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

[2024] SGHCR 12

Admiralty in Rem No 87 of 2022 (Summons No 2279 of 2024)

Between

Oghiaanous Khoroushan Shipping Lines Co. of Kish

… Claimant

And

Owner of the vessel "TINA I"

… Defendant

JUDGMENT

[Admiralty and Shipping] — [Practice and procedure of action in rem] — [Security]

TABLE OF CONTENTS

INTRODUCTION **1**

THE PARTIES AND THE COLLISION 2

COLLISION LIABILITY AGREEMENT 3

SECURITY NEGOTIATIONS 4

THE PARTIES' POSITIONS **6**

THE LAW **7**

DECISION **11**

SANCTIONS CLAUSE NOT SUPPORTED BY THE EVIDENCE 11

SANCTIONS CLAUSE INCONSISTENT WITH PAYMENT INTO COURT 13

CLAIMANT WOULD RECEIVE INADEQUATE SECURITY 15

CONCLUSION **18**

The "Tina I"

[2024] SGHCR 12

General Division of the High Court — Admiralty in Rem No 87 of 2022
(Summons No 2279 of 2024)
AR Navin Anand
9 October 2024

1 November 2024 Judgment reserved.

AR Navin Anand:

Introduction

1 Issues regarding sanctions have increasingly come to the fore in shipping and international trade. The international sanctions environment is complex, ever-changing, and wide-reaching, and some in the shipping industry may find themselves between a rock and a hard place, struggling to decide how best to navigate the attendant risks: see Steven Chong JCA, "Sanctions: Between a Rock and a Hard Place", keynote address at the Singapore Shipping Law Forum 2024 (17 October 2024) ("Chong JCA, Sanctions Keynote Address") at para 24.

2 The issue in the present case is how, if at all, foreign sanctions should affect the provision of security to avoid the arrest of a vessel. The parties have agreed on the quantum of security, and the form of security through payment into court. However, they are at an impasse over the inclusion of a sanctions

clause ("Sanctions Clause"), which allows the Defendant to refuse payment out to the Claimant on the grounds of sanctions imposed by the United States of America ("US"). The Claimant resists the inclusion of such a term, and the Defendant, by this application, seeks an order for the Sanctions Clause to be a term of the security.

3 After considering the parties' submissions and the relevant documents, I decline to order the inclusion of the Sanctions Clause as a term of the security. I set out my full grounds below.

The parties and the collision

4 The dispute in this action arises out of a collision between the "Shahraz" and the "Tina I" on 22 November 2020 ("Collision"). At the time of the Collision:

(a) the Claimant, Oghiaanous Khoroushan Shipping Lines Co. of Kish, a company domiciled in the Islamic Republic of Iran, was the registered owner of the "Shahraz";[1] and

(b) the Defendant, AQ Maritime Co. Limited, a company incorporated in Greece, was the registered owner of the "Tina I".[2]

5 The Collision occurred while the "Tina I" was transiting the Singapore Strait en route to Jakarta, Indonesia.[3] She collided with the "Shahraz", which had been grounded off the coast of Indonesia owing to a prior collision with

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1 Affidavit of Athanasis Neophytou dated 12 August 2024 ("Athanasis' Affidavit") at paras 7-8.

2 Athanasis' Affidavit at paras 1 and 8; Affidavit of Hamidreza Rezaei dated 16 September 2024 ("Hamidreza's Affidavit") at para 10.

3 Athanasis' Affidavit at para 9.

another vessel.[4]

6 The parties accept that the Claimant and the "Shahraz" are on the Specially Designated Nationals and Blocked Persons list ("SDN List") administered by the US Office of Foreign Assets Control ("OFAC"), and are thus sanctioned entities under the laws of the US.[5] In the present case, the US sanctions of concern are secondary sanctions, which are designed to deter non-US persons from dealing with sanctioned entities by cutting them off from the US banking and financial system: see Chong JCA, Sanctions Keynote Address at paras 19–20.

