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The "Reecon Wolf" – Forum Non Conveniens Revisited

BACKGROUND

The "Reecon Wolf" [2012] SGHC 22 was an appeal before a Judge of the Singapore High Court from the decision of the Assistant Registrar ("AR") refusing to stay an admiralty action between foreigners arising from a collision between foreign vessels of different nationalities.

The collision was between the Capt Stefanos (the Plaintiffs' vessel) and the Reecon Wolf (the Defendants' vessel) in the Straits of Malacca.

Both the Plaintiffs' and Defendants' claims are within the admiralty jurisdiction of the High Court of Singapore and the High Court of Malaya respectively. The substantive issues in both proceedings were the same i.e. which vessel was liable for the collision, and, if both vessels were negligent, how would liability be apportioned between them?

Both the Plaintiffs and Defendants then instituted admiralty actions in Singapore and Malaysia respectively as well as stay applications in both jurisdictions.

The Reecon Wolf sets out the application of the principles enunciated in the leading case of Spiliada Maritime Corporation v Cansulex Ltd [1987] AC 460 ("The Spiliada") when deliberating a stay application on grounds of forum non conveniens. The guidelines as provided by the House of Lords in the Spiliada case was made part of the local law when adopted by the Singapore Court of Appeal, most recently in the decision of JIO Minerals FZC and others v Mineral Enterprises Ltd [2011] 1 SLR 391, and now in The Reecon Wolf itself.

In summary, the Spiliada case enunciates a 2-stage test which the Court would apply when exercising its discretion to decide if a matter should be stayed on the basis it is not the natural or appropriate forum to hear the case. Stage 1 requires the Defendant to discharge the burden of proof that Singapore is not the natural or appropriate forum for the trial of the action ***and*** there is another available forum more appropriate than Singapore. If this is satisfied, the court will ordinarily grant a stay unless the Plaintiff can show why the stay should not be granted. The second stage of the test requires the Plaintiff to discharge the burden of showing that it will suffer a juridical or personal disadvantage if the stay application was allowed.

The importance of the Reecon Wolf lies in two factors, namely the issue of international comity and the relevance of the limitation regimes to

OON & BAZUL LLP
Tel: (65) 6223 3893, Fax: (65) 6223 6491
Email: general@oonbazul.com
Website: www.oonbazul.com

juridical and personal advantage. Although both the Spiliada and the JIO Minerals case had given guidance to both issues, the Court in Reecon Wolf had gone to great lengths in explaining the importance of achieving international comity when deciding such applications. The Court also made it very clear that they will not view with favour any argument which suggests that a party would suffer a juridical or personal disadvantage due to the applicable limitation regime of the 1957 Limitation Convention.

JUDGMENT

Stage 1 of the Spiliada test

The Court narrowed down the issues to be dealt with at the first stage of the Spiliada test to 3 factors, namely concurrent proceedings, place of the tort and international comity. A reading of the judgment shows that there was a certain amount of overlap in the judge's comments on concurrent proceedings and international comity although they were dealt with under separate headings.
In summary, the court made the following comments on the said 3 factors under the first stage of the test.

(a) Concurrent proceedings

The Judge was of the view that both Malaysian and Singapore Courts would have in rem jurisdiction over such a matter. In that regard, both parties would have a basis to commence their respective actions as of right in either jurisdiction. The Judge noted that both sets of action were founded on the same cause of action and the issues in disputes were largely similar (e.g. questions on the failure of the Reecon Wolf's steering gear, the reason for such failure, whether the Defendants were at fault and if so, the degree of such fault including contributory negligence etc.). There were therefore obvious overlaps between such issues in each jurisdiction and the application of substantially the same collision regulations in determining liability would lead to a situation where there is a real risk of the Courts giving conflicting judgments. In light of the fact that both proceedings were not at a very advanced stage and it was not in dispute that the collision occurred in Malaysian territorial waters, the Judge gravitated to the position that it may be more appropriate for proceedings to continue in Malaysia rather than Singapore. In coming to this decision, the Judge relied on the view of the learned author of "Civil Jurisdiction And Judgments" which expressed the view that in cases where it is clear that "foreign proceedings will continue despite the existence of English proceedings, it [would] be more appropriate to allow parties' rights to be determined by the foreign court rather than to create the conditions for a conflict of judgment".

