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

[2025] SGHCR 7

Admiralty in Rem No 83 of 2022 (Summons No 691 of 2025)

Between

Maersk Tankers MR K/S

… *Claimant*

And

Owner and/or Demise Charterer of the vessel "SWIFT WINCHESTER"

… *Defendant*

JUDGMENT

[Arbitration — Stay of court proceedings — Mandatory stay under International Arbitration Act]
[Arbitration — Stay of court proceedings — Case management stay]

The "Swift Winchester"

[2025] SGHCR 7

General Division of the High Court — Admiralty in Rem No 83 of 2022
(Summons No 691 of 2025)
AR Vikram Rajaram
7 April 2025

24 April 2025 Judgment reserved.

AR Vikram Rajaram:

Introduction

1 This is my judgment on an application by the claimant (the "Claimant") to stay an *in rem* action. The Claimant relies on two alternative grounds for seeking a stay: (a) pursuant to s 6 of the International Arbitration Act 1994 (2020 Rev Ed) (the "IAA"); and (b) alternatively, pursuant to the court's case management powers. This application raises interesting questions relating to whether a claimant may bring an application under the IAA to stay proceedings that the claimant started.

Facts

The parties and their relationships

2 The Claimant (Maersk Tankers MR K/S) and the defendant (Winchester Shipping Inc) (the "Defendant") were parties to a Pool Agreement titled

"Maersk Tankers Pool Agreement" (the "Pool Agreement"). The Defendant became a party to the Pool Agreement by way of an Accession Letter dated 30 March 2022 (the "Accession Letter").[1]

3 The Defendant was the owner of a vessel known as "SWIFT WINCHESTER" (the "Vessel") at the time when the Claimant commenced this action in HC/ADM 83/2022 ("ADM 83").[2]

4 Under the terms of the Pool Agreement, the Claimant was the Vessel's time-charterer with the right to use or hire the Vessel.[3] There are two key terms in the Pool Agreement to note for the purpose of the present application:

(a) Clause 25.4.2 requires "Participants" (including the Defendant) to save, indemnify and hold harmless the "Commercial Manager" (*ie*, the Claimant) against any claims that may be brought against the Claimant in the course of the performance of the Pool Agreement. The Claimant's view is that the indemnity extends to all costs, losses, liabilities and expenses (including legal costs that the Claimant may incur in defending proceedings). I will refer to clause 25.4.2 of the Pool Agreement as the "Indemnity Clause". The Indemnity Clause is reproduced below:[4]

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1 1st Affidavit of Prateek Sibal filed on 28 March 2025 in support of HC/SUM 691/2025 ("**Sibal's 1st Affidavit**") at para 5. The Pool Agreement may be found in Sibal's 1st Affidavit at pages 22 to 219. The Accession Letter may be found in the Sibal's 1st Affidavit at pages 220 to 221.

2 Sibal's 1st Affidavit at para 6.

3 Sibal's 1st Affidavit at para 6. Also see clauses 3.1 and 4.2 of the Pool Agreement (Sibal's 1st Affidavit at pages 33 and 35).

4 Sibal's 1st Affidavit at page 56.

> Except to the extent, and solely for the amount set out in Sub-clause 25.4, that the Commercial Manager in its role as commercial manager agent of a Participant or its Pool Vessels, as Disponent owner or otherwise would be liable under Sub-clause 25.4, each Participant hereby undertakes to defend and retain the Commercial Manager in its role as commercial manager as Disponent owner, agent of such Participant or its Pool Vessels, or otherwise and the Commercial Manager's employees, agents and subcontractors *indemnified and to hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising out of or in connection with the performance of this Pool Agreement and against and in respect of all costs, loss, damages, and expenses (including legal costs and expenses)* which the Commercial Manager in its role as commercial manager, Disponent owner, agent of such Participant or its Pool Vessels, or otherwise, may suffer or incur (either directly or indirectly) in the course of the performance of this Pool Agreement. [emphasis added]

(b) Clause 46.1 of the Pool Agreement provides that "…any dispute arising out of or in connection with [the] Pool Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996…".[5] Clause 46.2 of the Pool Agreement also contains various provisions relating to the conduct of any arbitration, such as the rules of the arbitration, the process of appointing arbitrators and the procedure to be adopted for small claims.[6] I will refer to clauses 46.1 and 46.2 of the Pool Agreement collectively as the "Arbitration Agreement".

5 The Claimant sub-chartered the Vessel to a company known as PMI Trading DAC ("PMI") pursuant to a sub-charterparty dated on or about 1 September 2022 (the "Sub-Charterparty").[7]

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5 Sibal's 1st Affidavit at page 68.

6 Sibal's 1st Affidavit at pages 68 to 69.

7 Sibal's 1st Affidavit at para 7.

Dispute with PMI

6 Sometime between September and November 2022 and during the term of the Sub-Charterparty, the Claimant and PMI had a dispute relating to the Vessel's detention at Port Arthur, Texas.[8] On or around 20 October 2022, PMI notified the Claimant via email that it would hold the Claimant responsible for various losses relating to an alleged delay in the discharge of the Vessel.[9] PMI sent a further email to the Claimant on 1 November 2022 to state that it had quantified its losses in the amount of approximately US$6,855,000.[10]

Protective proceedings in Singapore and Malaysia

7 On 2 November 2022, the Claimant filed ADM 83, which is an *in rem* action. In the "Endorsement of Claim" section of the Originating Claim (the "**ADM 83 OC**"), the Claimant states that its claims are for an indemnity and/or damages for the Defendant's failure to defend, indemnify and hold harmless the Claimant against: (a) PMI's claims relating to the Sub-Charterparty ("**PMI's Claims**"); and (b) all costs, loss, damages and expenses (including legal costs and expenses) incurred by the Claimant and which arise out of or in connection with PMI's Claims.

