

2. ADMIRALTY, SHIPPING AND AVIATION LAW

ADMIRALTY LAW

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Introduction

2.1 The year 2004 witnessed slightly fewer admiralty decisions compared with the recent past. Two of these decisions, however, raise important issues on tonnage limitation. The arrest of demise chartered vessels was finally introduced by way of an amendment to the High Court (Admiralty Jurisdiction) Act (Cap 123, 2001 Rev Ed).

Right to invoke admiralty jurisdiction

2.2 The facts of *The Acrux* [2004] 4 SLR 531 are rather unusual. The plaintiff's claim, for goods and services supplied to the vessel, *Acrux*, was relatively modest in quantum, amounting to all of \$51,064.06. After two corporate guarantees for this sum were offered and rejected, the defendant shipowner made part payment by way of telegraphic transfer of \$50,955.23 on 6 April 2004 but refused to pay the small balance of principal sum and costs of the action. The vessel was arrested on 7 April 2004. Payment of the small shortfall and interest was made *under protest* by the defendant on 8 April 2004. The defendant shipowner sought to set aside the arrest. The trivial shortfall in the principal sum was allegedly attributable to banking charges, which the plaintiff had in the past been prepared to absorb.

2.3 Belinda Ang Saw Ean J refused the defendant's application, notwithstanding the various grounds put forward by the defendant. The first ground relied upon by the defendant was easily disposed of. Its argument that security to prevent the arrest had been furnished by way of a corporate guarantee from a related company was rejected, as it was plainly inconsistent with its subsequent action of instructing its bankers to remit funds to the plaintiff's account.

2.4 The second ground was that because payment had been effected to the plaintiff in the sense that instructions were already given on 2 April 2004 to the defendant's bankers to remit the money to the plaintiff, no cause of action remained as of 2 April 2004, the day the writ was issued. This ground

was also all too fallible since it is trite law that by the deadline of 9.00am, 2 April 2004, a deadline imposed by the plaintiff, the moneys had not been received by the latter. Furthermore, as of that date, the plaintiff had no unconditional and immediate use of the funds since the value date of the remittance as evidenced by the remittance advice was 6 April 2004.

2.5 The defendant also relied on the fact that it had made full payment of the principal sum by virtue of the second payment on 8 April 2004. This too was rejected by the learned judge as the second payment was made *under protest*. Such payment did not have the effect of discharging the principal claim. Since the dispute to the validity of the claim for the shortfall and interest remained intact, because payment was made under protest, the admiralty action (and hence, the arrest) could still be sustained, although the relief that might eventually be given would be declaratory in nature. In any case, the plaintiff was entitled to be secured for the costs of the whole action and not merely for costs up to the time of the release of the vessel or time of protest payment. The learned judge concluded that given the special circumstances in this case, the trivial amount of the shortfall was not a reason for finding that admiralty jurisdiction had been oppressively invoked. A related ground of material non-disclosure was also rejected.

2.6 The result in *The Acrux* is that the plaintiff got his pound of flesh, so to speak, by being able to arrest the vessel to obtain security for a small principal shortfall plus costs. The court may have been influenced by the defendant's conduct in the case, not least its failure to make full payment (or put up adequate security) despite the threat of an arrest. However, it is submitted that the case is not to be taken as a licence for the oppressive use of the device of arresting a vessel for trivial claims, for which a simple letter of demand is often sufficient to elicit a settlement or sufficient security for the shipowner: see *The Song Da 2* [1995] SGHC 297. The other point of interest is the effect of payment under protest. While it is usually a sensible reservation adopted by a defendant, it can occasionally backfire, as the decision clearly illustrates.

2.7 An important statutory amendment to the High Court (Admiralty Jurisdiction) Act took effect on 1 April 2004. By virtue of the High Court (Admiralty Jurisdiction) (Amendment) Act (No 2 of 2004), s 4(4) of the Act was amended to allow for the arrest of a vessel if at the time the action is brought (*ie*, at the time of issuance of the admiralty writ *in rem*), the person who would be liable in an action *in personam* is the demise charterer of that ship in connection with which the claim arises. (For a more detailed discussion on the topic, see "Admiralty Jurisdiction of the High Court: Arrest

of Ships on Demise Charter to Secure the Obligations of the Demise Charterer”, a Consultation Paper prepared by the Law Reform and Revision Division, Attorney-General’s Chambers; for a recent Singapore case on demise charter, see *Pan United Shipping Pte Ltd v Cendrawasih Shipping Pte Ltd* [2004] SGHC 32.)

2.8 With this amendment, the law in Singapore is brought in line with the laws of the United Kingdom, Malaysia, Hong Kong, New Zealand and Australia so far as arrests of demise chartered vessels are concerned. Before the introduction of this amendment, an arresting party was occasionally met with a challenge to the validity of the arrest on the ground that the person who is liable *in personam* is not the beneficial owner as respect all the shares in the vessel, but only a demise charterer.

2.9 Previously, a shipowner would be able to bring himself outside the scope of s 4(4)(a) of the unamended Act by transferring control or possession of the vessel to an associated company or subsidiary by way of a demise charterparty. This amendment will therefore plug a lacuna in the maritime law of Singapore: see *Singapore Parliamentary Debates, Official Report* (5 January 2004) vol 77 at cols 61–62. One might argue whether the expansion in admiralty jurisdiction should be confined to a demise charter because a time charter arrangement between a shipowner and an entity controlled by it may equally pose a problem to maritime claimants such as necessities suppliers. The explanation to this restricted extension is that historically and legally, a demise charterer is considered an owner *pro hac vice* of the vessel and is therefore more akin to the owner than a time charterer *vis-à-vis* the world at large, save for the actual owner.

Limitation of liability

2.10 Last year’s Annual Review carried a discussion of the two High Court decisions of *The Seaway* [2004] 2 SLR 577 and *The Sunrise Crane* [2004] 1 SLR 300 at paras 2.23–2.27 and paras 2.19–2.22 respectively. Both decisions have been affirmed by the Court of Appeal, the latter by a majority.

2.11 The facts of *The Seaway* [2005] 1 SLR 435 are straightforward. The defendant’s dredger, the *Seaway*, collided with a wharf located in an oil terminal owned by the plaintiff. As an alternative plea to a denial of liability, the defendant relied on the tonnage limitation provision of s 136(1)(d) of the Merchant Shipping Act (Cap 179, 1996 Rev Ed) (“MSA”). If tonnage limitation could be established, the recoverable amount was calculated to be \$607,927.68 as opposed to an estimated amount of \$16.15m.

