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

[2024] SGHC 37

Admiralty in Rem No 61 of 2021
(Registrar's Appeals Nos 246 and 247 of 2023)

Between

THE OWNER AND/OR DEMISE CHARTERER OF THE VESSEL "A SYMPHONY"

… *Plaintiff*

And

THE OWNER AND/OR DEMISE CHARTERER OF THE VESSEL "SEA JUSTICE"

… *Defendant*

JUDGMENT

[Admiralty And Shipping — Admiralty jurisdiction and arrest — Stay of action proceedings]
[Admiralty And Shipping — Practice and procedure of action in rem — Duty of disclosure]

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12 January, 2 February 2024

9 February 2024 Judgment reserved.

Kristy Tan JC:

Introduction

1 A collision between an oil tanker "A Symphony" and a general cargo vessel "Sea Justice" occurred off the port of Qingdao, the People's Republic of China ("PRC"), within Chinese territorial waters ("Collision"). The respective vessel owners commenced and engaged in proceedings in the Qingdao Maritime Court ("QMC") in relation to the Collision. Among others, the owner of the "Sea Justice" constituted a limitation fund for maritime claims and the owner of the "A Symphony" registered claims against that limitation fund. Both parties also commenced liability actions against each other.

2 Separately, the owner of the "A Symphony" commenced (*qua* plaintiff) HC/ADM 61/2021 ("ADM 61") in Singapore as an admiralty action *in rem* against the "Sea Justice". More than a year after the Collision, the "Sea Justice" sailed into Singapore waters and was arrested on the plaintiff's application. The

(by now former) owner of the "Sea Justice" entered an appearance (*qua* defendant) in ADM 61 and provided security for the release of the "Sea Justice".

3 The plaintiff's claim against the defendant in ADM 61 is for damages and indemnification from loss arising from the Collision. The defendant applied by HC/SUM 4434/2022 ("SUM 4434") for, among others: (a) ADM 61 to be stayed in favour of the court proceedings in the PRC on the grounds of *forum non conveniens*; (b) the security it had provided in the Singapore action to be returned; and (c) the arrest of the "Sea Justice" to be set aside. The learned Assistant Registrar ("AR") who heard SUM 4434 ordered the *forum non conveniens* stay and return of security but declined to set aside the arrest. The AR's grounds of decision are set out in *The "Sea Justice"* [2023] SGHCR 24. Parties filed cross-appeals against the AR's decision. These are now before me.

4 HC/RA 246/2023 ("RA 246") is the plaintiff's appeal against the AR's order that the security provided by the defendant for the release of the "Sea Justice" be returned. The plaintiff *accepts* and has *not* appealed the AR's decision that the Singapore proceedings should be stayed in favour of the QMC as the more appropriate forum for the plaintiff's claims to be tried. The plaintiff has also made a considered decision *not* to ask that the *forum non conveniens* stay be imposed on the condition that the defendant provides alternative / equivalent security for the plaintiff's QMC action. Instead, the plaintiff wants to retain the security provided for ADM 61. The issue arising is thus whether the plaintiff should be permitted to retain the security provided for ADM 61 notwithstanding the *forum non conveniens* stay of the Singapore action, the defendant's constitution of a limitation fund in the PRC, and the plaintiff's participation in ongoing limitation and liability proceedings in the PRC.

5 In RA 246, the plaintiff also appeals against the AR's order that the plaintiff pay the defendant disbursements of S$88,786.53 towards the fees of the defendant's Chinese law expert in SUM 4434. The plaintiff contends that this figure should be further discounted.

6 HC/RA 247/2023 ("RA 247") is the defendant's appeal against the AR's decision not to set aside the arrest of the "Sea Justice". The defendant maintains that the arrest should be set aside because the plaintiff failed to make full and frank disclosure of material facts in its application for a warrant of arrest.

Facts

The parties

7 The plaintiff is Symphony Shipholding SA, a company incorporated in Liberia ("Plaintiff"). The Plaintiff was at all material times the registered owner of the "A Symphony". The defendant is Sea Justice Ltd, a company incorporated in the Marshall Islands ("Defendant"). The Defendant was at all material times the registered owner of the "Sea Justice".[1]

Background to the dispute

8 On 27 April 2021, the Collision between the "A Symphony" and the "Sea Justice" occurred off the port of Qingdao, PRC.[2] Oil carried on board the "A Symphony" spilled into the ocean, causing a marine pollution incident.[3]

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1 *The "Sea Justice"* [2023] SGHCR 24 ("GD") at [5]–[7].

2 1st Affidavit of Yu Changqing filed on behalf of the Defendant on 18 January 2023 ("1st YC Affidavit") at para 8.

3 2nd Affidavit of Eleftherios Tsouris filed on behalf of the Plaintiff on 17 January 2023 ("2nd ET Affidavit") at p 53; Plaintiff's Written Submissions dated 22 December 2023 ("PWS") at para 9.

9 On 28 April 2021, the Plaintiff filed a writ of summons in Singapore to commence ADM 61.

10 On 30 April 2021, the Defendant applied to the QMC in the PRC to constitute a limitation fund for all maritime claims (other than those for loss of life or personal injury) that may be brought against the Defendant as a result of the Collision ("SJ Limitation Fund Application").[4]

11 On 6 May 2021, the Plaintiff commenced an action *in personam* against the Defendant in the Marshall Islands in respect of the Collision.[5]

12 On 8 May 2021, the Defendant commenced a claim against the Plaintiff in the QMC to determine the collision liability between the parties and for the Plaintiff to compensate the Defendant for its loss according to the apportioned collision liability ("Defendant's Inter-Ship Claim").[6]

13 From 27 to 29 May 2021, the QMC published notices in the People's Court Daily calling for interested parties to object to the SJ Limitation Fund Application within specified times. The Plaintiff did not file any objections.[7]

14 On 25 June 2021, the Plaintiff's Protection and Indemnity ("P&I") club, the North of England P&I Designated Activity Company ("NEPIA"), commenced proceedings in the QMC to constitute a limitation fund for "oil pollution damage compensation liability" arising out of the Collision pursuant

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4 1st YC Affidavit at para 20 and pp 81–85; GD at [10].

5 2nd Affidavit of Yu Changqing filed on behalf of the Defendant on 7 December 2023 ("2nd YC Affidavit") at p 68; GD at [21].

6 1st YC Affidavit at para 30 and pp 126–131; GD at [11].

7 1st YC Affidavit at paras 21–23 and pp 102–103, 106–107 and 110–111; GD at [12].

to the 1992 International Convention on Civil Liability for Oil Pollution Damage ("AS CLC Limitation Fund").[8]

15 On 12 July 2021, the QMC issued a Civil Ruling approving the SJ Limitation Fund Application.[9]

16 On 20 and 21 July 2021, the Defendant constituted the limitation fund by paying a total of RMB39,536,501 (approximately US$6.1m) into the QMC ("SJ Limitation Fund").[10]

17 On 26 July 2021, the Plaintiff applied to register its claims against the SJ Limitation Fund ("Plaintiff's Application for Registration of Claim against SJ Limitation Fund").[11]

18 On 18 August 2021, the QMC approved the AS CLC Limitation Fund.[12]

19 On 27 August 2021, the QMC granted the Plaintiff's Application for Registration of Claim against SJ Limitation Fund.[13]

20 On 27 August 2021, the Defendant applied to dismiss the Marshall Islands proceedings on the grounds of, among others, *forum non conveniens*.[14]

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8 1st YC Affidavit at para 44; 2nd Affidavit of Corinne Lam filed on behalf of the Defendant on 15 December 2022 ("2nd CL Affidavit") at p 67; GD at [13].

9 1st YC Affidavit at para 23 and pp 116–118; GD at [14].

10 1st YC Affidavit at para 24; PWS at para 17(a).

11 1st Affidavit of Wang Yongli filed on behalf of the Plaintiff on 15 February 2023 ("1st WY Affidavit") at pp 154–156; GD at [15].

12 1st YC Affidavit at para 44; 2nd CL Affidavit at pp 66–73; GD at [16].

13 2nd ET Affidavit at para 20; GD at [15].

14 2nd YC Affidavit at p 69; GD at [21].

21 On 6 September 2021, the Plaintiff and NEPIA jointly commenced an action against the Defendant in the QMC to determine the collision liability between the parties and seek compensation for the losses suffered by the Plaintiff ("Plaintiff's Inter-Ship Claim").[15]

22 On 12 October 2021, the Defendant applied to the QMC for a worldwide behaviour preservation order against the Plaintiff, which parties have likened to an application for an anti-suit injunction ("Defendant's Chinese ASI Application"). The Defendant sought orders for the Plaintiff to: (a) withdraw its Marshall Islands action; and (b) be prohibited from initiating legal proceedings against the Defendant in the PRC or other countries or arresting the Defendant's property in respect of the dispute arising from the Collision.[16]

23 On 17 February 2022, the QMC dismissed the Defendant's Chinese ASI Application ("QMC's ASI Dismissal Ruling"). The QMC held that the Plaintiff's filing of the Marshall Islands lawsuit did not violate PRC laws, and that there was presently no evidence that the Plaintiff's behaviour would make it difficult to enforce a Chinese court judgment or cause the Defendant's legal rights and interests to be violated.[17]

24 On 18 March 2022, the Marshall Islands High Court dismissed the Plaintiff's action on the grounds of *forum non conveniens*. The Plaintiff's appeal against this decision was subsequently dismissed.[18]

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15 1st YC Affidavit at para 34 and pp 148–149 and 155–159; 1st WY Affidavit at pp 157–161; 2nd ET Affidavit at pp 96–100; GD at [17].

16 1st WY Affidavit at paras 14–15; 2nd ET Affidavit at p 106; GD at [22].

17 1st WY Affidavit at para 20 and p 152; 2nd ET Affidavit at p 111; GD at [23].

18 2nd YC Affidavit at p 85; GD at [21].

25 On 18 April 2022, the Plaintiff and the Defendant filed their evidence in respect of the Plaintiff's Inter-Ship Claim and the Defendant's Inter-Ship Claim (together, the "Inter-Ship Claims") in the QMC.[19]

26 On 19 April 2022, the QMC heard and directed the Inter-Ship Claims to be consolidated. At that hearing, the Plaintiff's PRC lawyers made oral submissions on the Plaintiff's defence to liability for the Collision and on the evidence tendered by the Defendant ("19 April 2022 QMC Hearing").[20]

27 On 27 May 2022, after the parties' PRC lawyers had conferred on the evidence tendered by the parties, they jointly confirmed in writing to the QMC the authenticity of the evidence ("27 May 2022 QMC Joint Confirmation").[21]

Procedural history in ADM 61

28 As mentioned at [9] above, on 28 April 2021, the Plaintiff commenced ADM 61. The Plaintiff's claim against the Defendant is for damages and indemnification from loss arising out of the Collision.

29 On 28 April 2022, the writ of summons was renewed for 12 months.

30 On 19 October 2022, the Plaintiff applied for a warrant of arrest against the "Sea Justice" ("Arrest Application"). The Plaintiff's application was made under s 4(3) of the High Court (Admiralty Jurisdiction) Act 1961 (2020 Rev Ed) based on a maritime lien arising out of the Collision.[22] In support of the Arrest

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19 1st YC Affidavit at para 39; GD at [18].

20 1st YC Affidavit at paras 32 and 40–41; 2nd YC Affidavit at para 25; GD at [19].

21 1st YC Affidavit at para 42; 2nd CL Affidavit at pp 59–60; GD at [20].

22 GD at [24].

Application, the Plaintiff filed a solicitor's affidavit (the 1st Affidavit of Liao Yanting) on 19 October 2022 enclosing in draft the 2nd Affidavit of Eleftherios Tsouris (which was eventually filed on 17 January 2023) ("Plaintiff's Arrest Affidavit"). The Plaintiff's Arrest Affidavit disclosed the following information about other court proceedings:

(a) The Defendant had constituted the SJ Limitation Fund in the QMC.[23]

(b) The Plaintiff had applied to register a claim against the SJ Limitation Fund, and its application had been granted by the QMC.[24] The Plaintiff's Arrest Affidavit exhibited an English translation of the Plaintiff's Application for Registration of Claim against SJ Limitation Fund. This English translation contained a reservation of rights in the following terms, which the Plaintiff also reproduced in the text of the Plaintiff's Arrest Affidavit:[25]

> This Application for Registration of Claim is a procedural application made in response to the application from Sea Justice Ltd for the constitution of a limitation fund for maritime claims. The Applicant hereby declares that all the matters described herein or referred hereto shall not be construed as the Applicant's acknowledgement of any facts or liabilities, *or acceptance of jurisdiction of your court or application of law*, or waiver of any substantial or procedural defenses. The Applicant also reserves the right to object to the right of the Respondent to limit its liabilities and the limitation amounts. [emphasis added]

It is undisputed that the phrase "or acceptance of jurisdiction of your court or application of law" ("Additional Words") should *not* be present

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23 2nd ET Affidavit at para 19.

24 2nd ET Affidavit at para 20.

25 2nd ET Affidavit at para 21 and pp 93–95.

in an accurate English translation of the original Chinese document. In his grounds of decision, the AR described the phrase as "Missing Words" because it did not appear in the original Chinese document. I prefer to describe the phrase as "Additional Words" to reflect that it should not have featured in an accurate English translation.