7 It is also common ground that there are no applicable sanctions against the Claimant and the "Shahraz" in Singapore.

Collision Liability Agreement

8 On 15 November 2022, the Claimant commenced HC/ADM 87/2022 ("ADM 87") against the Defendant for damage to the "Shahraz" and for losses suffered as a result of the Collision. The Claimant alleges that the Collision was caused by the Defendant's negligence.

9 Subsequently, the parties entered into an agreement on liability for the Collision, under which the Defendant agreed to bear 100% liability ("Collision Liability Agreement"). The Collision Liability Agreement was filed in the Supreme Court Registry on 17 May 2024, and it henceforth had the same effect as an order of court pursuant to O 33 r 34 of the Rules of Court 2021 ("ROC

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4 *Ibid*.

5 *Ibid* at paras 21-24; Hamidreza's Affidavit at para 19.

2021"). The salient terms of the Collision Liability Agreement read as follows:[6]

> **WHEREAS** the "TINA I" … and the "SHAHRAZ" … came into collision on or about 22 November 2020 … in a position just North-West of Batu Berhanti Beacon in the territorial waters of Indonesia (the "**Collision**"), causing loss and damage to the "SHAHRAZ" (the "**Claimant's Claims**") and "TINA I" (the "**Defendant's Claims**").
>
> For good and valuable consideration (the receipt and sufficiency of which the parties hereby acknowledge) it is now **HEREBY AGREED** as follows: -
>
> …
>
> 2. The Claimant is 0% to blame for the Collision.
>
> 3. The Defendant is 100% to blame for the Collision.
>
> 4. The Claimant shall pay 0% of the Defendant's Claims.
>
> 5. The Defendant shall pay 100% of the Claimant's Claims, the quantum of which is not admitted and is to be agreed by the parties. If no agreement can be reached, the Claimant's Claims are to be referred to the Registrar to assess the amount thereof.
>
> …
>
> [emphasis in original]

Security negotiations

10 The parties have been negotiating the voluntary provision of security for the Claimant's claims since February 2021, and these discussions have yielded consensus on the quantum and the form of security. In short, security is agreed at S$653,476.16 and is to be furnished by way of payment into court.[7]

11 However, the parties have been unable to agree on the terms of the security, specifically, the inclusion of the Sanctions Clause, which provides as

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6 Athanasis' Affidavit at pp26-27.

7 *Ibid* at para 13; Hamidreza's Affidavit at para 12.

follows:

> *Any disbursement of the Security, or any part thereof, to the Claimant shall be subject to the following conditions*: -
>
> (a) *The Defendant shall not be obliged to make any payment pursuant to any judgment and/or Order of Court, to the extent that the making of such payment would, in the Defendant's reasonable opinion, be prohibited and/or expose them, or any of their insurers, reinsurers/counter-guarantors, to the risk of a breach of or the risk of penalties imposed under* (i) any sanctions, laws, regulations, prohibitions, banking restrictions or adverse action by the [US]; or (ii) any applicable sanctions, laws, regulations, prohibitions, banking restrictions or adverse action by any state, international organisation or other competent authority (together, *the "Applicable Sanctions"*).
>
> (b) Without prejudice to the foregoing, if any bank in the commercial and/or payment chain is unable for any reason whatsoever including but not limited to a bank's internal policies, to process and/or receive any payment in connection with the disbursement as aforesaid, *the Defendant and the Defendant's insurers shall not be held responsible nor shall they incur any liability whatsoever in respect of the same.*
>
> In the event that circumstances (a) and/or (b) arise, *the Defendant shall use reasonable endeavours to obtain whatever governmental and/or other regulatory permissions, licences or permits as are reasonably available in order to effect the disbursement to [the Claimant].*
>
> [emphasis added]

12 Under the terms of the Sanctions Clause, payment out to the Claimant pursuant to any judgment or order of court can be legitimately refused by the Defendant in two prescribed scenarios:

(a) if the payment would in the "Defendant's reasonable opinion" be prohibited or expose the Defendant or its insurers to the risk of breach or penalties under, among other things, the sanctions laws of the US; or

(b) if any bank in the payment chain is unable to process or receive payment.

13 In either scenario, the Defendant shall nevertheless use reasonable endeavours to obtain the necessary permissions or approvals to effect payment to the Claimant.