8 According to the Claimant, ADM 83 was filed as a protective measure to preserve the Claimant's *in rem* cause of action against the Vessel, and its right to obtain security, if the Vessel's ownership was to change. There was urgency in commencing ADM 83 in November 2022 because the Defendant notified the

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8 Sibal's 1st Affidavit at para 8.

9 Sibal's 1st Affidavit at para 9. The 20 October 2022 email from PMI's representative to the Claimant's representatives may be found in Sibal's 1st Affidavit at page 301.

10 Sibal's 1st Affidavit at para 9. The 1 November 2022 email from PMI's representative to the Claimant's representatives may be found in Sibal's 1st Affidavit at page 299.

Claimant on 8 September 2022 that it intended to sell the Vessel.[11] The Defendant eventually ceased to own the Vessel after 19 November 2022.[12]

9 ADM 83 is not the only protective proceeding started by the Claimant. The Claimant also commenced a similar *in rem* proceeding in the High Court of Malaya (the "Malaysian Proceedings"). The Claimant served the writ in the Malaysian Proceedings on the Vessel on 17 May 2024. On the Claimant's application, the High Court of Malaya decided on 5 November 2024 to stay the Malaysian Proceedings pursuant to s 10 of the Arbitration Act 2005 (No 646 of 2005) (M'sia).[13]

10 According to the Claimant, it was important to commence protective *in rem* proceedings before the Vessel's ownership changed because the Defendant was a "one ship" company (*ie*, the Defendant, Winchester Shipping Inc, allegedly owned only the Vessel). Further, the Defendant apparently has no assets other than the Vessel.[14] The Claimant's concern is essentially that it might not be able to recover any amounts that an arbitral tribunal may find to be owing in future arbitration proceedings.

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11 Sibal's 1st Affidavit at para 12. The notice of sale (which was provided via an email on 8 September 2022) is at Sibal's 1st Affidavit at page 303.

12 Sibal's 1st Affidavit at para 17(c) and page 312 (report produced by S&P Global on 11 March 2025 which states that the Defendant was the Vessel's owner from 6 August 2019 until 19 November 2022).

13 Sibal's 1st Affidavit at para 13. The stay order may be found in Sibal's 1st Affidavit at pages 305 to 309.

14 Sibal's 1st Affidavit at para 14.

11 On 19 October 2023, on the Claimant's application, the court renewed the ADM 83 OC until 2 November 2024.[15] The Claimant applied for renewal because it was not able to serve the ADM 83 OC on the Vessel during its original validity period.[16]

12 The Vessel subsequently entered Singapore on two occasions on 23 March 2024 and 16 May 2024. However, the Claimant was not able to arrange for service of the ADM 83 OC on the Vessel on those occasions.[17]

13 The Claimant eventually served the ADM 83 OC on the Vessel when it entered Singapore territorial waters on 25 June 2024.[18] The Claimant effected service at that point because: (a) there was no guarantee that the Vessel would enter Singapore territorial waters again during the remaining period of validity of the ADM 83 OC; and (b) the court might not extend the validity of the ADM 83 OC beyond 2 November 2024 because the court's view might be that the Claimant had reasonable opportunity to serve the ADM 83 OC because the Vessel had entered Singapore waters while the ADM 83 OC was still valid for service.[19]

14 The Defendant has not filed a notice of intention to contest or not contest ADM 83.

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15 Sibal's 1st Affidavit at para 15. The renewal order may be found in Sibal's 1st Affidavit at page 321.

16 Sibal's 1st Affidavit at para 15.

17 Sibal's 1st Affidavit at para 16.

18 Sibal's 1st Affidavit at para 16.

19 Sibal's 1st Affidavit at para 17.

Texas proceedings

15 In parallel with the protective proceedings in Singapore and Malaysia, on 8 November 2022, the Claimant commenced proceedings in the United Sates District Court in the Southern District of Texas (the "Texas Proceedings"). The purpose of the Texas Proceedings was to arrest the Vessel as security for the Claimant's claims against the Defendant for an indemnity if the Claimant was eventually found liable to PMI.[20]

16 On 9 November 2022, in view of the imminent sale of the Vessel, the Defendant filed a motion in the Texas Proceedings for an order to approve a deposit of US$7,355,000 as substitute security. The court in Texas approved the motion on 10 November 2022 and the Defendant deposited the funds into the court registry in Texas (the "Security"). The Vessel was then released from arrest in Texas on or about 19 November 2022.[21]

17 On 28 November 2022, PMI intervened in the Texas Proceedings and sought to attach the Security.[22] Thereafter, on 7 December 2022, the Defendant applied in the Texas Proceedings for an order to reduce the quantum of the Security. The court in Texas granted the application and reduced the Security to US$330,000. This was because PMI did not provide sufficient evidence of its losses to the court to substantiate its claim for damages.[23]

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20 Sibal's 1st Affidavit at para 20.

