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Dispute Resolution
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A Convenient Truth: The Court of Appeal clarifies the *forum non conveniens* doctrine in the era of the Singapore International Commercial Court

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Introduction

The Singapore International Commercial Court ("**SICC**") was launched in 2015 as an alternative to international arbitration and domestic courts, allowing commercial parties with no ties to Singapore to litigate their claims in Singapore within a court system geared towards international disputes. A question that had lingered since then is where the doctrine of *forum non conveniens* stands given the establishment of the SICC.

A recent decision by the Singapore Court of Appeal ("**CA**") provides a degree of reassurance that the Singaporean courts will continue to apply a principled approach to the question of jurisdiction, weighing the potential benefits of the SICC alongside other relevant considerations.

Facts

The decision in *Rappo v Accent Delight International Ltd and another and another appeal* [2017] SGCA 27 arose from two appeals against the decision of the High Court judge who dismissed the Appellants' respective applications for a stay of proceedings in Singapore.

The Appellants were Tania Rappo ("**Rappo**"), Yves Charles Edgar Bouvier ("**Bouvier**") and MEI Invest Limited ("**MEI**") - a company controlled by Bouvier. The two Respondents were Accent Delight International Ltd and Xitrans Finance Ltd, companies owned by the family trust of Dimitry Rybolovlev, a Russian magnate ("**Rybolovlev**").

Rappo was a family friend of the Rybolovlev family and introduced Bouvier to Rybolovlev. Subsequently, Bouvier was engaged to source and assist in procuring artworks for Rybolovlev, who purchased the artworks via the Respondents. This arrangement went on for about a decade.

In 2014, the relationship between parties deteriorated. Rybolovlev discovered that Bouvier had sold the various artworks to Rybolovlev at a higher price than the original selling price. Essentially, Bouvier profited from the arbitrage between the original selling price and the price Rybolovlev paid via the Respondents. It was the Respondents' position that Bouvier was only engaged as an agent and was only entitled to a 2% fee for every transaction.

The Respondents' Swiss counsel made a criminal complaint to the General Prosecutor of the Principality of Monaco. This resulted in the arrest of Rappo and Bouvier who were charged with fraud and money laundering offences. Subsequently, the Respondents applied to join the criminal proceedings as civil claimants (the "**Monaco Civil Proceedings**").

In parallel, the Respondents commenced civil proceedings against the Appellants in Singapore (the "**Singapore Proceedings**"). They claimed that Bouvier had breached fiduciary duties that he owed to them as their agent, had perpetrated fraudulent misrepresentation and had committed the tort of deceit. It was further alleged that MEI and Rappo were liable for dishonest assistance and/or knowing receipt, and in addition, that all the Appellants had conspired wrongfully to cause loss to the Respondents.

Subsequently, the Appellants applied to the High Court for a stay of the Singapore Proceedings and were unsuccessful. Their main arguments were that the Monaco Proceedings were *lis alibi pendens* and that either Switzerland or Monaco was the more appropriate forum for determination of the Respondents' claims.

The High Court dismissed the stay applications on the condition that the Respondents discontinue the Monaco Civil Proceedings. Furthermore, the High Court urged the parties to agree to a transfer to the SICC or come back before the court to present further arguments on whether a transfer to SICC should be ordered.

Four key issues arose on appeal to the CA: (i) whether the Respondents had complied with the High Court's condition that they discontinue the Monaco Civil Proceedings, (ii) whether the Appellants were entitled to run a forum election argument concurrently with a *forum non conveniens* argument, (iii) whether Singapore was *forum non conveniens* and (iv) whether the proceedings in Monaco were *lis alibi pendens*.

The CA found that the Respondents had complied with the High Court's condition for the stay and that the Appellants were entitled to argue cumulatively that the Respondents should be put to forum election and that Singapore is *forum non conveniens*. The CA did not find it necessary to decide the *lis alibi pendens* issue.

In this client alert, we focus on a distinct aspect of the CA's *forum non conveniens* analysis that has a much broader significance; specifically, whether the possibility of a transfer of the dispute to the SICC is a relevant factor in determining whether Singapore is the most appropriate forum.