The parties' positions

14 The Defendant applies in HC/SUM 2279/2024 ("SUM 2279") for the court to order security in ADM 87 on the following main terms:

(a) the Defendant shall provide security for the Claimant's claims (inclusive of interest and costs) by paying the sum of S$653,476.16 into court;

(b) the provision of security is without prejudice to the Defendant's right to reduce the amount of security; and

(c) any disbursement of the security to the Claimant shall be subject to the Sanctions Clause.

15 The Claimant is not contesting the first two terms,[8] and the submissions before me centred on the narrow but novel issue of whether the payment out from court should be subject to the Sanctions Clause.

16 The Defendant contends that the Sanctions Clause is necessary to guard the Defendant and its insurers against "significant sanctions risk".[9] The Defendant has received US legal advice ("US Law Advice") that the Defendant and its insurers may face secondary sanctions if they are found to have engaged in a "significant transaction" with or for the benefit of entities on the SDN List

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8 Claimant's Written Submissions ("CWS") at para 3.

9 Defendant's Written Submissions ("DWS") at paras 11-15.

like "Shahraz" or the Claimant.[10] According to the Defendant, there is a real and material risk of violating US sanctions if the Defendant or its insurers make payment to the Claimant without prior permission from the OFAC.[11]

17 Further, the Defendant submits that the English courts have accepted the inclusion of a similar sanctions clause in security furnished through a Protection and Indemnity Club ("P&I Club") letter of undertaking ("Club LOU"). It therefore urges the Singapore court to follow suit for security provided through payment into court.[12]

18 On the other hand, the Claimant submits that no weight should be given to the US Law Advice. In essence, the Claimant argues that the US Law Advice does not comply with the requirements for expert evidence, and is, in any event, irrelevant to the main issue of whether payment out should be subject to the Sanctions Clause.[13] The Claimant also questions whether the Sanctions Clause usurps the authority of the Singapore court in determining payment out.[14]

The law

19 A key advantage to an admiralty action *in rem* is the claimant's ability to obtain pre-judgment security through the arrest of the defendant's vessel or the provision of security to avoid her arrest: see *Kuo Fen Ching and another v Dauphin Offshore Engineering & Trading Pte Ltd* [1999] 2 SLR(R) 793 at [26]–

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10 *Ibid*; Athanasis' Affidavit at pp45-47.

11 DWS at paras 11-15.

12 *Ibid* at para 17.

13 CWS at paras 21-62.

14 *Ibid* at paras 59-61.

[28].

20 The court has the jurisdiction to determine the form of security, the quantum of security, and the terms on which security is to be provided to avoid the arrest of a defendant's vessel. In the words of G P Selvam JC (as His Honour then was) in *The "Piya Bhum"* [1993] 3 SLR(R) 905 (*The "Piya Bhum"*) at [8] (articulated in an admiralty action *in rem* where a bail bond was furnished to avoid arrest):

> *The owners of a ship may secure* the release of their ship, if under arrest, or *the restraint of her arrest*, by providing a bail bond for an adequate amount … *The court has jurisdiction* to decide on the *quantum of the bond. The court also has jurisdiction to vary the wording* of the guarantee to protect the legitimate rights of the defendants … *The court, of course, cannot validate a worthless bail bond.*
>
> [emphasis added]

21 The court's power to control security is derived from its inherent jurisdiction to prevent the use of court procedure in an oppressive way: see *The "Arktis Fighter"* [2001] 2 SLR(R) 157 (*The "Arktis Fighter"*) at [7]. The power to arrest a ship is a very draconian power, and the court can and should interfere if the claimant is acting oppressively and abusing the process of the court: *The "Arktis Fighter"* at [7].

22 As security ordered by the court is given in exchange for the vessel, it must be *adequate* in the circumstances of the case: see *The "Benja Bhum*" [1993] 3 SLR(R) 242 (*The "Benja Bhum*") at [9]. Otherwise, the claimant will be relinquishing a substantial security for a vulnerable one: see *The "Arktis Fighter"* at [7] and [9]. The following three decisions are apt to illustrate this.

