

Court of Appeal Sets Out Proper Approach to Anti-suit Injunctions Based on Arbitration Agreements

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Introduction

When choosing to arbitrate, parties often draft their arbitration agreement in broad terms with the aim of having any disputes heard together in one forum. In such cases, the arbitration agreement will usually state that any dispute "arising out of or in connection with [the underlying contract]" is to be resolved by arbitration.

However, what are the limits on the expansive scope intended by this phrase? If a tortious claim between the parties arises during the performance of contractual obligations, would such a claim be within the scope of the arbitration agreement?

In *COSCO Shipping Specialized Carriers Co., Ltd. v PT OKI PULP & PAPER MILLS & 2 Ors* [2024] SGCA 50, the Court of Appeal ("**CA**") applied a two-stage test to answer this question. It emphasised that the key inquiry was to ascertain the nature of the competing claims and defences raised, but without determining the substantive merits of either claim or defence. Ultimately, it found that the tortious claim was covered by the arbitration agreement.

The appellant was successfully represented by Senior Partner [Toh Kian Sing, SC](#) and Partner [Dedi Affandi](#), together with Associates Hazel Cheah and Mu Muyu, of Rajah & Tann Singapore's [Shipping & International Trade Practice](#).

Background

The appellant ("**CSSC**") was the owner of the vessel *Le Li* ("**Vessel**"). CSSC entered into several contracts of carriage with the first respondent ("**PT**") by way of nine bills of lading ("**BLs**") in respect of certain cargo. The BLs incorporated an arbitration agreement which stated that "any dispute arising out of or in connection with this Contract ... shall be referred to and finally resolved by arbitration in Singapore".

After the cargo was loaded, the Vessel allided with a trestle bridge owned by PT during its departure from the terminal, causing part of the bridge to collapse ("**Incident**"). PT commenced a tortious claim against CSSC in Indonesia for losses arising out of the Incident ("**Indonesian Proceedings**"). In turn, CSSC applied for an anti-suit injunction to restrain the Indonesian Proceedings ("**ASI**"), and commenced arbitral proceedings against PT for breaches of a safe port warranty ("**Warranty**") in the BLs.

At first instance, the High Court Judge declined to grant the ASI, finding that the Indonesian Proceedings were not in breach of the arbitration agreement. The appellant appealed, leaving the CA to consider whether the disputes in the Indonesian Proceedings fell within the scope of "arising out of or in connection with" the underlying contract.

Principles Outlined by the CA

The CA found that a two-stage test should be applied to determine the scope of the phrase "arising out of or in connection with". First, the court should determine what are the matters or disputes which the parties have raised (or foreseeably will raise) in the foreign court proceedings. Second, it should ascertain whether such matters or disputes fall within the scope and ambit of the arbitration agreement.

In parsing these issues, the CA set out the following principles:

1. Although various tests have been developed to assist the courts in such inquiries, they were not intended to be applied in a formulaic manner. Indeed, there could be no universal test since the ascertainment of the relevant "connection" would invariably be a highly fact-specific inquiry.
2. The inquiry does not start with a presumption that parties must have intended for all disputes to be heard together. If the examination of the text of the agreement and the nature of the competing claims indicate that a claim is not within its ambit, then the courts should not steer away from the resulting outcome of forum fragmentation.
3. In determining the matters or disputes which the parties have raised or foreseeably will raise in the foreign court proceedings, the courts must ascertain the substance of the dispute or disputes between the parties. This also involves a consideration of the defences and all reasonably foreseeable defences to the claim or part of the claim.
4. The "matter" jurisprudence under the approach for a stay of proceedings under section 6 of the International Arbitration Act 1994 ("**IAA**") was likewise applicable to the approach for an ASI based on an arbitration agreement. Both are predicated on the breach of a valid arbitration agreement between the parties. As such, when considering an application for an ASI, the courts should not be asked to consider the merits of an identified or reasonably foreseeable defence or competing claim.

Application to the Present Facts

The CA found that the parties must have contemplated that a pure tort claim for damage to the trestle bridge should be subject to the arbitration agreement.

1. The damage was caused during the performance of the contracts of carriage, which specified that the cargo was to be loaded at that particular jetty with the trestle bridge.
2. The defence of "errors of navigation" ("**Defence**"), which would foreseeably be raised by CSSC in the Indonesian Proceedings, was contractually provided for. The CA noted again that the merits of this Defence was generally irrelevant. It sufficed for CSSC to identify that this Defence was contractually provided for, and that there appeared to be authorities supporting its assertion.
3. The common "connection" between the first respondent's tortious claim in Indonesia, the Defence, and the appellant's counterclaim for breach of the Warranty ultimately related to the cause of the allision.
4. Moreover, for a claim or defence to be causatively connected, there was no requirement that they must be causatively connected to the *legal relationship* under the contract in question. The fact that PT's claim was brought in its capacity as a jetty owner (rather than a shipper) did not change the fact that the allision occurred in the performance of the contract of carriage.

As such, PT's tortious claim arose out of or were in connection with the BLs, and was subject to the arbitration agreement. The Indonesian Proceedings had therefore been commenced in breach of the arbitration agreement, and the CA granted the ASI accordingly.

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