

SUPREME COURT OF SINGAPORE

22 June 2016

Media Summary

**Singapore International Commercial Court Suit No 1 of 2016
(HC/Summons No 1542 of 2016 and SIC/Summons No 3 of 2016)
Teras Offshore Pte Ltd v Teras Cargo Transport (America) LLC [2016]
SGHC(I) 02**

Background to the applications

1 The defendant in these proceedings filed two applications to be heard in the Singapore International Commercial Court (“the SICC”): first, for a decision that the action is an “offshore case”, pursuant to O 110 r 36 of the Rules of Court (Cap 322, R 5 2014 Rev Ed) (“Rules of Court”); and second, for summary judgment under O 14 r 1 of the Rules of Court in relation to a component of the defendant’s counterclaim.

2 This is the first application to the SICC for a decision that an action is an “offshore case”. Under paragraph 26(b) of the Singapore International Commercial Court Practice Directions (“SICC Practice Directions”), when the Court decides that a case is an offshore case, a party to the proceedings and in appeals from such proceedings may be represented by foreign lawyers.

Facts

3 The proceedings concern various claims and counterclaims arising in connection with three liquefied natural gas projects in or near Queensland, Australia. The defendant entered into a series of contracts (the “Main Contracts”) with Bechtel Oil Gas and Chemicals Inc. and Bechtel International Inc. for the provision of various services and the supply of equipment in

relation to these projects. The defendant then sub-contracted such work to the plaintiff on “back-to-back” terms (the “Sub-Contracts”). The plaintiff’s claims total approximately US\$29m. The defendant denies liability and itself advances various counterclaims totalling approximately US\$14m. In addition, both parties claim interest and costs.

Offshore case application

- 4 In its first application, the defendant sought a decision by the Court that the case was an offshore case (the “Offshore Case Application”). The defendant also made a related and unopposed application for an extension of time to bring the Offshore Case Application.
- 5 The Court allowed the Offshore Case Application. The Court made several observations about the definition of an “offshore case” under the Rules of Court and the factors that are relevant to the determination of whether an action is an “offshore case”.
- 6 The relevant inquiry under O 110 r 1(1) is whether the action has no substantial connection to Singapore. What is significant is the absence of a substantial connection with Singapore rather than the presence of substantial connections with other jurisdictions. The Court observed that the Rules of Court do not provide a positive definition or description of what is meant by substantial connection. O 110 r 1(2)(f) puts the matter negatively by identifying two situations where an action has no substantial connection to Singapore. The Court found that O 110 r 1(2)(f) was not applicable because the Sub-Contracts were governed by Singapore law and it was common ground that the dispute did not fall within either of these situations.
- 7 The Court accepted that the SICC Practice Directions and the subsidiary legislation indicate that the predominant consequence of a decision that an action is an “offshore case” is to allow representation

by foreign lawyers. In addition, given that the SICC aims to provide a dispute resolution framework for the resolution of international commercial disputes, it may be inappropriate to insist on representation by Singapore qualified lawyers where the action possesses only a handful of coincidental or procedural connections with Singapore. However, the question whether or not an action is an “offshore case” must be determined by reference to the particular action and whether it can properly be said that the action has no substantial connection with Singapore.

8 The Court then considered paragraph 29(3) of the SICC Practice Directions, which sets out a list of factors and states that each of these factors will not, by itself, constitute a substantial connection between the dispute and Singapore for the purposes of O 110 r 1(2)(f)(ii) of the Rules of Court. The Court observed that the definition of an “offshore case” in O 110 r 1(1) of the Rules of Court refers to the absence of a substantial connection of the “action” with Singapore, while paragraph 29(3) refers to the absence of a substantial connection between the “dispute” and Singapore. It also noted that paragraph 29(3) refers specifically to O 110 r 1(2)(f)(ii) where the word “dispute” rather than “action” is used.

9 After a careful consideration of the parties’ arguments, the Court was prepared to assume, in favour of the plaintiff, that:

(a) The test for the existence of a substantial connection embraces not only the underlying substantive dispute(s) between the parties but also other matters relevant to the action as a whole, including the procedural and administrative matters identified in paragraph 29(3) of the SICC Practice Directions.

(b) The existence of more than one of the factors identified in paragraph 29(3), taken either on their own or with other factors, is at

least capable of justifying a conclusion that an action has a substantial connection with Singapore.

10 On the facts of the case, the Court found that the action had no substantial connection with Singapore. The Court noted that there were several procedural or administrative factors connecting the action with Singapore, but did not find that such connection was “substantial”. Significantly, the various claims and counterclaims were all concerned with the provision of services in Queensland, Australia, and such services had nothing whatsoever to do with Singapore. Accordingly, the Court decided that the action was an “offshore case” and allowed the Offshore Case Application.

Summary judgment

11 The defendant’s second application was for summary judgment in relation to one of its counterclaims against the plaintiff. This counterclaim was for reimbursement of freight tax allegedly incurred by the defendant on various voyages transporting cargo and pre-fabricated modules from ports in Thailand and the Philippines to Australia.

12 The defendant’s case was that its obligations were sub-contracted to the plaintiff on “back-to-back” terms and thus the freight tax was recoverable by the defendant from the plaintiff under two of the Sub-Contracts. The plaintiff resisted the defendant’s application on the basis that there was a common understanding or agreement between the parties that the defendant would bear the freight tax.

13 The Court found that it was impossible to determine the issues on a summary basis. The resolution of the claim necessarily involved ruling on factual issues that could not be resolved at this stage. Thus the Court dismissed the defendant’s application and granted the plaintiff unconditional leave to defend the counterclaim for reimbursement of the freight tax.

This summary is provided to assist in the understanding of the Court's judgment. It is not intended to be a substitute for the reasons of the Court.
