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Case Comment

# LIMITATION OF LIABILITY IN SINGAPORE AND ENGLAND

*Evergreen International SA v Volkswagen Group Singapore Pte Ltd* [2004] 2 SLR(R) 457 and *MSC Mediterranean Shipping Company SA v Stolt Tank Containers BV* [2022] EWHC 835

**[2023] SAL Prac 16**

*Evergreen International SA v Volkswagen Group Singapore Pte Ltd* [2004] 2 SLR(R) 457 and *MSC Mediterranean Shipping Company SA v Stolt Tank Containers BV* [2022] EWHC 835 represent opposing judicial attitudes in Singapore and England on the principles of limitation of liability. In this article, the authors will examine the key differences between the two jurisdictions and their implications on shipowners and claimants.

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## I. Introduction

1 *Evergreen International SA v Volkswagen Group Singapore Pte*[1] ("*Evergreen International*") and *MSC Mediterranean Shipping Company SA v Stolt Tank Containers BV*[2] ("*MSC Mediterranean*") represent opposing judicial attitudes in Singapore and England respectively on the principles of limitation of liability. In this article, the authors will examine the key differences and their implications on shipowners and claimants.

## II. *Evergreen International SA v Volkswagen Group Singapore Pte Ltd*

### *A. Facts*

2 On 17 September 1998, there was a collision between the container vessel *Ever Glory* and car carrier *Hual Trinita* in Singapore territorial waters. On 18 September 1998, the plaintiffs Evergreen International SA commenced an *in rem* action against *Hual Trinita* in Singapore. A settlement was reached with the owners of *Hual Trinita*. The owners of *Hual Trinita* also commenced an *in rem* action against *Ever Glory* in Singapore. This action was settled.

3 On 2 October 1998, the plaintiffs commenced a limitation action in Singapore against the owners of *Hual Trinita* and all other persons including the defendants (as cargo interests and insurers) that had potential claims arising out of the incident. At the time, the International Convention relating to the Limitation of Liability of Owners of Sea-Going Ships 1957 (the "1957 Convention") was applicable.

4 On 3 November 1999, the Singapore court granted the plaintiffs a decree of limitation. On 28 October 1999, the plaintiffs obtained a declaration that their liability was limited to a sum of $2,411,227.56 plus interest thereon from the date of collision to the date of payment into court. On 4 November 1999, the plaintiffs paid into court the said sum plus interest.

1 [2004] 2 SLR(R) 457.
2 [2022] EWHC 835 (Admlty).



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5 The defendants were aware of the limitation action and informed of each step of the limitation proceedings leading to the constitution of the limitation fund. They were also aware that they had two months to set aside the decree or to file their claims against the limitation fund. The defendants did not participate in the limitation action, or challenge or apply to set aside the decree, or prove their claims against the limitation fund.

6 Before the decree of limitation was obtained, the defendants arrested a sister ship, *Ever Reach* in Belgium on 24 September 1999. Belgium was a state party to the Convention on Limitation of Liability for Maritime Claims 1976 (the "1976 Convention"). The plaintiffs furnished the security sum of US$18.3m to secure the release of the vessel. The defendants' claims against the plaintiffs in tort exceeded the limit of *Ever Glory* under both conventions. Under the 1976 Convention, the limit of liability would be about $13.5m as compared to the 1957 limit of $2,411,227.56.

7 The plaintiffs applied for an anti-suit injunction to restrain the defendants from pursuing their action in Belgium against *Ever Reach*.

### *B. Decision*

8 Belinda Ang J (as she then was) decided to grant the plaintiffs' application for an injunction restraining the defendants from continuing with proceedings in Belgium. She decided that:

(a) Singapore was the natural and proper forum for the resolution of the dispute. The defendants' claims were in tort and the tort was committed in Singapore, and it was the law of Singapore that gave rise to a cause of action.[3]

(b) The Belgium proceedings were oppressive because:

(i) The Belgium courts had no connection with the dispute between the plaintiffs and the

3 *Evergreen International SA v Volkswagen Group Singapore Pte Ltd* [2004] 2 SLR(R) 457 at [31].



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defendants, and Belgium was not the proper forum as the collision had occurred in Singapore and that was where the bulk of the evidence relevant to the dispute was located.[4]

(ii) The Belgium proceedings were commenced with a sole view of taking advantage of a higher limitation regime.[5]

(iii) The pursuit of the Belgium action would cause the plaintiffs substantive and procedural disadvantages which were unjust and oppressive. The injustice and oppression resulted both from the features which rendered Singapore a natural forum and from the fact that the plaintiffs had already established a limitation fund in Singapore according to the 1957 Convention.[6]

(iv) The vexatious and oppressive conduct of the defendants lay in their unlawful challenge to the plaintiffs' right to choose the limitation forum and the invasion or attack on the plaintiffs' legal rights conferred by the limitation decree and limitation fund. The effect and consequence of litigating in Belgium were a means or way to frustrate or subvert the plaintiffs' choice of forum for pursuing a limitation action. It purported to dictate the limitation forum and that was wrong in law. It was hence oppressive as the plaintiffs were compelled or coerced through the institution and continuation of foreign proceedings to set up another limitation fund in Belgium when there was already a limitation fund in Singapore.[7]

4 *Evergreen International SA v Volkswagen Group Singapore Pte Ltd* [2004] 2 SLR(R) 457 at [34(a)].
5 *Evergreen International SA v Volkswagen Group Singapore Pte Ltd* [2004] 2 SLR(R) 457 at [34(b)].
6 *Evergreen International SA v Volkswagen Group Singapore Pte Ltd* [2004] 2 SLR(R) 457 at [34(c)].
7 *Evergreen International SA v Volkswagen Group Singapore Pte Ltd* [2004] 2 SLR(R) 457 at [46]–[47].



