wansa (the "Arbitration") pursuant to Rule 6.1 of the SCMA Arbitration Rules (4th Edition, 1 January 2022).[53]

38 In the NOA, STS claimed that Wansa had committed the following breaches of the Affreightment Contract:

(a) Wansa failed to deliver bauxite at nominated berthing facilities which were available for safe operation and cargo intake of the barges in accordance with cl 8.1.2 of the COA (see para 9 of the NOA).

(b) Wansa failed to make or cause to make its berthing facilities at its nominated port available to STS for loading within the laycan stated within safe conditions (port, navigation channel and anchorage) in accordance with cl 8.1.3 of the COA (see para 10 of the NOA).

(c) Wansa failed to fulfil its undertaking to load bauxite at a rate of not less than 2,200 PMT per hour and not less than 30,000 PMT per day at the designated barge jetty in accordance with cl 9.3 of the COA. The actual loading rate at the designated barge jetty could not reach these rates (see para 11 of the NOA).

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52 Wang's 1st Affidavit at pp 128–189.

53 Wang's 2nd Affidavit at p 45.

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(d) Wansa breached the Arbitration Agreement by applying to and obtaining from the CCA / CCC an injunction (referred to by STS as the "Conakry Injunction") (see para 14 of the NOA).

(e) Wansa breached the Arbitration Agreement by applying to and obtaining from the CCA / BCFI an injunction for STS to stop work in the territorial waters of Boffa for any company other than Wansa and its affiliate (referred to by STS as the "Boffa Injunction") (see para 15 of the NOA).

39 STS sought damages to be assessed in respect of each of the above breaches of contract alleged by STS (see paras 16 and 23 of the NOA).

40 On 27 May 2024, Wansa's solicitors from Maalouf Ashford & Talbot, LLP ("MA&T") wrote to the SCMA, enclosing an extract of JUD 178 in French. MA&T stated that Wansa objected to the jurisdiction of the SCMA as "a case between the exact same parties, involving the exact same subject matter, arising out of the exact same set of facts and circumstances" was pending before a Guinean court. MA&T asserted that STS had submitted to the jurisdiction of the Guinean court and had actively participated in that case. MA&T stated that Wansa would not be participating in the Arbitration.[54]

41 On 29 May 2024, RW&W wrote to MA&T. RW&W stated that STS "vehemently dispute[d] the position taken by [Wansa]" in MA&T's letter of 27 May 2024 to the SCMA, for which "[t]here [was] no basis". RW&W stated that Wansa had breached the Arbitration Agreement by commencing court

[54] Wang's 1st Affidavit at pp 191–194.

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proceedings in Guinea, and that STS would proceed with the Arbitration without further reference to Wansa.[55]

42 On 4 June 2024, MA&T wrote to RW&W, enclosing an English translation of JUD 178. MA&T asserted that a Guinean court had determined that STS had unequivocally waived its right to arbitrate the parties' dispute, as set out in JUD 178. MA&T also stated that STS had not only actively participated in litigation against Wansa in Guinea, "but even went so far as to file a complaint against Wansa in [Guinea]", thereby further waiving any right to arbitrate the parties' dispute.[56]

43 On 19 June 2024, RW&W replied to MA&T's 4 June 2024 letter. RW&W stated that Wansa's position regarding the Arbitration and litigation proceedings in Guinea was "misconceived", and that STS would pursue all available remedies for Wansa's breach of the Arbitration Agreement.[57]

44 It is not disputed that the Arbitration is an international arbitration to which the International Arbitration Act 1994 (2020 Rev Ed) (the "IAA") and the UNCITRAL Model Law on International Commercial Arbitration 1985 (the "Model Law") apply.[58]

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55 Wang's 1st Affidavit at p 195.

56 Wang's 1st Affidavit at pp 196–207.

57 Wang's 1st Affidavit at p 208.

58 NA at p 12:20–27.

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Guinea Set 3: Boffa proceedings commenced by Wansa to enjoin STS from moving equipment out of Guinea for six months, leading to ORD 12 and ORD 9

45 On 17 May 2024, Wansa applied to the BCFI for an order prohibiting STS from moving its equipment out of Guinea for a period of six months. In support of its application, Wansa cited, *inter alia*, STS' violations of ORD 96 and ORD 11, and alleged that STS was in the process of demobilising its equipment in a fraudulent attempt to evade the authority of the Guinean court.[59] On the same day, the BCFI made an order in the terms sought ("ORD 12").[60]

46 On 14 June 2024, STS filed a summons seeking a retraction of ORD 12. STS asserted the BCFI's lack of jurisdiction given the Arbitration Agreement; the manifestly excessive consequences of ORD 12; the non-existence of any exclusivity clause in the Affreightment Contract; and that the low loading rate was due to operational inefficiencies, lack of supply of goods, port blockages, dangerous port conditions and tidal restrictions attributable to Wansa.[61]

47 On 27 June 2024, the BCFI made an order ("ORD 9") rejecting STS' 14 June 2024 application and upholding ORD 12. The BCFI held that it had jurisdiction as ORD 12 was a provisional decision which did not affect the substance of the dispute falling within the jurisdiction of the arbitral tribunal.[62]

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59 Wang's 1st Affidavit at pp 119–125.

60 Wang's 1st Affidavit at p 126.

61 Coughlan's Affidavit at pp 212–217.

62 Coughlan's Affidavit at pp 219–225.

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Guinea Set 4: Boffa proceedings commenced by STS to compel Wansa to perform the Affreightment Contract, leading to ORD 8

48 On 28 May 2024, STS filed a summons in the BCFI for an order to compel Wansa to comply with its obligations to supply the required quantity of bauxite at a port meeting the required standards under the Affreightment Contract, under penalty of US$2,731,000 per day of delay (the "28 May 2024 Application").[63]

49 On 7 June 2024, the BCFI declared the 28 May 2024 Application void due to a procedural irregularity in that the summons had wrongly indicated that Wansa was to appear before the CCC instead of the BCFI.[64]

50 On 10 June 2024, STS filed a fresh summons in the BCFI (the "10 June 2024 Application"), in terms similar to the 28 May 2024 Application:[65]

(a) STS stated that its summons was for "interim relief".[66]

(b) STS argued, *inter alia*, that Wansa had breached its obligations in the Affreightment Contract to provide a sufficient quantity of bauxite under port operating conditions that met the required standards. The delay in loading and low loading rates were due to operational inefficiencies attributable to Wansa, including the refusal to supply goods, port blockages, unsafe port conditions and tidal restrictions. STS

63 Coughlan's Affidavit at pp 93–102.

64 Coughlan's Affidavit at pp 227–233.

65 Coughlan's Affidavit at pp 105–109.

66 Coughlan's Affidavit at p 106.

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had been deceived about the depth of the port waters and its barges could not take on enormous cargoes.[67]

(c) STS sought an order compelling Wansa to provide bauxite to the port in compliance with all the required standards under the Affreightment Contract, under penalty of US$3,230,000 per day of delay in executing its contractual obligations.[68]

(d) There was no mention in the 10 June 2024 Application (or in the 28 May 2024 Application) of the Arbitration Agreement, the NOA or the Arbitration.

51 On 25 June 2024, the BCFI made an order ("ORD 8") dismissing the 10 June 2024 Application:[69]

(a) The BCFI referred to the 10 June 2024 Application and recapitulated STS' arguments;[70] then recapitulated Wansa's arguments.

(b) The BCFI noted that STS was seeking an "interim order" in summary proceedings. Under Guinean law, the judge hearing the summary proceedings could only order measures where no serious dispute was involved and in cases of emergency.

(c) The BCFI found that STS had provided no proof of non-performance by Wansa of its contractual obligations. To the contrary, a bailiff's report and images taken established the existence of a

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67 Coughlan's Affidavit at p 106–107.

