IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE

[2025] SGHC(I) 12

Originating Applications No 26 and 27 of 2024

Between

DMF

… *Applicant*

And

DMG

… *Respondent*

JUDGMENT

[Abuse of Process — *Henderson v Henderson* doctrine]
[Abuse of Process — Inconsistent positions]
[Arbitration — Arbitrability and public policy]
[Arbitration — Arbitral tribunal — Jurisdiction]
[Civil Procedure — Foreign law — Foreign law to be determined by submissions — Order 16 rule 8 of Singapore International Commercial Court Rules 2021]
[Contract — Contractual terms — Rules of construction]
[Res Judicata — Extended doctrine of res judicata]
[Res Judicata — Issue estoppel]

TABLE OF CONTENTS

DMF
v
DMG and another matter

[2025] SGHC(I) 12

Singapore International Commercial Court — Originating Application Nos 26 and 27 of 2024
Simon Thorley IJ
12–13 March 2025, 17 April 2025

17 April 2025 Judgment reserved.

Simon Thorley IJ:

Introduction

1 This judgment relates to two originating applications ("OAs") both of which were originally filed in the General Division of the High Court ("GDHC") on 10 September 2025 as HC/OA 919/2024 and HC/OA 921/2024. These applications were transferred to the Singapore International Commercial Court ("SICC") on 4 December 2024 as SIC/OA 26/2024 ("OA 26") and SIC/OA 27/2024 ("OA 27") respectively.

2 The relief sought in both OAs arise out of an arbitration before the Singapore Chamber of Maritime Arbitration ("SCMA") commenced on 10 August 2022 by the respondents to both OAs, [DMG] (the "Respondent"), against the applicants, [DMF] (the "Applicant"). The arbitration (Case No 2022/33) (the "Arbitration") related to an alleged breach by the Applicant

of a charterparty dated 10 June 2022 (the "Charterparty" or "Agreement") together with an addendum dated 17 June 2022 (the "Addendum").

3 The Applicant challenged the jurisdiction of the arbitral tribunal (the "Tribunal") which, following submissions, resulted in a decision in which the majority of the arbitrators held that the Applicant was a party to the Charterparty and that accordingly, the Tribunal had jurisdiction over it.

4 OA 26 seeks to reverse that decision. The relief sought is set out in paragraph 2 of the OA and is as follows:

> 2. An Order that the Applicant is not a contractual party to the Charterparty dated 10 June 2022 in respect of the [Vessel].

5 OA 27 is a freestanding application which does not relate to matters previously canvassed before the Tribunal and seeks declarations that the arbitration is either non-arbitrable or unenforceable. The relief sought is set out in paragraphs 1 and 2 of the OA and is as follows:

> 1. A Declaration that the dispute in the [Arbitration] is non-arbitrable as the dispute involves an issue regarding the public policy of Singapore.
>
> 2. A Declaration that the Charterparty contract dated 10 June 2022 with [the Respondent] as the Charterer for the [Vessel] for the carriage of a cargo of palm oil to Iran is unenforceable as it is against the public policy of Singapore.

6 Since both OAs relate to the same Arbitration and to the charterparty underlying it, directions were given for the two to proceed to a single hearing which took place on 12 and 13 March 2025. However, the relief sought in OA 27 is inconsistent with that in OA 26, since the latter contends that the Applicant is *not* a party to the charterparty and hence the Arbitration, whereas the former accepts that it *is* a party but that the Arbitration is non-arbitrable and/or unenforceable against it.

7 I shall therefore consider the two separately.

OA 26

Background facts

8 The background facts are not materially in dispute. Whilst it will be necessary to consider the facts in relation to some events in more detail below, the basic facts can be stated as follows.

9 The Respondent is a Singapore company carrying on business in the food and agriculture field. It is a subsidiary of a company listed on the Singapore stock exchange.

10 The Applicant is a Hong Kong company which was at the material time the demise charterer/owner of a vessel (the "Vessel").

11 On 10 June 2022, a charterparty was entered into for the Vessel to carry a cargo of palm oil from the port of Tanjung Pura in Indonesia to a port in Iran. Whilst there is no signed document, evidence of its terms is contained in an email dated 10 June 2022 (the "Recap") from Mr [A] of [X] Shipbrokers Pte Ltd to Captain [B] of [Y] Ship Management Limited.[1] It reads as follows:

> Dear Capt [B],
>
> Good day.
>
> We are pleased to advise that charterers lifted all subjects within agreed time and [the Vessel] is fully clean fixed with charter party dated June 10, 2022. Please find below clean fixture recap with following terms and conditions mutually agreed between owners and charterers.

---

[1] See Case Management Bundle ("CMB") Vol 3 pp 464-466. See also an email from Mr [A] to the Respondent at CMB Vol 2 pp 310–330.

CHARTER PARTY DATE	:	10TH JUNE 2022
CHARTERERS	:	[DMG], SINGAPORE OR IT'S NOMINEE
REGISTERED OWNERS	:	[DMF], P.R. CHINA
DISPONENT OWNERS	:	[Z] SERVICE LIMITED, P.R. CHINA
COMMERCIAL OPERATOR	:	[Y] SHIP MANAGEMENT LIMITED, P.R. CHINA
VESSEL	:	[THE VESSEL] – Q.88 ATTACHED … ALL OTHER DETAILS AS PER ATTACHED Q.88
CARGO/GRADES	:	27,500MT WITH 5PCT MOLCO, 1-5 GRADES CRUDE/REFINED PALM OIL PRODUCTS IN BULK, EXCLUDING PFAD/STEARIN OWNERS CONFIRM THAT VESSEL WILL NOT LOAD ANY OTHER CHARTERERS CARGO AND VESSEL WILL BE CHARTERED WHOLLY AND EXCLUSIVELY FOR CHARTERERS [DMG] CARGO ONLY. VESSEL WILL SAIL DIRECTLY TO DISCHARGE PORT IN PERSIAN GULF AFTER LOADING CARGO.
LOAD PORT	:	1 SP/SB/SA TANJUNGPURA (I.E. KIJING), INDONESIA
DISCH PORTS	:	1-2 SP/SB/SA BANDAR ABBAS AND/OR BANDAR IMAM KHOMENI (BIK), IRAN IN CHTRS OPTION
LAYCAN	:	25 JUNE – 05 JULY 2022
FREIGHT	:	USD 75.00/PMT BASIS 1:1. FREIGHT PAYMENT WILL BE DONE IN EURO ACCOUNT ONLY. EXTRA USD 2.00/PMT ON ENTIRE CARGO QTY FOR 2ND DISCHARGE PORT, IF USED

		CHTRS SHALL PAY FREIGHT INTO OWNER'S BANK ACCOUNT WITHIN 5 BANKING DAYS AFTER LOADING CARGO, BUT ALWAYSS BBB.
OWNERS BANK DETAILS	:	**BENEFICIARY BANK: EVERGROWING BANK HANGZHOU, P.R. CHINA** … **BENEFICIARY NAME: [Z] SERVICE LIMITED** …
LAYTIME	:	125MTPH FOR LOADING PORT AND 100 MTPH FOR DISCHARGING PORT, SHINC REVERSIBLE
DEMURRAGE	:	USD 18,000/PDPR.
COMMISSION	:	5.00PCT IN TOTAL (2.50PCT ADDCOM TO CHTRS [DMG] + 2.50PCT BROKERAGE COMMISSION TO [X] SHIPBROKERS PTE LTD PAYABLE BY OWNERS ON FREIGHT /DEADFREIGHT / DEMURRAGE, DEDUCTIBLE AT SOURCE
LAST 3 CARGO	:	SULP ACID (1ST LAST) / METHANOL (2ND LAST) / SULP ACID + MEG (3RD LAST) AS PER ATTACHEMENT OWNERS CONFIRM THAT VESSEL IS FIT TO LOAD PALM OIL CARGO AND LAST 3 CARGOES ARE NOT IN FOSFA BANNED LIST
ITINERARY	:	VESSEL EXPECTED TO OPEN IN STRAITS REGION END JUNE / EARLY JULY 2022, AGW/WP. OWNERS CONFIRM THAT VESEL IS CURRENTLY FIXED TO LOAD CHEMS CARGO (FULL SHIP) AT MID CHINA AND DISCHARGE SAME AT PARADIP, INDIA. OWNERS CONFIRM THAT VESSEL'S CURRENT ITINERARY IS FIRM WITHOUT ANY CHANGES. NO INTERIM VOYAGE OR ANY DEVIATION ALLOWED AFTER CLEAN FIXTURE FOR ACCOUNT [DMG]. AFTER LOADING AT KIJING (INDONESIA), VESSEL WILL SAIL DIRECTLY TO DISCHARGE PORT

WITHOUT ANY DEVIATION OR INTERIM VOYAGE.

TERMS:

1. VEGOILVOY CP AND [RESPONDENT'S] RIDER CLAUSES WITH LOGICAL AMENDMENTS AS ATTACHED TO APPLY AS MUTUALLY AGREED BETWEEN THE CHARTERERS AND OWNERS.

2. IN EVENT OF FREIGHT ASSIGNMENT TO OWNERS' NOMINATED ACCOUNT, HEAD OWNERS TO PROVIDE IN WRITING WITH COMPANY LETTERHEAD THAT THE NOMINATED BENEFICIARY HAS THEIR AUTHORIZATION AND LEGAL COMPETENCE TO COLLECT THE FULL FREIGHT ON BEHALF UNDER THIS CHARTER PARTY, AND GUARANTEE THEIR PERFORMANCE OF THE VOYAGE TILL CARGOES FULLY DISCHARGED IN NOMINATED PORT(S).

3. OWNERS WARRANT, THAT DURING THE CURRENCY OF THIS CHARTER PARTY VESSEL SHALL NOT CHANGE OWNERSHIP OR CLASS. OWNERS CONFIRM THAT VESSEL'S Q88 QUESTIONNAIRE PROVIDED HERE IS UPDATED AT THE TIME OF CLEAN FIXTURE.

4. OWNERS CONFIRM A VALID CERTIFICATE OF FITNESS FOR THE CARRIAGE OF VEGETABLE OILS AS PER MARPOL ANNEX 2 REGULATION 4.1.3. IS AVAILABLE FOR TANKS IN WHICH THE VEGETABLE OILS WILL BE STOWED.

5. CHARTERER'S AGENTS BOTH ENDS, PROVIDED COMPETITIVE.

6. SANCTIONS CLAUSE: BY ENTERING INTO THIS CHARTER PARTY, OWNERS AND THEIR SUBSIDIARIES / AFFILIATES ARE AGREEING THAT THEY ARE IN NO WAY AFFILIATED WITH ANY ENTITIY AND/OR PERSON(S) KNOWN TO BE SANCTIONED BY THE UN/EU/US DEPARTMENT OF THE TREASURY (HTTP://WWW.TREASURY.GOV/). OWNERS, UPON WRITTEN REQUEST FROM CHARTERERS, SHALL PROVIDE PROOF OF OWNERSHIP TO ADDRESS ANY QUERIES THAT MAY ARISE. OWNERS CONFIRM THAT THEY AND THEIR COMPANY BANK ACCOUNT ARE NOT UNDER ANY UN/EU AND/OR US INCLUDING OFAC SANCTIONS. OWNERS WILL BE HELD RESPONSIBLE FOR ALL CONSEQUENCES INCASE OF ANY UN/EU AND/OR US INCLUDING OFAC SANCTIONS ON OWNERS, VESSEL, SUBSIDIARIES, AFFILIATES AND THEIR COMPANY BANK ACCOUNT, ETC.

7. VESSEL WILL ENDEAVOUR TO SAIL WITH MAX SAFE SPEED. WEATHER SAFE NAVIGATION PERMITTING.

8. INCLUSION OF L/C NUMBERING IN BILLS OF LADINGS SHALL NOT BE CONSIDERED TO BE REFERRING TO OR INDICATING CARGO VALUE AND IS STRICTLY FOR BANK'S LETTER(S) OF CREDIT PURPOSES ONLY, IN CASE THE L/C NUMBERING IS INSERTED INTO THE B/LS.

9. MASTER TO SEND DAILY NOON REPORT TO CHARTERERS AND BROKERS UPON FIXING.

11. CHTRS WILL HAVE AN OPTION FOR SWITCHING B/LS AT LOADPORT, SINGAPORE, INDIA, UAE AND ANY OTHER PORT. B/L SWITCH PROCEDURES AND PROCESS IS FULLY ACCEPTABLE BY OWNERS BASED ON CHARTERER'S INSTRUCTIONS. IF ORIGINAL B/LS ARE NOT AVAILABLE AT DISCHARGE PORT, MASTER TO DISCHARGE CARGO AGAINST CHARTERERS' L.O.I. WITHOUT BANK GUARANTEE (LOI WORDINGS AS PER OWNERS PNI CLUB). IN THE EVENT LOCAL AND 2ND SET BILLS OF LADING HAVE NOT BEEN SWITCHED BEFORE DISCHARGE, OWNER TO INSTRUCT MATER TO DISCHARGE CARGO AGAINST CHARTERERS' L.O.I. WITHOUT BANK GUARANTEE STATING 2ND SETS BILLS OF LADING DETAILS. THE CHARTERERS ARE ALLOWED FOR SWITCHING B/LS AFTER THE FINAL DISCHARGE.

12. CHTRS WILL HAVE AN OPTION TO PAY FREIGHT IN USD, EURO OR AED CURRENCY TO THE OWNERS'S NOMINATED BANK ACCOUNT BY TELEGRAPHIC TRANSFER (TT) OR OTHER SOURCES.

13. DUE TO BANKING SANCTIONS, OWNERS AGREE FOR THE FOLLOWING ITEMS ON B/LS AND OTHER DOCUMENTS –

A) THE WORD "IRAN"; IF REQUESTED BY CHTRS, SHALL BE OMITTED FROM B/LS AND OTHER DOCUMENTS AND NOT TO BE SHOWN ANYWHERE.

B) THE SHIPPERS, BUYERS AND OTHER DETAILS TO BE INSERTED AS PER CHTRS'S REQUEST.

C) DISCHARGE PORT MAY BE MENTIONED "MIDDLE EAST (PORT)" OR "JEBEL ALI" OR "HAMRIYA" OR SOMEWHERE ELSE INSTEAD OF BANDAR ABBAS AND BIK AS PER CHTRS INSTRUCTIONS.

END RECAP

Trust above in line with our notes of negotiation, please reconfirm the same in written for sake of good order within 24hrs otherwise shall assume all in order.

> Many thanks for your kind co-operation and understanding during entire negotiation.
>
> Looking forward to having many more similar opportunities in near future.
>
> Best regards
>
> [A]
>
> [X] Shipbrokers Pte Ltd
>
> [Bolded underlining added]

12 In the Recap, the Applicant is recorded as being the "Registered Owners" (whereas it was in fact the demise charterer); [Z] Service Limited is stated to be the "Disponent Owners"; and [Y] Ship Management Limited is recorded as being the "Commercial Operator". The reference to "Vessel" refers to the name of the Vessel and states, "Q.88 attached",[2] the first page of which is reproduced below, and which identifies those companies as working from a common office in Guangzhou in the People's Republic of China, with the Applicant and [Y] Ship Management Limited sharing an email address.

INTERTANKO CHARTERING QUESTIONNAIRE 88 - OIL/CHEMICAL **Version 5**

1.	**GENERAL INFORMATION**	
1.1	Date updated:	2022/6/7
1.2	Vessel's name (IMO number):	**THE VESSEL**
1.3	Vessel's previous name(s) and date(s) of change:	30 JUNE 2021
1.4	Date delivered / Builder (where built):	25TH SEPT 2019 WUHU MARINE HEAVY INDUSTRY CO. LTD CHINA
1.5	Flag / Port of Registry:	HONG KONG
1.6	Call sign / MMSI:	[REDACTED]
1.7	Vessel's contact details (satcom/fax/email etc.):	Fax: Not Applicable Email: haidell@[Y] sg.com
1.8	Type of vessel (as described in Form A or Form B Q1.11 of the IOPPC):	Oil / Chemical Tanker
1.9	Type of hull:	Double Hull

[2] CMB Vol 1 pp 646–654.

