

ENGLAND AND WALES / JUDGMENT

Spec 1 Ltd & Ors v The Export-Import Bank of China [2026] EWHC 1162 (Comm) (15 May 2026) [2026] EWHC 1162 (Comm)

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Case No: CL-2025-000322

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

COMMERCIAL COURT

Royal Courts of Justice, Rolls Building

Fetter Lane, London, WC4A 1NL

15 May 2026

B e f o r e :

MR JUSTICE BRIGHT

Between:

(1) Spec 1 Limited

(2) Spec 2 Limited

(3) Spec 3 Limited

Claimants

- and -

The Export-Import Bank of China

Defendant

Jawdat Khurshid KC, Anna Hoffmann (instructed by Reed Smith LLP) for the Claimants

David Lewis KC, Joshua Folkard (instructed by Stephenson Harwood LLP) for the Defendant

Hearing dates: 6, 7 May 2026

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Mr Justice Bright:

A: Introduction

This judgment follows a hearing at which the Claimants (collectively "the Borrowers", individually "Spec 1", "Spec 2" and "Spec 3"), were represented by Mr Jawdat Khurshid KC and Ms Anna Hoffmann, and the Defendant ("the Lender") was represented by Mr David Lewis KC and Mr Joshua Folkard. I am immensely grateful to them all for their interesting and thoughtful submissions, and for the great skill and efficiency with which they were presented.

The hearing was concerned with the following applications:

- (1) The application of the Lender, issued on 28 January 2026, for an order declaring that this court declines jurisdiction and staying the proceedings in this action, in favour of proceedings in Singapore.
- (2) The application of the Borrowers, originally issued on 19 November 2025 but substantially amended on 22 April 2026. This is now an application for an order granting an anti-suit injunction ("ASI") against the Lender in respect of certain proceedings in Singapore; alternatively, an anti-anti-suit injunction ("AASI").

On the face of things, therefore, the parties' competing applications seem calculated to set up a rivalry between this court and the courts in Singapore.

I had occasion in my judgment in

GLAS SAS v European Topsoho SARL

[2024] EWHC 83 (Comm)

, at [134]-[138], to compare the civil justice system in this country with that in Singapore. I commented that I and my colleagues on the English bench hold our brethren in Singapore, and their judgments, in extremely high regard. This is not merely because of the excellent (and entirely deserved) reputation that the courts of Singapore enjoy. It is also because the similarities between the legal system in Singapore and that in this country (as well as other common features such as legal education and training) mean that judges in Singapore go about analysing points and then expressing their reasoning in a way that makes their judgments extremely accessible to English lawyers and scholars; and, I suspect, vice versa. It would be easy to identify points of distinction between the legal system in Singapore and that of this country, but the plain truth is that the overwhelming mass of common features and characteristics that we share is far more important.

I emphasise all this at the outset because, while one side maintains that it wants to litigate only in Singapore, and the other that it wants to litigate only in England, I asked both Leading Counsel why this was, and from each of them received answers that I regard as unsatisfactory and unconvincing. The reality is that the nature and quality of the decision-making, and the overall process by which it will be delivered, will be more or less equivalent in both countries. There are of course some procedural differences, but in the context of this case they are footling.

Given an ounce of common sense and a sprinkling of willingness to co-operate, objective logic suggests that it ought to have been straightforward for the parties to agree to litigate either in one place or in the other, and then find a way to make that happen. The fact that they have failed to do so, and instead have both (albeit perhaps to different degrees) engaged in forensic gamesmanship with a view to thwarting each other's ambitions, reflects badly on both. Sometimes, the instinct of litigators to object to anything proposed by the other side can obscure the fact that it is very often easier, quicker and cheaper – in short, better – just to say "yes".

The result is that this court has to make such decisions as it can about where the parties should litigate, given their apparent inability to resolve this simple and ultimately inconsequential matter between themselves. So be it.

B: Background

In 2015, ship finance arrangements were entered into by the Lender with various companies ("the Original Borrowers"), in relation to ships including the vessels now owned by Spec 1 and Spec 2. Issues arose and those arrangements became problematic.

From about July 2023 to March 2024, negotiations took place between the Lender and representatives of the Borrowers to alter and replace the previous arrangements. The intention was that the Borrowers would replace the Original Borrowers.

On 1 April 2024, the Lender and the Borrowers entered into a group of interlocking agreements, including the following:

- (1) A Novated, Amended and Restated Secured Loan Agreement ("the NAR Loan Agreement"), between the Lender and all the Borrowers (contracting jointly and severally).
- (2) A Deed of Novation, Amendment and Restatement, between the Lender, all the Borrowers and all the Original Borrowers ("the NAR Deed").
- (3) A First Preferred Liberian Mortgage related to the MV "Spec Nichole" (a vessel owned by Spec 3), between the Lender and Spec 3 ("the Spec Nichole Mortgage").

Collectively, these documents and the other documents in the overall group were referred to as "the Finance Documents". Within the Finance Documents was a sub-group referred to as "the Security Documents", which included the Spec Nichole Mortgage.

The Security Documents, including the Spec Nichole Mortgage, stood as security in relation to the totality of the sums that might be due under the NAR Loan Agreement. In other words, by the Spec Nichole Mortgage, Spec 3 was potentially liable, and its vessel the "Spec Nichole" could potentially be arrested, in respect of any sums that might be due by any or all of the Borrowers, jointly and severally, under the NAR Loan Agreement.

Issues arose under the Finance Documents. The Lender claims that very substantial sums are due and outstanding.

As a matter of contract, the loan was advanced and the rights in debt that relate to it were created and directly governed by the NAR Loan Agreement. The NAR Loan Agreement therefore was at the heart of the 2024 transaction. This specific agreement, and its law and jurisdiction agreement, was also at the heart of the issues between the parties, and it was central to the parties' submissions before me.

C: Singapore proceedings between the Lender and Spec 3: ADM 33

On 2 May 2025 the Lender commenced Admiralty proceedings in Singapore: ADM 33/2025, an Admiralty action in rem against Spec 3, as owner of the "Spec Nichole" ("ADM 33"). The vessel was arrested in Singapore on 3 May 2025. The Lender's Statement of Claim was served on 19 May 2025, alleging that all the Borrowers were in default under the NAR Loan Agreement. This meant that the entire loan had been accelerated, under the terms of the NAR Loan Agreement, so that the Borrowers were all jointly and severally liable for the full amount – all secured by the Spec Nichole Mortgage. Therefore, Spec 3 was said to be liable under the Spec Nichole Mortgage for a principal sum of over US\$61 million, plus interest.

Spec 3 did not dispute the Lender's entitlement to bring in rem proceedings under the Spec Nichole Mortgage in Singapore. Spec 3 submitted to the jurisdiction of the Singapore court and on 7 July 2025 it served its Defence and Counterclaim in ADM 33. There, Spec 3 alleged that there had been fraudulent misrepresentations by the Lender in the course of the negotiations prior to 1 April 2024, which Spec 3 and the other Borrowers relied on when entering into the Finance Documents. The relief sought by Spec 3 includes the rescission of all the Finance Documents (i.e., including but not confined to the Spec Nichole Mortgage), reimbursement of all expenditure and

losses incurred by Spec 3 as a result of entering into the Finance Documents, damages resulting from the alleged misrepresentations and damages for wrongful arrest.

