IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 149

Admiralty in Personam No 50 of 2022 (Summons No 4238 of 2022)

Between

COSCO Shipping Specialized Carriers Co, Ltd

… *Claimant*

And

(1) PT OKI Pulp & Paper Mills
(2) COSCO Shipping Specialized Carriers (Europe) BV
(3) All other persons claiming or entitled to claim damage, loss, expense, indemnity arising out of contact between "LE LI" (IMO No. 9192674) and jetty/structure at Tanjung Tapa Pier on or about 31.05.22

… *Defendants*

JUDGMENT

[Civil Procedure — Service]
[Admiralty and Shipping — Collision — Limitation action]

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COSCO Shipping Specialized Carriers Co, Ltd
v
PT OKI Pulp & Paper Mills and others

[2023] SGHC 149

General Division of the High Court — Admiralty in Personam No 50 of 2022 (Summons No 4238 of 2022)
S Mohan J
17 April 2023

22 May 2023 Judgment reserved.

S Mohan J:

Introduction

1 This application arises out of a contact that occurred between the general cargo ship "LE LI" (the "Vessel") and a trestle bridge connecting a paper mill to an offshore jetty at a port in Palembang, Indonesia (the "Incident"). The owner of the Vessel has commenced HC/ADM 50/2022 – a limitation action – to limit its liability arising out of the Incident to the limits as provided in the Merchant Shipping Act 1995 (2020 Rev Ed) ("MSA 1995") with reference to the tonnage of the Vessel. The shipowner has named the party alleged to be the owner of the trestle bridge/jetty and the head charterer of the Vessel as the first and second defendants respectively. Pursuant to the procedural rules for a limitation action as contained in O 33 r 36 of the Rules of Court 2021 ("ROC 2021"), service of the originating claim was only effected on the head charterer

(*ie*, the second defendant). Dissatisfied with this, the alleged owner of the trestle bridge/jetty (*ie*, the first defendant) has brought the present application to contest the jurisdiction of the Singapore courts in this action. It seeks to challenge the validity of the service on the second defendant and questions the very basis of the second defendant's professed claim against the claimant.

The nature of limitation actions

2 Before delving into the issues that arise in the application before me, it would be useful to first set out some background to the nature of a limitation action and certain unique procedures associated with it. This would better situate some of the arguments that I will address later in this judgment.

3 A shipowner's right to limit its liability in respect of certain maritime claims is a well-established one, from its historical roots in English legislation to its current form as encapsulated in the Convention on Limitation of Liability for Maritime Claims, 1976 as amended by the Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims ("LLMC 1976"). The LLMC 1976, with the exceptions of Article 2(1)(*d*) and 2(1)(*e*), has the force of law in Singapore pursuant to s 136(1) of the MSA 1995):

> Subject to this Part, the provisions of the Convention, other than paragraph 1(*d*) and (*e*) of Article 2 of the Convention, have the force of law in Singapore.

4 A shipowner faced with potential claims from various parties may invoke the right to limit liability by commencing a limitation action in accordance with O 33 r 36 of the ROC 2021. A limitation action is *sui generis*. It is different from other actions where the court determines a party's liability under defined, pleaded causes of action. In a limitation action, the court does not decide whether a shipowner is liable in respect of any claims that may arise

against the shipowner following the occurrence of a maritime casualty. The issue of the shipowner's liability, if any, is (unless such liability is admitted) a question to be decided in separate liability proceedings in the proper forum, which can take the form of arbitration or court proceedings (in Singapore or elsewhere). As recognised by the English High Court in *The Happy Fellow* [1997] 1 Lloyd's Rep 130 at 134, a limitation action is "a special proceeding to which all potential claimants are made parties", in which a shipowner enforces its right "to have all claims scaled down to their proportionate share of a limited fund".

5 Thus, a limitation action is not a simple action between one claimant and one defendant, but an action between the claimant shipowner (as the limiting party) and *all* limitation defendants (*ie*, all parties with claims or potential claims against the shipowner). Consistent with its nature and considering where liability proceedings may be brought or prosecuted (see [4]), any limitation decree granted by the court in a limitation action in favour of a shipowner is, generally speaking, "good against the world" (see the English Court of Appeal decision of *Saipem SpA v Dredging VO2 BV and Geosite Surveys Ltd (The Volvox Hollandia)* [1988] 2 Lloyd's Rep 361 at 370).

6 Notwithstanding the conceptual features of a limitation action, there are certain realities which cannot be ignored. It may not be possible for a shipowner seeking to limit its liability to know the identities (or even the existence) of all the parties with potential claims against it, let alone be able to name and serve the limitation proceedings on all of them. This is especially since the limitation action may be commenced even when no liability proceedings have been launched against the shipowner in any forum, and even where the shipowner does not know precisely who has claims against it but apprehends that claims may arise following a maritime incident. It is with these realities in mind that

one can appreciate why, under O 33 r 36(2) of the ROC 2021, a shipowner only needs to make *one* of the persons with claims against it in respect of the casualty a defendant to the limitation action (although others may be made defendants also). Further, only one such defendant must be expressly named in the originating claim, while all others may be described generally (see O 33 r 36(3)). As for service, the originating claim only needs to be served on one named defendant and need not be served on any others (see O 33 r 36(4)).

7 With these general principles and observations in mind, I turn to set out the background to this limitation action.

Facts

8 The first defendant, PT OKI Pulp & Paper Mills ("OKI"), owns and operates a pulp and paper mill in Palembang, Ogan Komering ILIR Regency, Indonesia. OKI also claims to own and operate a nearby seaport facility comprising a warehouse and jetty (the "Terminal") at Tanjung Tapa Pier. Prior to the construction of this facility, products from the mill had to be shipped out from an inland jetty on barges. The laden barges in turn had to travel some 92km by river in order to load the products onto seagoing vessels. The construction of the Terminal in 2020 obviated the need for the barges to carry the products to the seagoing vessels, as the products could be transported from the mill by truck *via* the trestle bridge to the jetty, which was located more than 2km off the mainland. From the jetty, the products would be loaded on board the receiving vessels directly.[1]

9 The Vessel is and was at all material times owned by COSCO Shipping Specialized Carriers Co, Ltd ("COSCO Shipping"), the claimant in this action.

