



29 October 2019
Ref : Chans advice/223

To: Transport Industry Operators

Sanchi c/w CF Crystal (V)

The Hong Kong Court of Appeal issued a Judgment on 20 September 2019 declining to give leave of appeal to Changhong Group in relation to the High Court Decision dated 29 January 2019 (reported in our Chans advice/221). [CAMP197/2019] [2019HKCA1061]

This case concerned a collision at sea between Changhong Group's cargo vessel, the CF Crystal, and a tanker owned by Bright Shipping, the Sanchi. The collision took place on 6 January 2018 at a location about 125 nautical miles from Changjiang Kou Light Ship in the East China Sea.

On 29 January 2019, the High Court dismissed the application of Changhong Group to stay the action of the plaintiffs, who were the consignee and insurer of the cargo on board the tanker Sanchi, for *forum non conveniens*. On 1 August 2019, the High Court refused leave to appeal against its decision.

Changhong Group renewed its application for leave to appeal to the Court of Appeal by a summons issued on 14 August 2019.

The plaintiffs' claim against Changhong Group was for the total loss of the cargo as a result of the collision of the Sanchi with the CF Crystal on the ground that the collision was caused or contributed by the negligence or breach of duty of Changhong Group, its servants or agents.

The shipowner of the Sanchi, Bright Shipping Limited, sued Changhong Group in Hong Kong and Changhong Group likewise applied to stay proceedings in Hong Kong on the ground of *forum non conveniens*. This was also dismissed by the High Court.

For leave to appeal to be granted under section 14AA of the High Court Ordinance, Cap 4, the court must be satisfied that the intended appeal has a reasonable prospect of success or that there is some other reason in the interests of justice the appeal should be heard. Reasonable prospect involves the notion that the prospect must be more than fanciful without having to be probable.

In respect of the 1st plaintiff (the consignee of the cargo), Changhong Group brought an action against it and National Iranian Tanker Co (the shipper of the cargo) in the Shanghai Maritime Court ("SMC"). The claim was referred to as a "mis-declaration" claim and related to the nature or characteristic of the cargo of gas condensate loaded on the Sanchi. It was alleged that the cargo of gas condensate was highly volatile and dangerous because it was not fit for long distance sea carriage in substantial quantity. Those proceedings had not yet been served on the 1st plaintiff. The High Court took the view that those proceedings were irrelevant as the claim, which did not depend on showing any duty of care was owed by the 1st plaintiff to Changhong Group, would not be able to meet the double actionability rule applicable to foreign torts.

As for the 2nd plaintiff (the insurer of the cargo), it applied for the registration of its claim against

Changhong Group in respect of property loss from the collision against the tonnage limitation fund set up by Changhong Group in the SMC and in August 2018 the SMC approved the registration of that claim. Considering that the plaintiffs had already brought the action in question in Hong Kong on 19 January 2018, the High Court regarded the registration of claim by the 2nd plaintiff in the SMC as merely a protective step. The 2nd plaintiff did not pursue the matter further in the SMC.

Changhong Group relied on the same grounds for stay of the action in question as in the Bright Shipping action. Having dismissed the other application, the High Court was unable to see why a different outcome was justified in the action in question. The High Court took the view that the plaintiffs were in an even stronger position than Bright Shipping in resisting a stay of proceedings, as there was no relevant ongoing action in the SMC between the parties in question and *lis alibi pendens* could not be invoked by Changhong Group.

The Court of Appeal agreed with the High Court that the case in question was not a situation of *lis alibi pendens*. There was no pending relevant action in the SMC as the issues in the “mis-declaration” claim were irrelevant to the issues that might fall to be determined in the Hong Kong action of the plaintiffs. Nor did the Court of Appeal think the related proceedings in the SMC, whether the limitation proceedings or the liability proceedings, could be decisive in tilting the scales and rendering the SMC as the appropriate forum.

The Court of Appeal declined to give 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.

Simon Chan

Director

E-mail: simonchan@smicsl.com

Richard Chan

Director

E-mail: richardchan@smicsl.com

23/F, Excel Centre, 483A Castle Peak Road, Lai Chi Kok, Kowloon, Hong Kong
香港九龍荔枝角青山道 483A 卓匯中心 23 樓 Tel: 2299 5566 Fax: 2866 7096

E-mail: gm@smicsl.com Website: www.sun-mobility.com

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