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Best Soar Ltd
v
Praxis Energy Agents Pte Ltd

[2017] SGHC 158

High Court — Suit No 835 of 2016 (Registrar's Appeal No 12 of 2017)
Chua Lee Ming J
20 March 2017

Conflict of laws — Jurisdiction — *Lis alibi pendens*

Conflict of laws — Natural forum — *Forum non conveniens*

Conflict of laws — Natural forum — Stay of proceedings — Partial stay

Civil procedure — Stay of proceedings — Limited stay pending outcome of foreign proceedings

6 July 2017

Chua Lee Ming J:

Introduction

1 This was an appeal by the plaintiff, Best Soar Ltd (“Best Soar”), against the decision of the assistant registrar (“AR”) granting a stay of the present action on the ground of *forum non conveniens* pursuant to an application by the defendant, Praxis Energy Agents Pte Ltd (“Praxis”).

2 I agreed with the AR’s decision and dismissed the appeal. Best Soar has appealed against my decision.

Background

3 Best Soar is a company incorporated in the British Virgin Islands and was, at all material times, the owner of the vessel, *Silvia Ambition* (“the Vessel”). Praxis is a Singapore company engaged in the business of, *inter alia*, selling and supplying bunker fuel for ships. Greatwin Carrier (Holdings) Co Ltd (“Greatwin”) was, at the material time, the time charterer of the Vessel.

4 Pursuant to a bunker nomination dated 10 July 2014 issued to Greatwin, Praxis contracted to supply between 700–750 MT of bunker fuel to the Vessel (“the Contract”).¹ Pursuant to the Contract, 739.288 MT of bunker fuel was delivered to the Vessel on 17 July 2014 by the physical bunker supplier, Searights Maritime Services Pte Ltd, a Singapore company.²

5 Praxis issued an invoice dated 17 July 2014 for the amount of US\$433,962.06 (“the Invoiced Sum”), which was to be paid by 15 August 2014, failing which late payment interest would begin to accrue at the rate of two percent per month on the Invoiced Sum.³ Best Soar disputed liability for the Invoiced Sum. On 16 March 2016, Praxis issued another invoice for the sum of US\$601,471.42, which comprised both the Invoiced Sum and the interest that had accrued from 16 August 2014 to 16 March 2016.⁴ Both invoices were addressed to, amongst others, Best Soar and Greatwin.

6 As the Invoiced Sum and the accrued interest remained unpaid, on 17 March 2016, Praxis arrested the Vessel in Beirut, Lebanon, pursuant to an arrest order issued by the Executive Bureau in Beirut (“EBB”). The EBB fixed Praxis’ claim at US\$465,000 plus US\$46,500 (for interests and costs). The EBB is a division of the First Instance Courts in Lebanon and has jurisdiction to decide matters relating to enforcement procedures as well as proceedings brought to challenge any enforcement procedures.⁵

7 It was common ground that under Lebanese law, Praxis had to file a substantive action with the Commercial Court in Beirut (“CCB”) within five days from the arrest of the Vessel, failing which the arrest would be revoked automatically.⁶ Accordingly, on 22 March 2016, Praxis commenced a substantive action in the CCB (“the CCB Proceedings”) against Best Soar, Greatwin, as well as the operators, charterers and master of the Vessel, in respect of its claim under the Contract.⁷ The CCB is a division of the First Instance Courts in Lebanon and it deals with commercial cases.⁸

8 On 23 March 2016, Best Soar filed an objection in the EBB (“the EBB Proceedings”) claiming that the arrest of the Vessel was wrongful and should be revoked.⁹ Best Soar also sought an order that Praxis provide security for damages in the event the arrest was held to be wrongful.

9 Submissions were made by both parties in the EBB and CCB Proceedings (collectively, “the Lebanon Proceedings”).¹⁰ In brief, the issues in dispute between the parties were:

- (a) whether the Contract was binding on Best Soar;
- (b) whether certain payments made by Greatwin discharged the Invoiced Sum or whether they were for invoices relating to another vessel (the *Pacific Vigorous*) operated by Greatwin; and
- (c) whether Praxis had a maritime lien over the Vessel under the Merchant Shipping Code of Lebanon, and if so, whether it was time-barred.

