

Singapore Shipping Law Forum 2021

Anti-suit Injunction in Maritime Disputes – A Trend that Threatens to be out of Control

Speaker

The Honourable Justice Belinda Ang Saw Ean

Supreme Court of Singapore

21 October 2021, 6.30pm to 7.45pm via Zoom

The Centre for Maritime Law (CML), at the National University of Singapore, Faculty of Law, held the 4th Singapore Shipping Law Forum via Zoom on the evening of Thursday, 21 October 2021. Over 100 participants, consisting of practitioners, academics and law students attended the event.

CML's Director, Professor Stephen Girvin, welcomed and introduced the Honourable Justice Belinda Ang Saw Ean of the Supreme Court of Singapore as the speaker for this Forum. He highlighted several of Her Honour's leading cases in the past two decades, including *Pirelli General plc v PSA Corp Ltd* [2003] SGHC 31, *The Vinalines Pioneer* [2016] 1 Lloyd's Rep 278, *The Dream Star* [2017] 2 Lloyd's Rep 538, and *The Bum Chin* [2020] 1 Lloyd's Rep 130.

Justice Ang spoke on the topic "Anti-suit Injunctions in Maritime Disputes: A Trend that Threatens to be out of Control". Her Honour's speech focused on three broad areas.

Justice Ang first discussed the grant of the anti-suit injunction against non-parties (ie persons who are not direct contracting parties to the contract containing a jurisdiction agreement). These are "quasi-contractual" anti-suit injunctions. Her Honour began by observing that in the *Sea Premium* line of cases, English courts had extended the grant of anti-suit injunctions from a contractual basis to include a "quasi-contractual" basis. The Singapore High Court in *Hai Jiang 1404 Pte Ltd v Singapore Technologies Marine Ltd* [2020] 4 SLR 1014 was persuaded to follow this extension of anti-suit injunction jurisprudence. Her Honour noted that this had attracted some criticism. Her Honour proceeded to examine various categories of non-parties, such as subrogation, assignment, statutes that confer rights of suit onto a non-party, and statutes that confer onto injured parties a direct right of action against the wrongdoer's insurer, as well as inconsistent contractual claims. Her Honour rounded up this part of her discussion by concluding that the quasi-contractual anti-suit injunction is a concept of considerable elasticity, and that courts must be wary of unduly expanding the contractual anti-suit injunction beyond the ambit of principle and common sense.

Second, Justice Ang discussed the possibility of a claim for damages for breach of a forum agreement, referring to English case law granting such claims. Her Honour identified that it

remained an open question whether the Singapore court should follow the liberal approach taken by the English courts. Her Honour noted that the legal basis of the court's power to award such damages might be based on tortious or non-contractual wrongs, equitable wrongs, and contractual wrongs. Turning to the issue whether the court should exercise its power to award such damages, Her Honour observed that the reasons in favour of awarding damages included upholding the parties' forum agreement and filling in the gaps occasioned by the limitations of the anti-suit injunction. However, principled limits to such damages must be worked out due to the risk of rendering foreign judgments nugatory, which in turn raises concerns regarding comity. Her Honour suggested three possible ways in which the damages remedy could be limited in a principled and coherent manner: causation, measure of damages, and other contractual or equitable doctrines limiting recovery. Her Honour noted that the possibility of a damages remedy became murkier when it came to quasi-contractual cases.

Third, Justice Ang discussed enforcement of anti-suit injunctions. Her Honour highlighted potential methods of enforcement, such as committal proceedings, refusing recognition of foreign judgments obtained in breach of the anti-suit injunction, and the use of anti-enforcement injunctions. Her Honour noted that while the enforcement of an anti-suit injunction by a third party court is highly unlikely, third party courts may be more open to assisting by other procedural means.

Following Justice Ang's speech, CML's Deputy Director, Associate Professor Paul Myburgh, delivered the concluding remarks. Prof Myburgh observed that anti-suit injunction litigation has always been highly controversial, and that this injunction is deeply distrusted outside of the common law world. Quasi-contractual anti-suit injunctions can cause bafflement to courts in civil law jurisdictions due to unclear conceptual underpinnings. The use of anti-suit injunctions should be kept under control in this globalised world where international judicial cooperation is essential. Prof Myburgh ended his remarks by inviting participants to join him in giving Justice Ang a round of applause to conclude the Forum.

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