As later spelled out in Further and Better Particulars in ADM 33, Spec 3 has pleaded that the fraudulent misrepresentations at the heart of its case were made by the Lender's employees Ms Gao Youzi and Mr Zhang Zhuoqi (but predominantly by Ms Gao), to the Borrowers' representatives Mr Zhang Jiangfeng and Ms Tina Liang Tingtin, partly in writing (by emails and by WeChat exchanges) and partly orally.

The proceedings in Singapore between the Lender and Spec 3 in ADM 33 have recently reached the stage of specific disclosure. In the meantime, the "Spec Nichole" has been sold, pursuant to a judicial sale.

My understanding from both counsel was that it was not possible for the Lender to add Spec 1 or Spec 2 as additional defendants in ADM 33, and that it was not possible for Spec 1 or Spec 2 to bring their own claims against the Lender in ADM 33 (i.e., in addition to the claims brought by Spec 3 by way of counterclaim).

D: This action

On 15 July 2025, the Borrowers issued the Claim Form in this action. They did so without seeking permission to serve it on the Lender out of the jurisdiction. This was on the basis that permission was not required, because of the terms of the law and jurisdiction clause in the NAR Loan Agreement.

Progress in this action so far has been subject to a number of delays which, at different times, in different ways and for different reasons, appear to have served both parties. No statement of case has yet been served, except the Claim Form itself.

The relief sought by the Borrowers includes the rescission of all the Finance Documents, reimbursement of all expenditure and losses incurred by all the Borrowers as a result of entering into the Finance Documents and damages resulting from the alleged misrepresentations. As regards rescission, the relief sought appears to be identical to the rescission sought by Spec 3 in its counterclaim in ADM 33. However, because the claim is brought by all of the Borrowers, jointly and severally, the financial recoveries claimed are broader in nature and in a higher total sum than Spec 3's counterclaim in ADM 33 (albeit there is no claim for wrongful arrest).

The Lender initially refused to accept service in England. However, on 3 December 2025, the Lender's solicitors indicated that they were authorised to accept service, without prejudice to the Lender's right to contest jurisdiction. Service was finally effected on the following day.

The Lender acknowledged service on 12 December 2025, indicating its intention to contest jurisdiction (followed shortly thereafter by its application for a stay).

Save this and the Borrowers' application, there have been no developments of note in the English proceedings.

E: Singapore proceedings between the Lender and Spec 1/Spec 2: OC 847

On 15 October 2025, the Lender commenced further proceedings in Singapore: OC 847/2025, an action against Spec 1 and Spec 2 (but not Spec 3), seeking declarations that the NAR Loan Agreement and NAR Deed are valid and binding and have not been rescinded, as well as the US\$61 million outstanding principal plus interest ("OC 847").

Spec 1 and Spec 2 entered appearances on 14 November 2025. They have not yet either filed Defences or made any challenge to jurisdiction, as OC 847 has, likewise, been subject to a number of delays. It is currently stayed, by agreement.

F: The Lender's Singapore ASI application: ADM 33

On 29 August 2025, the Lender applied within ADM 33 for an anti-suit injunction against Spec 3 (but not Spec 1 or Spec 2) in relation to this action. The application was heard by Justice Pang, who dismissed it on 25 February 2026 on the basis that for Spec 3 to take part in this action, in England, was not a breach of the relevant jurisdiction clauses, nor was it vexatious or oppressive. He further held that England, rather than Singapore, is the natural forum and that there are good reasons for Spec 3 to be part of the English proceedings.

The Lender applied for permission to appeal. The Singapore Court of Appeal granted permission to appeal on 12 May 2026.

G: Estimated month of final hearing(s) in Singapore

The evidence from the Borrowers' solicitor in Singapore, Mr Yee of Resource Law LLC, is that his estimate (given in February 2026) was that, if pursued by itself, ADM 33 was likely to come to a final hearing in about 12 months, i.e., in about February 2027. He did not indicate how long it might then take to receive a judgment.

His estimate if OC 847 were consolidated with ADM 33 (which is the Lender's preferred outcome) is the time to a final hearing would be about 12 months from the current stay being lifted. Accordingly, if the result of this judgment were to result in the stay being lifted, the trial in Singapore of the consolidated proceedings would be likely to take place in about May 2027.

I did not receive equivalent evidence from the Lender, but its solicitor, Mr Lin of Rajah & Tann stated that, in ADM 33, the parties were likely to exchange affidavits of evidence in chief in the final quarter of 2026. This certainly makes it unlikely that ADM 33 could come to a final hearing any earlier than February 2027 (absent consolidation with OC 847).

H: Catching up with ADM 33

Both parties found it necessary to compare the relatively immature stage of their preferred proceedings involving Spec 1 and Spec 2 (i.e., OC 847 for the Lender and this action for the Borrowers) with ADM 33, in order to persuade me that they could catch up with ADM 33. The Lender did this in order to persuade me that it was practically possible for OC 847 to catch up and

then be consolidated with ADM 33 and at least be the subject of an order in Singapore that ADM and OC 847 be tried together. The Borrowers did so in order to persuade me that allowing this action to proceed, ideally instead of any proceedings in Singapore, would not delay reaching a final outcome.

Although the issues have only been pleaded out in ADM 33, and not in OC 847 or in this action, it was effectively common ground that the issues would be essentially the same. The only real difference would be that, in each, the relief sought by the Borrowers would be broader than in ADM 33, and the damages higher, being damages sought by all three Borrowers rather than only Spec 3. Pleading out their respective cases therefore should not really take either party at all long. Much of the drafting would simply involve cutting and pasting from the equivalent pleadings in ADM 33. This must be the case both for OC 847 and for this action.

In relation to disclosure, Mr Lewis KC adopted the same approach. On the basis that the issues would be the same in OC 847 as they are in ADM 33, the documents to be disclosed must be essentially the same, so there would be no or not much additional work to be done.

I suggested to him that the same must be true in relation to this action. While the rules of disclosure in Singapore are not identical to the approach now taken in England, in particular under Practice Direction 57AD, the English approach is unlikely to require the production of more documents. At least in theory, it ought to result in the production of fewer documents. Mr Lewis KC did not disagree.

It follows that it should in fact be relatively straightforward for both or either of OC 847 and this action to catch up with ADM 33.

I: The applications before me

As noted above, the Lender's application is for an order declaring that this court declines jurisdiction and staying the proceedings in this action. It is brought (i) on forum non conveniens grounds and (ii) on general case management grounds.

The nature of this challenge to English jurisdiction is important. The Lender does not contend that the English court has no jurisdiction. It accepts that the English court has jurisdiction in principle, and that the Borrowers were able in principle to rely on the jurisdiction provisions in the NAR Loan Agreement and issue the claim form for service outside England, without permission.