21 Sibal's 1st Affidavit at para 21.

22 Sibal's 1st Affidavit at para 22 and page 343.

23 Sibal's 1st Affidavit at para 23. Also see Sibal's 1st Affidavit at pages 342 to 350 for the Judge's written ruling.

The New York Arbitration

18 On 16 March 2023, the Claimant commenced arbitration proceedings against PMI in New York pursuant to the terms of the Sub-Charterparty (the "New York Arbitration"). The Claimant sought a declaration that it was not liable for PMI's Claims.[24]

19 In response, on 3 April 2023, PMI submitted a Response and Cross-Demand for Arbitration in which PMI made claims against the Claimant totalling US$5,757,500 for damages for demurrage, freight and hedging losses.[25]

20 The Claimant is disputing PMI's counterclaim in the New York Arbitration.[26] According to the Claimant, it has incurred (and continues to incur) costs in the New York Arbitration to defend PMI's Claims.[27]

The present stay application

21 On 13 March 2025, the Claimant filed the present application in HC/SUM 691/2025 ("SUM 691") to seek a stay of ADM 83. The Claimant has put forward two alternative grounds for seeking a stay:

(a) First, the Claimant seeks a stay in favour of arbitration pursuant to s 6 of the IAA.

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24 Sibal's 1st Affidavit at para 24.

25 Sibal's 1st Affidavit at para 25.

26 Sibal's 1st Affidavit at para 27.

27 Sibal's 1st Affidavit at para 28.

(b) Second, in the alternative, the Claimant seeks a stay pursuant to the court's inherent powers of case management.

22 The stay is to be in place pending the reference of disputes between the Claimant and the Defendant to arbitration in London (the "**Future London Arbitration**") and the final disposal of the Future London Arbitration.

23 The Claimant has filed SUM 691 because it wishes to pursue its substantive claim for an indemnity from the Defendant (pursuant to the Indemnity Clause) in the Future London Arbitration instead of the Singapore court. The Claimant will be commencing the Future London Arbitration after its liability (if any) to PMI has been determined through the New York Arbitration.[28] The Claimant does not want to commence the Future London Arbitration at the present time because it does not know the amount (if any) that it owes PMI, and the full quantum of the costs for defending the PMI Claims.[29]

24 The Claimant is seeking a stay of ADM 83 to keep the proceedings alive to preserve its right to seek additional security from the Defendant. The Claimant is concerned that the Security in place in the Texas Proceedings (in the amount of US$330,000) may not be sufficient to cover the Claimant's claims against the Defendant if PMI succeeds in the New York Arbitration where PMI is making a claim for US$5,757,500. The Claimant's counsel also highlighted that the Claimant may be permitted to apply to re-arrest the Vessel if it would not be vexatious or oppressive to the Defendant to arrest the Vessel for a second time. The Claimant's counsel cited commentary to the effect that a re-arrest of a vessel may be allowed "where the re-arrest is necessitated by the fact that the

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[28] Sibal's 1st Affidavit at para 31.

[29] Sibal's 1st Affidavit at paras 32 to 33.

initial security is rendered valueless or otherwise impaired by the actions of the shipowner" or where the "security ordered by court to be provided is less than that which would have been ordered on the basis of a reasonably best arguable case": see Toh Kian Sing *SC*, *Admiralty Law and Practice* (LexisNexis, 3rd Ed, 2017) at pp 230 to 231.[30]

25 As the Claimant's counsel explained during his oral submissions, it is not an option for the Claimant to discontinue ADM 83 and commence a fresh action only if the Claimant finds itself in a position where it needs to obtain additional security beyond the Security that is in place in the Texas Proceedings. The Claimant will not be able to commence fresh *in rem* proceedings against the Vessel because of the change in ownership of the Vessel. This is due to the operation of the High Court (Admiralty Jurisdiction) Act 1961 (2020 Rev Ed) (the "HC(AJ)A"). Under s 4(4) of the HC(AJ)A, one of the requirements for bringing an action *in rem* against the ship that the claim arises in connection with is that the person who would be liable on the claim in an action *in personam* must be the beneficial owner of that ship at the time when the action is brought. Since the Defendant is no longer the owner of the Vessel (see [8] above), it will not be possible for the Claimant to bring a fresh action *in rem* against the Vessel. Accordingly, the only way for the Claimant to retain its right to apply to the court for additional security is to maintain ADM 83 as a live action.

26 I should add that the Claimant served the Defendant with the papers for SUM 691 by sending copies of the papers by email to the Defendant's representatives. The Defendant was also notified of the hearing date for

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[30] Claimant's Bundle of Authorities at Tab 16.

SUM 691.[31] The Defendant did not file an affidavit in reply or written submissions, and it did not attend the hearing of SUM 691.

Issues to be determined

27 Two issues arise for consideration:

(a) First, should a stay of ADM 83 pursuant to s 6 of the IAA be ordered?

(b) Second, in the alternative, should the court grant a case management stay in the exercise of its inherent powers?

Issue 1: Should ADM 83 be stayed pursuant to s 6 of the IAA?

28 I will first set out the requirements for granting a stay pursuant to s 6 of the IAA, before considering whether each of the requirements are satisfied on the facts.

The requirements for granting a stay pursuant to s 6 of the IAA

29 The Claimant's primary ground for seeking a stay is premised on s 6 of the IAA. The key provisions are ss 6(1) and 6(2) of the IAA, which are reproduced below for reference:

> **Enforcement of international arbitration agreement**
>
> **6.**—(1) Despite Article 8 of the Model Law, where any party to an arbitration agreement to which this Act applies institutes any proceedings in any court against any other party to the agreement in respect of any matter which is the subject of the agreement, any party to the agreement may, *at any time* ***after*** *filing and serving a notice of intention to contest or not contest*

[31] 2nd Affidavit of Aleksandar Anatoliev Georgiev filed on 3 April 2025 at paras 5 to 8.