2.12 The material parts of ss 136(1)(b) and 136(1)(d) of the MSA provide that:

The owner of a ship shall not, where all or any of the following occurrences take place without his actual fault or privity:

(b) where any damage or loss is caused to any goods, merchandise or other things whatsoever on board the ship;

...

(d) where any loss or damage is caused to any property (other than any property mentioned in paragraph (b)) or any right is infringed through the act or omission of any person (whether on board the ship or not) in the navigation or management of the ship, or in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers, or through any other act or omission of any person on board the ship,

be liable to damages beyond the following amounts:

...

(ii) in respect of such loss, damage or infringement as is mentioned in paragraphs (b) and (d), whether there is loss of life or personal injury or not, an aggregate amount not exceeding in the currency of Singapore the equivalent of 1,000 gold francs for each ton of the ship's tonnage.

[emphasis added]

2.13 As the Court of Appeal noted, s 136(1)(d) is applicable to two situations, namely,

(a) where any loss or damage is caused to any property, other than any goods, merchandise or other things on board the ship (“first limb”); or

(b) where any right is infringed (“second limb”).

2.14 The primary issue the Court of Appeal (and the learned judge below) had to wrestle with was whether the word “property” in s 136(1)(d) covered a privately-owned wharf such as that of the plaintiff. At first instance, the court reached the conclusion that such a wharf did not come within the scope of the word “property” in s 136(1)(d). The Court of Appeal, in contrast, found that it did and, in so deciding, dwelt extensively into the

legislative history behind s 136(1) of the MSA. In so doing, the court observed that a purposive approach to statutory interpretation could be undertaken even if the provision in question was not ambiguous or inconsistent and extrinsic materials could be referred to in this process.

2.15 The predecessor to s 136 was s 295 of the Merchant Shipping Act 1970 (Cap 172, 1970 Rev Ed) (“the 1970 MSA”). Section 295(4) of the 1970 MSA was repealed in 1981. Section 295(4) treated any obligation or liability in respect of any *damage* to, *inter alia*, harbour works, as coming within the scope of s 295(1)(d), which availed the shipowner of a right of limitation if the loss or damage caused by the vessel took place without the actual fault or privity of the shipowner. The legislative aim (as reflected in the *Parliamentary Debates*) in repealing this provision was to make the shipowner wholly liable for the cost of wreck removal and of repairs to facilities at the Port of Singapore Authority (which then existed as a statutory body). When Singapore acceded to the International Convention Relating to the Limitation of the Liability of Owners of Seagoing Ships 1957 (“the 1957 Convention”), it made the reservation that the shipowner should not be entitled to limit liability to harbour works, which, by virtue of the repeal, was reflected in s 136(1).

2.16 The Court of Appeal accepted the respondent’s argument that there was a good explanation for the legislative deeming in s 295(4) that damage caused to harbour works by a vessel was within the scope of s 295(1)(d) when, *prima facie*, such an event would already have come within the plain meaning of s 295(1)(d). Noting that Parliament could not have enacted an otiose provision, the Court of Appeal held (at [33]) that:

Viewed in this light, it seems to us that the argument made by the respondent makes good sense. The respondent argued that the critical phrase in s 295(1) is “liable to damages”. What it meant was that the subsection was concerned with an occurrence that sounded in damages. Events which gave rise to statutory debts, which a port authority could claim pursuant to statutory powers and which need not necessarily be based on the fault on the part of the employees on board the vessel, were not events which sounded in damages. Such statutory claims could not come within any of the limbs under s 295(1). Therefore, in order to make the defence of limitation of liability available to the owner of a vessel involved in such an occurrence, there was the need to enact s 295(4) to deem such a liability as falling within s 295(1)(d) and, in the case of wreck removal by the port authority, within s 295(1)(b).

2.17 Accordingly, the repeal in 1981 of s 295(4) merely meant that a shipowner could not enjoy any limitation of liability if there was a statutory debt arising from damage to harbour works, but the claim by an owner of a private harbour works for the negligence of the vessel in causing the damage would fall within s 295(1)(d), *ie*, be subject to limitation of liability. The Court of Appeal, in coming to this conclusion, laid great emphasis on the distinction between statutory debts and damages. Therefore, for any claim to come within s 295(1) and be subject to the limitation of liability laid down therein, the claim must be one that sounds in damages.

2.18 The Court of Appeal also briefly commented on the applicability of the second limb of s 136(1)(d) of the MSA. Agreeing with the learned judge below that when the wharf of a person was damaged by the operation of the vessel, the right of the owner of the wharf would be infringed, the Court of Appeal nevertheless observed that if the interpretation of the judge as to the first limb of s 136(1)(d) were correct, it would have meant that the second limb of s 136(1)(d) was inapplicable.

2.19 The Court of Appeal's decision clarifies an issue which has vexed admiralty lawyers in Singapore for a while, *ie*, whether a shipowner is entitled to raise tonnage limitation if his vessel damages a privately-owned berth or wharf. The answer is that he can; as a matter of principle, there is no obvious reason that should favour the private owner of a berth or wharf, as compared with the private owner of a vessel, such as to make the former immune to the plea of tonnage limitation.

2.20 The first instance judgment in *The Sunrise Crane* (*supra* para 2.10) was upheld by the majority of the Court of Appeal ([2004] 4 SLR 715). What is more interesting for the purposes of this section of the Annual Review is the court's discussion of the protection accorded to the shipowners under the 1957 Convention. These observations were contained in the judgment of the dissenting judge, Judith Prakash J. The majority of the Court of Appeal expressly agreed with her Honour so far as these comments were concerned.

2.21 Prakash J referred to and discussed a number of recent English cases on tonnage limitation, such as *The Norman* [1960] 1 Lloyd's Rep 1, *The England* [1973] 1 Lloyd's Rep 373 and *The Marion* [1981] 1 AC 563, in all of which the defence of tonnage limitation was rejected. While there is no doubt that a shipowner bears the burden of proving that the loss or damage caused by the negligent navigation of his ship took place without his "actual fault or privity" and that the definition of fault or privity imports some personal fault or blameworthiness on the shipowners' part, these English cases show

how difficult it is for shipowners to successfully plead tonnage limitation. The threshold which the shipowners have to cross is often very high. The protection accorded to shipowners under the 1957 Convention has therefore been whittled down over the years. Indeed, Prakash J observed that there was hardly a reported case after *The Norman* where an owner had managed to show that a system of the management of the vessel was such that it in no way contributed to the negligence of the crew.

