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# ANTI-SUIT INJUNCTIONS AND LONDON ARBITRATION

## RECENT DEVELOPMENTS

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# FREEZING INJUNCTIONS AND LONDON ARBITRATION

- Overview:
  - Introduction to anti-suit injunctions
  - Delay – general principles
  - Relevance of time-bar
  - Applicant unaware of foreign proceedings

# INTRODUCTION TO ANTI-SUIT INJUNCTIONS

- An order requiring a party not to commence or continue legal proceedings
- Protects a legal or equitable right not to be sued in a particular forum (eg under an arbitration agreement), or against vexatious or oppressive conduct
- Order directed against the party, not the foreign court

# INTRODUCTION TO ANTI-SUIT INJUNCTIONS

- Anti-suit injunction may be interim or final
- Arbitral tribunals can only grant interim injunctions with agreement of the parties
- No such agreement in the LMAA Terms – application therefore made to Court
- Tribunals can, and commonly do, grant final injunctions

# DELAY - GENERAL PRINCIPLES

- Anti-suit injunction is an equitable remedy
- Delay relevant to grant of equitable remedies:
- Important factors *"are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice ... so far as relates to the remedy"*

Sir Barnes Peacock, *Lindsay Petroleum Co v Hurd* (1874)

# DELAY - GENERAL PRINCIPLES

- Special principles for anti-suit injunctions
- Injunction must be sought "*promptly and before foreign proceedings are too far advanced*" – Millett LJ, *Angelic Grace* (1995)
- Recent cases explain:
  - Time spent challenging the jurisdiction of the foreign court may be relevant delay
  - Not necessary to show prejudice arising from delay
  - Comity calls for challenges to be made promptly

# RELEVANCE OF TIME-BAR

- Foreign proceedings often commenced shortly before expiry of Hague/Hague-Visby time-bar
  - Anti-suit injunction might be sought after time-bar expired
  - Present approach of the Court:
    - Time-bar in contractual forum is reason not to grant an anti-suit injunction
    - *Provided* that the respondent can show that he did not act unreasonably in failing to preserve his right to sue in the contractual forum
- eg *The Skier Star* (2008)

# RELEVANCE OF TIME-BAR

- Questionable whether that approach is too favourable to the respondent
- The foreign proceedings have been brought in breach of an arbitration agreement
- Why should they be allowed to continue if the respondent was "not unreasonable" in failing to satisfy the time-bar
- English law otherwise takes a strict approach to arbitral time-bars (eg s.12 of the Arbitration Act 1996)
- Absent injunction, the applicant can still seek damages for breach of the arbitration agreement



# APPLICANT UNAWARE OF FOREIGN PROCEEDINGS

- Some jurisdictions where ship's agent can be served long after ship has sailed
- Sometimes do not inform owner
- Judgment may be entered without owner being aware
- In that case, delay should not count against owner in seeking an anti-suit injunction?

# APPLICANT UNAWARE OF FOREIGN PROCEEDINGS

- Recent unreported case – injunction refused on the basis that the delay did count
- Apparently on the basis that the question was whether the owners had “any *means* of knowing”
- Contrary to principle?  
*“In order that the remedy should be lost by ... delay, it is ... ordinarily ... necessary that there should be sufficient knowledge of the facts constituting the title to relief”*  
Sir Barnes Peacock, *Lindsay Petroleum Co v Hurd* (1874)



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