(c) The Plaintiff had filed a Statement of Claim (for Declaratory Action) dated 6 September 2021 in the QMC. The Plaintiff's Arrest Affidavit exhibited an English translation of this Statement of Claim.[26]

(d) The Defendant had filed a case disputing collision liability on 8 May 2021 in the QMC.[27]

(e) The Plaintiff had commenced the Marshall Islands proceedings on 6 May 2021. The Defendant had applied to dismiss the action, and the Marshall Islands High Court had dismissed the action on *forum non conveniens* grounds. The decision was (then) being appealed.[28]

(f) The Defendant's Chinese ASI Application had been dismissed by the QMC.[29]

31 On 19 October 2022, the Duty Registrar heard and approved the Arrest Application. He issued a warrant of arrest against the "Sea Justice" ("Warrant of Arrest").

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26 2nd ET Affidavit at para 22 and pp 96–100.

27 2nd ET Affidavit at para 23.

28 2nd ET Affidavit at paras 25 and 34.

29 2nd ET Affidavit at paras 26–31.

32 On 20 October 2022, the "Sea Justice" was arrested after she entered Singapore waters.[30] The writ in ADM 61 was also served on the Defendant.

33 On 21 October 2022, the Defendant entered an appearance in ADM 61.

34 On 18 November 2022, the Plaintiff and the Defendant reached an agreement for the Defendant to provide security in the form of: (a) payment into court of S$8,846,383 (being the equivalent of US$6.5m); and (b) a Letter of Undertaking issued by The Swedish Club dated 17 November 2022 undertaking to pay the Plaintiff sums due in respect of its claim in ADM 61 up to US$13.5m (together, the "SG Security").[31]

35 On 19 November 2022, following the Defendant's provision of the SG Security, the "Sea Justice" was released from arrest.[32]

36 On 13 December 2022, the Defendant filed SUM 4434 to apply for orders, among others, that (a) the Singapore action in ADM 61 be stayed in favour of the court proceedings in the PRC on the grounds of *forum non conveniens*; (b) the SG Security be returned to the Defendant; and (c) the Warrant of Arrest and execution and service thereof be set aside.

Limitation of liability regimes in Singapore and the PRC

37 Of particular relevance to SUM 4434 and the present appeals is the fact that Singapore and the PRC have different regimes for the limitation of liability of shipowners for maritime claims based on vessel tonnage.

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30 1st YC Affidavit at para 12.

31 1st YC Affidavit at para 13 and pp 72–73.

32 1st YC Affidavit at para 15.

38 Singapore implements the Protocol of 1996 ("1996 Protocol") to amend the Convention on Limitation of Liability for Maritime Claims 1976 ("1976 Convention") domestically by way of Part VIII of the Merchant Shipping Act 1995 (2020 Rev Ed). The 1996 Protocol increased the limits of liability under the 1976 Convention (see also *CMA CGM SA and Another v The Ship Chou Shan and Another* [2014] FCAFC 90 ("*Chou Shan*") at [69]).

39 In contrast, the PRC is not a State party or signatory to any international convention on the limitation of liability for maritime claims. The Chinese limitation regime is enacted domestically by way of Ch 11 (titled "Limitation of Liability for Maritime Claims") of the Maritime Code of the PRC.[33] The substance of Ch 11 is taken from the 1976 Convention (see also *Chou Shan* at [9]), save that the former does not adopt Art 13 of the 1976 Convention which provides for, among others, a bar to other actions by a person who has made a claim against a limitation fund constituted under Art 11.[34]

40 It is undisputed that the limits of liability (quantum-wise) are higher under the Singapore limitation regime than under the Chinese limitation regime.[35] The total value of the SG Security is pegged to the maximum that the Plaintiff would be allowed to claim under Singapore's limitation framework.[36]

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33 1st Affidavit of Chu Beiping filed on behalf of the Plaintiff on 15 February 2023 at exh "CBP-2": Expert Opinion, Annex 1, pp 41–44.

34 Plaintiff's Skeletal Submissions dated 11 January 2024 ("2nd PWS") at para 17.

35 GD at [50].

36 GD at [108].

Decision below

Order for forum non conveniens stay

41 The AR held that the Singapore action should be stayed on the grounds of *forum non conveniens* in favour of the QMC proceedings.[37] At the first stage of the test in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 ("*Spiliada*"), he found that the QMC was the more appropriate forum for the Plaintiff's claims to be tried.[38] At the second stage of the test, *viz*, whether justice required that a stay should nonetheless not be granted, he rejected the Plaintiff's argument that it would lose the juridical advantage of the SG Security if the Singapore action were stayed. The practical effect of the Plaintiff losing the SG Security was no different from losing the benefit of the higher limit of liability in Singapore. The Plaintiff's argument attempted to sidestep the fact that the existence of different limitation regimes is not an advantage under the second stage of the *Spiliada* test given international comity (citing *The "Reecon Wolf"* [2012] 2 SLR 289 ("*Reecon Wolf*") at [55]). Further, accepting the Plaintiff's argument would force the Defendant to potentially set up a limitation fund in Singapore, contrary to its right to claim limitation in its choice of forum (citing *Evergreen International SA v Volkswagen Group Singapore Pte Ltd and others* [2004] 2 SLR(R) 457 ("*Evergreen*") at [47]).[39]

Order for return of SG Security

42 The AR stayed the Singapore proceedings unconditionally and ordered the return of the SG Security.[40] He held that the grant of the *forum non*

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37 GD at [121].

38 GD at [45]–[106].

39 GD at [107]–[120].

40 GD at [160] and [162].

conveniens stay required the return of the SG Security as there was no longer a pending claim here. He also cited *The "Putbus"* [1969] P 136 ("*Putbus*") for the proposition that a shipowner, having constituted a limitation fund to answer collision claims, should not be compelled to put up further security in another country for the same claims. He held that allowing the Plaintiff to retain the SG Security would usurp the Defendant's choice of forum for its limitation action.[41]

43 The AR further rejected the Plaintiff's proposal for a "conditional stay" or "case management stay" (with attendant retention of the SG Security) where the stay could be lifted for the Plaintiff to enforce any Chinese judgment obtained so as to claim damages it could not claim against the SJ Limitation Fund.[42] He held that such an order would allow the Plaintiff to be doubly secured in Singapore and in the PRC. It would also go against comity as it would be tantamount to finding that the Chinese limitation regime was inadequate compared with that of Singapore.[43] As for the Plaintiff's argument that it was unclear whether its oil pollution indemnity claims against the Defendant would fall within the SJ Limitation Fund, the Plaintiff had not proven that these claims were not subject to the SJ Limitation Fund. The Plaintiff had in fact already registered these claims against the SJ Limitation Fund.[44]

Order dismissing the Defendant's application to set aside the arrest

44 The AR found that the non-disclosures by the Plaintiff were, although relevant, immaterial.[45] He held that whether the Plaintiff had reserved its rights

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41 GD at [147]–[150].

42 GD at [29].

43 GD at [151]–[157].

44 GD at [158]–[159].

45 GD at [161].

when it registered its claim against the SJ Limitation Fund was relevant. A reservation of rights signalled that the Plaintiff was intent to proceed with the Singapore and not QMC action. The fact that the Plaintiff had participated in the Chinese proceedings without any express reservation or objection to the QMC's jurisdiction was inconsistent with what the Plaintiff told the Duty Registrar in the Arrest Application. However, the AR noted the opinion of the Plaintiff's Chinese law expert, Prof Chu Beiping ("Prof Chu"), that the Plaintiff could still challenge the QMC's jurisdiction by making a "procedural defence". The AR found that the lack of the Additional Words (see [30(b)] above) in the actual Chinese reservation of rights clause was thus not material to the grant of the Warrant of Arrest.[46] He also opined that every proceeding in the QMC preceding the hearing of the Arrest Application should have been disclosed. However, the impact of not disclosing more was not significant. He therefore exercised his discretion not to set aside the Warrant of Arrest.[47]

Order for the Plaintiff to pay the Defendant's Chinese law expert's fees

45 The AR awarded the costs of SUM 4434 to the Defendant. He allowed disbursements of S$88,786.53 for the fees of the Defendant's Chinese law expert, Prof Zhao Jinsong ("Prof Zhao"). The parties had adduced Chinese law expert evidence for the *forum non conveniens* stay application, on which the Defendant succeeded. Prof Zhao's bill was for S$110,983.17. The AR went through the entries in his bill and found his fees to be reasonable and reasonably incurred. However, a reduction of Prof Zhao's fees was in order. Prof Zhao had rendered five reports. His first report and part of his second report related to the issue of submission to jurisdiction of the Chinese courts. They accounted for the

46 GD at [137] and [140]–[143].

47 GD at [144]–[145].

bulk of his costs. His third, fourth and fifth reports were on other issues. The AR found Prof Zhao's opinion on the issue of submission to jurisdiction difficult to follow as it was diametrically opposite to the opinion Prof Zhao had rendered in another case. The first and second reports were thus of limited value. This did not mean that all of Prof Zhao's work in rendering his opinion on the issue of submission to jurisdiction should be negated. However, his fees should be reduced on account of the limited value derived from his opinion on this issue. A 20% reduction on his fees, to S$88,786.53, was appropriate.[48]

The parties' cases on appeal

46 I set out a brief overview of the parties' positions in these appeals, to be elaborated at the relevant junctures.

47 The Plaintiff did not appeal against the *forum non conveniens* stay order. Notwithstanding that, the Plaintiff submitted that the SG Security should be retained. This is to satisfy any amounts under any Chinese judgment the Plaintiff might obtain against the Defendant and which might not be satisfied out of the SJ Limitation Fund. Next, the Plaintiff submitted that the AR rightly exercised his discretion not to set aside the arrest of the "Sea Justice" as the non-disclosed matters were immaterial to the Duty Registrar's decision whether to issue the Warrant of Arrest. Finally, the Plaintiff's counsel clarified at the hearing of RA 246 that its appeal against the AR's costs order is confined to the disbursements of S$88,786.53 allowed for Prof Zhao's fees.[49] The Plaintiff argued for a 70%–80% reduction of Prof Zhao's fees.

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48 Certified Transcript of hearing of SUM 4434 on 3 November 2023 at p 5 line 30–p 6 line 31.

49 Notes of Arguments of RA 246 and RA 247 hearing on 12 January 2024 ("NOA") at p 14 lines 31–32.

48 The Defendant opposed the retention of the SG Security on the grounds that (a) there is no legal basis to maintain the SG Security given the grant of the *forum non conveniens* stay; (b) the Plaintiff will be doubly secured should the SG Security be retained; and (c) the retention of the SG Security would go against international comity. Next, the Defendant submitted that the AR's discretion not to set aside the arrest of the "Sea Justice" was incorrectly exercised as the Plaintiff's non-disclosures were material and deliberate. Finally, the Defendant submitted that the AR's costs order was within his discretion and should not be disturbed.

Issues to be determined

49 The three main issues to be determined are:

(a) in RA 246: whether the SG Security should be retained by the Plaintiff;

(b) in RA 247: whether the arrest of the "Sea Justice" should be set aside; and

(c) in RA 246: whether the disbursements allowed for Prof Zhao's fees, in the amount of S$88,786.53, should be further reduced.

Issue 1: Whether the SG Security should be retained by the Plaintiff

The Plaintiff's case

50 The Plaintiff has not appealed against the *forum non conveniens* stay ordered by the AR, a point emphasised by the Plaintiff in its submissions[50] and reflected in the RA 246 Notice of Appeal, which states only that the Plaintiff

[50] 2nd PWS at para 2; NOA at p 3 lines 2–3.

appeals (a) the AR's decision that the SG Security be returned to the Defendant; and (b) the AR's costs order. The Plaintiff submitted that the *default* position is that the courts will order the retention of security provided for the release of an arrested vessel where the admiralty action is subsequently stayed on *forum non conveniens* grounds.[51]

51 At the same time, the Plaintiff ran the primary argument that the Singapore court should order a "conditional stay" or "case management stay" that allows the Plaintiff to (a) "return to Singapore to lift the stay" after the issues of liability and quantum of damages have been determined in the Chinese proceedings; (b) obtain a Singapore judgment using the Chinese courts' findings and "based on *res judicata*"; and (c) "enforce by way of Singapore judgment against the [SG] Security" for "any sum that has not been satisfied by the Defendant in the Chinese proceedings, over and above any entitlement of the Plaintiff to the SJ Limitation Fund".[52] In effect, the Plaintiff contended for a *limited* stay of the Singapore action with attendant retention of the SG Security. I shall refer to the Plaintiff's proposal as being for a "Limited Stay".

52 The Plaintiff submitted that notwithstanding the constitution of the SJ Limitation Fund, neither the Chinese courts (which dismissed the Defendant's Chinese ASI Application) nor Chinese law constrained the Plaintiff from suing outside the PRC to obtain security for its claim.[53] On that basis:

(a) It is not contrary to international comity to order the retention of the SG Security.[54] Instead, "it would be contrary to international comity"

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51 2nd PWS at paras 3–6.

52 PWS at para 80; 2nd PWS at para 27; NOA at p 3 lines 22–25 and p 14 lines 11–14.

53 PWS at paras 22–26, 31 and 42–43; 2nd PWS at paras 7–8 and 24–25.

54 PWS at para 26.

to order the return of the SG Security, since obtaining the SG Security was permissible under the Chinese limitation regime and "impliedly sanctioned" by the QMC's ASI Dismissal Ruling.[55]

(b) The Plaintiff would not be usurping the Defendant's choice of limitation forum by retaining the SG Security.[56]

(c) Allowing the Plaintiff to retain the SG Security does not amount to the Plaintiff being doubly secured.[57]

53 The Plaintiff submitted that there is no general principle that a shipowner who has constituted a limitation fund in a "non-LLMC convention country" should not be made to put up further security in another country for the same collision claims. *Putbus* concerned whether security provided in England should be released under s 5 of the Merchant Shipping (Liability of Shipowners and Others) Act 1958 (c 62) (UK), which implemented the International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships 1957 ("1957 Convention"). The case has no bearing on whether the SG Security should be retained under Singapore law.[58] A Chinese limitation decree only limits procedurally the extent to which claims can be enforced against the SJ Limitation Fund.[59]

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55 PWS at paras 29–30; 2nd PWS at para 25; NOA at p 9 lines 4–6.