2.22 Given that the protection accorded to shipowners under the 1957 Convention had become “illusory”, Prakash J suggested that it was time for Singapore to consider ratifying the Convention on Limitation of Liability for Maritime Claims 1976 (“the 1976 Convention”). Compared with the 1957 Convention, the 1976 Convention offers higher limitation to the claims but the corresponding benefit to the shipowners is that it is extremely difficult to break limitation because to do so would entail the claimant showing that the loss has resulted from the shipowners’ personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result. It is not surprising that shortly after the Court of Appeal judgment was given in September 2004, a Merchant Shipping (Amendment) Bill (No 53 of 2004) was read in Parliament on 19 October 2004. This Bill has since been passed (see Merchant Shipping (Amendment) Act) (No 56 of 2004). The 1976 Convention is now scheduled to the Merchant Shipping Act and applies to any casualty which occurs on or after 1 May 2005. This change is to be welcomed by the shipping community in Singapore.

2.23 On the facts of the case and judged by the requirements of the 1957 Convention, the shipowner did not discharge his burden of proving that the casualty happened without his fault or privity. It was insufficient for the shipowner to merely rely on the fact that it had appointed competent master and officers to serve on the vessel and that these persons were trained to handle dangerous chemicals. It was still necessary for the shipowner to show that it had a proper system on board the vessel for dealing with such dangerous chemical cargo including, in particular, the transfer of cargo between vessels.

SHIPPING LAW

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2.24 What they lack in numbers, the few shipping cases of 2004 made up for in significance. A rare judgment on collision liability was rendered in the high profile *Ng Keng Yong v PP* [2004] 4 SLR 89 (the *RSS Courageous* case). In *Sunlight Mercantile Pte Ltd v Ever Lucky Shipping Co Ltd* [2004] 1 SLR 171, the Court of Appeal considered whether an exemption clause excuses a shipowner from “actionable fault” for unseaworthiness, so that the shipowner can claim general average contribution. The Court of Appeal also put down an attempt to extend the recoverability of pure economic loss in *Man B&W Diesel S E Asia Pte Ltd v PT Bumi International Tankers* [2004] 2 SLR 300. *Pan United Shipping Pte Ltd v Cendrawasih Shipping Pte Ltd* [2004] SGHC 32 witnessed probably the last attempt in Singapore by a shipowner to escape *in rem* jurisdiction by alleging the existence of a demise charter. This shipowner failed, and a subsequent change in legislation sealed the avenue for further attempts. In another important decision, *The Sunrise Crane* [2004] 4 SLR 715, the Court of Appeal emphasised the high standard of care that must be exercised in relation to the handling of dangerous cargo. The Court of Appeal’s decision and observations with respect to the International Convention Relating to the Limitation of Liability of Owners of Seagoing Ships 1957 (“the 1957 Convention”) in this case led to a long overdue subscription to the Convention on Limitation of Liability for Maritime Claims 1976 (“the 1976 Convention”) by Singapore.

Navigation of ships

2.25 In *Ng Keng Yong v PP* [2004] 4 SLR 89, two lieutenants of the Republic of Singapore Navy were convicted of the offence of causing death by a negligent act not amounting to culpable homicide under s 304A of the Penal Code (Cap 224, 1985 Rev Ed). Their vessel, *RSS Courageous* (“the *Courageous*”), collided with the merchant ship *ANL Indonesia* (“the *ANL*”), resulting in the death of four crew members of the *Courageous*. The district judge held the two lieutenants jointly responsible for negligently navigating the *Courageous* in an unsafe manner across the path of the *ANL* (see *PP v Ng Keng Yong* [2004] SGDC 74). His decision was upheld on appeal to the High Court.

2.26 At the appeal, Yong Pung How CJ made several important pronouncements on the rules and duty of care in the navigation of ships. Rule 14(a) of the Merchant Shipping (Prevention of Collisions at Sea) Regulations (Cap 179, Rg 10, 1990 Rev Ed) (“the Collision Regulations”) provides that:

When two power-driven vessels are meeting on reciprocal or nearly reciprocal course so as to involve risk of collision each shall alter her course to starboard so that each shall pass on the port side of the other.

2.27 Yong CJ held that the words “involved a risk of collision” under r 14(a) referred to a time when there was not yet actual danger, but when the relation between the vessels was such that danger might shortly arise, if the rules were not obeyed. He agreed with the district judge that the situation clearly involved a risk of collision.

2.28 Yong CJ also clarified the test for causation under s 304A of the Penal Code, namely that the death must be the direct result of a rash or negligent act of the accused and that act must have been the proximate and efficient cause without the intervention of another’s negligence. He found that although the vessels would not have collided if the ANL had not been negligent, the accused were the ones who created the situation of danger to begin with. The ANL was obliged by the accused’s action to respond with her own, albeit negligent, manoeuvres. The accused’s negligence was a substantial cause of the collision.

2.29 One of the accused was a trainee officer, but Yong CJ held that this was no defence. A doctrine of varying standards depending on the defendant’s experience was too uncertain to be viable. Once she was placed in the position of making navigational decisions for the vessel, she was also responsible for the lives and safety of the crew of other vessels in the vicinity as well. In the circumstances, the trainee Officer-of-the-Watch (“OOW”) had to be held to the same standard as a reasonably competent and qualified OOW.

2.30 The finding that a trainee is held to the same standard as a fully qualified officer will find application in the civil negligence context as well. In fact, on this point, the district judge had followed the English case of *Nettleship v Weston* [1971] 2 QB 691, a civil case on the negligence of a learner driver. Yong CJ acknowledged that this decision might have wider implications on the training regime of the Republic of Singapore Navy, as allowing trainees to take control of naval vessels was part and parcel of the navy’s training regime. But his Honour noted that he had to consider not just

the welfare of the navy trainees, but also the wider interests of other navy personnel as well as the other vessels and their crews at sea. To subject trainees to a lower standard of care would unfairly place the safety of everyone else around her at risk.

Exemption clauses and unseaworthiness

2.31 In *Sunlight Mercantile Pte Ltd v Ever Lucky Shipping Co Ltd* [2004] 1 SLR 171, the *Pep Nautic* carried a cargo of logs, some in holds and some on deck, bound from Central Africa to India. The bills of lading for the logs carried on deck noted that the logs were shipped on deck at shipper's risk and excluded liability of the carrier for any loss or damage "howsoever" arising or caused.