10 The Vessel was released on 11 April 2016 after Best Soar furnished security by way of a bank guarantee in the sum of US\$511,500 to the EBB.

11 On 1 August 2016, Best Soar commenced the present action in Singapore against Praxis (“the Singapore Proceedings”), seeking the following remedies:¹¹

- (a) A declaration that Best Soar is not liable to Praxis under the Contract (“the Contract Claim”) and/or that Praxis had wrongfully arrested the Vessel in Lebanon (“the Wrongful Arrest Claim”);
- (b) Damages to be assessed;
- (c) An injunction to restrain Praxis from pursuing its claim under the Contract against Best Soar and/or the Vessel before any competent court or tribunal, including the EEB and CCB, or taking any steps to enforce any judgment obtained from any such court or tribunal; and
- (d) The return of the security provided by Best Soar to any court or tribunal, including the bank guarantee that Best Soar had provided to the EEB to procure the release of the Vessel.

12 On 24 August 2016, Praxis filed Summons No 4104 of 2016 (the subject of this appeal) seeking a stay of the Singapore Proceedings on the following grounds:

- (a) *Forum non conveniens* and/or *lis alibi pendens*; and
- (b) Case management, pending the outcome of the Lebanon Proceedings.

13 In his decision, the AR noted that Praxis did not in fact rely on *lis alibi pendens* as a separate ground for a stay and correctly observed that *lis alibi pendens* operates merely as a fact to which legal significance is accorded by virtue of the doctrines of forum election and *forum non conveniens*, citing

Virisagi Management (S) Pte Ltd v Welltech Construction Pte Ltd and another appeal [2013] 4 SLR 1097 (“*Virisagi*”) at [29]. He then ordered the Singapore Proceedings to be stayed on the ground of *forum non conveniens*. He also expressed the view that in any event, he would have been minded to stay the Singapore Proceedings temporarily on case management grounds pending the completion of the Lebanon Proceedings.

14 The question before me was whether the Singapore Proceedings should be stayed on the ground of *forum non conveniens*, alternatively on the ground of case management pending the outcome of the Lebanon Proceedings. I was informed by parties during the hearing before me that the EEB had not given its decision.

Stay on the ground of *forum non conveniens*

15 It is well established that a stay of proceedings on the ground of *forum non conveniens* will only be granted if the two-stage test enunciated in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 (“*Spiliada*”) is satisfied (“the *Spiliada* test”). The court will first determine whether, *prima facie*, there is some other available forum that is “clearly or distinctly more appropriate” for the case to be tried. If the court concludes that there is *prima facie* a more appropriate alternative forum, the court will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should nonetheless not be granted. See *Rappo, Tania v Accent Delight International Ltd and another and another appeal* [2017] SGCA 27 (“*Tania Rappo*”) at [68]–[69], citing *Spiliada* and *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 (“*Rickshaw Investments*”).

First stage of the Spiliada test

16 In the present case, Praxis (as the party seeking the stay) bore the legal burden of demonstrating that Lebanon was a clearly or distinctly more appropriate forum than Singapore for the trial of the dispute between the parties. The five (non-exhaustive) connecting factors to consider in this regard are well known – personal connections of the parties and witnesses, connections to relevant events and transactions, applicable law, *lis alibi pendens* and the shape of the litigation. However, it should be borne in mind that whilst these factors provide a useful list of potentially relevant factors, they should not be applied mechanistically. See *Tania Rappo* at [71].

17 It also bears reminding that it is not enough just to show that Singapore is not the natural or appropriate forum; the defendant must establish that there is another available forum which is clearly or distinctly more appropriate than Singapore: *CIMB Bank Bhd v Dresdner Kleinwort Ltd* [2008] 4 SLR(R) 543 at [26].

