

SUPREME COURT OF SINGAPORE

4 March 2020

Case summary

Singapore International Commercial Court Suit No 5 of 2019 (Summons No 5626 of 2019) [2020] SGHC(I) 05

Carlsberg Breweries A/S v CSAPL (Singapore) Holdings Pte Ltd

Decision of Jeremy Lionel Cooke IJ:

Outcome: The court dismissed the defendant's application for a stay of the suit in its entirety and instead ordered a partial stay, pending the final determination of an ongoing arbitration between the parties in the Singapore International Arbitration Centre ("the SIAC").

Background

2 The plaintiff commenced the suit seeking repayment of a loan under an amended loan agreement, which was interconnected with an Amended Shareholders' Agreement containing an arbitration clause, a Deed of Undertaking (a breach of which entitled the plaintiff to demand repayment of the loan) and a Deed of Release and Discharge ("the Deed of Release").

3 Pursuant to the defendant's alleged breaches of clauses 2(a) and 2(c) of the Deed of Undertaking, some of which were allegedly constituted by breaches of the Amended Shareholders' Agreement, the plaintiff demanded repayment of the loan on 12 July 2019. The dispute arising out of clause 5 of the Amended Shareholders' Agreement principally related to Carlsberg South Asia Pte Ltd ("CSAPL"), a joint venture company in which both parties were shareholders. Clause 5 required the parties to cooperate in bringing about an Initial Public Offering ("IPO") of CSAPL's various combined businesses, though parties disagreed on whether the IPO had to take place in India alone ("the clause 5 issue").

4 The defendant applied for the suit to be stayed in its entirety, pending the outcome of an ongoing SIAC arbitration between them ("the Arbitration"). Both parties agreed that the part of the plaintiff's claim which proceeded on the basis of a breach of clause 2(a) of the Deed of Undertaking, and which in turn depended upon alleged breaches of the Amended Shareholders' Agreement, should be stayed. However, the plaintiff argued that its claim in respect of a breach of clause 2(c) of the Deed of Undertaking ought to proceed, as the alleged clause 2(c) breach and the defences thereto ("the clause 2(c) issues") were independent of any breach of the Amended Shareholders' Agreement. Clause 2(c) required the defendant to use its best efforts to ensure the attendance of the appointed director to all meetings of the board of directors of CSAPL's Nepalese subsidiary. The plaintiff alleged that as a result of the defendant's clause 2(c) breach, the appointed director failed to attend four board meetings between February 2019 and July 2019.

The court's decision

5 The court ordered a stay in relation to all matters in the suit other than the clause 2(c) issues (at [24]). It was evident from the relevant paragraphs of the defence that the clause 2(c) issues were discrete and capable of determination with limited evidence (at [14]).

6 The defendant raised the “prevention principle” in its defence, which refers to the idea that a party cannot obtain a benefit from his own contractual breaches (at **[12]**). According to the defendant, but for the plaintiff’s breach of clause 5 of the Amended Shareholders’ Agreement in refusing to cooperate in setting up an IPO in India, the IPO would have occurred before 26 July 2019 (when the plaintiff commenced the suit by writ). Consequently, the terms of the Deed of Release would have been triggered, such that no loan remained outstanding as of 12 July 2019 when the plaintiff demanded repayment (at **[12]**). In response, the plaintiff argues that it had accrued rights in respect of the clause 2(c) breaches which could not be defeated by a later failure to complete the IPO (at **[13]**).

7 As regards the prevention principle, the defendant did not allege that the plaintiff’s breach of clause 5 of the Amended Shareholders’ Agreement in failing to advance the IPO in India caused the clause 2(c) breaches, but simply that if the IPO had occurred earlier, those breaches could not have had the consequence of rendering the loan repayable (at **[16]**, **[18]** and **[19]**). In any event, the defendant would have faced difficulty in making such an allegation. Even if an Indian IPO had occurred by the indicative scheduled completion date of 30 June 2019, per the Amended Shareholders’ Agreement, any breaches in respect of three board meetings would already have occurred (at **[17]** and **[18]**).

8 The interests of justice would be best served by the clause 2(c) issues being determined as soon as convenient, because they had the potential to be determinative of the entire dispute regardless of any finding which might be made in the Arbitration, and could be decided in a much shorter timeframe than the Arbitration (at **[20]** and **[21]**). Even if the clause 2(c) issues were not determinative, the Arbitration was not any likelier to provide a determinative result, owing to its inability to deal with the clause 2(c) issues and the prevention principle in that context (at **[21]**). Since the clause 2(c) issues would probably have to be determined as discrete points by the court at some stage, they should be dealt with as expeditiously as possible, rather than for the suit to be wholly stayed pending the outcome of the Arbitration (at **[23]**). There was a greater possibility of complete resolution of the clause 2(c) issues in one relatively short court hearing than there was in a protracted arbitration proceeding where the clause 2(c) issues could not be determined at all (at **[21]**). The clause 2(c) issues, and the questions of construction which arose in relation to accrued rights, could be decided by the court without trespassing on the arbitrators’ jurisdiction to decide on the clause 5 issue (at **[20]**).

This summary is provided to assist in the understanding of the Court’s grounds of decision. It is not intended to be a substitute for the reasons of the Court. All numbers in bold font and square brackets refer to the corresponding paragraph numbers in the Court’s grounds of decision.