68 Coughlan's Affidavit at p 108.

69 Coughlan's Affidavit at pp 235–242.

70 Coughlan's Affidavit at pp 235–237.

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significant quantity of bauxite available at the Alufer port, allowing STS to execute its contractual obligations. It did not seem urgent or necessary to consider measures to force Wansa to do what it was already voluntarily doing in accordance with its contractual obligations.

(d) The BCFI also held that STS had already argued, in proceedings before the CCC, the unavailability of a sufficient quantity of bauxite at the port. This argument had been rejected by the CCC in JUD 178, against which STS had appealed. The trial judge in the CCC remained seised of the case, given STS' appeal against JUD 178. The measures presently sought by STS were thus seriously questionable and inappropriate. The BCFI declared "for the benefit of the trial judge [in the CCC]" that it had no jurisdiction.

52 It is undisputed that STS filed an appeal against ORD 8, which is pending.[71]

53 In OA 642, STS avers that the 28 May 2024 Application and the 10 June 2024 Application had been filed by its Guinean counsel without its instructions.[72] STS claims that it learned of these applications "for the first time" after reading about them in affidavits filed by Wansa on 14 August 2024[73] in OA 642.[74] Rather inconsistently, however, at the hearing of OA 642, STS' counsel, Mr Alwyn Kok ("Mr Kok"), stated on instructions from his client that

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71 NA at pp 19:14–20:2.

72 Wang's 2nd Affidavit at para 35(a).

73 1st Affidavit of Ker Yanguang (Wansa's Singapore solicitor) filed on Wansa's behalf on 14 August 2024, exhibiting a draft of Coughlan's Affidavit; 2nd Affidavit of Ker Yanguang filed on Wansa's behalf on 14 August 2024, exhibiting a draft of Aboubacar's Affidavit.

74 Wang's 2nd Affidavit at para 35(a).

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(a) STS had filed its appeal against ORD 8 almost immediately, within one to two working days, after ORD 8 dated 25 June 2024 was made and (b) the filing of the appeal against ORD 8 *was done on STS' instructions*.[75] Mr Kok could not factually explain how STS knew enough about ORD 8 by around 25 June 2024 to appeal it without at the same time having knowledge of the underlying 10 June 2024 Application which ORD 8 had expressly referred to (see [51(a)] above) and decided.[76]

Guinea Set 5: Boffa proceedings commenced by Wansa for the immobilisation of STS' equipment in Guinea, leading to ORD 444

54 On 25 June 2024, pursuant to an application by Wansa, the BCFI made an order ("ORD 18") for the immobilisation STS' equipment in the shallower waters of Guinea.[77] It appears that Wansa had made this application to preserve STS' assets for the execution of court decisions obtained against STS.[78]

55 On 9 July 2024, STS filed a summons with the BCFI seeking a retraction of ORD 18.[79] On 22 July 2024, the BCFI made an order ("ORD 11") rejecting STS' 9 July 2024 application and upholding ORD 18.[80]

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75 NA at p 19:14–30.

76 NA at pp 20:4–6 and 20:16–20.

77 Coughlan's Affidavit at p 111.

78 Coughlan's Affidavit at p 261.

79 Coughlan's Affidavit at pp 244–248.

80 Coughlan's Affidavit at pp 250–263.

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56 On 13 August 2024, STS filed a summons with the CCA for a retraction of ORD 18.[81] On 20 August 2024, the CCA made an order ("ORD 444") reversing ORD 11 and ORD 18.[82]

OA 642 and SUM 1844 proceedings commenced by STS, leading to the Interim Order

57 On 3 July 2024, RW&W, on behalf of STS, filed OA 642 and SUM 1844 (see [2] and [3] above).

58 On 5 July 2024, STS made a request for an urgent *ex parte* hearing of SUM 1844, proposing hearing dates in the week of 8 July 2024. STS did not notify Wansa of the hearing sought (or of the hearing date when that was obtained). STS' reason for not notifying Wansa was that Wansa might "escalate the legal proceedings in Guinea in a tit-for-tat".[83]

59 On 9 July 2024, the Judge heard SUM 1844 and made ORC 3396 / the Interim Order.[84]

Guinea Set 6: Conakry proceedings commenced by STS claiming payment owed by Wansa under the Affreightment Contract

60 On 3 July 2024, *ie*, the same day that STS filed OA 642 and SUM 1844, STS also filed a summons with the CCC seeking, *inter alia*, an order for Wansa to pay sums allegedly due under the Affreightment Contract (the "3 July 2024 Application").[85]

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81 DWS at p 40; NA at p 20:22.

82 Wang's 2nd Affidavit at p 184.

83 Wang's 2nd Affidavit at pp 263–265.

84 Wang's 2nd Affidavit at pp 30–31.

85 Coughlan's Affidavit at pp 113–117.

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61 On 11 July 2024, *ie*, after the Interim Order was made in SUM 1844, STS' Guinean counsel wrote to Wansa's Guinean counsel to withdraw the 3 July 2024 Application. STS' Guinean counsel added that the withdrawal took into account the Guinean courts' lack of jurisdiction given the Arbitration Agreement.[86]

62 In OA 642, STS avers that it did not instruct the Guinean counsel acting for it at the material time to file the 3 July 2024 Application. STS claims that after it learned of the 3 July 2024 Application, it took immediate action to instruct its then-Guinean counsel to withdraw the same. Subsequently, STS discharged its Guinean counsel who had filed the 3 July 2024 Application without instructions.[87] There is no explanation in STS' affidavits filed in OA 642 of how and when STS learned of the 3 July 2024 Application.[88]

Guinea Set 7: Boffa proceedings commenced by Wansa for temporary authorisation to use STS' equipment, leading to ORD 19

63 On 8 July 2024, pursuant to an application by Wansa, the BCFI made an order ("ORD 19") temporarily authorising Wansa to use certain equipment of STS for loading and transporting 25,000 tonnes of bauxite per day.[89]

64 On 26 August 2024, STS filed an application to set aside ORD 19.[90]

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86 Coughlan's Affidavit at pp 265–266.

87 Wang's 2nd Affidavit at para 35(c).

88 NA at pp 7:4–6 and 7:24–25, *cf*, NA at p 20:9–13.

89 Wang's 2nd Affidavit at p 186.

90 DWS at p 40; NA at p 20:22.

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Application by STS to the CCA for a transfer of the litigation venue

65 It is undisputed that, on 28 August 2024, STS filed a request to the CCA for the BCFI to consent to a transfer of the venue of the litigation. It is unclear which set of Guinean court proceedings this request pertains to. The request is pending before the CCA.[91]

Chronological snapshot of the proceedings between the parties

66 To give a longitudinal perspective of the events occurring in the various proceedings between the parties (as set out in [14]–[65] above), I set out a chronological summary of the events in the following Table 1.

Table 1

S/N	Date (2024)	Event	Proceedings reference
1	4 April	Wansa applied to the CCC to compel STS to perform its obligations under the Affreightment Contract	Guinea Set 1: see [14] above
2	9 April	The CCC made ORD 96 directing STS to perform its obligations under the Affreightment Contract	Guinea Set 1: see [16] above
3	15 April	STS applied to the CCC for a revocation of ORD 96	Guinea Set 1: see [17] above
4	18 April	Wansa applied to the BCFI for an order that STS stop work in Boffa for other companies	Guinea Set 2: see [24] above

[91] DWS at p 40; NA at p 20:22.