Ownership and Operation		
1.10	Registered owner - Full style:	**DMF (THE APPLICANT)** SHIPPING LIMITED [redacted] Well Center, No. 180 Jiangnan Avenue Middle, Haizhu Disrrict, Guangzhou,P.R.China Tel: +86 20 84125879 Fax: +86 20 89019819 Telex: Not Applicable Email:charter@[Y][redacted]-sg.com Web: Not Applicable
1.11	Technical operator - Full style:	[Y][redacted] SHIP MANAGEMENT LIMITED [redacted] Well Center, No. 180 Jiangnan Avenue Middle, Haizhu Disrrict, Guangzhou,P.R.China Tel: +86 20 84125879 Fax: +86 20 89019819 Telex: Not Applicable Email: charter@[Y][redacted]sg.com Web: Not Applicable
1.12	Commercial operator - Full style:	[Y][redacted] SHIP MANAGEMENT LIMITED [redacted] Well Center, No. 180 Jiangnan Avenue Middle, Haizhu Disrrict, Guangzhou,P.R.China Tel: +86 20 84125879 Fax: +86 20 89019819 Telex: Not Applicable Email:charter@[Y][redacted]-sg.com Web: Not Applicable
1.13	Disponent owner - Full style:	[Z][redacted]SERVICE LIMITED [redacted] Well Center, No. 180 Jiangnan Avenue Middle, Haizhu Disrrict, Guangzhou,P.R.China Tel: +86 20 84125879 Fax: +86 20 89019819
Insurance		

13 All the negotiations leading up to the agreement on 10 June 2022 were carried out between Mr [A] of [X] Shipbrokers Pte Ltd and Captain [B] of [Y] Ship Management Limited.[3]

14 Thereafter on 16 and 17 June 2022, emails were exchanged between Mr [A] and Captain [B] implementing the terms of the charterparty from which it is apparent that [Y] Ship Management Limited were also acting on behalf of [Z] Service Limited, using [Y] Ship Management Limited's email address.[4]

15 Also on 17 June 2022, following a discussion between them, Mr [A] sent the following email to Captain [B],[5] setting out the terms of an Addendum to the charterparty which provided for the option of an additional load port at Kuala Tanjung, Indonesia with an additional payment if the option was exercised.

---

3 See *eg*, CMB Vol 1 pp 643–645, 668–676.

4 CMB Vol 1 pp 627–630.

5 CMB Vol 3 pp 447–448.

Dear Capt [B],

Good day.

As discussed and agreed, please find below addendum-1 for additional load port for the subject vessel.

…

ADDENDUM-01

To charter party dated 10th June 2022 between [DMG] as Charterer, [DMF] as registered owners and [Z] Service Limited as disponent owners for [the Vessel].

It is this day agreed between charterers and owners that:

1. Charterers will have an option for additional loadport Kuala Tanjung, Indonesia for loading cargo as per C/P. Vessel will call loadport Kuala Tanjung, Indonesia first (1st loadport), followed by Tanjungpura (Kijing), Indonesia (2nd loadport), if used.

2. Charterers will pay extra USD 4.00/pmt to owners on entire cargo quantity for additional loadport Kuala Tanjung, Indonesia, if used.

All other terms and conditions remain unchanged and unaltered.

…

Singapore

June 17, 2022

End Addendum-01

++++++

Please confirm receipt.

Thank you.

Best regards

[A]

[X] Shipbrokers Pte Ltd

[Underlining added]

16 Although there was provision in the draft for the signatures of the Applicant, the Respondent, and [Z] Service Limited to be affixed, no signed document has been produced in court. However, the terms of the Addendum as set out in the email were implemented.[6] On 2 July 2022, a Notice of Readiness of the Vessel at the port of Kuala Tanjung was issued by the shipmaster under the stamp of the Applicant.[7]

17 It was following the arrival of the vessel at Kuala Tanjung that the events which led to the alleged breaches of the charterparty occurred. These are matters which will have to be fully ventilated in the Arbitration. It is sufficient for present purposes to record that the cargo was not loaded by 7 July 2022 when the Vessel left the port. The emails record that [Y] Ship Management Limited was contending that there was a failure by [X] Shipbrokers Pte Ltd to obtain the necessary export permits which would have allowed the Vessel to load the cargo and sail and that [X] Shipbrokers Pte Ltd was contending that all necessary documents had been obtained by 7 July 2022 such that leaving the port without loading was a breach of the charterparty.[8]

18 As appears from an email from Mr [A] to Captain [B] dated 7 July 2022, the Respondent was aware that the Vessel was sailing to the Malaysian port of Pasir Gudang,[9] and on 8 July 2022, the Respondent applied to the High Court of Malaya at Kuala Lumpur for a warrant of arrest (the "Warrant") in respect of the Vessel. The Warrant was granted. It was served on 10 July 2022.[10] The writ

---

6 See *eg*, CMB Vol 4 pp 338–347.

7 CMB Vol 4 p 21 and CMB Vol 3 p 474.

8 See *eg*, CMB Vol 4 pp 364–365, 367–374 and 27–44.

9 CMB Vol 4 p 35.

10 CMB Vol 4 pp 134–142.

in rem (the "Writ")[11] named the defendants in the suit as being the "Owners and/or Demise Charterers of the [Vessel] of the port of Hong Kong".

19 The Writ was issued on 10 July 2022 and on 18 July 2022, the Applicant entered an appearance, initially stating that it was the owner of the Vessel but subsequently amending this to being the demise charterer.[12] On 22 July 2022, the Applicant applied to set aside the Warrant, supported by an affidavit from Captain [B].[13] The application was dismissed with costs on 12 September 2022.[14] The Applicant thereupon issued an application for the release of the Vessel on 12 September 2022 again supported by an affidavit sworn by Captain [B].[15]

20 On 20 September 2022, [X] Shipbrokers Pte Ltd became aware that on 15 or 16 September 2022, the Vessel had broken arrest, left Malaysian waters and had changed her name. This led to successful contempt proceedings against the shipmaster, Captain [B], and the director of the Applicant.[16]

The Charterparty and the Arbitration

21 Before turning to the issues, it is necessary to consider the terms of the Charterparty in a little more detail. The relevant passages have been emphasised at [11] above.

---

11 CMB Vol 3 pp 416–419.

12 CMB Vol 2 pp 447–448.

13 CMB Vol 3 pp 510–513, 430–445.

14 CMB Vol 3 pp 644–645.

15 CMB Vol 3 pp 578–592, 650–653.

16 CMB Vol 4 pp 163–166, 265–268.

22 First, it is to be noted that both the Applicant and [Z] Service Limited are each named as "Owners" in the plural and the body of the document continues by referring to "Owners" without distinguishing between them save in respect of (a) the "Owners Bank Details" where [Z] Service Limited is named as the beneficiary, and (b) in paragraph 2 of the Terms, where reference is made to "Head Owners" in relation to any freight assignment.

23 Secondly, Term 1 applies the Vegoilvoy Charterparty and the Respondent's rider clauses.[17] The introductory passage states:[18]

> This standard Charter Party Clauses of [RESPONDENT'S] RIDER CLAUSES (PALM OIL), as mentioned below are used in conjunction with VEGOILVOY Charter Party. It is understood that should there be any conflict between clauses, charterparty main terms shall always take precedence first before any other clauses, then charterer's rider clauses which shall take precedence over Vegoilvoy proforma terms.

24 Clause 41 is the arbitration clause, which reads as follows:

> **41. ARBITRATION:**
>
> This Charter Party shall be governed by English law arbitrated at Singapore. All disputes arising out of or in connection this Charter Party, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in accordance with the Arbitration Rules of the Singapore Chamber of Maritime Arbitration ("SCMA Rules") for the time being in force at the commencement of the arbitration. SCMA Rules are deemed to be incorporated by reference into this Clause

25 Pursuant to Clause 41, on 10 August 2022, the Respondent gave Notice of Arbitration,[19] naming the Applicant as respondent in the Arbitration. In its

---

17 CMB Vol 2 pp 313–329.

18 CMB Vol 2 p 313.

19 CMB Vol 4 pp 514–516.

Defence served on 8 November 2022, the Applicant raised a number of defences, the primary one of which was that it did not contract with the Respondent, the sole contracting party being [Z] Service Limited.[20]

26 On 13 January 2023, the Applicant sought to challenge the jurisdiction of the Tribunal on the basis that it was not a party to the Charterparty.[21] On 25 May 2023, the Tribunal directed that the challenge to jurisdiction should proceed first, and a hearing took place in Singapore on 23 and 24 September 2023.

27 Following further written submissions, the Tribunal gave its Partial Award on Jurisdiction on 13 August 2024.[22] This was based on the reasoning of the majority, with a "Dissent Award" also being issued by the Presiding Arbitrator.[23]

28 All members of the Tribunal agreed that [Z] Service Limited was a party to the Charterparty but differed in respect of the Applicant. It is now not in dispute that [Z] Service Limited is a party to the Charterparty. The question is whether the Applicant is also a party.

29 Both the Applicant and the Respondent accept that the hearing before me is a *de novo* hearing and that accordingly I should not show any deference to the views of the majority or take into account the fact that this was a split decision (see *Sanum Investments Ltd v Government of the Lao People's Democratic Republic* [2016] 5 SLR 536 at [40]–[44]).

---

20 CMB Vol 6 pp 137–148.

21 CMB Vol 1 pp 122–131.

22 CMB Vol 1 pp 62–104.

23 CMB Vol 1 pp 106–120.

The Issues

30 Clause 41 of the Agreement provides that English law governs the Charterparty. The Applicant's case is that, on a true interpretation of the Charterparty, it is not a party to the Charterparty as agreed on 10 June 2022 (*ie*, the Agreement of 10 June 2022). It contends that the correct legal approach is to consider the Agreement separately from the Addendum of 17 June 2022 on the basis that if it was not a party at that date, it could not become one subsequently by reason of the wording of the Addendum.

31 For its part, the Respondent contends that the proper approach under English law is to interpret the Agreement together with the Addendum as being a composite agreement made on 17 June 2022 and that on this basis the Applicant is a party to the Charterparty. If, however, this is a wrong approach in law, then it contends that even without reference to the Addendum, on its proper construction, the Applicant is a party to the Agreement.

32 If it is wrong on both bases, the Respondent contends that the Applicant's conduct and statements in the Malaysian proceedings were such as to make it inequitable for it now to deny that it was a party to the Charterparty on a number of grounds, namely, *res judicata*, issue estoppel, estoppel on the extended grounds set out in *Henderson v Henderson* (1843) 3 Hare 100 ("*Henderson*"), approbation and reprobation, and finally, abuse of process.

33 It is convenient first to consider the issues of interpretation and then to turn to the effects of the Applicant's actions and conduct in the Malaysian proceedings.

Interpretation of the Charterparty

34 The issues of interpretation can be defined as follows:

(a) First, what are the applicable principles governing the interpretation of contracts under English law?

(b) Second, is it appropriate under English law to construe the Agreement of 10 June 2022 and the Addendum of 17 June 2022 separately or together?

(c) Third, are there any customs or accepted practices in relation to the interpretation of charterparties?

(d) Fourth, drawing the threads together, what is the proper interpretation of the Charterparty in the present case?

What are the applicable principles of contractual interpretation?

35 The parties were agreed that guidance could be obtained from the reasoning of His Honour Judge Pelling QC in *Americas Bulk Transport Ltd v Cosco Bulk Carrier Ltd (The "Grand Fortune")* [2020] 2 Lloyd's Rep 105 ("*Americas*").

36 Beyond that, counsel for the Applicant, Mr Raymond Ong ("Mr Ong"), contented that there was no difference between English and Singapore law. Ms Corina Song ("Ms Song") for the Respondent contended that there were certain nuances of English law which she would like to draw to my attention. At an early stage, I was requested by both parties to permit submissions so far as necessary on foreign law, both English and Malaysian, pursuant to O 16 r 8

of the Singapore International Commercial Court Rules 2021 (the "SICC Rules") instead of proof by way of expert evidence.

37 So far as concerns English law, Ms Song sought leave to adduce written evidence from Mr Roderick Cordara KC ("Mr Cordara") and at a case management conference ("CMC") on 25 February 2025, I gave the following directions:

> I am going to give permission in your written submissions to have a section on English law which can be written by Mr Cordara, and it is limited to drawing my attention to any relevant principles or cases which build upon the principles set out in the *Americas* and anything additional that you wish to draw my attention to, in order to assist in understanding the way the *Americas* work. What we will do at the outset of the hearing is decide whether it is necessary to have oral submissions from Mr Cordara.

38 I also indicated that at that time I did not foresee the need for oral submissions in addition to those written submissions. The Respondent's written submissions therefore incorporated English law input from Mr Cordara. At the outset of the hearing, Ms Song made an application to permit Mr Cordara to make oral submissions in addition to his written submissions, which was opposed by Mr Ong. I remained of the view that little extra benefit would be obtained from oral submissions but since Mr Cordara was in court, I concluded that the best course would be to receive his submissions *de bene esse*. I am grateful to Mr Cordara for his assistance.

39 At the end of this judgment (at [196]–[209] below), I shall consider in more detail the question of expert evidence in the form of submissions in the light of the experiences in this case.

40 In its written submissions, the Respondent referred to the principles of construction of a contract set out by Lord Neuberger in *Marley v Rawlings* [2015] AC 129 ("*Marley*") at [18]–[19]:[24]

> 18 During the past 40 years, the House of Lords and Supreme Court have laid down the correct approach to the interpretation, or construction, of commercial contracts in a number of cases starting with *Prenn v Simmonds* [1971] 1 WLR 1381 and culminating in *Rainy Sky SA v Kookmin Bank* [2011] 1 WLR 2900.
>
> 19 When interpreting a contract, the court is concerned to find the intention of the party or parties, and it does this by identifying the meaning of the relevant words, (a) in the light of (i) the natural and ordinary meaning of those words, (ii) the overall purpose of the document, (iii) any other provisions of the document, (iv) the facts known or assumed by the parties at the time that the document was executed, and (v) common sense, but (b) ignoring subjective evidence of any party's intentions. In this connection, see *Prenn*, at pp 1384–1386 and *Reardon Smith Line Ltd v Yngvar Hansen-Tangen (trading as H E Hansen-Tangen)* [1976] 1 WLR 989, *per* Lord Wilberforce, *Bank of Credit and Commerce International SA v Ali* [2002] 1 AC 251, para 8, *per* Lord Bingham of Cornhill, and the survey of more recent authorities in *Rainy Sky*, *per* Lord Clarke of Stone-cum-Ebony JSC, at paras 21–30.
>
> [Underlining added]

41 This objective approach involves ascertaining what a reasonable person would have understood the parties to have meant and the relevant reasonable person is one who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract (the "informed reader"): see *eg*, *Rainy Sky SA v Kookmin Bank* [2011] 1 WLR 2900 at [14], referred to by Lord Neuberger in *Marley* at [18].

42 The *Americas* was a case about a charterparty. The oddity about the case was that whereas there was no dispute that an agreement had been reached, there

---

[24] Respondent's Written Submissions at para 72.

was a dispute as to which of two companies was the counterparty under the charterparty. The facts are complex and it is not necessary to go into them in any great detail in order to place the observations on the law into context.

43 The Defendant in that case claimed damages from the Claimant under a Recap Time Charter dated 16 May 2008 contained in or evidenced by an email of that date which contained an arbitration clause. The Claimant, the respondent in an arbitration brought by the Defendant, asserted in its response that the Tribunal did not have jurisdiction over the Defendant. The arbitrators, by a majority, held that it did have jurisdiction.

