
Shipping & International Trade

Singapore High Court Refuses to Impose Conditions in Ordering a Stay of Proceedings in Favour of Arbitration in London

Introduction

If a claim would be time-barred in arbitration, but not in the court proceedings that had been commenced within time, would that be enough reason to impose conditions when ordering a stay of court proceedings? The Singapore High Court answered the question in the negative in *The Navios Koyo* [2021] SGHC 131. This case is a reminder for parties to commence legal proceedings timeously and in the agreed forum, or risk the claim being time-barred.

Background

The claimant, an endorsee and holder of the bills of lading, commenced admiralty proceedings in the Singapore High Court and arrested the vessel *Navios Koyo* on 18 September 2020 for the alleged mis-delivery of a cargo of logs which were shipped under the bills. Apparently, the carrying vessel had completed the discharge of the cargo in India by 23 September 2019.

The front of the bills of lading identified a charterparty dated 3 July 2019 and Clause 1 on the reverse side stated as follows:

"All terms and conditions, liberties and exceptions of the Charter Party, dated as overleaf, including the Law and Arbitration Clause are herewith incorporated."

The claimant had come into possession of the bills of lading as it had extended financing to its customer. Much like a bank providing trade financing facilities, the claimant was not involved in the chartering of the vessel or the shipment of the cargo. As such, it did not have a copy of the charterparty referenced in the bills of lading when it arrested the vessel. Apparently, the claimant had requested for the relevant charterparty from its customer, but it was not provided.

It was only during the court proceedings, on 24 September 2020, that the claimant was provided a copy of the charterparty dated 3 July 2019, where Clause 60 stated as follows:

"Any dispute arising from or in connection with this Charter Party shall be referred to arbitration in London..."

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Under the Hague Rules and the Hague-Visby Rules, which were incorporated by clauses 2(a) and 2(b) of the bills of lading, there is a one-year time-bar from the discharge of the cargo (or when the cargo ought to have been discharged) for arbitration claims brought under the bills of lading. Here, by the time the claimant obtained a copy of the charterparty, more than one year had passed since the cargo had been discharged in India.

The owners of the *Navios Koyo* applied for a stay of the Singapore court proceedings in favour of arbitration in London. Given that a stay is mandatory under section 6 of the International Arbitration Act where a party to an arbitration agreement commences court proceedings against the other party in respect of a matter which is the subject of the arbitration agreement, the claimant focussed its efforts on persuading the Court that the stay should be conditional on the waiver of the time-bar defence in the arbitration proceedings.

Holding of the High Court

The Court acknowledged that it has an unfettered discretion in imposing conditions wherever the justice of the case calls for it when granting a stay under section 6(1) of the International Arbitration Act. But it observed, in the same breath, that this is a wide discretionary power which ought to be exercised with great caution and that the Courts should generally be slow to interfere in the arbitration process.

With respect to time-bar defences specifically, the Court endorsed the view that the imposition of a condition as to the waiver of a defence of time-bar can only be justified in very special circumstances as it takes away a substantive right of one of the parties. In this regard, the Court stated that a claimant seeking a time-bar waiver as a condition to a stay must show that it would be unjust to penalise it for having allowed its claim to become time-barred and that the following factors are relevant in this context:

- (a) Whether the conduct of the plaintiff in not commencing arbitration proceedings before its claim became time-barred was reasonable; and
- (b) Whether the defendant should be faulted for the claimant's failure to commence arbitration proceedings before its claim became time-barred.

In this case, the Court refused to exercise its discretionary power to grant a conditional stay on the basis of the time-bar waiver because it formed the view that the claimant was the author of its own misfortune:

- (a) The claimant was put on notice of the existence of the 3 July 2019 charterparty as this was reflected on the face of the bills of lading that the claimant received on 12 September 2019. Yet it made no effort to obtain a copy until July/August 2020.

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- (b) The claimant could have, but did not, find out who the carrier was and if it did, that would have led it to the chartering chain from which the relevant charterparty could have been obtained.
- (c) Clause 1 on the reverse side of the bill of lading expressly referred to the incorporation of an arbitration clause, which should have put the claimant on notice of the existence or potential existence of the arbitration clause.
- (d) There was no difficulty finding out the date the cargo was discharged, even if this could have only been an estimate. The claimant would have known, or would have been able to estimate, when its claims would be time-barred so as to be in a position to take prompt action to avert that situation.
- (e) The claim quantum carried little weight in the context of time-bar waiver because this has nothing to do with whether the claimant had acted reasonably in not having commenced arbitration before its claims became time-barred.

