

The Chinese Court Recognizes an English Commercial Judgment for the First Time

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Written by Zilin Hao, Anjie Law Firm, Beijing, China

Introduction

On 17 March 2022, Shanghai Maritime Court of PRC issued a ruling of recognizing and enforcing a commercial judgment made by the English High Court, with the approval of Supreme People's Court ("SPC"). This is the first time that Chinese court recognizes an English commercial judgment based on the principle of reciprocity, which is undoubtedly a milestone where the English court has not recognized the Chinese judgment before.

I. Case Overview

1. The Original English Judgments

18 March 2015, the high court of Queen's Bench Division (Commercial Court), England & Wales made a judgment on the case of Spar Shipping AS v Grand China Logistics Holding (Group) Company, Ltd (hereinafter "Spar Case"). In the Spar Case, the Claimant ("Spar") was the registered owner of three supramax bulk carriers each let on long term time charter to Grand China Shipping (Hong Kong) Co Ltd (hereinafter "GCS") with guarantees issued by the defendant, GCL, incorporated in Shanghai as the parent of the charterer. The charterer failed to pay hire on time and in September 2011 Spar withdrew the vessels and terminated the charterparties under the cancellation clause, which states: "If the vessel is off-hire for more than 60 days continuously, Charterers have the option to cancel this Charter Party.". Spar then sued the GCL under the guarantees, claiming the balance of hire unpaid under the charters and damages for loss of bargain in respect of the unexpired term of the charters.

In the first instance, Mr Justice Popplewell J. concluded that payment of hire by the Charterers under the three charters was not a condition to cancel charterparties but the liberty to withdraw the vessel from service. The judge also

held that payment of hire was that the charterer had renounced the charter parties and that the shipowner was entitled to about USD 24 million in damages for loss of bargain in respect of the unexpired terms of the charter parties. The decision was appealed, the English Court of Appeal upheld the judgment of first instance and ordered the charterers' parent company GCL as guarantor to pay the shipowner the amounts due under the three charterparties including damages plus interest and costs.

2. The Chinese Ruling- (2018) Hu72Xie Wai Ren No.1

In March 2018, the applicant of Norwegian shipowner applied to the Shanghai Maritime Court, the competent court where the respondent is located, for recognition of the judgment of the English court. On March 17, 2022, the Shanghai maritime court finally made a civil ruling to recognize the judgment made by the English court involved in the case.

According to the ruling, the key issues in this judicial cooperation case are as follows: (1) Whether there is a reciprocal relationship between China and the UK on the recognition and enforcement of civil judgments, including whether there are precedents for English courts to recognize and enforce Chinese court judgments and whether there are precedents for refusing to recognize and enforce Chinese court judgments; (2) In the absence of reciprocal precedent, whether the Chinese court can recognize the judgment of the English court based on the principle of reciprocity; (3) Whether the injunction system of the English court constitutes a reason for refusing to recognize the judgment of the English court; (4) Whether the fines for interest and expenses claimed by the applicant fall within the admissible scope of foreign judgment.

After hearing, the Shanghai Maritime Court decided to recognize the judgment of the English court. Firstly, the PRC Ruling considered that the PRC and United Kingdom have not concluded or acceded to treaties on mutual recognition and enforcement of court judgments in civil and commercial matters, so the principle of reciprocity should be taken as the basis for the recognition of an English Judgment. The claimant argued that "the judgment of Spliethoff's Bevrachtungskantoor BV v Bank of China Ltd, [2015] EWHC 999 (Comm) of the English High Court of Justice Queen's Bench Division Commercial Court (hereinafter "Spliethoff Case") could be regarded as positive precedent of Chinese judgments recognised and enforced by English Courts. In this Case, the English court confirmed that another Chinese judgment in Rongcheng Xixiakou

Shipbuilding Co., Ltd., Wartsila engine (Shanghai) Co., Ltd. v. Wartsila Finland Oy decided by Shandong High Court (hereinafter “Xixiakou Case”) was effective and enforceable, but did not actually enforce it. This opinion was not adopted by the Shanghai Maritime Court.

Despite the above, the Shanghai Maritime Court held that “when stipulating the principle of reciprocity, the Civil Procedure Law of the People’s Republic of China does not limit it to that the relevant foreign court must first recognize the civil and commercial judgment of Chinese court. If there are possibilities that the civil and commercial judgment made by Chinese court can be recognized and enforced by the foreign court, it can be considered that there is reciprocity between the two jurisdictions.” Therefore, even if in the absence of reciprocal precedent, the Chinese court still can recognize the judgment of the English court based on the principle of reciprocity.