However, the Lender contends that England is not the natural forum, and that the best way to prevent duplicative proceedings and the risk of inconsistent decisions in England and Singapore is if this court stays itself, to allow the disputes to be determined only in Singapore, in ADM 33 and OC 847. This is on the basis that those proceedings can be consolidated and/or tried together in Singapore. It says that the jurisdiction provisions in the NAR Loan Agreement are consistent with this approach, and in any case the parties' agreement cannot oust the court's discretion to decline jurisdiction and stay itself, at least where there is strong reason to do so.

The Borrowers' answer to this is that they have an absolute contractual right to bring their claims in England, and the Lender should not be permitted to resile from its concomitant contractual obligations to allow the Borrowers to bring claims in England.

The Borrowers' application is brought pursuant to s. 37 of the Senior Courts Act 1981 and essentially relies on the jurisdiction provisions in the NAR Loan Agreement. The Borrowers contend that the effect of these provisions, in all the circumstances, is to preclude the continuation of the proceedings in Singapore, which are brought in breach of contract and/or are vexatious and/or oppressive.

The Lender's answer is that the Borrowers' case misconstrues the relevant provisions, under which in fact it is expressly permitted to bring claims in Singapore, if it wishes to do so, even if this gives rise to parallel proceedings in more than one jurisdiction. The Lender also relies on the principle of comity.

It follows that both applications are very significantly affected by the jurisdiction provisions in the NAR Loan Agreement. The hearing was first and foremost about the proper construction of those provisions, which both parties' submissions required me to decide. As set out below, this falls to be determined as a matter of English law.

J: Clause 18 of the NAR Loan Agreement

Under the NAR Loan Agreement, law and jurisdiction are dealt with in Clause 18. Most of the debate before me focussed on the meaning, effect and consequences of this provision. This reflected the fact that, as Mr Khurshid KC submitted (with no dissent from Mr Lewis KC), the NAR Loan Agreement is the agreement at the commercial centre of the overall transaction between the Lender and Borrowers (viz., the loan of approximately US\$61 million), and must have been intended to govern disputes such as arise in the proceedings before me (viz., as to the recoverability of the loan). Clause 18 provides as follows:

"

18 Law and Jurisdiction

18.1

Governing law

This Agreement and any non-contractual obligations arising from or in connection with it shall in all respects be governed by and interpreted in accordance with English law.

18.2

Jurisdiction

For the exclusive benefit of the Lender, the parties to this Agreement irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any dispute (a) arising from or in connection with this Agreement or (b) relating to any non-contractual obligations arising from or in connection with this Agreement and that any proceedings may be brought in those courts.

18.3

Alternative jurisdictions

Nothing contained in this Clause 18 shall limit the right of the Lender to commence any proceedings against the Borrowers in any other court of competent jurisdiction nor shall the commencement of any proceedings against the Borrowers in one or more jurisdictions preclude the commencement of any proceedings in any other jurisdiction, whether concurrently or not.

18.4

Waiver of objections

Each Borrower irrevocably waives any objection which it may now or in the future have to the laying of the venue of any proceedings in any court referred to in this Clause 18, and any claim that those proceedings have been brought in an inconvenient or inappropriate forum, and irrevocably agrees that a judgment in any proceedings commenced in any such court shall be conclusive and binding on it and may be enforced in the courts of any other jurisdiction.

18.5

Service of process

Without prejudice to any other mode of service allowed under any relevant law, each Borrower:

18.5.1 irrevocably appoints HFW Nominees Ltd as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and

18.5.2 agrees that failure by a process agent to notify any Borrower of the process will not invalidate the proceedings concerned."

Clause 18 is an asymmetrical exclusive jurisdiction clause. In broad terms, its intended effect is that the Borrowers, in general, can and must only sue the Lender in England; whereas the Lender can sue the Borrowers in England (and serve process pursuant to Clause 18.5) but, in general, can also sue elsewhere. This much is obvious, and was common ground.

However, the parties disagreed on the limits of the liberties conferred on each of them. Above all they disagreed on the effect on each of them if (i) the Lender had commenced proceedings outside England, or (ii) the Borrowers had commenced proceedings in England – i.e., whether (i) affected the Borrowers' ability to sue in England, and/or the Lender's ability to object to English jurisdiction or (ii) affected the Lender's ability to sue elsewhere, and/or the Borrowers' ability to object to all or any foreign jurisdictions.

They both agreed that, in some circumstances, Clause 18 contemplated (i.e., permitted) parallel proceedings in different jurisdictions. However, they disagreed as to what those circumstances were. 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 Borrowers contended that the Lender could only sue outside England before either of them had commenced proceedings in England, whereas the Borrowers' ability to sue in England was not affected by the Lender suing elsewhere.

Asymmetric exclusive jurisdiction clauses are not uncommon, and it is not in doubt that they are enforceable in principle, under English law. However, there are relatively few decided cases, and neither side was able to point me to any that addressed a clause identical to, or even analogous to, Clause 18.

K: Other law and jurisdiction provisions

Although the submissions made before me focussed on Clause 18 of the NAR Loan Agreement, it is nevertheless pertinent to consider the law and jurisdiction provisions in other Finance Documents (in so far as they were put before me).

The NAR Deed is subject to a law and jurisdiction clause which is materially identical.

The Spec Nichole Mortgage has an entirely different law and jurisdiction clause. This is unsurprising: as a mortgage over a ship registered in Liberia, it accordingly is subject to Liberian law, not English law. Clause 21 of the Spec Nichole Mortgage provides, as follows:

"

21 Law and Jurisdiction

21.1 This Mortgage and any non-contractual obligations arising from or in connection with it shall in all respects be governed by and interpreted in accordance with the law of the Republic of Liberia.

21.2 For the exclusive benefit of the Mortgagee, the Owner irrevocably submits to the jurisdiction of the English courts for any proceedings against the Owner

in personam

- (a) arising from or in connection with this Mortgage or (b) relating to any non-contractual obligations arising from or in connection with this Mortgage.

21.3 Nothing contained in this Clause shall limit the right of the Mortgagee to commence any proceedings against the Owner in any other court of competent jurisdiction nor shall the commencement of any proceedings against the Owner in one or more jurisdictions preclude the commencement of any proceedings in any other jurisdiction, whether concurrently or not.

21.4 The Mortgagee shall in addition have the right to arrest and take action against the Vessel and/or any other vessel for the time being belonging to the Owner wherever it or they may be, for which purpose the Owner irrevocably agrees that any claim form, notice, judgment or other legal process may be served on the Owner in the manner set out in Clause 19.6 or on the Vessel or on the master (or anyone acting as the master) of the Vessel or of the vessel against which the action is taken, which shall be deemed good service on the Owner, the Vessel or such other vessel for all purposes.

21.5 The Owner irrevocably waives any objection which it may now or in the future have to the laying of the venue of any proceedings in any court referred to in this Clause and any claim that those proceedings have been brought in an inconvenient or inappropriate forum, and irrevocably agrees that a judgment in any proceedings commenced in any such court shall be conclusive and binding on it and may be enforced in the courts of any other jurisdiction.

