Neutral Citation Number:

[2021] EWHC 1262 (Comm)

No. CL-2021-000236

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURT
OF ENGLAND & WALES
COMMERCIAL COURT

Rolls Building
Fetter Lane
London, EC4A 1NL

Thursday, 29 April 2021

Before:

MR JUSTICE CALVER

B E T W E E N :

ZHD — Claimant/Applicant

- and -

SQO

Defendant/Respondent

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MR P. WEBSTER (instructed by Campbell Johnston Clark Ltd) appeared on behalf of the Claimant/Applicant.

THE DEFENDANT/RESPONDENT did not attend and was not represented.

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**J U D G M E N T**

MR JUSTICE CALVER:

1 This is the claimant (the owners)'s application for three things. First, an interim and in due course a final antisuit injunction pursuant to section 37(1) of the Senior Courts Act 1981 to restrain the defendant from pursuing proceedings against the claimant in the People's Court of a particular province in Vietnam, which I will call the Vietnamese action, in breach of an arbitration agreement providing for arbitration in London. Second, for permission for alternative service of the claim form and documents relating to the application for an interim antisuit injunction. Third, for permission to serve those documents out of the jurisdiction pursuant to CPR 62.5(1)(c) and/or CPR 6.36 and para.3.1(6)(c) of practice direction 6B.

2 On 20 July 2019 a bill of lading PS1 ("the bill of lading"), was issued by the owners in respect of a cargo of corn loaded on their vessel, the Precious Sky, identifying the defendant cargo interests, whom I shall call SQO, as the notified party. The bill of lading was to order but was later endorsed to SQO. The bill of lading is on the Congenbill form and it refers on its face to a sub-charter dated 18 April 2019. That corresponds to the date of a sub-charter between O and M, being the entity from which SQO purchased the corn.

3 On 17 September 2019 the vessel arrived at the discharge port. Issues with the cargo were identified by cargo surveyors on 19 September 2019. On 24 September 2019 SQO applied to the Vietnam court for the arrest of the vessel to obtain security (as frequently happens) and that was granted on 27 September 2019. To obtain the vessel's release, the owners procured the issuance of a bank guarantee dated 11 October 2019 in favour of SQO, and I shall return to that bank guarantee later. An order for the release of the vessel was made on 11 October 2019.

4 After the release of the vessel the owners' representatives submitted an opinion dated 30 October 2019 to the Vietnam court drawing the court's attention to the likely existence of an arbitration agreement and arguing that the court should refuse the enrolment of a statement of claim filed by SQO or, if it had been enrolled, should dismiss such a claim. That filing, I am told, was a pre-emptive measure made out of a concern that SQO might seek to issue proceedings before the same court that had issued the arrest order. SQO in fact issued its statement of claim against the owners before the Vietnamese courts on 20 August 2020.

5 Under Vietnamese procedure, the initiation proceedings involve a process known as enrolment and acceptance of the case. Mr Williams, in his first witness statement before the court dated 23 April 2021, gives evidence that the fact that a statement of case is accepted by the Vietnamese court, in other words, enrolled and accepted, does not amount to a definitive determination that the court has jurisdiction and does not mean that the defendant cannot challenge jurisdiction (see para.18 of this witness statement).

6 On 24 November 2020 the Vietnamese court issued what is called a Notice of Case Acceptance; however, that was only served on the owners on 3 December 2020. The statement of claim of SQO advances a claim against the owners that they should:

> "... compensate for the damage and shortage of cargo carried by Precious Sky under the bill of lading number PS1, dated 20 July 2019 with the amount of USD 845,173.939 as well as late payment of interest, court fees and other legal fees."

7 In the statement of claim, SQO admits at paragraph 1.4 that it did receive the bill of lading and it also suggests that Vietnamese law applies to the issues in the case by reason of the bank guarantee issued in its favour in Vietnam. However, for reasons which I shall explain, that fact cannot trump the parties' contractual choice of forum in this case which was arbitration in London.