2.32 The vessel's main engine broke down off the coast of southwest Africa. She was eventually towed to India, where her cargo of logs was discharged and delivered. The shipowner, Ever Lucky, claimed general average contribution from Sunlight Mercantile, the owners of the cargo, and Liberty Citystate, the cargo insurers, for costs and expenses incurred by Ever Lucky resulting from the breakdown. Under Rule D of the York Antwerp Rules 1974, if the general average sacrifice resulted from a legal wrong of the shipowner that was actionable (an "actionable fault") by the cargo interests at the time when the sacrifice was made, the shipowner would lose its right to contribution. Sunlight Mercantile argued that there was an actionable fault on the part of the shipowner because the vessel was unseaworthy at the point of sailing.

2.33 In the Court of Appeal, the issue was whether the exemption clauses in the bills of lading absolved the shipowner from any actionable fault, so that its right to contribution remained intact. The Court of Appeal held that the words, "howsoever caused" and "at shipper's risk", were insufficient to avoid liability for unseaworthiness. As the exceptions in the bills of lading for the deck cargo were inapplicable, there was actionable fault on the part of Ever Lucky. There was, therefore, no obligation on either Sunlight Mercantile or Liberty Insurance to contribute to the general average expenses incurred by the shipowner.

Tort in shipping cases

2.34 Two cases dealt with different aspects of liability in tort.

2.35 In *Man B&W Diesel S E Asia Pte Ltd v PT Bumi International Tankers* [2004] 2 SLR 300, a shipowner sued the manufacturer and supplier of a defective engine, which persistently gave the ship problems until she was laid up. No damage was caused to the ship herself, but the shipowner suffered loss of hire and costs in replacing the engine. The shipowner contracted only with the shipyard who engaged the manufacturer and supplier. The shipowner had no direct contract with the manufacturer and the supplier, so the question was whether they were liable to the shipowner in tort for the pure economic loss suffered by the shipowner.

2.36 The Court of Appeal took a cautious approach in rejecting the claim, and refused to extend its decision in *RSP Architects Planners & Engineers v Ocean Front Pte Ltd* [1996] 1 SLR 113 (“*Ocean Front*”), where a claim for pure economic loss by a management corporation against a developer was allowed. The Court of Appeal held that extreme caution had to be exercised in extending the duty of care or the decision in *Ocean Front* to new situations, particularly to a scenario which was essentially contractual. Foreseeability of harm did not automatically lead to a duty of care. *Ocean Front* should be treated as a special case in the context of the statutory scheme of things under the Land Titles (Strata) Act (Cap 158, 1988 Rev Ed) or at least be confined to defects in buildings.

2.37 In contrast, in *The Sunrise Crane* [2004] 4 SLR 715, the Court of Appeal was stricter with a shipowner who was offloading dangerous cargo onto another ship. The *Sunrise Crane*, a chemical carrier, arrived in Singapore carrying a contaminated cargo of nitric acid. Her owner knew of the highly dangerous nature of the cargo and that only stainless steel tanks could receive it. Her protection and indemnity club appointed a surveyor to find a contractor to remove the contaminated cargo. The contractor was informed of the nature of the cargo but did not inform the time-charterers of the *Pristine*, to whom it subcontracted the job. The *Pristine* sank during the transfer because the cargo corroded her hull. The owner of the *Pristine* sued the owner of the *Sunrise Crane* for negligence in not informing it of the nature of the cargo.

2.38 By a majority (Judith Prakash J dissenting), the Court of Appeal held that, given the very dangerous nature of the cargo, the owner of the *Sunrise Crane* still owed a separate duty to advise the owner of the *Pristine* of

the nature of the cargo even though the main contractor knew the nature of the cargo and it was through the default of the contractor that the information was not passed down to the *Pristine*. Chao Hick Tin JA and Yong Pung How CJ held that, in relation to ordinary or less dangerous chemicals, an advice to the main contractor could perhaps suffice. But having regard to the circumstances and the very dangerous substance involved, more care should have been exercised by the *Sunrise Crane*.

2.39 The other issue was whether the *Sunrise Crane* could limit its liability under s 136 of the Merchant Shipping Act (Cap 179, 1996 Rev Ed) if it was liable. On this issue, the Court of Appeal was unanimous in that, if the shipowner was in breach of its duty of care, it had not discharged the burden of showing under s 136 that the breach of duty arose without its actual fault or privity. The owner of the *Sunrise Crane* did not give any evidence on the management system which it had adopted so as to ensure that the vessel implemented and followed the industry standards in relation to the handling of chemical cargo.

2.40 Prakash J, who delivered the judgment on the limitation of liability issue, observed that over the years the court had whittled down the protection available to the shipowner from the 1957 Convention on which s 136 was based, and that the protection offered by s 136 was largely illusory. She noted that under the 1976 Convention monetary limits were much higher but the benefit to the shipowner was that the right to limit was only lost if it was proved that the loss sued for “resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result”. She recommended that Singapore ratify the 1976 Convention. Since the Court of Appeal’s judgment, legislation to amend the Merchant Shipping Act to give effect to the 1976 Convention has been passed on 16 November 2004.

Demise charter – or not

2.41 Prior to the amendment of the High Court (Admiralty Jurisdiction) Act (Cap 123, 2001 Rev Ed) (“the Act”) in 2004, the owner of a ship against whom an admiralty action *in rem* was invoked might have challenged jurisdiction on the ground that the ship was on demise charter, so that the shipowner was not the person who would be liable *in personam* under s 4(4) of the Act. This was especially so where the claim was one in tort, where the demise charterer rather than the shipowner would be in control and possession of the ship and the employer of her crew. Thus, in *Pan United Shipping Pte Ltd v Cendrawasih Shipping Pte Ltd* [2004] SGHC 32 (“*Pan*

United”), the owners of a tug and barge that ran aground, causing cargo to be washed overboard, claimed that the vessels were on demise charter when sued for the loss. The High Court examined the evidence and rejected this allegation of demise charter, finding that the defence was suspect.

2.42 *Pan United* may be the last case where an attempt to challenge admiralty jurisdiction is made on this ground. On 1 April 2004, s 4(4) of the Act was amended to allow a claimant to arrest a vessel under demise charter even where the demise charterer is himself the person liable *in personam*.