44 In 2007, the Defendant had sub-chartered the vessel to a company named Brittania Bulkers A/S ("Bulkers") whose obligations under the charterparty were guaranteed by Brittania Bulk Plc ("Bulk"). Bulkers was a wholly owned subsidiary of Bulk. The Defendant's claim was based upon its standing as assignee of the rights of Bulkers. The Claimant claimed that Bulk, not Bulkers, was the counterparty to the charterparty and that therefore Bulkers had no standing to make a claim in the arbitration. It was common ground that Bulkers was the disponent owner of the vessel under a sub-charter from the Defendant but the charterparty had been drawn up in Bulk's office and did not name the counterparty.

45 The case thus proceeded on the basis that it was necessary to decide which of two parties was the counterparty, the disponent owner (Bulkers) or the party negotiating the charterparty (Bulk). The decision of the majority proceeded on the basis that there "*was a presumed concern and hence intention, in the absence of evidence to the contrary, of charterers engaged in negotiations to contract with the disponent owners of the vessel …*" (at [14]).

46 At [18] and [19] the Judge stated the applicable legal principles as follows:

> 18 There is a dispute between the parties as to how the issues that arise should be determined. The claimant submits that ascertaining the identity of the parties to a contract is a question of fact to be determined by reference to all the relevant evidence even if it post-dates the contract in issue and even if it is not something known to both parties but only to one of them. The defendant submits that identification of a party to a contract is a matter of contractual construction, which may be supported by extrinsic evidence known to both parties at the time the contract was made. It submits that material coming into existence after that time is immaterial to the issue.
>
> 19 In my judgment the applicable principles in summary are as follows:
>
> > (i) Where the contract is contained in a document then the first question that arises is whether the document sufficiently unequivocally identifies the parties to the contract. If it does then the question is one to be determined by construction of the relevant document and is not a question of factual investigation and evaluation – see *Hector v Lyons* (1988) 58 P & CR 156 and *Shogun Finance Ltd v Hudson* [2004] 1 Lloyd's Rep 532; [2004] 1 AC 919 per Lord Hobhouse at para 49 because: "… the rule that other evidence may not be adduced to contradict the provisions of a contract contained in a written document is fundamental to the mercantile law of this country; the bargain is the document; the certainty of the contract depends on it …", and per Lord Phillips at para 161.
> >
> > (ii) Where the contract is contained in or evidenced in writing but the document or documents containing or evidencing the agreement do not enable the parties to be ascertained, then recourse to extrinsic evidence is permitted of what the parties said to each other and what they did down to the point at which a contract was concluded for the purpose of determining who the parties to the agreement were intended to be – see *Estor Ltd v Multifit (UK) Ltd* [2010] CILL 2800 per Akenhead J at para 26 approved in *Hamid v Francis Bradshaw Partnership* [2013] BLR 447 per Jackson LJ at para 56 with whom the other members of the court agreed – see paras 74 and 75.

> (iii) Where para (ii) applies in principle, the approach that should be adopted is objective not subjective so that the question the court must ask and answer is what a reasonable person furnished with the relevant information, would conclude – see *Hamid v Francis Bradshaw Partnership* (ibid) at para 57(ii) and *Navig8 Inc v South Vigour Shipping Inc* [2015] 1 Lloyd's Rep 436 per Teare J at para 94.
>
> [Underlining added]

47 The Judge then rejected a submission that post-contractual evidence was admissible to determine the parties to an agreement but did accept that it might be in reaching a conclusion as to identifying an unidentified principal, as a last resort. In [23] he said this:

> 23 Finally, it was submitted by the defendant and I accept that if: (i) the identity of the disponent owner is not apparent on the face of a document containing or evidencing the charterparty; and (ii) cannot be ascertained by reference to the extrinsic evidence available down to the point at which the relevant contract was concluded; but (iii) the relevant contract was entered into by an agent acting on behalf of two or more potential unidentified principals, the identity of the true principal can be ascertained by reference to the intention of the agent when entering the contract – see *North Atlantic Insurance Co Ltd v Nationwide General Insurance Co Ltd* [2003] 2 CLC 731 per Cooke J at para 28, where he held that: "… where it is necessary to ascertain the [identity] of a principal, with whom the other party knows it is dealing but who remains unidentified on the face of the contract, resort … must be had to the intention of the agent when making the contract, to ascertain on whose behalf he was then acting …". The material that is admissible in order to resolve this issue includes "… any … admissible material showing what was subjectively intended by …" the agent – see *National Oilwell (UK) Ltd v Davy Offshore Ltd* [1993] 2 Lloyd's Rep 582 per Colman J at page 597 col 1 (para (3)). I accept that when this is the issue it is permissible to refer to post-contractual as well as pre-contractual evidence as long as the evidence is material to the subjective intent of the agent at the time when he contractually bound his principal.
>
> [Underlining added]

48 The observations of Lord Neuberger in *Marley* are of general application to all forms of contact. The language of HHJ Pelling is specific to charterparties. But, subject to any underlying customs or accepted presumptions specific to such contracts, charterparties are but a form of contract to which the general principles apply. This is apparent from the reasoning in [19] of *Marley*.

49 The underlying issue in the *Americas* was very different to that in the present proceedings. There the investigation was to identify who, in fact, was the unnamed counterparty. In this case there is now no dispute that [Z] Service Limited is a party, the question is whether the Applicant is also a party.

50 Care must be taken when considering reasoning developed to meet the facts of one case to a case where the facts are different. It may provide a useful structured approach but should not be elevated into a statutorily mandated task as I apprehended both parties were tempted to do. In particular, I consider that the approach set out in [23] of the *Americas* concerning the admissibility of post-contractual evidence was intended to be limited to the ascertainment of the identity of unidentified parties acting through agents, which is not the case here.

51 On the facts of this case, I consider that the correct approach is to apply the principles set out by Lord Neuberger in *Marley* which is also the approach adopted by HHJ Pelling in [19(i)]–[19(ii)] of the *Americas*.

Is it appropriate under English law to construe the Agreement of 10 June 2022 and the Addendum of 17 June 2022 separately or together?

52 Mr Cordara contended in written submissions that the two should be read together:[25]

---

[25] Respondent's Written Submissions at para 75.

> On this basis, although the Tribunal proceeded first to analyse the wording of the Charterparty as it stood initially in the Fixture Recap before proceeding to the analysis of the wording added in the Addendum (see Award [109] *et seq.*), English law would regard the better approach as to go directly to a consideration of the meaning of the wording of the contract documentation viewed *as a whole*, applying the above principles. The fact that the overall wording was constructed in two stages, over 7 days, would not (*per se*) be regarded as of any ultimate significance.

He cited no authorities in support of his submissions.

53 Mr Ong responded as follows in his written submissions:[26]

> Further, Judge Pelling, QC also cautioned against fact finding – see [19(i)] of the Americas case. Where the document is clear, a Court ought not to make any factual investigation or evaluation, where the identity of the party is already clearly spelt out.

54 Mr Ong amplified upon this in oral submissions:

> The Tribunal made a leap in reasoning to say that this [the Addendum] is a contractual document which is part and parcel of the CP [Charterparty]. If the CP did not intend to make [the Applicant] a party, a subsequent document cannot create privity of contract if none existed in the first place. I submit that the Tribunal's finding that the Addendum as an agreed contractual document that forms part of the CP is an unwarranted assumption that is wrong. The Addendum cannot be an agreed contractual document. It remains unsigned to this day.
>
> Looking back at the email, this email was to talk about additional load ports and increased freight prices. The focus of the email and the Addendum was to increase the freight because of the increase in load ports. … The subject matter of this email was not so much as to who was the contracting party; rather it was purely more freight for a second load port. … A subsequent document cannot create privity if [the Applicant] was not a party to the first CP. … I submit that Addendum is

[26] Applicant's Written Submissions (Jurisdictional Challenge) at para 26.

> nothing more than reflection of prices to be paid for the second load port.
>
> [Underlining added]

55 I disagree that the Addendum is not a contractual document. Although unsigned, it was acted upon by the parties and if not a contract in itself is evidence of a contract in those terms. Mr Ong asserts that it merely serves to alter the terms of the contract to give the Respondent the right to nominate two ports and pay additional freight if it did. In all other respects, as the Addendum expressly states: "*All other terms and conditions remain unaltered*".

56 The Addendum is thus altering the terms of the Charterparty. Thereafter the Applicant could not insist on the cargo being loaded at only one port nor could the Respondent seek to pay freight at the lower rate if the option was exercised. These considerations lead to the conclusion that it is correct to read the documents together as Mr Cordara suggests. But this does not mean that the wording of the Addendum can override "the other terms and conditions".

57 I therefore accept Mr Ong's submission that the wording of the Addendum cannot serve to make the Applicant a party if it was not already a party to the Agreement. This will involve considering the Agreement on its own to determine whether, taken alone, it is clear that the Applicant was not intended to be a party. If it is, then the Addendum must be read in the light of this conclusion such that the informed reader of both documents would conclude that the introductory words to the Addendum were erroneous.

58 If however the informed reader would consider that the Agreement, taken on its own was ambiguous, then I agree with Mr Cordara that recourse could properly be had to the Addendum to resolve the ambiguity. Of course, if

it is clear from the Agreement that the Applicant was intended to be a party, that is the end of the matter and the Addendum is merely confirmatory of this.

Are there any customs or accepted practices in relation to the interpretation of charterparties?

59 The informed reader would be aware of any custom or accepted practice in the field of charterparties and would take them into account when forming a view on the meaning of words in a contract.

60 The Applicant contended that there was a custom in relation to charterparties that the disponent owner, and only the disponent owner, would be the counterpart to a charterparty.[27]

61 Paragraphs 33, 62 and 63 of its written submissions read as follows:

> 33. Being a professional ship broker, [X] Shipbrokers Pte Ltd must have known the effect of expressly naming [Z] Service Limited as "Disponent Owner" in a CP. The objective inference must be, that [Z] Service Limited was [the Respondent's] counterparty and not Applicant. If the intent was to have only Applicant as the counterparty, then the CP would have simply named Applicant as disponent owner.
>
> …
>
> 62. With respect, the latter argument [that [Z] Service Limited could be a contractual party, or was jointly liable, so long as the Applicant was also a contractual party] meant that [the Respondent] made a contract with 2 carriers. A result that is not only unusual, but an anomaly in shipping. If one refers to the standard BIMCO charterparty forms, there is only 1 box to be filled in for 1 owner, and 1 box for 1 charterer, just like [DMG]'s Rider Clauses mentioned above.
>
> 63. A normal commercial person does not engage 2 carriers in a contract of carriage, or provide for 1 carrier to be jointly liable with another. It is also noticeable that the words "jointly" or "severally" are absent from the CP which, if it was intended for

---

27 Applicant's Written Submissions (Jurisdictional Challenge) at paras 15 and 17.

> both Applicant and [Z] Service Limited to be counterparties, such wording would have been used, especially if the intent was to create joint liability.

62 The Applicant relies on extracts from three textbooks for the definition of "disponent owner" and on an analogy with the facts in the *Americas*, *Navig8 Inc v South Vigour Shipping Inc* [2015] 1 Lloyd's Rep 436 ("*Navig8*"); *O/Y Wasa S.S. Co Ltd and another v Newspapers Pulp & Wood Export Ltd* [1949] 82 Lloyd's List Rep 936 ("*Wasa*") and *Asty Maritime Co Ltd and another v Rocco Guiseppe & Figli and others (The "Astyanax")* [1985] 2 Lloyd's Rep 109 ("*Asty Maritime*").

63 The textbook citations are from David Foxton *et al*, *Scrutton on Charterparties and Bills of Lading* (Sweet & Maxwell, 24th Ed, 2020) ("*Scrutton*") at para 2-057, Stephen Girvin, *Carriage of Goods by Sea* (Oxford University Press, 3rd Ed, 2022) at para 1.45 and *Carver on Charterparties* (Sweet & Maxwell, 2nd Ed) (Howard Bennett, gen ed) at para 2-003.[28]

64 The extract from *Scrutton* states that charterparties:

> … are to be construed according to their sense and meaning as collected in the first place from the terms used understood in their plain, ordinary and popular sense unless they have generally in respect of the subject matter, as by the known usage of the trade or the like, acquired a particular sense, distinct from their popular sense distinct from their popular sense; or unless the context evidently shows that they must in the particular instance, and in order to effectuate the immediate intention of the parties, be understood in some other special and peculiar sense.
>
> [Underlining added]

---

[28] Applicant's Written Submissions (Jurisdictional Challenge) at paras 77–84; Applicant's Bundle of Authorities Tabs 5-7.

65 I accept this proposition but the evidential onus will be on the person asserting that there is a known usage in the trade to prove it. The other two extracts do not seek to give a precise meaning to the word "Disponent Owner" and accept that whilst the expression may generally be a reference to the person who controls the commercial operations of the vessel, the precise meaning has to be determined by reference to the contract's surrounding circumstances. Neither provides support for the proposition that there is a custom in the trade that only the disponent owner, whoever it may be, will be the sole party to the charterparty.

66 The four cases equally provide no support for the proposition. In the *Americas*, the assumption was that the disponent owner would be the counterpart to the Charterparty, the task of the court was to identify who that was. The issue of additional parties did not arise.

67 The issue in *Navig8* was whether the commercial manager of the vessel ("SMMC") which was described as "Disponent Owners Signatory in Contract", was the counterparty or whether the registered owner was the counterparty with SMMC acting on their behalf. The Judge concluded, on the facts, that the contract was signed by SMMC as disponent owner in the sense of being the manager of the vessel and that the owners were not a party (at [97]–[98]). There was no suggestion that both were parties or that there was a custom in the trade that there would only be one party to the charterparty. A similar exercise was carried out by the Judge in *Wasa* to determine the ambit of the expression "Disponent Owner" and again there was no discussion of any custom in the trade (at pp 953–954).

68 In *Asty Maritime*, the Judge at first instance had concluded that the parties to the charterparty were the 1st Defendant as charterers with the

counterparties being the 1st Plaintiff as registered owner and the 2nd Plaintiff as disponent owner. On appeal the English Court of Appeal held on the facts that the 1st Plaintiff was not a party to the charterparty so could not enforce the charterparty with the charterers (at p 113 col 1). It was not contended that the appeal should be allowed on the basis that there was a custom in the trade that only the disponent owner could be a party.

69 The submissions and documents relied upon by the Applicant therefore do not satisfy me that there is a custom in the trade that only the disponent owner, whoever that may be on the facts of a given case, will be the sole counterparty to the charterparty. Whilst it may be that the notional reader might expect that there would only be a single counterparty, this does not mean that the reader would work on the basis that there *must* only be one counterparty.

70 Each case turns on its own facts. The approach to the interpretation of a charterparty is no different from any other contract. Whilst I accept that the informed reader would be someone familiar with charterparties, they would not approach the issue of construction on the understanding that there must only be one party contracting as the owner of the vessel.

What is the proper interpretation of the Charterparty in the present case?

71 I turn now to interpret the Charterparty in the light of the above observations. I should make it clear that the sole question before me is whether the Applicant is a party to the Charterparty and hence a party to the arbitration agreement contained in Clause 41. It was not suggested that if it were held to be a party to the Charterparty it was not also subject to the arbitration clause.

72 If I conclude that the Applicant is a party I am not deciding what the rights and obligations of the Applicant and [Z] Service Limited are *inter se* or *vis-à-vis* the Respondent. That would be a matter to be decided by the Tribunal.

73 The structured approach of Lord Neuberger in *Marley* mandates that one should consider five factors when seeking to ascertain the intention of the parties but should do so without taking account of any evidence relating to the subjective intention of the parties themselves. One has to do this by reading the documents through the eyes of the informed reader.

74 I shall start by considering the Agreement of 10 June 2022 alone, without also taking into account the wording in the Addendum of 17 June 2022. The object is to ascertain whether (a) it is plain that the Applicant was not intended to be a party or (b) it is plain that the Applicant was intended to be a party or (c) it is ambiguous as to this.