21.6 Without prejudice to any other mode of service allowed under any relevant law, the Owner:

21.6.1 irrevocably appoints HFW Nominees Ltd as its agent for service of process in relation to any proceedings before the English courts; and

21.2 agrees that failure by a process agent to notify the Owner of the process will not invalidate the proceedings concerned."

This, too, is an asymmetric provision, but it is much more asymmetric than Clause 18 of the NAR Loan Agreement. Under Clause 21 of the Spec Nichole Mortgage, the Lender (as Mortgagee) can sue Spec 3 in England, but is not obliged to do so (i.e., the English jurisdiction rights conferred on the Lender/Mortgagee in Clause 21.6.2 are not exclusive). By contrast, Spec 3 is not given any contractual right at all to sue the Lender in England; or, indeed, anywhere. It must found jurisdiction, wherever it can, by other means – i.e., without assistance from this provision.

I barely received any submissions in relation to Clause 21 of the Spec Nichole Mortgage, and its terms were not really relied on by either side as affecting the outcome of either application. However, if nothing else, it illustrates the infinite variety of such provisions.

I was not provided with the other Finance Documents, but I assume that many of them will also have law and jurisdiction provisions. I consider it highly likely that, in general, they are subject to English law, unless there is some particular reason for a different system of law to apply (as with the Spec Nichole Mortgage, and, no doubt, with all other ship mortgages).

I assume that, in so far as the other Finance Documents have provisions as to jurisdiction, they do not affect the debate; else, they would have been shown to me.

L: Textbooks on asymmetric exclusive jurisdiction clauses

I was referred by both parties to the general comments of Prof. Fentiman in

International Commercial Litigation

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ed), under the heading "Asymmetric agreements", at §2.18:

"It is particularly common, at least in financial transactions, for the rights of one party to a jurisdiction agreement (invariably the finance provider) to be at least partly unilateral. Typically, a borrower and lender will submit to the exclusive jurisdiction of a designated court, but the lender will reserve the right to sue the borrower in any other court of competent jurisdiction. Such provisions do not represent an agreement to the jurisdiction of any court where the lender sues, but a unilaterally non-exclusive jurisdiction agreement in the lender's favour. The jurisdiction of any alternative court depends on whether that court has personal or subject-matter jurisdiction, not on consent. Where the counterparty's obligation is the repayment of money, such clauses are less a mechanism for dispute-resolution, and more a mechanism for debt collection. Indeed, the expectation is that a lender will merely seek summary enforcement in any alternative court. Such provisions allow a creditor the flexibility to seek enforcement wherever a borrower's assets are for the time being located. By minimizing enforcement risk they reduce the cost of the transaction to borrowers and enhance the readiness of lenders to provide finance. It is possible, although unusual, that such an agreement is intended to allow the beneficiary to sue in any court in the world, with the effect that the counterparty has effectively submitted to the jurisdiction of any court where the beneficiary brings proceedings."

The observation that clauses of this type are particularly frequent in borrower-lender arrangements certainly chimes with my own experience. It sheds important light on the commercial purpose and, therefore, the intended operation and effect of such clauses. Above all, if the purpose is to make it easier for the lender to take action where the borrowers' assets are located, the clause must be interpreted so as to facilitate that purpose, rather than to frustrate it.

This is of especially acute importance in the context of ship finance. In many borrower-lender arrangements, the key borrower assets are likely to consist of money (or a money equivalent), which of course is readily transportable and fungible, hence the need for the lender to be able to take action widely. However, in practice the lender often begins by securing the borrower's financial assets, with a worldwide freezing order that is normally sought in the designated jurisdiction (also sometimes referred to as the "anchor" jurisdiction). The designated jurisdiction has usually been selected as a jurisdiction where such orders are made regularly, and whose orders and judgments, once made, are frequently recognised and enforced by the courts of other jurisdictions. In such cases, the pattern will often be for much or all of the litigation on the merits to take place in the designated jurisdiction, with (as Prof. Fentiman suggests) other jurisdictions being called on for ancillary purposes and enforcement; although there are, naturally, many

variations, depending on the circumstances.

However, where the borrowers' main asset is a ship, a freezing order is not necessarily a suitable remedy. It is often not practical to freeze the movements of a ship – especially if it is laden with cargo, or subject to a charterparty, such that to do so would prejudice the rights of third parties. Instead, the lender will monitor the ship's movements, then arrest it when it arrives at a suitable port. This requires substantive admiralty proceedings, which (despite Prof. Fentiman's suggestion that it may be expected that the lender will only seek summary enforcement outside the anchor jurisdiction) will often lead to, and may require, a trial on the merits. In this context, therefore, it is truly vital for the lender to be able to sue wherever is required by the ship's trading pattern.

To similar effect (albeit without the comment that such clauses are particularly common in borrower-lender transactions) is the following general summary by Dr Marshall in

Asymmetric Jurisdiction Clauses

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ed), at §§7.12, 7.13:

"7.12 The parties are taken to have intended to 'prorogate' or 'confer jurisdiction' only on the court nominated in the anchor limb and to have done so for proceedings brought by both parties. One party, the non- option holder, is taken to have agreed in advance to 'submit' to the jurisdiction of that court, both as claimant and as defendant. The option holder is generally taken to submit to the jurisdiction of that court, but only in its position as defendant.

7.13 Courts interpret the clause as a whole to suggest that the presence of the optional limb for one party means that there is no such option for the other. They do so either by reference to the canon

expressio unius est exclusio alterius

or by reference to the descriptor 'exclusive' in the anchor limb, though the absence of that descriptor does not detract from this interpretation. The clause 'is exclusive against the first party [the non-option holder], but non-exclusive for the benefit of the second party [the option holder]'

[1]

. The non- option holder promises not to sue in any court but the anchor; the option holder does not. ..."

In each case, the general explanation that I have quoted from these textbooks is given at a fairly high level of abstraction. This means that it is of course vital to check these comments against the actual words of Clause 18.

However, because they are attempts to summarise the standard approach of the courts to provisions of this general kind, they are arguably informative as indications of the understanding that any contractual draftsman should expect a court to reach for, in the absence of any indication to the contrary. If the draftsman in fact intends a different result, he/she should make this clear, by drafting accordingly, ideally in express terms.

M: Authorities on asymmetric exclusive jurisdiction clauses

I of course was taken to numerous authorities, but the cases that both parties returned to repeatedly, and which were relied upon by one or other of them (as the case may be) as offering the best guidance for the construction of Clause 18, were the following.

In considering them, I have found it necessary to be very aware that most of them were decided when the Brussels I Regulation (or its predecessors) formed part of English law. In that context, the court first seised would normally have the right (and, generally, the obligation) to take charge, so as to prevent parallel proceedings. Seisin was not a concept familiar to the English common law before the original 1968 Brussels Convention became part of English law. It therefore is questionable whether it can be regarded as relevant now, which in turn casts doubt on the relevance of some of the authorities where the reasoning was clearly influenced by the significance of one court having become seised before another.