Concluding Words

The decision of the Court highlights the importance of observing the relevant timelines in a dispute, whether it is in arbitration or in litigation. Failing to comply with important deadlines, as demonstrated in this case, may potentially have adverse consequence on one's claim.

The importance of timelines takes on an additional complexity in the context of shipping and trade finance. Banks and lenders providing trade finance facilities may find themselves in a position where they are exercising rights under the agreements of their debtors, but without being fully apprised of the relevant contracts or trade documents. Nonetheless, parties should ensure that reasonable efforts are made to obtain the relevant documents and ascertain the corresponding timelines, particularly where they have been put on notice of the existence of such documents.

Banks and lenders finding themselves in such a situation may thus wish to seek advice on documents to be obtained and the steps to be taken, as well as the potential timelines which may apply.

For further queries, please feel free to contact our team below.

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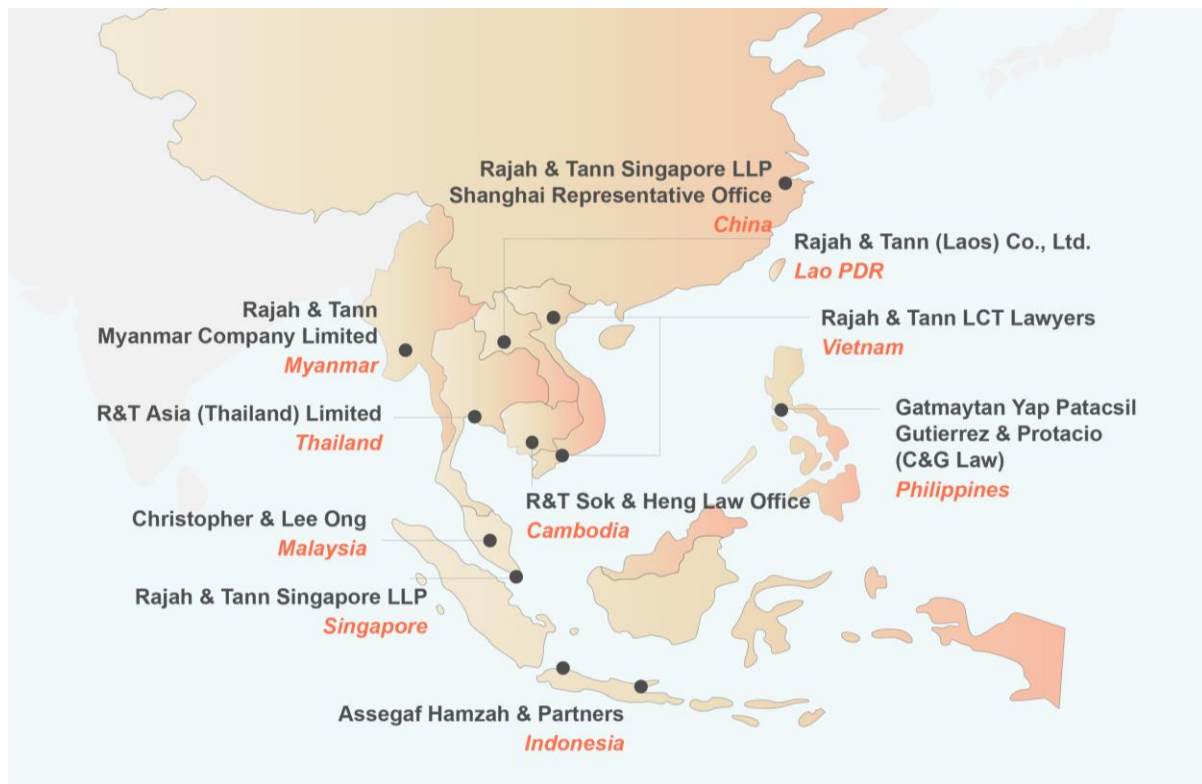
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