The SICC Factor

The CA confirmed that in deciding whether Singapore is *forum non conveniens* such that proceedings should be stayed, the applicable test continues to be the one laid out in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 (the "**Spiliada Test**"). Under the Spiliada Test, the court has to consider whether, *prima facie*, there is some other available forum that is more appropriate for the case to be tried. If so, the court will ordinarily grant a stay unless justice requires that a stay should nonetheless not be granted. The first part of this test requires an analysis of all factors that connect the dispute with the various competing jurisdictions.

The Appellants argued that the High Court judge had erroneously taken into account the availability of a transfer to the SICC when applying the Spiliada Test.

On the facts, the CA held that the High Court judge had not taken the SICC into account when it rejected the stay application. However, the CA nonetheless opined that the availability of a transfer to the SICC could be a factor within the broader *forum non conveniens* analysis, albeit not the only determinative factor.

Importantly, the CA held that the mere presence of the SICC should not result in an "*unprincipled jurisdictional grab resulting in the Singapore courts' refusal to grant a stay in all cross-border commercial cases*". It emphasized where parties argue that "*the possibility of a transfer to the SICC weighs in favour of an exercise of jurisdiction by the Singapore courts, [this] must be grounded in specificity of argument and proof by evidence. A plaintiff must articulate the particular quality or feature of the SICC that would make it more appropriate for the dispute to be heard in Singapore by the SICC, as well as prove that the dispute is of a nature that lends itself to the SICC's capabilities*". For example, the fact that a law other than Singapore law applies to the dispute at hand might carry less weight in the *forum non conveniens* analysis if the judges sitting in the SICC are familiar with and adept at applying that foreign law.

In considering the possibility of a transfer to the SICC, the court must also consider whether the requirements for a transfer under the Rules of Court are likely to be met; namely, the claims are of an "international and commercial nature", the parties do not seek any relief in the form of, or connected with, a prerogative order, and the High Court deems it more appropriate to be heard in the SICC (Order 110, Rules 7 and 12).

The CA also affirmed that the factors that are normally considered under the Spiliada Test – personal connections, connections to events and transactions, applicable law etc. – continue to remain as relevant and significant as before.

Comments

The decision from the CA provides vital guidance on the effect of the SICC on jurisdictional issues before the Singapore courts.

Professor Yeo Tiong Min in the *Eighth Yong Pung How Professorship of Law Lecture 2015* had highlighted two possible extreme effects of the SICC on jurisdictional issues. One view was that the High Court would consider the question of the exercise of international jurisdiction without reference to the existence of the SICC at all. The other view is that with the establishment of the SICC, instead of staying proceedings, all proceedings can now be heard in Singapore, either in the High Court or the SICC.

Notably, the CA agreed with Professor Yeo that both extreme views should be rejected and the availability of the SICC should be but one relevant factor and does not supersede the other connecting factors that normally apply under the Spiliada Test. The middle-of-the-road approach chosen by the CA is a welcome one for international commercial parties. It ensures that the courts continue to give effect to the underlying rationale of the doctrine of *forum non conveniens* - which is to "*find the forum which is the more suitable for the ends of justice, and is preferable because pursuit of the litigation in that forum is more likely to secure those ends*".

Parties can take comfort in the knowledge that the mere presence of the SICC would not be determinative of all jurisdictional issues in a non-consensual situation. The establishment of the SICC has not and will not result in any seismic change of the common law or the abandonment of the Spiliada Test in a *forum non conveniens* case.

Do note, however, that this case does not deal with a situation where there is a clause agreeing to the jurisdiction of the SICC. In that situation, the SICC is likely to take jurisdiction, provided other conditions for its jurisdiction are satisfied. Paragraph 26 of the Report of the SICC Committee (November 2013) explains as follows:

> *"Forum non conveniens would not be an issue for consensual cases founded on an exclusive jurisdiction agreement, as the Singapore court would not allow the contesting party to breach its agreement. In such cases, the SICC would ordinarily dismiss the application for a stay unless strong cause can be shown."*

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