23 The first authority, *The "Piya Bhum"*, concerned a dispute regarding the *form* of security. The parties were unable to agree on the wording of a Club

LOU, and the defendants' local agents proceeded to file a bail bond given by a Swedish corporate entity with no assets in Singapore: see *The "Piya Bhum"* at [3], [4] and [11]. Selvam JC set aside the bail bond, and allowed a Club LOU to be furnished with wording to be agreed between the parties: see *The "Piya Bhum"* at [12]. He held that a bail bond by a person without assets within jurisdiction is inadequate security as it could not be enforced by the plaintiffs, and was "an empty, worthless piece of paper": see *The "Piya Bhum"* at [10]–[12].

24 The *quantum* of security was in issue in the second authority, *The* "*Arktis Fighter*", where the plaintiffs sued the defendant shipowners for damage caused to cargo carried on board the defendant's vessel. The plaintiffs sought security for the sums of US$3.8m (in respect of the replacement costs for the cargo) and US$6.5m (concerning liquidated damages to third-party contractors): see "*Arktis Fighter*" at [6]. Choo Han Teck JC (as His Honour then was) agreed with Brandon J's summary of the legal principles in *The Polo II* [1977] 2 Lloyd's Rep 115 at 119, and held that adequate security is one that covers the claimant's reasonably best arguable case, plus interest and costs (at [7]):

> …[s]ecurity should be sufficient to cover the amount of the claim plus interest and costs on the basis of the plaintiff's best arguable case, but should not normally exceed the value of the vessel arrested. Security is given in exchange for the *res* and unless there are sound reasons otherwise, it should only be of equivalent value.

25 Based on the evidence, Choo JC allowed security for the US$3.8m replacement cargo claim. However, he declined to order security for the US$6.5m liquidated damages claim as the full circumstances of the likelihood of the plaintiffs having to pay that sum was not adequately presented to the court: see "*Arktis Fighter*" at [6]–[8].

26 The third authority, *The "Benja Bhum"*, concerned a disagreement on the *terms* of the security to secure the release of an arrested vessel. The parties had agreed on security taking the form of a Club LOU, but the defendants rejected the plaintiffs' requirement of the Club LOU being answerable to "a final judgment of a court or a tribunal of competent jurisdiction": see *The "Benja Bhum"* at [2]–[3]. L P Thean JA held that the plaintiffs were entitled in the circumstances to insist that the Club LOU contain terms that would give them adequate security in replacement of the vessel they had arrested. As explained by Thean JA (at [9]):

> I agree with the arguments made on behalf of the plaintiffs. Though the parties had agreed in principle to refer the plaintiffs' claim to arbitration, the terms of the agreement had yet to be agreed at that time. In effect, there was really no binding agreement. Even if I was wrong on this point, there was at least a doubt as to whether there was, at the time, a concluded valid and binding agreement between the parties to refer the plaintiffs' claims to arbitration… The plaintiffs had already arrested the vessel and had a security for their claim. *They were therefore entitled in the circumstances to insist that the [Club LOU] should contain terms which would give them adequate protection or security in replacement of the res they had arrested.* The terms required by them were wholly reasonable in the circumstances and I could not see any ground on which the defendants could justifiably refuse to accede to those terms.
>
> [emphasis added]

27 Ultimately, whether the proposed security is adequate will necessarily turn on the facts of each case, but it is evident that the foremost considerations are the value of the security and the ease in which the claimant can enforce a judgment against the security. This follows from the fact that an arrested vessel is security in hand that the claimant can realise through the process of judicial sale, and any decision to order a substitute form of security should be made only if the court is satisfied that the security offered is an adequate replacement. Further, the court's determination on security has serious consequences for a

claimant once the ordered security is furnished. Thereafter, the claimant is generally precluded from obtaining further security through an arrest, and may be liable instead for wrongful arrest if it attempts to do so: see Toh Kian Sing SC, *Admiralty Law and Practice* (LexisNexis, 3rd Ed, 2017) ("*Admiralty Law and Practice*") at pp 228 and 232; *The "Vasiliy Golovnin"* [2008] 4 SLR(R) 994 at [141].