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S/N	Date (2024)	Event	Proceedings reference
5	18 April	The BCFI made ORD 11 ordering STS to stop work in Boffa for other companies	Guinea Set 2: see [24] above
6	24 April	STS applied to the BCFI for a retraction of ORD 11	Guinea Set 2: see [25] above
7	25 April	A hearing before the CCC took place on STS' application for a revocation of ORD 96	Guinea Set 1: see [18] above
8	30 April	Wansa applied to the BCFI for orders for STS to hand over equipment used in violation of ORD 11 and to pay a penalty	Guinea Set 2: see [26] above
9	30 April	STS filed submissions in support of its application to the CCC for a revocation of ORD 96	Guinea Set 1: see [19] above
10	9 May	A hearing before the CCC took place on STS' application for a revocation of ORD 96	Guinea Set 1: see [20] above
11	9 May	The BCFI made ORD 5 rejecting STS' request for a withdrawal of ORD 11; maintaining ORD 11; and imposing a fine on STS	Guinea Set 2: see [28] above
12	9 May	STS appealed to the CCA against ORD 5	Guinea Set 2: see [29] above
13	13 May	STS applied to the CCA for a stay of execution of ORD 5	Guinea Set 2: see [30] above

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S/N	Date (2024)	Event	Proceedings reference
14	14 May	STS commenced the Arbitration	Singapore: see [37] above
15	17 May	Wansa applied to the BCFI for an order prohibiting STS from moving its equipment out of Guinea for six months	Guinea Set 3: see [45] above
16	17 May	The BCFI made ORD 12 prohibiting STS from moving its equipment out of Guinea for six months	Guinea Set 3: see [45] above
17	21 May	A precautionary seizure of STS' property was carried out by Wansa in execution of ORD 5	Guinea Set 2: see [31] above
18	23 May	The CCC issued JUD 178 rejecting STS' jurisdictional objection based on the Arbitration Agreement; holding that STS had not performed its loading obligations under the Affreightment Contract without valid reason; ordering STS to perform its loading obligations; and ordering STS to pay damages to Wansa	Guinea Set 1: see [21] above
19	~ 27 May	STS appealed to the CCA against JUD 178; the appeal is pending	Guinea Set 1: see [22] above
20	27 May	MA&T (for Wansa) informed SCMA that Wansa objected to the SCMA's jurisdiction and would not participate in the Arbitration	See [40] above

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S/N	Date (2024)	Event	Proceedings reference
21	28 May	STS made* the 28 May 2024 Application, *viz*, applied to the BCFI for an order to compel Wansa to supply bauxite in the quantity and under port conditions required in the Affreightment Contract * In OA 642, STS claims that the 28 May 2024 Application was made without its instructions and that STS only learned of it from Wansa's affidavits filed on 14 August 2024	Guinea Set 4: see [48] and [53] above
22	29 May	RW&W (for STS) informed MA&T that STS would proceed with the Arbitration	See [41] above
23	4 June	MA&T asserted to RW&W, with reference to JUD 178 and STS "even [going] so far as to file a complaint against Wansa in [Guinea]", that STS had waived its right to arbitrate	See [42] above
24	7 June	The BCFI declared the 28 May 2024 Application void due to a procedural irregularity	Guinea Set 4: see [49] above
25	10 June	STS made* the 10 June 2024 Application, *viz*, applied to the BCFI for an order to compel Wansa to supply bauxite in the quantity and under port conditions required in the Affreightment Contract	Guinea Set 4: see [50] and [53] above

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S/N	Date (2024)	Event	Proceedings reference
		* In OA 642, STS claims that the 10 June 2024 Application was made without its instructions and that STS only learned of it from Wansa's affidavits filed on 14 August 2024	
26	12 June	The CCA made ORD 41 rejecting STS' application for a stay of execution of ORD 5	Guinea Set 2: see [32] above
27	14 June	STS applied to the BCFI for a retraction of ORD 12	Guinea Set 3: see [46] above
28	19 June	RW&W replied to MA&T's 4 June 2024 letter, stating that Wansa's position was misconceived	See [43] above
29	20 June	The CCA issued JUD 279 upholding ORD 5 (and consequently, ORD 11)	Guinea Set 2: see [33] above
30	25 June	STS appealed to the GSC against JUD 279; the appeal is pending	Guinea Set 2: see [34] above
31	25 June	STS applied to the GSC for a stay of execution of JUD 279 pending appeal	Guinea Set 2: see [34] above
32	25 June	STS applied to the CCC to lift the precautionary seizure of STS' equipment	Guinea Set 2: see [35] above
33	25 June	The BCFI made ORD 18 for the immobilisation of STS' equipment in the shallower waters of Guinea	Guinea Set 5: see [54] above

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S/N	Date (2024)	Event	Proceedings reference
34	25 June	The BCFI made ORD 8 dismissing the 10 June 2024 Application	Guinea Set 4: see [51] above
35	~ 26–27 June	STS appealed against ORD 8; the appeal is pending	Guinea Set 4: see [52]–[53] above
36	27 June	The BCFI made ORD 9 upholding ORD 12	Guinea Set 3: see [47] above
37	3 July	STS filed OA 642 and SUM 1844 in Singapore seeking anti-suit relief	Singapore: see [57] above
38	3 July	STS made* the 3 July 2024 Application, *viz*, applied to the CCC to enforce Wansa's payment obligations under the Affreightment Contract * In OA 642, STS claims that the 3 July 2024 Application was made without its instructions	Guinea Set 6: see [60] and [62] above
39	5 July	STS requested an urgent *ex parte* hearing of SUM 1844	Singapore: see [58] above
40	8 July	The BCFI made ORD 19 temporarily authorising Wansa to use certain equipment of STS for loading and transporting 25,000 tonnes of bauxite per day	Guinea Set 7: see [63] above
41	9 July	SUM 1844 was heard and ORC 3396 / the Interim Order was made	Singapore: see [59] above

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S/N	Date (2024)	Event	Proceedings reference
42	9 July	STS applied to the BCFI for a retraction of ORD 18	Guinea Set 5: see [55] above
43	11 July	STS withdrew the 3 July 2024 Application	Guinea Set 6: see [61] above
44	22 July	The BCFI made ORD 11 upholding ORD 18	Guinea Set 5: see [55] above
45	August	Bailiffs and an auctioneer in Conakry took steps towards selling seized property of STS in execution of JUD 279	Guinea Set 2: see [36] above
46	13 August	STS applied to the CCA for a retraction of ORD 18	Guinea Set 5: see [56] above
47	20 August	The CCA made ORD 444 reversing ORD 11 and ORD 18	Guinea Set 5: see [56] above
48	26 August	STS applied to the BCFI to set aside ORD 19	Guinea Set 7: see [64] above
49	28 August	STS applied to the CCA for the BCFI to consent to a transfer of the venue of the litigation; the request is pending	Guinea: see [65] above

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The parties' cases

STS' case

67 STS submits that a permanent anti-suit injunction should be granted for three main reasons. First, Wansa brought the legal proceedings in the CCA, CCC and BCFI in breach of the Arbitration Agreement.[92] Second, there are "no strong reasons against" granting the anti-suit injunction.[93] The factors relevant to the grant of an anti-suit injunction are satisfied in that Wansa is amenable to the jurisdiction of the Singapore court; Singapore is the natural forum for the resolution of the parties' dispute; and an anti-suit injunction would not deprive Wansa of legitimate juridical advantages sought in the Guinean court proceedings.[94] Comity considerations are "irrelevant"[95] as there was no delay in STS' commencement of OA 642: (a) STS had "no choice" but to contest Wansa's applications to the Guinean courts; (b) STS argued in the Guinean court proceedings that the parties were bound by the Arbitration Agreement and that the Guinean courts had no jurisdiction; (c) STS "acted expeditiously" to commence the Arbitration on 14 May 2024; (d) STS has pending appeals in the Guinean court proceedings, which are accordingly "not well-advanced"; and (e) it was only "[a]fter 19 June 2024", when Wansa continued to be in breach of the Arbitration Agreement following the exchange of letters between the parties' counsel from 29 May 2024 to 19 June 2024, that "it became sufficiently clear that [an] application for anti-suit relief was justified", and "STS filed OA 642 once practicable".[96] Even if comity considerations are relevant, the

92 CWS at paras 17–24.

93 CWS at para 25.

94 CWS at paras 26–29.

95 CWS at para 33.

96 CWS at paras 30–32 and 40.

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Guinean court proceedings are not well-advanced because (so STS asserts) the Guinean courts did not consider evidence tendered by the parties or make factual findings; only made "interlocutory or provisional orders"; and did not examine the substantive merits of the dispute.[97] Moreover, Wansa is not prejudiced by any delay in the commencement of OA 642.[98] Third, the Guinean court proceedings are vexatious and/or oppressive if allowed to continue:[99] they were commenced by Wansa unlawfully in breach of the Arbitration Agreement; STS is subject to "wrongful and onerous financial penalties" as a result; and Wansa acted with "collateral purpose" in obtaining and using Guinean court orders to "impede" STS' business and operations in Guinea and to "exert unlawful pressure" on STS.[100]

68 STS submits that the declaration sought should be granted as "it may be used as a persuasive tool in pending legal proceedings in Guinea".[101] In any event, Wansa does not dispute that it breached the Arbitration Agreement by commencing proceedings in the CCC on 4 April 2024.[102]

69 STS submits that Wansa should be "compelled to arbitrate and/or participate in the [Arbitration]" because "STS is extremely concerned that Wansa would continue to boycott the [Arbitration] even if STS succeeds in OA 642".[103] From the context of STS' submissions, the nub of the relief sought

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97 CWS at paras 34–38 and 43.