56 PWS at paras 4(a)(ii) and 44–48; 2nd PWS at paras 9 and 22.

57 PWS at paras 4(a)(iii) and 49–55; 2nd PWS at para 28.

58 PWS at paras 4(a)(i) and 33–38; 2nd PWS at para 21.

59 PWS at paras 38–41.

54 Next, notwithstanding that the Plaintiff has made oil pollution indemnity claims in the Plaintiff's Inter-Ship Claim and against the SJ Limitation Fund,[60] the Plaintiff submitted that it is "unclear" under Chinese law whether oil pollution indemnity claims would fall within the SJ Limitation Fund.[61] Thus, if the SG Security were returned, the Plaintiff may be losing security for its oil pollution indemnity claims.[62] The Plaintiff argued that the SG Security should be retained to cover that risk.[63]

55 The Plaintiff also raised a new argument in RA 246 that, following the QMC's administrative ruling on 16 November 2023 granting the Qingdao Maritime Safety Administration's application for execution of its penalty of RMB691,514,694.37 (approximately US$97.1m) ("QMC's Administrative Ruling"), "such penalty will also effectively wipe out [the] SJ Limitation Fund" which stands in the amount of US$6.1m. This would leave the Plaintiff with "no possibility of recovery" against the SJ Limitation Fund if it is successful in the Plaintiff's Inter-Ship Claim for US$112.3m.[64]

56 Belatedly, one week after the hearing of these appeals, the Plaintiff wrote to court asking to tender submissions "on authorities in relation to the court's power and discretion at common law to order the retention of security where a stay of *in rem* proceedings is granted on *forum non conveniens* grounds".[65] The Plaintiff had already filed two sets of written submissions for,

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60 NOA at p 30 lines 23–31; GD at [159].

61 2nd PWS at para 29; NOA at p 12 lines 1–5.

62 NOA at p 11 lines 20–28.

63 NOA at p 29 lines 5–6.

64 PWS at para 52; 2nd PWS at para 28.

65 Letter from AsiaLegal LLC to court dated 19 January 2024.

and been heard at a full-day hearing of, these appeals. I gave the Plaintiff a final opportunity to tender short written submissions limited to the point stated in its letter. The Plaintiff then advanced another new argument that, applying the "*Rena K* principle", the SG Security should be retained because it is unlikely that any Chinese judgment obtained by the Plaintiff will be satisfied and there is thus a possibility that the *forum non conveniens* stay will be lifted for the Plaintiff to obtain judgment in the Singapore *in rem* action to satisfy itself out of the SG Security. The Plaintiff also purported to rely on new evidence not adduced in SUM 4434 for its new argument.[66]

The Defendant's case

57 First, the Defendant submitted that as the Singapore action is stayed, there is "no cause of action to enforce the [SG] Security against" and no legal basis for the Plaintiff to retain the SG Security.[67] The Plaintiff cannot rely on the QMC proceedings to retain the SG Security. *The "Eurohope"* [2017] 5 SLR 934 ("*Eurohope*") laid down the principle that the Singapore courts will not order security obtained under an arrest to be retained to satisfy a judgment given in foreign court proceedings.[68] The practical effect of the Plaintiff's argument that it intends to use any Chinese judgment obtained to apply to the Singapore court for a Singapore judgment and satisfy what it could not obtain from the SJ Limitation Fund out of the SG Security, is no different from the Plaintiff directly seeking to enforce the Chinese judgment against the SG Security, which *Eurohope* does not permit.[69]

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66 Plaintiff's Supplemental Submissions dated 25 January 2024 ("3rd PWS").

67 Defendant's Written Submissions dated 22 December 2023 ("DWS") at paras 73–76.

68 DWS at para 77.

69 DWS at paras 78–79.

58 Second, the Defendant submitted that the Plaintiff would be doubly secured by having claims against both the SJ Limitation Fund in the PRC and the SG Security in Singapore. This disregards the legal rights granted to the Defendant by the SJ Limitation Fund and should not be permitted by this court.[70]

59 Third, the Defendant submitted that the retention of the SG Security would go against international comity. It would be tantamount to this court making a determination that the Chinese limitation regime is inadequate in assisting the Plaintiff to satisfy its claims arising from the Collision. It is not for the Singapore courts to decide if the amount prescribed by Chinese law under the SJ Limitation Fund will do justice to the Plaintiff's liability claims.[71]

60 As for the Plaintiff's new argument that the SJ Limitation Fund would be depleted by the QMC's Administrative Ruling, the Defendant argued that this is a matter of Chinese law, but the Plaintiff has not adduced any Chinese law expert evidence to substantiate its assertion. The QMC's Administrative Ruling is in any event irrelevant to the principles that the Singapore courts should consider in determining whether the SG Security should be returned.[72]

61 Finally, in respect of the Plaintiff's new argument on the "*Rena K* principle", the Defendant submitted that the decision in *The Rena K* [1979] QB 377 ("*Rena K*") related to mandatory stays in favour of foreign arbitration proceedings pursuant to s 1(1) of the Arbitration Act 1975 (c 3) (UK), where the arresting party had no security in the arbitration proceedings. The "*Rena K* principle" was "formulated to protect a claimant's right to obtain security by

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70 DWS at paras 83–86.

71 DWS at paras 87–91.

72 NOA at p 21 lines 1–6.

arrest of a vessel in *in rem* proceedings, even where those *in rem* proceedings had been stayed in favour of arbitration in a foreign jurisdiction". The principle "allowed the court to order security to be retained in favour of the arresting party, who may well be at risk of not being able to enforce that (foreign) arbitral award in its favour". *Rena K* has no relevance to the present case concerning a *forum non conveniens* stay where the court must consider factors such as international comity in view of the SJ Limitation Fund established in the PRC.[73]

Decision

62 I decline to order the Limited Stay and/or to allow the retention of the SG Security for four main reasons, which I will develop:

(a) First, what the Plaintiff seeks is tantamount to retaining the SG Security to secure foreign proceedings. This is not permitted.

(b) Second, what the Plaintiff seeks is effectively premised on treating the Singapore limitation regime as superior to the Chinese limitation regime by reason of the higher limit of liability available under the former. This is contrary to the Singapore courts' approach, based on international comity, in such matters.

(c) Third, what the Plaintiff seeks is incongruent with the *forum non conveniens* stay that has been granted.

(d) Fourth, what the Plaintiff seeks effectively undermines the Defendant's right to claim limitation in a forum of its choice, while doubly securing the Plaintiff. This is unjust.

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[73] Defendant's Supplemental Submissions dated 2 February 2024 at para 8.

Impermissible to retain the SG Security to secure foreign proceedings

63 In my view, there is no disguising the fact that what the Plaintiff truly and effectively seeks is the retention of the SG Security for the satisfaction of any Chinese judgment it might obtain in the Chinese proceedings. The Plaintiff's true intention is most evident from the Plaintiff's counsel's oral submission that if the SG Security were cancelled, the Plaintiff may lose its security for its oil pollution indemnity claims[74] and the SG Security should be retained to cover that risk.[75] To recapitulate, the Plaintiff has made oil pollution indemnity claims against the Defendant in the Plaintiff's Inter-Ship Claim before the QMC. The Plaintiff says it is "unclear" under Chinese law whether its oil pollution indemnity claims would be compensated out of the SJ Limitation Fund (see [54] above). In other words, and consistent with how the Plaintiff's counsel candidly put it, the Plaintiff wants to retain the SG Security to satisfy any judgment it might obtain from the QMC on its oil pollution indemnity claims. In truth, this intention extends to the Plaintiff seeking to retain the SG Security to satisfy *any* judgment the Plaintiff might obtain on *all* of its claims in the Chinese proceedings.

64 However, in an admiralty action *in rem*, the Singapore court should not order the arrest of a vessel, retention of that arrested vessel, or retention of security furnished for the release of that vessel, for the purpose of securing a foreign judgment or award: *The "ICL Raja Mahendra"* [1998] 2 SLR(R) 922 at [22]; *Eurohope* at [25] and [28]–[29].

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74 NOA at p 11 lines 20–28.

75 NOA at p 29 lines 2–6.

65 In *Eurohope*, the plaintiff had already commenced an admiralty action in London for the defendant's wrongful termination of a charterparty, when the plaintiff arrested the defendant's vessel "Eurohope" in Singapore. The defendant furnished security for the release of the "Eurohope". The plaintiff admitted that it had no intention of proceeding with the Singapore action and that the sole purpose of applying for the warrant of arrest was to obtain security in aid of the London proceedings. The plaintiff applied to stay the Singapore proceedings and for the security furnished by the defendant to remain in force pending final determination of the London proceedings.

66 The court held that the power of arrest in an action *in rem* should not be exercised in aid of legal proceedings in a foreign court. The purpose of the arrest in an action *in rem* is to provide security in respect of the action *in rem* (at [25]). Section 7(1) of the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("IAA"), which empowered the Singapore courts on ordering a stay of proceedings in favour of arbitration to also order that property arrested be retained as security for the satisfaction of any arbitration award, was the product of legislative intervention (at [27]). In contrast, there is no statutory provision that empowers the Singapore courts to order that property arrested be retained for the satisfaction of a judgment given in foreign court proceedings. This differs from the position in the UK, where the court has the power to do so under s 26(1) of the Civil Jurisdiction and Judgments Act 1982 (c 27) (UK) ("CJJA") (at [28]). Section 26(1) of the CJJA provides:

> 26.–(1) Where in England and Wales or Northern Ireland a court stays or dismisses Admiralty proceedings on the ground that the dispute in question should be submitted to the determination of the courts of another part of the United Kingdom or of an overseas country, 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 –

> (a) order that the property arrested be retained as security for the satisfaction of any award or judgment which –
>
> (i) is given in respect of the dispute in the legal proceedings in favour of which those proceedings are stayed or dismissed; and
>
> (ii) is enforceable in England and Wales or, as the case may be, in Northern Ireland; or
>
> (b) order that the stay or dismissal of those proceedings be conditional on the provision of equivalent security for the satisfaction of any such award or judgment.

The court concluded that legislative intervention in Singapore would be required if the courts were to be given powers to order that property arrested in an action *in rem* in Singapore be retained as security for the satisfaction of a judgment given in legal proceedings in a foreign court (at [29]).

67 Applying the above legal principles, the Plaintiff should not be permitted to retain the SG Security for the purpose of satisfying any judgment it might obtain in the Chinese proceedings.

Contrary to international comity to retain the SG Security

68 The Plaintiff obviously recognised that the SG Security should only be applied to secure a Singapore judgment in the Singapore action. In a veiled attempt to skirt the restriction in *Eurohope*, the Plaintiff thus argued for a Limited Stay of the Singapore action with attendant retention of the SG Security. In my judgment, however, it would be contrary to international comity to allow the Limited Stay with retention of the SG Security.

69 When considering whether to stay a Singapore action in favour of a more appropriate jurisdiction, the Singapore courts' approach is not to treat any higher limit of liability available under Singapore's limitation regime (as compared to that in the other jurisdiction in question) as a juridical advantage

to the plaintiff in having his claim tried in Singapore. Comity in not regarding Singapore's limitation laws as superior to those of another jurisdiction underlies this approach (see *Reecon Wolf* at [37] and [54]–[55]). The Plaintiff strenuously argued that while these considerations apply in the *forum non conveniens* analysis, they are no longer relevant and should not be "conflated" with the issue of whether security should be retained after the stay has been granted.[76] Yet, the precise reason the Plaintiff seeks the Limited Stay and retention of the SG Security is that it wishes to avail of the higher limit in Singapore (as compared to that under the Chinese limitation regime). In essence, the Plaintiff wishes to satisfy out of the SG Security (the value of which is pegged to the maximum that the Plaintiff would be allowed to claim under Singapore's limitation framework[77]) what it will not be able to get based on its share of the SJ Limitation Fund.[78] I agree with the Defendant that in these circumstances, retaining the SG Security would be tantamount to an implicit finding that the Chinese limitation regime is less adequate than that of Singapore. This would be contrary to international comity.

70 My view on this point is reinforced by the Plaintiff's reliance on the *dicta* in the Australian case of *Chou Shan* at [36] (reproduced at [74] below) as support for the Limited Stay and retention of the SG Security.[79] The Plaintiff's reliance on this *dicta*, which is misplaced, exposes that the Limited Stay sought by the Plaintiff is, in fact, premised (impermissibly under Singapore legal principles) on treating the higher limit in Singapore as a juridical advantage to the Plaintiff in having its claims tried here. I elaborate.

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76 NOA at p 3 lines 7–10.