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(v) The defendants' election to have limitation determined under Belgium law was not only inconsistent with the *Volvox Hollandia*[8] principle[9] (to which the court should not go to the claimant's assistance), it also sought to obviate the need to share rateably with others in the amount of the plaintiffs' limited liability available for distribution in Singapore. It was wrong not only as between the plaintiffs and the defendants but also as between the other claimants to the limitation fund.[10]

(vi) The plaintiffs were given a personal right to limit liability and protection from proceedings *in rem* after the decree was granted and the fund was constituted. The Belgium proceedings would alter those rights and obligations if the Singapore limitation decree was not recognised. To that extent, the effect and consequence of the Belgium proceedings were to infringe or undermine the protection granted to the plaintiffs by the Singapore court. In the circumstances of this case, there was justification for the Singapore court to protect the plaintiffs' legitimate interests as well as give effect to the polices of its own legislature and its orders especially in a case like this, where an arrest was made under a system of law that acknowledged a different limitation regime and as a result would not recognise a limitation decree of a court of competent jurisdiction.[11]

8 *The Volvox Hollandia* [1988] 2 Lloyd's Rep 361.

9 Rix J in *Caspian Basin Specialised Emergency Salvage Administration v Bouygues Offshore SA (No 4)* [1997] 2 Lloyd's Rep 507 said (at 527) that the principle is that a claimant is not permitted to interfere with a shipowner's legitimate choice of forum for his action to limit liability, even in circumstances where the appropriate forum for the adjudication of liability was elsewhere.

10 *Evergreen International SA v Volkswagen Group Singapore Pte Ltd* [2004] 2 SLR(R) 457 at [47].

11 *Evergreen International SA v Volkswagen Group Singapore Pte Ltd* [2004] 2 SLR(R) 457 at [52] and [54].



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## III. *MSC Mediterranean Shipping Company SA v Stolt Tank Containers BV*

### *A. Facts*

9 On 14 July 2012, the container ship *MSC Flaminia* was in the middle of the Atlantic Ocean when an explosion occurred in a cargo hold leading to a large fire on board. Several crew members were injured and three crew lost their lives. Hundreds of containers were destroyed and extensive damage was caused to the ship. The explosion was caused by the auto-polymerisation of the contents of one or more of three tank containers laden with 80% divinylbenzene. At the time, the ship was operating under a period time charter between the claimant, MSC Mediterranean Shipping Company SA ("MSC"), as time charterer, and its registered owner Conti.

10 The time charter provided for London arbitration. On 30 March 2021, the tribunal issued an award determining that MSC was liable to Conti in respect of the casualty. The tribunal issued an award on 30 July 2021 (corrected on 1 September 2021), by which Conti was awarded damages of c US$200m ("Monetary Award").

11 On 21 July 2020, MSC commenced an admiralty limitation claim in the English High Court to limit its liability for claims arising out of the casualty pursuant to the Convention on Limitation of Liability for Maritime Claims 1976 as amended by the Amending Protocol of 1996 (the "Amended 1976 Convention"). A limitation fund of c £26.5m was established by way of a letter of undertaking by the Protection and Indemnity Club.

12 Conti challenged MSC's limitation claim on the merits and disputed that MSC had any limitation right under the Amended 1976 Convention. MSC then applied for an anti-suit injunction to restrain Conti from taking any step to enforce the Monetary Award anywhere in the world prior to the conclusion of the limitation claim before the English High Court. Conti in turn applied for declarations that the Monetary Award was binding on MSC, that the limitation claim did not act to set aside or


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suspend the Monetary Award, and that any limitation decree in due course granted would not operate to set aside or suspend the Monetary Award.

### B. *Decision*

13 Andrew Baker J refused the application for an anti-suit injunction. He held that:

(a) There was no evidence that Conti had any intention to claim against the fund. Instead, there was evidence indicating that unless restrained by injunction from doing so, Conti had in mind to seek to enforce the Monetary Award elsewhere.[12]

(b) Article 13(2) of the Amended 1976 Convention would apply in all jurisdictions that are party to it, under which there was only a discretion, not an obligation, to release any arrest or attachment of MSC property at the suit of Conti, if Conti's claim could be made against the limitation fund. MSC's application did not provide any reason why the English court should pre-judge the exercise of that discretion in another jurisdiction.[13]

(c) There was no evidence that there was any jurisdiction which was not party to the Amended 1976 Convention, that would allow irreversible steps by way of enforcement while the limitation action was pending before the English courts. MSC's application was at best, premature.[14]

