IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 384

Suit 370/1998, RA 233/1998

Between

Ocean Marine Mutual
Insurance Association Ltd

… *Plaintiff*

And

Joo Tat Shipping Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

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Ocean Marine Mutual Insurance Association Ltd v Joo Tat Shipping Pte Ltd

[1998] SGHC 384

Suit 370/1998, RA 233/1998
Warren Khoo L H J
21 November 1998

Judgment :

GROUNDS OF DECISION

1. This is an appeal against an assistant registrar's refusal to stay the action for arbitration and his decision to enter summary judgment in favour of the plaintiffs. I take the following introductory facts from a judgment I wrote on another matter arising in this suit.

2. The plaintiffs are a company incorporated in Turks and Caicos in the British West India. They are a protection and indemnity association of shipowners. The association is composed of individual shipowning members. Their vessels are entered with the association for third party liability and related insurances. The insurance cover provided is set out in the association's rule book. Members of the association do not pay a fixed-cost premium. The premium is made up of advance calls which are agreed at the beginning of each club year. Calls are calculated at a rate per gross tonne of vessels entered. At the end of the club year, the costs and liabilities of the association are assessed and, if appropriate,

supplementary calls are raised on the members. Whenever a member's entry is terminated for whatever reason, the member is required to pay release calls to finalise their liability for the remaining open years. The level of release calls in any one year is notified by circular issued by the directors of the association and distributed to all the members.

3. Vessels owned or managed by the defendants have been entered with the association since 1993. These were "Sentosa Jaya" "Senang Jaya" and "Seraya Jaya". The defendants were late in paying supplementary calls made on them. In the latter part of 1997, there was a sum of US$34,359.80 outstanding. The defendants were allowed to pay by four monthly instalments starting 1 September 1997 and ending 1 December 1997. They failed to make any payment. On 21 January 1998, the association served a notice on them calling upon them to pay the outstanding amount by 28 January, failing which the insurance on all ships listed against the defendants' name would be cancelled without further notice. The defendants failed to pay, and accordingly the insurance was cancelled. The cancellation also triggered off liability for release calls. On the defendants' failure to pay, the association on 12 March 1998 took out the writ in this action claiming the sum of US$210,343.37 allegedly due. On the next day, they applied ex parte and obtained an interim injunction restraining the defendants from removing one of the vessels from Singapore waters. This injunction was subsequently discharged and an order for damages to be assessed was made.

4. In the meantime, the plaintiffs took out a summons for summary judgment. The defendants applied for a stay of the action on the ground that the rules of the association required that all disputes and differences between a member and the association be in the first instance decided by the directors of the association,

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and if the member does not accept that decision, be referred for arbitration in London.

5. The two applications were heard together by the assistant registrar. The summary application was partially allowed, and the stay application was refused. The defendants appealed against both decisions. I heard both the appeals on 6 August, and dismissed them.

Chronology of proceedings

6. The chronology of the proceedings is of relevance in the application for stay. As stated earlier, the writ in this action was taken out on 12 March 1998. On 13 March, the plaintiffs applied for and obtained, ex parte, an injunction prohibiting the defendants from removing their vessel "Sentosa Jaya" from Singapore waters. On 23 March, the defendants entered appearance. On 1 April, they took out a summons to discharge the injunction, returnable on 6 April. They filed an affidavit in support. On 27 April, the plaintiffs took out the summons for summary judgment. The defendants did not file any affidavit in opposition. On 18 May, they took out the summons for stay.

7. On 27 May, the defendants' summons to discharge the interim injunction was heard. As I said, the application was allowed. The injunction was ordered to be discharged, with damages to be assessed. On 5 June, the summary judgment application and stay application were heard, with the outcome which I have mentioned. On 25 June, they took out a summons for directions in respect of the assessment of damages consequent on the discharge of the interim injunction. On 10 July, the summons for directions was heard, and directions given.

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8. On 26 June, the defendants took out a summons asking for extension of time to file their defence pending the disposal of their appeal against the assistant registrar's decisions. They included in this summons a reservation that it was without prejudice to their stay proceedings. Except for this summons, none of the proceedings filed by the defendants throughout contained any such reservations. Neither have they made such reservations while taking part in the applications against them.

