Neutral Citation No. [2024] EWHC 663 (Comm)

Claim No. CL-2023-000137

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

15 March 2024

Royal Courts of Justice
Rolls Building
Fetter Lane
London EC4A 1NL

THE HONOURABLE MR JUSTICE ANDREW BAKER

IN THE MATTER OF

CETO SHIPPING CORPORATION (Claimant)

-v-

SAVORY SHIPPING INC (Defendant)

Jonathan Crystal (instructed by Stephenson Harwood) appeared on behalf of the Claimant
Oliver Caplin (instructed by Waterson Hicks) appeared on behalf of the Defendant

JUDGMENT

(Approved Transcript)

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Mr Justice Andrew Baker:

1. The defendant, Savory, applies for an interim anti-suit injunction in support of a claim it will wish to add by amendment to its counterclaim in these proceedings, to restrain until further order of this court any further prosecution by the claimant, Ceto, of proceedings it has commenced in Singapore. The interim relief sought extends to a prohibition until further order upon any commencement or pursuit by Ceto of any other proceedings except in this court arising out of or in connection with the contractual relations that Savory and Ceto had in connection with what was then Savory's ship, mv *Victor 1*, and a specific mandatory order requiring Ceto to consent within the next seven days to an application Savory has issued in Singapore to stay Ceto's claim there in favour of this claim in London.

2. Previous proceedings in this court between these parties in Claim No. CL-2022-000277, by listing coincidence, came before me for determination in October 2022. My judgment on that occasion is [2022] EWHC 2636 (Comm). I shall not repeat the essential commercial background that is evident from that judgment.

3. The ship, *Victor 1*, was later sold under the order for appraisement and sale in Singapore to which I referred in that judgment at [9]-[10], and the contractual relations between Savory and Ceto in connection with the ship that I have already mentioned were the Bareboat Charter, MoA and Addendum to which I referred in the judgment. Each of those contained an express choice of English law as governing law and an exclusive jurisdiction agreement for disputes to be resolved here: *per* the Bareboat Charter and the MoA, before "*the High Court of Justice in London*" and "*the High Court of London*" respectively; *per* the Addendum, "*the Courts of England and Wales*."

4. The proceeds of sale from the ship, on the evidence before the court on the present application, were brought into court in Singapore on or about 16 January 2023. This Claim then followed, commenced by Ceto in March 2023. Logically, in view *inter alia* of the conclusions reached by my judgment in the previous Claim and the subsequent events in Singapore, the focus of these new proceedings is to have this court finally resolve the underlying disputes between the parties as to the fulfilment or otherwise of what Savory continues to say were pre-conditions upon any obligation on its part to transfer title in the ship to Ceto, and issues between the parties as to the consequences pursuant to their contractual terms of any failure on Ceto's part to have fulfilled those pre-conditions either by the time of the expiry of the Bareboat Charter or subsequently.

5. That is all encapsulated by the declaratory relief Ceto seeks in the proceedings, extending, as it does, amongst others, to claims for declarations as to its asserted entitlement

to the ultimate net sale proceeds in Singapore, after it may be the discharge from those proceeds of any third party entitlements, and indeed claims for orders from this court in these proceedings that would give practical effect to any such determination as regards what is to happen next in Singapore. It is also neatly encapsulated by the contrary relief by way of counterclaim sought by Savory in the proceedings.

6. The Claim here has proceeded in the ordinary way through an exchange of statements of case, followed by preparations for and the conducting of a main case management conference. That came before Mr Hollander KC, sitting as a Deputy Judge of this court, in November 2023. For the purpose of that hearing Savory had issued and arranged to be listed for disposal at the CMC an application for security for costs. In the event, security for costs was ordered and, at least as things stand, Ceto has not yet complied with the relevant order.

7. Shortly before that CMC and security for costs hearing, on 24 October 2023 Ceto commenced *in rem* proceedings in Singapore before the Singapore High Court with claim reference HCA/ADM 103/2023. The writ *in rem* identified the *res*, the defendant *in rem*, as still the ship *Victor 1*, although of course she is neither as of October 2023 the *Victor 1*, nor properly the subject matter herself any longer of any claim by Ceto, or for that matter Savory. I have proceeded on the assumption that whether or not that is correct in form for how matters are dealt with in Singapore, in substance the intention was to commence a claim *in rem* against the sale proceeds now standing in the custody of the court in Singapore.

8. On 15 November 2023, the day before the hearing of the CMC and security for costs application before Mr Hollander KC, Savory filed a "NOTICE OF INTENTION TO CONTEST OR NOT CONTEST" in Singapore, a document akin in function on the evidence before me to an acknowledgment of service in this jurisdiction. By that notice, to which I will therefore refer as the 'Notice to Contest', Savory indicated an intention to contest Ceto's new action. On the evidence before me for this application, its doing so did not amount to a submission to the Singapore Court's jurisdiction but at that stage preserved its entitlement to challenge jurisdiction or propose that the proceedings in Singapore should be stayed, including, in particular, therefore its right to seek a stay of those proceedings in favour of this Claim.

9. Similarly to the procedural position in the Admiralty Court in this jurisdiction, the result of that Notice to Contest is, amongst others, that, all things being equal, the proceedings in Singapore would continue thereafter, both *in rem* against the *res* and *in personam* against Savory.

10. There were thereafter three procedural or case management hearings in the Singapore proceedings, at each of which, again, Savory, though represented, has not submitted to the

jurisdiction of the Singapore Court or lost any right to seek a stay or discharge of the Singapore proceedings on jurisdictional grounds. At all of those hearings, likewise, Ceto on the face of things sought actively, or by omission to indicate to the Singapore Court that any different course should be proposed, to pursue the action in Singapore, as then constituted, amongst others, as a claim *in personam* against Savory.