77 GD at [108].

78 PWS at para 80; NOA at p 3 lines 22–23 and p 14 lines 11–13.

79 NOA at p 4 lines 1–3.

(1) *Chou Shan*

71 *Chou Shan* is the decision of the Full Court of the Federal Court of Australia ("Full Court") concerning an appeal against the primary judge's decision to stay an *in rem* proceeding. A collision occurred between the ships "Chou Shan" and "CMA CGM Florida" off the coast of China. The owners of the "Chou Shan" successfully applied to the Ningbo Maritime Court to set up a limitation fund. The owner and operator of the "CMA CGM Florida", having filed a writ *in rem* against the "Chou Shan" in the Federal Court of Australia ("FCA"), caused the "Chou Shan" to be arrested in Australia. The "Chou Shan" was released on her owners' provision of security for the plaintiffs' claims. The "Chou Shan" and her owners then applied to stay the Australian proceedings on the grounds, among others, that Australia was a clearly inappropriate forum for the hearing and determination of the plaintiffs' claims.

72 The primary judge granted the stay sought. He took into account the fact that the plaintiffs had the benefit of increased security in the proceeding *in rem* in the FCA. This benefit arose because the limitation amounts in Australia, a signatory to both the 1976 Convention and the 1996 Protocol, were higher than those in China, where the limitation regime was in substance based on the 1976 Convention (at [9]). However, the primary judge did not consider the benefit of increased security sufficient to undermine his conclusion that the FCA was a clearly inappropriate forum, having regard to other factors such as that the natural and obvious forum for all disputes relating to the collision was China (at [35], citing from the primary judge's judgment at [158]–[160]).

73 The Full Court dismissed the plaintiffs' appeal against the primary judge's decision. The Full Court agreed that the Australian limitation regime would be considered a legitimate advantage of a plaintiff in an Australian action.

It found that the primary judge did not unduly discount the weight of this juridical advantage to the plaintiffs and thus upheld his decision to stay the Australian proceedings (at [82]).

74 However, the Full Court appeared to suggest, in *dicta* (at [36]), that the plaintiffs could have argued before the primary judge for the Australian claim to proceed "and be finalised, by access to the Australian security or limitation fund" after the Ningbo Maritime Court had made its findings:

> Before turning to the substance of the application, it is important to recognise that the argument placed before the primary judge involved the proposition that the plaintiffs proposed to run the claims in this Court. That involved, necessarily, the spectre of parallel proceedings, in this Court and in the Ningbo Maritime Court. Hence, the primary judge placed some importance on the potentiality of inconsistent findings. No argument was run before him, and the position was not taken below, by the plaintiffs, that two parallel and competing proceedings should be avoided by *managing the Federal Court action to await the findings by the Ningbo Maritime Court, and when those issues litigated between the parties were resolved, the Federal Court claim could proceed, and be finalised, by access to the Australian security or limitation fund.* In other words, the case was not put to the primary judge that sought to avoid or ameliorate the vexation of two factual hearings and the potential for inconsistent findings, but to emphasise the retention of the significant juridical advantage given to the plaintiffs by the security put up by the P&I club for the maritime lien or the value of a limitation fund, if set up, in an amount under the 1976 Convention and the 1996 Protocol under Australian law. [emphasis added]

75 Later in the judgment, the Full Court again commented that a possible approach could have been to manage and stage the proceedings "to vindicate rights under Australian law" without the risk of inconsistent findings, but whether or not that approach was still open (in view of the *forum non conveniens* stay granted by the primary judge) need not be discussed (at [83]):

> In a legal environment governed by *Voth* where a plaintiff had a legitimate advantage in an Australian limitation of liability

> regime in the enforcement of a maritime lien, in circumstances where the risk of inconsistent findings in parallel proceedings could be eliminated, or at least significantly ameliorated, it might be difficult to conclude that the Federal Court was a clearly inappropriate forum. *In this context, the managed and staged approach in the Caltex case may well be a mechanism to vindicate rights under Australian law* without engaging the risk of the vexation of inconsistent finding that may be unnecessary. *Whether or not that approach is still open in this matter need not be discussed.* [emphasis added]

76 To provide context, the approach adopted in *Caltex Singapore Pte. Ltd. and others v BP Shipping Ltd.* [1996] 1 Lloyd's Rep 286 ("*Caltex*"), which the Full Court referred to, was to stay proceedings temporarily for issues of quantum to be determined in the (foreign) natural forum, leaving the question of whether there should be a final stay to be determined thereafter (at 300). I discuss this judgment in greater detail at [82]–[83] below. At this juncture, it suffices to note that the Full Court suggested the approach taken in *Caltex* in *dicta* (at [83]).

77 The Plaintiff submitted that such an approach is similar to and embraces the Limited Stay and retention of the SG Security sought by the Plaintiff.[80] What the Plaintiff ignored, however, is that a decision by the Australian courts to decline a stay, or grant a limited stay, of a local action because of the higher limit in Australia does not undermine international comity. This is because Australia's formulation of the test for *forum non conveniens* is different from that of Singapore. Thus, what may legitimately be considered under Australian law is not necessarily an approach the Singapore courts would take.

78 The test for *forum non conveniens* in Australia is whether the Australian court is a clearly inappropriate forum (*Chou Shan* at [46]). When the Australian

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80 NOA at p 4 lines 1–3.

court declines a stay, or grants a limited stay, of the local action because of the higher limit of liability available to the plaintiff in Australia, the conclusion made by the court is that *Australia is not a clearly inappropriate forum*. The Full Court in *Chou Shan* specifically acknowledged that the Australian *forum non conveniens* test is not focused on whether justice can be achieved in a foreign court (at [58]):

> One other consequence of the clearly inappropriate forum test's focus upon the local court is the avoidance of what might be the difficulty or inappropriateness of deciding whether a plaintiff will obtain justice in a foreign court…

Because the Australian court is only pronouncing on the appropriateness of its local forum, there is no concern that international comity will be undermined by recognising the higher limit in Australia as a legitimate juridical advantage.

79 In contrast, the Singapore and English test for *forum non conveniens* is the *Spiliada* test, which concerns the staying of proceedings on the basis of the existence of a more appropriate forum (*Chou Shan* at [48]). Where there is a foreign forum that is clearly or distinctly more appropriate than Singapore under the first stage of the *Spiliada* test, the inquiry at the second stage of the *Spiliada* test is whether the plaintiff can show that it will not obtain substantial justice in the foreign forum. Consequently, when the Singapore court declines a stay, or grants a limited stay, of the local action because of the higher limit of liability available to the plaintiff in Singapore, the conclusion made by the court is that *the plaintiff will be denied substantial justice in the foreign forum with a lower limit*. Recognising the higher limit in Singapore as a legitimate juridical advantage is thus at odds with international comity.

80 In fact, the Full Court in *Chou Shan* explained that the difference between the Australian and English *forum non conveniens* tests is "of critical

importance to the place of the juridical advantage to the plaintiffs in the local proceeding" (at [47]). The requirement in the Australian test to focus on the local chosen forum and its asserted inappropriateness means that juridical advantage in the local forum must play a greater part in the analysis than it does under the *Spiliada* test (at [77]). The plaintiff's juridical advantage is assessed with other factors to determine whether the local forum is a clearly inappropriate forum, and the juridical advantage is not to be "compared in terms of abstract justices with the laws of the foreign forum" (at [81]).

81 The Plaintiff's reliance on the *dicta* in *Chou Shan* as support for the Limited Stay is thus misplaced. The *dicta* of the Full Court must be viewed in light of the Australian *forum non conveniens* test and the corollary that international comity is not undermined when the Australian courts decline a stay, or grant a limited stay, of a local action on the basis that the higher limit in Australia is a legitimate juridical advantage.

(2) *Caltex*

82 I turn next to the approach in the English decision of *Caltex*, which was cited by the Full Court in *Chou Shan*. *Caltex* concerned an allision in Singapore between BP Shipping Ltd.'s ("BP") vessel and a jetty owned, used and administered by Caltex companies. BP set up a limitation fund in Singapore that was based on the 1957 Convention then applied in Singapore. The Caltex companies sued in England where the 1976 Convention (with higher limits) applied. BP sought to stay the actions by the Caltex companies in England.

83 Clarke J (as he then was) accepted that Singapore was the natural and appropriate forum for the trial of the action. However, he was of the view that English public policy favoured applying the 1976 Convention and that

depriving Caltex of the higher limit would be depriving them of a "legitimate juridical advantage" (at 299). He concluded that the most appropriate solution (if either party were to seek it and it were possible in Singapore) would be to stay the English action temporarily in order to enable the issues of quantum to be determined in Singapore, leaving the question whether there should be a final stay in England to be determined thereafter (at 300). Clarke J's decision in *Caltex* was, however, overruled by the English Court of Appeal in *The "Herceg Novi" and "Ming Galaxy"* [1998] 2 Lloyd's Rep 454 ("*Herceg Novi (CA)*").

(3) *Herceg Novi (QBD)* and *Herceg Novi (CA)*

84 *Herceg Novi (CA)* was an appeal from Clarke J's decision in *The "Herceg Novi" and "Ming Galaxy"* [1998] 1 Lloyd's Rep 167 ("*Herceg Novi (QBD)*"). The case concerned a collision between the ships "Herceg Novi" and "Ming Galaxy" in the Straits of Singapore. In Singapore, the owners of the "Ming Galaxy" began admiralty actions *in rem* and *in personam* against the "Herceg Novi" and her owners. In England, the owners of the "Herceg Novi" issued a writ in an admiralty action *in rem* against the "Ming Galaxy" and served the writ on a sister ship, the "Ming South". The owners of the "Ming Galaxy" applied to stay the English action on the grounds of *forum non conveniens*.

85 Clarke J, hearing the application in the first instance, reached a similar landing as he had in *Caltex*. He considered that Singapore was the more appropriate forum under the first stage of the *Spiliada* test but that a relevant consideration under the second stage was that the owners of the "Herceg Novi" (*ie*, the plaintiffs in the English action) would be deprived of the benefit of the provisions of the 1976 Convention. This led him to hold that the English action should be "temporarily" stayed (*Herceg Novi (QBD)* at 180 and 181).

86 On appeal, however, the English Court of Appeal allowed the appeal against Clarke J's decision. The English Court of Appeal held that it was impossible to say that Singapore's application of the 1957 Convention instead of the 1976 Convention meant that substantial justice was not available in Singapore. The English Court of Appeal thus ordered an *unconditional* stay of the English action (*Herceg Novi (CA)* at 460):

> In our view it is quite impossible to say that substantial justice is not available in Singapore, seeing that there is a significant body of agreement among civilized nations with the law as it is there administered. The preference for the 1976 Convention has no greater justification than for the 1957 regime. *Loss in the cases we are considering will often be borne by the insurers of one side or the other.* The 1976 Convention provides a greater degree of certainty, which they will perhaps welcome. But *in terms of abstract justice, neither Convention is objectively more just than the other.* ***Our task is not to decide whether our law is better than the law of Singapore. It is to decide whether substantial justice will be done in Singapore. In our view it will be***. This appeal should be allowed, and ***an unconditional stay of the English action granted***. [emphasis added in italics and bold italics]

In other words, having decided that the availability of a higher limit in England could *not*, for reasons of comity, be considered a legitimate juridical advantage to the plaintiffs in the local (English) action, the English Court of Appeal granted a *forum non conveniens* stay on an *unconditional* basis. The limited stays contemplated in *Caltex* and *Herceg Novi (QBD)* were rejected.

87 The foregoing review of cases shows that the limited stay approach referenced in *Chou Shan*, *Caltex* and *Herceg Novi (QBD)* was premised on treating the availability of a higher limit of liability in the local forum as the plaintiff's juridical advantage to be preserved. In *Chou Shan*, the Full Court considered that there was room for this perspective under the Australian "clearly inappropriate forum" test for *forum non conveniens*, but this is not the test that applies in Singapore. This perspective in *Caltex* and *Herceg Novi (QBD)* was

rejected in *Herceg Novi (CA)* on the ground of international comity. There is no basis for the Plaintiff to argue for a Limited Stay and attendant retention of the SG Security when the Singapore courts share the view in *Herceg Novi (CA)* that the availability of a higher limit of liability in a particular jurisdiction is not a legitimate consideration in determining where an action should proceed. This is evident from the Singapore decisions of *Reecon Wolf* and *Evergreen*.

(4) *Reecon Wolf*

88 In *Reecon Wolf*, the plaintiff's vessel and the defendant's vessel "Reecon Wolf" collided in the Straits of Malacca. The defendant commenced an *in rem* action in Malaysia and the plaintiff commenced an *in rem* action in Singapore. The defendant applied for an order that the Singapore action be stayed in favour of Malaysia on *forum non conveniens* grounds. At that time, Singapore applied the 1976 Convention and Malaysia the 1957 Convention.

89 The court considered that the plaintiff's suggestion that Singapore was the more appropriate forum was really based entirely on its desire to choose a forum with higher limits under the 1976 Convention (at [35]). Having regard to comity, the court roundly rejected the notion that the higher limit in Singapore was a legitimate consideration, holding (at [37], [54] and [55]):

> 37 With *judicial chauvinism firmly replaced by judicial comity*, the dichotomy of the limitation regimes that used to be fought out as a loss of juridical advantage is now gone. It would be contrary to *The Spiliada* principles to look favourably upon a party who selected a forum based solely upon the level of damages that could be awarded or higher limits of liability.
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> …
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> 54 … [the plaintiff's counsel] argued that the dichotomy between the two limitation regimes would leave the plaintiff disadvantaged if the Singapore Action was stayed for Malaysia's domestic law gave effect to the 1957 Convention. In other words, the plaintiff's claim would be subject to the lower 1957

> limits of liability. *This line of argument would invariably draw this court to make comparisons between the merit of the statutory limits in Singapore and [Malaysia]. I cannot be drawn into making comparisons between the laws of this country and that of another friendly state to do justice in such cases*.
>
> 55 Second, the fact that the law in the alternative forum may be less favourable to the plaintiff does not necessarily justify a dismissal of the stay application on ground of *forum non conveniens*. As stated, *the existence of different limitation regimes is not considered a personal or juridical advantage under Stage 2*.
>
> [emphasis added]

The court in *Reecon Wolf* further opined that although the case of *Evergreen* concerned an anti-suit injunction, it was "instructive both in terms of admiralty action *in rem* and international comity" (at [56]).