75 The objective is to determine the meaning of the relevant wording in the context of the document as a whole. The five factors identified by Lord Neuberger need not be considered on a step-by-step basis but are considerations to be taken into account when reaching an overall conclusion. The weight to be attached to each consideration will depend upon the facts of each case.

76 The question is whether the reference to the Applicant as Registered Owners in the Recap (set out in opening words of the email from Mr [A] to Captain [B] of 10 June 2022) (reproduced at [11] above)[29] serves to make the Applicant a party to the Charterparty or whether the reference is properly to be

[29] CMB Vol 3 pp 464–466.

interpreted as identifying the Registered Owners for information purposes only without rendering them a party. The surrounding wording is as follows:

> Dear Capt [B]
>
> Good day.
>
> We are pleased to advise that charterers lifted all subjects within agreed time and [the Vessel] is fully clean fixed with charter party dated June 10, 2022. Please find below clean fixture recap with following terms and conditions mutually agreed between owners and charterers.
>
CHARTER PARTY DATE	:	10TH JUNE 2022
CHARTERERS	:	[DMG], SINGAPORE OR ITS NOMINEE
REGISTERED OWNERS	:	[DMF], P.R. CHINA
DISPONENT OWNERS	:	[Z] SERVICE LIMITED, P.R. CHINA
COMMERCIAL OPERATOR	:	[Y] SHIP MANAGEMENT LIMITED, P.R. CHINA
VESSEL	:	[THE VESSEL] – Q.88 ATTACHED … ALL OTHER DETAILS AS PER ATTACHED Q.88

77 The following points should be noted:

(a) The document does not begin in a conventional contractual way by including wording such as "This agreement is made between A on the one part and B and C on the other". It is thus not manifest from the wording actually used that the Applicant was intended to be a party.

(b) The informed reader familiar with charterparties would regard the presence of the name of the Registered Owner in addition to that of the Disponent Owner as being unusual and would wish to understand why it was included.

(c) In the introductory wording the text of the last sentence states "Please find below clean fixture recap with the following terms and conditions mutually agreed between **owners and charterers**" (Emphasis added).

(d) Thereafter, throughout the Recap reference is made to "Owners" *simpliciter* without any distinction being drawn between the Registered and Disponent Owners with the following exceptions:

(i) Under "Owners Bank Details" reference is made to [Z] Service Limited's bank details

(ii) Clause 2 of the Terms refers to "Head Owners" when making provision for freight assignment.

(e) Under the heading "Vessel" reference is made to the Q.88 (see [12] above)[30] which identifies the Applicant, [Z] Service Limited and [Y] Ship Management Limited as trading from the same address with a single email address.

(f) Clause 1 of the Terms incorporates the Vegoilvoy and the Respondent's rider clauses "with logical amendments as attached to apply **as mutually agreed between the Charterers and Owners**". (Emphasis added)

(g) The email is sent by Mr [A] of [X] Shipbrokers Pte Ltd and begins "*We are pleased to advise that charterers lifted all subjects within agreed time…*". It would thus be plain that [X] Shipbrokers Pte Ltd was acting as the agent of the charterer. It was sent to Captain [B] at

[30] CMB Vol 1 pp 646–648.

charter@[Y]-sg.com, the email address given in the Q.88 for both [Y] Ship Management Limited and the Applicant. It would thus equally be plain that Captain [B] was acting as agent for the Applicant. The use of agents having authority to bind their principals is commonplace.

(h) The email ends "*Trust above in line with our notes of negotiation, please reaffirm the same in written for the sake of good order within 24hrs otherwise shall assume all in order*". No response was received.

78 The Applicant contends that the informed reader, knowing that the usual practice was for the Disponent Owner alone to be a party to a Charterparty, would assume that it alone would be the contracting party and that this was consistent with the fact that freight was payable to [Z] Service Limited. It relied upon the observation of HHJ Pelling in [41] and [62] that the identity of the payee of freight was a significant factor.[31] The reference to the Applicant as Registered Owner would thus be understood as being for information purposes only.

79 In paragraph 14 of its written submissions, the Applicant accepted that one need only look at the Charterparty to decide the question of jurisdiction but did draw attention to the fact that no mention was made of the Applicant when the bill of lading was discussed in an email exchange of 4 July 2022.[32] This exchange however took place after the date of the Agreement and the Addendum and therefore cannot be taken into account unless it can be said that it formed part of an assumption "*by the parties at the date the document was*

---

31 Applicant's Written Submissions (Jurisdictional Challenge) at paras 14–19, 27 and 38.

32 Applicant's Written Submissions (Jurisdictional Challenge) at paras 28–33.

executed" (*per* Lord Neuberger in *Marley* at [19]). This is however no more than another way of submitting that there would be no need for the Applicant to be a party to the Charterparty. It does not help to determine whether in the circumstances it was nonetheless a contracting party.

80 Whilst the Respondent's primary assertion was that any ambiguity in the Agreement was resolved by the wording of the Addendum of 17 June 2022, it also contended that on a proper application of the principles in *Marley*, there was no ambiguity and that it was plain that it was intended that the Applicant should be a party. It accepted that it was usual for the Disponent Owner to be the sole counterparty to a Charterparty but relied on this as illustrating that the informed reader would identify the naming of the Registered Owners as being an exception to that. Hence the reader's attention would be drawn to the naming of the Applicant in conjunction with [Z] Service Limited and would wish to decide why it was included.

81 With this background, I turn to apply the principles in *Marley* to the circumstances of this case. Following on from [57]–[58]and [74] above, the exercise is to determine (a) whether it is clear that the reference to the Applicant was not intended to include it as a party to the Agreement or (b) whether it is ambiguous or (c) whether it is clear that it was intended to include it as a party.

82 First, whilst the wording does not use the customary form of "this agreement is made between A and B", the way in which the names of the companies involved are set out is suggestive that each Owner had a part to play. This is reinforced by the details contained in the Q.88 which demonstrate that the three entities, the Applicant, [Z] Service Limited and [Y] Ship Management Limited traded from the same address using, in the Applicant and [Y] Ship Management Limited's case, the same email. This would serve to identify that

[Y] Ship Management Limited was acting as agent (as its title as Commercial Operator would suggest) acting on behalf of the two principals with authority to bind both.

83 Faced with this, the informed reader would either accept that, for whatever reason, the Applicant was intended to be a party to the Agreement or, if they were uncertain, would look at the Agreement as a whole to resolve that uncertainty. I do not consider that their primary assumption would be that the Applicant was named for information purposes only.

84 The Applicant and [Z] Service Limited are both named as "Owners" in the plural and thus no weight should be attached to the use of the plural in the rest of the document but significant weight would be attached to the use of the word "Owners" *simpliciter* with no distinction being drawn between the Registered Owners and the Disponent Owners. Nowhere in the rest of the document is either prefix used. I do not regard use of [Z] Service Limited's bank details under the heading "Owners Bank Details" as being indicative that it was the sole party. It is indicative of the usual practice of the Disponent Owner being the payee but it does not serve to answer the question of whether the Applicant was also a party.

85 Equally I consider that no weight would be placed on the use of the words "Head Owners" in Clause 2 of the Terms. The term is not defined or otherwise used in the Agreement and its inclusion is suggestive of "copy and paste" from a precedent.

86 In conclusion therefore, in my judgment, the informed reader would start with the impression that the Applicant was named in the agreement as a party and that this impression would be confirmed by reading the document as a

whole. I doubt it would cross their mind that that it was named merely to provide information and, if it did, they would readily conclude that this was unnecessary having regard to the Q.88 which fulfils this purpose.

87 Accordingly, considering the Agreement on its own without recourse to the Addendum I am not satisfied that it is clear that the Applicant was not intended to be a party, nor that there is any ambiguity taking the Agreement as a whole.

88 Applying the principles set out by Lord Neuberger in *Marley* and the first principle set out by HHJ Pelling in the *Americas* leads to the conclusion that the informed reader would inevitably perceive on reading the Agreement as a whole that the Applicant was intended to be a party. Hence it would also be a party to the arbitration agreement contained in Clause 41 so that any dispute as to the rights and liabilities of the Applicant would fall to be resolved in the Arbitration.

89 It is therefore not necessary to have regard to the second and third principles set out by HHJ Pelling in the *Americas*.

90 It is also not necessary to have regard to the wording of the Addendum although, for the reasons given, I consider that it would be proper to do so had I concluded that wording of the Agreement was ambiguous. The wording of the Addendum, set out in [15] above, is unequivocal in that it expressly states that the Applicant is a party which would have served to resolve any ambiguity.

91 OA 26 thus falls to be dismissed. It is thus not necessary to consider the Respondent's alternative ground. This is based upon the premise that on the true interpretation of the Charterparty, the Applicant was not a party to it yet,

nonetheless, having regard to its conduct in the Malaysian proceedings it was inequitable for the Applicant thereafter to deny that it was a party. Consequently, it should be deemed to be a party so that the Arbitration should proceed on this basis. I shall however deal with the arguments both because there might be an appeal and because the outcome may have a significant impact on costs.

Effect of the Malaysian proceedings

Background to the Malaysian proceedings

92 In order to address the issues raised by the Respondent, it is necessary to consider the facts surrounding the arrest of the Vessel and the subsequent applications to the High Court of Malaya at Kuala Lumpur in more detail.

93 On 8 July 2022, the Respondent applied for and obtained the Warrant which was served on 10 July 2022. On the same day the Writ *in rem* was issued naming the defendants to the application as being the "owners and/or demise charterers of the Vessel" (see [18] above).[33] The affidavit supporting the application for the Warrant was sworn by Mr Matthew Van Huizen ("Mr Van Huizen"), a solicitor of Joseph & Partners acting for the Respondent.[34] Paragraph 5 of that affidavit reads as follows:

> 5 The Plaintiff, [DMG] is at all material times the voyage charterers of the [Vessel] from the Defendant, demise charterers [DMF] under a charterparty dated 10.6.2022 …. The Charterparty, as amended, provides for the loading and carriage of 27,500mt (+/- 5%) of crude / refined palm oil in bulk ("Cargo"), from Kuala Tanjung Port and Tanjung Pura Port, Indonesia ("Load Port"), to 1 or 2 safe ports, Bandar Abbas and/or Bandar Imam Khomeni, Iran.

---

33 CMB Vol 3 pp 416–419.

34 CMB Vol 4 pp 542–550.

94 The deponent thus relies on the Agreement and the Addendum and identifies the Defendant as being the Applicant. He continues by asserting in paragraph 10 that there was a breach of the Charterparty by leaving the load port without loading the cargo and in paragraphs 17–20 sets out the legal basis for the application:

> 17 This action is brought by the Plaintiff pursuant to **Section 24(b)** of the Courts of Judicature Act 1964 **("CJA")**, which confers upon the High Court of Malaya the same jurisdiction and authority in relation to matters of admiralty as is had by the High Court of Justice in England under the United Kingdom Senior Courts Act 1981.
>
> 18 The Plaintiff's action falls within the provisions of **Section 20(2)(h)** and **Section 21(4)** of the Senior Courts Act 1981, which applies to claims arising out of an agreement relating to carriage of goods in a ship. It enables the Plaintiff to enforce its claim by an action *in rem* against the [Vessel].
>
> 19 The property to be arrested is the [Vessel] and she is the Vessel in connection with which the claim in this action arose.
>
> 20 The Defendant in this action, [DMF], was at the material time when the cause of action arose, and also at the date of the issue of the Writ in this action, the Demise Charterer of the Vessel, and is the party who would be liable to the Plaintiff under the Charterparty on the claim in action in *personam*.
>
> [Underlining added]

95 Finally, Mr Van Huizen refers to the Arbitration Agreement in Clause 41 of the Charterparty and asserts in paragraphs 25–27 and 32:

> 25 I am instructed that the Charterparty incorporates an arbitration agreement for all disputes arising thereunder to be resolved by arbitration in Singapore in accordance with English law. …
>
> 26 I am instructed that the Plaintiff has not yet commenced arbitration on its claim against the Defendant.
>
> 27 I respectfully say that the Arbitration Agreement does not prevent the Plaintiff from commencing admiralty *in rem* proceedings against the Vessel in enforcement and/or as security for its claim in arbitration in Singapore. An arrest as security for any claim in a foreign arbitration is permissible.

> This Honourable Court has the power to issue a Warrant of Arrest by way of interim remedy to secure the Plaintiff's claim by the Vessel's arrest under **Section 11(1)(c)** of the Arbitration Act 2005.
>
> …
>
> 32 Further, if so advised, the Plaintiff shall reserve its rights to apply to stay proceedings in Malaysia under **Section 10** of the Arbitration Act 2005 to have its claim against the Defendant resolved by arbitration in Singapore.

96 On 18 July 2022 the Applicant entered an appearance and on 22 July 2022 applied to set aside the Warrant (see [19] above)[35] (the "Set Aside application"). This application was supported by the 1st Affidavit of Captain [B].[36] Captain [B] states that he was a manager at the Applicant and was authorised to affirm the affidavit on its behalf. The following paragraphs are material:

> 4 I affirm this Affidavit in support of the Defendant's Notice of Application filed herein. This application is made without prejudice to the Defendant's rights to require that this dispute be referred to arbitration in accordance with the arbitration agreement at clause 41 of the [Respondent's] Rider Clauses (Palm Oil) which forms part of the charterparty entered into between the Plaintiff and the Defendant.
>
> …
>
> 27 I also state that Clause 13 of the "Recap" ("**Clause 13**") of the Charterparty states as follows:-
>
> > "*13 Due to banking sanctions, owners agree for the following items on B/Ls and other documents-*
> >
> > *(A) The word "Iran"; if requested by Chtrs, shall be omitted from B/Ls and other documents and not to be shown anywhere.*
> >
> > *(B) The shippers, buyers and other details to be inserted as per chrtrs's request.*

---

35 CMB Vol 2 pp 447–448.

36 CMB Vol 3 pp 430–445.

> *(C) Discharge port may be mentioned "Middle East (Port)" or "Jebel Ali" or "Hamriya" or somewhere else instead of Bandar Abbas and BIK as per chtrs instructions."*
>
> 28 The above clause was inserted in the Charterparty on the requirement of the Plaintiff. I state that it is apparent from the above clause that the Plaintiff intended to mislead the relevant authorities and financial institutions on the true destination of the Cargo to Iran by deceptively requiring that it be replaced with a false destination on the Bills of Lading and other documents. I am advised that Clause 13 makes the Charterparty unenforceable due to illegality and/or being against public policy under Malaysian law. This fact and material consideration was not highlighted to this Honourable Court in the Arrest Affidavit by the Plaintiff.
>
> [Underlining added].

97 In these paragraphs Captain [B] expressly asserts that the Applicant was a party to the Charterparty and its rights to implement the arbitration clause. Further he asserts that the Charterparty was unenforceable for illegality and thus contrary to public policy under Malaysian law, which is the same allegation as is made in OA 27 under Singaporean law. However, he does not make any assertion to the effect that the Applicant was not a party to the Charterparty.

98 On 10 August 2022, the Respondent gave Notice of Arbitration.[37]

99 Following submissions and a (remote) hearing, the Applicant's application to set aside the Warrant was dismissed on 12 September 2022 by way of an order of court (the "Order") issued in the High Court of Malaya at Kuala Lumpur the substantive terms of which were in the following terms:[38]

> **UPON THE APPLICATION** by the Defendant abovenamed **AND UPON READING** the Notice of Application dated 22 June 2022 and all the Affidavits and Written Submissions filed herein **AND UPON HEARING** Jeremy M. Joseph (Matthew Jerome van

[37] CMB Vol 4 pp 514–516.

[38] CMB Vol 3 pp 644–645.