Personal connections of the parties and witnesses

18 Praxis accepted that this was a neutral factor. In any event, I agreed with the AR this factor did not point to Lebanon being a more appropriate forum. The documents and Praxis’ witnesses are in Singapore. Praxis is a Singapore company. Best Soar is a BVI company which was managed by a Singapore company. The supply of bunker took place in Singapore.

Connections to relevant events and transactions

19 The key consideration is where the trial could be held at least expense and inconvenience: *Halsbury’s Laws of Singapore* vol 6(2) (LexisNexis, 2016 Reissue) (“*Halsbury’s Laws*”) at para 75.092. I agreed with the AR that there

was insufficient evidence as to how the costs of litigating this matter in Lebanon compared with the costs of litigating in Singapore.

20 However, another consideration is that where the claim is in tort, as a general principle, the place where a tort was committed is *prima facie* the natural forum for that tortious claim: *JIO Minerals FZC and others v Mineral Enterprises Ltd* [2011] 1 SLR 391 (“*JIO Minerals*”) at [106], citing *Rickshaw Investments* at [39]. The Wrongful Arrest Claim is a claim in tort. As the alleged wrongful arrest took place in Lebanon, this pointed to Lebanon being *prima facie* the natural forum for the Wrongful Arrest Claim. In my view, there was nothing to displace this *prima facie* position in this case. The place of the tort was not fortuitous. The arrest was made pursuant to an order issued by the EBB under the laws of Lebanon.

Governing law

21 The governing law is a relevant connection because in general, the court which will be called on to apply its own law is in a better position to do so: *Halsbury’s Laws* at para 75.093. In the present case, it was not disputed that the Wrongful Arrest Claim was to be resolved under Lebanese law and depended in part on the interpretation of the Merchant Shipping Code of Lebanon.

22 As for the Contract Claim, Best Soar submitted that it was governed by Singapore law whereas Praxis took the position that it was governed by the general maritime law of the United States of America. For purposes of the present stay application, it was not necessary for me to decide whether Singapore law or US law governed the Contract Dispute. Neither one pointed to Lebanon being the more appropriate forum for the Contract Dispute.

Lis alibi pendens

23 A *lis alibi pendens* is relevant to the doctrine of forum election and the doctrine of *forum non conveniens*: *Virsagi* at [29]. It was not disputed that no issue of forum election arose in the present case. In the context of deciding whether a stay should be granted on the ground of *forum non conveniens*, a *lis alibi pendens* merely features as one of the factors to be considered by the court. However, it is sufficient that there are parallel proceedings even if these proceedings do not meet the stricter requirements of a *lis alibi pendens*. See *Virsagi* at [38]–[40]. Within the *Spiliada* framework, parallel proceedings are relevant because of concerns over the duplication of resources and the risk of conflicting judgments: *Halsbury’s Laws* at para 75.094.

24 It was not necessary for me to decide whether the EBB Proceedings and/or the CCB Proceedings constituted *lis alibi pendens*, although it seemed to me that the AR was correct in thinking that they did. In my view, the EBB and CCB Proceedings were parallel proceedings. The question was whether the EBB and CCB Proceedings gave rise to concerns over the duplication of resources and the risk of conflicting judgments.

25 Both parties’ experts agreed that it was the CCB that would make the final determination on the merits of the Contract Claim.¹² Best Soar submitted that the EBB Proceedings were therefore irrelevant to the *Spiliada* test since the EBB could not make any final determination on the merits of Contract Claim. I disagreed with Best Soar. Best Soar’s submission conveniently ignored the fact that the EBB Proceedings were clearly relevant to the Wrongful Arrest Claim. Best Soar’s case in the EBB Proceedings was that the arrest of the Vessel was wrongful and that Praxis should provide security for damages in the event the arrest was held to be wrongful (see [8] above).