98 CWS at paras 41–42.

99 CWS at para 44.

100 CWS at paras 44–57.

101 CWS at para 65.

102 CWS at para 66.

103 CWS at para 67.

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is an order compelling Wansa to participate in the Arbitration. There is no suggestion that STS seeks to compel Wansa to *commence* its own arbitration.

70 STS submits that the Interim Order should not be set aside for material non-disclosure in SUM 1844: STS had disclosed that it was still engaged in litigation with Wansa and had filed appeals in the Guinean courts as of 3 July 2024; STS had not instructed the filing of the 28 May 2024 Application, 10 June 2024 Application or 3 July 2024 Application; and Wansa has not shown how any alleged non-disclosure would have "materially changed the [c]ourt's decision" to grant the Interim Order.[104]

71 STS submits that an inquiry as to damages should not be ordered because: (a) the Interim Order is not an interlocutory injunction "in the same vein" as an injunction prohibiting the disposal of assets and/or a search order that would "impact Wansa's property rights"; (b) the Judge did not seek any undertaking as to damages from STS and there was no requirement for STS to provide such an undertaking; (c) it does not behove Wansa to seek damages when Wansa had breached the Arbitration Agreement in the first place; and (d) the Judge was aware that STS did not give Wansa notice of the hearing of SUM 1844 and still granted the Interim Order.[105]

Wansa's case

72 Wansa opposes the grant of anti-suit relief on the grounds that, first, STS refuses to give an undertaking as to damages.[106] Second, as of 9 July 2024, no right to refer disputes to arbitration remain: (a) STS has submitted to the

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104 CWS at paras 72–81.

105 CWS at paras 86–90.

106 DWS at paras 47–49.

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jurisdiction of the Guinean courts; (b) the Arbitration Agreement was "repudiated" and "c[a]me to an end" in the light of the position taken by STS in STS' 15 April 2024 Opposition and/or the 28 May 2024 Application, 10 June 2024 Application and 3 July 2024 Application; and (c) by that same conduct, STS has waived its right to arbitrate.[107] Third, there was significant delay in STS' application for an anti-suit injunction. OA 642 was filed only after the issuance of ORD 8 on 25 June 2024 (which dismissed the 10 June 2024 Application), indicating that STS sought to obtain procedural advantages through the Singapore court after losing in the Guinean courts. This delay has led to "no less than 14 judgments and orders issued by the Guinean [c]ourts over at least 6 main cases and at least 30 hearings". Significant Guinean judicial resources have been expended; findings on the merits have been made; and the Guinean court proceedings have advanced to the appeal stages in some cases. Maintaining an anti-suit injunction would interfere with the pending appeals.[108]

73 Wansa submits that the Interim Order should be set aside as STS failed to disclose the following material facts to the Judge: (a) the extensiveness of the Guinean court proceedings with at least six main cases filed by the parties collectively; (b) that STS had not raised the Arbitration Agreement and instead descended into the merits in STS' 15 April 2024 Opposition; (c) the findings and orders made in JUD 178, which was "a final judgment on the merits";[109] and (d) the 28 May 2024 Application, 10 June 2024 Application and 3 July 2024 Application. It was "unbelievable" that STS had not instructed the filing of these applications, which contained identical or overlapping claims with STS' claims in the NOA. The Judge was not given a full picture of the impact of the interim

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107 DWS at paras 50–61.

108 DWS at paras 69–74.

109 Aboubacar's Affidavit at para 15.

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anti-suit injunction which, if broadly construed, infringed on the findings of the Guinean courts. These facts would also have "demonstrated the perfectly foreseeable defence" that STS had submitted to the Guinean courts' jurisdiction and that its right to insist on arbitration had been terminated or waived.[110]

74 Wansa submits that, if the Interim Order is set aside, the court should order an inquiry as to damages as this is the "usual approach" when an interim injunction is set aside. While STS refuses to give an undertaking as to damages, such an undertaking should be implied.[111]

Issues to be determined

75 The main issues for determination are whether the court should order:

(a) the permanent anti-suit injunction sought in OA 642 ("Issue 1");

(b) the declaratory relief sought in OA 642 ("Issue 2");

(c) Wansa to participate in the Arbitration ("Issue 3");

(d) the setting aside of the Interim Order for material non-disclosure ("Issue 4"); and/or

(e) an inquiry as to damages to be paid by STS to Wansa ("Issue 5").

Issue 1: whether the court should grant the permanent anti-suit injunction sought in OA 642

76 Wansa does not dispute that it commenced its action in the CCC on 4 April 2024 in breach of the Arbitration Agreement (see [14] and [15(c)] above). Given this concession, STS has *prima facie* basis for seeking anti-suit

110 DWS at paras 39–46.

111 DWS at paras 83–84.

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relief on the grounds of a breach of an arbitration agreement. However, Wansa goes on to contend that STS' right to arbitrate under the Arbitration Agreement was subsequently terminated or waived. In my view, it is unnecessary to address this contention for the purposes of resolving Issue 1. This is because, even assuming a best-case scenario for STS that all the Guinean court proceedings have been pursued by Wansa in breach of the Arbitration Agreement, STS has, in my judgment, unduly delayed the commencement of OA 642, such that considerations of comity militate against the grant of anti-suit relief. I elaborate.

77 In *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] 1 SLR 732 ("*Sun Travels*"), the Court of Appeal explained that:

(a) Even though anti-suit injunctions operate *in personam*, they nevertheless indirectly interfere with the foreign court proceedings involved, and the jurisdiction to grant anti-suit relief must thus be exercised with caution (at [69]).

(b) Comity considerations are relevant when there is delay in bringing an application for anti-suit relief, even in respect of foreign court proceedings pursued in breach of an arbitration agreement (at [81] and [114(a)]).

(c) The extent to which the delay has allowed the foreign court proceedings to progress is particularly relevant: the more advanced the foreign court proceedings have become, the stronger the considerations of comity would be (at [82]–[83]). This is in view of the fact that an anti-suit injunction will (if obeyed) frustrate all that has gone before and waste the judicial resources expended in the foreign court proceedings (at [77]–[78] and [114(b)]).

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(d) Delay cannot be justified on the basis that jurisdictional objections were being raised in the foreign court (at [84]). Indeed, an applicant for anti-suit relief cannot have two bites at the cherry by resisting the foreign court proceedings on jurisdictional grounds, and seeking an anti-enforcement injunction only when its jurisdictional challenge in the foreign court has failed (at [86]).

(e) Where, after the foreign court has already issued a judgment, an anti-enforcement injunction is sought to enjoin a party from relying on or enforcing that foreign judgment, the application should generally be refused because it would not have been made with sufficient promptitude (at [89] and [114(c)]). Two further considerations underpin the need for caution in anti-enforcement injunction applications: first, such an injunction would preclude other foreign courts from considering whether the judgment in question should be recognised and enforced; and second, such an injunction would be an indirect interference with the execution of the judgment in the jurisdiction where the judgment was given and can be expected to be obeyed (at [97] and [114(c)]).