Highland Crusader Offshore Partners LP v Deutsche Bank AG

Both parties made extensive reference to the general summary given by Toulson LJ in

Highland Crusader Offshore Partners LP v Deutsche Bank AG

[2009] EWCA Civ 725

, at [50]. Helpfully, this passage expressly sets out the principles that apply if EU law is ignored, in propositions number (1) to (8):

"50. Leaving aside the provisions of the Brussels 1 Regulation and previous conventions, which are not relevant in this case, I would summarise the relevant key principles 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) It is too narrow to say that such an injunction may be granted only on grounds of vexation or oppression, but, 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) The courts have refrained from attempting a comprehensive definition of vexation or oppression, but 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
 - (a) England is clearly the more appropriate forum ("the natural forum"), and
 - (b) 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. For that would be to overlook the important restraining influence of considerations of comity.
- (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 his 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 occasioning a breach of customary international law or manifest injustice, and that 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, for 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. (I will come to the question whether there is a presumption that parallel proceedings in an alternative jurisdiction are vexatious or oppressive).
- (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."

Toulson LJ then expanded on and justified each of these propositions in the part of the judgment that immediately follows. Of particular relevance to the applications before me are propositions (6) and (7), which he explained at [63] and [64]:

"Proposition 6

[63] This proposition is supported by the

Airbus

case

[1999] 1 AC 119

, 132–133 ("parallel proceedings in different jurisdictions are not of themselves regarded as unacceptable", per Lord Goff),

Credit Suisse First Boston (Europe) Ltd v MLC (Bermuda) Ltd

[1999] 1 All ER (Comm) 237, 257 and

Royal Bank of Canada v Cooperative Centrale Raiffeisen-Boerenleenbank BA

[2004] 2 All ER (Comm) 847, paras 9, 10. It also links with propositions 4 and 5. It is perfectly possible to envisage a scenario in which there are parallel proceedings and each court considers itself to be clearly the more appropriate forum, the difference of opinion arising from the courts taking different views of the weight of the relevant connecting factors. This scenario was envisaged by Hoffmann J in

Barclays Bank plc v Homan

[1993] BCLC 680. It is unfortunate if this should arise, but the possibility is inevitable. If in that situation the English court were to decide to impose its view on the foreign court by granting an anti-suit injunction, and the foreign court for the same reason decided to impose its view on the English court by an anti-suit injunction, the parties would then find themselves subject to mutual anti-suit injunctions. This would not solve the problem; it would add a further dimension, and it would run counter to the principle of comity. Hence the reason for an English court not ordinarily granting an anti-suit injunction in such circumstances, although there may be exceptions in circumstances such as those considered by Hoffmann J and by Sopinka J and Judge Wilkey in the judgments referred to by Lord Goff in the

Airbus

case.

Proposition 7

[64] It stands to reason that by agreeing to submit to the non-exclusive jurisdiction of state X the parties implicitly agree that X is an appropriate jurisdiction, and therefore either party should have to show a strong reason for later arguing that it is not an appropriate jurisdiction. The cases support this approach: see

Cannon Screen Entertainment Ltd v Handmade Films (Distributors) Ltd

(unreported) 11 July 1989;

S & W Berisford plc v New Hampshire Insurance Co

[1990] 2 QB 631;

British Aerospace plc v Dee Howard Co

[1993] 1 Lloyd s Rep 368, 376 and

Ace Insurance SA-NV v Zurich Insurance Co

[2001] 1 All ER (Comm) 802

, para 62. On the other hand, a non-exclusive jurisdiction clause self evidently leaves open the possibility that there may be another appropriate jurisdiction. The degree of appropriateness of an alternative jurisdiction must depend on all the circumstances of the case. In addition to the usual factors, the wording of the non-exclusive jurisdiction clause may be relevant, because of the light which it may throw on the parties' intentions. Another possibly relevant factor (to which Waller J drew attention in the

British Aerospace

case) may be whether the choice of non-exclusive jurisdiction was specially negotiated or was contained in a standard form of contract."

Having said at [50(7)] that he would come back to the question whether there is a presumption that parallel proceedings in an alternative jurisdiction are vexatious or oppressive, Toulson LJ did so at [105]-[110]. In the interests of brevity I will not set out the entire passage, but his conclusion was that there was no such presumption. See at [105]:

"... I do not consider that it would be right to start with a general presumption that parallel proceedings in a non-selected forum are to be regarded as vexatious or oppressive and that there is a burden on the party responsible for prosecuting them to make out a strong case to justify them on grounds of matters unforeseeable at the time of the contract or other exceptional circumstances."

It is self-evident from this that Toulson LJ regarded parallel proceedings that have resulted from a jurisdiction clause that contemplated the possibility of parallel proceedings as a circumstance that was foreseeable, rather than unforeseeable.

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. In particular, in

Investec Bank plc v Protopapa

[2025] EWHC 3202 (Comm)

, Mr Peter MacDonald Eggers KC at [65] treated an asymmetric exclusive jurisdiction clause as equivalent to a non-exclusive jurisdiction clause of the kind discussed in Toulson LJ's proposition (7).

It is well established that, if proceedings are commenced in England as the designated jurisdiction, the English court will not stay its proceedings without "strong reasons":

Donohue v Armco Inc

[2001] UKHL 64

, per Lord Bingham at [24]. That was a case involving an exclusive jurisdiction clause, but the same principle applies in the context of non-exclusive jurisdiction clauses:

Antec International Ltd v Biosafety USA Inc

[2006] EWHC 47 (Comm)

, per Gloster J at [7]. It must also apply in the context of asymmetric exclusive jurisdiction clauses, see again

Investec Bank plc v Protopapa

[2025] EWHC 3202 (Comm)

, per Mr MacDonald Eggers KC at [65].

It may be that the reasons for a stay should be even stronger in the context of exclusive jurisdiction clauses, but in many instances there will be little if any practical difference:

Dexia Credit Local SA v Patrimonio del Trentino SpA

[2024] 2717 (KB), per Bryan J at [140]. On this I agree with Mr MacDonald Eggers KC in

Investec Bank plc v Protopapa

, at [54].

For the reasons given by Toulson LJ in his proposition (7), foreseeable factors of mere convenience should not be regarded as strong reasons. This means that standard factors in forum non conveniens cases (e.g., location of documents or witnesses) will often be of no weight, because they were foreseeable:

Skype Technologies SA v Joltid Ltd

[2009] EWHC 2783

, per Lewison J at [33];

Antec International Ltd v Biosafety USA Inc

[2006] EWHC 47 (Comm)

, per Gloster J at [7](iii);

Clifford Chance LLP v Societe Generale SA

[2023] EWHC 2682 (Comm)

, per Henshaw J at [81];

Zephyrus Capital Aviation Partners 1D Ltd v Fidelis Underwriting Ltd

[2024] EWHC 734 (Comm)

, per Henshaw J at [111], [114], [125].