AVIATION LAW

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Introduction

2.43 In 2004, the courts in Singapore continued to deal with the lawsuits arising from the crash of Singapore Airlines Flight SQ006 which occurred in Taiwan in October 2000. In the first of these, *Civil Aeronautics Administration v Singapore Airlines Ltd* [2004] 1 SLR 570, the Court of Appeal dismissed the appeal by Taiwan’s Civil Aeronautics Administration (“CAA”) against the decision of the High Court not to set aside the application of Singapore Airlines (“SIA”) to join CAA as a third party by allowing it to claim immunity under the State Immunity Act (Cap 313, 1985 Rev Ed) (“the Act”) while in *Ang Ming Chuang v Singapore Airlines Ltd* [2005] 1 SLR 409, the High Court granted the CAA’s application to stay SIA’s action against it in Singapore pending the outcome of SIA’s parallel action against CAA in Taiwan.

State immunity

2.44 In *Civil Aeronautics Administration v Singapore Airlines Ltd* [2004] 1 SLR 570 (“CAA v SIA”), the Court of Appeal dismissed the appeal by the CAA against the High Court’s decision not to allow it to set aside SIA’s application to join it as a third party. SIA had been sued by passengers who were injured or the families of passengers who had been killed in the crash at Chiang Kai Shek (“CKS”) International Airport in Taiwan and it applied to

join CAA as a third party to the proceedings on the basis that CAA, being the authority in control of the facilities at the airport in Taiwan, was wholly or partly responsible for the accident. When SIA served CAA with the third party notice, CAA entered provisional appearance and applied to set it aside on the ground of state immunity. CAA argued that as a department of the government of Taiwan, it was, pursuant to the Act, immune from the jurisdiction of the Singapore courts.

2.45 In the High Court (see *Woo Anthony v Singapore Airlines Ltd* [2003] 3 SLR 688), Choo Han Teck J rejected CAA's argument that it was entitled to state immunity. While the Act did not include any definition of "State", s 18 did provide that a certificate by or on behalf of the Ministry of Foreign Affairs would be conclusive evidence of, *inter alia*, whether any country was a "State" for the purposes of the Act. When the CAA requested for such a certificate, the Ministry replied that it was "unable" to issue the same.

2.46 Choo J held that as the CAA was unable to obtain the necessary certificate from the Ministry of Foreign Affairs, it was therefore not entitled to immunity under the Act. His interpretation of the Ministry's reply was affirmed by the Court of Appeal. By not issuing the certificate requested for, certifying that Taiwan was a "State" for the purposes of the Act, the only logical conclusion that could be drawn was that Taiwan was not a "State" for the purposes of the Act. If it were, the Ministry would have issued the certificate requested for.

2.47 Even if the Ministry's reply could be said to be ambiguous, the Court of Appeal endorsed the approach of the trial judge in holding that it was not for the judiciary to resolve the ambiguity by requiring the parties to adduce evidence to determine whether Taiwan was a "State" for the purposes of the Act. In *Duff Development Company, Limited v Government of Kelantan* [1924] AC 797, the majority, Viscounts Cave and Finlay held that when such a question arose, it was desirable that it should be determined, not by the courts, which must decide only on principles of law, but by the Government of the country which was entitled to have regard to all the circumstances of the case. If there was any doubt on the matter, the practice would be for the court to receive information from the appropriate department of the Government and the information so received would be conclusive.

2.48 The minority, Lord Sumner, was of the opinion that there might be occasions when the court could accept such secondary evidence. However, this "expansive" approach was expressly disapproved of by the entire quorum of the House of Lords in the later case of *Government of the Republic of Spain*

v SS Arantzazu Mendi (The Arantzazu Mendi) [1939] AC 256. Lord Atkin, who delivered the leading judgment in the case and with whom the other law lords agreed, said (at 263–264):

On the question whether the Nationalist Government of Spain was a foreign sovereign State, Bucknill J took the correct course of directing a letter, dated May 25, 1938, to be written by the Admiralty Registrar to the Secretary of State for Foreign Affairs, asking whether the Nationalist Government of Spain is recognized by His Majesty's Government as a foreign sovereign State. I pause here to say that not only is this the correct procedure, but that it is the only procedure by which the Court can inform itself of the material fact whether the party sought to be impleaded, or whose property is sought to be affected, is a foreign sovereign State. This, I think, is made clear by the judgments in this House in the *Kelantan* case (*supra*). With great respect I do not accept the opinion implied in the speech of Lord Sumner in that case that recourse to His Majesty's Government is only one way in which the judge can ascertain the relevant fact. The reason is, I think, obvious. Our State cannot speak with two voices on such a matter, the judiciary saying one thing, the executive another. Our Sovereign has to decide whom he will recognize as a fellow sovereign in the family of States and the relations of the foreign State with ours in the matter of State immunities must flow from that decision alone.

2.49 This position of Lord Atkin's was reiterated in subsequent cases like *Sayce v Ameer Ruler Sadig Mohammad Abbasi Bahawalpur State* [1952] 2 QB 390.

2.50 In short, the Court of Appeal in *CAA v SIA* concluded that the question of whether an entity was a State, so as to enjoy sovereign immunity in Singapore, was eminently a matter within the exclusive province of the Executive. The courts were not in the best position to decide, as the answer to this question involved not only matters of fact but also matters of policy. This was the reason why Parliament had by s 18 of the Act conferred upon the Executive the power to make a conclusive determination whether a State was so recognised for the purposes of the Act. There might be matters of fact which were not within the public domain but which were known only to the Executive. Therefore, to allow such a question to be determined on the basis of evidence adduced by the parties would not only protract a trial but also leave much to be desired as it could very well be that all the pertinent facts and circumstances might not be before the court.

2.51 The Court of Appeal distinguished the decision of the Superior Court of Quebec in the parallel proceedings against SIA in Canada. In *Parent v Singapore Airlines Limited* 2003 IICJ Can 7285 (22 October 2003), SIA also

applied to join CAA as a third party and CAA likewise argued that it was entitled to immunity under the Canadian State Immunity Act. However, s 14 of the Canadian State Immunity Act (which corresponds with s 18 of the Act), merely provided for the Ministry's reply to be admissible in evidence. To the Court of Appeal, the manner in which s 14 was worded clearly contemplated that other forms of evidence might be admissible to determine the issue. Given the narrower wording of s 18 of the Act and the fact that it had to be applied to issues such as state immunity where it was vital that the judiciary and the executive speak with one voice, there would be pitfalls in the way of a court trying to make its own determination of the issue. It would be undesirable for a court to make a determination which was at variance with the decision of the Executive, particularly in a case where the Executive had given an answer which was reasonably clear.