(5) *Evergreen*

90 In *Evergreen*, a collision occurred between the container vessel "Ever Glory" and the car carrier "Hual Trinita" in Singapore waters. The plaintiff-owners of the "Ever Glory" commenced a limitation action in Singapore against all persons having potential claims arising out of the collision, including the defendants, who were the owners or insurers of the cargo carried on the "Hual Trinita". The 1957 Convention applied in Singapore at the time. The limitation decree was granted and the plaintiffs paid the limitation fund sum into court. The defendants did not participate in the limitation proceedings. Instead, they arrested the "Ever Reach", a sister ship of the "Ever Glory", in Belgium and commenced an action in tort against the plaintiffs in Belgium as the Belgian courts would apply a higher limit based on the 1976 Convention. The plaintiffs furnished security for the release of the "Ever Reach" from arrest. The plaintiffs then applied in Singapore for an anti-suit injunction to restrain the defendants from continuing their action in Belgium.

91 The court granted the application and further ordered that the security provided for the release of the "Ever Reach" be returned to the plaintiffs (at [66]–[67]). The court accepted that admiralty jurisdiction in Belgium was properly founded and that the defendants had arrested the "Ever Reach" as of right (at [45] and [64]). Nevertheless, the Belgian proceedings were vexatious and oppressive to the plaintiffs because they constituted an unlawful challenge to the plaintiffs' right to choose the limitation forum and an attack on the plaintiffs' legal rights conferred by the Singapore limitation decree and limitation fund (at [46]–[47]). The court held that the advantage of a higher limit under the 1976 Convention, as contended for by the defendants, was not a legitimate consideration in the overall question of where the ends of justice lie (at [49]). The court rejected the defendants' argument that they would suffer a legitimate juridical disadvantage if they had to make their claims in Singapore where the lower limit applied, citing with approval *Herceg Novi (CA)* among other decisions (at [58]–[63]).

(6) Conclusion

92 In view of international comity, the Singapore courts will not be drawn into any implicit pronouncement that the limitation of liability regime in Singapore is superior to that of another jurisdiction. This is regardless of whether that other jurisdiction applies a limitation regime based on an international limitation of liability convention or its own domestic system of limitation. As G Lam JA observed in *Pusan Newport Co Ltd v The Owners and/or Demise Charterers of the Ships or Vessels "Milano Bridge" and "CMA CGM Musca" and "CMA CGM Hydra"* [2022] HKCA 157 at [53], there is great diversity in the limitation regimes implemented across the world:

> … Whatever may be the merits of the international unification of limitation regimes, the fact is that there is a complex

> patchwork around the world consisting of, inter alia, 1976 Convention countries (with variations in terms of reservations), 1996 Protocol countries (of which some have denounced the 1976 Convention and some have not), and countries who have ratified neither, such as China (except for Hong Kong), United States, and, … Korea and Panama, and who may or may not have their own domestic systems of limitation. …

It is not for the Singapore courts to adjudicate on the relative merits of different limitation regimes, be they domestic systems or based on international conventions, in comparison to Singapore's limitation regime.

93 In the context of determining whether to grant a *forum non conveniens* stay, comity manifests in the Singapore courts *not* treating the availability of a higher limit in Singapore as a legitimate juridical advantage to the plaintiff in having his claim tried in Singapore. By logical extension, comity mandates that the Singapore courts *not* grant a limited stay that expressly allows the plaintiff to later resume the Singapore action to avail of the higher limit (and any security provided up to that higher limit) here. Otherwise, the Singapore courts would be allowing through the back door what they have closed off at the front. Indeed, the limited stay approach in *Chou Shan*, *Caltex* and *Herceg Novi (QBD)* was predicated on precisely the converse consideration that the availability of a higher limit in the local forum is a legitimate juridical advantage to be preserved for the plaintiff. That is not the principle applied in Singapore. The (a) *forum non conveniens* analysis; (b) assessment of the nature and extent of stay to impose; and (c) determination of whether to retain security provided for the local action upon the grant of a stay, are part of the same continuum of decision-making in a *forum non conveniens* stay application, to which the same considerations of comity apply. Allowing the Limited Stay and attendant retention of the SG Security sought by the Plaintiff would be contrary to comity.

94 The Plaintiff argued that it is not against comity to order retention of the SG Security, and more startlingly, that it would be *contrary* to comity *not* to order retention of the SG Security, because Chinese laws and the QMC's ASI Dismissal Ruling do not prohibit the Plaintiff from commencing proceedings outside of the PRC to obtain security for its claim in respect of the Collision.[81] I am not persuaded by this argument. Comity concerns the posture of the Singapore courts. That *the Plaintiff* may not be constrained from suing outside the PRC (which the Defendant does not dispute) does not impact, much less negate, *the Singapore courts'* considerations of comity set out in [92]–[93] above. Further, taken to its logical conclusion, the Plaintiff's argument would mean that the court breached comity when the AR ordered the *forum non conveniens* stay of the Singapore action (since, on the Plaintiff's logic, it was not prohibited under Chinese laws or the QMC's ASI Dismissal Ruling from commencing ADM 61). This would be an absurd position for the Plaintiff to take, and it is telling that the Plaintiff has not challenged the grant of the *forum non conveniens* stay on this ground (or at all).

95 I also take the view that the Plaintiff placed undue weight on the QMC's ASI Dismissal Ruling. I share the AR's observations that the QMC had only ruled that (a) the Plaintiff's claim in the Marshall Islands did not violate Chinese laws; and (b) there was no evidence that the Plaintiff's behaviour, at the time when the Defendant's Chinese ASI Application was made, made it difficult to enforce a judgment of the Chinese court. The QMC gave no reasons for rejecting the Defendant's Chinese ASI Application in respect of proceedings in other countries[82] and certainly did not encourage the Plaintiff to start other

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81 PWS at paras 29–30.

82 GD at [64].

proceedings.[83] The Plaintiff pitched its case too high by arguing that the QMC's ASI Dismissal Ruling "impliedly sanctioned"[84] the Plaintiff's Singapore action.

96 On a procedural note, the Plaintiff has not appealed the *forum non conveniens* stay order but at the same time seeks a Limited Stay. A *forum non conveniens* stay and a "case management stay" (as the Plaintiff terms the Limited Stay sought) are not the same thing. A *forum non conveniens* stay is granted in recognition that there is a more appropriate jurisdiction than Singapore for the trial of the same claims; barring exceptional circumstances, it is envisaged that the Singapore action stayed on *forum non conveniens* grounds will not continue. A case management stay, as its name indicates, involves the court staying proceedings for case management purposes; such a stay may be imposed on a temporary basis in view of other proceedings that are not entirely the same as those before the court imposing the stay (see, *eg*, *Chan Chin Cheung v Chan Fatt Cheung and others* [2010] 1 SLR 1192 at [41]–[47]). In *Chou Shan*, having upheld the *forum non conveniens* stay granted by the primary judge, the Full Court indicated that whether or not the limited stay approach was "still open" "need not be discussed" (at [83]). In the present case, the Plaintiff did not explain how it can seek a Limited Stay without appealing the *forum non conveniens* stay order and I remain to be convinced that it can do so. Even assuming, however, that it is procedurally open to the Plaintiff to seek the Limited Stay, I would not grant such a stay for the above-mentioned reasons.

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83 GD at [65].

84 PWS at para 30.

Incongruent to retain the SG Security under a forum non conveniens stay

97 Perhaps recognising that it is bound by the *forum non conveniens* stay, the Plaintiff then raised a new argument in its latest written submissions that the "*Rena K* principle" applied to permit retention of the SG Security notwithstanding the *forum non conveniens* stay. I start by exploring the genesis of the "*Rena K* principle".

98 In *The Golden Trader* [1974] 3 WLR 16 ("*Golden Trader*"), Brandon J (as he then was) explained that the usual consequence when an action is stayed is that security provided in the action is released since there is no longer any expectation of a judgment in the action to be satisfied (at 26F–G):

> … The starting point… is that *the court can only retain the security to satisfy a judgment or a compromise in the action itself.* It follows that, if the court stays the action, so that there will, in all probability at least, be no judgment or compromise in the action to be satisfied, it must then release the security. Putting it shortly, *if there is a stay, there must, as a necessary consequence, be a release.* … [emphasis added]

99 He observed that in cases where the grant of a stay is discretionary, the court can subject the grant of the stay to a condition that alternative security be provided (*Golden Trader* at 26G–H):

> … In cases where the grant of a stay is discretionary, the court can refuse a stay unless alternative security is provided. The defendant then has to choose between having a stay subject to a term for the provision of such security and not having a stay at all. If he chooses the former, then, subject to his complying with the term, he gets both a stay and release; if he chooses the latter, he gets neither. …

100 He held, however, that in the case at hand involving the grant of a mandatory stay of the *in rem* action in favour of arbitration, to which no conditions could be attached under the applicable English arbitration legislation

at the time, the order for the stay and the consequent order for the release of the arrested vessel or security must be unconditional (*Golden Trader* at 26H).

101 In the subsequent case of *Rena K*, Brandon J was again confronted by a mandatory stay of the *in rem* action in favour of arbitration and it was in this case that the "*Rena K* principle" was developed. In *Rena K*, cargo owners commenced an action *in rem* against the vessel "Rena K" and *in personam* against her owners, claiming for cargo damage during the shipment voyage. The plaintiffs subsequently arrested the "Rena K" in Liverpool. The vessel was released on the defendants' provision of security. The defendants then applied for a stay of proceedings in favour of arbitration. The dispute fell within a non-domestic arbitration agreement, and under the applicable English arbitration legislation at the time, the court had to grant a mandatory stay of court proceedings and the stay could not be made conditional on the provision of security (at 400).

102 This being prior to the enactment of s 26(1) of the CJJA (see [66] above), Brandon J observed (as he similarly had in *Golden Trader*) that, as a general principle, "without some statutory authority which does not unfortunately at present exist … the court has no jurisdiction to use the retention method, that is to say to retain security not for the purpose of satisfying a judgment or settlement in the action in which the security has been given, but to satisfy the judgment or award of another tribunal" (at 402).

103 He noted, however, that in cases where the grant of a stay was discretionary (for example, cases where the parties had agreed to submit the dispute to the jurisdiction of a foreign court), the English courts had gotten round the unavailability of the retention method by releasing the security subject

to a term that the defendant provide alternative security outside the court to satisfy the judgment or award of the other tribunal (at 398 and 401).

104 Addressing the mandatory stay situation, he drew a distinction between (a) the attachment of a condition to the release of the vessel, which was permitted (at 404); and (b) the attachment of a condition to the order for a stay of the action, which was not permitted for mandatory stays (at 400). He further considered the principle that a cause of action *in rem* does not merge in a judgment *in personam* but remains available to the person who has it so long as, and to the extent that, such judgment remains unsatisfied (at 405). On that basis, if an arbitration award were made against the defendants and they were unable to satisfy it, the plaintiffs could have the stay of the action removed and proceed to a judgment *in rem* in the action (at 406). In a situation where it could be shown that the defendants would be unable to satisfy the award and the stay might well not be final, the court could exercise its discretion to retain the arrested vessel or to release her subject to a term for the provision of alternative security (at 406). This holding came to be referred to as the "*Rena K* principle".

105 In my judgment, it is not appropriate to apply the "*Rena K* principle" in the present case.

106 First, the Plaintiff's argument that any Chinese judgment it obtains will not be fully satisfied and the *forum non conveniens* stay will thus be lifted for the Plaintiff to pursue a Singapore judgment to be satisfied against the SG Security, is, in substance, no different from the Plaintiff's argument that a Limited Stay should be ordered for the Plaintiff to pursue the exact same course for the exact same purported reason. The Plaintiff runs up against the same difficulty that it is contrary to comity to entertain the premises of the Plaintiff's arguments. *Rena K* was a case concerning a stay of court proceedings in favour

of arbitration where, unlike the present case, no issue of different limitation regimes in competing fora presented. *Rena K* does not address the approach to be taken when a plaintiff's argument is, in essence, that it should be allowed to pursue the stayed action because of a higher limit of liability in the local forum. In contrast, the Singapore courts' position is to reject such an argument (see [69] and [88]–[93] above).

107 Second, the "*Rena K* principle" was developed to meet the needs of cases concerning mandatory stays in favour of arbitration where no conditions could be attached to the stay. In contrast, a *forum non conveniens* stay is discretionary and the court may impose as a condition of the stay an *in personam* requirement for the defendant to provide alternative / equivalent security for the foreign proceedings (*Reecon Wolf* at [20] and [59(a)]; *Golden Trader* at 26G–H). This option obviates the need to resort to the "*Rena K* principle" and respects the restriction in *Eurohope* against retaining security in a Singapore action for the satisfaction of a foreign judgment. Even in the context of stays in favour of arbitration, there is no longer any need to resort to the "*Rena K* principle". The court in *Front Carriers Ltd v Atlantic & Orient Shipping Corp* [2006] 3 SLR(R) 854 held that in Singapore, the enactment of s 7(1) of the IAA (which empowered the courts on ordering a stay of proceedings in favour of arbitration to also order that property arrested be retained as security, or alternative security be provided, for the satisfaction of any arbitration award) effectively did away with the *Rena K* test (at [28]).