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[1] 1st Affidavit of Surya Kurniawan dated 12 January 2023 at paras 5, 7–8.

Pursuant to a contract of affreightment dated 6 April 2021 (the "Head COA"), the Vessel was chartered by the claimant to COSCO Shipping Specialized Carriers (Europe) BV ("COSCO Europe"). By a voyage charterparty also dated 6 April 2021, COSCO Europe sub-chartered the Vessel to OKI.[2] As their names suggest, COSCO Shipping and COSCO Europe (collectively, the "COSCO entities"), are related – COSCO Europe is majority-owned by another entity which is itself a wholly-owned subsidiary of COSCO Shipping.[3]

10 On 31 May 2022, at or around 3.20pm local time, the Vessel departed from her berth at the jetty whilst being piloted and with the assistance of two tugs. While manoeuvring away from the jetty, the Vessel made contact with the trestle bridge, allegedly causing about 220m of the bridge to collapse.[4] OKI claims to be the owner of the trestle bridge/jetty and asserts that the Incident has caused it significant loss and damage. I mention as an aside and for completeness that since the occurrence of the Incident, COSCO Shipping and OKI have been unable to agree on security for OKI's claims, presently estimated by OKI to be approximately US$592 million.[5] In contrast, the aggregate limit of COSCO Shipping's liability under the LLMC 1976, calculated with reference to the tonnage of the Vessel, is approximately US$16 million.[6]

11 On 4 August 2022, COSCO Shipping commenced the present limitation action, naming OKI and COSCO Europe as defendants, and with the remaining defendants generically described as "[a]ll other persons claiming or entitled to

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2 2nd Affidavit of Li Jianzhong dated 20 January 2023 at para 9.

3 1st Affidavit of Jun Hu dated 3 March 2023 at paras 9–10.

4 1st Affidavit of Surya Kurniawan dated 12 January 2023 at para 11.

5 1st Affidavit of Surya Kurniawan dated 12 January 2023 at para 13.

6 1st Affidavit of Li Jianzhong dated 25 August 2022 at para 22.

claim damage, loss, expense, indemnity arising out of contact between 'LE LI' (IMO No. 9192674) and jetty/structure at Tanjung Tapa Pier on or about 31.05.2022". The originating claim was served by COSCO Shipping's solicitors, Rajah & Tann Singapore LLP, on COSCO Europe's Singapore solicitors, JLex LLC ("JLex") on 5 August 2022 by email, following JLex's confirmation that they were authorised to accept service in Singapore on COSCO Europe's behalf.[7] COSCO Europe then filed a notice of intention not to contest COSCO Shipping's originating claim on 11 August 2022. It is common ground that OKI, on the other hand, was not served with the originating claim.

12 On 25 August 2022, COSCO Shipping filed an application for, among others, the grant of a limitation decree in HC/SUM 3219/2022 ("SUM 3219"). SUM 3219 was scheduled to be heard by this court on 12 October 2022. However, OKI filed a notice of intention to contest on 11 October 2022. At the hearing of SUM 3219 on 12 October, Mr Chan Leng Sun SC ("Mr Chan") appeared as instructed counsel for OKI and stated for the record that OKI was challenging the court's jurisdiction in this limitation action. At Mr Chan's request (and after hearing COSCO Shipping's objections), I adjourned SUM 3219 to allow OKI time to formulate its reliefs.

13 OKI subsequently filed the present application, HC/SUM 4238/2022 ("SUM 4238"), seeking, among others, declarations that: (a) the Singapore courts have no jurisdiction to hear this action; and (b) COSCO Europe is not a proper defendant in the action and should be removed from it. On the first issue of jurisdiction, OKI contends that the service of the originating claim on COSCO Europe's Singapore solicitors was invalid. The result, OKI argues, is

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7 2nd Affidavit of Li Jianzhong dated 20 January 2023 at para 77.

that the requirements for service on a named defendant have not been met and the court therefore has no jurisdiction. On the second issue of COSCO Europe's status as a named defendant, OKI contends that COSCO Europe is not a "proper" defendant in the limitation action because its claims against COSCO Shipping are not genuine. Unsurprisingly, the COSCO entities deny OKI's contentions. These two issues form the core of OKI's application in SUM 4238. I should add that while OKI had also sought a declaration that the originating claim had not been served on it, Mr Chan sought permission to withdraw that prayer since it was not disputed that the originating claim had not been served on OKI. As that prayer of the application was superfluous, I granted OKI permission to withdraw it and reserved all questions of costs occasioned by the withdrawal to be dealt with later.

14 I would also mention that since the filing of SUM 4238, arbitration proceedings have been commenced and are currently afoot in Singapore between COSCO Shipping and COSCO Europe, with each entity raising claims against the other in connection with the Incident.[8] I elaborate on this development later in this judgment.

OKI's standing to challenge the court's jurisdiction

15 Before addressing the two core issues I identified at [13], I note as a preliminary point that the COSCO entities have, in their written submissions and through their counsel at the hearing, questioned OKI's standing to make this application. They contend that OKI, as a party which has not been served with the originating claim and which continues to deny the court's jurisdiction, is in no position to challenge the validity of service on another defendant (*ie*,

8 2nd Affidavit of Li Jianzhong dated 20 January 2023 at paras 69–72.

COSCO Europe) which has not raised such issues itself.[9] They question whether OKI is even permitted under the ROC 2021 to file a notice of intention to contest if it has not been served with the originating claim.