Toulson LJ's proposition (6) is also of particular relevance, and must be taken together with proposition (7). The question whether parallel proceedings can be considered vexatious or oppressive will likewise be affected by foreseeability, as demonstrated by Toulson LJ's conclusion at [106]. In particular, if the parties chose to contract on a basis that permitted parallel proceedings in more than one jurisdiction, such that it is something that can be said to have been contemplated by the contract, then it is difficult for either of them to rely on this as a strong reason for the English court to decline jurisdiction, where it is the designated court:

Deutsche Bank AG v Sebastian Holdings AG

[2009] EWHC 3069 (Comm)

, per Burton J at [24] (accepted as correct in the Court of Appeal,

[2010] EWCA Civ 998

);

Standard Chartered Bank (Hong Kong) Ltd v Independent Power Tanzania Ltd

[2015] EWHC 1640 (Comm)

, per Flaux J at [109]-[110];

[2016] EWCA Civ 411

, per Longmore LJ at [24].

The position may be different if the factor relied on is not one of mere convenience, but concerns the interests of justice in the sense of the prospect of a fair trial:

Zephyrus Capital Aviation Partners 1D Ltd v Fidelis Underwriting Ltd

[2024] EWHC 734 (Comm)

, per Henshaw J at [125](viii)-(ix). The risk of inconsistent judgments, because of a non-exclusive jurisdiction clause of a kind which permits parallel proceedings, does not fall into this category.

Royal Bank of Canada v Cooperatieve Centrale Raiffeisen-Boerenleenbank BA

In

Royal Bank of Canada v Cooperatieve Centrale Raiffeisen-Boerenleenbank BA

[2004] EWCA Civ 7

, the clause in question was a symmetric non-exclusive jurisdiction clause, which designated England but permitted proceedings in other jurisdictions, including concurrent proceedings:

"

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction ... nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

"

Rabobank commenced proceedings in New York. RBC commenced proceedings in England, then sought an anti-suit injunction to restrain Rabobank from proceeding in New York. The injunction was refused, because the terms of the contract meant that the parties must have contemplated the problems of parallel proceedings, which therefore could not be said to be vexatious or oppressive, nor was it a breach: per Evans-Lombe LJ at [21], [25], [31].

Mance LJ suggested at [35] (without deciding the point) that the second part of the provision quoted above (i.e., permitting later proceedings outside England) may have been restricted to proceedings by the same party; such that Rabobank's suit in New York was consistent with the contract because its proceedings there had been commenced before, rather than after, the proceeding in England. Such commencement of proceedings, and then their continuation after commencement of the English proceedings, could not normally be regarded as oppressive: [42], [50].

Mr Khurshid KC contended that it followed from Mance LJ's suggestion that an anti-suit injunction would (or might) have been granted if the New York proceedings had been commenced after the English proceedings (as here, with OC 847 commenced after this action). Leaving aside that Mance LJ's comments at [35] were tentative and obiter, this kind of question must always depend on the construction of the particular clause, in its overall contractual context.

Lornamead Acquisitions Ltd v Kaupthing Bank

In

Lornamead Acquisitions Ltd v Kaupthing Bank

[2011] EWHC 2611 (Comm)

, there was an asymmetric exclusive English jurisdiction clause. It provided for English jurisdiction, with an express agreement that England was the most appropriate and convenient forum, then continued with the following carve-out:

"This clause 43.1 is for the benefit of the Finance Parties and Secured Parties only. As a result, no Finance Party or Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties and Secured Parties may take concurrent proceedings in any number of jurisdictions."

Lornamead commenced proceedings in England, which Kaupthing sought to stay on the basis that it could simply renounce the agreement of English jurisdiction, because it was said to be expressly for its benefit.

Gloster J rejected this submission at [111]-[112], for two reasons. The first was because it was too late for Kaupthing to do this after Lornamead had commenced proceedings in England. The second was because the argument was not sustainable in the light of Article 17 of the Lugano Convention (which established as a matter of law that the clause merely enabled Kaupthing to bring proceedings elsewhere) or on the wording of the clause (i.e., "To the extent allowed by law..." which referred her back to Article 17 of the Lugano Convention).

Because Gloster J's reasoning in this case was heavily dependent on a predecessor of the Brussels I Regulation, I do not find it of great assistance.

Mr Khurshid KC also relied on

Commerzbank AG v Liquimar Tankers Management Inc

[2017] EWHC 161 (Comm)

, where Cranston J cited at [40] the reasoning of Gloster J in

Lornamead Acquisitions Ltd v Kaupthing Bank

at [112]. This does not appear to have been necessary to Cranston J's reasons and in any event is, again, dependent on a predecessor of the Brussels I Regulation and thus of no real assistance.

Mauritius Commercial Bank Ltd v Hestia Holdings Ltd

In

Mauritius Commercial Bank Ltd v Hestia Holdings Ltd

[2013] EWHC 1328 (Comm)

, the clause was materially identical to that in

Lornamead Acquisitions Ltd v Kaupthing Bank

. MCB sued in England. Hestia challenged English jurisdiction, arguing that the clause was invalid. Popplewell J upheld the clause. In doing so, he rejected an argument that the clause meant that MCB could resist any suit by Hestia in England, as follows, at [40]:

"Clause 24.1 is for the benefit of MCB in the sense that Hestia and Sujana are obliged to sue in England but MCB is not. But that does not disapply cl 24.1(a) to MCB completely. Where it is Hestia or Sujana which brings suit against MCB in England, cl 24.1(a) is not disapplied by the operation of cl 24.1(c). MCB is thereby agreeing to be sued in England subject to the liberty conferred by cl 24.1(c). In those circumstances MCB has agreed to be subjected to the exclusive jurisdiction of the English courts, subject to its right to bring claims (which may overlap) abroad pursuant to cl 24.1(c). Were it otherwise, cl 24.1(a) would be superfluous: if cl 24.1(c) permitted MCB to insist on suing or being sued anywhere, or anywhere of competent jurisdiction, that would include England (given that this is an English law agreement and forum conveniens is conclusively determined by sub-cl (b))."

As Popplewell J then noted at [41], he thus arrived at the same conclusion as Gloster J in

Lornamead Acquisitions Ltd v Kaupthing Bank,

as regards the meaning of the provision that the clause was for MCB's benefit. However, he got there by different reasoning, which, in his case, was not dependent on the Lugano Convention/ the Brussels I Regulation.

Furthermore, Popplewell J did not add Gloster J's gloss that, if proceedings were commenced under the clause by Hestia in England, it was not possible for MCB then to commence separate proceedings in another jurisdiction, because England was the jurisdiction of the court first seised. On the contrary, Popplewell J seems to have contemplated that, under the clause, MCB could indeed commence subsequent, overlapping proceedings abroad.

Hipgnosis SFH 1 Ltd v Barry Manilow

In

Hipgnosis SFH 1 Ltd v Barry Manilow

[2025] EWCA Civ 486

, there was an asymmetric exclusive jurisdiction clause which provided for exclusive jurisdiction in England, with the following carve-out in its fourth sentence:

"

Notwithstanding the foregoing, any claims made by BM against Hipgnosis related to the Purchase Price may be brought by BM in the courts of Los Angeles, California or New York City, New York

."

