

**ENGLISH HIGH COURT CONSIDERS STAY OF PROCEEDINGS UNDER
ARBITRATION ACT 1996**

Golden Ocean Group Ltd v Humpuss Intermoda Transportasi Tbk Ltd & Genuine Maritime Ltd [2013] EWHC 1240

Introduction

In its decision in *Golden Ocean Group Ltd v Humpuss Intermoda Transportasi Tbk Ltd & Genuine Maritime Ltd* [2013] EWHC 1240, handed down on 16 May 2013, the English High Court considered the circumstances in which a stay would be granted where the existence of an arbitration agreement was disputed.

Background

The present proceedings arose out of a dispute over which of the Defendants was party to a charterparty under which a vessel was chartered to the Claimant in March 2008.

The First Defendant, Humpuss Intermoda Transportasi Tbk Ltd ("HIT") (currently in liquidation) was the ultimate parent company of the Humpuss group of companies, which included the Second Defendant, Genuine Maritime Ltd ("Genuine").

On 7 February 2011, the Claimant commenced proceedings in the English courts claiming a declaration that HIT was the party to the charterparty and seeking the appointment of a London arbitrator to determine the dispute between the parties. By a consent order of Teare J on 22 June 2011, an arbitrator was appointed, and in November 2012, the arbitrator issued a decision awarding damages in favour of the Claimant.

On 16 January 2013, Genuine commenced arbitration in Singapore against the Claimant. On 28 January 2013, the Claimant issued a claim form in the English courts, firstly attempting to enforce the arbitration award against HIT and secondly restraining Genuine from pursuing arbitration in Singapore.

Judgment

The Court granted the applications for permission to serve out of the jurisdiction on HIT and Genuine and the interim anti-arbitration injunction against Genuine.

The majority of Popplewell J's decision focused on the applications relating to Genuine, including an extensive discussion of the circumstances in which a stay would be granted under Section 9 of the Arbitration Act 1996.

Popplewell J noted that it would not be appropriate for the court to grant permission to serve out of the jurisdiction if thereafter the court would grant Genuine, a stay of proceedings in favour of arbitration.

The Learned Judge considered at length the principles applicable to such a stay, citing with approval recent decisions in *JSC BTA Bank v Ablyazov* [2011] 2 Lloyd's Rep 129 and *JSC Aeroflot Russian Airlines v Berezovsky* [2013] 1 Lloyd's Rep 345, and set out a summary of the principles applicable where a claimant brought proceedings against a defendant in relation to matters which the defendant claimed, and the claimant disputed, were governed by an arbitration agreement:

(1) The court's jurisdiction to grant a stay may arise under Section 9 or under its inherent jurisdiction.

(2) Section 9(1) permits the grant of a stay only if the defendant is party to a written arbitration agreement which has agreed to refer to arbitration the matters in respect of which the claimant has brought the proceedings - to bring himself within the scope of section 9, the defendant must establish that such an agreement was concluded, and that its terms apply to the underlying dispute.

(3) If s. 9(1) is fulfilled, s. 9(4) requires the court to grant a stay unless the claimant can satisfy the court that the arbitration agreement is null and void, inoperative or incapable of having effect (ie, in cases of fraud or misrepresentation, or illegality, mistake or duress).

(4) Disputes which engage s. 9(1) or s. 9(4) must relate to the distinct arbitration agreement, not merely the matrix contract in which it is contained.

(5) It is for the defendant to satisfy the court, and not merely show an "arguable case" that he comes within s. 9(1) before the court can grant relief under that section. The court must determine the dispute if it affects the question whether the defendant comes within s. 9(1).

(6) In deciding whether to order the trial of the arbitrability issue under s. 9(1) or s. 9(4), or whether to grant a stay under the inherent jurisdiction to permit the arbitrability issue to be resolved by the tribunal, the court will consider all the circumstances of the case, including:

(a) whether the arbitrability issue is likely to fall to be resolved by the court in any event, for example in the context of enforcement of an award - if so, this will be a powerful factor in favour of the court deciding the issue rather than leaving it in the first instance to the arbitral tribunal;

(b) whether the resolution of the arbitrability issue will involve findings of fact or law which impact on the substantive rights and obligations of the parties in relation to their underlying dispute;

(c) the length and cost of the inquiry into the arbitrability issue and how quickly it will be resolved;

(d) whether there have been or will be related proceedings addressing the arbitrability issue between the same or other parties;

(e) the degree of connection between the arbitrability dispute and England;

(f) the strength of the arguments on the arbitrability issue; and

(g) the nature and quality of the arbitral tribunal and arbitral process, including the supervisory jurisdiction of the curial court.

28th May 2013