(d) The establishment of a limitation fund was not analogous to a statutory scheme of distribution following insolvency for the following reasons:[15]

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12 *MSC Mediterranean Shipping Company SA v Stolt Tank Containers BV* [2022] EWHC 835 (Admlty) at [87]–[88].
13 *MSC Mediterranean Shipping Company SA v Stolt Tank Containers BV* [2022] EWHC 835 (Admlty) at [89].
14 *MSC Mediterranean Shipping Company SA v Stolt Tank Containers BV* [2022] EWHC 835 (Admlty) at [91].
15 *MSC Mediterranean Shipping Company SA v Stolt Tank Containers BV* [2022] EWHC 835 (Admlty) at [95].



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(i) Though there is a public policy behind tonnage limitation, it is not one on which there is international consensus.

(ii) The Amended 1976 Convention *provides* an orderly means for a *pari passu* distribution of a particular fund between claimants who opt to claim against the fund (if entitled to do so), accepting thereby that they may not make any fuller recovery (by operation of Article 13(1)). It provides, ultimately, no more than that.

(iii) A limitation action involves neither all the limiting party's assets nor all its creditors. Nor does it necessarily involve all creditors entitled to claim against the fund.

(e) In line with *Seismic Shipping Inc v Total E & P UK plc*[16] and *Bouygues Offshore SA v Caspian Shipping Co (Nos 1, 3, 4 and 5)*,[17] it was not unconscionable for a claimant to seek full satisfaction for a claim by pursuing enforcement in a jurisdiction where their recovery might not be limited by operation of the 1976 Convention. The English court should leave it to the foreign court to decide what effect to give to the English decree. It was an established understanding of English law that the statutory enactment of the Amended 1976 Convention was not intended to dictate to other systems of law, or their courts, whether they give effect to that Convention and/or the decisions of the English courts. In this regard, the analysis adopted in Singapore in *Evergreen International* was stated not to represent or reflect English law.[18]

## IV. Analysis

14 While *Evergreen International* and *MSC Mediterranean* could be considered to have been decided on their unique facts, the

16 [2005] EWCA Civ 985.
17 [1998] 2 Lloyd's Rep 461.
18 *MSC Mediterranean Shipping Company SA v Stolt Tank Containers BV* [2022] EWHC 835 (Admlty) at [101]–[103].



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two cases nonetheless represent diametrically opposed judicial sentiments on a few key issues.

15 Firstly, in *Evergreen International*, the whole purpose of the 1957 and 1976 Convention was seen to enable a shipowner to set up one fund against which all claimants would be required to make their claim. The defendants were seen as claimants against the limitation fund even though they chose not to make a claim against the fund. The foreign proceedings were considered to be allowing the defendants a second bite at the cherry. In contrast, in *MSC Mediterranean*, Baker J emphasised that the Amended 1976 Convention only provided an orderly means for a *pari passu* distribution of a particular fund between claimants who had opted to claim against that fund, and that it was no more than that.

16 Secondly, in *Evergreen International*, the emphasis was on the shipowner's right to claim limitation in any particular forum, which was considered to have been frustrated or subverted by litigation in Belgium, as it would force the plaintiffs to set up another limitation fund in Belgium when there was already a limitation fund in Singapore. The higher limit of the 1976 Convention (versus the 1957 Convention) was not considered a legitimate consideration in the overall question of where the ends of justice lie. In contrast, in *MSC Mediterranean*, Conti openly declared that it was not seeking to enforce the Monetary Award in England but elsewhere. This was not seen as being unconscionable or oppressive. Further, it was held that it was not unconscionable for a claimant to seek full satisfaction of a claim elsewhere, and that it was for the foreign court to decide what effect to give to an English limitation decree and/or whether the same limits of liability would be recognised in the foreign country.

17 Thirdly, in *Evergreen International*, the effect and consequence of Belgium proceedings were seen to infringe or undermine the protection granted to the plaintiffs by the Singapore court, and that there was justification for the Singapore court to protect its own legitimate interests as well as give effect to policies of its own legislature. In contrast, in *MSC Mediterranean*,



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it was held that English law and the statutory enactment of the Amended 1976 Convention was not intended to dictate to other systems of law, or their courts, whether to give effect to the Convention and/or to the decisions of the English courts.

18 The dichotomy between the current Singapore legal position and the English legal position on limitation presents challenges to litigants. Shipowners would of course prefer the approach of the Singapore courts, which would potentially offer more protection against claimants who chose not to claim against a fund constituted in Singapore. Claimants, on the other hand, would potentially have more options if limitation proceedings are brought in England.

## V. Conclusion

19 The above cases show that the commencement of limitation proceedings in a particular jurisdiction may not give a shipowner the assurance that there will be a halt in legal proceedings or enforcement elsewhere. Shipowners must therefore choose their forum wisely, with due consideration of the limitation regime, proper forum and judicial attitudes to proceedings commenced elsewhere. A wrong choice could potentially result in the shipowner incurring legal costs in more than one jurisdiction and/or having to constitute funds in different jurisdictions.



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