> and ***before*** *delivering any pleading (other than a pleading asserting that the court does not have jurisdiction in the proceedings) or taking any other step in the proceedings,* apply to that court to stay the proceedings so far as the proceedings relate to that matter.
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> (2) The court to which an application has been made in accordance with subsection (1) is to make an order, upon such terms or conditions as the court thinks fit, staying the proceedings so far as the proceedings relate to the matter, unless it is satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed.
>
> [emphasis added in italics and bold italics]

30 The emphasised words in s 6(1) of the IAA (as quoted above at [29]) show that s 6(1) prescribes a timeframe for when an application for a stay may be brought:

(a) the *earliest* that an application under s 6(1) of the IAA can be brought is *after* a notice of intention to contest or not contest is filed and served (the "First Timeframe Requirement"); and

(b) the *latest* that an application under s 6(1) of the IAA can be brought is *before* any pleading is delivered (other than a pleading asserting that the court does not have jurisdiction) or taking any other step in the proceedings (the "Second Timeframe Requirement").

The First Timeframe Requirement and the Second Timeframe Requirement will be referred to collectively as the "Timeframe Requirements".

31 Apart from the Timeframe Requirements, it is well established that ss 6(1) and 6(2) of the IAA require the party seeking a stay to show a *prima facie* case that three requirements are satisfied (the "Substantive Requirements"): see the Court of Appeal's decision in *Tomolugen Holdings Ltd*

and another v Silica Investors Ltd and other appeals [2016] 1 SLR 373 ("*Tomolugen*")[32] at [63]:

(a) the parties in the court proceedings are also parties to a valid arbitration agreement;

(b) the dispute that is the subject of the court proceedings (or part thereof) comes within the scope of the arbitration agreement; and

(c) the arbitration agreement is "not null and void, inoperative or incapable of being performed".

32 Before considering whether the Timeframe Requirements and the Substantive Requirements are satisfied on the facts, a preliminary question that I should address is whether a claimant may bring an application under s 6 of the IAA to stay proceedings that the claimant itself decided to commence. I will then consider the Timeframe Requirements, followed by the Substantive Requirements.

Preliminary issue: Can a claimant bring an application for a stay under s 6 of the IAA?

33 I agree with the Claimant[33] that *any* party to the court proceedings (including the claimant which commenced the court proceedings) may bring an application under s 6(1) of the IAA to stay the court proceedings. This conclusion is supported by both a plain reading of s 6(1) of the IAA, and observations in a High Court decision.

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32 Claimant's Bundle of Authorities at Tab 13.

33 Claimant's Written Submissions at paras 44 to 47.

34 First, a plain reading of s 6(1) of the IAA suggests that a claimant may bring a stay application. Section 6(1) of the IAA states that "*any* party to the [arbitration] agreement" may bring the stay application. The term "any party" would include a claimant which commenced the court action despite the claimant being a party to an arbitration agreement with the defendant. Section 6(1) of the IAA does not state that only the party *against* which the court proceedings were brought (*ie*, the defendant) may bring a stay application. I reproduce s 6(1) of the IAA here for reference, adding emphasis to the words "any party to the agreement":

> Despite Article 8 of the Model Law, where any party to an arbitration agreement to which this Act applies institutes any proceedings in any court against any other party to the agreement in respect of any matter which is the subject of the agreement, *any party to the agreement* may, at any time after filing and serving a notice of intention to contest or not contest and before delivering any pleading (other than a pleading asserting that the court does not have jurisdiction in the proceedings) or taking any other step in the proceedings, apply to that court to stay the proceedings so far as the proceedings relate to that matter. [emphasis added]

35 Section 6(1) of the IAA also states that the stay application is to be brought "at any time after *filing and serving* a notice of intention to contest or not contest" [emphasis added]. The phrasing may suggest that the party to the arbitration agreement which is entitled to bring stay application must be the party which *filed and served* a notice of intention to contest or not contest. As a matter of civil procedure, a claimant does not file a notice of intention to contest or not contest. A notice of intention to contest or not contest is a court form that a *defendant* served with an originating claim is to file and serve (see O 6 r 6(1) of the Rules of Court 2021 ("ROC 2021")):

> **6.**—(1) A *defendant* who is served an originating claim in Singapore must file and serve a notice of intention to contest or

> not contest within 14 days after the statement of claim is served on the defendant. [emphasis added]

36 Thus, one interpretation of s 6(1) of the IAA may be that the general reference to "any party to the agreement" is qualified by the subsequent wording that the party bringing the application must have "fil[ed] and serv[ed] a notice of intention to contest or not contest". However, as I will explain below when considering the Timeframe Requirements, the requirement to file and serve a notice of intention to contest or not contest in s 6(1) of the IAA has not been interpreted in the case law literally to mean the filing of a court form. That term has been interpreted as requiring the court to consider whether the substantive claim in the court proceedings have been crystallised (see [44] and [46] below).