8 After being served on 3 December 2020, the owners immediately objected to the Vietnamese court's jurisdiction in a submission, called a testimony, dated 4 December 2020. The owners contended that the Vietnamese action should be dismissed because of the existence of the arbitration agreement. This jurisdictional challenge remains outstanding. As Mr Williams explains in his first witness statement, there was a hearing on 18 December 2020 at which the owners' representatives orally presented the argument that the court lacked jurisdiction relying on the 4 December 2020 jurisdictional objection. However, the judge indicated that she had insufficient evidence and that she might in fact summon M and B to participate in the proceedings. She directed the parties to supply further materials within one month. No decision was made by her regarding the owners' jurisdictional objections at that hearing or indeed since.

9 On 18 January 2021 the owners' Vietnamese lawyers made an application for an extension of time in respect of the provision of material. This, it is confirmed, was for the purpose of submitting further evidence relating to the jurisdictional issue; in particular evidence as to the arbitration clause in the sub-charter which is not currently before the Vietnamese court. Both Mr Williams in his witness statement at para.21 to 22 gives that evidence and it is confirmed before me by Mr Peter Webster, counsel, for the owners.

10 There has been no ruling on the application for an extension of time for the provision of materials and indeed Mr Webster confirmed that due to the Covid 19 situation in Vietnam in 2020 and early 2021, hearings in general have been delayed and indeed progress of cases have been brought to an effective standstill.

11 Unless the Vietnamese action ceases, the owners' Vietnamese lawyers anticipate having to file further documents in respect of the jurisdictional challenge in early May. Pending provision of that material, the owners provided the Vietnamese court in an opinion with the text of the arbitration clause from the sub-charter in their filing dated 20 April 2021. However, I am told that there is a risk that this may not satisfy the Vietnamese court because of evidentiary requirements which require documents submitted to the court to be legalised and notarised originals or certified true copies. The problem is that the owners are unable to provide the Vietnamese court with an original or certified copy of an original of the sub-charter as they are not a party to it. So to protect against this risk, the owners suggested to the court in their filing of 20 April 2021 that the court should summon O or M. If that were to happen, then obviously the proceedings would become more complex.

12 Once the further documents are submitted, the case may be brought on for further hearings at any time. Although under Vietnamese procedure matters of jurisdiction will usually be determined first, the Vietnamese court can order that matters of jurisdiction and the merits be determined at the same hearing. The owners will have to cooperate with any orders made if they are not to lose their right, therefore, to defend the claim in the event that the Vietnamese court were not to uphold the jurisdictional challenge, as Mr Williams confirms in his witness statement.

13 Finally, on 14 April 2021 the owners through their English solicitors wrote to SQO demanding that it discontinue and refrain from taking further steps to prosecute the proceedings before the Vietnamese court. The owners also commenced London arbitration proceedings against SQO and I am told by Mr Webster that the tribunal has now been constituted. SQO has refused to provide the confirmation which the owners sought and indeed in a response dated 16 April 2021 asserted that the Vietnamese court has accepted

jurisdiction and disputes the owners' case regarding the arbitration agreement. That appears to be a reference to the fact that the Vietnamese court has enrolled and accepted the claim which, however, for the reasons I have already stated does not appear to me to be any acceptance by the court that it does finally have jurisdiction over the claim.

THE LAW

14 I turn next to the applicable principles for the grant of an antisuit injunction. The court has the power to make an antisuit injunction under section 37(1) of the Senior Courts Act 1981 where it is just and convenient to do so. That provision reads as follows:

> "The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so."

15 On an interim basis such as this, a claimant must demonstrate to a high degree of probability that there is an arbitration agreement which governs the dispute in question; see Cockerill J in *Times Trade Incorporation v National Bank of Fujairah (Dubai Branch)* [2020] EWHC 1078 at 38. If that hurdle is met and provided that the application has been made promptly and before the foreign proceedings are too far advanced, then where proceedings are commenced in breach of a valid and binding arbitration clause, the presumption is that an injunction will normally be granted unless the other party can show strong reasons why an injunction should not be granted; see *The Epsilon Rosa* [2003] 2 Lloyds Reports 509 at 518 per Tuckey LJ.