Hipgnosis commenced proceedings in England. Mr Manilow commenced proceedings in California relating to the purchase price, and sought a stay of the English proceedings. The Court of Appeal held that the English proceedings should not be stayed. Mr Manilow had agreed to be sued by Hipgnosis in England and the fact that he was entitled to sue elsewhere did not derogate from this, as explained by Sir Julian Flaux C at [64]-[65]:

"[64] In this case the clear language of clause 14 is to the effect that, so far as any claim by the appellant is concerned, including claims in respect of the purchase price, the English court has exclusive jurisdiction and so far as claims by the respondents are concerned, the English court has exclusive jurisdiction save for the limited carve-out in respect of purchase price claims provided for in the fourth sentence.

[65] So far as the detailed comparison which Mr Sutcliffe KC sought to make with the LMA wording highlighting the distinctions between that wording at clause 14 is concerned, whilst it is correct that there are differences between the two wordings, there is nothing which detracts from the correct interpretation of clause 14 being that it contemplates expressly that there may be parallel proceedings in England and the US. The fact that, unlike the LMA wording, the fourth sentence includes the provision that the appellant agrees to submit to the jurisdiction of the courts in Los Angeles or New York in respect of purchase price claims by the respondents does not advance the respondents' argument. What is missing from that provision is any agreement by the appellant that the courts of Los Angeles or New York will have

exclusive

jurisdiction over such claims and the provision simply does not address at all purchase price claims by the appellant."

Accordingly, the Court of Appeal was sanguine about the prospect of parallel proceedings in different jurisdictions, because this was expressly contemplated by the parties' contract.

Athena Capital Fund SICAV-FIS SCA v Secretariat of State for the Holy See

One further authority that I should mention at this point is

Athena Capital Fund SICAV-FIS SCA v Secretariat of State for the Holy See

[2022] EWCA Civ 1051

. This was not a case on an asymmetric jurisdiction clause, but it is the leading case on whether a stay should be granted by the court in England on case management grounds, where there are parallel proceedings in another jurisdiction which have been commenced in the face of an exclusive English jurisdiction clause.

The Court of Appeal considered various earlier decisions which appeared to suggest that a stay should only be granted in these circumstances in "rare and compelling cases". Males LJ said that the true test was simply one depending on "the interests of justice", which he explained as follows, at [59]:

"[59] There is, as it seems to me, no reason to doubt that it is only in rare and compelling cases that it will be in the interests of justice to grant a stay on case management grounds in order to await the outcome of proceedings abroad. After all, the usual function of a court is to decide cases and not to decline to do so, and access to justice is a fundamental principle under both the common law and article 6 ECHR. The court will therefore need a powerful reason to depart from its usual course and such cases will by their nature be exceptional. In my judgment all of the guidance in the cases which I have cited is valuable and instructive, but the single test remains whether in the particular circumstances it is in the interests of justice for a case management stay to be granted. There is not a separate test in parallel proceedings cases. Rather, considerations such as the existence of an exclusive English jurisdiction clause and the danger of circumventing a statutory scheme for the allocation of jurisdiction (such as the Judgments Regulation) will be weighty and often decisive factors pointing to where the interests of justice lie."

N: Clause 18.1

There was no issue before me in relation to Clause 18.1. It was agreed that the NAR Loan Agreement as a whole, including Clause 18, is governed by and interpreted in accordance with English law.

While not contentious, this is significant. First, it means that the construction of the other provisions of Clause 18 – all of which were in issue, except 18.5 – must be decided by me in accordance with English law. As a matter of English law, my decision in relation to them will be final (subject to the Court of Appeal) and binding.

Second, the effect of CPR 6.36 and CPR PD 6B is that there is a jurisdictional gateway in relation to claims in respect of a contract governed by English law, which can be invoked so as to commence proceedings for service out of the jurisdiction, with the permission of the court: gateway (6)(c). Thus, even without Clause 18.2, the parties already had the ability to commence proceedings against each other in England, with the permission of the court. It follows that Clause 18.2 was intended to add something. I note that this was one of the points relied on by Popplewell J in

Mauritius Commercial Bank Ltd v Hestia Holdings Ltd

, at [40].

O: Clause 18.2

This provision has a number of important features, which it is convenient to consider separately.

"... the parties to this Agreement..."

This binds both groups of parties – both the Lender and the Borrowers. Each side makes the same promises to the other.

"...irrevocably agree that the courts of England are to have exclusive jurisdiction..."

Each agrees both (i) that they will bring proceedings exclusively in England and (ii) that, if sued, in England, they will submit to English jurisdiction.

So far as the Lender is concerned, the agreement to bring proceedings exclusively in England is subject to Clause 18.3; and Clause 18.4 affects the Borrowers' rights and obligations if the Lender exercises its optional rights under Clause 18.3. However, neither of those provisions affects the position if the Borrowers commence proceedings in England, nor their rights and obligations in that regard.

If the Borrowers wish to commence proceedings, they must do so in England. For them to commence proceedings elsewhere would be a breach of Clause 18.

They can do so without permission. This follows from CPR 6.33(2B). This is what the Borrowers did in this action. As already noted, the Lender has taken no objection, thus the Lender appears to accept that the Borrowers were all entitled to rely on Clause 18.2 as conferring English jurisdiction as of right.

It also follows that, if the Borrowers commence proceedings in England, the Lender cannot dispute that the English courts have jurisdictional competence, in principle:

Mauritius Commercial Bank Ltd v Hestia Holdings Ltd

, at [40]. This, I take it, is why the Lender's challenge to English jurisdiction is advanced as explained in Section I above.

It further follows that, although the Lender is entitled to seek a stay in England, it is constrained by the principle that Toulson LJ set out as his proposition (7) in

Highland Crusader Offshore Partners LP v Deutsche Bank AG

at [50], as further explained in the other authorities discussed above. A strong reason is required; and consequences that were foreseeable when the NAR Loan Agreement was concluded will not assist.

Such strong reasons could include the involvement of a third party, not bound by the jurisdiction clause, or issues that are outside its scope: cf.

Donohue v Armco Inc

. However, this is not relevant on the facts of this case, because no third party is involved in or affected by the issues in this action, and all the issues that will arise under it are within the scope of Clause 18. (For the avoidance of doubt, the same is also true of OC 847.)

Toulson LJ's proposition (7) is also subject to the interests of justice in the sense of a fair trial:

Zephyrus Capital Aviation Partners 1D Ltd v Fidelis Underwriting Ltd

. However, the Lender does not assert that it will not get a fair trial in England. (For the avoidance of doubt, nor has either side asserted that they might not get a fair trial in Singapore.)

"For the exclusive benefit of the Lender..."