26 In my view, it was clear that both the EBB and CCB Proceedings were multiple proceedings and that this fact was a relevant factor to be considered under the *Spiliada* test. Both gave rise to concerns over the duplication of resources and the risk of conflicting judgments. The risk of conflicting judgments was especially of concern with respect to the Wrongful Arrest Claim since it concerned the correctness or otherwise of the Arrest Order made by the EBB and this in turn depended in part on Praxis' entitlement to a maritime lien under the Merchant Shipping Code of Lebanon.

Shape of the litigation

27 This factor refers to the manner in which the claim and defence have been pleaded: *Tania Rappo* at [71]. As already mentioned, Best Soar's claim in the Singapore Proceedings comprised the Contract Claim and the tortious Wrongful Arrest Claim.

28 It seemed to me that there were overlaps between this factor and some of the other factors. However, I also agreed with the AR that the Wrongful Arrest Claim involved considerations of international comity. International comity refers to "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws": *The Reecon Wolf* [2012] 2 SLR 289 at [23]. In my view, considerations of international comity favoured Lebanon as the more appropriate forum for the Wrongful Arrest Claim. The EBB, as the court making the Arrest Order, should be recognised as the more appropriate court to determine whether the arrest was wrongful under Lebanese law.

Conclusion on first stage of the Spiliada test

29 As Best Soar submitted, the case should be looked at holistically. It is the quality, rather than the quantity, of the connecting factors that is crucial in this analysis and the search is for connections that have the “most relevant and substantial associations with the dispute”: *Tania Rappo* at [70]. Ultimately, the question is whether any of the connections point towards a jurisdiction in which the case may be “tried more suitable for the interests of all the parties and for the ends of justice”: *Tania Rappo* at [72], quoting Lord Goff of Chieveley in *Spiliada* at 476.

30 It was clear from the earlier discussions that Lebanon was the more appropriate forum for the Wrongful Arrest Claim. Before me, Best Soar also accepted that the Lebanon court was more appropriate if one just looked at the Wrongful Arrest Claim alone. However, Lebanon was not the more appropriate forum where the Contract Claim was concerned.

31 Where then should the balance be struck in the present case? In my view, the connecting factors to Lebanon in respect of the Wrongful Arrest Claim, in particular the considerations of international comity, were more significant. Accordingly, I concluded that Praxis had succeeded in showing that Lebanon was *prima facie* a more appropriate forum.

Second stage of the Spiliada test

32 The legal burden was on Best Soar to show why the Singapore Proceedings should not be stayed even though Lebanon has been shown to be the *prima facie* more appropriate forum for the dispute. The main consideration at this stage is whether substantial justice can be obtained in the foreign court: *JIO Minerals* at [43], citing *Halsbury’s Laws of Singapore* vol 6(2) (LexisNexis,

2009) at para 75.096. The question is whether the foreign court would be able to try the dispute in a manner which is procedurally and substantively fair: *Tania Rappo* at [110], citing Adrian Briggs, *Civil Jurisdiction and Judgments* (Informa Law, 6th Ed, 2015) at para 4.31.

33 Best Soar argued that it would suffer a serious disadvantage in the Lebanon courts because there was no express procedure for discovery or cross-examination of witnesses. I pause to note first that Best Soar did not adduce evidence from its expert on this. The burden being on Best Soar, it was incumbent on Best Soar to adduce evidence that Lebanese court procedure did not provide for discovery or cross-examination. Be that as it may, in my view, Best Soar's argument merely pointed to differences between the common law system in Singapore and the civil law system in Lebanon. In my view, these differences did not amount to denial of substantial justice.

34 I therefore rejected Best Soar's submission that it would be deprived of substantial justice if left to seek recourse in the Lebanon courts.

35 Best Soar further submitted that the Singapore Proceedings should not be stayed because it was also seeking an injunction to restrain Praxis from pursuing its claim under the Contract against Best Soar and/or the Vessel before *any* court or tribunal, or enforcing any judgment obtained from any such court or tribunal (see [11(c)] above). Best Soar argued that as Praxis is a Singapore company, this remedy could only be obtained in a Singapore court. I did not think that this was sufficient reason to not grant a stay in this case. This was an argument that applied to every defendant with a presence in Singapore. Besides, there was no evidence that Praxis was going to commence action elsewhere if it failed before the Lebanon courts.