16 On the other hand, Mr Chan argued at the hearing that OKI is a named defendant in the limitation action and should be entitled to address the court before the grant of any limitation decree which will affect its rights.

17 There appears to be some uncertainty as to whether a notice of intention to contest can be filed by a party who has not been served with the originating process. Counsel for COSCO Shipping, Mr Toh Kian Sing SC ("Mr Toh"), argued at the hearing that the rules in O 33 r 2(4) to O 33 r 2(7) of the ROC 2021 contemplate that a notice of intention to contest may only be filed by a defendant who has been served:

> **Issue of originating claim and filing of notice of intention to contest or not contest (O. 33, r. 2)**
>
> **2.**—(1) …
>
> **…**
>
> (4) *A defendant who is served an originating claim* in Singapore must file and serve a notice of intention to contest or not contest within 14 days after the originating claim is served on the defendant.
>
> (5) A defendant who is served out of Singapore must file and serve such a notice within 21 days after the originating claim is served on the defendant.
>
> (6) The notice of intention to contest or not contest the originating claim must be in Form 49.
>
> (7) The filing and service of such a notice is not treated as a submission to jurisdiction or a waiver of any improper service of the originating claim.
>
> [emphasis added]

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9 Claimant's Reply Submissions at para 53.

However, Mr Chan pointed out that the above provisions only state that a notice of intention to contest must be filed if one has been served with the originating claim. They do not state that a party who has not been served *cannot* file a notice of intention to contest.

18 Mr Chan highlighted a different provision – O 33 r 40(1)(b) – which contemplates that after a limitation decree has been granted, a named defendant which has not been served with proceedings can file a notice of intention to contest and apply to set aside the decree:

> **Limitation action: Proceedings to set aside decree (O. 33, r. 40)**
>
> **40.**—(1) Where a decree limiting the claimant's liability (whether made by a Registrar or on the trial of the action) fixes a time in accordance with Rule 39(2), any person with a claim against the claimant in respect of the casualty to which the action relates, who —
>
> (*a*) was not named by that person's name in the originating claim as a defendant to the action; or
>
> (*b*) if so named, *neither was served with the originating claim* nor filed and served a notice of intention to contest or not contest,
>
> may, within that time, after filing and serving a notice of intention to contest or not contest, take out a summons before the Registrar asking that the decree be set aside.
>
> [emphasis added]

19 Mr Chan also highlighted to me that the previous rule permitting the entering of an appearance *gratis* in O 10 r 1(3) of the Rules of Court (2014 Rev Ed) ("ROC 2014") does not have an equivalent in the ROC 2021.

20 Interesting as this question was, given that I ultimately disagree with OKI on the merits of its application for reasons which are elaborated upon below, I do not find it necessary to decide this point. For present purposes, I will

proceed on the assumption that OKI does have standing to make this application.

The First Issue: Whether COSCO Europe was validly served with the originating claim

21 I therefore turn to the first core issue relating to the validity of service on COSCO Europe. As I mentioned at [11], the originating claim was served by email on COSCO Europe's Singapore solicitors, JLex, on 5 August 2022, pursuant to JLex's confirmation to COSCO Shipping's solicitors that they had the authority to accept service on COSCO Europe's behalf.[10] COSCO Europe also confirms that it agrees to submit to the jurisdiction of the court.

22 OKI contends that this service was invalid because COSCO Europe is a foreign defendant, with the consequence that service could not be validly effected on COSCO Europe until the court's permission to serve them out of jurisdiction was obtained pursuant to O 8 r 1 read with O 33 r 3 of the ROC 2021. No such application for the court's permission was made. OKI argues that it is no answer to say that COSCO Europe agreed to be served *via* its Singapore solicitors. This is because service on solicitors is merely a mode of service which may be considered only *after* the court grants permission for the originating process to be served out of jurisdiction; it is not a device to bypass the court's permission entirely.[11]

23 OKI's submission on this issue is founded upon the premise that a foreign defendant can only be served with proceedings under O 8, *ie* only with the court's permission. In my judgment, this premise is misconceived.

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10 2nd Affidavit of Li Jianzhong dated 20 January 2023 at para 77.

11 OKI's Written Submissions at paras 23–25; OKI's Response Submissions at para 9.

Establishment of jurisdiction by service

24 The starting point is to consider the role and purpose of service of originating processes or court documents. This is concisely summarised as follows in *Singapore Rules of Court – A Practice Guide (2023 Edition)* (Chua Lee Ming gen ed) (Academy Publishing, 2023) ("*Singapore Rules of Court – A Practice Guide*") at para 07.002:

> Service is the formal transmission or delivery of court documents to another person. It is the means by which parties are notified of the start and progress of court proceedings. In particular, the service of originating processes is used to establish the jurisdiction of the courts.

The purpose of service is described in similar terms in Jeffrey Pinsler, *Singapore Civil Practice* (LexisNexis, 2022) at para 9-1:

> Service has certain fundamental purposes. It communicates or gives notice of the document or a process (such as an application) so that the party served may address the matter, respond and state his position (if he wishes to do so). In the case of an originating process, service is a primary basis for establishing the jurisdiction of the court.

25 It is clear from the above that there are two core functions to the service of originating processes or court documents. The first is to ensure that the party served has notice of a particular proceeding or document. The second and more material function for present purposes is that service of an originating process is one of the main (or primary) avenues to establish the civil jurisdiction of the court over a matter. This is enshrined in s 16(1)(*a*) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA"), which provides for the establishment of the civil jurisdiction of the General Division of the High Court by service *in Singapore* (under s 16(1)(*a*)(i)) and service *outside Singapore* (under s 16(1)(*a*)(ii)), with such service to be in the manner prescribed by, among others, the Rules of Court:

> **Civil jurisdiction — general**
>
> **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 —
>
> (i) *in Singapore* in the manner prescribed by Rules of Court or Family Justice Rules; or
>
> (ii) *outside Singapore* in the circumstances authorised by and in the manner prescribed by Rules of Court or Family Justice Rules; or
>
> …
>
> [emphasis added]

26 In accordance with ss 16(1)(*a*)(i) and 16(1)(*a*)(ii), the ROC 2021 establishes rules for service of proceedings in O 7 and O 8, which are titled "Service in Singapore" and "Service Out of Singapore" respectively. COSCO Shipping points out in its written submissions that the key factor determining which of the two orders applies is *not* whether the *defendant* is a Singapore-based or foreign defendant *per se*, but *where* the act of service is effected – *in Singapore*, or *out of Singapore*.[12] I agree.