Decision

28 I now address the core question that persists: should the payment out of security furnished by the Defendant be subject to the Sanctions Clause? Applying the principles articulated above, I answer this question in the negative. I rest my conclusion on the following three prongs: (a) the inclusion of the Sanctions Clause is not supported by the evidence before me; (b) it is inconsistent with the legal consequences of payment into court; and (c) it would result in the Claimant receiving inadequate security. I set out my detailed reasons in the paragraphs that follow.

Sanctions Clause not supported by the evidence

29 The Defendant's primary submission that the Sanctions Clause ought to be included as a term of the security is premised on the assertion that the Defendant and its insurers are at risk of secondary sanctions if they pay the security into court, and part of or that entire sum is subsequently paid out to the Claimant. This necessarily turns on US law, which as a foreign law, must be proved as a question of fact: see *Pacific Recreation Pte Ltd v S Y Technology Inc and another appeal* [2008] 2 SLR(R) 491 ("*Pacific Recreation*") at [54]. In this case, the Defendant seeks to prove the content of US law through the US Law Advice. In my view, there are issues with the US Law Advice, both as a matter of form and as a matter of substance.

30 As a matter of form, the US Law Advice essentially comprises an email from Mr Alexander Brandt, a partner at Reed Smith, to the Defendant's solicitors, and was exhibited in an affidavit filed by the Defendant's representative, Mr Athanasis Neophytou.[15] This contravenes O 12 r 5(1) of the ROC 2021 which requires a signed expert's report exhibited in an affidavit made by the expert himself. In addition, there are certain requirements that the expert's report must fulfil which are absent in the US Law Advice. For example, there are no details of the expert's qualifications, nor a statement that the expert understands that his duty is to assist the court in matters within his expertise and on the issues referred to him, and that such duty overrides any obligation to the person from whom he receives instructions or by whom he is paid: see O 12 r 5(2) the ROC 2021.

31 The Court of Appeal in *Pacific Recreation* had specifically cautioned parties against proving foreign law through private correspondence from the foreign law expert in the following terms (at [64]):

> … If a party has previously sought the opinion of a foreign law expert and has obtained such an opinion in some private correspondence, *in order for that correspondence to be admitted, it must be contained in an affidavit of the expert himself* and not the party to whom the opinion was addressed. In addition, *there are certain other requirements which the expert's report must fulfil. The opinions rendered by an expert to his client may not necessarily comply with these requirements, and, in such cases, the responsible party should be directed to render a specially prepared expert's report…*
>
> [emphasis added]

32 Given this clear judicial pronouncement and the express requirements for expert evidence imposed under the ROC 2021, the manner in which the

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[15] Athanasis' Affidavit at pp45-47.

Defendant has attempted to prove US law is deficient and respectfully left much to be desired.

33 As a matter of substance, and putting to one side the form of the expert evidence, the US Law Advice is also completely silent on the risk of secondary sanctions if the Defendant or its insurers furnish security by payment of a Singapore dollar sum into court. The US Law Advice only considered the position where security was provided through a solicitor's undertaking, or a letter of undertaking from the Defendant's P&I Club. At the risk of stating the obvious, payment into court and a letter of undertaking are different forms of security. Payment into court is governed by the domestic rules of court, while the enforcement of an undertaking, being a contract between the issuing law firm or P&I Club and the beneficiary, is based on contractual principles. It is not evident why the risk of secondary sanctions should be the same under both forms of security.

34 Accordingly, there is no evidential basis for the inclusion of the Sanctions Clause as a term of the security.

Sanctions Clause inconsistent with payment into court

35 The procedure for the payment of monies into court as security in an admiralty action can be described in the following terms.

> (a) A party can furnish security in an admiralty action through payment into court under O 33 r 25(1) of the ROC 2021. The monies to be paid into court must be lodged by means of a direction to the Accountant-General to receive this sum: see O 27 r 4(1) of the ROC 2021. A receipt will be issued once the monies are received by the Accountant-General: see O 27 r 4(7) of the ROC 2021.