16 As explained by Jacobs J in *Catlin Syndicate v Amec Foster Wheeler USA Corp* [2020] EWHC 2530 at para.36, the starting point is that the court will ordinarily act to protect the integrity of a contractual bargain reached between the parties.

17 The English court should feel no diffidence in granting an injunction restraining the defendants from pursuing foreign proceedings in breach of an exclusive jurisdiction clause or an arbitration clause as Millett LJ stated in *The Angelic Grace* [1995] 1 WLR 87 at 96:

> "In my judgment, where an injunction is sought to restrain a party from proceeding in a foreign Court in breach of an arbitration agreement governed by English law, the English Court need feel no diffidence in granting the injunction, provided that it is sought promptly and before the foreign proceedings are too far advanced. I see no difference in principle between an injunction to restrain proceedings in breach of an arbitration clause and one to restrain proceedings in breach of an exclusive jurisdiction clause ..."
>
> "The justification for the grant of the injunction in either case is that without it the plaintiff will be deprived of its contractual rights in a situation in which damages are manifestly an inadequate remedy. The jurisdiction is, of course, discretionary and is not exercised as a matter of course, but good reason needs to be shown why it should not be exercised in any given case."

Indeed, strong reason is required to be shown.

18 An antisuit injunction is not granted out of fear that a foreign court or tribunal (in this case the Vietnamese court) will wrongly assume jurisdiction (although this can provide a reason why the applicant will be prejudiced if an injunction is not granted) but on the surer basis that the defendant promised to resolve disputes only by way of arbitration governed by English law and that damages are unlikely to be an adequate remedy; see Steyn LJ (as he was) in *Continental Bank v Icos* [1994] 1 WLR 588 at 598.

19 In *The Angelic Grace* the court was urged not to issue an antisuit injunction until the Italian court had decided whether or not to accept jurisdiction. In the present case a similar

argument might be advanced by the Vietnamese defendant in respect of the Vietnamese court. However, Millett LJ held at p.96 in that case:

> "We should, it was submitted, be careful not to usurp the function of the Italian Court except as a last resort, by which was meant, presumably, except in the event that the Italian Court mistakenly accepted jurisdiction, and possibly not even then. That submission involves the proposition that the defendant should be allowed, not only to break its contract by bringing proceedings in Italy, but to break it still further by opposing the plaintiff's application to the Italian Court to stay those proceedings, and all on the ground that it can safely be left to the Italian Court to grant the plaintiff's application.
>
> "I find that proposition unattractive. It is also somewhat lacking in logic, for if an injunction is granted, it is not granted for fear that the foreign Court may wrongly assume jurisdiction despite the plaintiffs, but on the surer ground that the defendant promised not to put the plaintiff to the expense and trouble of applying to that Court at all.
>
> "Moreover, if there should be any reluctance to grant an injunction out of sensitivity to the feelings of a foreign Court, far less offence is likely to be caused if an injunction is granted before that Court has assumed jurisdiction than afterwards, while to refrain from granting it at any stage would deprive the plaintiff of its contractual rights altogether."

20 It follows that on an interim basis if the existence of the arbitration clause is established to the necessary high degree of probability standard, then the court is simply engaged in determining whether strong reasons exist and whether the injunction should be granted in the court's discretion on the material before it at the hearing.

21 In determining whether strong reasons exist, where there is a valid and binding London arbitration clause, the court gives little or no weight to factors frequently applicable on applications to stay foreign proceedings such as the convenience of witnesses, availability of documents or a particular juridical advantage in another jurisdiction because the parties are deemed to have taken them into account where they have deliberately chosen their London arbitral forum. Nor is it necessary for the injunction claimant to show that England is the natural forum.