> Huizen with him), counsel for the Plaintiff, and Siva Kumar Kanagasabai (Dhanyaa Shreeya Sukumar and Melissa Malthew with him), counsel for the Defendant **IT IS HEREBY ORDERED ON THIS DAY** that :-
>
> > (i) The Notice of Application in Enclosure 20 is dismissed; and
> >
> > (ii) The Defendant do pay costs of RM20,000.00 to the Plaintiff, subject to allocatur.
>
> Dated 12 September 2022

100 No reasons were given for this conclusion but it is common ground that the question of whether or not the Applicant was a party to the Charterparty was not raised. This is not surprising in the light of the contents of Captain [B]'s affidavit. The Respondent and, no doubt, the court, proceeded on the basis that it was.

101 Following the failure of its attempt to have the Warrant set aside, the Applicant issued a further application on 12 September 2022,[39] seeking release of the vessel on the provision of appropriate security. Paragraph 1 of the grounds for the application states:

> (1) The instant application is made without admission of liability and without prejudice to:-
>
> > (a) The Defendant's rights to require that the instant dispute be referred to arbitration in accordance with the arbitration agreement at clause 41 of the [Respondent's] Rider Clauses (Palm Oil) which forms part of the Charterparty entered into between the Plaintiff and Defendant;
> >
> > (b) The Defendant's application to set aside the Warrant of Arrest issued by this Honourable Court on 8.7.2022; and
> >
> > (c) The Defendant's position that it has not committed any breach of the Charterparty to give rise to the Plaintiff's claim.

---

[39] CMB Vol 3 pp 650–653.

102 This was supported by Captain [B]'s 2nd Affidavit.[40] In paragraph 6 he repeats the reservation of rights and in paragraph 8.1 states:

> 8.1. The Plaintiff was the voyage charterer of the Vessel under a charterparty entered into between the Plaintiff and Defendant on 10.6.2022.
>
> [Underlining added]

103 On 15 September 2022 the Vessel broke arrest and thus the Application fell away and was subsequently dismissed.

The parties' contentions

(1) The Respondent's contentions

104 On the basis of these facts the Respondent contends that even if, on a proper interpretation of the Charterparty, the Applicant is not a party to the Charterparty, it is precluded by its conduct during the Malaysian proceedings from denying that it is a party. It relies on four grounds:

(a) *Res judicata* on the grounds of issue estoppel on the basis that the issue of whether the Applicant was a party to the Charterparty had been decided in the Set Aside application.

(b) *Res judicata* on the basis of the extended doctrine of *res judicata* identified in *Henderson* that if that issue had not been decided in the Set Aside application then it could and should have been raised and that to do so subsequently in the Arbitration proceedings and in OA 26 would be an abuse of process.

---

[40] CMB Vol 3 pp 578–592.

(c) Approbation and reprobation on the basis that having maintained the position that it was a party to the Charterparty so as to have standing to make the applications in the Malaysian proceedings, it could not thereafter adopt a different position in the Arbitration and in OA 26.

(d) On general principles of abuse of process having regard to the Applicant seeking to resile from the admissions made in Captain [B]'s affidavits.

105 Although the Respondent relied on seven different incidents in its oral submissions, they are all repetitions of the fundamental admission made in evidence by Captain [B] in his affidavits that the Applicant was a party to the Charterparty. Throughout the Malaysian proceedings it was never suggested to the contrary. In particular, there was no application to set aside the Writ *in rem* on the basis that, although the Applicant was the demise charterer of the Vessel, [Z] Service Limited and not the Applicant was the sole party to the Charterparty nor was there any express reservation of rights to raise that matter in the arbitration.

106 As is plain from the 2nd Affidavit of Mr [C], filed on 2 September 2024 in these proceedings on behalf of the Applicant,[41] at all times until October 2022, the Applicant's commercial manager for the Vessel was [Y] Ship Management Limited and up until that time the Applicant had entrusted the Vessel and all legal proceedings to Captain [B].

107 Since I am satisfied on the basis of all the documentation relied upon by the Respondent that Captain [B] was of the view that the Applicant was a party

[41] CMB Vol 6 pp 521–525.

to the Charterparty and that the Respondent and the Malaysian court acted on that basis there is no need to consider all the incidents relied upon.

(2) The Applicant's contentions

108 Whilst the Applicant does not dispute that Captain [B] made the representations relied on and accepts that no suggestion was made that it was not a party, it asserts that there is no abuse in raising it for the first time in the Arbitration, this being the appropriate tribunal to determine whether or not it has jurisdiction over the Applicant.

109 More specifically it contends that the doctrine of issue estoppel is inapplicable because the issue did not arise for determination in the Set Aside application and/or that the Order of 12 September 2022 was not a final order. So far as concerns the case based on *Henderson* and general principles of abuse of process are concerned, it contends that there was no abuse. Even if the issue could have been raised in the Malaysian proceedings there was no good reason why it should have been.

110 On approbation and reprobation, the Applicant contends that the statements made by Captain [B] constitute evidentiary admissions which were rebuttable and did not have the same standing as admissions in pleadings. The former were not conclusive and could be shown to be wrong. Hence, whilst the burden would be on the Applicant to prove that the admissions were wrong, the Arbitration was the appropriate forum in which to do so such that there was no impermissible reprobation in adopting that course. Further, in any event, it was a requirement of the doctrine of approbation and reprobation that the person against whom the doctrine was invoked had received an actual benefit as a result

of the inconsistent positions being taken and that on the facts of this case there was no such benefit.[42]

The applicable law

(1) Singapore law

111 It is common ground that the resolution of the issues is a matter of Singapore law.

112 The Court of Appeal decision in *Merck Sharp & Dohme Corp (formerly known as Merck & Co, Inc) v Merck KGaA (formerly known as E Merck)* [2021] 1 SLR 1102 ("*Merck Sharp*") considers the applicable legal principles on abuse of process and approbation and reprobation as well as issue estoppel in circumstances when the issues arise out of prior foreign proceedings.

113 Sundaresh Menon CJ, giving the judgment of the court said this (at [1]):

> 1 Issue estoppel, cause of action estoppel and the doctrine of abuse of process are all principles that are part of the armoury of tools availing a court confronted with the need to act so as to prevent litigants from being twice vexed in the same matter or in respect of the same or sufficiently similar issues. At the same time, these doctrines also promote the public interest in upholding the finality of litigation. Where issue estoppel is said to arise out of a prior *local* decision ("domestic issue estoppel"), it is these twin rationales of protecting defendants from unfair vexation and upholding finality in litigation that principally animate the court's formulation of the applicable legal rules. Where, however, issue estoppel is said to arise from a prior *foreign* decision ("transnational issue estoppel"), additional considerations come into play in shaping how the interests of justice may be best served.

---

42 Relying on *BWG v BWF* [2020] 1 SLR 1296 at [118] – see below.

114 The learned Chief Justice first considered the issues of abuse of process and approbation and reprobation (at [20]–[22]):

> 20 A party's adoption of inconsistent positions in the same or related proceedings may potentially amount to an abuse of process, or offend the doctrine of approbation and reprobation: *BWG v BWF* [2020] 1 SLR 1296 ("*BWG*") at [52]–[56] and [102]. We were satisfied, however, that this was not the case here, having regard to the stance adopted by the Appellant in mounting this appeal.
>
> 21 As to abuse of process, we considered that the Appellant was indeed taking inconsistent positions in its conduct of this appeal in so far as it argued that the Judge had erred in finding, in relation to the Interpretation Preliminary Determination, that there was identity of *parties* to found an estoppel in respect of the ECA's interpretation of cl 7 of the 1970 Agreement, whilst declining to take issue with his finding, in relation to the Governing Law Preliminary Determination, that the English Preliminary Decision … likewise gave rise to an estoppel, even though the latter finding shared the same foundation of identity of parties. That said, in *BWG* (at [57]), we held that the court should adopt a "granular approach" and view each defence mounted by a party separately in order to determine whether there was in fact any abuse of process. In that light, we were satisfied that the inconsistency we have just noted warranted at most that we disregard the Appellant's arguments on the lack of identity of parties in relation to the interpretation of cl 7. In any case, these arguments were unpersuasive for the reasons given by the Judge, which we affirmed. None of this affected the Appellant's other arguments, including those concerning identity of *issues*, given that the Governing Law Preliminary Determination and the Interpretation Preliminary Determination concerned quite distinct issues.
>
> 22 As to the doctrine of approbation and reprobation, in *BWG*, we held (at [118]) that this doctrine extended to the assertion of inconsistent positions against different parties in different proceedings, so long as the party against whom the doctrine was invoked had received an *actual benefit* arising from an earlier inconsistent position. In the present case, we did not think that the Appellant had received any such benefit as a result of the inconsistent positions it had taken. The Respondent also did not explain how any benefit to the Appellant had arisen beyond generally asserting that there was a benefit "in terms of costs consequences".
>
> [Underlining added]

115 On abuse of process, the relevant paragraphs from *BWG v BWF* [2020] 1 SLR 1296 ("*BWG*"), also a judgment delivered by Menon CJ, are as follows:

> 52 In *Jtrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2018] 2 SLR 159, this court cited with approval Lord Sumption's statement in *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd (formerly Contour Aerospace Ltd)* [2014] AC 160 at [25], that "abuse of process is a concept which informs the exercise of the court's procedural powers". This court further explained that abuse of process is a concept by which the court ascertains whether the proceedings in question constitute an "improper use of its machinery" (at [99]). In *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 at [22] (albeit in the context of O 18 r 19(1)(d) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC")), this court also observed that abuse of process imports considerations of public policy and the interests of justice, and signifies that the process of the court must be used bona fide.
>
> 53 We also highlight that abuse of process is ultimately exercised at the court's discretion, which depends on all the interests and circumstances of the case. As this court observed in *Lim Geok Lin Andy v Yap Jin Meng Bryan and another appeal* [2017] 2 SLR 760 at [38] and [44] (albeit in the context of a particular type of abuse of process known as the "*Henderson* rule", *ie*, that a litigant may not make a case in litigation which might have been, but was not, made in previous litigation, as doing so may amount to an abuse of process):
>
> > [T]he court will exercise its discretion in such a way as to strike a balance between allowing a litigant with a genuine claim to have his day in court on the one hand and ensuring that the litigation process would not be unduly oppressive to the defendant on the other**.** The court will also be mindful of the considerations which led a claimant to act as he did … [emphasis in italics in original, underlining added]
>
> 54 The learned authors of *Singapore Civil Procedure 2020*, vol 1 (Chua Lee Ming gen ed) (Sweet & Maxwell, 10th Ed, 2020) made an observation at para 18/19/14 (in the context of O 18 r 19(1)(*d*) of the ROC), "The categories of conduct rendering a claim … an abuse of process are not closed but depend on all the relevant circumstances and for this purpose considerations of public policy and the interests of justice may be very material". In sum, the doctrine of abuse of process has been developed to permit the courts to police their own processes and

> guard against abuse. This may entail balancing considerations of public policy and the interests of justice.
>
> [Underlining added]

116 The doctrine of approbation and reprobation was considered in *BWG* at [102]–[118].

117 At [102], the court endorsed Belinda Ang J's (as she then was) description of the doctrine in *Treasure Valley Group Ltd v Saputra Teddy and another (Ultramarine Holdings Ltd, Intervener)* [2006] 1 SLR(R) 358 at [31]:

> "The doctrine of approbation and reprobation precludes a person who has *exercised a right* from *exercising another right which is alternative to and inconsistent with the right he has exercised*. It entails, for instance, that a person 'having accepted a benefit given him by a judgment cannot allege the invalidity of the judgment which conferred the benefit': see *Evans v Bartlam* [1937] AC 473 at 483 and *Halsbury's Laws of Australia* vol 12 (Butterworths, 1995) at para 190-35 where the doctrine of approbation and reprobation is conveniently summarised as follows:
>
> > A person may not "approbate and reprobate", meaning that a person, having a choice between two inconsistent courses of conduct and having chosen one, is treated as having made an election from which he or she cannot resile once he or she has taken some benefit from the chosen course.
>
> [Emphasis in original, underlining added]

118 That decision goes on to consider various authorities and concludes in [118]:

> 118 Based on our survey of the above authorities, it is clear that the operation of the doctrine of approbation and reprobation does extend to inconsistent positions asserted against different parties in different proceedings, as long as the party has received an actual benefit as a result of an earlier inconsistent position. This is illustrated by cases such as *Express Newspapers* and *First National Bank*, where the doctrine was applied because the parties who sought to

> advance inconsistent positions had already secured actual benefits from their prior positions.
>
> [Underlining added]

119 I agree with the Respondent that the doctrine is not limited to any particular form of benefit,[43] arguably on the facts of a particular case to detrimental reliance, but there must be a material benefit or detriment as it is accepted that the doctrine is discretionary. In [22] of *Merck Sharp* (cited at [114] above) an assertion that costs consequences would be sufficiently material was rejected.

120 Turning then to consider issue estoppel, the underlying requirements under Singapore law are well-known and not in dispute.

121 They are set out in the leading textbook by Patrick Keane, *Spencer Bower and Handley: Res Judicata* (LexisNexis, 6th Ed, 2024) (at para 1.02):

> (a) the decision, whether domestic or foreign, was judicial in the relevant sense;
>
> (b) it was in fact pronounced;
>
> (c) the tribunal had jurisdiction over the parties and the subject matter;
>
> (d) the decision was final on the merits;
>
> (e) it determined a question raised in the later litigation; and
>
> (f) the parties are the same or their privies, or the earlier decision was.

122 Where however the issue in question arises out of foreign proceedings regard must also be had to the principles of law as developed in the foreign state. *Merck Sharp* concludes at [43]:

---

[43] Respondent's Written Submissions at paras 154–157.

> 43 … in order for a foreign judgment to give rise to issue estoppel, not only the foreign judgment as a whole, but also the decision on the specific issue that is said to be the subject matter of the estoppel must be final and conclusive under the law of the foreign judgment's originating jurisdiction. This must follow from the awareness that in certain jurisdictions, binding effect might be accorded to the result arrived at in a judgment, but not to the reasons, intermediate steps or other elements that led to that result even if they are stated in the judgment, such that even an essential part of the reasons in judgments from those jurisdictions might not be binding and therefore should be incapable of giving rise to issue estoppel. As noted in *Civil Jurisdiction and Judgments* at para 7.82, "the court may have recited the considerations on which its judgment was formally based, but without intending them to have the status of decisions on the particular points". … All this underscores the need to be alive to inter-jurisdictional differences, and to consider the expert evidence, if available, on what precisely the position is under the law of the foreign jurisdiction in question.
>
> [Underlining added]

123 The test for issue estoppel in the context of transnational cases was considered further in *The Republic of India v Deutsche Telekom AG* [2024] 1 SLR 56 at [64] and [69]

> 64 The test for transnational issue estoppel has been formulated as follows (*Merck Sharp* at [35]–[40]):
>
> > (a) the foreign judgment must be capable of being recognised in this jurisdiction, where issue estoppel is being invoked. Under the common law, this means that the foreign judgment must:
> >
> > > (i) be a final and conclusive decision on the merits;
> > >
> > > (ii) originate from a court of competent jurisdiction that has transnational jurisdiction over the party sought to be bound; and
> > >
> > > iii) not be subject to any defences to recognition;
> >
> > (b) there must be commonality of the parties to the prior proceedings and to the proceedings in which the estoppel is raised; and

> (c) the subject matter of the estoppel must be the same as what has been decided in the prior judgment.
>
> …
>
> 69 We also acknowledge the helpful identification by the Court of Appeal of England and Wales in *Good Challenger Navegante SA v Metalexportimport SA* [2004] 1 Lloyd's Rep 67 ("*The Good Challenger*") (at [54]), of four important considerations that should guide the court in this context:
>
> > (a) It is irrelevant that the court invoking transnational issue estoppel may form the view that the decision of the foreign court was wrong either on the facts or on the law.
> >
> > (b) The court must be cautious before concluding that the foreign court had made a final decision on the relevant issue because the procedures of the latter may be different and it may not be easy to determine the precise issues that were decided.
> >
> > (c) The determination of the issue must be a necessary part of the foreign court's decision.
> >
> > (d) The application of issue estoppel is subject to the overriding consideration that *it must work justice and not injustice* (see also, *PAO Tatneft v Ukraine* [2021] 1 WLR 1123 ("*PAO Tatneft*") at [34]). Thus, the correct approach is to apply the principles identified unless there are special circumstances such that it would be unjust to do so. Whether there are such special circumstances would of course depend on the facts of the case (*The Good Challenger* at [79]).

