

Kluwer Arbitration Blog

Stay of proceedings in favour of arbitration under the court's inherent jurisdiction

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In *Shanghai Construction (Group) General Co. Singapore Branch v Tan Poo Seng* [2012] SGHCR 10, the Singapore High Court granted a temporary stay of proceedings in exercise of its inherent jurisdiction. The stay was granted on the ground that there was an arbitration which was intended to take place and the outcome of that arbitration would effectively determine the issues in dispute in the court proceedings. This case illustrates how a stay of proceedings can be granted even when there is no arbitration agreement between the parties to those proceedings.

Shanghai Construction was a main contractor who engaged Top Zone Construction & Engineering Pte Ltd as a sub-contractor for certain building works required in a lift upgrading programme. The sub-contract agreement contained an arbitration agreement.

Whilst the project was ongoing, Top Zone requested Shanghai Construction to make certain direct payments to Top Zone's sub-contractors, which Shanghai Construction duly did. As "security" for those payments, Tan Poo Seng, who is a director and shareholder of Top Zone, issued a cheque in favour of Shanghai Construction.

Sometime later, Top Zone stopped work. Shanghai Construction presented the cheque for payment on the ground that no repayment of the sums it had paid was forthcoming from Top Zone. However, the cheque was dishonoured on the ground that payment had been stopped.

Shanghai Construction commenced an action against Tan based on the dishonoured cheque. In defence, Tan Poo Seng argued that there was an arrangement for Shanghai Construction to recoup the payments from progress claims paid by the Housing and Development Board of Singapore; that there had been a settlement between Top Zone and Shanghai Construction; that Shanghai Construction was not entitled to present the cheque for payment; and that Shanghai Construction's conduct in presenting the cheque for payment was unconscionable because of its conduct during the project.

After a review of English case law, the Singapore High Court stated that it has the power to order a case management stay under its inherent jurisdiction but only in rare and exceptional circumstances. Ultimately the court granted the stay on the basis of the substantial overlap between the curial and intended arbitral proceedings. The court was of the view that most of the issues in the curial proceedings would be resolved by the arbitral proceedings. If the curial proceedings were allowed to proceed before the arbitral proceedings, Top Zone would have to be involved either as a

third-party or a co-defendant and there would be an airing of the issues that Shanghai Construction and Top Zone had agreed to arbitrate. It is observed here that, in any event, the same result may be reached if Tan had applied for Top Zone to be made a co-defendant or third party to the court proceedings and Top Zone then applied for a stay by invoking the arbitration agreement (see *Reichhold Norway ASA v Goldman Sachs International* [2000] 1 WLR 173).

Coincidentally, a similar stay on the same grounds was recently ordered by the Federal Court of Australia as well. In *Casaceli v Natuzzi S.p.A.* [2012] FCA 691, Natuzzi and Nataceli had an agreement for Nataceli to have exclusive rights to sell certain products in New South Wales and the Australian Capital Territory. There was an arbitration agreement providing for arbitration in Milan.

The relationship between the parties broke down. Nataceli, its directors and a related trustee company, commenced court proceedings against Natuzzi, a related company and the director of that related company. The applicants alleged *inter alia* that the respondents had engaged in misleading and deceptive conduct. Not all of the parties were involved in all of the claims. Nataceli's directors and the related trustee company were only claimants in respect of claims for damages for a specific sub-set of misrepresentations.

Natuzzi applied for a stay of proceedings based on s 7 of the Australian International Arbitration Act 1974 (Cth). The Federal Court of Australia stayed the entire proceeding to allow the claims between Nataceli and Natuzzi to proceed to arbitration first. Citing previous Australian authorities, Jagot J confirmed that the court had broad discretionary powers to grant a stay in three scenarios:

- (i) when a proceeding includes matters that are not capable of being referred to arbitration, but the determination of which is dependent upon the determination of the matters required to be submitted to arbitration, the court may stay the whole proceeding;
- (ii) the court may also exercise its discretion to impose terms that the arbitration not proceed prior to the determination of the curial proceeding where the claims in the arbitration are seen to be subsidiary to or significantly less substantial than, but overlapping with, the claims in the curial proceeding; and
- (iii) the court may also exercise its discretion to stay the curial proceeding where the claims in the curial proceeding are the ancillary claims.

These cases showcase the court's readiness to grant, in appropriate circumstances, a stay in multi-party disputes even if there may be no arbitration agreement between the immediate parties to those proceedings.

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