27 Firstly, this distinction is evident from the plain words of the ROC 2021. The respective titles of O 7 and O 8 (see [26] above) provide an indication that the distinction between the two orders is the location of service. But even putting the titles aside, there is in any case no basis, on the wording of the rules, to suggest that the distinction between the two revolves around whether the defendant to be served is, for example, resident or incorporated in Singapore or a foreign defendant. I will focus on O 7 since this forms the core of the dispute between the parties.

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12 Claimant's Reply Submissions at para 11.

28 A plain reading of the rules in O 7 does not suggest any restriction in the ambit of the order to Singapore-based defendants only. By way of illustration, O 7 r 2(1) provides as follows as to how personal service can be effected in Singapore:

> **Personal service (O. 7, r. 2)**
>
> **2.**—(1) Personal service of a document is effected —
>
> (*a*) on a natural person by leaving a copy of the document with that person, or the person's agent if that person is an *overseas principal* under Rule 4;
>
> (*b*) on *any entity* by leaving a copy of the document with the chairperson or president of the entity, or the secretary, treasurer or other officer;
>
> (*c*) on *any person or entity* according to the requirements of any written law; or
>
> (*d*) in any manner agreed with the person or the entity to be served.
>
> [emphasis added]

29 O 7 r 2(1)(*a*) expressly provides that personal service may be effected on a natural person who is an *overseas* principal *via* service on his agent in Singapore. An overseas principal is defined in O 7 r 4(1)(*a*) as "a principal who does not reside within or is absent from Singapore", or in other words, a foreign defendant. While O 7 r 4(1) provides that a claimant must seek the court's permission to serve proceedings in this manner, the inquiry under that rule is not focused on the permissibility of service out of jurisdiction (as is the case under O 8), but on the authority of the agent. This is affirmed in *Singapore Rules of Court – A Practice Guide* at para 07.024:

> The effect of rule 4(1) is to allow an agent or manager to be served in Singapore *without having to obtain approval for service outside Singapore* under Order 8, so long as the conditions of rule 4(1) are satisfied. …
>
> [emphasis added]

30 Similarly, O 7 r 2(1)(*b*) and O 7 r 2(1)(*c*) provide for service on "any entity" and "any person or entity" respectively, with no qualification or suggestion that these refer only to entities or persons resident in Singapore.

31 Therefore, on a plain reading of the relevant provisions, there is no basis for OKI's contention that only Singapore-based entities or persons can be served in Singapore under O 7.

32 Secondly, OKI's interpretation would also not be in accordance with the Ideals of the ROC 2021, particularly those of expeditious proceedings and efficient use of court resources under O 3 r 1(2)(*b*) and O 3 r 1(2)(*d*). On OKI's case, it is not enough that a foreign defendant such as COSCO Europe has agreed to submit to the jurisdiction of the Singapore courts and to accept service of proceedings in Singapore through its local solicitors. A claimant would nonetheless have to apply for the court's permission to serve the originating process *out of jurisdiction* and upon permission being granted, to then effect service *in Singapore* on the solicitors based on their agreement to accept service. On OKI's case, judicial time and resources will have to be expended to schedule a hearing for the grant of permission in circumstances where such an application is entirely otiose and unnecessary. To seek the court's permission to serve an originating process out of jurisdiction on a foreign defendant who has already expressed that it is ready and willing to submit to the court's jurisdiction and accept service of process in Singapore *via* its solicitors is, with respect, pushing an open door. An interpretation of the rules which produces such an absurd outcome cannot be correct.

33 Thirdly, there is well-established precedent in the form of our courts accepting that service on Singapore solicitors constituted service in Singapore. Mr Toh referred to two cases to make the point. The first is the Court of

Appeal's decision in *Shanghai Turbo Enterprises Ltd v Liu Ming* [2019] 1 SLR 779 ("*Shanghai Turbo*"). In this case, the claimant had obtained leave to serve an originating process out of jurisdiction on its former employee (the "Service Order"), one Mr Liu Ming, pursuant to O 11 of the ROC 2014 (now O 8 of the ROC 2021). Mr Liu later applied successfully to set aside the Service Order in the High Court. The claimant then appealed to the Court of Appeal. While the appeal was focused primarily on the merits of the Service Order, the Court of Appeal noted that the originating process had in fact been served on Mr Liu's solicitors in Singapore after they informed the claimant's solicitors that they had instructions to accept service on Mr Liu's behalf. Accordingly, the Court of Appeal observed that Mr Liu had effectively been served in Singapore under O 10 of the ROC 2014 (now O 7 of the ROC 2021) (*Shanghai Turbo* at [24]):

> 24 … The writ of summons and statement of claim were accordingly served on Mr Liu at his solicitors' offices in Singapore on 14 March 2018. *This meant that the originating process was served within jurisdiction pursuant to O 10 of the ROC, and not out of jurisdiction pursuant to the Service Order made under O 11.* The Service Order was therefore essentially redundant, and so was the application to set it aside. However, given that the parties did not raise this point before us, we went on to consider the appeal on its merits.
>
> [emphasis added]