(2) Malaysian law

124 It is thus necessary for this court to be instructed in Malaysian law unless the parties are agreed that it does not differ from the law of Singapore. Both parties sought leave to adduce evidence of Malaysian law by way of submissions pursuant to O 16 r 8 of the SICC Rules.

125 This was granted but the parties were unable to agree on the issues to be addressed. Following submissions the court identified the following issues:

> 1. Whether the Order of the Court dated 12 September 2022, issued by the Honourable Judicial Commissioner Azlan Bin Sulaiman of the High Court of Malaya at Kuala Lumpur in WA-27NCC-32-07/2022 ("The Order") constitutes a final order on the merits or were the proceedings to which the Order relates interlocutory proceedings?
>
> 2. If it was a final order, whether the specific issue as to the correct identity of the parties to the Charterparty dated 10 June 2022 necessarily arose for decision in those proceedings?
>
> 3. If it was a final order and the specific issue did arise, whether the Order was final was conclusive as to the identity of the Applicant as being a party to the Charterparty?
>
> 4. If it was a final order but the specific issue did not arise, whether the reference in the Order to the Applicant as being a party to the proceedings was necessarily conclusive in the particular circumstances of those proceedings as to the identity of the Applicant as being a party to the Charterparty?
>
> 5. To what extent, if at all, is a statement sworn on behalf of a company identifying the capacity in which that company is purporting to act conclusive?

126 Detailed written submission were provided on behalf of the Applicant by Ms Nik Azila Shuhada, a solicitor and partner in the firm of Messrs Shearn Delamore & Co and on behalf of the Respondent by Mr Arun Krishnalingam, a solicitor and partner in the firm of Messrs Sativale Mathew Arun. These were supplemented by brief oral submissions. I am grateful to both lawyers for the detail and clarity of their submissions which revealed a significant measure of agreement as to the applicable law, the disagreement being in the main on how that law should be applied to the facts of this case.

127 Having heard full submissions I am satisfied that, whilst an understanding of Malaysian law in relation to the first four questions is necessary in order to approach issue estoppel under the law of Singapore, the answer to Question 5 plays no part in this. Equally, I am satisfied that Malaysian law plays no part in reaching a decision on the other issues: *Henderson*,

approbation and reprobation and abuse of process. Accordingly, it is not necessary to consider the fifth question further although it does appear that the Malaysian law approach differs little from that which would be applicable in Singapore.

Decision

(1) Issue estoppel

128 The Writ *in rem* was issued pursuant to s 24(b) of the Malaysian Courts of Judicature Act 1964 (as amended) which confers on the High Court of Malaya "the same jurisdiction and authority in relation to matters of admiralty as is had by the High Court of Justice in England under the United Kingdom Supreme Court Act 1981".

129 Section 20 of the Supreme Court Act 1981 (c 54) (UK) (the "UK Act") provides (so far as relevant):

> (1) The Admiralty jurisdiction of the High Court shall be as follows, that is to say —
>
> (a) jurisdiction to hear and determine any of the questions and claims mentioned in subsection (2);
>
> …
>
> (2) The questions and claims referred to in subsection (1)(a) are —
>
> …
>
> (h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
>
> …

130 Section 21(4) provides:

> (4) In the case of any such claim as is mentioned in section 20(2)(e) to (r), where

> (a) the claim arises in connection with a ship; and
>
> (b) the person who would be liable on the claim in an action in personam ("the relevant person") was, when, the cause of action arose, the owner or charterer of, or in possession or in control of, the ship,
>
> an action in rem may (whether or not the claim gives rise to a maritime lien on that ship) be brought in the High Court against—
>
> (i) that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; or
>
> (ii) any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.

131 The action *in rem* was thus brought against the Vessel on the basis that there was a claim arising out of an agreement relating to carriage of goods on the Vessel and that the "relevant person" was the Applicant.

132 The Applicant then entered an unconditional appearance to the Writ in its capacity as Demise Charterer which it was entitled to do without leave as, in that capacity, it was a Defendant to the action pursuant to O 70 r 16 of the Malaysian Rules of Court 2012.[44] As a result, the action became a hybrid action, *in rem* against the Vessel and *in personam* against the Applicant. This put the Applicant in a position either to seek to set aside the Warrant or to seek the release of the Vessel.

133 This it did and the ruling on the application to set aside the Warrant was in the form of the Order of 12 September 2022 (see [99] above). This is an order of court rather than a reasoned judgment but nonetheless the Respondent

---

[44] See Respondent's Written Submissions at paras 187–191.

contends that it was final in the sense required for issue estoppel and that the other requirements of issue estoppel are met.[45]

134 The Applicant contends that it was not a final decision and that the issue of whether or not the Applicant was a party to the Charterparty was not in issue and therefore was not a necessary part of the decision.

135 The starting point is to note that both experts accept that the decision on the application to set aside was interlocutory in the sense that it did not finally decide whether or not there had been a breach of the Charterparty.[46] In order to obtain the Warrant, the Respondent had to raise a *prima facie* case of breach and the court in refusing to set aside the Warrant was not required to reach any conclusions on the merits of the case.

136 However, the Respondent submits that issue estoppel can operate on an interlocutory decision in respect of findings which are binding on the court,[47] but it does appear from the cases cited that this relates to preliminary findings which are of a substantive nature in that they are finally decisive of an issue in the litigation. The Order relied upon is not decisive of anything save that the Warrant will not be set aside. It proceeds on the basis that the Respondent has made out a *prima facie* case that there has been a breach of the Charterparty (s 20(2) of the UK Act) and that the person who would be liable on the claim for breach was the owner or charterer of the Vessel (s 21(4) of the UK Act). It is thus not final as to the issue of whether the Applicant was liable on the claim. Indeed, the Applicant expressly reserved its right to have such matters resolved

---

45 Respondent's Written Submissions at para 211.

46 Respondent's Written Submissions at para 174–175; Applicant's Written Submissions (Questions Postulated to the Malaysian Solicitor) at paras 4.7–4.29.

47 Respondent's Written Submissions at paras 176–177.

in the arbitration which is inconsistent with any decision on the Set Aside application being a final resolution.

137 The fact that the Order contains no reasons was not suggested to be a bar to it acting as a decision for the purposes of *res judicata* but is indicative that nothing was finally being decided on the application other than a refusal by the Judge to exercise his discretion to decline to set aside the Warrant.

138 I am thus satisfied that the Respondent's case on issue estoppel fails at the first hurdle. The Order was not a final decision under Malaysian (or for that matter Singapore) law.

139 Equally it fails on the second aspect because it was not necessary for the purposes of the application to decide whether the Applicant was a party to the Charterparty. The Respondent had raised the necessary *prima facie* case and the issue was not raised by the Applicant. Had it done so, I have no doubt that the court would have declined to consider the question other than on a *prima facie* basis, leaving the substantive issue to be decided either in the arbitration or, following pleadings, in the courts of Malaysia.

(2) Henderson v Henderson

140 The Doctrine is based on the well-known words of Vice-Chancellor Wigram in *Henderson*:[48]

> … where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter[s] which might have been brought forward

[48] [1846] 3 Hare 100

> as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.
>
> [Underlining added]

141 It has been frequently applied in the courts of Singapore and the approach has recently been considered by the Court of Appeal in a judgment delivered by Steven Chong JCA in *CIX v DGN* [2025] 1 SLR 272 ("*CIX v DGN*") where, having cited the wording of Wigram VC, he went on at [57]–[61]:

> 57 The policy behind the extended doctrine (as with the broader doctrine of *res judicata*) is that litigants should not be twice vexed in the same matter, and that the public interest requires finality in litigation: see *The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd (nTan Corporate Advisory Pte Ltd and others, other parties) and another appeal* [2015] 5 SLR 1104 ("*TT International*") at [98].
>
> 58 Drawing from these policy objectives, the essence of the extended doctrine thus concerns a collateral attack against prior decisions. In this regard, it is crucial to identify the relevant prior decision which is the subject matter of the collateral attack.
>
> 59 To the same end, in examining the extended doctrine, it is crucial to determine the nature of the claim and the essential issues in the earlier proceedings (whether in court or arbitration). In that regard, it will not be helpful to claim that the present action deals with claims which were not dealt with in the earlier proceedings. For the extended doctrine to apply, there is no requirement that the claims in the earlier proceedings should be the same as those pursued in court. In fact, the doctrine is extended precisely to apply to situations of claims and/or issues which were not raised earlier but which could and ought to have been raised in the previous action.
>
> 60 …

> 61 When undertaking an inquiry as to whether the extended doctrine applies, the court has a higher degree of flexibility as compared to situations of cause of action or issue estoppel. Lord Bingham of Cornhill, in the House of Lords decision of *Johnson v Gore Wood & Co (a firm)* [2002] 2 AC 1 ("*Johnson*") at 31D, saw the question of whether a litigant should be estopped from taking a point that could have been raised in earlier proceedings between the same parties not as a "dogmatic" inquiry, but rather, as a "broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case": *TT International* at [104]. To this end, the High Court in *Goh Nellie v Goh Lian Teck and others* [2007] 1 SLR(R) 453 ("*Goh Nellie*") stated at [53] (as endorsed by this court in *TT International* at [104] and in *Lim Geok Lin Andy v Yap Jin Meng Bryan and another appeal* [2017] 2 SLR 760 at [38]):
>
> > "To put it shortly, a court should determine whether there is an abuse of process by looking at all the circumstances of the case, including whether the later proceedings in substance is nothing more than a collateral attack upon the previous decision; whether there is fresh evidence that might warrant re-litigation; whether there are *bona fide* reasons why an issue that ought to have been raised in the earlier action was not; and whether there are some other special circumstances that might justify allowing the case to proceed. The absence or existence of these enumerated factors (which are not intended to be exhaustive) is not decisive. In determining whether the ambient circumstances of the case give rise to an abuse of process, the court should not adopt an inflexible or unyielding attitude but should remain guided by the balance to be found in the tension between the demands of ensuring that a litigant who has a genuine claim is allowed to press his case in court and recognising that there is a point beyond which repeated litigation would be unduly oppressive to the defendant. In the context of cases such as the present, the inquiry is directed not at the theoretical possibility that the issue raised in the later proceedings could conceivably have been taken in the earlier but rather at whether, having regard to the substance and reality of the earlier action, it reasonably ought to have been. …"
> >
> > [Underlining added]

142 The substance and reality of the Writ *in rem* in Malaysia was that it was a preliminary step in an action for breach of contract which both parties

anticipated would be resolved by way of arbitration. This can be seen from Captain [B]'s 1st Affidavit in which he reserved the Applicant's right to refer the matter to arbitration was dated 21 July 2022,[49] and from the Respondent's Notice of Arbitration which was given on 10 August 2022.

143 What the Applicant did not do was expressly to reserve its right to challenge the jurisdiction of the Tribunal on the basis that it was not a party to the Charterparty. Instead, it allowed the Set Aside application to proceed on the acceptance that it was a party. Undoubtedly it could have made such an express reservation and it is plain on the facts of the case that it did not do so because Captain [B], whom it is accepted had been entrusted with the legal proceedings at that time, considered that the Applicant was a party.

144 However, had he viewed matters differently and had expressly reserved the right to challenge jurisdiction, no objection could thereafter have been taken to the question being raised in the Arbitration. There would have been no need to raise the matter for consideration in the Set Aside application if this had been done.

145 Viewed in this light I consider that the correct question is not whether the Applicant ought to have raised the issue for decision in the Set Aside application but whether it ought to have reserved its position expressly. The Respondent suggested that the correct course would have been for the Applicant to seek to strike out the Malaysian proceedings on the basis that it was not a party to the Charterparty. Whilst I accept that such an application was possible,

---

[49] See also CMB Vol 6 p 377: [DMF]'s Written Submissions dated 5 September 2022 at para 3.

since both parties accepted that that any dispute under the Charterparty fell to be resolved by way of arbitration, I do not see that it is a realistic suggestion.

146 In truth, if the Applicant had raised it as a consideration for the Judge to take into account in the exercise of his discretion whether or not to set aside the Warrant in the Applicant's favour, the Judge might have done so (at least on a *prima facie* basis). The fact that it was not, if anything, therefore works in the Respondent's favour.

147 In this case therefore, the Respondent is not being vexed twice in the sense that, had the issue been raised in the Set Aside application it would have been decided once and for all at the hearing that led up to the Order of 12 September 2022. Its complaint is that having not reserved its right to raise the issue in the (by then existing) arbitration proceedings, it should be barred from raising them later before the Tribunal. This is not a case of repeated litigation. There is no collateral attack on the earlier decision underlying the Order of 12 September 2022.

148 Looking at all the circumstances, I have concluded that the Applicant's failure to reserve its right to challenge jurisdiction in the Arbitration during the Set Aside application is not such as to deny it the right later to do so. I consider that such a decision would be unfair on the Applicant and would not be in the interests of justice.

(3) Approbation and reprobation

149 The Respondent put its case in the course of oral submissions as follows:

> Song: The benefit in this case is the affidavit filed, indicating willingness to arbitrate. Having relied on those statements, [the Respondent] has commenced

> arbitration proceedings. It is too late for you to take a diametrically different approach now.
>
> Court: What exactly is the benefit they gained from saying they were a party to the arbitration?
>
> Song: The matter has been stayed.
>
> Court: The benefit is obtaining the stay of Malaysian proceedings rather than to have to go through Malaysian courts to determine what? Whether there was a breach of the CP?.
>
> Song: Everyone was on the same page that there was an arbitration agreement and that this was a security arrest. In essence, what happens in *in rem* proceedings, the ship will be sold and proceeds paid into court. When the arbitration is completed and the award published, the successful party would have to go back to Malaysia to get paid from the proceeds of sale.
>
> Court: So let's try to encapsulate the benefit you say that they have received.
>
> Song: The benefit that they have obtained is that they have managed to, in a way, get my client to start the arbitration, which was in accordance with your belief. Having taken that benefit, they have now decided they want to stop the arbitration.

150 The difficulty with this argument is that the right to arbitrate was first raised by Mr Van Huizen in paragraphs 25–27 and 32 of his affidavit of 8 July 2022 (see [95] above).[50] In those passages he seeks to justify the granting of the Warrant as being security for its claim in the arbitration which had not been issued and reserved the Respondent's right to do so. This was an acceptance that the claim underlying the application was a breach of the Charterparty to which Clause 41 applied. Clause 41, which Mr Van Huizen sets out in paragraph 25 of his affidavit, is in standard form as requiring any dispute including a dispute as to jurisdiction to be resolved by arbitration.

---

[50] CMB Vol 4 p 549.

151 In order to obtain the benefit from the arrest of the Vessel, the Respondent would have to prove that there was a breach and, as recognised by Mr Van Huisen, the only way to do this was by way of arbitration. I therefore cannot accept that Captain [B]'s statement in paragraph 4 of his 1st affidavit (see [96] above)[51] that the Applicant reserved its right to require that the dispute be referred to arbitration on the basis that the Charterparty "*was entered into between the Plaintiff and Defendant*" played any part in the Respondent's decision to commence the Arbitration.

152 Both parties had reserved the right to commence arbitration proceedings because any dispute as to whether there had been a breach would fall to be determined by arbitration, it was therefore a question of which party commenced the arbitration. Had the Applicant reserved its right to contest jurisdiction, the position would have been no different. This would have had to be resolved in the arbitration, the option of unilaterally requiring the Malaysian court to do so did not exist.

