Seeking Early Anti-Suit Relief for Breach of Arbitration Agreements

STS Seatoshore Group Pte Ltd v Wansa Commodities Pte Ltd
[2024] SGHC 266

25 October 2024

LEGAL
UPDATE

In this Update

In *STS Seatoshore Group Pte Ltd v Wansa Commodities Pte Ltd* [2024] SGHC 266, the High Court dismissed an application for a permanent anti-suit injunction despite the Respondent breaching the arbitration agreement by commencing foreign Court proceedings.

At the time of the hearing, multiple sets of Court proceedings in Guinea had already been heard with multiple judgments and Court orders issued. The High Court held that the Applicant had unduly delayed commencing proceedings and that considerations of comity weighed against the grant of anti-suit relief.

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INTRODUCTION

In *STS Seatoshore Group Pte Ltd v Wansa Commodities Pte Ltd* [2024] SGHC 266, the High Court dismissed an application for a permanent anti-suit injunction.

The Applicant ("**STS**") and the Respondent ("**Wansa**") had entered a contract of affreightment containing an arbitration clause, which provided that English law applied, and that parties would resolve disputes by arbitration in Singapore in accordance with Singapore Chamber of Maritime Arbitration terms.

In an *ex parte* application, STS obtained an interim anti-suit injunction pending the final resolution of its application. It was not disputed that there was breach of the arbitration agreement.

However the particular facts of this matter led the High Court to conclude that STS had unduly delayed commencing the Singapore proceedings, such that comity weighed against granting an anti-suit injunction.

In particular, there had been multiple sets of Court proceedings in Guinea and multiple judgments and Court orders made in Guinea.

The High Court discharged the interim injunction and dismissed the application for a permanent anti-suit injunction.

PROCEDURAL HISTORY

There were seven sets of proceedings in Guinea, plus the arbitration and the Singapore proceedings for the anti-suit injunction. We use the same terms used in the Judgment, and broadly summarise each set of proceedings as the details are largely not material for present purposes.

Guinea Set 1

On 4 April 2024, Wansa applied to the Commercial Court of Conakry ("**CCC**") in Guinea for an injunction against STS to perform certain obligations under the contract.

Wansa did not dispute that this was in breach of the arbitration agreement.

The application was contested by STS, and the CCC issued a judgment on 23 May 2024 in favour of Wansa ("**JUD 178**"). STS appealed, and the appeal is pending.

Guinea Set 2

On 18 April 2024, Wansa applied to the Court of First Instance of Boffa ("**BCFI**") in Guinea for STS to cease work in the territorial waters of Boffa on

behalf of companies other than Wansa. This was granted the same day ("**ORD 11**").

On 24 April 2024, STS filed a summons for retraction of ORD 11.

On 30 April 2024, Wansa filed a summons for BCFI to order STS to pay certain penalties.

On 9 May 2024, the BCFI issued its decision in favour of Wansa ("**ORD 5**") ordering STS to pay a fine of ~USD1.6 million per day. STS appealed, and the appeal is pending.

Arbitration

On 14 May 2024, STS served a Notice of Arbitration on Wansa through its lawyers in Singapore.

Guinea Sets 3 to 7

Both STS and Wansa filed further proceedings in Guinea including:

(a) an application by Wansa in the BCFI to prohibit STS moving equipment out of Guinea;

(b) an application by STS in the BCFI to compel Wansa to comply with its obligations to supply bauxite under the affreightment contract;

(c) an application by Wansa in the BCFI to immobilise STS' equipment in the shallow waters of Guinea;

(d) an application by STS in the CCC for Wansa to pay sums under the affreightment contract;

(e) an application by Wansa in the BCFI to authorise Wansa to use equipment of STS to load and transport bauxite.

There were also various applications to set aside Court orders and the various appeals.

Singapore proceedings

In the midst of the various Guinea proceedings, STS filed HC/OA 642/2024 ("**OA 642**") in Singapore on 3 July 2024 seeking an anti-suit injunction among other things.

WHEN SHOULD AN ANTI-SUIT INJUNCTION BE GRANTED?