22 It follows, therefore, as Mr Webster submitted to me, that the following issues arise in the present case:

(1) can the owners show to a high degree of probability that there is an arbitration clause binding on SQO of which SQO is in breach by pursing the Vietnamese action?

(2) if so, has the application been made promptly and before the foreign proceedings are too far advanced and

(3) are there strong reasons not to grant the antisuit injunction?

23 I shall take these three issues in turn.

(1) *Can the owners show to a high degree of probability that there is an arbitration clause binding on SQO of which SQO is in breach by pursing the Vietnamese action?*

24 The question of whether SQO is in breach of the arbitration agreement can be broken down into three issues; one, whether the arbitration agreement in the sub-charter is incorporated into the bill of lading; two, whether it binds SQO and, three, whether SQO is in breach by pursuing the Vietnamese action.

25 As I have mentioned, the bill of lading issued in respect of the cargo is on the standard Congenbill 1994 form with the customary conditions of carriage on the reverse. Clause 1 of the conditions stipulates:

> "All terms and conditions, liberties and exceptions of the charterparty dated as overleaf, including the law and arbitration clause, are herewith incorporated."

The bill of lading specifically identifies a charterparty on its face by reference to its date, namely, 18 April 2019.

26 There were two charterparties involved in the carriage of cargo; a period time charter between the owners and O as charterers which was dated 15 November 2018 and, secondly, a voyage charter on the Congen form between O and M as charterers dated 18 April 2019. It follows that the reference on the face of the bill of lading to the charter dated 18 April 2019 is clearly a reference to the sub-charter between O and M.

27 That sub-charter contains a clause 19A and arbitration clause in these terms:

> "This charterparty shall be governed by and construed in accordance with English law and any dispute arising out of this charterparty shall be referred to arbitration in London in accordance with the Arbitration Acts 1950 and 1979 or any statutory modification or re-enactment thereof for the time being in force."

28 English law is the governing bill of the law of the bill of lading and governs the question of whether there is a London arbitration clause incorporated into the contract of carriage contained in and evidenced by the bills of lading; see *The Joker* [2019] EWHC 3451, *Bulk Poland* [2020] EWHC 3343 and *A v B* [2020] EWHC 3657.

29 As a matter of English law clause 19A is incorporated into the contract contained in or evidenced by the bill of lading; see *The Delos* [2001] 1 Lloyds Reports 703 which was a decision regarding the wording of the Congenbill. There is thus a high degree of probability by reference to English law principles of incorporation that there is a binding arbitration clause incorporated from the sub-charter into the bill of lading. Moreover, SQO is bound by that clause. It is a lawful holder of the bill of lading. Section 3 of the Carriage of Goods by Sea Act 1992 applies as SQO has, one, taken delivery from the carrier of the goods to which the bill of lading relates and, two, has made a claim under the contract of carriage against the

carrier in respect of those goods. Accordingly, SQO is subject to the original contracting party's liabilities which include the obligation to resolve any disputes covered by the arbitration agreement by way of arbitration.

30 SQO is also in breach of the arbitration clause by bringing the Vietnamese action. That is a claim brought by reference to the bill of lading and to the owners' carriage of the cargo under the bill of lading. It is, therefore, covered by the wide wording of the arbitration clause. The wording of the arbitration clause covers not only claims under the contract evidenced in the bill of lading but also non-contractual claims which are dependent on the existence of the bills of lading; see in a comparable context *The Delos* at para.14.

31 In that case it was held that the wording "any disputes under this charter party" which had been incorporated into a bill of lading - although in fact narrower than the wording we have in this case, which is "any dispute arising out of" - was broad enough to cover not only claims under the contract of carriage but also claims for breach of duty or bailment, which were dependent on the existence of the bills of lading.

32 Furthermore, *The Delos* predates *Fiona Trust v Privalov* [2007] UKHL 40 in which the House of Lords held that there is a strong presumption that commercial parties intend all of their disputes to be determined in a single forum. Accordingly, the claims in the Vietnamese action are squarely within the scope of the arbitration clause. It follows that the owners do indeed establish to a high degree of probability that SQO is acting in breach of the arbitration agreement in bringing its proceedings in Vietnam.