108 In the present case, the Plaintiff does not want the provision of alternative security for the Chinese proceedings and has not sought such a requirement as a condition of the *forum non conveniens* stay. This is because, as both parties' Chinese law experts agree, provision of alternative or equivalent security in the Chinese proceedings is unlikely to be well-received by the

Chinese courts not least given the existence of the SJ Limitation Fund.[85] It does not follow, however, that the SG Security should then be retained instead, despite the *forum non conveniens* stay of the Singapore action.

109 Third, another difficulty arising from the "*Rena K* principle" being developed outside the context of a *forum non conveniens* stay is that the "*Rena K* principle" applies a different test to determine whether the stay on an action may be lifted. The test under the "*Rena K* principle" is whether the defendant would be unable to satisfy an award made against it (*Rena K* at 406). In contrast, where a *forum non conveniens* stay is concerned, the stay would be lifted only in the exceptional circumstance where a premise on which the stay was granted turns out to have been mistaken: *Rotary Engineering Ltd and others v Kioumji & Eslim Law Firm and another and another appeal* [2017] 1 SLR 907 ("*Rotary Engineering*") at [24]–[25]. In *Rotary Engineering*, the Court of Appeal gave as an example of such exceptional circumstance a situation where the Singapore court had assumed that another jurisdiction was available, but it later turned out that that other jurisdiction was not willing to take jurisdiction for some reason. In such a case, it would be open to the plaintiff to come back to Singapore and seek the lifting of the *forum non conveniens* stay (at [24]). However, the Court of Appeal stressed that the court's discretion to lift the stay would only be exercised in exceptional circumstances which struck at the very basis on which the stay was granted (at [25]):

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85 NOA at p 3 lines 25–29 and p 4 lines 26–28; 3rd Affidavit of Zhao Jinsong filed on behalf of the Defendant on 16 June 2023 at exh "ZJ-3": 3rd Expert Report at p 6 para 16, p 12 para 27 and pp 14–15 para 38; 2nd Affidavit of Chu Beiping filed on behalf of the Plaintiff on 20 July 2023 at exh "CBP-3": Expert Opinion on Transfer of Security at pp 4–5 paras 6–10 and p 8 paras 18–19; 4th Affidavit of Zhao Jinsong filed on behalf of the Defendant on 16 June 2023 at exh "ZJ-4": 4th Expert Report at p 1 para 5, p 7 para 22 and pp 8–9 paras 23(a)–(c).

> … We emphasise, however, that the discretion to lift the stay would only be exercised in *exceptional circumstances which strike at the very basis on which the stay was granted*. Put bluntly, the court's persisting discretion to lift the stay should not be misconstrued as a standing invitation to litigants to re-agitate settled issues in the event that they later encounter mere setbacks or inconveniences in prosecuting their claims. [emphasis added]

110 The Plaintiff sought to apply the "*Rena K* principle" without being sensitive to the above difference in tests for the lifting of a stay. As a result, the Plaintiff's arguments for the lifting of the *forum non conveniens* stay do not cohere with the principles in *Rotary Engineering*. It is not the Plaintiff's position that the QMC will decline to hear the Plaintiff's claims in the PRC. Instead, the Plaintiff argued that it should be permitted to lift the *forum non conveniens* stay to satisfy out of the retained SG Security any Chinese judgment which the Defendant does not satisfy. However, the *forum non conveniens* stay was *not* granted based on any premise concerning whether the SJ Limitation Fund or the Defendant would be able to satisfy any Chinese judgment. That any Chinese judgment obtained by the Plaintiff might not be satisfied does not strike at the very basis on which the *forum non conveniens* stay was granted.

111 Fourth, further and in any event, the Plaintiff has not established the factual premise for its purported application of the "*Rena K* principle", *viz*, that the Defendant would be unlikely to satisfy a judgment obtained by the Plaintiff in the Chinese proceedings. The Plaintiff alleged that any Chinese judgment will not be satisfied in full or at all because:

(a) the QMC's Administrative Ruling will "wipe out" the SJ Limitation Fund (see [55] above); and

(b) "the Defendant was a self-admitted one-ship company which has since sold its only asset being the ['Sea Justice']".[86]

112 These two allegations were based on new affidavit evidence that was not adduced in SUM 4434 below. The new evidence surfaced in the following manner. After the AR rendered his decision in SUM 4434, the Plaintiff filed HC/SUM 3559/2023 ("SUM 3559") for a stay of execution of the AR's decision pending appeal. In support of SUM 3559, the Plaintiff filed a solicitor's affidavit (6th Affidavit of Liao Yanting) on 11 December 2023 enclosing in draft the 5th Affidavit of Eleftherios Tsouris (which has not been filed to-date). The two new allegations are contained in the draft 5th Affidavit of Eleftherios Tsouris ("Draft 5th ET Affidavit").

113 The Plaintiff placed the 6th Affidavit of Liao Yanting enclosing the Draft 5th ET Affidavit in the bundle of affidavits for the hearing of these appeals, without making any attempt to justify why the new evidence should be considered in RA 246 when it had not been raised in SUM 4434 below. Leaving aside the procedural liberties taken by the Plaintiff, it is significant that the two new allegations simply do not bear out that the Defendant is unlikely to satisfy a judgment obtained by the Plaintiff in the Chinese proceedings.

114 The Plaintiff's allegation that the QMC's Administrative Ruling will "wipe out" the SJ Limitation Fund is based on a single paragraph (para 15) in the Draft 5th ET Affidavit:[87]

> … a recent administrative ruling by the [QMC] … on 16 November 2023 (the "QMC's Administrative Ruling") granting

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86 3rd PWS at para 8.

87 6th Affidavit of Liao Yanting filed on behalf of the Plaintiff on 11 December 2023 at exh "LYT-6": draft 5th Affidavit of Eleftherios Tsouris at para 15.

> the Qingdao Maritime Safety Administration's application for execution [of] its penalty of RMB 691,514,694.37 (which is approximately equivalent to USD 97,121,482.38), *which I am advised by the Plaintiff's Chinese solicitors* will wipe out the limitation fund in the amount of … USD 6,110,162.96 … established by the Defendant in the PRC. [emphasis added]

115 It is not evident from this one paragraph what the connection between the QMC's Administrative Ruling and the SJ Limitation Fund is. As the Defendant rightly points out, this is a question of Chinese law.[88] This must be so since the assertion in the Draft 5th ET Affidavit that the SJ Limitation Fund will be "wipe[d] out" purports to be made on Chinese law advice. However, no Chinese law expert evidence was adduced to substantiate this assertion. The bare assertion in para 15 of the Draft 5th ET Affidavit was made by a lay representative of the Plaintiff. Accordingly, I do not accept the Plaintiff's argument that the QMC's Administrative Ruling will "wipe out" the SJ Limitation Fund as the argument was made without proper evidential basis. In fact, the Plaintiff's counsel conceded at the hearing of RA 246 that this was based on his instructing solicitors' advice but he was not sure where it was expressly stated that the Qingdao Maritime Safety Administration's penalty would be settled out of the SJ Limitation Fund.[89]

116 Further, there is a distinction between, on the one hand, the Defendant being unlikely to satisfy a Chinese judgment, and, on the other hand, the Defendant exercising a legal entitlement to limit its liability under the Chinese judgment to the sum in the SJ Limitation Fund. If the Plaintiff purports to rely on the "*Rena K* principle", the Plaintiff must show the former. However, the Plaintiff's true grouse is that it will recover less under the lower limit in the

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88 NOA at p 21 lines 1–3.

89 NOA at p 13 line 24–p 14 line 2.

PRC, and it thus wishes to avail of the higher limit in Singapore by resorting to the SG Security. The "*Rena K* principle" was not developed to cater for this latter situation.

117 As for the Plaintiff's second allegation that "the Defendant was a self-admitted one-ship company which has since sold its only asset being the ['Sea Justice']", this appears to be based on paras 13 and 14 of the Draft 5th ET Affidavit. The Plaintiff's suggestion here is that the Defendant does not have the financial means to satisfy any Chinese judgment. However, this line of argument strikes me as an afterthought. It was raised only in the Plaintiff's latest set of written submissions filed *after* the hearing of RA 246. At the hearing of RA 246, the Plaintiff's counsel made no submissions on the Defendant's financial means and even acknowledged that the Defendant may well choose to pay off the Chinese judgment.[90] In any event, the evidence that the Defendant is a one-ship company that has sold its vessel, *ie*, the "Sea Justice", does not suffice to establish that the Defendant would have no means to make payment. The "Sea Justice" was, in fact, sold by the Defendant in or around September 2022, *prior* to the vessel's arrest.[91] The Defendant nevertheless procured the funds to provide the security for the release of the "Sea Justice". If the SG Security is returned to the Defendant, the underlying funds would also be available to the Defendant for the satisfaction of any judgment the Plaintiff may obtain. If the Plaintiff's insinuation is that the Defendant would be *unwilling* (as opposed to unable) to make payment, that would require further proof of the Defendant's lack of *bona fides*, but no such evidence is before the court.

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90 NOA at p 14 lines 19–20.

91 1st YC Affidavit at para 7.

118 I come back, therefore, to the "starting point" referred to in *Golden Trader* at 26F–G (see [98] above): given that there is a *forum non conveniens* stay of ADM 61 with no demonstrated probability that there will be judgment in the Singapore action, there must, as a necessary consequence, be a release of the SG Security provided for the Singapore action.

119 Finally, I address the Plaintiff's submission that Lord Goff's *dicta* in *Spiliada* at 483D–E and the case of *Reecon Wolf* support its argument that the default legal position in cases where a *forum non conveniens* stay is obtained is for the security obtained by a plaintiff to be retained.[92] I disagree that these cases support the proposition advanced by the Plaintiff.

120 In *Spiliada* at 483D–E, Lord Goff stated:

> But the underlying principle requires that regard must be had to the interests of all the parties and the ends of justice … For example, it would not, I think, normally be wrong to allow a plaintiff to keep the benefit of security obtained by commencing proceedings here, while at the same time granting a stay of proceedings in this country to enable the action to proceed in the appropriate forum. Such a conclusion is, I understand, consistent with the manner in which the process of saisie conservatoire is applied in civil law countries; and cf. section 26 of the Civil Jurisdiction and Judgments Act 1982, now happily in force. …

121 The phrase "keep the benefit of security obtained" is broad and could refer to (a) retention of security provided in the local proceedings; or (b) provision of alternative security for the foreign proceedings. Where retention of security is concerned, Lord Goff's comment must be viewed in light of what is permitted under s 26 of the CJJA to which Lord Goff expressly referred. In the absence of a provision mirroring s 26(1) of the CJJA in Singapore (see [66]

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92 2nd PWS at paras 3–4; 3rd PWS at paras 2–3.

above), there is no basis to conclude from Lord Goff's comment that the default position under Singapore law is to retain security provided for the release of an arrested vessel even after the Singapore action has been stayed in favour of foreign proceedings. Where provision of alternative security is concerned, it is uncontroversial that the courts can require a defendant to provide alternative security for foreign proceedings as a condition of making a *forum non conveniens* stay, as was done in *Reecon Wolf* (at [59(a)]); however, the Plaintiff decidedly does not seek this. *Spiliada* and *Reecon Wolf* therefore do not support the Plaintiff's proposition that the default position under Singapore law is for security to be retained in *forum non conveniens* stay cases.

122 *Spiliada* also did not concern different limitation regimes in the local and foreign fora and/or the defendant's establishment of a limitation fund in the foreign forum. Lord Goff's *dicta* in *Spiliada* thus does not address the present case where these factors are present. These factors engage considerations of comity (which I have addressed), as well as the Defendant's right to claim limitation in a forum of his choice. On this last note, there was also no mention in *Reecon Wolf* that the defendant had already constituted a limitation fund in Malaysia or that the plaintiff was already otherwise secured in Malaysia. The order in *Reecon Wolf* for the defendant to provide equivalent security to satisfy any judgment the plaintiff may obtain in the Malaysian proceedings thus did not result in the plaintiff being doubly secured. This is in contrast to the present case where the Defendant has constituted the SJ Limitation Fund. I turn to address the considerations of fairness presented by the Defendant's commencement of (and the Plaintiff's participation in) limitation proceedings in the PRC.

Unjust to the Defendant for the Plaintiff to retain the SG Security

123 It is established law that:

(a) A shipowner has the right to claim limitation by action or defence and/or counterclaim: *The "Volvox Hollandia"* [1988] 2 Lloyd's Rep 361 ("*Volvox Hollandia*") at 370.

(b) Where the shipowner commences limitation proceedings, the purpose is for him to obtain a decree *in rem* against all claimants for a single sum limited to the amount of the limitation fund: *Volvox Hollandia* at 366.

(c) The shipowner's right in a limitation action is to have all claims scaled down to their proportionate share of the limited fund: *The "Happy Fellow"* [1997] 1 Lloyd's Rep 130 at 134.

(d) Crucially, the right to claim limitation in any particular forum is a right that belongs to the shipowner alone and that choice is not to be pre-empted by a claimant; a claimant cannot dictate where the limitation fund is to be constituted: *Evergreen* at [47]; *Volvox Hollandia* at 370.

