

**LEGALUPDATE**

A DREW &amp; NAPIER PUBLICATION

**CASE UPDATE****Singapore Court Of Appeal Rules Court Has No Power Under International Arbitration Act To Grant Mareva Injunction In Aid Of Foreign Arbitration*****Swift-Fortune Ltd v Magnifica Marine SA* [2006] SGCA 42**

The Singapore Court of Appeal has ruled that Singapore courts have no power under section 12(7) of the International Arbitration Act (the “**IAA**”) to grant interim measures, including Mareva interlocutory relief, in aid of foreign arbitration proceedings. This long-awaited decision has clarified the legal position on this issue, which has been the subject of two conflicting High Court decisions earlier this year.

**Conflicting High Court Decisions**

In *Swift-Fortune Ltd v Magnifica Marine SA* [2006] 2 SLR 323, Judith Prakash J, hearing the matter at first instance, ruled that section 12(7) of the IAA conferred powers on Singapore courts to make interim orders under section 12(1) of the IAA to assist only international arbitrations where Singapore is stipulated as the seat of arbitration but not international arbitrations which do not stipulate Singapore as the seat of arbitration (“**foreign arbitrations**”). Section 12(1) of the IAA provides for the granting of orders and reliefs for matters such as security for costs, discovery of documents or interrogatories, including interim injunctions such as Mareva injunctions.

Not long thereafter, in *Front Carriers Ltd v Atlantic & Orient Shipping Corporation* [2006] 3 SLR 854 (the “**Front Carriers decision**”), Belinda Ang J held that the court had the power under section 12(7) of the IAA to grant a Mareva injunction in aid of foreign arbitration.

**The Court of Appeal Decision**

After close examination of the legislative history of the IAA, the Singapore Court of Appeal agreed with the decision of Prakash J that the court did not have statutory power under section 12(7) of the IAA to make orders in relation to the matters listed in section 12(1) of the IAA in support of foreign arbitrations. The court noted that to rule otherwise would give rise to two undesired implications:

*“First, it will mean that these statutory powers [in section 12(1) of the IAA] have been impliedly incorporated into the arbitration agreement between the parties, whether or not they had agreed to them. Secondly, the exercise of such powers may cut across or intrude into the powers of the foreign arbitral tribunal conducting the arbitration under a foreign law”.*

**MAIN OFFICE**

20 Raffles Place  
#17-00 Ocean Towers  
Singapore 048620

t +65 6535 0733

f +65 6535 4906

mail@drewnapier.com  
www.drewnapier.com

Co. Reg. No. 200102509E

The court also had difficulty accepting the argument that Parliament had enacted section 12(7) with the intent of allowing Singapore courts to assume the mantle of “*universal providers of procedural orders and reliefs to assist all anticipated or ongoing international arbitrations ... in any country in of (sic) the world, whether or not they are Model Law states or signatories to the New York Convention*”.

The court also held that section 12(7) did not constitute an independent source of statutory power for the court to grant the orders and reliefs set out in section 12(1) of the IAA, but that such power is derived from section 4(10) of the Civil Law Act (the “**CLA**”) and section 18(1) of the Supreme Court of Judicature Act.

As to section 4(10) of the CLA, the Court of Appeal recognised that Ang J had also held in the *Front Carriers* decision that the court has the power to grant a Mareva injunction in support of a foreign arbitration where the court has personal jurisdiction over the defendant and where the plaintiff has an accrued cause of action against the defendant that is justiciable in a Singapore court. However, the court declined to approve or to disapprove Ang J’s ruling on this point, noting that the *Front Carriers* decision was a subject of a separate appeal.

### Comment

With the increasing amount of international arbitrations handled by Drew & Napier LLC, this case provides welcome guidance on an important issue that arises frequently in cross-border disputes. It reinforces the integrity of the arbitration agreement and the choice of arbitral forum by preventing parties from trying to seek relief in jurisdictions other than the chosen contractual venue. This decision allows counsel to develop more focused strategies to assist clients in their dispute resolutions.

If you would like more information about this case or wish to discuss how it may potentially affect you or your business, please feel free to contact the dispute resolution lawyers in Drew & Napier LLC (please refer to the Directors’ Profiles on our website), or:

Indranee Rajah, SC  
Director (Dispute Resolution & Litigation)  
Tel: +65 6531 4100  
Email: [indranee.rajah@drewnapier.com](mailto:indranee.rajah@drewnapier.com)

*The contents of this update are only intended to provide general information on the subject covered. Nothing in this publication should be treated as specific professional legal advice concerning any particular business, operational or other situations with which you might be faced. Drew & Napier LLC accepts no liability for, and does not guarantee the accuracy of, the information contained in this publication, and does not accept any liability for any loss or damage arising from any reliance thereon.*

## OUR BUSINESS GROUPS AND PRACTICE AREAS

**BANKING/GENERAL FINANCE**

David Ang  
T +65 6531 2236  
F +65 6535 4864  
E david.ang@drewnapier.com

**BIOMEDICAL SCIENCES**

Lim Wee Hann  
T +65 6531 2244  
F +65 6535 4864  
E weehann.lim@drewnapier.com

**Tony Yeo**

T +65 6531 2512  
F +65 6220 0324  
E tony.yeo@drewnapier.com

**BUILDING & CONSTRUCTION**

Tan Liam Beng  
T +65 6531 4139  
F +65 6533 3591  
E liambeng.tan@drewnapier.com