(f) The recognised exceptions warranting the exercise of the court's jurisdiction to grant an anti-enforcement injunction are cases of fraud and cases where the applicant had no knowledge that the foreign judgment was being sought until after it was rendered (at [114(d)]).

78 In the present case, it cannot be gainsaid that, by the time STS filed OA 642 on 3 July 2024 and obtained the Interim Order on 9 July 2024, *multiple* sets of court proceedings in Guinea had been heard, and *multiple* Guinean judgments and court orders had been issued in those proceedings (see Table 1 at [66] above). In this regard, there are three features of significance.

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79 First, JUD 178 was issued by the CCC on 23 May 2024 in respect of Wansa's action commenced on 4 May 2024 ("Wansa's Main Action"). Wansa had claimed a breach by STS of its loading obligations under the Affreightment Contract and had sought an order compelling STS to perform its obligations (see [14] above). After considering STS' jurisdictional objections *and* substantive defences to Wansa's claim (see [17]–[19] above), the CCC issued JUD 178 (a) rejecting STS' jurisdictional objection for tardiness as it had been raised after STS presented arguments on the merits; (b) rejecting STS' defences and finding that STS had failed to perform its loading obligations without valid reason; (c) ordering STS to perform its obligations; and (d) ordering STS to *pay damages* to Wansa for STS' breach of contract (see [21] above). On any view, JUD 178 contains a decision on the merits of Wansa's claim and substantive orders against STS. While STS' appeal against JUD 178 is pending, JUD 178 hitherto remains in force.

80 Second, the other Guinean court proceedings commenced, and Guinean court orders obtained, by Wansa appear to stem from Wansa's Main Action. For example:

(a) It was apparently because STS did not comply with ORD 96 made by the CCC on 9 April 2024 in Wansa's Main Action directing STS to perform its contractual obligations (see [16] above) that Wansa sought and obtained ORD 11 on 18 April 2024 from the BCFI ordering STS to stop work in Boffa territorial waters for companies other than Wansa (see [23]–[24] above). That led to STS and Wansa filing further applications, and the BCFI and CCA making further orders in May and June 2024, in relation to ORD 11 (see [25]–[33] above), culminating in JUD 279 issued by the CCA which effectively upheld ORD 11 (see [33]

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above). While STS' appeal against JUD 279 is pending, JUD 279 and the orders which it upheld hitherto remain in force.

(b) It was apparently because STS violated ORD 96 and ORD 11 that Wansa sought and obtained ORD 12 on 17 May 2024 from the BCFI prohibiting STS from moving its equipment out of Guinea (see [45] above). STS' application for a retraction of ORD 12 was rejected by the BCFI in ORD 9 on 27 June 2024 (see [46]–[47] above).

(c) Wansa also sought and obtained ORD 19 on 8 July 2024 from the BCFI for temporary authorisation to use STS' equipment for loading and transporting 25,000 tonnes of bauxite per day (in other words, to effect what STS was contractually obliged to do) (see [63] above).

81 Third, ironically, *STS itself* is responsible for a set of pending Guinean court proceedings. In the 10 June 2024 Application filed in STS' name, it was claimed that Wansa had breached its obligations to supply bauxite in the quantity and under the port conditions required in the Affreightment Contract, and an order was sought to compel Wansa to do so (see [50] above). The BCFI dismissed the 10 June 2024 Application by ORD 8 on 25 June 2024 (see [51] above). STS then, with full awareness of what it was doing, appealed against ORD 8 and maintains this appeal, which is pending (see [52]–[53] above).

82 In these circumstances, applying the principles in *Sun Travels*, there are two main reasons STS' application for anti-suit relief must be refused.

83 First, STS' undue delay in commencing OA 642 has allowed the Guinean court proceedings to progress to an advanced stage. Given the vast amount of the Guinean courts' time and costs that would potentially be wasted if the permanent anti-suit injunction sought in OA 642 were granted, respect for

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the operations of the Guinean legal system impels me to exercise my discretion against granting such an injunction.

84 In my view, STS could and should have applied to the Singapore court for anti-suit relief once Wansa's Main Action was commenced. There was no legal necessity for STS to commence an arbitration before applying for anti-suit relief, and I therefore do not accept STS' submission that anti-suit relief was only "justified" when it supposedly became "sufficiently clear" to STS after 19 June 2024 that Wansa refused to participate in the Arbitration;[112] in any event, Wansa had already expressly conveyed on 27 May 2024 that it would not participate in the Arbitration (see [40] above).

85 I also do not accept STS' submission that there was no delay as STS had "no choice" but to "expeditiously" contest Wansa's applications of 4 April 2024 and 18 April 2024 to the CCC and the BCFI respectively (see [17] and [25] above), including on jurisdictional grounds.[113] While STS was entitled to contest the jurisdiction of the Guinean courts, it could and should have simultaneously sought anti-suit relief from the Singapore court (see *Sun Travels* at [118]). Instead, STS waited until the Guinean courts had rejected STS' jurisdictional challenges (see [21(a)], [28(a)] and [33] above) before belatedly turning to the Singapore court. To allow STS' anti-suit application, made only after STS obtained unfavourable outcomes on its jurisdictional challenges before the Guinean courts, would be the "reverse of comity" and should not be countenanced (see *Sun Travels* at [84], [86]–[87] and [118]).

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112 CWS at paras 32(i) and 40.

113 CWS at paras 32(a) and 32(e).

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86 I also do not accept STS' submission that the Guinean court proceedings are "not well-advanced". STS makes two arguments. The first argument is that the Guinean court proceedings are not advanced because there are appeals pending in the Guinean courts.[114] In my view, the existence of several pending appeals in the Guinean courts in fact indicates the contrary, *viz*, that the Guinean court proceedings have progressed to such an advanced stage that appeals against judgments and court orders are due to be heard. The next argument is that the Guinean court proceedings are not advanced because the Guinean courts allegedly did not consider evidence tendered by the parties or make factual findings; only made "interlocutory or provisional orders"; and did not examine the substantive merits of the dispute.[115] I do not accept this argument:

(a) One, it is a sweeping and unsubstantiated assertion. In particular, JUD 178 (in its approved English translation) expressly states that the CCC "[f]inds that [STS] has violated the contract for the transshipment of the ore that binds it to [Wansa]; [o]rders [STS] to fulfill [*sic*] its contractual obligations to [Wansa], namely the daily loading of 25,000 tonnes of bauxite …; [o]rders [STS] to pay compensation in the amount of GNF 5,000,000,000 to [Wansa] …",[116] all of which points to a decision on the merits of Wansa's claims and substantive orders made against STS. If STS purports, in support of its case in OA 642, that JUD 178 is provisional in nature, STS bears the burden (as the claimant in OA 642) of proving this, but STS has not adduced any Guinean law expert evidence to such effect.

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114 CWS at para 32(h).

115 CWS at paras 34–38.

116 Coughlan's Affidavit at p 76.

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(b) Two, while ORD 5 (maintaining ORD 11) for STS to stop work for other companies, and ORD 12 prohibiting STS from moving its equipment out of Guinea for six months, were expressed to be "provisional" (see [28(a)], [32], [33] and [47] above), they appear to have been sought in pursuance of Wansa's Main Action (see [80(a)] and [80(b)] above). Viewed holistically, they form part of the web of interconnected court proceedings in Guinea relating to Wansa's Main Action, in which JUD 178 has already been issued.

(c) Further and in any event, however STS purports to characterise the Guinean judgments and court orders, there is no getting round the fact that multiple hearings have been conducted before, and multiple judgments and orders have been issued by, the Guinean courts; there is no answer to the waste of Guinean judicial resources that will ensue if anti-suit relief is now granted.