37 Second, there are statements in a High Court judgment to the effect that either party to the court proceedings (*ie*, both the claimant and the defendant) may apply under s 6 of the IAA to stay the court proceedings. In *The "ICL Raja Mahendra"* [1998] 2 SLR(R) 922 ("*ICL Raja Mahendra*"),[34] the High Court stated at various points in its judgment (at [4], [15], [21] and [23]) that an application for a stay under s 6 of the IAA may be brought by either party. The relevant parts of the judgment are reproduced below for reference:

> 4 Section 6 of the said Act provides for situations where a party to an arbitration agreement commences any legal proceedings in Singapore against any party to the agreement. In such cases, *either party is entitled*, if it had not taken any other steps than entering an appearance, to apply to stay the proceedings. Unless the court is satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed, it shall order a stay upon terms and conditions as it thinks fit.
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> …

[34] Claimant's Bundle of Authorities at Tab 10.

> 15 In the case before me, *either party could apply for a stay* by virtue of s 6 of the International Arbitration Act (Cap 143A), in which event, the court would be bound to order a stay but may impose a condition that the defendant provide security for the satisfaction of any award made on the arbitration.
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> …
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> 21 Generally, when a party invokes a court's jurisdiction to arrest a vessel it is for the purpose of securing it to satisfy a judgment or award which it may obtain in that jurisdiction. Sometimes, having invoked the jurisdiction *the party concerned or the opposing party may*, on good grounds, apply to stay the proceedings in favour of commencing or continuing proceedings elsewhere. In such circumstances, the court has the discretion whether to release the arrested vessel, and it follows, also a discretion whether to impose conditions if the vessel is to be released.
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> …
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> 23 If they proceed with the action in this court, the vessel would have been released subject to the provision of adequate security to satisfy a judgment here. If, however, *either party* applies under s 6, the security would be to satisfy an award by the arbitration in London. That would be the logical position since the arbitration agreement in this case specifically refers to arbitration in London only.
>
> [emphasis added]

38 To be clear, the court in *ICL Raja Mahendra* was not concerned specifically with the issue of whether a claimant may make an application for a stay of proceedings under s 6(1) of the IAA. The issue that the court there was considering was whether the wording in a letter of undertaking issued by the defendant to secure the release of a vessel (which had been arrested as security for a dispute that was subject to an arbitration agreement) should be modified. The defendant was concerned that the letter of undertaking was drafted too widely because the wording contemplated that the dispute may be settled "in a court or tribunal of competent jurisdiction" instead of either in the specific admiralty proceedings or in arbitration in London (as contemplated under the arbitration clause in the bill of lading): see *ICL Raja Mahendra* at [6]. The court

agreed with the defendant and narrowed the wording of the letter of undertaking. The court did not have to consider whether the claimant was entitled to bring an application under s 6(1) of the IAA because such an application was not before the court. Thus, the references in *ICL Raja Mahendra* to either party being entitled to make an application for a stay were *obiter*. Nonetheless, the repeated observations in *ICL Raja Mahendra* that either party is entitled to bring a stay application supports an interpretation of s 6(1) of the IAA that allows both the claimant and the defendant to bring a stay application.

39 For these reasons, I find that a claimant may, in principle, bring an application under s 6(1) of the IAA to stay court proceedings. To conclude this section, I observe that it may seem odd that a *claimant* may apply to stay (rather than discontinue) proceedings that the *claimant itself decided* to bring in court. However, the facts of this case illustrate that there can be legitimate reasons why a claimant may wish to seek a stay of the proceedings that it had originally brought. As explained above, the Claimant in this matter is seeking a stay (rather than a discontinuance) to preserve its right to bring an application in the future to re-arrest the Vessel (see [24] to [25] above).

The Timeframe Requirements

40 I turn now to the Timeframe Requirements. As noted above, there are two Timeframe Requirements. I am to consider whether it is either too early (*ie*, the First Timeframe Requirement) or too late (*ie*, the Second Timeframe Requirement) for the Claimant to bring a stay application. I will consider each requirement in turn.

The First Timeframe Requirement

41 The First Timeframe Requirement was considered by the Court of Appeal in *Navigator Investment Services Ltd v Acclaim Insurance Brokers Pte Ltd* [2010] 1 SLR 25 ("*Navigator Investment Services*"). Before I summarise the Court's reasoning, I should highlight a non-substantive change in wording in s 6(1) of the IAA in connection with the First Timeframe Requirement after the Court of Appeal issued its decision in *Navigator Investment Services*:

(a) At the time of the court's decision in *Navigator Investment Services*, s 6(1) of the IAA provided that a stay application may be brought "at any time after *appearance*" [emphasis added]. The word "appearance" was replaced by the words "filing and serving a notice of intention to contest or not contest" with effect from 1 April 2022 via s 31(*a*) of the Courts (Civil and Criminal Justice) Reform Act 2021 (Act No 25 of 2021) (the "CCCJRA").

(b) Another amendment that was made was to introduce the words "(other than a pleading asserting that the court does not have jurisdiction in the proceedings)" (see s 31(*b*) of the CCCJRA).

(c) These were not substantive amendments. As stated in the Explanatory Statement to the Courts (Civil and Criminal Justice) Reform Bill (Bill No. 18/2021), cl 31 of that Bill was meant "to modernise certain expressions used in connection with court proceedings"; see also Singapore Parl Debates; Vol 95, Sitting No 37; [13 September 2021] (Mr Edwin Tong Chun Fai, Second Minister for Law).