34 The next case is *N M Rothschild & Sons (S) Pte Ltd v Plaza Rakyat Sdn Bhd* [1995] 2 SLR(R) 565 ("*Rothschild*"), which involved a defendant who was initially served in Malaysia pursuant to an order of court granting leave to serve proceedings outside Singapore. Kan Ting Chiu J held that the service in Malaysia was defective, but that the defendant had nonetheless submitted to the jurisdiction of the Singapore courts by virtue of his solicitors accepting service in Singapore subsequently (*Rothschild* at [9]–[10]):

> 9 On these facts, the writ was not served outside Singapore. The attempt to serve them in Malaysia was bad because there were no Malay translations of the documents. *The effective service was the service on Harry Elias & Partners without the Malay translations*. Whether there was a failure to make proper disclosures in the application for leave to serve in Malaysia, and regardless whether the order granting leave should be set aside, *service was eventually effected in Singapore without reliance on the order.*
>
> 10 By accepting service in Singapore, the defendant had submitted to this court's jurisdiction …
>
> [emphasis added]

35 On the other hand, OKI raises several authorities which it argues supports the contrary position that the court's permission is required to serve proceedings on a foreign defendant in all instances. First, reliance is placed on the following statement from the Court of Appeal in *Burgundy Global Exploration Corp v Transocean Offshore International Ventures Ltd and another appeal* [2014] 3 SLR 381 ("*Burgundy*") at [93], which OKI submits establishes that the focus is on "the presence of the defendant in Singapore, not the act of service":[13]

> 93 Indeed, in our judgment, service is the crucial act that engages the court's jurisdiction over a foreign person. As a matter of Singapore law, *personal jurisdiction may be found when the putative defendant is physically within the jurisdiction at the time the writ is served on him* (see s 16(1) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed)) or when the requirements stipulated in O 11 of the ROC have been met and leave has been given for a writ to be served on a defendant not physically within the confines of Singapore. …
>
> [emphasis added]

36 With respect, I disagree that the passage above from *Burgundy* supports OKI's case. In fact, the very proposition that OKI cites the case for does not seem logical – the presence of the defendant in Singapore is important, *because*

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[13] OKI's Response Submissions at paras 11.1–11.2.

it determines where the act of service can physically take place, not as a matter of law but as a matter of reality. In the passage quoted in [35], the Court of Appeal is clearly focused on the *physical act* of service. In the first situation envisioned in this passage, the act of service occurs *in Singapore*, because "the putative defendant is physically within the jurisdiction at the time the writ is served on him". In the second situation envisioned by the Court of Appeal, permission to serve outside Singapore is required because the defendant is not *physically* in Singapore. Thus, the focus of this passage is on where the act of service may occur, and not whether the defendant is Singapore-based or foreign. This is made even clearer in the next paragraph of the judgment, where the Court of Appeal recognises that even foreign persons who are in Singapore temporarily can be served *in Singapore*:

> 94 To hold that there is an absolute prohibition on the issuance of EJD orders against foreign officers would go too far because *it is entirely conceivable for such an order to be served within the jurisdiction when the officer comes to Singapore for a temporary visit*. …
>
> [emphasis added]

37 While the discussion above is in the context of personal service on individuals, I do not see how the position can be any different for personal service on entities such as COSCO Europe. True enough, a foreign-incorporated company cannot be said to be "physically present" in Singapore in the same way an individual can, but that is why O 7 r 2 of the ROC 2021 exists – to provide for how personal service may be effected on entities. In that regard, personal service may be effected in Singapore on a foreign company under O 7 r 2(1)(*b*) if the company's chairman is served while he is in Singapore, or indeed under O 7 r 2(1)(*d*) if local solicitors agree to accept service on the foreign company's behalf.

38 OKI further relies on the following passage from *Siemens AG v Holdrich Investment Ltd* [2010] 3 SLR 1007 ("*Siemens*") for the same proposition that it is the location of the defendant which is key:[14]

> 7 However, in recognition of the primarily territorial nature of the court's jurisdiction, the court begins with the location of the defendant when it decides whether it has jurisdiction over a dispute – thus, jurisdiction over a defendant who is within the territory is as of right, while jurisdiction over a defendant who is outside the territory is discretionary. …

As with *Burgundy*, this passage does not advance OKI's case. There is no dispute that the physical location of the defendant is important because that is the primary factor in determining where the act of service can physically take place, as a matter of reality. That in turn informs the inquiry on whether the court's permission is required. One would expect, in general, that a defendant based overseas will have to be physically served overseas, but again there is nothing in law preventing such a defendant from being served in Singapore under the avenues in O 7 r 2 (if they are available).

39 Significantly, Mr Chan did not submit on behalf of OKI at the hearing that *Shanghai Turbo* and *Rothschild* were wrong in principle. These cases make clear the well-established position, across various iterations of the Rules of Court, that a defendant (even one based outside Singapore) is deemed to be served in Singapore if he accepts service through his solicitors in Singapore. I note however that Mr Chan cautioned, at certain points in the hearing, against relying on cases decided under prior versions of the rules before the ROC 2021. Yet, OKI relies on *Burgundy* and *Siemens*, which are also cases decided before the introduction of the ROC 2021, to support its arguments.

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14 OKI's Response Submissions at paras 11.4–11.5.

40 In my view, the position expressed in *Shanghai Turbo* and *Rothschild* has not changed under the ROC 2021. Importantly, no authority has been cited to me to suggest that the ROC 2021 departs from this orthodox and well-established position. At the very least, no indication of any such intention is found in the *Civil Justice Commission Report* (29 December 2017) (Chairman: Justice Tay Yong Kwang). The result is that a defendant based overseas can be served in Singapore under O 7 r 2(1)(*d*) of the ROC 2021 in a "manner agreed with the person or entity to be served", which can include effecting service through the defendant's solicitors in Singapore. I therefore find that COSCO Europe was validly served with the originating claim in Singapore through the service effected on its solicitors, JLex. That is sufficient, pursuant to s 16(1)(*a*)(i) of the SCJA, to clothe the court with jurisdiction to hear this action. Consequently, there is no need to consider OKI's submissions on whether such service was valid under O 8 r 1 read with O 33 r 3.