87 Second, given that JUD 178 and other Guinean court orders have already been issued, it is plain that STS' prayer for Wansa to be restrained from pursuing legal proceedings in Guinea seeks, in substance, an *anti-enforcement* injunction to enjoin Wansa from relying on or enforcing those judgments / orders. Such an injunction would be an indirect interference with the execution of the Guinean judgments and court orders in Guinea, which is an additional and important consideration upon which I would exercise my discretion against granting the injunction sought by STS (see [77(e)] above). No exceptional circumstances of the sort referred to in *Sun Travels* (see [77(f)] above) were raised much less established by STS.

88 I add that this consideration is not changed by the fact that certain of the Guinean court orders were expressed to be "provisional" orders (see [86(b)]

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above). In *Mamidoil-Jetoil Greek Petroleum Co SA v Okta Crude Oil Refinery AD* [2003] 1 Lloyd's Rep 1 ("*Mamidoil*"), Jetoil and Okta were engaged in English proceedings over a dispute arising out of a 1993 contract. Okta's privy, Elpet, then commenced court proceedings against Jetoil in the state now known as the Republic of North Macedonia and obtained an *interim* injunction preventing Okta from paying any damages that might be found due and owing to Jetoil in connection with the 1993 contract (the "Macedonian interim injunction") (at [187]). It was accepted by the parties that the Macedonian proceedings were not yet final (at [188]). In response, Jetoil applied in the English proceedings for, *inter alia*, an injunction to restrain Okta from relying on any judgment given by the Macedonian court (at [189(5)]). Aikens J (as he then was) held that the injunction sought by Jetoil should not be granted: it was aimed at preventing Okta from relying on the Macedonian interim injunction and would indirectly interfere with the process of the Macedonian court (at [201] and [204]). *Mamidoil* was cited in *Sun Travels* as an authority expressing the need to exercise great caution in granting anti-enforcement injunctions because of the way they interfere with foreign proceedings (at [90] and [94]–[95]). Indeed, on principle, such great caution is called for whether the foreign court order in question is final or interim / interlocutory / provisional; in either case, the local court would still be indirectly interfering with the foreign court process if the local court restrains reliance on or enforcement of the foreign court order in that foreign jurisdiction.

89 It is of especial concern in the present case that STS seeks an anti-enforcement injunction when *STS' appeals* against JUD 178, JUD 279 and ORD 8 are pending before the Guinean courts (see [22], [34] and [52] above). STS has said nothing about discontinuing those appeals if anti-suit relief were obtained. In these circumstances, an anti-enforcement injunction will have the practical effect that Wansa will be unable to participate in and/or will lose the

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appeals; such indirect interference in the Guinean appeal process is not warranted (see *Sun Travels* at [124]–[125]). Further, while JUD 178 and JUD 279 are judgments in proceedings commenced by Wansa, ORD 8 contains the BCFI's decision dismissing *STS' claim* against Wansa for alleged breaches of the Affreightment Contract. This means that, by advancing its appeal against ORD 8, STS is pursuing a positive legal case against Wansa in Guinea. Yet, at the same time, STS seeks to enjoin Wansa from relying on ORD 8 to defend itself against STS' claim. This cannot be right.

90 Finally, I note that STS also purports to seek anti-suit relief on the grounds that the Guinean court proceedings are vexatious and oppressive. However, STS' arguments in this respect stem, first and foremost, from its contention that the Guinean court proceedings were commenced in breach of the Arbitration Agreement.[117] The same reasons I have given above for rejecting STS' application for anti-suit or anti-enforcement relief apply.

91 At the conclusion of the hearing of OA 642, I reserved judgment and expressly directed that no further documents should be filed by the parties without the prior permission of the court.[118] On 14 October 2024, RW&W sent a letter to the court ("RW&W's Letter") setting out apparent "recent developments in Guinea" that STS wished the court to take into consideration in reaching its decision. STS claimed that no hearing for the auction and sale of STS' vessels and equipment took place in August 2024 and no actual auction and sale took place either; the "State Prosecutor" had issued a direction for the auctioneer and Wansa to be investigated in relation to the "unlawful" auction and sale; and the circumstances of the "unlawful" auction and sale were "highly

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117 CWS at paras 44–45.

118 NA at p 27:7–9.

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suspicious".[119] RW&W's Letter was filed without prior permission, in disregard of this court's express direction. The matters stated therein were not contained in an affidavit and did not constitute evidence. Their legal relevance (if any) to the issues in OA 642 was also not explained in RW&W's Letter; facially, the asserted matters do not affect my analysis and decision at [76]–[90] above. For all these reasons, I decline to substantively consider RW&W's Letter.

92 I accordingly dismiss STS' prayer in OA 642 for a permanent anti-suit injunction.

Issue 2: whether the court should grant the declaratory relief sought in OA 642

93 The declaration sought by STS is, effectively, that Wansa's claims in the Guinean court proceedings fall within the scope of the Arbitration Agreement and were brought in breach of the Arbitration Agreement. STS says that, in *Sun Travels*, the Court of Appeal upheld a similar declaration that had been granted by the lower court.[120]

94 In *Sun Travels*, the arbitration proceedings between Sun and Hilton were commenced in 2013 pursuant to an arbitration agreement in the Management Agreement between them and concerned disputes in relation to the Management Agreement. In 2015, partial and final arbitration awards were rendered in Hilton's favour. Thereafter, in 2016, Sun commenced a Maldivian suit making claims similar to those Sun had brought in the arbitration (at [23]). The lower court granted a declaration that Sun's claim in the Maldivian suit was in respect of disputes between Sun and Hilton that had arisen out of or in connection with

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119 RW&W's letter to the court dated 14 October 2024 filed on STS' behalf at paras 3–4.

120 CWS at paras 63–65.

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the Management Agreement and any consequential proceedings (including appeals) would be in breach of the arbitration agreement (at [127]). The Court of Appeal explained that the Singapore court had the power to grant declaratory relief pursuant to s 18 of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) (the "SCJA") read with para 14 of the First Schedule to the SCJA, including in proceedings in the context of arbitration (at [133]). However, in the context of arbitration, the power was not unfettered given Art 5 of the Model Law, which provided that "[i]n matters governed by [the Model Law], no court shall intervene except where so provided in [the Model Law]" (at [134]). That said, there was no specific provision in the IAA or the Model Law which addressed the specific declaration granted by the lower court, and the court's power to grant that declaration was thus not circumscribed by the IAA or the Model Law (at [135]). Addressing the court's discretion to grant declaratory relief, the Court of Appeal found that the declaration granted by the lower court was appropriate as it would signify that Sun had breached the arbitration agreement by instituting the Maldivian suit "*when arbitration awards on the same dispute had already been issued*" [emphasis added] (at [142]).

95 Pertinently, the factual situation in *Sun Travels* was that the arbitration proceedings had *already concluded* (with the final arbitration award issued) by the time Sun commenced the Maldivian suit. There was no question of referring any matter to an arbitral tribunal; nor was there any dispute over the validity of the arbitration agreement. In my view, these are material differences between the relevant factual matrix in *Sun Travels* and that in the present case.

96 In the present case:

(a) STS has commenced the Arbitration, and has chosen (i) to bring claims in the Arbitration that Wansa breached the Arbitration

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Agreement when Wansa applied to the Guinean courts for the Conakry Injunction and the Boffa Injunction and (ii) to seek from the arbitral tribunal an award of damages for these breaches of the Arbitration Agreement (see [38(d)], [38(e)] and [39] above). In other words, there is a gross overlap, if not a coincidence, in the claims submitted by STS to arbitration (which are for the arbitral tribunal to determine) and the declaration sought by STS from this court in OA 642.