The High Court applied the legal principles from *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] 1 SLR 732, where the Court of Appeal had explained the following:

(a) anti-suit injunctions indirectly interfere with foreign court proceedings, so the Court's jurisdiction to grant such relief must be exercised with caution;

(b) comity is relevant when there is a delay in applying for anti-suit relief;

(c) the extent of delay is particularly relevant. The more advanced the foreign Court proceedings, the stronger the considerations of comity;

(d) delay cannot be justified on the basis of raising jurisdictional objections in the foreign Court. The applicant for anti-suit relief cannot have two bites at the cherry by resisting the foreign Court proceedings on jurisdictional grounds, and then seeking an anti-suit injunction when the jurisdictional challenge fails;

(e) applications for anti-suit injunctions after the foreign Court has issued a judgment should generally be refused;

(f) the exceptions warranting an anti-enforcement injunction are cases of fraud and cases where the applicant had no knowledge that the foreign judgment was being sought, until after it was rendered.

KEYPOINT

Undue delay in applying for anti-suit relief allowed the Guinean court proceedings to progress to an advanced stage. In such circumstances, comity militates against the grant of an anti-suit injunction

UNDUE DELAY

By the time STS filed OA 642, multiple sets of Court proceedings in Guinea had been heard, with multiple judgments and Court orders issued.

The High Court noted three significant points:

(a) the CCC in JUD 178 had considered STS' jurisdictional objections and substantive defences, decided the merits of Wansa's claim and made substantive orders against STS;

(b) the various Guinea court proceedings by Wansa stemmed from its main action; and

(c) STS itself had commenced Court proceedings in Guinea claiming that Wansa had breached obligations to supply bauxite.

Taking these factors into account, the High Court held that there were two main reasons why the application for anti-suit relief had to be refused.

First, there had been undue delay by STS in commencing OA 642. The Guinea Court proceedings had progressed to an advanced stage. An anti-suit injunction would waste a vast amount of the Guinean Courts' time and costs, which weighed against the exercise of discretion to grant the injunction.

The High Court noted that STS should have applied to the Singapore Court for anti-suit relief once Wansa's main action had been commenced, and that there was no necessity for STS to commence arbitration before applying for anti-suit relief.

The High Court rejected STS argument that STS had no choice but to contest Wansa's applications including to make jurisdictional arguments. The High Court noted that STS should have simultaneously sought anti-suit relief from the Singapore Court.

The approach adopted by STS to wait until the Guinean Courts had rejected STS' jurisdictional objections before turning to the Singapore Court was not acceptable.

The High Court also rejected STS argument that the Guinea proceedings were "not well-advanced". The fact that there were pending appeals indicated that the proceedings were at such an advanced stage that appeals were due to be heard.

KEYPOINT

Although the applicant had to contest the jurisdiction of the foreign court, they should have also simultaneously sought anti-suit relief from the Singapore Court

Second, the anti-suit injunction sought was in substance an anti-enforcement injunction because JUD 178 and the other Guinean court orders had already been issued.

The High Court noted that such an injunction was an indirect interference with execution of the Guinean judgments, which militated against the grant of an injunction.

The High Court expressed concern that despite seeking an anti-enforcement injunction, the appeals by STS were still pending in the Guinean Courts, and that indirect interference with the Guinean appeal process was not warranted.

For these reasons, the High Court dismissed STS' application for a permanent anti-suit injunction.

KEY LEARNING POINTS

Breach of an arbitration agreement must be acted upon quickly.

Although only three months elapsed, too much had happened in the foreign Court proceedings such that comity weighed against the Court's exercise of discretion to grant anti-suit relief.

As the High Court explained, the applicant should have simultaneously sought anti-suit relief from the Singapore Court even if they had to contest the Guinean proceedings at the same time.

This may require increased effort and costs in having to fight on two fronts simultaneously, but may be unavoidable. Parties to arbitration agreements should carefully consider at an early stage of proceedings whether and how disputes should be referred to arbitration, including what to do when the adverse party breaches the arbitration agreement by commencing Court proceedings.

Failing to properly exercise rights in the face of breach runs the risk of losing those rights. It is easy to fall into the trap of vigorously contesting any claims, without considering the broader picture and what else may be necessary. Where jurisdictional challenges are made and fail in the wrong forum, a party would be disentitled to a second bite of the cherry.

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