

Evergreen Marine (Singapore) Pte Ltd v Fast Shipping & Transportation Co Ltd

Queen's Bench Division (Commercial Court)

25 July 2014

Case Analysis

Where Reported

Unreported

Case Digest

Subject: Arbitration **Other related subjects:** Civil procedure; Conflict of laws

Keywords: Anti-suit injunctions; Foreign jurisdictions; Interim relief; Mandatory injunctions; Seat of arbitration

Summary: In a dispute as to whether an agency agreement had been validly terminated, the agent was prohibited from seeking injunctive relief in Mauritius since the agreement had included an arbitration clause specifying London as the seat. A mandatory order was also granted requiring the agent to take all necessary steps to obtain a stay in the Mauritian proceedings.

Abstract: The applicant (E) applied to continue an injunction preventing the respondent (D) from pursuing injunctive relief in Mauritius in respect of an agreement which provided for arbitration in London. D acted as a local agent in Mauritius for E. E purported to terminate the agency agreement, but D did not accept that it had been validly terminated. That agreement contained a clause specifying London as the seat of arbitration for disputes arising from the agreement and that the arbitration would be in accordance with the [Arbitration Act 1996](#). D applied for interim relief in Mauritius. E obtained an injunction in England preventing D from pursuing its claim for substantive relief under the agency agreement through any means other than the arbitration proceedings which had been commenced in London. Even if D took no further active part, the Mauritian application would take its course and could have resulted in a decision in D's favour. The issues were whether (i) the injunction should continue; (ii) there should be a mandatory order requiring D to take all necessary steps to obtain a stay in Mauritius. E submitted that the arbitration clause meant that D had agreed that applications for interim relief, other than those made to the arbitral tribunal, were to be made to the English courts which had supervisory jurisdiction over the arbitration and the power to grant interim relief under [s.44\(2\)\(e\)](#), otherwise there would be a risk of inconsistent orders. D submitted that it had had no practical alternative other than to apply on an urgent basis to the Mauritian court as there was evidence that E's new agents had sent representatives to D's office requesting that D hand over its books and records, and making the application was the only way to ensure that the status quo, whereby D acted as local agent, was preserved until the arbitration had concluded. D further submitted that the arbitration could be concluded within the near future and it was therefore just and convenient to allow the Mauritian proceedings to continue.

Application granted. (1) An application for interim relief in a foreign jurisdiction where parties had agreed to submit their dispute to arbitration in England could be exceptionally granted where that application could only sensibly be made in that jurisdiction, and provided that it was not a disguised attempt to outflank the

arbitration agreement, [Orient Express Lines \(Singapore\) PTE Ltd v Peninsular Shipping Services Ltd \[2013\] EWHC 3855 \(Comm\)](#) considered. Neither of D's submissions had merit or produced a good reason for allowing the Mauritian proceedings to continue. The application had not mentioned that the new agents had sought to take custody of D's books and records. The principal relief sought had been directed against E, namely a mandatory injunction to compel E to carry on performing the agency agreement until the arbitration's conclusion. There was no practical reason for not making that application in England as the supervisory jurisdiction for the arbitration, which was a sufficient reason to prevent D from pursuing relief in Mauritius. It seemed reasonably plain that the Mauritian proceedings were a disguised attempt to outflank the arbitration agreement, *Orient Express* applied. There was no evidence that D had done anything to progress the matter since the arbitrator had been appointed. Furthermore the Mauritian application implied that D intended to seek an interim order and to enter a main case before the Supreme Court. If D wanted to apply for injunctive relief to compel performance of the agency agreement pending the arbitration result, the proper place was clearly England. The injunction had been properly made and was to be continued until the arbitration's conclusion or until further order. (2) Mandatory relief would only be granted exceptionally and if prohibitory relief was inadequate. It was necessary in the instant case so as to ensure that D's breach of the arbitration agreement would not have the effect sought, and because it imposed only a modest obligation on D.

Judge: Leggatt J

Counsel: For the applicant: Ben Gardner. For the respondent: Nadeem Aullybocus.

Solicitor: For the applicant: Mills & Co.

Significant Cases Cited	Orient Express Lines (Singapore) PTE Ltd v Peninsular Shipping Services Ltd [2013] EWHC 3855 (Comm); Official Transcript ; QBD (Comm); 07 November 2013
All Cases Cited	Orient Express Lines (Singapore) PTE Ltd v Peninsular Shipping Services Ltd [2013] EWHC 3855 (Comm); Official Transcript ; QBD (Comm); 07 November 2013
Significant Legislation Cited	Arbitration Act 1996 (c.23) Arbitration Act 1996 (c.23) s.44(2)(e)
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