Can a Seat Court Injunct a Foreign Non-Party to an Arbitration? Singapore High Court clarifies in Alphard Maritime v Samson Maritime (2025) SGHC 154

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The Singapore High Court recently clarified the scope of the court's jurisdiction over foreign non-parties to the arbitration. In an application to set aside two interim injunctions, in *Alphard Maritime Ltd. v Samson Maritime Ltd. & Ors. (2025) SGHC 154*,[1] the court held that the the seat *per se* did not confer jurisdiction against non-parties to an arbitration, and that jurisdiction would first have to be established through regular service-out procedures before the seat court could grant an injunction against a non-party.

Factual Background

Briefly, the applicant, Alphard Maritime ("**Alphard**"), initiated SCMA arbitration[2] against its debtor, Samson Maritime ("**Samson**"), and Samson's wholly owned subsidiary, Underwater Services ("**Underwater**"), for alleged breach of a settlement agreement for the sale of approx. nine vessels and Samson's shareholding in Underwater to Alphard ("**Subject Assets**"). Alphard initiated arbitration upon receiving information of the pledge/mortgage of the Subject Assets to J M Baxi Marine Services ("**Baxi**") in breach of the Settlement Agreement. In addition to *the ex-parte* freezing order against Samson and

Underwater, Alphard had received from the seat court, acting in support of the arbitration, an *ex-parte* prohibitory injunction restraining Baxi and other creditors of Samson from *assisting in or facilitating the dissipation of, or dealing with, any of Samson and Underwater's assets worldwide*. Baxi was not a party to the Settlement Agreement. While one of the defendants was based out of Singapore, Samson and Underwater were bound by the jurisdiction conferred to the seat court; however, Baxi was a foreign non-party to the arbitration.

While the interim freezing injunction against Samson and Underwater was vacated on the finding that there was no evidence of dissipation or risk of dissipation of assets, and the court observed that there was no basis for the injunction which in effect prohibited Baxi and/or the lenders from asserting their own contractual rights or enforcing proprietary rights against Samson which pre-dated the Settlement Agreement, the injunction was vacated primarily on the finding that the Singapore court, as the seat court, had no jurisdiction over Baxi or the foreign lenders.

Seat Court's Jurisdiction over Foreign Defendants

A court must have *in personam* jurisdiction to grant an injunction against a party. Under Singapore law, which follows the English law on jurisdiction, jurisdiction is based on service of proceedings, and the court assumes jurisdiction over a foreign party (not having a presence in Singapore and not having submitted to the proceedings) through permission for service out of the claims. [3] The court allows permission for service out where "*the Singapore Court is the appropriate forum for hearing the proceedings*".[4] For the assessment of whether permission for service out should be granted, *i.e.*, that Singapore Court is the appropriate forum, the claimant is required to meet the following three-prong assessment: [5]

1. *A good arguable case that there is sufficient nexus with the Singapore court;*

2. *Singapore is the forum conveniens; and*
3. *There is a serious question to be tried on the merits of the claim*.

The "sufficient nexus" refers to the connection between the court and the defendant and follows the logic that a party may only be called to a foreign court where they have a sufficiently strong connection to the state. Practice Directions 63(3)(a) to (t) set out "Factors" that guide as to the possible connection that the foreign defendant may have with the Singapore court. ***[6]***

Alphard relied on 2 factors – *first*, PD 63(3)(d), a claim to obtain relief in respect of the breach of a contract governed by the laws of Singapore. This was held to be inapplicable, as Baxi was neither a party to the contract, nor committed any breach. *Second*, PD 63(3)(n) claims made under any other written law of Singapore. In this regard, it was contended that the claim against Baxi was under Section 12A of the International Arbitration Act, *i.e.*, an exercise of the Singapore court's power to grant an injunction against non-parties in support of Singapore-seated arbitration, which wide power ensured that non-parties did not collude with the defendants to frustrate the fruits of a claim. The court accepted PD 63(3)(n) as a relevant factor.