11. Pursuant to a direction made at the first of those hearings Ceto filed and served a statement of claim in the Singapore claim on 4 January 2024 by which it made unambiguously clear that it was seeking by the Singapore proceedings (a) to continue them *in personam* against Savory and (b) to have by them a determination from the Singapore Court of essentially all of the issues hitherto being litigated in London in this Claim and which the parties had agreed by the exclusive jurisdiction provisions of their contracts were indeed to be submitted exclusively to be determined by this court.

12. The second and third of those procedural hearings in Singapore took place on 18 January and 1 February 2024 and involved, amongst others, a direction for any application by Savory to stay the Singapore proceedings to be issued by a stated deadline, a deadline which in due course Savory has met, and a direction for a next hearing in the Singapore proceedings on 28 March 2024, just under two weeks from today.

13. In those circumstances, and as at 7 February 2024 when this application was made in this court, the only reasonable inference was, and I am confident, that Ceto had decided and intended to pursue its Singapore claim to judgment, even though doing so after Savory had entered appearance in Singapore, as it did on 15 November 2023, was, and other things being equal would continue to be, in plain breach of Ceto's obligations to have its disputes with Savory as raised by its Singapore statement of claim determined exclusively here.

14. Moreover, I agree with Mr Caplin's submission for Savory that in circumstances where the self-same disputes were already being litigated between the parties here, it was plainly vexatious and oppressive for Ceto to seek to have them litigated to a resolution in Singapore.

15. Mr Caplin submits, further, that the explanations now proffered for Ceto's conduct, by which it is suggested that the sole purpose of the Singapore claim was to ensure that Ceto had done that which might be required procedurally for it not to lose any entitlement it might otherwise have eventually to receive a share of the sale proceeds without interfering with the extant English proceedings, are disingenuous rationalisations after the fact, confronted by the need to respond to this *prima facie* well-founded application.

16. I consider that quite likely to be correct, but I do not need to reach a final view about it. It suffices to say that even if Ceto needed to issue something like its writ *in rem* in Singapore,

and even if there is nothing untoward about when it chose to do so, once Savory filed its Notice to Contest in Singapore, Ceto's only proper course, so as not to be in breach of contract and so as not to be litigating vexatiously, was to procure without having to be asked an immediate stay in Singapore. Ceto's failure to adopt that course, compounded by its actions in Singapore thereafter, inevitably and properly brought this application upon it.

17. I am satisfied that the offer it made through its solicitors to stay in Singapore would not otherwise have been made, and that the indication by leading counsel appearing for Ceto at the CMC and security for costs hearing that the Singapore claim probably ought to be stayed would not have been acted upon by Ceto without that Savory had brought this application.

18. That offer came in a solicitor's letter dated 27 February 2024. It was not unconditional, nor was it an offer to give any undertaking to the court as a sensible acknowledgement of the position Ceto had put itself in. It was an offer to agree to a stay in Singapore only if this application was withdrawn, whereby to avoid any possible costs liability, and to avoid the obligation to stay being an obligation owed directly to this court.

19. In my judgment, Savory acted reasonably in not regarding that as good enough, or indeed as an offer Ceto could be trusted to honour. Between the bringing of the application and the sending of that offer Ceto's only, or at least principal, response had been to try to game the case management correspondence that ensued so as to ensure that the application was not heard by this court before the next hearing scheduled in Singapore on 28 March 2024, at which, or so Ceto then made it to appear, Ceto would have been actively contesting Savory's stay application. Ceto's conditional offer to agree a stay was not accepted and agreed terms for a resolution of the application were never reached.

20. With his skeleton argument, Mr Crystal for Ceto proposed a draft order under which formally the application would be dismissed, although in his oral submissions Mr Crystal also formulated a possibility of there being no order on the application, upon the basis of a recital that the claimant voluntarily agreed to stay the Singapore proceedings pending completion of these proceedings, and undertakings proposed to be set out in a schedule to the order. The proposed undertakings were to agree to stay the Singapore proceedings pending determination of this claim, and to take reasonable steps in the Singapore Court to obtain an order for such a stay.

21. Mr Crystal's clear and helpful submissions ultimately were all to the effect, in one way or another, that nothing more than such an order was required or justified as to the substance of the application, as opposed to any question of costs. For Savory, by contrast, Mr Caplin's

submissions ultimately were all to the effect, one way or another, that the wider relief proposed had been, and remained, necessary or at all events justified.

22. I agree with Mr Caplin. Ceto, by its conduct, demonstrated and threatened an intention to subvert the English proceedings by finding a means to have the disputes, that by the parties' contract and by the procedural history must now properly be determined in this claim, determined instead in Singapore. I consider there to be a real risk that Ceto will look for other means to achieve that same end or a similar end, unless it is made plain by the terms of relief granted by this court today that it would be acting in contempt of court to do so.

23. It is, in the circumstances, just and convenient, in my view, to require Ceto to consent to Savory's extant stay application in Singapore, and to do so within the next seven days, and to restrain it until further order of this court in terms that will ensure the integrity and priority in all the circumstances of this case of the exclusive jurisdiction bargain between the parties and the existing English proceedings.

24. For those reasons, and subject it may be to any specific points on the drafting that may arise if Mr Caplin now takes me back to his proposed draft order, as to the substance of the application, the order will be as proposed by Savory.
