



16 July 2018

Ref : Chans advice/210

To: Transport Industry Operators

HK or Yangon? (II)

The Hong Kong Court of Appeal issued a Judgment on 12/2/2018 to deal with the cargo owners' seeking leave to appeal against the High Court's Judgment reported in our Chans advice/209 last month. [CAMP 38/2017] [2018 HKCA77]

The decision of the High Court was an exercise of discretion involving evaluation of various factors and the circumstances of the case. The Court of Appeal would be slow to interfere with a decision of that nature.

The Court of Appeal were of the view that the High Court was plainly right in holding that Hong Kong was not the natural or appropriate forum and the Yangon Court was clearly and distinctly the more appropriate forum in respect of the dispute.

In respect of the time-bar, the Court of Appeal agreed with the High Court that this was a case where the observation of Lord Goff in *Spiliada Maritime Corp v Cansulex Ltd* [1987] 1 AC 460 at 483-484 was germane, in particular:

"... suppose that it was obvious that the plaintiff should have commenced proceedings in the appropriate jurisdiction, and yet he did not trouble to issue a protective writ there; in cases such as these, I cannot see that the court should hesitate to stay the proceedings in this country, even though the effect would be that the plaintiff's claim would inevitably be defeated by a plea of the time bar in the appropriate jurisdiction ..."

The Court of Appeal did not accept the cargo owners' submission that the cargo owners had not acted unreasonably in failing to issue a protective writ in Myanmar. The Court of Appeal saw no justification to disturb the High Court's conclusion in this regard. The discharge port was Yangon, the cargo owners should have considered proceedings in the Yangon Court.

In short the Court of Appeal was not satisfied that the High Court's evaluation of the facts and circumstances pertaining to the unreasonableness in the cargo owners' not issuing a protective writ was so wrong and aberrant that the Court of Appeal could interfere. Nor could the Court of Appeal say that the High Court's declining to impose a condition for stay that the demise charterer should waive the time bar was outside the range of reasonable exercise of the discretion on the facts of the case in question.

The Court of Appeal dismissed the summons of the cargo owners of 10 October 2017 and refused leave to appeal.

Please feel free to contact us if you have any questions or you would like to have a copy of the Judgment.

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