However, since sufficient nexus with the court is not enough for permission to service out, the court proceeded to the next equity, i.e., whether Singapore was the '*forum conveniens*'. *Forum conveniens* is an exercise in determining the most appropriate court for deciding the lis. It is the assessment of the connection of the dispute with the Singapore court. The 'dispute' here was the prohibitory injunction against Baxi. The court held that to be the 'appropriate court' for interim relief against a *specific party*, it required more than the arbitration being seated in Singapore. The seat court would be the appropriate court if the dispute with the specific party could be traced to the arbitration, or assets/obligations were substantially that of party to the arbitration, *i.e.*,

1. Was the non-party bound by the arbitration agreement even if it was not a party to the arbitration?
2. did the non-party hold assets in Singapore, which arguably belonged beneficially to a party to the arbitration (non-party was a trustee / pass-through for the assets)
3. was the non-party a corporate entity held/owned by the party to the arbitration, and therefore, did the dissipation of assets of the party amount to the dissipation of value of the party (merger of identity between the party and non-party)?

The Court held that in the absence of any of the above, the seat court would not be the *de facto* appropriate forum for injunctions against all non-parties even when the injunction is in aid of Singapore-seated arbitration. The court did not find any reason for Baxi, an entity pursuing its independent remedy against the Alphard, to be brought before the Singapore court.

Notably, Alphard had already pursued interim relief under Section 9 of the (Indian) Arbitration and Conciliation Act, 1996, against the Defendants, including Baxi, before the High Court of Bombay. [7] The Bombay High Court, acting further to its power for making interim orders for protection of the subject matter in arbitration, including in international commercial arbitration where the place of arbitration is outside India [8], granted a status quo injunction, including on Baxi, on further dealing in or creating any further third-party interests in the shares held by Samson in Underwater and a disclosure order in respect to the transaction for pledge created in favour of Baxi.

Concluding Thoughts

For the known benefits of enforcement and limited grounds of challenge of awards under Singapore law and before Singapore courts, foreign parties regularly opt for Singapore as the neutral seat of arbitration. In such cases, the

only nexus of the dispute with the court is its designation as the seat court. Separately, arbitral tribunals do not have jurisdiction over non-parties to an arbitration; thus, courts assume adjudication for interim relief applications against non-parties to the arbitration. With this decision, the Singapore court has confirmed the non-seat court's interference for interim reliefs where parties require protective orders vis-a-vis non-parties to the arbitration.

[1] Available here.

[2] Arbitration under the Singapore Chamber of Maritime Arbitration ("**SCMA**") Rules.

[3] S. 16(1)(a)(ii) of the Supreme Court of Judicature Act 1969: "***16.***—*(1) The General Division has jurisdiction to hear and try any action in personam where — (a) the defendant is served with an originating claim or any other originating process — …(ii) outside Singapore in the circumstances authorised by and in the manner prescribed by Rules of Court or Family Justice Rules.*"

[4] *Rules of Court 2021, Rule 1(1) of Order 8 of ROC 2021 "**1.**—(1) An originating process or other court document may be served out of Singapore with the Court's approval if it can be shown that the Court has the jurisdiction or is the appropriate court to hear the action"* .

[5] Supreme Court Practice Directions 2021, Para 63(2).

[6] Prior to 2021, this condition was similar to English law, i.e., the "*Good and arguable case that a gateway applies*". While "gateways" have been done away with, the Practice Directives have set out a non-exhaustive list of factors (PD 63(3)(a)–(t)) which a claimant "should refer to" in order to meet the requirement under PD 63(2)(a). These factors mirror the gateways with were earlier found in the Rules of Court 2014. See Ardavan Arzandeh, The New Rules of Court and the Service-Out Jurisdiction in Singapore, (2022) Singapore Journal of Legal Studies 191–201.

[7] Alphard Maritime Ltd. v Samson Maritime Limited & Ors. Commercial Arbitration Petition (L) No.7499 of 2025, Order dated 02.04.2025, available here.

[8] Section 9 read with Section 2(2) of the Arbitration Act, 1996.