Partial stay

36 Best Soar did not seek a partial stay. In fact, it argued against a partial stay. Best Soar referred to *Humpuss Sea Transport Pte Ltd (in compulsory liquidation) v PT Humpuss Intermoda Transportasi TBK and another* [2016] 5 SLR 1322 in which the court observed (at [96]) that a partial stay “would be impermissible if there is a high degree of overlap in the claims leading to the possibility of inconsistent decisions by different courts”. I agreed that a partial stay would not have been appropriate in this case given that the Wrongful Arrest Claim and the Contract Claim were very closely connected.

Limited stay on the ground of case management

37 Praxis’ alternative submission was that the Singapore Proceedings should be stayed on the ground of case management pending the outcome of the Lebanon Proceedings.

38 The court has the power to grant a limited stay under s 18(2) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) read with para 9 of the First Schedule, alternatively under the inherent jurisdiction of the court. The exercise of this discretion does not require the application of *forum non conveniens* principles: *Chan Chin Cheung v Chan Fatt Cheung and others* [2010] 1 SLR 1192 at [47].

39 The grant of a limited stay of proceedings is a discretionary exercise of the court’s case management powers. This discretion is triggered when there is a multiplicity of proceedings. In considering all the circumstances of the case, the underlying concern is the need to ensure the efficient and fair resolution of the dispute as a whole. See *BNP Paribas Wealth Management v Jacob Agam and another* [2017] 3 SLR 27 at [35].

40 Had I not decided that a stay should be granted on *forum non conveniens* grounds, I would have granted a limited stay of the Singapore Proceedings pending the outcome of the Lebanon Proceedings. The Lebanon Proceedings were at a more advanced stage. The parties were waiting for the EBB to issue its decision and two rounds of written submissions had been made to the CCB. In my view, a limited stay would ensure an efficient and fair resolution of the dispute, avoid the possibility of conflicting decisions (especially on the Wrongful Arrest Claim) and promote international comity.

Conclusion

41 For all of the reasons set out above, I affirmed the AR's decision that the Singapore Proceedings should be stayed on the ground of *forum non conveniens*. In the result, Best Soar's appeal was dismissed with costs fixed at \$6,000 (inclusive of disbursements) to be paid by Best Soar to Praxis.

Chua Lee Ming
Judge

Leong Kah Wah and Ko Weifen, Cindy (Rajah & Tann Singapore
LLP) for the plaintiff;
Yap Ming Kwang Kelly and Jade Chia Kia Huang (Oon & Bazul
LLP) for the defendant.

- 1 Dimitri Martinuzzi's 1st Affidavit dated 24 August 2016, pp 22–23.
2 Martinuzzi's 1st Affidavit, p 24.
3 Martinuzzi's 1st Affidavit, p 25.
4 Martinuzzi's 1st Affidavit, p 26.
5 Rania Antoine Zeidan's 1st Affidavit dated 21 September 2016, exh RAZ-2, para 14.
6 Martinuzzi's 1st Affidavit, para 15; Zeidan's 1st Affidavit, exh RAZ-2, para 16(d).
7 Martinuzzi's 1st Affidavit, para 14; Rasha Toppozada-Yow's Affidavit dated 15
8 September 2016, pp 270–288.
9 Zeidan's 1st Affidavit, exh RAZ-2, para 11.
10 Martinuzzi's 1st Affidavit, para 17; Toppozada-You's Affidavit, pp 73–88.
11 Toppozada-You's Affidavit, pp 115–138, 166–190, 221–248, 309–326; Defendant's
12 Written Submissions, paras 18, 20, 26, 28.
Statement of Claim (Amendment No 1) dated 2 December 2016, pp 11–12.
Josiane Lahoud's 1st Affidavit dated 12 October 2016, para 10; Zeidan's 1st Affidavit,
paras 12 and 17.