(b) The declaration sought by STS in OA 642 is not simply that Wansa's *first* application to the CCC on 4 April 2024 was filed in breach of the Arbitration Agreement (which Wansa does not dispute: see [15(c)] above). The declaration sought by STS is framed more generally and widely as being that "[Wansa's] claims in legal proceedings in [Guinea] as well as any consequential proceedings (including appeals)" are in breach of the Arbitration Agreement. However, Wansa's case in OA 642 is that the Arbitration Agreement was "repudiated" and "c[a]me to an end" by reason of the position taken by STS in STS' 15 April 2024 Opposition (and/or the 28 May 2024 Application, 10 June 2024 Application and 3 July 2024 Application) (see [72] above). This means that a resolution in OA 642 of STS' claim that Wansa pursued the Guinean court proceedings in breach of the Arbitration Agreement will involve a determination of the validity of the Arbitration Agreement as of 15 April 2024 (and/or the other points of time relied on by Wansa). A finding on the validity of the Arbitration Agreement as of 15 April 2024 will have implications on the jurisdiction of the arbitral tribunal in the Arbitration commenced on 14 May 2024.

97 In my judgment, given the particular circumstances of the present case, it is not appropriate for the court to decide on the merits of STS' claim for

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declaratory relief and/or to grant the declaration sought by STS, for two main reasons.

98 First, STS is seeking practically the same relief in the Arbitration and by its prayer for a declaration in OA 642: in both fora, STS claims a breach by Wansa of the Arbitration Agreement by virtue of the latter's commencement of proceedings in the Guinean courts (see [96(a)] above). It is inappropriate for STS to pursue parallel proceedings. STS has invoked the jurisdiction of the arbitral tribunal to determine in the Arbitration if Wansa had breached the Arbitration Agreement; that is the forum in which STS' claim should be decided.

99 Second, s 10(3) of the IAA and Art 16(3) of the Model Law provide for an arbitral tribunal to be the first arbiter of its own jurisdiction before any party may apply to the court to decide the matter. This recognises and gives effect to an arbitral tribunal's *kompetenz-kompetenz*. In OA 642, while STS does not expressly seek (and does not appear to have set out to obliquely seek) the court's determination of the jurisdiction of the arbitral tribunal, a decision on the merits of STS' claim for declaratory relief will skirt close to pronouncing on this issue, because of the position taken by Wansa (see [96(b)] above). However, the Arbitration is extant and the issue of jurisdiction should properly be determined by the arbitral tribunal in the Arbitration. Thus, while the court's power to grant the declaration sought by STS may not, strictly speaking, be circumscribed by Art 5 of the Model Law read with s 10(3) of the IAA and Art 16(3) of the Model Law, I do not think it is appropriate, having respect for the principle of *kompetenz-kompetenz*, to decide on the merits of STS' claim for declaratory relief. It bears noting that a declaration is a form of final relief; any declaration granted would be a final pronouncement on the parties' legal rights and not a mere *prima facie* finding by the court.

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100 I draw support for my decision from two English cases. In *ADM Asia-Pacific Trading Pte Ltd v PT Budi Semesta Satria* [2017] 1 Lloyd's Rep Plus 1, ADM applied for an anti-suit injunction to restrain BSS from continuing proceedings against ADM in Indonesia on the grounds that those proceedings were in breach of an arbitration agreement between the parties. By that time, ADM had already commenced an arbitration against BSS, in which ADM claimed damages for, *inter alia*, BSS' alleged breach of the arbitration agreement in commencing proceedings in Indonesia (at [23]–[24]). Phillips J (as he then was) refused to grant an anti-suit injunction on the ground of delay and further decided that "it [was] not necessary or appropriate for [him] to determine whether the Indonesian proceedings [were] in breach of the arbitration clause, *particularly as that [was] a live issue both in the ... arbitration* and before the Indonesian Supreme Court" [emphasis added] (at [29]).

101 In *HC Trading Malta Ltd v Tradeland Commodities SL* [2016] 2 Lloyd's Rep 130, instead of commencing arbitration proceedings, HCT issued a claim in the English High Court for a declaration that there was a binding arbitration agreement which covered its proposed claims against Tradeland. HCT's claim was dismissed on Tradeland's application to strike out the claim. Noting s 30 of the Arbitration Act 1996 (c 23) (UK) (the "1996 Act"), which empowers an arbitral tribunal to rule on its own jurisdiction and provides for any challenge to such ruling to be made according to the available arbitral process of appeal or review or in accordance with the provisions of Part I of the 1996 Act, Judge Waksman QC (as he then was) held that the scheme of and the principles underlying the 1996 Act would be frustrated where an arbitration was on foot or contemplated if the parties were able to apply for declaratory relief as HCT had done; it was wrong in principle to grant declaratory relief in such circumstances (at [18] and [40]). It was also a "needless invocation of the court's

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powers where there [was] another body [*ie*, the arbitral tribunal itself] particularly suited to declaring the validity or otherwise of the arbitration agreement" (at [41(1)]).

102 I accordingly dismiss STS' prayer in OA 642 for declaratory relief.

103 As I have not seen it fit to grant and have dismissed STS' prayers in OA 642 for a permanent anti-suit injunction and declaratory relief (see [92] and [102] above), it follows that the Interim Order should also be discharged and I so order.

Issue 3: whether the court should order Wansa to participate in the Arbitration

104 STS belatedly seeks an order that Wansa be compelled to participate in the Arbitration.[121] STS argues that the court is empowered to make such an order pursuant to s 4(10) of the Civil Law Act 1909 (2020 Rev Ed) (the "CLA") and s 18(2) of the SCJA read with para 14 of the First Schedule to the SCJA "as it is essentially a mandatory injunction and/or an order for specific performance".[122] I disagree that the court has the power to order Wansa to participate in the Arbitration.

105 The order sought by STS is a mandatory injunction as it requires Wansa to do something. Section 4(10) of the CLA is the source of the court's power to grant interim injunctions, while s 18(2) of the SCJA read with para 14 of the First Schedule to the SCJA provides for the court's power to grant permanent injunctions: *Gonzalo Gil White v Oro Negro Drilling Pte Ltd and others*

121 CWS at para 67.

122 CWS at para 68.

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[2024] 1 SLR 307 at [60] and [63]. In my view, STS seeks the mandatory injunction against Wansa as permanent, and not interim, relief. However, in this case, it is not a matter of simply applying s 18(2) of the SCJA read with para 14 of the First Schedule to the SCJA, as STS appears to think. Article 5 of the Model Law provides that in matters governed by the Model Law, no court shall intervene except where so provided in the Model Law. The effect of Art 5 of the Model Law is to confine the power of the court to intervene in an arbitration to those instances which are provided for in the Model Law and to exclude any general or residual powers arising from sources other than the Model Law: *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd and another appeal* [2013] 1 SLR 125 at [36].

106 In the present case, Wansa's refusal to participate at the outset of the Arbitration *is* a matter governed by the Model Law in that under Art 25(b) of the Model Law, "[u]nless otherwise agreed by the parties, if, without showing sufficient cause … the respondent fails to communicate his statement of defence in accordance with Article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations". In short, the Model Law prescribes that the Arbitration may continue in the face of Wansa's non-participation. Notably, in this situation, neither the Model Law nor the IAA *obliges* Wansa to participate in the Arbitration much less *empowers* the court to intervene and compel Wansa to participate in the Arbitration.

107 In a similar vein, the Court of Appeal in *Rakna Arakshaka Lanka Ltd v Avant Garde Maritime Services (Pte) Ltd* [2019] 2 SLR 131 observed that neither the Model Law nor the IAA imposes a duty on a respondent to participate in arbitration proceedings (at [74]). Of relevance to the present case is the Court of Appeal's explanation that (at [73]):

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> … The law does not compel a respondent against whom arbitration proceedings have been started to take part in those proceedings and defend his position. If the respondent believes that the arbitration tribunal has no jurisdiction, for one reason or another, he is perfectly entitled to sit by and do nothing in the belief that either the proceedings will not result in a final award against him or that, if an award is made, he will have valid grounds to resist enforcement. … If the respondent is mistaken in his belief, then the arbitration which proceeds without his participation will end in an award which will be enforceable against him …

108 Therefore, in the present case, there is neither power nor basis for the court to make an order compelling Wansa to participate in the Arbitration.