*(2) Whether the application has been made promptly and before the foreign proceedings are too far advanced*

33 The next question which arises is whether the application has been made promptly and before the foreign proceedings are too far advanced. The Vietnamese action has not much advanced on the merits and the owners have objected to the Vietnamese courts having jurisdiction of the dispute. The relevant principles in this respect were set down in *Specialised Vessel Services v MOP Marine Nigeria Limited* [2021] EWHC 333 (Comm) at paragraphs 28 to 36. In that case at paragraph 34 of the Judgment, the court quoted with approval Bryan J's statement in *Qingdao v Shanghai Ding* as follows:

> "(1) There is no rule as to what will constitute excessive delay in absolute terms. The court will need to assess all the facts of the particular case.
>
> "(2) The question of delay and the question of comity are linked. The touchstone is likely to be the extent to which delay in applying for antisuit relief has materially increased the perceived interference with the process of the foreign court or led to a waste of its time or resources.
>
> "(3) When considering whether there has been unacceptable delay a relevant consideration is the time at which the applicant's legal rights had become sufficiently clear to justify applying for anti-suit relief."

34 At para.35 of *Specialised Vessel Services* the court also quoted with approval from *The Antisuit Injunction*, second edition (Raphael), in which the learned author stated as follows:

> "The significance of delay will depend on all the circumstances of a particular case. But some principles have been identified in the case law. First, even where there is a binding exclusive forum clause, the injunction should be sought promptly, and before the foreign proceedings are too far advanced. Second, the questions of delay and comity are linked. The more closely that the foreign court has become involved with the matter due to delay, the greater the interference with foreign court that an injunction is likely to produce, and so the stronger the factors against the grant of an injunction. Third, prejudice to the injunction defendant due to delay is significant, and if delay is not prejudicial it may be given significantly less weight.

35 Furthermore, in *Ecobank Transnational v Tanoh* [2015] EWCA civ 1309, at para.133 Christopher Clarke LJ said this:

> "Injunctive relief may be sought (a) before any foreign proceedings have begun; (b) once they have begun; (c) within a relatively short time afterwards; (d) when the pleadings are complete; (e) thereafter but before the trial starts; (f) in the course of the trial; (g) after judgment.
>
> "The fact that at some stage the foreign court has ruled in favour of its own jurisdiction is not *per se* a bar to an anti-suit injunction. But, as each stage is reached more will have been wasted by the abandonment of proceedings which compliance with an anti-suit injunction would bring about. That being so, the longer an action continues without any attempt to restrain it the less likely a court is to grant an injunction and considerations of comity have greater force."

36 By way of illustration of the application of these principles, see the court's decision in *A v B,* [2020] EWHC 3657 in which the court granted a final antisuit injunction in respect of Chinese proceedings which was applied for only after the Chinese court had rejected the claimant's jurisdictional challenge but before the Chinese proceedings had been allowed to progress on the merits.

37 In the present case the Vietnamese action was enrolled on 24 November 2020 and only served on the owners on 3 December 2020. It is right that although the claimant did not seek interim anti-suit injunctive relief immediately upon receipt of the Vietnamese proceedings on 3 December 2020 as it might have done, but chose to contest these proceedings so far as jurisdiction is concerned, they have still not engaged in the proceedings on the merits. There has been very little procedural progress in the Vietnamese action. There is no suggestion that a merits' hearing is imminent.

38 A hearing occurred on 18 December 2020 at which the owners reiterated their jurisdictional objection, but the Vietnamese court stated that there was insufficient evidence to determine it. Little has happened in the proceedings since then and the owners have applied for an extension of time to provide such evidence; moreover on 20 April 2021 they made their filing regarding the terms of the arbitration clause in the sub-charter. SQO has not served on

the owners any further evidence after that hearing and so there is no question of prejudice to the injunction defendant in this case. The jurisdiction challenge is still currently live but there has been no decision in respect of it and no decision is apparently imminent.