(b) Thereafter, these monies cannot be paid out otherwise than under an order of a Judge sitting in the General Division of the High Court, save that the Registrar may in certain limited situations order payment out with the consent of the interested parties: see O 33 rr 25(2)-(3) of the ROC 2021. After the order of court is obtained, the relevant party will need to file a direction to the Accountant-General to pay the monies to the person entitled under the order: see O 27 r 8 of the ROC 2021.

36 It is evident from these procedural rules that a defendant who provides security in an admiralty action through payment into court is not at liberty to take out the security as and when it wishes. This is because the defendant ceases to have full title to those monies, as they become subject to the outcome of the action and any order that the Judge or the Registrar may make: see *Ang Tin Gee v Pang Teck Guan* [2015] 5 SLR 836 at [27]; *Cheng Lip Kwong v Bangkok Bank Ltd* [1992] 1 SLR(R) 941 at [17].

37 In the present case, the Sanctions Clause is phrased subjectively, and confers a discretion on the Defendant to deny payment of the security to the Claimant based on the Defendant's own subjective risk assessment (*ie,* the Defendant's "reasonable opinion" of exposure or breach of US sanctions) (see [12(a)] above). While the Defendant is still obliged to use reasonable endeavours to effect payment to the Claimant (see [13] above), it remains the case that the Claimant's prospect of receiving payment out lies significantly in the hands of the Defendant.

38 Quite clearly, such a discretion is inconsistent with the legal consequences of payment into court, as it is the court (and not the Defendant) who decides whether a party is entitled to payment out (see [35]-[36] above). Further, once the Defendant chooses to relinquish full title to the security by

paying it into court, the Defendant cannot, at the same time, also want a final say on the payment out. That, to my mind, is the Defendant wanting to have its proverbial cake and eating it.

Claimant would receive inadequate security

39 Even if it is possible to subject the payment out from court to the Sanctions Clause, such a term should not be ordered as it would result in the Claimant receiving inadequate security.

(a) If the Claimant proceeds to arrest the "Tina I", it could apply for a judicial sale and look to the vessel's sale proceeds to satisfy its claim, subject of course to the admiralty rules on priorities between competing maritime claims. The Claimant's claim, being in the nature of a damage maritime lien, would generally rank higher than other maritime claims, and entitle the Claimant to be paid out of the sale proceeds in priority to other classes of creditors: see *Admiralty Law and Practice* at pp374–375. Hence, the Claimant has reasonable grounds to expect a tangible pool of funds to enforce any judgment it obtains if it pursues an arrest.

(b) On the other hand, the Claimant would face greater uncertainty on the enforcement of a judgment under the Defendant's proposal, since the Sanctions Clause confers a discretion on the Defendant to refuse payment out (see [37] above). Put simply, it would be easier to enforce a judgment where the Claimant obtains security through a ship arrest as compared to under the Defendant's proposal. The Claimant is thus in a worse position, as it would have relinquished a substantial security for a comparatively uncertain one.

40 I now turn to address the decisions in *M/V Pacific Pearl Co Ltd v Osios David Shipping Inc* [2022] 1 Lloyd's Rep 261 ("*Pacific Pearl (HC)*") and *M/V Pacific Pearl Co Ltd v Osios David Shipping Inc* [2022] 2 Lloyd's Rep 448 ("*Pacific Pearl (CA)*"), which the Defendant cites as an instance where the court accepted security that included a similarly worded sanctions clause.

41 Both decisions arose out of collisions in the Suez Canal between three vessels, "Panamax Alexander", "Sakizaya Kalon", and "Osios David". All three vessel owners agreed to liability being determined by the English courts pursuant to a collision jurisdiction agreement entered using a standard form ("ASG 2") devised by the Admiralty Solicitors Group. Clause C of the ASG 2 provides that:

> Each party will provide security in respect of the other's claim in a form reasonably satisfactory to the other.