153 Hence the Applicant gained no benefit from Captain [B] deposing to the fact that the Applicant was a party to the Charterparty and the Respondent suffered no detriment. Indeed, as indicated above, it may have obtained a benefit in that the possibility of the Applicant not being a party to the Charterparty might have influenced the Judge in the Setting Aside application had it been raised. In the event it was not and the application was dismissed with costs to the Respondent's benefit.

---

[51] CMB Vol 3 p 431.

154 Since benefit is a necessary ingredient of a successful claim based on approbation and reprobation, on the facts of this case, any such claim would fail.

(4) Abuse of process

155 The focus of the Respondent's case on abuse of process[52] was on the acceptance by Captain [B] in his affidavits that the Applicant was a party to the Charterparty. Such affidavits are sworn documents which are evidence of the truth of the facts alleged in them (see *Clarkson v Future Resources FZE* [2022] EWCA Civ 230 at [47]). The Respondent contends that it is thus not easy to resile from the contents of such statements and in the circumstances of this case it would be an abuse of process for the Applicant to be permitted to resile from its position as averred by Captain [B].

156 In the Respondent's written submissions, this issue was considered last of the four and briefly. In oral submissions it was elevated to a primary submission. In response to a question from the court as to whether the Respondent could succeed on issue estoppel if the Respondent lost on abuse of process or approbation and reprobation Ms Song said this:

> No. Abuse of process and resiling from sworn statements is widest and easiest in terms of attacking the other side's evidence and position. Approbation and reprobation is equally strong except that Your Honour has concern over the benefit point. *Henderson*, subject to what we find on "should", is equally strong. It can stand on its own. There are overlaps between abuse of process and *Henderson*, but I was zooming in more on the inconsistent statements under abuse of process.

157 *Henderson* prevents a party, in an appropriate case, from raising in a subsequent case an issue that could and should have been brought in the

---

[52] Respondent's Written Submissions at paras 158–162.

previous litigation on the basis that it would be an abuse of process to permit this to be done. The relevant considerations focus on whether in all the circumstances it would be just to debar the party in question from raising the issue subsequently. The balance is between the public interest in the finality of litigation and the interests of justice. As Chong JCA put it in *CIX v DGN* (see [141] above) it is:

> … a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case.

158 An admission made in an affidavit relied upon in litigation stands in my view in no different position to an admission made in a pleading. A party will not lightly be allowed to resile from it. The Respondent drew my attention to the case of *Recovery Vehicles Pte Ltd v Industries Chimiques du Senegal* [2021] 1 SLR 342 in which the Court of Appeal at [111] aligned itself with the observations of Buckley LJ in the English Court of Appeal in *Bryanston Finance Ltd v De Vries* [1976] 1 Ch 63 at 77. This was a case in which the appellants sought to resile from a concession made before the first instance judge. Buckley LJ observed:

> The primary function of the appellate court is to decide whether the judge at first instance has reached the right conclusion on the material before him. This material must include any concession made before him. If the appellate court were to be satisfied that the concession was made as the result of some misunderstanding or for some other reason justice required that the party should be allowed to withdraw it, [i]t might allow the withdrawal of the concession. Otherwise the concession must hold.
>
> [Underlining added]

159 In a *Henderson* situation the later court is assessing whether or not justice requires that the issue in question should be entertained. In the case of seeking to resile from a previous admission or concession, again the question is

whether the interests of justice should allow this to be done in the circumstances. In neither case will the discretion lightly be exercised in favour of the party seeking the indulgence of the court.

160 In the former case the question is whether the issue should have been raised and in the latter there is, in addition, an explanation as to why it was not raised. I do not see that the principles which should guide the exercise of discretion should be any different in a case such as the present where allowing the issue to be ventilated in the subsequent proceedings necessarily involves permitting a party to resile from an admission made in the previous litigation. The two go hand-in-hand.

161 Accordingly, by parity of reasoning for the rejection of the Respondent's case based on *Henderson* likewise would fail.

Conclusion on OA 26

162 For the reasons given, I am satisfied that the Applicant is a party to the Charterparty and hence is bound by the arbitration clause (ie, Clause 41). Had it not been, none of the grounds for contending that it should nonetheless be bound by its conduct from denying that it was a party would have succeeded.

163 I shall give directions on costs after having considered OA 27.

OA 27

164 The relief sought in OA 27 is set out at [5] above but for convenience I shall repeat it here:

> 1. A Declaration that the dispute in the [Arbitration] is non-arbitrable as the dispute involves an issue regarding the public policy of Singapore.

> 2. A Declaration that the Charterparty contract dated 10 June 2022 with [the Respondent] as the Charterer for the [Vessel] for the carriage of a cargo of palm oil to Iran is unenforceable as it is against the public policy of Singapore.

165 The Applicant contends that the purpose of Clause 13 of the Charterparty was to avoid or circumvent banking sanctions through the use of the bills of lading and other documents with inaccurate details so as to avoid naming Iran or the Iranian ports of Bandar Abbas and Bandar Imam Khomeni in such documents. These documents were intended to be presented to banks or other financial institutions for payment of freight or negotiation of letters of credit through the Singapore or international banking system.

166 Hence it is said that the performance of the Charterparty would involve the parties generating important mercantile documents so as to hide, conceal or misrepresent the true facts to any bank. This would render the Charterparty non-arbitrable under the established heads of common law illegality and thus be contrary to the public policy of Singapore.[53]

167 Clause 13 of the Charterparty reads as follows:[54]

> 13. DUE TO BANKING SANCTIONS, OWNERS AGREE FOR THE FOLLOWING ITEMS ON B/LS AND OTHER DOCUMENTS –
>
> > A) THE WORD "IRAN"; IF REQUESTED BY CHTRS, SHALL BE OMITTED FROM B/LS AND OTHER DOCUMENTS AND NOT TO BE SHOWN ANYWHERE.
> >
> > B) THE SHIPPERS, BUYERS AND OTHER DETAILS TO BE INSERTED AS PER CHTRS'S REQUEST.
> >
> > C) DISCHARGE PORT MAY BE MENTIONED "MIDDLE EAST (PORT)" OR "JEBEL ALI" OR "HAMRIYA" OR

---

53 Applicant's Written Submissions (OA 27) at paras 1–9.

54 CMB Vol 3 p 466.

> SOMEWHERE ELSE INSTEAD OF BANDAR ABBAS AND BIK AS PER CHTRS INSTRUCTIONS.

168 In the Amended Statement of Respondent's Defence in the Arbitration the Applicant raised a plea of illegality and also contended that the Charterparty was void and unenforceable on the grounds of illegality such that the Charterparty was unenforceable as being against the public policy of Singapore.[55]

169 However, no application has been made to the Tribunal for a preliminary ruling on whether the dispute is arbitrable. But for this application, having been raised in the pleadings in the Arbitration, the matter would fall to be decided by the Tribunal as part of its final award. The Applicant however contends that this would be an inappropriate course to take and that by virtue of s 11 of the International Arbitration Act 1994 (2020 Rev Ed) (the "IAA") it is appropriate for this Court rather than the Tribunal to rule on issues of public policy. Section 11 provides:

> **Public policy and arbitrability**
>
> **11.**—(1) Any dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless it is contrary to public policy to do so.
>
> (2) The fact that any written law confers jurisdiction in respect of any matter on any court of law but does not refer to the determination of that matter by arbitration does not, of itself, indicate that a dispute about that matter is not capable of determination by arbitration.

170 The Respondent disputes that the Applicant is entitled to the relief sought on three primary grounds:[56]

---

55 CMB Vol 7 pp 445–446.

56 Respondent's Written Submissions at para 220.

(a) That this Court lacks the jurisdiction or power to grant the declarations sought. The power to determine whether or not a given arbitral tribunal has jurisdiction is vested in the tribunal by ss 10(2) and 10(3) of the IAA which provides:

> (2) An arbitral tribunal may rule on a plea that it has no jurisdiction at any stage of the arbitral proceedings.
>
> (3) If the arbitral tribunal rules —
>
> > (a) on a plea as a preliminary question that it has jurisdiction; or
> >
> > (b) on a plea at any stage of the arbitral proceedings that it has no jurisdiction,
>
> any party may, within 30 days after having received notice of that ruling, apply to the General Division of the High Court to decide the matter.

(b) That the subject matter of the issue is plainly arbitrable as it is a dispute as to breach of the Charterparty which falls within the wide ambit of the Clause 41 and does not cease to be arbitrable because an allegation of illegality or public policy is involved.

(c) That the issues of whether the Charterparty is unenforceable for alleged illegality or public policy is a substantive issue which goes to the merits of the underlying dispute which is for the Tribunal to rule upon.

171 I find it convenient to consider the third ground first.

The third issue – illegality

172 The foundation of the relief sought that the Charterparty is non-arbitrable or unenforceable on the grounds of public policy lies in the assertion

that the terms of Clause 13 of the Charterparty render the Charterparty void and unenforceable.

173 The Applicant alleges that this is plain on the face of the clause. The Respondent disagrees. It contends that read in context, particularly in the light of Clause 11, there is no illegality.

174 Mr [D], the Respondent's Trade Operations Manager swore an affidavit in reply on this application dated 18 October 2024.[57] In paragraphs 59–64, he deposes as follows:

> 59. There is nothing nefarious with Clause 13 of the Fixture Recap contrary to what [the Applicant] seeks to suggest. Clause 13 simply provides that (1st [C], p 14):
>
> > *"13. DUE TO BANKING SANCTIONS, OWNERS AGREE FOR THE FOLLOWING ITEMS ON B/LS AND OTHER DOCUMENTS –*
> >
> > > *A) THE WORD "IRAN"; IF REQUESTED BY CHTRS, SHALL BE OMITTED FROM B/LS AND OTHER DOCUMENTS AND NOT TO BE SHOWN ANYWHERE.*
> > >
> > > *B) THE SHIPPERS, BUYERS AND OTHER DETAILS TO BE INSERTED AS PER CHTRS'S REQUEST.*
> > >
> > > *C) DISCHARGE PORT MAY BE MENTIONED "MIDDLE EAST (PORT)" OR "JEBEL ALI" OR "HAMRIYA" OR SOMEWHERE ELSE INSTEAD OF BANDAR ABBAS AND BIK AS PER CHTRS INSTRUCTIONS."*
>
> 60. The purpose of Clause 13 was in fact to ensure that [the Respondent] complies with all relevant sanctions and national laws.
>
> 61. [The Respondent] undertakes a significant volume in Iran. At all material times, the supply of food products to Iran has been exempt from any sanctions laws applicable to [the Respondent] and other major agricultural trading companies.

---

57 CMB Vol 6 pp 527–553.

> As [the Applicant is] well aware, [the Respondent] is involved, amongst others, in the international trading of palm oil and its products. The subject voyage was in fact for the carriage of crude / refined palm oil products and [the Applicant] had expressly agreed to carry the cargo to Iran. The Iran trade however inevitably contains risks since the geopolitics in the Middle East / Gulf region are extremely volatile and are susceptible to swift and sudden changes. One such risk is if the United States were to change its position or tighten restrictions on commodity trade with Iran, including the palm oil trade, while cargoes are afloat enroute to Iran.
>
> 62. To ensure that it is able to comply with the relevant sanctions regimes, to cater for changes, and to maintain flexibility in its shipments, [the Respondent] expressly put in place a mechanism in the form of Clause 13 (and Clause 11) in the Fixture Recap, to allow [the Respondent] to direct the cargo to be shipped to the Middle East or elsewhere, if necessary. As the cargo approaches the Persian Gulf, [the Respondent] conducts continual monitoring to assess the prevailing geopolitical situation and determine whether the cargo can continue to be legally shipped to Iran. If there are perceived risks, the cargo can instead be discharged in the UAE with the mutual agreement of [the Applicant] in order to safeguard the cargo and the Vessel.
>
> 63. In this regard, what is material is not only Clause 13, which cannot be plucked out in isolation, but also Clause 11, which provides that: "*CHTRS WILL HAVE AN OPTION FOR SWITCHING B/LS AT LOADPORT, SINGAPORE, INDIA, UAE, AND ANY OTHER PORT. B/L SWITCH PROCEDURES AND PROCESS IS FULLY ACCEPTABLE BY OWNERS …*" as well as the discharge port clause, which provides that the discharge ports are "*IN CHTRS OPTION*".
>
> 64. These clauses are the mechanism by which [the Respondent] ensures that it is able to comply with all applicable laws whilst maintaining commercial flexibility. There is nothing nefarious about Clause 13.

175 There is thus a dispute as to whether Clause 13 is inciting an illegal act or whether it is in context part of a matrix of clauses designed to avoid an illegal act.

176 I accept the Respondent's contention that this is plainly a dispute "*arising out of or in connection with this Charter Party, including any questions*

as to its existence, validity or termination" which "*shall be referred to and finally resolved by arbitration*".[58]

177 Accordingly, the Applicant was both entitled and correct to plead the issues of illegality and public policy in its Defence in the Arbitration as it did in the Amended Defence cited above.

178 Were the Tribunal to resolve the dispute, it would have to construe the relevant clauses of the Charterparty to determine whether or not the clauses are invalid, which may well require the admission of expert evidence as to customs in the trade. It would then have to decide whether or not such illegality rendered the Charterparty as a whole void and, if so, whether this also applied to the arbitration agreement encapsulated in Clause 41. Finally, it would have to decide whether the illegality involved rendered the Charterparty non-arbitrable and/or contrary to public policy.

179 The decisions made by the Tribunal would be encapsulated in an award which could then be subject to a review by the Singapore courts on the grounds set out in Art 34 of the UNCITRAL Model Law on International Commercial Arbitration ("Model Law"), which is given force of law in Singapore by s 3 of the IAA. Article 34, so far as relevant provides:

> **Article 34.** Application for setting aside as exclusive recourse against arbitral award
>
> (1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this Article.
>
> (2) An arbitral award may be set aside by the court specified in Article 6 only if:
>
> …

[58] See the arbitration clause (Clause 41) at CMB Vol 2 p 324.

> (b) the court finds that:
>
> > (i) the subject matter of the dispute is not capable of settlement by arbitration under the law of this State; or
> >
> > (ii) the award is in conflict with the public policy of this State.
>
> …
>
> [Underlining added]

180 It can thus be seen that what the Applicant is seeking to do by virtue of this application is to have the court perform the role of the primary decider of issues of fact and law, rather than being the appellate tribunal with powers limited by Art 34 following an award by the Tribunal.

181 The Applicant contends that the court has power to exercise its discretionary powers to grant the declarations sought so as to declare the dispute non-arbitrable and thus deprive the Tribunal of the power to rule upon the matter and that this is an appropriate case for it to do so.

182 This leads back to the first and second issues.

The first issue – the power to grant the declarations

183 It is trite law that an arbitral tribunal will not have jurisdiction over disputes that are non-arbitrable: *Arbitration in Singapore: A Practical Guide* (Sundaresh Menon ed-in-chief) (Sweet & Maxwell, 2nd Edn, 2018) at para 10.017. Further s 10(2) of the IAA provides that a properly constituted tribunal itself has the power to determine whether or not it lacks jurisdiction. That this extends to questions of lack of jurisdiction on the grounds of non-arbitrability and potential conflicts with public policy is apparent from the potential for an award on these matters to be set aside under Art 34(2)(b) of the Model Law as set out above.

184 The Applicant relies on s 11 of the IAA as giving the court the right also to grant a declaration that the dispute is non-arbitrable and/or contrary to public policy.