Establishment of jurisdiction by submission

41 Regardless of whether COSCO Europe was validly served with the originating claim, I find that COSCO Europe has submitted to the jurisdiction of this court. There is nothing objectionable to this as a matter of principle. As I had prefaced earlier, service is *one* of the main avenues by which the court's jurisdiction is established (see [24]–[25] above), but it is by no means the *only* avenue. Sections 16(1)(*b*) and 16(2) of the SCJA provide as follows:

> **Civil jurisdiction — general**
>
> **16.**—(1) The General Division has jurisdiction to hear and try any action in personam where —
>
> …
>
> (*b*) *the defendant submits to the jurisdiction of the General Division.*

> (2) Without limiting subsection (1), the General Division has such jurisdiction as is vested in it by any other written law.
>
> [emphasis added]

42 Thus, even if a defendant has not been served in accordance with s16(1)(*a*), the court's jurisdiction may nonetheless be established under s16(1)(*b*) by that defendant's submission to the court's jurisdiction. Whether a defendant has in fact submitted to jurisdiction would depend on whether its conduct demonstrates an unequivocal, clear and consistent intention to submit to the jurisdiction of the court. That is a question of fact in every case (*Shanghai Turbo* at [37]).

43 In this case, COSCO Europe has clearly submitted to the jurisdiction of this court, by, among others, authorising its solicitors to accept service on its behalf and by its solicitors' unqualified confirmation that they were authorised to accept service on COSCO Europe's behalf,[15] as confirmed in its written submissions for the hearing of SUM 4238 and as reaffirmed by its counsel, Mr Joseph Tan ("Mr Tan"), at the hearing before me. Pursuant to that submission to jurisdiction, the court's jurisdiction has also been established under s 16(1)(*b*) of the SCJA, and this remains the case regardless of the status of the validity of service on COSCO Europe pursuant to s 16(1)(*a*)(i) of the SCJA.

The Second Issue: Whether COSCO Europe is a "proper" defendant to the limitation action

44 I turn to the second core issue raised by OKI – that COSCO Europe is not a "proper" defendant to the limitation action because its claims against COSCO Shipping are not genuine.

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15 Claimant's Reply Submissions at paras 36 – 39 and footnote 89.

45 OKI submits that while a claim of a named defendant in a limitation action need not be certain or proven at the commencement of limitation proceedings, there must still be a threshold to be crossed before a defendant may be considered a person "with claims against the claimant in respect of the casualty" within the meaning of O 33 r 36(2) of the ROC 2021. It acknowledges that there is no indication of what this threshold should be on the plain words of O 33 r 36, but submits that the claim must be a genuine claim, and not one which is completely non-existent or spurious. OKI also submits that such a claim should not be one which is brought for the purpose of circumventing other requirements necessary for the institution of limitation proceedings.[16] On OKI's case, COSCO Europe's claims against COSCO Shipping are not genuine, and COSCO Europe should therefore be removed as a defendant in this limitation action. As I understand OKI's submission, it takes the position that removing COSCO Europe as a defendant would mean that the court would, as a consequence of that removal, have no jurisdiction to hear this action.

The standard of review at the commencement of a limitation action

46 The first and perhaps threshold question is whether a court must, at the stage of the commencement of a limitation action by a shipowner, conduct any review of the merits of a named defendant's claim or potential claim against that shipowner. COSCO Shipping submits that there should be no merits review at this stage of the proceedings.[17] However, even if there is to be such a review, COSCO Shipping argues that the threshold should be low – one that should require no more than a consideration of whether the claims against the

16 OKI's Written Submissions at paras 49–51.

17 Claimant's Written Submissions at para 63.

shipowner are fanciful or illusory.[18] At the hearing, Mr Chan also agreed with this standard of review.

47 Some background to this purported standard is apt in order to place the arguments advanced in context. The language is drawn from the English High Court decision of *Caspian Basin Specialised Emergency Salvage Administration and another v Bouygues Offshore SA and others (No 4)* [1997] 2 Lloyd's Rep 507 ("*Caspian*"). This case arose out of limitation actions commenced in England following the total loss of a barge under tow by a tug off Cape Town, South Africa. The owners of the lost barge applied to stay the English limitation action commenced by the tug owner pending the outcome of liability proceedings against them in South Africa. However, the limitation action had been commenced not only against the barge owners but also against several other claimants. This presented a problem for the barge owners because of the principle laid down in an earlier English decision in *The Falstria* [1988] 1 Lloyd's Rep 495 at 498 – that a limitation action brought against several claimants cannot be stayed at the instance of only one of those claimants. In order to get around this difficulty, counsel for the barge owners contended that the claims of those other claimants were "fanciful or illusory" (*Caspian* at p 527), such that the barge owners were the only "real" claimant. It was in this context that the English High Court proceeded to analyse whether the claims were indeed fanciful or illusory.

48 Given the specific context in which the language of "fanciful or illusory" was used, I do not read *Caspian* as setting out any general standard of review of the claims of limitation action defendants at the commencement of a limitation action by a shipowner.

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[18] Claimant's Written Submissions at para 64.

49 Returning to the words of O 33 r 36(2) of the ROC 2021, which I set out below, it is quite apparent that no indication of such a merits review can be found within the language of the provision itself:

> The claimant must make one of the persons with claims against the claimant in respect of the casualty to which the action relates defendant to the action, and may make all or any of the others defendants also.