39 This application was issued on 23 April 2021. In my judgment, the length of the delay in making this application, which here is not in fact particularly great, is of less importance than the extent to which the foreign proceedings have progressed during the delay and whether those foreign proceedings have been allowed to progress on the merits because that would be a powerful factor against the grant of an antisuit injunction. Here, however, the proceedings have progressed hardly at all on the merits. Moreover, justifiable delay will not be given serious weight against the grant of an injunction in a clear case which I consider that this is.

40 It follows that the granting of the injunction will lead to little waste of judicial resources in the Vietnamese courts. Furthermore, there is no prejudice to SQO as a result of the application being made now as opposed to some point in December or early January. Whilst there has been a short delay of some three or four months in this case, as I have mentioned, delay *per se* is not a reason for refusing antisuit relief which ought otherwise to be granted, as was explained in the *Specialised Vessel Services* case in which the court granted a final anti-suit injunction more than a year after the foreign proceedings had started and despite there having been various hearings and applications before the foreign court in the meanwhile.

*(3) Are there strong reasons not to grant an anti-suit injunction?*

41 The final question which arises is whether there are strong reasons not to grant an antisuit injunction. Mr Webster addressed me on various points which SQO might make regarding why an injunction should not be granted and the first point that he raised is that, as SQO has contended in its 16 April 2021 email, the Vietnamese court, it says, has already assumed jurisdiction over the claim when it accepted the case for enrolment. However, the evidence before me suggests that that is wrong. As I have mentioned, the enrolment of the case in Vietnam is not sufficient for the court to assume final jurisdiction. The statement of claim itself did not refer to the arbitration clause and jurisdiction is indeed clearly a live issue in Vietnam. In other words, accepting enrolment of the case is not the same as a final acceptance by the Vietnamese court of jurisdiction over the dispute.

42 In any event, it is worth mentioning that even if SQO were correct about this, it would not necessarily bar anti-suit injunctive relief; see, for example, *A v B* [2020] EWHC 3657 where an anti-suit injunction was granted after the foreign court rejected a jurisdictional challenge, and indeed see Christopher Clarke LJ's observations in *Ecobank* at para.40. The point is that the court is giving effect to the party's contractual agreement in granting the antisuit injunction.

43 Secondly, Mr Webster points out that SQO might seek to argue that the owners had submitted to the jurisdiction. However, the owners' evidence establishes that that is wrong and Mr Webster has set out in his skeleton argument a number of other points which demonstrate that that is wrong, which I accept.

44 Thirdly, and perhaps most significantly, SQO might seek to take a point about limitation. The bill of lading incorporates the Hague Rules including the Article 3, rule 6, one year time bar. Any claim in arbitration will therefore now be time barred.

45 Where the respondent to the injunction application has acted *reasonably* in allowing the time bar to expire in the contractual forum, then this court may place the applicant for the injunction on terms requiring the time bar to be waived. However, that is likely to be a rare case as ordinarily the respondent cannot complain of the application of time bar in the contractual mandatory forum as he has agreed to it, see *The Pioneer Container* [1994] 2 AC 324 at 348ff.

46 Here, the time bar is the product of SQO's own decision not to commence proceedings in time *by way of arbitration*. Crucially the owners were not served until 3 December 2020, so even if the owners had applied immediately the situation would have been the same, SQO would be timed barred. That also is true if one takes the October 2020 date when the owners discovered the existence of the claim.

47 It follows that this is no reason not to grant an antisuit injunction. SQO can always apply for an extension of time under section 12 of the Arbitration Act, although they may find that a difficult application bearing in mind that they allowed the relevant limitation period to expire without apparently any good reason, although obviously that would be something that they would be able to argue should they choose to do so in due course.