(d) The amendments to s 6(1) of the IAA were made in tandem with the implementation of the ROC 2021 on 1 April 2022. The ROC 2021 requires a defendant to an originating claim to file a "notice of intention to contest or not contest" to indicate the defendant's intention to contest or not contest the action (see O 6 r 6(1) of the Rules of Court 2021 – quoted above at [35]). The equivalent procedure under the Rules of Court (2014 Rev Ed) ("ROC 2014") was for a defendant (to an action begun by writ) to enter an "appearance" (see O 12 r 1(1) of the ROC 2014). The ROC 2021 also introduced a new requirement for a defendant who wishes to challenge the jurisdiction of the court to file and serve a defence stating the ground on which the defendant is challenging the jurisdiction of the Court (see O 6 r 7(4) of the ROC 2021). There was no such requirement under the ROC 2014.

(e) Since the amendments made to s 6(1) of the IAA on 1 April 2022 were not meant to be substantive, but were instead amendments made to modernise expressions used in court proceedings, the Court of Appeal's holdings in respect of the First Timeframe Requirement remain relevant under the current wording of s 6(1) of the IAA.

42 Coming back to *Navigator Investment Services*, the Court of Appeal in that case was concerned with an application to stay a pre-action discovery and pre-action interrogatories application which had been commenced as an originating summons ("OS 1830"): see *Navigator Investment Services* at [8]. One of the arguments raised by the party resisting the stay was that the applicant had not entered an appearance in respect of OS 1830: see *Navigator Investment Services* at [19] and [48]. This was because there was no requirement to enter an appearance in respect of an action commenced by originating summons: see O 12 r 9 of the ROC 2014 and *Navigator Investment Services* at [51]. I note

parenthetically that under the ROC 2021, there is similarly no requirement to file a notice of intention to contest or not contest (*ie*, the ROC 2021 equivalent of an "appearance") in an action commenced by originating application (which is the ROC 2021 equivalent of an "originating summons"). Under the ROC 2021, a defendant served with an originating application is required to file an affidavit in reply (if it wishes to introduce evidence); there is no requirement for the defendant to file a notice of intention to contest or not contest: see O 6 r 12 of the ROC 2021.

43 The Court of Appeal examined the legislative history of s 6(1) of the IAA and noted that the words "at any time after appearance" may be traced back to s 11 of the Common Law Procedure Act 1854 (c 125) (UK): see *Navigator Investment Services* at [49]. The Court noted that the words "at any time after appearance" were removed from the English equivalent of the IAA, the Arbitration Act 1996 (c 23) (UK), with the Departmental Advisory Committee on Arbitration Law's *Report on the Arbitration Bill* (February 1996) observing, amongst others, that the requirement for a party to enter an "appearance" before seeking a stay was not appropriate because a defendant to counterclaim could not enter an appearance, and it was also not the appropriate expression for county court proceedings: see *Navigator Investment Services* at [52].

44 The Court of Appeal proceeded to hold that the court should look at the "*legal significance* … from a *substantive* perspective" when considering the requirement of an "appearance" in s 6(1) of the IAA: see *Navigator Investment Services* at [53] [emphasis in original]. The court then reasoned that looking at the "*substance* of the matter", what is actually required before a stay application may be brought pursuant to s 6(1) of the IAA is that "a *substantive claim has already been crystallised*": see *Navigator Investment Services* at [53] and [54]

[emphasis in original]. Applying this test, the Court of Appeal found that OS 1830, being an application for *pre-action* discovery and/or *pre-action* interrogatories did not, by its nature, meet the "cut-off point" for an application to be brought under s 6(1) of the IAA: see *Navigator Investment Services* at [54].

45 Apart from *Navigator Investment Services*, as highlighted by the Claimant's counsel,[35] there are other cases where the court has held that a stay application may be brought in respect of an originating summons for which an appearance need not be filed:

(a) In *Equinox Offshore Accommodation Ltd v Richshore Marine Supplies Pte Ltd* [2010] SGHC 122[36] at [5], an Assistant Registrar of the High Court considered whether a stay in favour of arbitration should be ordered in respect of one of the prayers in an originating summons. The relevant prayer sought to enforce the plaintiff's contractual right of inspection. The underlying contract (which allegedly contained the contractual right of inspection) also had an arbitration clause. The court proceeded to find that the dispute between the parties relating to the contractual right of inspection was a dispute falling within the scope of the arbitration agreement. The court then granted a stay of the relevant prayer in the originating summons even though an appearance had not been entered in respect of the originating summons (since there was no procedural requirement for the entry of an appearance in respect of an originating summons, following amendments to the Rules of Court in 2006).

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35 Claimant's Written Submissions at para 48(b).

36 Claimant's Bundle of Authorities at Tab 6.

(b) In *Duncan, Cameron Lindsay and another v Diablo Fortune Inc and another matter* [2018] 4 SLR 240[37] at [23], the High Court considered whether a stay application under s 6(1) of the IAA may be brought in respect of an originating summons. The court observed that there is no reason why proceedings commenced by originating summons should be treated differently from proceedings commenced by writ. The court also observed that when the requirement to enter an appearance to an originating summons was removed via an amendment to the Rules of Court in 2006, "the consequential effect of this on s 6(1) of the IAA might not have been considered". The court concluded that s 6(1) of the IAA should apply to proceedings commenced by originating summons "although the requirement for an appearance is no longer required to engage s 6(1) of the IAA".

46 To summarise, the language in s 6(1) of the IAA providing for the filing and service of a notice of intention to contest or not contest should not be read literally. As held in *Navigator Investment Services,* what is required before a stay application can be brought is that the claim that the claimant intends to make in court must have been sufficiently crystallised.