2.52 The Court of Appeal concluded by dismissing a subsidiary argument raised by CAA. CAA's final argument was that if the Singapore courts should find that Taiwan was not a State and did not enjoy sovereign immunity, then the courts should likewise find that Taiwan had no *locus standi* to be sued. While acknowledging that this would seem like a valid argument at first blush, the Court of Appeal noted that it was crucial to differentiate between the question of whether an entity was a "State" for the purposes of state immunity and whether it was a "State" for other purposes. In this case, the Ministry's reply merely stated that Taiwan was not a "State" for the purposes of the Act. To say that Taiwan was not a "State" for other purposes would be a leap in logic.

2.53 English case law on this point was inconclusive. The House of Lords in *Carl-Zeiss-Stiftung v Rayner and Keeler, Ltd (No 2)* [1966] 2 All ER 536, had left open the question of whether entities from unrecognised states could or could not be sued in the English courts. Lord Wilberforce expressed his opinion thus (at 577):

[I]f the consequences of non-recognition of the East German "government" were to bring in question the validity of its legislative acts, I should wish seriously to consider whether the invalidity so brought about is total, or whether some mitigation of the severity of this result can be found. In the United States some glimmerings can be found of the idea that non-recognition cannot be pressed to its ultimate logical limit and that where private rights, or acts of every day occurrence or perfunctory acts of administration are concerned (the scope of these exceptions has never been precisely defined) the courts may, in the interest of justice and commonsense, where no consideration of public policy to the contrary has to prevail, give recognition to the actual facts or realities found to exist in

the territory in question. No trace of any such doctrine is yet to be found in English law, but equally, in my opinion, there is nothing in those English decisions, in which recognition has been refused to particular acts of non-recognised governments, which would prevent its acceptance or which prescribes the absolute and total validity of all laws and acts flowing from unrecognised governments. In view of the conclusion which I have reached on the effect to be attributed to non-recognition in this case, it is not necessary here to resort to this doctrine but for my part, I should wish to regard it as an open question, in English law, in any future case whether and to what extent it can be invoked.

2.54 In the opinion of the Court of Appeal in *CAA v SIA*, there was nothing seriously inconsistent with the stand of not granting recognition to an entity for purposes of state immunity and yet permitting that entity to be sued for its acts. It agreed with the contents of an article entitled “The Carl-Zeiss Case and the Position of an Unrecognised Government in English Law” (1967) 83 LQR 96 in which the author, D W Greig, after an extensive review of the cases on the subject, commented (at 136) that:

Although one difficulty still remains – how can a government which is not recognised by the United Kingdom sue in the English courts? – this is a psychological problem rather than a question of legal principle. As has been stated, non-recognition does not deny the existence of a foreign government: it simply denies its competence to represent the state concerned on the international plane. British companies can trade with it, and the English courts can recognise its acts, and grant it remedies, provided that they do not acknowledge its international status. Thus, if proceedings are brought against a foreign government or its officials in the English courts, the plea of sovereign or diplomatic immunity should not be available unless, as far as diplomatic immunity is concerned, it has been specifically granted by the Foreign Office.

2.55 On the facts, once it was appreciated that the non-recognition of Taiwan was only in respect of the Act, the Court of Appeal said that there was no reason why its effect should or needed to be extended to other respects. That would be completely unwarranted. The existence of Taiwan was a fact as was the fact that the government of Taiwan exercised control over a specified area. The accident happened at an airport within the control of CAA and it must answer the allegations made against it of having caused or contributed towards the tragedy, as it did not enjoy immunity under Singapore law.

The argument of *lis alibi pendens*

2.56 In *Ang Ming Chuang v Singapore Airlines Ltd* [2005] 1 SLR 409 (“*Ang Ming Chuang*”), the CAA succeeded in setting aside SIA’s application to join it as a third party, but on different grounds. In this case, the plaintiff, Ang, started the action against SIA in or about October 2002 to claim damages and other relief and on 9 January 2003, SIA was granted leave to issue a third party notice to bring in CAA as a third party to the action. SIA’s intention was to seek an indemnity or contribution from CAA should SIA be found liable to Ang. After CAA failed in its application for sovereign immunity (*CAA v SIA, supra* para 2.44), CAA applied for SIA’s Singapore action to be stayed, dismissed and/or discontinued in order to avoid a multiplicity of proceedings (the *lis alibi pendens* argument) and on the ground that the courts in Taiwan were the more appropriate forum to determine the claim (the *forum non conveniens* argument). In its application, CAA applied to stay, not only the third party proceeding which SIA had commenced against CAA in Ang’s action against SIA, but all other third party proceedings that SIA had taken out against CAA in lawsuits that had been filed by the other victims who were on the same flight. While CAA should have confined its application to Ang’s action, the parties agreed that any decision on this matter would apply to all the other third party proceedings that SIA had taken out against CAA in Singapore.

2.57 While SIA did obtain leave to issue the third party notice against CAA, it did not do so. Instead, SIA commenced an action in Taiwan on 30 April 2003 against CAA in respect of the same accident. This action was not limited to a claim for an indemnity or contribution from CAA for the lawsuits that had already been filed against SIA in Singapore; it was widened to include claims that had been made against SIA worldwide as well as a claim for hull and cargo losses.

2.58 His Honour, Woo Bih Li J, started with a review of local case law on *lis alibi pendens*. In *Koh Kay Yew v Inno-Pacific Holdings Ltd* [1997] 3 SLR 121, a Singapore-incorporated employer sought an injunction to restrain its employee from continuing his action for unlawful dismissal which had been filed in California, USA (the employee had worked for the employer in California). The Court of Appeal held that in a situation where a party had commenced actions concurrently in two jurisdictions, it was understandable for a court to feel uncomfortable about allowing both actions to go on. Not only would the same issue have to be litigated twice but there would also be the risk of having two different results that conflicted with the other. In such circumstances, courts, including those in Singapore, should prevent the

inherent abuse of the different judicial systems in different jurisdictions by compelling that party to choose one jurisdiction to litigate in.