**CAPITAL MARKETS**

Sin Boon Ann  
T +65 6531 2206  
F +65 6535 4864  
E boonann.sin@drewnapier.com

**CHINA BUSINESS GROUP**

David Chin  
T +86 21 6335 1628  
F +86 21 6335 0638  
E david.chin@drewnapier.com

**COMPETITION LAW**

Andrew Ong (non-contentious)  
T +65 6531 4106  
F +65 6535 4864  
E andrew.ong@drewnapier.com

**Lim Chong Kin (non-contentious)**

T +65 6531 4110  
F +65 6535 4864  
E chongkin.lim@drewnapier.com

**Cavinder Bull (contentious)**

T +65 6531 2416  
F +65 6533 3591  
E cavinder.bull@drewnapier.com

**CORPORATE**

Gary Pryke  
T +65 6531 4104  
F +65 6535 4864  
E gary.pryke@drewnapier.com

**CORPORATE INSOLVENCY & RESTRUCTURING**

Sushil Nair  
T +65 6531 2410  
F +65 6532 7149  
E sushil.nair@drewnapier.com

**Manoj Sandrasegara**

T +65 65314156  
F +65 65327149  
E manoj.sandrasegara@drewnapier.com

**EMPLOYMENT & IMMIGRATION  
Indranees Rajah, SC (contentious)**

T +65 6531 4100  
F +65 6532 7149  
E indranees.rajah@drewnapier.com

**Andrew Ong (non-contentious)**

T +65 6531 4106  
F +65 6535 4864  
E andrew.ong@drewnapier.com

**FAMILY & MATRIMONIAL**

Randolph Khoo  
T +65 6531 2418  
F +65 6532 7149  
E randolph.khoo@drewnapier.com

**FUND MANAGEMENT & PRIVATE EQUITY**

Evelyn Wee  
T +65 6531 2260  
F +65 6535 4864  
E evelyn.wee@drewnapier.com

**INFO-COMMUNICATIONS & TECHNOLOGY**

Andrew Ong  
T +65 6531 4106  
F +65 6535 4864  
E andrew.ong@drewnapier.com

**INSURANCE & REINSURANCE**

Gary Pryke  
T +65 6531 4104  
F +65 6535 4864  
E gary.pryke@drewnapier.com

**INTELLECTUAL PROPERTY**

Morris John (Patents)  
T +65 6531 2503  
F +65 6533 0694  
E mj@drewnapier.com

**Edar Singh Gill (Trade Marks)**

T +65 6531 2507  
F +65 6533 0694  
E edar.singh@drewnapier.com

**LITIGATION & DISPUTE RESOLUTION**

Jimmy Yim, SC  
T +65 6531 2504/2505  
F +65 6533 3591  
E jimmy.yim@drewnapier.com

**PROJECT FINANCE**

Christina Ng  
T +65 6531 2250  
F +65 6535 4864  
E christina.ng@drewnapier.com

**PROPERTY**

Chua Bee Lan  
T +65 6531 2302  
F +65 6535 1952  
E beelan.chua@drewnapier.com

**SHIPPING & INTERNATIONAL TRADE**

Ian Koh  
T +65 6531 2436  
F +65 6533 3591  
E ian.koh@drewnapier.com

**TAX, TRUSTS, ESTATE PLANNING & PROBATE**

Teoh Lian Ee  
T +65 6531 2248  
F +65 6535 4864  
E lianee.teoh@drewnapier.com

**TRANSNATIONAL & CROSS-BORDER WORK**

Christina Ng  
T +65 6531 2250  
F +65 6535 4864  
E christina.ng@drewnapier.com

**OTHER OFFICES**

**Shanghai Office**  
#2501 Office Tower  
Bund Center  
222 Yan An Road East  
Shanghai 200002  
China  
T +86 21 6335 1628  
F +86 21 6335 0638  
E china@drewnapier.com

**Drewmarks Patents & Designs (Malaysia) Sdn Bhd**  
9th floor  
Bangunan Getah Asli (Menara)  
148 Jalan Ampang  
50450 Kuala Lumpur, Malaysia  
T +603 2162 2522/2162 2529  
F +603 2162 2804  
E drewmark@tm.net.my

**PT Drewmarks Konsultama**  
Correspondence address:  
20 Raffles Place  
#17-00 Ocean Towers  
Singapore 048620  
T +65 6531 2503/6531 2504  
F +65 6533 0694  
E ip@drewnapier.com

**DrewCorp Services Pte Ltd**  
20 Raffles Place  
#09-01 Ocean Towers  
Singapore 048620  
ROC No. 200102492H  
T +65 6531 2266  
F +65 6533 1542/6533 7649  
E services@drewcorpservices.com

Through a joint venture with Freshfields Bruckhaus Derigner in Singapore, we have associated offices in: Amsterdam, Barcelona, Beijing, Berlin, Bratislava, Brussels, Budapest, Cologne, Dubai, Dusseldorf, Frankfurt, Hamburg, Hanoi, Ho Chi Minh City, Hong Kong, London, Madrid, Milan, Moscow, Munich, New York, Paris, Rome, Shanghai, Tokyo, Vienna, Washington.

Copyright in this publication is owned by Drew & Napier LLC. This publication may not be reproduced or transmitted in any form or by any means, in whole or in part, without prior written approval. Drew & Napier LLC accepts no liability for, and does not guarantee the accuracy of information or opinion contained in this publication. This publication covers a wide range of topics and is not intended to be a comprehensive study of the subjects covered nor is it intended to provide legal advice. It should not be treated as a substitute for specific advice on specific situations.