47 Applying the test in *Navigator Investment Services*, I find that the Claimant's claim in ADM 83 has been sufficiently crystallised, and thus the First Timeframe Requirement is satisfied. The Endorsement of Claim in the ADM 83 OC clearly states the substance of the Claimant's claim. The Claimant is seeking an indemnity against the Defendant for amounts that the Claimant

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[37] Claimant's Bundle of Authorities at Tab 5.

may be found to be liable for under PMI's Claims, as well as the costs of defending the PMI Claims.

48 I note that my finding that the First Timeframe Requirement is made out on the facts (on an application of the principles in *Navigator Investment Services*), even though the Defendant has not filed a notice of intention to contest or not contest, does not sit comfortably with the drafting of s 6(1) of the IAA. Section 6(1) of the IAA, on its face, appears to require that a notice of intention to contest or not contest (a specific court form) be filed and served before a stay application can be brought. Further, s 6(1) of the IAA appears to be internally inconsistent. On the one hand, s 6(1) of the IAA states that *any party* to the arbitration agreement (which may include the claimant) can apply to stay the proceedings. However, the provision also suggests that *the applicant* must file and serve a notice of intention to contest or not contest (see [29] and [35] above). The difficulty with this is that a notice of intention to contest or not contest is a court form that is only filed by a defendant in an originating claim. The relevant authorities may wish to consider legislative amendments to clarify that any party to an arbitration agreement may bring a stay application if the claim is sufficiently crystallised, regardless of whether the action in court was brought by originating claim or by originating application.

The Second Timeframe Requirement

49 The Second Timeframe Requirement may be dealt with briefly. Section 6(1) of the IAA provides that a party seeking a stay must make its application before delivering any pleading or taking any other step in the proceedings. The Claimant has not delivered any pleading. As for whether it has taken "any other step in the proceedings", a party will be considered as having taken a step in the proceeding if it took steps that reveal an intention to pursue

the proceedings in court on their merits: see *Carona Holdings Pte Ltd and others v Go Go Delicacy Pte Ltd* [2008] 4 SLR(R) 460 at [52] and [55].

50 In my view, the Claimant has not taken a step in the proceedings through the actions it has taken in ADM 83 thus far. The Claimant has not pursued its claim against the Defendant on its merits in ADM 83. The steps that the Claimant has taken have been limited to preserving its right to obtain security for its claim.

51 Arresting a vessel to obtain security for claims that will be pursued in arbitration does not constitute a step in the proceedings. As submitted by the Claimant's counsel, the IAA expressly contemplates that a stay application may be brought after property has been arrested. Section 7(1)(*a*) of the IAA states that a court which stays proceedings under s 6 of the IAA may order that any property that has been arrested be retained as security for the satisfaction of any award made on the arbitration:

> **7.**—(1) *Where a court stays proceedings under section 6*, the court may, if in those proceedings property has been arrested or bail or other security has been given to prevent or obtain release from arrest, order that —
>
> (*a*) *the property arrested be retained as security* for the satisfaction of any award made on the arbitration; or
>
> (*b*) the stay be conditional on the provision of equivalent security for the satisfaction of any such award.
>
> [emphasis added]

This must mean that any steps taken by a party to arrest a vessel prior to the application for a stay do not preclude the granting of a stay under s 6 of the IAA. Section 7(1)(*a*) of the IAA would be otiose if the pre-application steps taken by a party to arrest property prevents a party from seeking a stay under s 6.

52 For these reasons, I find that the Second Timeframe Requirement is satisfied.

The Substantive Requirements

53 The Substantive Requirements may also be briefly considered. I agree with the Claimant[38] that it clearly meets each of the Substantive Requirements.

54 First, there is a valid arbitration agreement between the Claimant and the Defendant. The Pool Agreement contains the Arbitration Agreement (see [4(b)] above). The Defendant acceded to the Pool Agreement by way of the Accession Letter. The Accession Letter states that the clauses in the Pool Agreement (which would include the Arbitration Agreement) "shall apply, mutatis mutandis, to [the] Accession Letter as if set out in full herein".[39]

55 Second, the dispute as described in the Endorsement of Claim falls within the scope of the Arbitration Agreement. The Claimant will rely on the Indemnity Clause in the Pool Agreement to seek an indemnity from the Defendant for any amounts that the Claimant may be found liable for in respect of PMI's Claims (which are being pursued in the New York Arbitration) and the costs of defending PMI's Claims. I also note that the Defendant has not accepted that it is liable to indemnify the Claimant. The Claimant states in its supporting affidavit for SUM 691 that it requested the Defendant to provide a corporate guarantee from its holding company. However, the Defendant has apparently "failed and/or refused to indemnify the Claimant".[40] Thus, there is a

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38 Claimant's Written Submissions at paras 38 to 42.

39 Sibal's 1st Affidavit at page 220.

40 Sibal's 1st Affidavit at para 19.

dispute between the Claimant and the Defendant. The dispute relates to a provision in the Pool Agreement (namely, the Indemnity Clause). This dispute would fall squarely within the term "any dispute arising out of or in connection with [the] Pool Agreement" within the meaning of clause 46.1 of the Pool Agreement (see [4(b)] above).

56 Third, on the material before me, there is no basis to conclude that the Arbitration Agreement is null, void, inoperative or incapable of being performed.

57 For these reasons, I find that the Claimant has made out the Substantive Requirements on a *prima facie* standard. As the Timeframe Requirements are also satisfied, a stay under s 6(2) of the IAA should be granted.

Issue 2: Should ADM 83 be stayed on case management grounds?