124 With these principles in mind, I take the view that allowing the Plaintiff to retain the SG Security for the purpose of satisfying any judgment against that security would effectively be compelling the Defendant to constitute a limitation fund in Singapore, despite the Defendant having chosen (as was its right) to claim limitation in the PRC. I agree with the AR that this would undermine the Defendant's choice of forum for its limitation action.[93]

125 In oral submissions, the Plaintiff's counsel stated that he took no issue with the general principle that a shipowner has the right to choose his own limitation forum. The Plaintiff's counsel argued, however, that the shipowner

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93 GD at [150].

had to take all the consequences of his choice of forum. This meant that, having chosen to limit in the PRC, where the Chinese limitation regime did not prohibit the Plaintiff from bringing claims and arresting the "Sea Justice" to obtain security outside the PRC, the Defendant had to live with those consequences.[94] I do not accept this argument. In *Evergreen*, Singapore and Belgium were party to different international limitation of liability conventions. Strictly speaking, there was no law prohibiting the defendants in that case from pursuing their action in Belgium despite the plaintiffs' commencement of their limitation action in Singapore. Notwithstanding that, the court in *Evergreen* took the view that by litigating in Belgium, the defendants effectively frustrated or subverted the plaintiffs' choice of forum (Singapore) for pursuing a limitation action (at [47]). While the Plaintiff in the present case may not have been constrained by Chinese laws or the QMC from commencing the Singapore action or arresting the "Sea Justice", this does not change the reality that by retaining the SG Security, the Plaintiff would effectively be compelling the Defendant to constitute a limitation fund in Singapore and undermining the Defendant's choice to pursue limitation in the PRC.

126 Further, allowing the Plaintiff to retain the SG Security when the SJ Limitation Fund has already been constituted would result in the Plaintiff being doubly secured. While *Putbus* concerned the application of English legislation to a specific set of facts and thus is not directly relevant to the present case, there is Singapore authority indicating that it is, in general, unjust for a party to have to provide double security.

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94 NOA at p 5 lines 8–14.

127 In *Evergreen*, after ordering the anti-suit injunction, the court further ordered the security provided for the release of the "Ever Reach" to be returned to the plaintiffs, stating (at [67]):

> As for the application to return the security provided in Belgium, *the bank guarantee was provided before the limitation fund was constituted*. The arrest and security provided to secure the release of the Ever Reach was therefore consistent with the principle in *The Wladyslaw Lokietek* [1978] 2 Lloyd's Rep 520. However, *in view of my decision to grant injunctive relief, the security is to be returned to the plaintiffs*. [emphasis added]

In other words, after the constitution of the limitation fund in Singapore and given that the Belgian proceedings would not continue, the security that the defendants had obtained in Belgium (through the arrest of the "Ever Reach" there) was to be returned to the plaintiffs. The defendants were not permitted to be doubly secured.

128 In *The "Blue Fruit"* [1979–1980] SLR(R) 238, the respondent commenced an action *in rem* against the owner of the vessel "Blue Fruit". The respondent had earlier commenced an action against the owner in the Yokohama District Court where it caused a sister ship owned by that owner, "Universal Princess", to be arrested. Security was furnished and the "Universal Princess" was released. The current owner of the "Blue Fruit" furnished security to obtain the release of the ship from arrest and applied for all further proceedings to be set aside or stayed on grounds that they were vexatious and an abuse of process given that the respondent had commenced an action and obtained security in Yokohama. The High Court refused the application. On appeal, the Court of Appeal found that Singapore was the *forum conveniens* for the action and dismissed the appeal but subject to the respondent's undertaking to discontinue the Japanese action and to discharge the Japanese security (at [14]). While this

case did not concern limitation, it demonstrates more generally that it is not considered just for a party to be doubly secured.

129 In *Reecon Wolf*, where a condition of the *forum non conveniens* stay of the Singapore action was that the defendant would provide equivalent security for the Malaysian action, there was no indication that the defendant had already constituted a limitation fund or otherwise provided security in Malaysia such that the plaintiff would be doubly secured by the condition of the stay.

130 In circumstances where (a) the PRC is the natural and more appropriate forum for the Plaintiff's claims arising from the Collision to be tried; (b) the Defendant has the right to choose where to claim limitation and has chosen to do so in the PRC; and (c) the Defendant has constituted a limitation fund in the QMC (*ie*, the SJ Limitation Fund) and the Plaintiff has registered its claims against the SJ Limitation Fund, I find that justice does not warrant allowing the Plaintiff to retain the SG Security following the *forum non conveniens* stay of ADM 61.

Issue 2: Whether the arrest of the "Sea Justice" should be set aside

The Defendant's case

131 At the hearing of RA 247, the Defendant's counsel confirmed that the Defendant was proceeding only on:[95]

(a) The Plaintiff's "positive misstatement" by way of the Additional Words that the Plaintiff had reserved its rights on the QMC's jurisdiction ("Misstatement").[96]

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95 NOA at p 24 lines 17–23.

96 GD at [122(a)].

(b) The non-disclosure of the 19 April 2022 QMC Hearing and the 27 May 2022 QMC Joint Confirmation which took place in the Inter-Ship Claims.[97]

(c) The non-disclosure of the constitution of the AS CLC Limitation Fund in the QMC.[98]

132 The Defendant submitted that the Misstatement that the Plaintiff had registered a claim against the SJ Limitation Fund with a strict reservation of rights when it had not in fact reserved its rights on jurisdiction, should be viewed together with the Plaintiff's lack of disclosure on its active participation in other proceedings in the QMC, especially those it had initiated. These painted a distorted picture before the Duty Registrar that the Plaintiff was allowed to arrest the "Sea Justice" in Singapore since it had not submitted to the QMC's jurisdiction and was not involved in the proceedings in the QMC.[99] While the AR reasoned that the deficiency in disclosure did not change the fact that the Plaintiff retained the right to apply for the Warrant of Arrest, whether the Plaintiff retained that right is a separate inquiry from whether there was non-disclosure of material facts. Non-disclosure of material facts constitutes a ground, by itself, for setting aside a warrant of arrest. This ground is not limited to the non-disclosure of material facts which go towards *in rem* jurisdiction or *in personam* liability.[100] At the hearing of RA 247, the Defendant's counsel accepted that the three matters relied on by the Defendant (see [131] above) did not go towards considerations of jurisdiction *in rem*.[101] He submitted, however,

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97 GD at [122(c)].

98 GD at [122(d)].

99 DWS at paras 55–57.

100 DWS at paras 61–64.

101 NOA at p 24 line 2.

that they were relevant because issues of different limitation regimes in competing fora and forum shopping commonly arise in ship collision cases.[102]

133 The Defendant further submitted that the material non-disclosure was deliberate and thus special circumstances are required for the court to exercise its discretion against setting aside the arrest.[103] These matters could not have slipped from the Plaintiff's mind at the time of making the Plaintiff's Arrest Affidavit.[104] The Plaintiff had not put forth any cogent explanation for the inclusion of the Additional Words and the lack of reference to the other proceedings in the PRC.[105] Instead, the inference must be drawn that the Misstatement was deliberate because the Additional Words appeared in the English translation exhibited to the Plaintiff's Arrest Affidavit when there was no Chinese equivalent of the Additional Words in the original Chinese document.[106] The court should set aside the Warrant of Arrest in condemnation of the Plaintiff's material non-disclosure.[107]

The Plaintiff's case

134 The Plaintiff accepted that:[108]

(a) A wrong English translation of the Plaintiff's Application for Registration of Claim against SJ Limitation Fund containing the

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102 NOA at p 33 lines 6–13.

103 DWS at para 58.

104 DWS at para 56.

105 DWS at para 59.

106 NOA at p 25 line 30–p 26 line 2 and p 33 lines 15–19.

107 DWS at paras 55–60.

108 NOA at p 29 line 16 and p 30 lines 4 and 10–11.

Additional Words was presented in the Plaintiff's Arrest Affidavit and relied on in the Arrest Application.

(b) The 19 April 2022 QMC Hearing and the 27 May 2022 QMC Joint Confirmation were not disclosed in the Arrest Application.

(c) The constitution of the AS CLC Limitation Fund was not disclosed in the Arrest Application.

135 However, the Plaintiff submitted that these matters were immaterial.[109]

(a) The Plaintiff's Chinese law expert, Prof Chu, had opined that since the Plaintiff's reservation of rights included a reservation of the right to raise any substantive or procedural defence (see [30(b)] above), and since a jurisdictional challenge is a procedural defence under Chinese law, an accurate English translation without the Additional Words did not exclude the Plaintiff's reservation of rights to raise jurisdictional defences before the QMC.[110] The AR rightly considered that the Plaintiff would still be able to challenge the jurisdiction of the QMC even if it did not expressly reserve its rights on jurisdiction.[111]

(b) The AR erred in finding that every proceeding before the QMC preceding the Arrest Application hearing should have been disclosed. The Plaintiff's participation in the 19 April 2022 QMC Hearing and 27 May 2022 QMC Joint Confirmation in the Inter-Ship Claims, which were at the stage of "pre-litigation mediation", would not have had any

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109 PWS at paras 4(c) and 57.

110 PWS at paras 66–67.

111 2nd PWS at para 34.

material bearing on the Duty Registrar's decision whether to issue the Warrant of Arrest.[112]

(c) The fact that NEPIA had constituted an oil pollution limitation fund (*ie*, the AS CLC Limitation Fund) to protect the Plaintiff from third party claims was also irrelevant to the Duty Registrar's decision.[113]

(d) The Plaintiff's lawyers had highlighted the Chinese proceedings, including the Inter-Ship Claims and the QMC's ASI Dismissal Ruling, at the hearing of the Arrest Application.[114]

136 The Plaintiff further submitted that the use of the English translation with the Additional Words was an "innocent and inadvertent error". The Plaintiff's PRC lawyers had an outdated in-house English translation of the Plaintiff's Application for Registration of Claim against SJ Limitation Fund, and this version was inadvertently provided to the Plaintiff's Singapore lawyers. This error came to the Plaintiff's PRC lawyers' attention in late December 2022, and they notified the Plaintiff's Singapore lawyers shortly thereafter. The error was raised and explained by way of affidavit at the earliest opportunity on 25 January 2023.[115] At the hearing of RA 247, the Plaintiff's counsel elaborated[116] that the Defendant had filed a solicitor's affidavit (1st Affidavit of Ng Yuhui) on 13 December 2022 enclosing in draft the 1st Affidavit of Yu Changqing (eventually filed on 18 January 2023), which pointed out the erroneous

112 PWS at para 70; 2nd PWS at para 33; 1st WY Affidavit at paras 38–41.

113 2nd PWS at para 33.

114 PWS at para 71.

115 PWS at para 63.

116 NOA at p 26 lines 17–30.

translation.[117] This is how the Plaintiff's PRC lawyers discovered the error in late December 2022. The Plaintiff filed a solicitor's affidavit (2nd Affidavit of Liao Yanting) on 25 January 2023 enclosing in draft the 1st Affidavit of Wang Yongli (eventually filed on 15 February 2023), which set out the Plaintiff's aforesaid explanation for the error.[118]

Relevant legal principles

137 It is settled law in Singapore that non-disclosure of material facts is an independent ground for setting aside an arrest: *The "Rainbow Spring"* [2003] 3 SLR(R) 362 at [35] and [37]; *The "Vasiliy Golovnin"* [2008] 4 SLR(R) 994 ("*Vasiliy*") at [84].

138 The test of materiality is whether the fact is relevant to the making of the decision whether or not to issue the warrant of arrest, *ie*, a fact which should properly be taken into consideration when weighing all the circumstances of the case, though it need not have the effect of leading to a different decision being made: *Vasiliy* at [85]–[86], citing *The "Damavand"* [1993] 2 SLR(R) 136 at [30]. The test for materiality is objective: *Vasiliy* at [87]. At the stage of an application for a warrant of arrest, the court is concerned with disclosure of material facts which (a) are germane to considerations of jurisdiction *in rem*; and (b) show that the application does not constitute an abuse of the arrest process: *The "Eagle Prestige"* [2010] 3 SLR 294 ("*Eagle Prestige*") at [74], [81] and [84]. The existence of foreign proceedings in respect of the same claim brought in the local forum has been held to be a material fact that should be disclosed as it would otherwise obscure the inevitable consequence that

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117 1st YC Affidavit at paras 26–28.

118 1st WY Affidavit at paras 28–29; PWS at para 63.

proceedings in the local forum would be stayed or that jurisdiction would be declined: *Vasiliy* at [98], citing *The "Kherson"* [1992] 2 Lloyd's Rep 261 at 268.

139 However, even where there has been material non-disclosure, the court retains an overriding discretion whether or not to set aside the arrest: *Vasiliy* at [84], citing *The "Fierbinti"* [1994] 3 SLR(R) 574 at [41]. In exercising this discretion, the court will apply the principle of proportionality in assessing the sin of omission against the impact of such default. This requires a measured assessment of the material facts as well as the circumstances in which the application for arrest was made: *Vasiliy* at [84]. Where non-disclosure was deliberate, the court would exercise its discretion not to set aside the arrest only in a special case: *Treasure Valley Group Ltd v Saputra Teddy and another (Ultramarine Holdings Ltd, intervener)* [2006] 1 SLR(R) 358 at [23].