2.59 In *Yusen Air & Sea Service (S) Pte Ltd v KLM Royal Dutch Airlines* [1999] 4 SLR 21 (“*Yusen Air*”), Federal Insurance Co, the insurers of some missing cargo, commenced an action in New York against Yusen Air & Sea Service Pte Ltd (“Yusen”), a freight forwarding company incorporated in Singapore. Yusen joined KLM Royal Dutch Airlines (“KLM”) as a third party in the New York proceedings to seek contribution and/or an indemnity from KLM. Subsequently, Yusen also commenced action in Singapore against KLM and the cargo handling agents, Changi International Airport Services Pte Ltd, seeking a declaration for an indemnity in respect of the claim by Federal Insurance Co and Yusen’s costs and expenses in the New York proceedings.

2.60 KLM applied to strike out Yusen’s Singapore action. It succeeded before the assistant registrar whose decision was upheld by a judge. However, on appeal, the Court of Appeal allowed Yusen’s appeal. It found that Yusen had not affirmatively elected to proceed against KLM exclusively in New York because the evidence showed that Yusen intended to pursue its claim in Singapore for an indemnity for its costs and expenses in the New York proceedings for which it had been advised would not have been recoverable under New York law. As Yusen had elected to proceed against KLM in Singapore, it was allowed to do so but the Court of Appeal granted an injunction restraining Yusen from continuing the prosecution of the New York proceedings against KLM.

2.61 The Court of Appeal held that when an issue of *lis alibi pendens* arose, *ie*, when a plaintiff sued the same defendant in two or more different jurisdictions over the same subject matter, the defendant could take out an application to compel the plaintiff to make an election as to which set of proceedings he wished to pursue. For the purposes of an election, the considerations of *forum conveniens* did not come into play. All that the defendant needed to demonstrate was a duplicity of actions in the different jurisdictions. Once this had been established, the burden of proof would then shift to the plaintiff to justify the continuance of the concurrent proceedings by showing “very unusual circumstances”.

2.62 On the facts, Woo J in *Ang Ming Chuang* found that SIA had failed to demonstrate that such unusual circumstances existed. Unlike *Yusen Air* (*supra* para 2.59), where the Singapore action was commenced to claim relief not sought in the New York action, SIA’s Taiwan action sought a wider scope of relief than the Singapore action. In the premises, his Honour decided that

it would be vexatious for SIA to continue with both its Taiwan and Singapore actions and that SIA's Singapore action should be stayed on the ground of *lis alibi pendens*.

The argument of *forum non conveniens*

2.63 As the issue of *forum non conveniens* had also been extensively argued in *Ang Ming Chuang* (*supra* para 2.56), Woo J gave his grounds of decision on this issue too. In the *locus classicus* on *forum non conveniens*, *Spiliada Maritime Corporation v Cansulex Ltd (The Spiliada)* [1987] AC 460, the House of Lords held that the purpose of the doctrine was to ensure that the forum in which the case was tried was the more suitable one in the interests of all the parties and the ends of justice. On the facts, the onus was on CAA not only to show that Singapore was not the natural or appropriate forum but also that there was another available forum which was clearly or distinctly more appropriate than the Singapore forum. This principle, as enunciated in *The Spiliada*, and the factors to be considered by the Court in deciding which is the more appropriate forum, have been applied on numerous occasions by the Singapore courts. His Honour proceeded to consider these factors and concluded that they favoured Taiwan as the forum which was clearly or distinctly more appropriate than Singapore. The following were the factors which His Honour considered.

Where the parties operated from

2.64 CAA operates only in Taiwan while SIA operates worldwide. SIA has offices all over the world, including Taiwan. This was a factor favouring Taiwan as the more appropriate forum.

Location of witnesses

2.65 CAA submitted that a fairly large number of its staff who are located in Taiwan would be called as witnesses of fact. These included the local controller, the ground controller, the flight data controller, the clearance delivery controller, the Chief of Tower of CKS International Airport, employees or agents of the Aviation Safety Council, the Director-General of CAA, other employees or agents of CAA and SIA's employees or agents in Taiwan. CAA argued that greater inconvenience and costs in transporting these witnesses would occur if the trial were in Singapore instead of Taiwan.

2.66 SIA did not dispute the possible list of witnesses submitted by CAA. Instead SIA's response was that CAA's argument would cut both ways as

witnesses for SIA who were not resident in Taiwan would similarly then have to travel to Taiwan if the hearing were held there. However, his Honour noted that SIA did not set out its list of witnesses. Given that the incident and the alleged acts of negligence would have occurred in Taiwan, it would be more likely that there would be more witnesses from Taiwan than from Singapore. Moreover, there was no suggestion by SIA that it would have any difficulty in getting its witnesses to fly to Taiwan. This second factor also favoured Taiwan as the more appropriate forum.

Translation costs

2.67 CAA also argued that as SIA's claims were based upon, *inter alia*, the inadequate operation and maintenance of CKS International Airport by CAA, many of the relevant documents would be located in Taiwan. The majority of these documents, including CAA's documents, were in Chinese and would have to be translated into English if the proceedings were heard in Singapore.

2.68 SIA counter-argued that non-Chinese documents tendered to a Taiwanese court would have to be translated into Chinese. Such translation and interpretation costs might well be higher if proceedings were to continue in Taiwan rather than in Singapore.

2.69 To his Honour, it seemed more likely that there would be more documents from Taiwan than Singapore. As most of the documents from Taiwan would be in Chinese and would require translation if the proceedings were to continue in Singapore, this was another factor favouring Taiwan as the more appropriate forum.

Site inspection

2.70 CAA asserted that the physical conditions at CKS International Airport might be in contention and fundamental to the trial. Thus a Taiwanese court would be in a better position to conduct a site inspection of the various items in contention. These included:

- (a) the runway designs of Runways 05R and 05L and their relative positions to each other;
- (b) the physical characteristics of Runways 05R and 05L, their similarities and their differences;

- (c) the runway designations at the holding positions of Runways 05R and 05L;
- (d) the guard lights at the holding positions of Runway 05L;
- (e) the bar lights at the holding positions of Runway 05L;
- (f) the taxiway centreline lights on Taxiway N1 across the threshold of Runway 05R;
- (g) the lighting and radar system at CKS International Airport.

2.71 While SIA did not dispute that a Taiwanese court would be better placed to do a site inspection, it was of the view that it was pure assumption that a site visit by the court was necessary. As the accident site had been thoroughly examined and inspected by experts after the accident and accident reports had been completed a long time ago, it would be pointless to inspect the accident site now.

2.72 His Honour agreed that unless the inspection was done on board a similar aircraft from where the pilots were seated and in similar severe weather as on that fateful day, the value of a site inspection would be likely to be low since the accident site had already been inspected and accident reports prepared. Nevertheless, the possible value of a site inspection could not be ruled out and this factor once again favoured Taiwan as the more appropriate forum.