Secondly, in terms of the anti-suit injunction in the English judicial system, the Shanghai Maritime Court held that in this specific case, the English courts did not issue anti-suit injunctions to prohibiting the parties from litigating in foreign courts. Both parties have agreed that the English court has the jurisdiction and the English court asserted jurisdiction based on the choice of court agreement. The existence of anti-suit injunction in the foreign legal system is not a reason to make foreign judgments unenforceable in China.

Thirdly, in terms of an error in the application of law in the English judgment, the Shanghai Maritime Court held that this was a substantive matter and was not subject to judicial review in recognition and enforcement of foreign judgments. And even if the error of applying the law is indeed proved, it will constitute the reason for refusing recognition and enforcement only when it violates the basic principles, public order and social public interests under the PRC legislation.

Finally, the Shanghai Maritime Court decided that the interest, expenses and fines in this case were due to the respondent’s failure to perform its payment obligations, which were “monetary debt” and admissible matters for recognition and enforcement of the English judgment.

II. Comments

On 31 December 2021, shortly before this ruling, the SPC issued a memorandum on commercial and maritime matters entitled “Memorandum of the National

Courts' Symposium on Trials for Commercial and Maritime Cases" (hereinafter "Memorandum"). Article 44 of the Memorandum provided that "When hearing a case applying for recognition and enforcement of a judgment of a foreign court, the people's court may recognize that there is a reciprocal relationship under any of the following circumstances: (1) according to the law of the country where the court is located, the civil and commercial judgments made by the People's Court can be recognised and enforced by the courts of that country; (2) China has reached a memorandum or consensus of mutually reciprocity with the country where the court is located; (3) the country where the foreign court is located has made reciprocal commitments to China through diplomatic channels or China has made reciprocal commitments to the country where the court is located through diplomatic channels, and there is no evidence that the country where the court is located has refused to recognize and enforce the judgments and rulings made by Chinese courts on the ground that there is no reciprocal relationship. Obviously, the principle of the ruling that Shanghai Maritime Court made to recognize English judgment was consistent with the Memorandum.

Article 288 of the Civil Procedure Law of PRC (hereinafter "CPL") and article 544 of the Judicial Interpretation of CPL issued by the SPC both make reciprocity one of the bases for recognizing and enforcing foreign judgments. When China has committed more to international connection and cooperation, the application of the principle of reciprocity in judicial practice is gradually getting more flexible. The court abandoned the previous rigid 'de facto' reciprocity and adopts the "legal reciprocity" or "de jure reciprocity". As long as the Chinese judgment can be recognized and enforced according to the law of the country where the foreign court is located, the reciprocal relationship exists. According to the Memorandum, the courts of China shall examine and determine whether there is a reciprocal relationship case by case.

Since the UK not a Belt and Road Initiative ("BRI") country, this case shows China adopts a liberal and flexible approach to enforce foreign judgments as a general policy. Chinese courts also adopts a minimum-review approach to review foreign judgments, which is clearly favourable to foreign judgment enforcement. It indicates China continues an open attitude to international commerce and judicial cooperation in civil and commercial matters.

1. Spar Shipping as v Grand China Logistics Holding (Group) Company Ltd, [2015] EWHC 718 (Comm).

2. Michael Volikas, Court finds payment of charter hire is not a condition: Astra not followed, 20 March 2015, available at <https://www.incegd.com/en/news-insights/>.
3. Yang Yang and Patrick Lee, PRC Court recognizes an English judgment for the first time - a Gard perspective, 12 April 2022, available at <https://www.gard.no/web/updates/content>.
4. Grand China Logistics Holding (Group) Co. Ltd v Spar Shipping AS, [2016] EWCA CIV 982.
5. Spar Shipping AS (2018) Hu 72 Xie Wai Ren No 1.
6. Yang Wengui and Luo Yi, The Chinese court recognized the commercial judgment of the British court for the first time (translated), Chinese version published on 24 March 2022, available at HAI TONG & PARTNERS website <https://www.haitonglawyer.com/news/598.html>. HAI TONG & PARTNERS is the law firm entrusted by the applicant before Shanghai Maritime Court in this case.
7. Spliethoff's Bevrachtungskantoor BV v Bank of China Ltd [2015] EWHC 999 (Comm) (17 April 2015).
8. Case No.: (2013) Lu Min Si Zhong Zi No. 87, accordingly the case number of the first-instance judgment is Qingdao Maritime Court (2011) Qinghai Fa Hai Shang Chu Zi No. 271.
9. WANG Limin and DING Qixue, Report on the trial of Xixiakou Shipyard Case of Qingdao Maritime Court, published on 24 April 2014, available at <http://qdhsfy.sdcourt.gov.cn/qdhsfy/394069/394047/548075/index.html>.
10. Wang Beibei, Key points of "Memorandum of the National Courts' Symposium on Trials for Commercial and Maritime Cases", published on the official social media account of Shanghai Second Intermediate People's Court "SJ-Research", 5 May 2022.