58 In view of my conclusion that a stay pursuant to s 6(2) of the IAA should be granted, it is not strictly necessary for me to consider whether a stay should be granted on the alternative ground. I nevertheless state my views on the alternative ground briefly for completeness.

59 The principles that the court will apply when considering whether to grant a case management stay were set out in the Court of Appeal's judgment in *Tomolugen*. The relevant principles may be summarised as follows:

(a) The test for granting a case management stay is not set at the "rare and compelling" threshold adopted by the courts in England and New Zealand: see *Tomolugen* at [187].

(b) The Court must strike a balance between three "higher-order concerns": "first, a plaintiff's right to choose whom he wants to sue and where; second, the court's desire to prevent a plaintiff from circumventing the operation of an arbitration clause; and third, the court's inherent power to manage its processes to prevent an abuse of process and ensure an efficient and fair resolution of disputes". The balance that is reached "must ultimately serve the ends of justice": see *Tomolugen* at [188].

(c) Where there are overlaps in parties, issues and remedies, the factors set out in the decision of the New Zealand High Court in *Danone Asia Pacific Holdings Pte Ltd v Fonterra Cooperative Group Limited* [2014] NZHC 1681 would be a "comprehensive (although by no means exhaustive) and instructive guide": *see Tomolugen* at [188]. Those factors are: (i) the relationship between the parties to the court proceedings and the parties to the arbitration; (ii) the claims in the court proceedings and those in the arbitration, and the respective issues which they raised; (iii) issue estoppel; (iv) the risk of inconsistent findings between the two sets of proceedings; (v) the risk of delay; and (vi) cost: see *Tomolugen* at [179].

60 Applying the principles in *Tomolugen*, I agree with the Claimant[41] that a case management stay would have been appropriate in the present case:

(a) The parties in ADM 83 and the Future London Arbitration will be identical. The Claimant and the Defendant are or will be party to both sets of proceedings.

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41 Claimant's Written Submissions at para 62.

(b) The Claimant's claim in ADM 83 (as outlined in the Endorsement of Claim) will likely overlap substantially with the Claimant's claims in the Future London Arbitration. Both proceedings will be concerned with whether the Defendant is obliged to indemnify the Claimant (pursuant to the Indemnity Clause in the Pool Agreement) for: (i) any amounts that the Claimant may be found liable for (in the New York Arbitration) in respect of PMI's Claims; and (ii) the Claimant's costs for defending PMI's Claims.

(c) There is a risk of inconsistent findings if the common issues arising in ADM 83 and the Future London Arbitration are determined in both forums.

(d) It will be an inefficient use of the court's resources, and a waste of costs for the Claimant and the Defendant, for the common issues to be determined in both ADM 83 and the Future London Arbitration.

61 For these reasons, I would have granted a stay for case management reasons if the Claimant's primary ground for seeking a stay was not made out.

Costs

62 The Claimant has prayed in SUM 691 that the costs of SUM 691 "be provided for". During oral submissions, the Claimant's counsel clarified that the Claimant was seeking costs for SUM 691. The Claimant's counsel accepted that the Future London Arbitration was the forum in which the Claimant would ultimately be claiming all the costs incurred in defending PMI's Claims. For the purposes of SUM 691, the Claimant is only seeking costs on a party-and-party basis. The Claimant will seek its full costs in respect of ADM 83 in the Future

London Arbitration, and it will make allowance for the amounts I order in favour of the Claimant on a party-and-party basis to avoid double recovery.

63 In my view, the Claimant should be entitled to the costs of SUM 691. Costs should follow the event. The Defendant was served with the papers for SUM 691, and it could have consented to the stay once it was served. Since there was no consent, the Claimant was required to make full submissions to satisfy the court that there is basis to grant the stay. Given these circumstances, my view is that costs should be ordered in favour of the Claimant.

64 In terms of the quantum, the Claimant's counsel sought costs in the amount of S$14,000 plus disbursements in the amount of S$3,250 for filing fees for the summons, the supporting affidavits, the written submissions and the bundle of authorities. The amount that the Claimant is seeking is within the range set out in Appendix G of the Supreme Court Practice Directions 2021 for applications for stay of proceedings in favour of arbitration (the range stated there is $5,000 to $23,000, excluding disbursements).

65 I will fix the costs of SUM 691 at S$12,000, all in, in favour of the Claimant. To be clear, I am fixing the costs in respect of SUM 691 on a standard basis. In my view, S$12,000 (all in) is a fair and reasonable amount having regard to Appendix G. SUM 691 was not a complex application for a stay, though there was some uncertainty in respect of the preliminary issue and the First Timeframe Requirement. The written submissions and the supporting affidavits were not particularly lengthy. The Claimant did not have to deal with submissions from the Defendant since the Defendant did not participate in SUM 691. For these reasons, my view is that a costs award of S$12,000 (inclusive of disbursements) is appropriate.

Conclusion

66 For the reasons set out above, I order that ADM 83 be stayed in favour of arbitration pursuant to s 6 of the IAA. I also order the Defendant to pay the Claimant costs in respect of SUM 691 fixed at S$12,000 all in. Finally, I also grant liberty to apply (as was prayed for in SUM 691).

67 I thank the Claimant's counsel for the helpful written and oral submissions.

Vikram Rajaram
Assistant Registrar

Aleksandar Georgiev and Hazel Cheah Kam Ying (Rajah & Tann Singapore LLP) for the claimant;
The defendant absent and unrepresented.