42 The owners of the "Panamax Alexander" and their P&I Club offered to the owners of the "Osios David" a Club LOU that contained a sanctions clause. This arose as the cargo on board the "Osios David" was destined for Iran, and it was considered that there might be difficulty making payment to the owners of "Osios David" due to an "Iranian nexus". The owners of the "Osios David" did not accept this security, and proceeded to arrest a vessel in South Africa to obtain a Club LOU without a sanctions clause. The owners of the "Panamax Alexander" thereafter commenced a claim against the owners of the "Osios David" for breach of the collision jurisdiction agreement, and a key issue before the court was whether a Club LOU with a sanctions clause constituted security "in a form reasonably satisfactory" to the owners of the "Osios David".

43 At first instance, the English High Court answered this question in the affirmative because the effect of the sanctions clause was merely to suspend the

P&I Club's liability to pay in the event that payment would be unlawful or a bank was unwilling to pay, which would reactivate if the P&I Club's reasonable endeavours to enable payment are successful: see *Pacific Pearl (HC)* at [70]. Based on the evidence, the court considered that a Club LOU with a sanctions clause was reasonably satisfactory to the owners of the "Osios David", given the "Iranian nexus" in the case: see *Pacific Pearl (HC)* at [63]–[64] and [77]. This finding was upheld on appeal (see *Pacific Pearl (CA)* at [54]). In addition, the English Court of Appeal held that shipowners who enter into an agreement on the terms of ASG 2 are obliged to accept reasonable security provided pursuant to clause C, and that it was not open to the recipient to seek alternative or better security by means of an arrest (see *Pacific Pearl (CA)* at [39]):

> … *it is clear in the present case*, whether as a matter of construction or implication, *that shipowners who enter into an agreement on the terms of ASG 2 agree that, if reasonable security is provided pursuant to clause C, it is not open to the receiving party to seek alternative or better security by means of an arrest*; and that if a ship has been arrested, it must be released once reasonable security is provided.
>
> [emphasis added]

44 It is plain that from the foregoing discussion that both decisions can be distinguished from the present case.

(a) For a start, the security in question in the English decisions was a Club LOU, while the security implicated in the present case is payment into court. It is possible for parties to introduce bespoke clauses in the contract contained in a Club LOU to allocate the risk of sanctions (see Chong JCA, Sanctions Keynote Address at paras 28–33), whereas any attempt to do so for payment into court would be fundamentally flawed by design (see [35]-[38] above).

(b) The finding that a Club LOU with a sanctions clause was reasonably satisfactory in the English decisions turned on the fact-specific and context-specific exercise of *contractual interpretation* of the ASG 2 form (in particular, clause C). Shipowners who enter into the ASG 2 form *agree* to forego better security attainable through an arrest (see [43] above), and it must be right for the court to hold the parties to their contractual bargain.

(c) However, the Claimant's agreement to forego security obtainable through an arrest is clearly absent in the present case, where the Defendant has invoked the court's jurisdiction to determine security. The court must thus ensure that the security the Claimant is ordered to accept is an adequate replacement for what it is giving up (see [27] above). Accordingly, until such adequate security is furnished, the Claimant's right to arrest and obtain pre-judgment security for its claim should not be lightly curtailed.

Conclusion

45 For the foregoing reasons, I decline to allow the Sanctions Clause and instead make the following orders in SUM 2279:

(a) the Defendant is at liberty to provide security for the Claimant's claims (inclusive of interest and costs) in this action by paying the sum of S$653,476.16 into court; and

(b) the provision of security by the Defendant is without prejudice to its right to moderate the amount of security provided.

46 Should the Defendant furnish security in the terms ordered above, the

Claimant would have received adequate security for its claims.

47 On the issue of costs, the parties are to file written submissions not exceeding five pages by 4.00 pm on 8 November 2024.

48 Before concluding, and bearing in mind the constantly evolving nature of the international sanctions environment, I cannot foreclose the possibility of future circumstances that may affect payment out. It suffices to state that the onus will be on the Claimant then to persuade the court that it is entitled to payment out.

49 In closing, it remains for me to thank counsel for their helpful submissions.

Navin Anand
Assistant Registrar

Tan Boon Yong Thomas and Lieu Kuok Poh (Haridass Ho & Partners) for the Claimant;
Loh Wai Yue, Daniel Tan An Ye and Glenn Tennyson Ong (Incisive Law LLC) for the Defendant.