



Singapore – arrest on basis of anticipatory breach was lawful

A five-member Court of Appeal heard its first Admiralty case in Singapore in January 2015. It reversed the decision of the Singapore High Court, finding that the vessel STX MUMBAI could be lawfully arrested on the basis of an anticipatory breach. The reasoned judgment from the panel of the five appeal judges is eagerly awaited.

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Brief facts Transocean Oil Pte Ltd (Transocean) supplied bunkers to the STX MUMBAI in 2013. Payment was due on 16 June 2013, when the 30 day credit period expired. On 14 June 2013, Transocean commenced *in rem* proceedings against the owners of the STX MUMBAI and arrested the vessel. Transocean claimed that owners of the STX MUMBAI were in anticipatory breach of the bunker supply contract because the STX Group was insolvent and the owners would be unable to pay the price of the bunkers.

Judgments Transocean successfully appealed the Singapore High Court decision to strike out its claim for unpaid bunkers and the order to set aside its warrant of arrest against the STX MUMBAI. The High Court had found that:

- Transocean's action was premature and legally unsustainable as it was commenced prior to the expiry of the 30 day credit period.
- Insolvency does not amount to repudiation of a contract as a matter of law and observed that the doctrine of anticipatory breach may not be available under Singapore law in executed contracts where the only obligation left is to make payment.
- Transocean acted in bad faith in arresting the STX MUMBAI and ordered an inquiry as to damages for wrongful arrest.

The Court of Appeal overturned the High Court's decision and found in favour of Transocean on the basis of its oral arguments that:

- a single test of anticipatory breach should apply in both executed and executory contracts, i.e. the Court should look at the facts and determine whether it was impossible to perform the contract; or if there was an intention not to perform; and
- the insolvency of STX Pan Ocean Co Ltd precluded the bunker price from being paid as there was no incentive for the liquidator to admit the debt for payment.

Implications The Court of Appeal has not yet issued its grounds of decision. It is expected that these grounds will clarify important principles of law in Singapore regarding anticipatory breach, insolvency and arrest of vessels.