(b) Place of the tort

There was no dispute between the parties that the collision occurred in Malaysian territorial waters. The Judge made it clear whilst the jurisdiction in which the tort was committed is normally the forum in which it is just and reasonable for the wrongdoer to answer for his wrongdoing, this is only a prima facie position. In short, unless the Plaintiffs are unable to show why Malaysia would not be the more appropriate forum, the Court would apply the prima facie position and grant the stay in favour of Malaysia. In this case, despite various arguments floated by the Plaintiffs, they were not able to displace the prima facie position. Further and in addition to the above, the Judge also took onboard the decision of the Malaysian Court to exercise jurisdiction in this matter on the basis that it was a more appropriate forum.

In light of the above, the Judge decided this issue in favour of the Defendants.

(c) International comity

International comity is a doctrine that is acknowledged by the courts of Singapore and will be given due regard in a proper case. Unless international comity offends the public policy of the domestic legal system, the former will prevail.

Here, it is common ground that the Spiliada principles are applicable in Malaysia. The Malaysian Court having applied these principles and found that Malaysia was the more appropriate forum to resolve the issues constitutes a weighty factor in favour of the Defendants. Not only that, Belinda Ang J herself was of the view that Malaysia was the natural forum. Hence, to stay the Singapore action would avoid the inconvenience and expenses incurred for preparation of two trials and the risk of conflicting judgments. In short, the Judge also ruled this point In favour of the Defendants.

Given that all three factors were in favour of the Defendants' position, the Defendants had satisfied its burden as set out in the first stage of the Spiliada test. The Court would stay the action unless the Plaintiffs are able to show that it would suffer a personal or juridical disadvantage if the stay application was allowed.

Stage 2 of the Spiliada test

As for Stage 2 of the test, Belinda Ang J was of the view that counsel for the Plaintiffs had failed to put forth any personal or juridical advantage that the Plaintiffs would be deprived of should the Singapore action be stayed. The Court made it very clear that it will not draw a comparison between the merits of two statutory limits (i.e. that of the 1957 Limitation Convention in Malaysia and that of the 1976 Limitation Convention in Singapore) and will not take the position that being subjected to lower limits of liability justifies a dismissal of the stay application.

OBSERVATIONS

The case is not an outright indication that Singapore would cease to be the more appropriate forum if a collision between two foreign vessels occurred within the territorial waters of another jurisdiction. Where the factors are pretty much balanced in favour of both parties, the court will take into account the existence of concurrent proceedings, if any, the place of the commission of the tort and international comity when evaluating the more appropriate forum for the trial.

Two points can be taken away from this decision: First, the stay application taken out by the Defendants was heard before the Plaintiffs' stay application although the latter had filed its application at an earlier date. Hence, during the hearing in the first instance, the AR did not have to consider the decision of a foreign court. However, when the Defendants' appeal regarding the outcome of the stay application was heard, Belinda Ang J had to take into account the dismissal of the Plaintiffs' stay application where the High Court of Malaya had ruled that Malaysia was the appropriate forum for the resolution of the issues between the parties, and the Plaintiffs' intention to appeal against that ruling.

It is evident that our courts do not merely pay lip service to "international comity" – regardless of the AR's decision in the first instance, it is evident that the Court would have factored in the outcome of the Malaysian stay application before coming to a decision on the appeal. By allowing the Defendants' stay application, the learned Judge was giving due regard to international comity. She was trying to prevent a situation where there would be a race for the parties to be first to obtain judgment favourable to them as well as the likelihood of inconsistent, conflicting judgments.

On the facts of the case, it is unclear as to whether the Malaysian Court took into account the outcome of the Singapore stay application hearing in the first instance before coming to its decision.

Second, what is of importance is that the Court has once again made very clear its stand with respect to the argument that being subject to a lower limitation fund in an alternative forum is a personal or juridical disadvantage. This argument has been raised in the past and now the Court has firmly stated that any future attempts to do so will be rejected. This illustrates that our Courts acknowledges the doctrine of international comity and will do their part in enforcing it.

For more information, please contact:

MOHAMED GOUSH MARIKAN
Partner

Advocate & Solicitor, Singapore
Barrister at Law, Lincoln's Inn

Email : goush@oonbazul.com

Phone : (65) *6223 3893* / (65) *9825 9763*

SYED ISA BIN MOHAMED ALHABSHEE
Associate

Advocate & Solicitor, Singapore

Email : isa@oonbazul.com

Phone : (65) 6223 3893 / (65) 8126 2177