Issue 4: whether the court should set aside the Interim Order for material non-disclosure

109 On one view, there is no practical necessity to address Issue 4 given my decision at [103] above discharging the Interim Order. Nevertheless, to stress to litigants the paramount importance of their duty to make full and frank disclosure in *ex parte* applications so as to avoid abuse of the process of the court, I choose to address Issue 4. I decide that another ground for the discharge of the Interim Order is material non-disclosure by STS in SUM 1844.

110 The relevant legal principles are set out in the seminal decision of *The "Vasiliy Golovnin"* [2008] 4 SLR(R) 994 ("*Vasiliy*"):

(a) The duty of disclosure: On an *ex parte* application, the applicant must disclose to the court all matters within his knowledge which might be material even if they are prejudicial to his claim (at [83]).

(b) The required content / scope of disclosure: Material facts are not strictly limited to facts which will have a determinative impact on the court's decision; so long as the facts are matters that the court should take into consideration in making its decision, they are material (at [86]).

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The test for materiality is objective, and the duty of disclosure requires the applicant to ask what might be relevant to the court in its assessment of whether or not the remedy should be granted and not what the applicant alone might think is relevant (at [87]). The duty of disclosure extends to defences that might be reasonably raised by the defendant (at [87]) and facts the applicant would have known if he had made proper inquiries (at [88]).

(c) The required threshold / manner of disclosure: The material facts must be presented in their proper context (at [91]). All material facts should be fairly stated in the affidavit; it is not sufficient to produce exhibits which contain the papers if no specific reference is made to them (at [94]).

(d) Setting aside an order for material non-disclosure: The court retains the discretion whether or not to set aside the order even where there has been material non-disclosure (at [108]). Where the non-disclosure was deliberate, the court would exercise its discretion not to set aside the order only in a special case (at [108] and [109]).

111 In my judgment, STS failed to make disclosure of material facts in SUM 1844 in two respects.

112 First, STS failed to bring to the Judge's attention the contents of JUD 178. While STS exhibited a copy of JUD 178 to its supporting affidavit, the affidavit did not set out the contents of JUD 178.[123] At the hearing of SUM 1844, JUD 178 was not mentioned at all and the Judge was not taken to

[123] Wang's 1st Affidavit at para 23.

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the copy of JUD 178 buried among the affidavit exhibits.[124] The contents of JUD 178 record the CCC (a) rejecting STS' jurisdictional objection for tardiness as it had been raised after STS presented arguments on the merits; (b) rejecting STS' defences and finding that STS had failed to perform its loading obligations without valid reason; (c) ordering STS to perform its obligations; and (d) ordering STS to *pay damages* to Wansa for STS' breach of contract (see [21] above). These matters are material because they bring to the fore that what STS really sought in OA 642 and SUM 1844 was an anti-enforcement injunction of, *inter alia*, JUD 178. This would affect the court's assessment of whether anti-suit relief should be granted.

113 At the hearing of OA 642, Mr Kok argued that because STS disagreed with JUD 178, STS could not have explained the significance of JUD 178 in a way that Wansa would consider fulfilled the duty to make full and frank disclosure.[125] I do not accept this submission. Factually, STS did not even show JUD 178 to the Judge; it is not a question of how STS characterised the contents of JUD 178. Legally, the duty of disclosure extends to plausible defences and what *the court* (and not the applicant alone) might think relevant (*Vasiliy* at [87]); STS was thus obliged to disclose the contents of JUD 178 in a manner that would encapsulate reasonable characterisations that Wansa might place on JUD 178.

114 Second, STS failed to disclose to the Judge that STS had brought and was maintaining an appeal against ORD 8, *ie*, that STS was in essence pursuing the 10 June 2024 Application against Wansa for Wansa's alleged breach of the Affreightment Contract (see [81] above). I find it very difficult to accept STS'

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124 Wang's 2nd Affidavit at pp 89–117; NA at p 25:6–7.

125 NA at pp 25:8–10.

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claim that STS did not know of the 10 June 2024 Application at the time STS filed SUM 1844 on 3 July 2024, when STS had knowingly appealed ORD 8 (which dismissed the 10 June 2024 Application) within one to two working days of ORD 8 being issued on 25 June 2024 (see [53] above). ORD 8 in fact makes express reference to the 10 June 2024 Application.[126] In any event, given that STS knew of the existence of ORD 8 and STS' appeal against ORD 8 by 3 July 2024, the contents of ORD 8 and the implications of STS' pursuit of an appeal against ORD 8 (*ie*, that STS was effectively pursuing positive claims of breaches of the Affreightment Contract before the Guinean courts) should have been disclosed to the Judge in SUM 1844. These matters are material because they raise for consideration (a) possible defences by Wansa that STS had repudiated the Arbitration Agreement and/or waived its right to arbitrate by reason of such conduct and (b) in turn, whether anti-suit relief was (still) warranted. These are arguments that Wansa did ultimately raise at the *inter partes* stage.

115 The contents of JUD 178 and STS' appeal against ORD 8 were within STS' knowledge at the time SUM 1844 was filed and heard, and STS has given no or no good explanation why these matters were not disclosed to the Judge. I have little choice but to infer that they were deliberately not disclosed. There are no special reasons why the Interim Order should not be set aside in the face of such deliberate non-disclosure. I therefore hold that STS' material non-disclosure in SUM 1844 is a further ground on which the Interim Order should be and has been discharged. It is in the public interest to thus condemn material non-disclosure and remind all litigants of the importance of dealing in good faith with the court when *ex parte* applications are made (see *Treasure Valley Group*

126 Coughlan's Affidavit at p 235.

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Ltd v Saputra Teddy and another (Ultramarine Holdings Ltd, intervener) [2006] 1 SLR(R) 358 at [23]).

Issue 5: whether the court should order an inquiry as to damages to be paid by STS to Wansa

116 STS' submission that no inquiry as to damages should be ordered because STS did not give an undertaking to the court as to damages in SUM 1844 is misconceived. In law, it is implied that STS had provided an undertaking as to damages when it applied for the Interim Order: *Neptune Capital Group Ltd and others v Sunmax Global Capital Fund 1 Pte Ltd and another* [2016] 4 SLR 1177 at [43]; *SmithKline Beecham plc v Apotex Europe Ltd* [2006] 1 WLR 872 at [29], [30] and [32].

117 In determining whether to exercise its discretion to enforce the undertaking as to damages, the court will consider (a) whether the interim injunction was wrongly sought and (b) whether any special circumstances militate against the enforcement of the undertaking: *Astro Nusantara International BV and others v PT Ayunda Prima Mitra and others and another matter* [2016] 2 SLR 737 ("*Astro*") at [35]. However, the court will not make an order for an inquiry as to damages where the applicant for the inquiry has not adduced credible evidence to support an arguable case that it had suffered loss by reason of the interim injunction: *Astro* at [36] and [47]; *The Agency for Policy Coordination on State Property of Mongolia and others v Batbold Sukhbaatar and others* [2023] 4 SLR 1623 at [9] and [25]. In the present case, Wansa has not addressed *any* case of loss in either its affidavits or submissions in OA 642.[127] There is therefore no basis for me to order an inquiry as to damages and I decline to do so.

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127 DWS at paras 83–84.

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Conclusion

118 In conclusion, I dismiss OA 642.

119 In respect of SUM 2328:

(a) Under prayer 1, I discharge the Interim Order.

(b) I decline to order an inquiry as to damages and dismiss prayer 2.

(c) I make no order on prayer 3 for "OA 642 [to] be dismissed". This prayer is unnecessary because, by opposing OA 642, Wansa was *already* seeking the dismissal of OA 642.

120 Unless the parties agree on costs, they should file their written submissions on costs, limited to five pages (excluding any annexure addressing disbursements), within two weeks from the date of this judgment.

Kristy Tan
Judicial Commissioner

Kok Jia An Alwyn (Robert Wang & Woo LLP) for the claimant;
Daniel Chia, Ker Yanguang and Tan Yi Liang (Prolegis LLC) for the defendant.

Version No 1: 22 Oct 2024 (12:41 hrs)