Governing law

2.73 The issue of the governing law was a matter which Woo J discussed at some length. While SIA's action against CAA in Taiwan was based on Taiwanese legislation such as the Civil Code and the State Compensation Law which imposes liability for intentional or negligent conduct, SIA's action against CAA in Singapore was based on common law negligence. Whether the law of Taiwan or the law of Singapore would govern was a conflict of laws issue which his Honour had to decide.

2.74 Counsel for CAA referred his Honour to the double actionability rule for international torts which was laid down in *Phillips v Eyre* (1870) LR 6 QB 1. According to the double actionability rule, an act done in a foreign country is a tort and actionable as such in England, only if it is both:

- (a) a tort in England if the act had been done in England; and

(b) actionable according to the law of the foreign country where it was done.

2.75 This double actionability rule is not inflexible and as qualified by the exception in *Chaplin v Boys* [1971] AC 356 and *Red Sea Insurance Co Ltd v Bouygues SA* [1995] 1 AC 190 (“*Red Sea Insurance*”), it is possible to depart from the double actionability rule if there are clear grounds that injustice will result. In such a situation, the governing law of any particular issue will be the law of the country which, with respect to that issue, has the most significant relationship with the occurrence and the parties. In *Goh Chok Tong v Tang Liang Hong* [1997] 2 SLR 641 and *Parno v S C Marine Pte Ltd* [1994] 4 SLR 579, the Court of Appeal held that the rule in *Phillips v Eyre* together with the exception in *Chaplin v Boys* and *Red Sea Insurance* were all part of the law of Singapore.

2.76 In England, the double actionability rule no longer applies. The Private International Law (Miscellaneous Provisions) Act 1995 (c 41) has since 1 May 1996 adopted the *lex loci delicti* or the law of the place where the tort was committed as the applicable law of an international tort. Two other common law jurisdictions, Canada and Australia, have likewise adopted the *lex loci delicti* as the applicable law of an international tort but by judicial decision. In *Tolofson v Jensen* (1994) 120 DLR (4th) 289 and *Regie Nationale des Usines Renault SA v Zhang* (2002) 210 CLR 491, the Supreme Court of Canada and the High Court of Australia, respectively, have found this to be the sounder approach for a large number of practical considerations. There are the advantages of certainty, ease of application and predictability. Moreover, adopting the *lex loci delicti* better meets normal expectations as ordinarily, people expect their activities to be governed by the law of the place where they happen to be and that concomitant legal benefits and responsibilities will be defined accordingly as the government of that place is the only one with power to deal with these activities. The same expectation is ordinarily shared by other states and by people outside the place where an activity occurs. If other states routinely apply their laws to activities taking place elsewhere, confusion will be the result. In our modern world of easy travel and with the emergence of a global economic order, chaotic situations will often result if the principle of territorial jurisdiction were not generally respected. While many activities within one state necessarily have impact in another, a multiplicity of competing exercises of state power in respect of such activities must be avoided.

2.77 After completing his review of the case law in these two jurisdictions, Woo J in *Ang Ming Chuang* concluded that he, too, would have

applied the *lex loci delicti* as a general rule for international torts but he was bound by the doctrine of precedence and could not depart from the double actionability rule. However, he could apply the *Red Sea Insurance* exception and as the other significant factors were clearly in favour of Taiwan, he held that the law of Taiwan would apply if the action were to be heard in Singapore.

Eventual enforcement in Taiwan

2.78 CAA submitted that if the Singapore proceedings were not stayed and SIA were to obtain judgment against it, SIA would still have to seek redress in Taiwan as there was no reciprocity between Taiwan and Singapore that would enable the judgment of a superior court in Singapore to be enforced in Taiwan. SIA would not be allowed to sue upon the Singapore judgment but would have to sue afresh in Taiwan.

2.79 His Honour's view was that this was a problem for SIA to contend with and it was not for CAA to raise it as a factor in favour of a stay application. Relying on the recent High Court case of *Bayerische Landesbank Girozentrale v Kong Kok Keng* [2002] 4 SLR 283, his Honour held that if the plaintiff chose to sue in a jurisdiction that made enforcement more difficult, it was a problem that would be faced by the plaintiff and it was not for the defendant to complain.

The scope of SIA's Taiwan action

2.80 In his Honour's opinion, the fact that SIA's Taiwan action was wider in scope than its Singapore action was an important factor to be considered. Besides an indemnity or contribution for damages paid or payable by SIA to passengers and crew in various jurisdictions, SIA's Taiwan action included hull and cargo losses as well. Accordingly, the question arose as to whether a finding or exoneration of liability on the part of CAA by a Singapore court would be binding in the Taiwan action between SIA and CAA when the additional claims of SIA were considered. This would give rise to a clear risk that the issue of liability for the additional claims would have to be re-litigated all over again with the real possibility of a different conclusion, if CAA's application for a stay were to be refused. This was yet another factor favouring Taiwan as the more appropriate forum.

Juridical advantage and the ends of justice

2.81 Woo J also rejected SIA's final two arguments. Firstly, SIA argued that the dispute between SIA and CAA was a matter of public and national interest that should be tried in Singapore. However, to his Honour, the dispute was no less a matter of public and national interest in Taiwan and it may even be said to be of greater interest in Taiwan as the tragedy occurred there and the operation of CKS International Airport would be under scrutiny as contrasted with the operation of a few crew members on board an aircraft.

2.82 SIA's final argument was that the role of CAA would be material in SIA's defence against the claims that had been filed against it by the other victims who were on the same flight. Without the participation of CAA and the examination of the role played by it, SIA would be prejudiced and deprived of a legitimate juridical advantage in presenting a full defence. Woo J disagreed. While the role of CAA might be material in SIA's defence, it did not follow that SIA would be prejudiced if CAA did not participate in the Singapore action. The reality would be that if CAA did not participate, SIA would be at liberty to make whatever assertions it wished about CAA's role in the accident without challenge from CAA. That would be an advantage to SIA, rather than a prejudice, in its defence against the claims that had been filed against it by the other victims who were on the same flight.

2.83 In the circumstances, his Honour held that the factors weighed in favour of Taiwan and that it was clearly the more appropriate forum. Accordingly, his Honour decided that SIA's Singapore action should be stayed on the ground of *forum non conveniens* as well as *lis alibi pendens*.