50 All that is required is that the claimant must name as defendant one of the persons "with claims against the claimant in respect of the casualty to which the action relates". To my mind, if these words do entail any review, it is not of the merits of the claim, but of the *nature* of the claim. At the minimum, a court would need to be satisfied as to whether the defendant's claim against the claimant is one which is even subject to limitation of liability at all, *ie*, a claim falling within the categories of claims enumerated in Art 2 of the LLMC 1976. Art 2 provides as follows:

> 1. Subject to Articles 3 and 4, the following claims, whatever the basis of liability may be, shall be subject to limitation of liability:
>
> (*a*) claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;
>
> (*b*) claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
>
> (*c*) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;
>
> (*d*) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;

> (*e*) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;
>
> (*f*) claims of a person other than the person liable in respect of measures taken in order to avert or minimise loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.
>
> 2. Claims set out in paragraph 1 shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise. However, claims set out under paragraph 1(*d*), (*e*) and (*f*) shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

51 To take an extreme example, a claim for defamation will not be regarded as a "claim" under O 33 r 36(2), however meritorious it may be, simply because it is not a claim that falls within Art 2 of the LLMC 1976. To take a less extreme example, a claim for wreck removal (which is a limitable claim under Art 2(1)(*d*) of the LLMC 1976) does not have the force of law in Singapore by virtue of the language of s 136(1) of the MSA 1995 (see [3] above). Without arriving at any definitive determinations in this regard, it is arguable that such a claim would also not fall within the ambit of "claims" in O 33 r 36(2) of the ROC 2021 because it is not a claim subject to limitation of liability under Singapore law. In my view, the question is therefore more one of characterisation of the claim as opposed to a review (however cursory) of its merits.

52 However, even so, the question remains – when should this review take place? In so far as Mr Chan contends that a review should be undertaken by the court at the time the limitation action is commenced, I disagree. For one, there is no mechanism by which the court can or should, at the time the originating claim is filed, assess if the claim of a named defendant in the limitation action is fanciful or illusory. Similarly, it is also untenable to require the court in a

limitation action, on the basis of affidavit evidence and in the context of a jurisdictional challenge by one named defendant, to decide whether a particular claim of *another* named defendant against the claimant shipowner is fanciful or illusory. More broadly, it bears repeating that in a limitation action, the court is *not* concerned with the liability of the shipowner (see [4] above). The court is only concerned with whether the shipowner seeking to limit its liability, if any, has met the legal requirements under the LLMC 1976 and the procedural requirements under O 33 of the ROC 2021 for a limitation decree to be granted by the court. As I mentioned at [6], a shipowner might not even know of the existence of all the parties with claims against it following a maritime casualty. It would, in my view, be unprincipled to hold that with regard to the named defendants in a limitation action, the court is required (at the commencement of the limitation action) to conduct some form of review of the legitimacy of their claim(s) against the shipowner, but not in respect of claims by the generically described defendants in the limitation action whose identities or existence may not even be known to the shipowner when the limitation action is commenced.

53 The conclusions I have arrived at in [50] do not mean, however, that a claimant shipowner in a limitation action has free reign to circumvent the service or any potential jurisdictional requirements by naming a defendant whose claims are plainly fictitious. In my view, while the words of O 33 r 36 do not import any requirement to review the merits of a named defendant's claim, the court nonetheless retains an inherent discretionary power to strike out *proceedings* which amount to an abuse of its process. By "proceedings", I refer to the limitation action *itself*. However, given the "special" nature of a limitation action (see [4] – [5]), it is not for the court at the commencement of a limitation action, or even in the context of a jurisdictional challenge within the limitation action, to effectively strike out one limitation action defendant's *claim* against

a shipowner (the determination of which is for a *different* forum) at the behest of another limitation defendant – I do not think that the court's inherent power extends that far.

54 The categories of proceedings amounting to an abuse of process were set out by VK Rajah J (as he then was) in *Chee Siok Chin and others v Minister for Home Affairs and another* [2006] 1 SLR(R) 582 ("*Chee Siok Chin*") at [34]:

> 34 The instances of abuse of process can therefore be systematically classified into four categories, *viz*:
>
> (a) proceedings which involve a deception on the court, or are fictitious or constitute a mere sham;
>
> (b) proceedings where the process of the court is not being fairly or honestly used but is employed for some ulterior or improper purpose or in an improper way;
>
> (c) proceedings which are manifestly groundless or without foundation or which serve no useful purpose;
>
> (d) multiple or successive proceedings which cause or are likely to cause improper vexation or oppression.
>
> [emphasis in original omitted]

55 However, this power is not to be exercised by the court on the basis of a mere allegation of abuse by one party. It is axiomatic that the power to strike out proceedings should only be exercised in plain and obvious cases (*Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 at [18]).

Analysis

56 As a starting point, I do not think it can be seriously disputed that, at least on its face, COSCO Europe is a party with claims against COSCO Shipping which fall within Art 2 of the LLMC 1976. These include claims relating to unseaworthiness of the Vessel under the Hague-Visby Rules, delay,

negligent navigation,[19] as well as claims for an indemnity against losses arising from the Incident and/or against COSCO Europe's liability for claims made by OKI.[20]

57 The focus is therefore on whether this limitation action is a plain and obvious case of an abuse of process on the part of COSCO Shipping (and possibly COSCO Europe as well). It is at this point that a significant difficulty arises with OKI's case. While Mr Chan argued at the hearing that COSCO Shipping is seeking to drag OKI into these proceedings and invoking the court's jurisdiction in a "cynical" manner, he did not contend that there was an abuse of process on COSCO Shipping's part. However, that is problematic because without a submission to the effect that there *is* an abuse of process, the foundation of OKI's attempt to challenge the commencement and prosecution of this limitation action effectively falls away entirely.

58 In any case, I do not find this limitation action to be a plain and obvious case of an abuse of process, with reference to the categories identified in *Chee Siok Chin*. The first and fourth categories can be dealt with summarily. Firstly, OKI does not submit that the COSCO entities are, with a common intention, deceiving the court by way of sham arbitration proceedings between them, nor does OKI submit that this limitation action is itself a sham. Secondly, this is not a case involving multiple or successive proceedings which are likely to cause improper vexation or oppression. That leaves the second and third categories in *Chee Siok Chin*, which require the court to be satisfied either that the process of the court is not being fairly or honestly used but is employed for some ulterior

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19 1st Affidavit of Jun Hu dated 3 March 2023 at paras 33–45.