48 Mr Webster also points out that SQO might suggest that the court should not grant relief in circumstances in which the owners have commenced arbitration; however, even in a situation in which, as here, the tribunal is now operational, that is no reason to refuse relief if

otherwise appropriate; see *Nori Holdings v PJSC Bank Otkritie Financial Corporation* [2018] EWHC 1343.

49 In all the circumstances, and Mr Webster pointed out some other points that SQO might seek to argue, none of them, in my judgment, would have merit and in all the circumstances there is no reason, let alone a strong reason, not to grant the interim antisuit injunction which, in my judgment, should be granted.

*The terms of the anti-suit injunction*

50 So far as the terms of the antisuit injunction are concerned, the owners have highlighted two aspects of the order which is sought by them. First, they seek both a prohibitory injunction and a mandatory injunction. The mandatory injunction would require SQO to use its best endeavours to procure as soon as practicable a stay of the Vietnamese action. The current position is that there is an order made in December 2020 requiring further material to be provided within a month. The owners have applied for an extension of time of that deadline and that is yet to be decided. The Vietnamese lawyers for the owners have stated that in those circumstances they are bound to file documents when received and anticipate filing further documents regarding the jurisdictional challenge in early May. Mr Williams points out that the case may continue on the court's own motion even if SQO takes no further step in it.

51 Accordingly, the owners may be put in a position in which they are faced with a choice of complying with orders made by the Vietnamese court regarding the merits of the case or losing their ability to challenge jurisdiction; and so they say that mandatory relief is needed

to make the anti-suit injunction effective; see by analogy *Specialised Vessels Services* at para.55 and following, although of course that was a final injunction case.

52 Since the owners seek only a requirement that SQO apply for a *stay*, not a discontinuance of the Vietnamese action, so this would not affect SQO's substantive rights in the unlikely event that it were later to be concluded that the ASI was wrongly granted, and since the owners are seeking simply to give effect to the parties' clear contractual agreement as I have found, I do consider that this aspect of the relief in the particular circumstances of this case is justified.

53 Secondly, the draft order provides that the injunction will continue until further order and for the return date to be vacated unless SQO applies to challenge the order. In my judgment, the right course is to order that a return date should be fixed as is customary and the owners can then seek their costs on an indemnity basis in accordance with ordinary Commercial Court practice at the return date; see *National Westminster Bank v Rabobank Nederland* [2007] EWHC 1742 at para.21.

54 So far as service out is concerned, I grant permission to serve the claim form and documents relating to the antisuit injunction application out of the jurisdiction. Permission for service is granted under CPR 62.5(1)(c) as the claimant seeks the remedy regarding an arbitration agreement and the seat is England. It could also be granted in the alternative under CPR 6.36 and Practice Direction 6B para.3.1(6)(c), the contract being governed by English law.

55 I also grant permission to the owners under CPR 6.15, 6.27 and 6.37(5)(b)(1) to serve SQO by alternative means, namely, by email on the three email addresses specified in Mr Webster's skeleton argument. There is a good reason for alternative service. Vietnam is a

Hague Convention country and service via Hague Convention routes is likely to be time-consuming. The application relates to an arbitration agreement and to protect an arbitration which the owners have commenced in England. Service via Government channels is estimated to take up to six months. Whilst service by the postal service could be shorter, taking perhaps a month or so, under Vietnamese law that gives rise to real, practical issues regarding the enforcement of documents served by post. Though bailiff service may be possible, it is not certain that that method of service will be viewed as effective by a Vietnamese court; see Mr Williams' first witness statement at para.30.

56 There are therefore, in my judgment, exceptional and special circumstances to justify alternative service in this case despite Vietnam being a Hague Convention State. The court is making a number of coercive orders with the risk of committal for contempt, and the claimant is giving an undertaking in damages. It is accordingly imperative that the proceedings should be constituted formally as soon as possible. Service by email is not prohibited by Vietnamese law and so the requested alternative means of service by email, which I grant, is not prohibited by CPR 6.40(4).

**CERTIFICATE**

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