185 This question was considered by the Court of Appeal in *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] 1 SLR 732 ("*Sun Travels*") where at [131]–[135] Chong JCA, giving the judgment of the court said this:

> 131 Although the parties have not focused their attention on the source of the court's power to grant declaratory relief in the arbitration context, we think it is important to first establish the source of the power, which is the first precondition to granting declaratory relief.
>
> 132 Certain areas of declaratory relief in the context of arbitration are statutorily provided for. This includes a declaration that an arbitral tribunal has or does not have jurisdiction, upon an application by a party to the arbitration pursuant to s 10(3) of the IAA or Art 16(3) of the UNCITRAL Model Law on International Commercial Arbitration ("the Model Law") (see *International Research Corp PLC v Lufthansa Systems Asia Pacific Pte Ltd and another* [2014] 1 SLR 130 at [11] and [63]; *BCY v BCZ* [2017] 3 SLR 357 at [35] and [97]). But apart from these specific statutory provisions, our courts also have wide-ranging powers to grant declaratory relief in respect of a Singapore-seated arbitration. For instance, this court in *AKN and another v ALC and others and other appeals* [2016] 1 SLR 966 granted a declaration that the claims and any relevant defences arising from the setting aside of a specific part of an arbitral award remained to be determined between the relevant parties (at [68]). This is not a form of declaratory relief explicitly mentioned in the IAA or the Model Law.
>
> 133 In our judgment, this wide-ranging power to grant declaratory relief is derived from s 18 of the SCJA, read with para 14 of the First Schedule to the SCJA; both provisions, read together, confer on the court the "[p]ower to grant all relief and remedies at law and in equity". In addition, O 15 r 16 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) clarifies that it is possible to seek only a mere declaratory judgment or order from the court. The power to grant declaratory relief applies in all cases, including proceedings in the context of arbitration.

> 134 This, however, is not an unfettered power. In the context of arbitration, Article 5 of the Model Law provides that "[i]n matters governed by [the Model Law], no court shall intervene except where so provided in [the Model Law]". The *raison d'être* of this rule is not to promote hostility towards judicial intervention but to satisfy the need for certainty as to when court action is permissible: *LW Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd and another appeal* [2013] 1 SLR 125 ("*LW Infrastructure")* at [36]. This court in *LW Infrastructure* found that certain provisions, such as s 47 of the Arbitration Act (Cap 10, 2002 Rev Ed) ("the Act") should be read consistently with Art 5. The upshot of this is that in situations that are expressly regulated by the Act, the courts should only intervene where so provided in the Act (at [39]) (this position should similarly apply in the IAA context). In *LW Infrastructure,* this court upheld the High Court's decision *not* to declare that an arbitral award was deemed a nullity, because the Act already makes provisions for seeking relief in such circumstances, *ie,* to set aside the award under s 48(1)(*a)(*v) of the Act. This court then concluded that where relief has been provided in the Act, there is simply no basis for finding that there is any residual or concurrent jurisdiction for the court to make a declaration as to the validity of the award (at [42]).
>
> 135 However, in the present case, unlike *LW Infrastructure,* there is no specific provision in the IAA or the Model Law which addresses the specific declarations granted by the Judge. Hence, nothing in the IAA and the Model Law circumscribes the court's power to grant the declaratory relief sought by Hilton under s 18 of the SCJA, read with para 14 of the First Schedule to the SCJA.
>
> [Underlining added]

186 *Sun Travels* thus upholds the policy of minimal curial intervention in arbitral proceedings as was observed by Hri Kumar Nair J in *DMZ v DNA* [2025] SGHC 31 at [24]–[25]:

> 24 The claimant submitted, on the strength of *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] 1 SLR 732 ("*Sun Travels*") (at [132]), that this court had "wide-ranging powers [under the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA")] to grant declaratory relief in respect of a Singapore-seated arbitration". This did not assist the claimant.
>
> 25 First, *Sun Travels* does not support the proposition that the court may grant declarations in breach of express

> provisions of the SIAC Rules. On the contrary, *Sun Travels* upholds the policy of minimal curial intervention, as summarised by the Court of Appeal in *COT v COU and others and other appeals* [2023] SGCA 31 (at [1]):
>
> > The policy of minimal curial intervention in arbitral proceedings is well settled in our arbitration jurisprudence … This policy is engendered by considerations of party autonomy and the finality of the arbitral process, dictating that the courts should act with a view to "respecting and preserving the autonomy of the arbitral process" … Thus, curial intervention is warranted only on limited grounds.

187 *LW Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* ("*LW Infrastructure*") [2013] 1 SLR 125 was an appeal to the Court of Appeal involving an award made under the Arbitration Act 2001 (the "AA"), the domestic arbitration act. Section 48 of the AA setting out the powers of the court to set aside an arbitral award is in the same terms as Art 34 of the Model Law and the court drew upon the Model Law in seeking guidance for the interpretation of the domestic AA (at [34]).

188 At [35], Sundaresh Menon JA (as he then was), giving the judgment of the court relied upon Art 5 of the Model Law and went on to say (at [36]–[38]):

> 36 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 (see H M Holtzmann & J E Neuhaus, *A Guide to the UNCITRAL Model Law on International Commercial Arbitration: Legislative History and Commentary* (Kluwer Law and Taxation Publishers, 1989) ("*Holtzmann & Neuhaus*") at p 216). The *raison d'être* of Art 5 of the Model Law is not to promote hostility towards judicial intervention but to "satisfy the need for certainty as to when court action is permissible" (*ibid*).
>
> 37 Article 5 of the Model Law has been described as "being comparable" with s 47 of the Act (see Chan Leng Sun SC, *Singapore Law on Arbitral Awards* (Academy Publishing, 2011) ("*Singapore Law on Arbitral Awards*") at para 4.13). Section 47 of the Act provides:

> **No judicial review of award**
>
> **47**. The Court shall not have jurisdiction to confirm, vary, set aside or remit an award on an arbitration agreement except where so provided in this Act.
>
> 38 In our view, having regard to the need for a broadly consistent approach to the interpretation of the Act and the Model Law, s 47 of the Act should be construed in a manner that is consistent with the intent underlying Art 5 of the Model Law. Section 47 of the Act states that the court shall not have jurisdiction to interfere with an arbitral award except where so provided in the Act. The certainty which is sought to be achieved by this provision would be significantly undermined if the courts retained a concurrent "supervisory jurisdiction" over arbitral proceedings or awards that could be exercised by the grant of declaratory orders not expressly provided for in the Act.
>
> [Underlining added]

189 On the basis of these cases I am satisfied that whilst this court has a wide power to grant declarations, this power will not be exercised in circumstances where the legislation has made provision for seeking relief by way of a set aside application. In those circumstances there is no residual or concurrent jurisdiction for a court to make a declaration which pre-empts an arbitral tribunal's decision on a matter expressly governed by the Model Law.

The second issue – is the dispute arbitrable?

190 This issue seeks to suggest that because the dispute involves a consideration of the public policy of Singapore it should not be susceptible to resolution by the Tribunal and that it is therefore appropriate to be resolved by direct intervention in the Court.

191 I do not agree. The assertion that the Charterparty is unenforceable because it is against the public policy of Singapore is (said to be) a consequence of the alleged illegality which renders the Charterparty void. Resolution of the allegation of illegality is something that the Tribunal is empowered to do

pursuant to Clause 41 as indicated in [176]–[177] above. This is accepted by the Applicant by the fact that it has pleaded the issue in its Amended Statement of Respondent's Defence.

192 The issue of illegality is thus arbitrable and would involve the Tribunal addressing the issues considered in [168]. Following the Tribunal's award, the national court has the power granted by Art 34 to consider whether to set that award aside on either of the grounds set out in Art 34(2)(b) if it is satisfied that *(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or (ii) the award is in conflict with the public policy of this State.*

Conclusion on OA 27

193 Drawing this together, the court's power to grant declarations will not be exercised in circumstances where the legislation has made provision for seeking relief by way of a set aside application under Art 34 of the Model Law. This extends to decisions by an arbitral tribunal in a given case that the subject matter of the dispute is non-arbitrable or in conflict with public policy.

194 The dispute in this case is whether or not, because of the alleged illegality, the subject matter of the Charterparty is non-arbitrable or contrary to public policy. This has been raised before and should be decided in the first instance by the Tribunal and not by this court in the exercise of its discretionary powers.

195 OA 27 will therefore be dismissed.

Submissions on foreign law

196 In [36]–[39] above, I referred to a previous CMC on 19 February 2025 at which I had given permission for expert evidence on foreign law to be given by way of submissions pursuant to O 16 r 8 of the SICC Rules. At that CMC an issue arose as to the scope of O 16 r 8 as is illustrated by the following interchange between Ms Song and the Court:

> Ms Song: I was looking at provisions, O 16 r 8(1) – [*reads*]. I think the phrase there is "who may submit on questions of foreign law" as opposed to just in a traditional method where one would be putting in principles of foreign law in an expert report.
>
> Court: You're saying that the correct interpretation of O 16 r 8(1) goes wider than allowing the expert to instruct the court on what the applicable principles are, and instead allows the expert to make submissions on how to apply those principles to the facts of the case?
>
> Ms Song: Yes, Your Honour, because we were just discussing earlier on as to the limits to impose on English counsel appearing before Your Honour. Looking at O 16 r 8(1), it seems to suggest that the expert may make submissions before Your Honour, as opposed to an expert in the traditional scenario.

197 I then gave the directions set out in [37] above from which it will be clear that I did not accept Ms Song's submissions on O 16 r 8. I indicated that I would give my reasons for doing so in this judgment.

198 O 16 r 8 provides:

> **8.**—(1) The Court may, on the application of a party, order that a question of foreign law be determined on the basis of submissions instead of proof, specifying one or more persons who may submit on the question of foreign law, and such further orders and directions as may be appropriate with regard to such determination.
>
> [Underlining added]

199 The reference to "proof" of a question of foreign law is to the underlying common law principle that foreign law is deemed to be a question of fact which means that the court must determine it based on the evidence presented (*Pacific Recreation Pte Ltd v S Y Technology Inc and another appeal* [2008] 2 SLR(R) 491 at [54]).

200 As with any question of fact, it must be pleaded with adequate particulars and in a responsive pleading admissions can be made or rival contentions as to the correct foreign law can be pleaded, again with proper particulars. This enables the disputed issues to be identifiable and affidavits or witness statements from experts in the foreign law to be adduced which can then, if necessary, be the subject of cross-examination. This allows the judge to determine on the balance of probabilities what the foreign law in issue is and to apply it to the facts of the case.

201 Lord Neuberger, in *Actavis UK Limited and others v Eli Lilly & Co* [2017] UKSC 48 at [93], observed that the notion that findings of foreign law are findings of fact is "somewhat artificial" and it can be seen that the process by which it is to be approached as set out above is somewhat cumbersome. Similar sentiments have also been expressed by the Court of Appeal in *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 at [57]. But it does provide a structured approach to identifying the aspects of foreign law that are in dispute and permits the evidence to be focused on those.

202 The SICC was instituted following the publication of the *Report of the Singapore International Commercial Court Committee* (29 November 2013)

(Co-chairmen: Indranee Rajah and V K Rajah)[59] ("SICC Committee Report"). In paragraph 34 it stated:

> **Questions of foreign law.**
>
> 34. In line with the international character of the SICC, foreign law need not be pleaded and proved as fact in proceedings before the SICC, as the Judges can take judicial notice of foreign law with the assistance of oral and written legal submissions, supported by relevant authorities. The SICC would then apply foreign law to determine the issues in dispute. This would facilitate buy-in from foreign counsel to bring their disputes to the SICC and, at the same time, aligns SICC procedure with the practice in international arbitration. Notwithstanding the position on the applicable conflict of laws rules, consideration should be given to the extent to which Singapore's public policy would be applicable in each case, and if so, the relevant implications it might have on the resolution of SICC disputes.
>
> [Underlining added]

203 The SICC Committee Report went on to consider the appearance by foreign counsel in cases before the SICC in paragraphs 36 and 37:

> **Representation before the SICC and Court of Appeal cases arising out of the SICC**
>
> 36 As a division of the Singapore High Court, proceedings before the SICC will be governed by the LPA [Legal Profession Act 1966]. Presently, parties can only be represented by members of the Singapore Bar, subject to the discretion of the court to admit Queen's Counsel or foreign lawyers of equivalent distinction on an ad hoc basis in certain cases. This position will also apply to cases transferred from the Singapore High Court to the SICC.
>
> 37 It is intended that special rules apply for cases which have no substantial connection to Singapore. What constitutes the absence of substantial connection will be further refined in consultation with stakeholders, but will include cases in which either (i) Singapore law is not the governing law; or (ii) the choice of Singapore law is the sole connection to Singapore; foreign counsel may appear before the SICC in such cases if

[59] Accessible at <www.mlaw.gov.sg/files/Annex-A-SICC-Committee-Report.pdf> as at the date of the publication of this judgment.

> they are registered with the SICC. Provision should be made under the SICC Rules to allow any party to apply to the court to disallow foreign counsel if they can show sufficient cause that (i) or (ii) does not apply in the case at hand.
>
> [Underlining added]

204 These proposals were adopted in O 110 r 25 of the Rules of Court (2014 Rev Ed) (the predecessor provision to O 16 r 8 of the SICC Rules) which provides:

> **25.**—(1) The Court may, on the application of a party, order that any question of foreign law be determined on the basis of submissions (which may be oral or written or both) instead of proof.
>
> (2) Before making an order under paragraph (1), the Court must be satisfied that each party is or will be represented by a counsel, restricted registration foreign lawyer or registered law expert who is suitable and competent to submit on the relevant question of foreign law.
>
> [Underlining added]

205 In relation to the definition of an offshore case, O 3 r 3 of the SICC Rules expressly provides that:

> **3.**—(1) "Offshore case" means an action that has no substantial connection with Singapore, but does not include the following:
>
> > (a) Any proceedings under the International Arbitration Act that are commenced by way of any originating process.
> >
> > …

206 Hence these applications cannot be considered to fall within the ambit of the offshore case provisions which do provide for foreign counsel to represent a party in a case before the Singapore courts (see O 3 r 1 of the SICC Rules).

207 It is with this background that the scope of O 16 r 8 of the SICC Rules falls to be assessed. It relates to the determination of a question of foreign law

on the basis of submissions instead of proof by a specific person who may make submissions on that question. Read in context and, particularly having regard to the wider provisions relating to representation in offshore cases, O 16 r 8 goes no further than permitting submissions as a substitute for proof in the manner required in the GDHC (see [199]–[200] above). Hence, there is no requirement for the matter to be the subject of pleadings, the written submissions will take the place of written expert reports and any oral submissions will replace cross-examination.

208 For these reasons, I was unable to accept Ms Song's submission that foreign counsel could make submissions on the substance of the case rather than solely addressing the question of foreign law and gave the limited direction for further submissions set out in [37] above (see [196]–[197] above).

209 Since there will be no requirement that there be pleadings, a degree of robust case management will be necessary in order to ensure that any questions of foreign law are identified and focused down to areas that are truly in dispute at any early stage so as to avoid wide ranging submissions on questions of foreign law that are not in dispute. Such a course will, hopefully, also limit the need to incur the time and expense of oral submissions. With the benefit of hindsight, I fear that the directions given in this case were insufficiently robust.

Conclusion

210 In sum, both OA 26 and OA 27 are dismissed.

Costs

211 The parties should, within 14 days, each file a schedule of costs and disbursements separating those incurred prior to the transfer to the SICC from

those incurred post-transfer. In the case of OA 26, the schedules should separate the costs and disbursements incurred in relation to the Malaysian law issue from the general costs and the costs of the interpretation of the Charterparty.

212 Thereafter each party should file written submissions on costs limited to ten pages with an indication of whether it is prepared to agree to the issue of costs being decided on the basis of the written submissions without an oral hearing if the court considers that this is appropriate.

Simon Thorley
International Judge

Raymond Ong (Fullerton Law Chambers LLC) for the applicant;
Corina Song, Daniel Liang, KarLuis Quek and Thomas Benjamin Lawrence (Allen & Gledhill LLP) for the respondent.