The stay proceedings

9. The stay proceedings took rather strange turns. The summons itself was expressed to be made, unusually, under the inherent jurisdiction of the court. No reference was made to any arbitration Act. Before the assistant registrar, and before me, the plaintiffs, also rather unusually, relied on Order 12 r 7 of the Rules of the Supreme Court, which provides for applications to challenge the jurisdiction of the court to be made within the time limited for the filing of the defence. They contended that the defendants were out of time according to this rule. It is not clear to me why the plaintiffs relied on this rule. Their counsel made no effort to show that such an application is an application challenging the jurisdiction of the court.

10. S 7 of the Arbitration Act requires that an application for stay be made before the delivery of any pleadings or taking any other steps in the proceedings. Counsel for the plaintiffs made what appeared to be a substantial point that the defendants had taken such steps. He referred in particular to the defendants' application to set aside the interim injunction, and their application for directions for the assessment of damages consequent on the discharge of the injunction. He cited authorities on this point touching on the English equivalent

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of s 7 of the Arbitration Act (Cap 10): Turner & Goudy v. McConnel [1985] 1 W.L.R. 898; Ives & Barker v. Willans [1894] 2 Ch. 478.

11. Defence counsel informed me that the case indeed came within s 7 of the Arbitration Act. He had told the assistant registrar that it was not a case under the International Arbitration Act. He devoted the major part of his submission, as he had done before the assistant register, to showing that there were disputes between the parties, and that these disputes should be referred for arbitration. However, he declined to say what was the nature of the dispute. He said, without further explanation, that to do so might amount to submission to the jurisdiction of the court and prejudice his clients' position. He did refer to some correspondence, which merely showed that there had been negotiations on the terms of the defendants' return to membership of the association. He refrained from going into the question whether the defendants had taken "steps" in the proceedings within the meaning of s 7 of the Act. He merely said that the defendants were not barred as defence had not been filed.

12. In the circumstances, I accepted plaintiffs' counsel's submission that no dispute had been shown and that the defendants had taken steps in the proceedings which precluded them from applying for a stay. I dismissed the stay appeal. There was no substantive argument on the summary judgment appeal, and I dismissed that as well.

13. The defendants' solicitors subsequently applied to present further arguments. In their letter of 17 August, they said that the case was in fact governed by the International Arbitration Act, rather than the (domestic) Arbitration Act as had been assumed in argument. Citing the decision of the English Court of Appeal in Halki Shipping Corporation vs Sopex Oils Ltd

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[1998] 2 All E R 23, they submitted that in an application for stay under s 6 of the International Arbitration Act, the court no longer has to be concerned whether there is in fact a dispute between the parties; the court is required to order a stay unless it is satisfied that the agreement to arbitrate is null and void, inoperative or incapable of being performed, in the words of ss (2) of that section. In so far as their appeal had been dismissed on a misapprehension of the position, they requested that I review my decision.

14. I have said earlier that defendants' counsel had argued in extenso that there were disputes and that the case should for that reason be referred under s 7 of the Arbitration Act. Before the assistant registrar, he had also disavowed the application of the International Arbitration Act. The defendants now seemed to wish to go back on this position. Having regard to the history of the proceedings, it seemed to me that it would be an abuse of process to allow them to do so. Furthermore, in the letter, no attempt was made to deal with the question whether the defendants had taken a "step" in the proceedings. Like s 7 of the (domestic) Arbitration Act, s 6 of the International Arbitration Act has a requirement that the applicant for a stay must not have delivered any pleadings or taken any step in the court proceedings, although this is expressed to be without prejudice to Article 8 of the UNCITRAL Model Law, which provides that an application may be made not later than when submitting the first statement on the substance of the dispute. In the circumstances I did not think it appropriate to entertain further argument.

Dated this 21st day of November, 1998.

Warren L H Khoo

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Judge

Warren Khoo L H J

Liew Teck Huat for the plaintiffs
Shahiran Ibrahim for the defendants

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