Decision

140 It is undisputed that the three matters which are the subject of inquiry (see [131] and [134] above) do not go towards jurisdiction *in rem*.[119] Notwithstanding that, these matters would be material if they had a bearing on whether the application for arrest was an abuse of process (*Eagle Prestige* at [74], [81] and [84]), such as by reason of the arrest being sought for the purpose of securing a foreign judgment (*Eurohope* at [25] and [28]–[30]). In this connection, facts showing that Singapore is obviously not the *forum conveniens* for the trial of the Plaintiff's action may be relevant to the propriety of the purpose for which the arrest was being sought, and in turn, whether the Arrest Application was an abuse of process. In my judgment, however, the three

119 NOA at p 24 line 2.

matters were not material, and even if they were, their impact does not warrant setting aside the arrest of the "Sea Justice". I elaborate.

The Misstatement

141 The Misstatement, by way of the Additional Words, was to the effect that the Plaintiff had expressly reserved the right not to accept the jurisdiction of the QMC in respect of the Chinese limitation proceedings commenced by the Defendant. The true position was that the Plaintiff's express reservation of rights clause did not mention the QMC's jurisdiction. The Duty Registrar was not apprised of this.

142 In a paradigm non-disclosure case, a fact is not disclosed, and the court considers the counterfactual, *viz*, what impact disclosure of that fact would have made. In my view, where a misstatement is made, the court should take a similar approach of considering the counterfactual, *viz*, what impact disclosure of the true position would have made. This approach finds support in *The "Nordglimt"* [1987] 2 Lloyd's Rep 470. In that case, the receivers of cargo carried on a vessel commenced an action *in rem* and arrested a sister ship, the "Nordglimt". The plaintiffs' claim was in respect of damage to and shortfall of the cargo. The shipowners applied, among others, to set aside the warrant of arrest on the ground that the plaintiffs had failed to disclose material facts in their application for the issue of an arrest warrant. Two bills of lading had been issued, one genuine and one false. In their application, the plaintiffs had referred to and produced the false bill of lading that incorrectly set out when the cargo was shipped and the quantity of the cargo shipped. The court commented that this was more accurately described as a case of misstatement than non-disclosure (at 473). Parties accepted that the misstatement was due to an oversight and was not deliberate (at 473). Parties also accepted that "if the true facts had been

relied upon, that is to say if the genuine bill of lading had been referred to … there would be nothing wrong with the affidavit and … no reason for the Court to refuse to issue the warrant of arrest" (at 473). The court considered what the impact on the arrest proceedings would have been had the true / accurate position been stated instead of the misstatement and concluded that the inaccuracy was immaterial (at 474):

> … The inaccurate facts did not enable the plaintiffs to obtain any relief which they would not have obtained if they had stated the correct facts. The inaccuracy was central to the description of the plaintiffs' cause of action but was immaterial in that with the substitution of the correct date and the correct quantity of cargo loaded the position would have been precisely the same as that they stated. The plaintiffs have not obtained any advantage by misleading the court. It follows therefore that I will not set aside the warrant of arrest on this ground and that any consequences are adequately dealt with by an appropriate order for costs.

143 In the present case, the true position is that the reservation of rights clause in the Plaintiff's Application for Registration of Claim against SJ Limitation Fund did not mention the QMC's jurisdiction. I reproduce the reservation of rights clause with the Additional Words stricken out to demonstrate how the clause should have read on an accurate translation:

> This Application for Registration of Claim is a procedural application made in response to the application from Sea Justice Ltd for the constitution of a limitation fund for maritime claims. The Applicant hereby declares that all the matters described herein or referred hereto shall not be construed as the Applicant's acknowledgement of any facts or liabilities, ~~or acceptance of jurisdiction of your court or application of law,~~ or waiver of any substantial or procedural defenses. The Applicant also reserves the right to object to the right of the Respondent to limit its liabilities and the limitation amounts.

As can be seen, the clause without the Additional Words is *silent* as regards jurisdiction. It does not convey that the Plaintiff had in fact submitted to, or would not be objecting to, the jurisdiction of the QMC.

144 I find that the true position in respect of the reservation of rights clause is not a material fact as it is not relevant to the Duty Registrar's decision whether or not to issue the Warrant of Arrest. First, while the AR took the view that an express reservation of rights not to accept the QMC's jurisdiction signalled an intent to proceed with the Singapore action,[120] I do not think that the converse follows. The actual wording of the clause, *sans* any express reservation on jurisdiction, was simply neutral as regards the Plaintiff's stance on the QMC's jurisdiction in the Chinese limitation proceedings.

145 Further, the fact that the Plaintiff said nothing about the QMC's jurisdiction when reserving its rights in relation to the Chinese limitation proceedings is not determinative of whether Singapore is the *forum conveniens* for the trial of the Plaintiff's liability claims in ADM 61. After all, limitation and liability may, in principle, be tried separately (*Volvox Hollandia* at 371).

Non-disclosure of the 19 April 2022 QMC Hearing and the 27 May 2022 QMC Joint Confirmation

146 The 19 April 2022 QMC Hearing and the 27 May 2022 QMC Joint Confirmation took place in the Inter-Ship Claims. Although the AR stated that the Inter-Ship Claims were not disclosed to the Duty Registrar,[121] the parties are in agreement that the Inter-Ship Claims *were* disclosed in the Plaintiff's Arrest Affidavit and I find that this is borne out on a perusal of the documents (see [30(c)] and [30(d)] above).[122] Some confusion may have arisen in the hearing below because the term "Inter-Ship Claim" was not used in the Plaintiff's Arrest Affidavit although the actions themselves were disclosed. In my view, the key

120 GD at [137].

121 GD at [124], [138(a)] and [139].

122 2nd ET Affidavit at paras 22 and 23; NOA at p 25 lines 20–21.

fact relevant to the Duty Registrar's decision whether or not to issue the Warrant of Arrest was the existence of the ongoing Inter-Ship Claims and this fact was disclosed to him. The 19 April 2022 QMC Hearing and the 27 May 2022 QMC Joint Confirmation related to certain submissions made and evidence tendered for the Inter-Ship Claims (see [26] and [27] above). These events did not indicate that the Inter-Ship Claims had progressed to an advanced stage. In fact, it is not disputed that the Inter-Ship Claims were at the "pre-litigation mediation" stage at the time.[123] I therefore find that these two particular steps in the Inter-Ship Claims are not material facts as they are not relevant to the Duty Registrar's decision whether or not to issue the Warrant of Arrest.

Non-disclosure of NEPIA's constitution of the AS CLC Limitation Fund

147 The AS CLC Limitation Fund was established to address oil pollution claims that third parties might have against the Plaintiff (see [14] and [18] above). It does not pertain to the Plaintiff's claims against the Defendant. In so far as the Plaintiff claims an indemnity from the Defendant in respect of oil pollution claims brought by third parties against the Plaintiff, these oil pollution indemnity claims are part of the claims brought in the Plaintiff's Inter-Ship Claim and are registered by the Plaintiff against the SJ Limitation Fund.[124] I therefore find that the constitution of the AS CLC Limitation Fund is not a material fact as it is not relevant to the Duty Registrar's decision whether or not to issue the Warrant of Arrest. In this respect, I diverge from the AR's view that every proceeding in the QMC preceding the hearing of the Arrest Application should have been disclosed.[125]

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123 2nd YC Affidavit at para 26; PWS at para 70.

124 NOA at p 30 lines 23–31.

125 GD at [145].

Conclusion

148 Given my view that there was no material non-disclosure, there is no basis to set aside the Warrant of Arrest. Even if I am wrong on the relevance or materiality of any of the three matters, I consider that the impact of their non-disclosure is marginal. As the key matters of the Defendant's Chinese limitation proceedings and the Inter-Ship Claims were disclosed, disclosure of these three subsidiary matters would not have moved the needle on the Duty Registrar's decision. Were it necessary to decide, I would not, applying the principle of proportionality in assessing the sin of omission against the impact of default, exercise my discretion to set aside the Warrant of Arrest.

149 In light of my decision, there is no need for me to determine whether the Misstatement and the other two non-disclosures were deliberate. However, as the Defendant pressed its case that the erroneous translation giving rise to the Misstatement must have been deliberate,[126] I make the following observations. The Plaintiff's explanation is that its PRC lawyers had an *outdated* in-house English translation of the Plaintiff's Application for Registration of Claim against SJ Limitation Fund, and this version was inadvertently provided to the Plaintiff's Singapore lawyers (see [136] above). The relevant inquiry would thus be whether the *outdated* translation was deliberately provided, and not whether a mistranslation was deliberately made, for the purposes of the Arrest Application. The Plaintiff's bare assertion that its PRC lawyers had inadvertently provided the outdated translation to its Singapore lawyers, without further explanation of how the asserted inadvertent error came to be made, is not ideal. In general, any litigant claiming inadvertence to excuse a particular action should, minimally, explain how and why the purported inadvertence

126 NOA at p 25 line 30–p 26 line 2.

came to pass. Having said that, and returning to the present case, if the outdated translation was deliberately provided by the Plaintiff's PRC lawyers for the purposes of the Arrest Application, that would be tantamount to lawyers setting out to deceive the court. Were a determination necessary, I would, on balance, hesitate to make such a finding lightly, without more evidence of such improper conduct.

Issue 3: Whether the disbursements allowed for the Defendant's expert's fees should be further reduced

The Plaintiff's case

150 The Plaintiff submitted that the AR erred in finding that only "a small reduction of 20%" of Prof Zhao's fees was warranted despite finding that Prof Zhao's evidence on the issue of submission to jurisdiction of the Chinese courts could not be relied on as he gave a diametrically opposing view in another case and provided no explanation for his change in opinion.[127] The Plaintiff submitted that the work done by Prof Zhao in preparing his first and second reports "should be entirely disregarded, or at the very least, that a much higher reduction of 70%–80% should have been imposed on Prof Zhao's fees".[128]

The Defendant's case

151 The Defendant pointed to *Kiri Industries Ltd v Senda International Capital Ltd and another* [2022] 3 SLR 174 ("*Kiri*") where the Singapore International Commercial Court ("SICC") held that expert witness fees are generally recoverable as long as they are reasonably incurred (at [102]); and to *Centre for Laser and Aesthetic Medicine Pte Ltd v GPK Clinic (Orchard) Pte*

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127 PWS at paras 4(b), 76–78; 2nd PWS at para 35.

128 PWS at para 78; 2nd PWS at para 36.

Ltd and others and another appeal [2018] 1 SLR 180 ("*GPK*") where the Court of Appeal held that "the fact that an expert's views were ultimately not accepted in full by the court does not mean that the costs of engaging the expert were unreasonably incurred" (at [96]). The Defendant submitted that while the AR did not rely on Prof Zhao's opinion on the issue of submission to jurisdiction, it was within his discretion to find that Prof Zhao's fees were reasonably incurred.[129]

Decision

152 In addition to the legal propositions cited by the Defendant at [151] above, in *GPK*, the successful plaintiff was allowed to recover its expert's fees despite the trial judge rejecting the plaintiff's expert's method of computing damages. The Court of Appeal held that the trial judge, who had the benefit of hearing the expert's testimony, found his costs to be reasonably incurred, and the Court of Appeal saw no reason to disturb the trial judge's finding (at [96]). In *Kiri*, the SICC drew a distinction between the situation where the costs associated with expert evidence were unreasonably incurred, and a situation where the expert evidence was reasonably sought (and the associated fees were reasonably incurred) but was eventually not accepted by the court. In the latter case, the party would still be entitled to disbursements (at [102]).

153 In the present case, the Plaintiff's position is not that Prof Zhao's fees were excessive or unreasonable in amount, or that the costs were for work that should not have been done in the first place. Rather, the Plaintiff's objection is that Prof Zhao's evidence on the issue of whether the Plaintiff had submitted to the jurisdiction of the QMC was inconsistent and was not relied on by the AR

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129 DWS at paras 99–101.

in this respect. However, the AR also found that the issue was not completely addressed by the Plaintiff's Chinese law expert and ultimately made no finding on whether the Plaintiff had submitted to the jurisdiction of the QMC.[130] This issue pertained to the *forum non conveniens* analysis.

154 The *forum non conveniens* stay application is not the subject of challenge in the appeals before me. I have not had to consider the parties' Chinese law experts' opinions in relation to *forum non conveniens* issues. The person best placed to make an assessment of the value derived from Prof Zhao's opinions is thus the AR. Particularly in these circumstances, due weight must be given to his decision (see also *Tan Boon Heng v Lau Pang Cheng David* [2013] 4 SLR 718 at [22]). In my view, the AR undertook a reasoned and thorough assessment, in line with the relevant legal principles, of the disbursements to be allowed for Prof Zhao's fees. I see no basis for interfering with the exercise of his discretion. Further, no copy of Prof Zhao's bill was placed before me in RA 246. This is all the more reason I should not interfere with the exercise of discretion by the AR, who *had* reviewed Prof Zhao's bill.

Conclusion

155 I dismiss RA 246 and RA 247. The AR's orders that (a) the SG Security is to be returned to the Defendant; (b) the Defendant's application to set aside the Warrant of Arrest is dismissed; and (c) the Plaintiff is to pay the Defendant S$88,786.53 for Prof Zhao's fees, stand.

130 GD at [82] and [99]–[102].

156 Unless parties agree on costs, they should file their written submissions on costs, limited to five pages, within one week from the date of this judgment.

Kristy Tan
Judicial Commissioner of the High Court

Timothy Tan, Gho Sze Kee and Liao Yanting (Asia Legal LLC) for the plaintiff in ADM 61 / appellant in RA 246 / respondent in RA 247;
Loh Wai Yue, John Seow, Kunal Mirpuri and Gerry Zhang (Incisive Law LLC) for the defendant in ADM 61 / respondent in RA 246 / appellant in RA 247.