

Insights

SPEC 1 LIMITED & ORS V THE EXPORT-IMPORT BANK OF CHINA: SQUARING THE CIRCLE OF ASYMMETRIC EXCLUSIVE JURISDICTION CLAUSES

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Summary

The High Court analysed the principles governing asymmetric exclusive jurisdiction clauses, emphasising that such clauses in finance documentation must be interpreted in light of their commercial purpose, namely that of facilitating the lender's enforcement against the borrower's assets.

The High Court held that the asymmetric exclusive jurisdiction clause in this case permitted parallel proceedings in England and Singapore. Accordingly, the Borrowers could pursue their claims in England and the Lender could pursue its claims in Singapore.

The Court nevertheless urged the parties to exercise their "*common sense*" and show more "*willingness to cooperate*" by finding their "*own path to pragmatism*" and avoiding the "*forensic gamesmanship*" which had led to the parallel proceedings in England and Singapore.

This case concerns a dispute between Spec 1 Limited, Spec 2 Limited and Spec 3 Limited (the "**Claimants**" or "**Borrowers**") and the Export-Import Bank of China (the "**Defendant**" or "**Lender**"), arising from several ship finance agreements, including a loan agreement.

The Lender commenced proceedings in Singapore in May 2025. Subsequently, the Borrowers commenced parallel proceedings against the Lender in England. The Lender acknowledged service, indicating its intention to contest jurisdiction (on *forum non conveniens* grounds) and then applied for a stay of the English proceedings on general case management grounds, in favour of Singapore.

The High Court's decision concerns:

i. the Lender's application for an order: (a) declaring that the court declines jurisdiction and (b) staying the proceedings in this action on *forum non conveniens* and general case management

grounds, in favour of proceedings in Singapore; and

ii. the Borrowers' application for an order granting an anti-suit injunction against the Lender in respect of the proceedings in Singapore and, alternatively for an anti-anti-suit injunction.

Central to both the Lender's and Borrowers' respective applications was an asymmetric exclusive jurisdiction clause (Clause 18), which, in effect, provided that the Borrowers could and must only sue the Lender in England, whereas the Lender could sue the Borrowers in England but, in general, could also sue elsewhere.

The parties agreed that Clause 18 permitted parallel proceedings in different jurisdictions, but disagreed on the circumstances in which such proceedings were permitted and the limits on each party's rights:

i. The Lender contended that its ability to sue elsewhere was not affected by the commencement of proceedings in England, whether by it or by the Borrowers. The Lender further contended that, while the English court had jurisdiction in principle under Clause 18, England was not the natural forum. It argued that the court should stay itself in favour of Singapore, to prevent duplicative proceedings and inconsistent decisions, and that the jurisdiction provisions could not oust the court's discretion to do so where strong reasons existed.

ii. The Borrowers contended that the Lender could only sue outside England before either party had commenced proceedings in England, whereas the Borrowers' right to sue in England was unaffected by the Lender suing elsewhere. The Borrowers maintained that they had an absolute contractual right to bring their claims in England and argued that the Lender should not be permitted to resile from its concomitant contractual obligations to allow the Borrowers to do so.

DECISION

The judge noted that although asymmetric exclusive jurisdiction clauses are not uncommon and "*it is not in doubt that they are enforceable in principle*" under English law, there are relatively few decided cases and neither side was able to highlight any decisions addressing a clause identical, or similar, to Clause 18.

The judge observed that such clauses are particularly common in borrower-lender arrangements, where their commercial purpose is to facilitate the lender's enforcement against the borrower's assets. They must therefore be interpreted so as to facilitate, not frustrate, that purpose.

The judge then considered the authorities relevant to the construction of Clause 18 and summarised the key principles (as set out by Toulson LJ in *Highland Crusader Offshore Partners LP v Deutsche Bank AG*^{[1][2]}). These principles (which apply post-Brexit and are not based on EU law) are summarised as follows:

1. Under English law, the court may restrain a defendant over whom it has jurisdiction, from instituting or continuing proceedings in a foreign court when it is necessary in the interests of justice to do.
2. Where a matter is justiciable in an English and a foreign court, the party seeking an anti-suit injunction must generally show that proceeding before the foreign court is, or would be, vexatious or oppressive.
3. While there is no comprehensive definition of “vexation” or “oppression”, in order to establish that proceeding in a foreign court is, or would be, vexatious or oppressive on grounds of *forum non conveniens*, it is generally necessary to show that:
 - i. England is clearly the more appropriate forum (“the natural forum”); and
 - ii. Justice requires that the claimant in the foreign court should be restrained from proceeding there.
4. If the English court considers England to be the natural forum and can see no legitimate personal or juridical advantage in the claimant in the foreign proceedings being allowed to pursue them, it does not automatically follow that an anti-suit injunction should be granted. Comity must also be considered (see the fifth principle, below).
5. An anti-suit injunction always requires caution because, by definition, it involves interference with the process or potential process of a foreign court.
 - An injunction to enforce an exclusive jurisdiction clause governed by English law is not regarded as a breach of comity, because it merely requires a party to honour its contract.
 - In other cases, the principle of comity requires the court to recognise that, in deciding questions of weight to be attached to different factors, different judges operating under different legal systems with different legal policies may legitimately arrive at different answers, without it constituting a breach of customary international law or manifest injustice. In such circumstances it is not for an English court to arrogate to itself the decision how a foreign court should determine the matter.
 - The stronger the connection of the foreign court with the parties and the subject matter of the dispute, the stronger the argument against intervention.
6. The prosecution of parallel proceedings in different jurisdictions is undesirable, but not necessarily vexatious or oppressive.
7. A non-exclusive jurisdiction agreement precludes either party from later arguing that the forum identified is not an appropriate forum on grounds foreseeable at the time of the agreement, as the parties must be taken to have been aware of such matters at the time of the agreement.

- For that reason, an application to stay, on *forum non conveniens grounds*, an action brought in England pursuant to an English non-exclusive jurisdiction clause will ordinarily fail, unless the factors relied upon were unforeseeable at the time of the agreement.
- It does not follow that an alternative forum is necessarily inappropriate or inferior.

8. The decision whether or not to grant an anti-suit injunction involves an exercise of discretion and the principles governing it contain an element of flexibility.

The Lender's Application

Applying these principles, the Court found the Lender's application for the English Court to decline jurisdiction and stay the English proceedings "*extremely difficult.*"

The Lender had rightly accepted that the claims brought by the Borrowers could have only been brought in England under the loan agreement and that bringing them elsewhere would have been a breach of contract by the Borrowers.

The substantial overlap between the relief sought in England and Singapore did not diminish the Borrowers' contractual right.

Furthermore, the Lender's entitlement to commence proceedings in other courts did not assist its application: it merely confirmed that the loan agreement unequivocally contemplated parallel proceedings. The Borrowers were entitled to argue that it was the Lender's own decision to sue outside England that made parallel proceedings a reality.

The Court accepted that parallel proceedings and the associated risk of inconsistent decisions were ordinarily perils that parties could be assumed to wish to avoid.

However, that was not the bargain that the parties made. The foreseeable risk of inconsistent decisions was a feature of the bargain itself, which both parties must be taken to have accepted. The Court further considered this risk manageable, given the mutual respect between England and Singapore: if one jurisdiction produced a binding judgment first, the other would likely apply it on the basis of their shared approach to *res judicata*.

In circumstances where England was the exclusive jurisdiction for any proceedings commenced by the Borrowers, the Lender had to identify strong reasons for a stay, which were absent on the facts. The Court therefore dismissed the Lender's application.

The Borrowers' Applications

The Court dismissed the Borrowers' primary application for an anti-suit injunction against the Lender. The Court noted that anti-suit injunctions were most readily granted where the foreign proceedings represented a breach of an English jurisdiction clause. This was not the case here, as

the Lender was contractually entitled to bring proceedings outside England, including in Singapore. Therefore, there was no basis to grant an anti-suit injunction.

As to the Borrowers' alternative application for an anti-anti-suit injunction to restrain the Lender from bringing an anti-suit injunction in relation to the English action, the Court considered that there was no realistic basis to expect that the Lender would apply for an anti-suit injunction and that, in any event, such application would be bound to fail. The Court therefore also dismissed the Borrowers' alternative application.

CONCLUSION

This decision reinforces the primacy of the parties' contractual agreement and mutually negotiated terms under English law. It also provides a useful example of interpreting asymmetric exclusive jurisdiction clauses in finance agreements, having regard to their underlying commercial purpose, namely that of facilitating a lender's enforcement against a borrower's assets.

The judgment serves as a reminder that commercial pragmatism and cost-efficiency remain paramount in litigation. While the Court could not impose "*common sense*" on the parties, it encouraged them to "*find their own path to pragmatism*", observing that it "*may well be objectively sensible for one of [the parties] to yield to the other's preference and agree to stay its own claims – either in England or in Singapore*", notwithstanding that the contract permitted parallel proceedings.

[1] [2009] EWCA Civ 725.

[2] Note that although *Highland Crusader Offshore Partners LP v Deutsche Bank AG* did not concern an asymmetric clause, it has since been referred to in cases concerned with asymmetric clauses, on the basis that they are equivalent to a non-exclusive jurisdiction clause of the type discussed in Toulson LJ's seventh proposition.

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