20 2nd Affidavit of Li Jianzhong dated 20 January 2023, Tab 13, at pp 273–274 (Para 11(b) of Response to Notice of Arbitration).

or improper purpose or in an improper way, or that this limitation action is manifestly groundless or without foundation or serves no useful purpose. With respect to these two categories, I am prepared to assume (without deciding the point) that the court may have regard to the fact that the named defendant's claims against the shipowner are alleged to be not genuine, in the sense that they are fanciful or illusory. But even on this assumed basis, I cannot find that COSCO Europe's claims against COSCO Shipping are fanciful or illusory.

59 First, before examining COSCO Europe's claims, I address a preliminary point raised by Mr Chan in his oral submissions. Mr Chan contended that the court should not take into consideration the fact that arbitration proceedings are underway between the COSCO entities, in which COSCO Europe has raised various claims against COSCO Shipping. Mr Chan's submission is not that the arbitration proceedings are a sham as he is not prepared to go that far. Instead, Mr Chan argues that the arbitration proceedings cannot be used to undermine the court's jurisdiction and power to decide this issue – *ie*, whether the claim by COSCO Europe is fanciful or illusory. I do not agree with Mr Chan's contention that the fact that claims have been raised in arbitration proceedings (or in other courts for that matter) are irrelevant or should be disregarded by the court. If the court is to examine whether a limitation action defendant's claims are fanciful or illusory, the court surely cannot ignore the fact that the defendant in the limitation action has, for example, taken positive steps to enforce those claims in arbitration proceedings against the shipowner (including by participating in the appointment of the arbitral tribunal). The existence of the arbitration proceedings between the COSCO entities is, in my view, undoubtedly a relevant factor for the court's consideration, as is the fact that OKI does not assert that those arbitration proceedings are a sham.

60 Turning to the substance of the claims themselves, OKI argues that some of COSCO Europe's claims (*eg*, for breach of duties under the Hague-Visby Rules, negligent navigation and delay among others) are effectively dud claims because such claims are precluded by certain exclusion of liability clauses in the Head COA.[21] Even if I accept that argument, that does not address COSCO Europe's remaining claims, including its claim for an indemnity in respect of its losses arising from the Incident and in respect of COSCO Europe's liability for claims made by OKI (see [56] above). Mr Tan for COSCO Europe highlights that while OKI has not as yet brought any claim against COSCO Europe, it has also not waived its rights to make such a claim.[22] That remained the position at the hearing before me. Consequently, COSCO Europe's liability to OKI remains a live (as opposed to a theoretical) possibility, and the same must go for COSCO Europe's consequent indemnity claims up the charter chain against COSCO Shipping. Art 2(2) of the LLMC 1976 makes it clear that the claims in Art 2(1) may be subject to limitation of liability "even if brought by way of recourse or for indemnity under a contract or otherwise." Accordingly, I do not accept Mr Chan's submission that COSCO Europe's claim against COSCO Shipping for an indemnity is a fanciful or illusory one. Nor am I persuaded that the bringing and prosecution of this limitation action amounts to an abuse of process by COSCO Shipping within the ambit of the second and third categories in *Chee Siok Chin*.

61 To summarise my analysis and conclusion on this issue, this is not a plain and obvious case of an abuse of process by COSCO Shipping in its commencement and prosecution of this limitation action. OKI itself does not contend that it is. On an examination of the relevant circumstances, including

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21 OKI's Written Submissions at paras 56–64.

22 COSCO Europe's Written Submissions at para 41.

the fact of the arbitration proceedings currently afoot between the COSCO entities, COSCO Europe's claims against COSCO Shipping cannot be said to be fanciful or illusory such as to render this action an abuse of process. There is accordingly no basis for OKI's complaint that COSCO Europe is not a "proper" defendant and should be removed from the limitation action.

OKI's submission to jurisdiction

62 For completeness, I turn now to address COSCO Shipping's submission that OKI has, by its own conduct, either agreed to submit or has submitted to this court's jurisdiction such that the originating claim has been deemed to be served on it. On this point, COSCO Shipping relies on OKI's acts of, among others, filing a notice of intention to contest and making this application to remove COSCO Europe as a defendant.[23]

63 Given the conclusions I have reached above on the validity of service on COSCO Europe, COSCO Europe's submission to jurisdiction and OKI's failure to argue or demonstrate an abuse of process, it is not necessary for me to decide if OKI has submitted to the court's jurisdiction. Under O 33 r 36(4) of the ROC 2021, only one named defendant needs to be served with the originating claim, and that has been complied with by the service of the originating claim on COSCO Europe's solicitors in Singapore. In my judgment, there is no doubt that the court has jurisdiction over this limitation action, and it is accordingly unnecessary to decide whether such jurisdiction can also be established by OKI's own alleged submission to jurisdiction.

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[23] Claimant's Written Submissions at paras 118–123.

Conclusion

64 For the reasons detailed in this judgment, I dismiss SUM 4238. I shall hear the parties separately on costs.

S Mohan
Judge of the High Court

Toh Kian Sing SC, Dedi Affandi Bin Ahmad, Li Kun Hang and Koh Xu Min Rebecca (Rajah & Tann Singapore LLP) for the claimant;
Chan Leng Sun SC (Chan Leng Sun LLC) (instructed), Chong Ik Wei, Leong Lu Yuan (Liang Luyuan), Dawn Tan Si Jie and Teo Wei Lin Elizabeth (Clasis LLC) for the first defendant;
Tan Wee Kong and Poh Ying Ying Joanna (JLex LLC) for the second defendant.