For all the reasons just explained, Clause 18.2 provides substantial benefits to the Borrowers. It does not benefit only the Lender, so that cannot be what the words quoted above are intended to mean. As suggested by Popplewell J in

Mauritius Commercial Bank Ltd v Hestia Holdings Ltd

, what they mean is that the Borrowers can only commence proceedings in England (with the consequences set out above), but the Lender has the option of commencing proceedings elsewhere, as then explained in Clause 18.3 and Clause 18.4. This is consistent with the explanation of Dr Marshall in

Asymmetric Jurisdiction Clauses

, at §§7.12: the Borrowers have agreed to submit to the jurisdiction of the English court both as defendant and as claimant; the Lender has only agreed to do so as defendant.

At first sight, the express provision that Clause 18.2 is for the exclusive benefit of the Lender might be understood by the unwary as meaning that it can be waived by the Lender, in the sense that the Lender can unilaterally withdraw the Borrowers' right to commence proceedings against the Lender in England, and/or can decline to be bound to take any part in such proceedings. This is similar to the argument about renouncing the clause, which was rejected (for different reasons) in

Lornamead Acquisitions Ltd v Kaupthing Bank

and in

Mauritius Commercial Bank Ltd v Hestia Holdings Ltd

.

While I do not find

Lornamead Acquisitions Ltd v Kaupthing Bank

of great assistance, I respectfully agree with the analysis and reasoning of Popplewell J on this point in

Mauritius Commercial Bank Ltd v Hestia Holdings Ltd

. Furthermore, in the specific context of the wording of Clause 18.2, the word "irrevocably" is a further indication against the right of the Lender to waive or renounce Clause 18.2.

My understanding is that waiver arguments along these lines have been run by the Lender in Singapore. Mr Lewis KC made it very clear that he did not advance any argument based on waiver. This was greatly to his credit and he was right to make this concession. Any such argument is hopeless, on a correct understanding of Clause 18.2, under English law.

P: Clause 18.3

This is the carve-out provision, which has the effect of making the clause asymmetric. It has two separate limbs, and is also subject to a qualification as to jurisdictional competency.

Limb 1: "Nothing contained in this Clause 18 shall limit the right of the Lender..."

The first limb provides that the Lender's right to commence proceedings in other courts (i.e., other than England) is limited by nothing in Clause 18. The only part of Clause 18 that purports to limit that right is Clause 18.2. Ergo, what it really means is that Clause 18.2 does not so limit the Lender's right.

Mr Khurshid KC acknowledged this, but submitted that there is a distinction between Clause 18.2 itself, and proceedings commenced by the Borrowers in England pursuant to Clause 18.2. He said that, while the words of Clause 18.2 do not prevent the Lender from commencing proceedings outside England, if the Borrowers commence proceedings in England, this fact will have that result.

I cannot accept this submission for two reasons. The first is textual. There is nothing in Clause 18.3 (or anywhere else in Clause 18) that suggests that the commencement of proceedings in England should have this effect. On the contrary, if the commencement of proceedings in England takes place expressly in reliance on the Borrowers' rights under Clause 18.1 and/or under Clause 18.2 (as here), it is very difficult to see why this is not caught by the words "Nothing in this Clause 18...", which in my view must be understood as including the Borrowers' assertion

of their rights under Clause 18.

The second reason goes back to the purpose of Clause 18, in the context of a ship finance transaction. The reason why asymmetric exclusive jurisdiction clauses are particularly common in borrower-lender arrangements, as explained by Prof. Fentiman and expanded by me in Section L above, is to enable the Lender to take steps against the Borrowers' assets, wherever they may be situated. The Lender may wish to take such steps pre-emptively, before any proceedings have been commenced by either side in the designated jurisdiction. However, it will very often be the case that the Lender wishes to take such steps after proceedings have been commenced in the designated jurisdiction – whether by the Lender or by the Borrowers; for security, or for enforcement, or on some other basis, such as Admiralty proceedings in rem.

Mr Khurshid KC's argument would prevent this. Indeed, it would mean that canny Borrowers would be able to prevent the Lender from taking any such steps to secure or enforce its claims, by commencing their own proceedings in England before the Lender had yet managed to act abroad: a strategy that Mr Lewis KC described as the English torpedo.

That simply cannot be how the NAR Loan Agreement is intended to operate. Mr Khurshid KC's argument would frustrate the very purpose that lies behind clauses of this kind.

The qualification: "...in any other court of competent jurisdiction..."

The clauses in

Lornamead Acquisitions Ltd v Kaupthing Bank

and in

Mauritius Commercial Bank Ltd v Hestia Holdings Ltd

allowed the banks in those cases to commence proceedings "... in any jurisdiction", without any express qualification. This gave rise to the complaint in

Mauritius Commercial Bank Ltd v Hestia Holdings Ltd

that the clause appeared to have the effect of obliging Hestia to submit to be sued anywhere in the world of MCB's choosing, even if there was no connection whatsoever with the case and no basis on which jurisdiction might otherwise be invoked. Popplewell J rejected that, finding that the clause did not entitle MCB to sue in a foreign court where jurisdiction would not otherwise have existed. It merely preserved the right that MCB would have had, but for the clause, to sue in any court that would regard itself as of competent jurisdiction.

I suspect that the qualification "in any other court of competent jurisdiction" has been included in order to make this clear. The words only appear in limb 1 of Clause 18.3, but they would also be apposite for limb 2.

The significance of this part of Clause 18.3 became apparent only upon the service of the Borrowers' skeleton argument, where it was asserted for the first time, that the Lender's proceedings in OC 847 had not been commenced in a court of competent jurisdiction, in that the Lender had not been entitled to invoke the jurisdiction of the courts of Singapore for proceedings that had to be served on the Borrower out of the jurisdiction, in England. Mr Lewis KC objected to this point being taken so late, and also suggested that I should not attempt to decide whether the courts in Singapore would regard themselves as of competent jurisdiction.

As the hearing went on, it became apparent that this issue was unlikely to present any real difficulties, as I explain later in this judgment. Mr Lewis KC did not ask for the hearing to be adjourned so that he could obtain evidence from Singapore to answer the Borrowers' points. Instead, he presented some additional Singapore law materials, which evidently were provided overnight (I take it, by Rajah & Tann), on which he made submissions. Mr Khurshid KC had no objection to this.

Limb 2: "... nor shall the commencement of any proceedings against the Borrowers in one or more jurisdictions preclude..."

This focuses only on proceedings commenced by the Lender against the Borrowers. The words "any proceedings" are wide and must be interpreted widely. The words "in one or more jurisdictions" are also significant – they highlight that the Lender can commence proceedings in more than one jurisdiction. No such proceedings preclude the commencement by the Lender of yet more proceedings, in still further jurisdictions.

Thus, the first limb of Clause 18.3 contemplates proceedings commenced in England (whether by the Lender or by the Borrowers) and then proceedings commenced in some other court of competent jurisdiction. The second limb contemplates proceedings commenced by the Lender (whether in England or elsewhere) and then more proceedings commenced by the Lender (whether in England or elsewhere). It is highly significant for both the applications before me that Clause 18 actively contemplated and sanctioned the possibility of parallel proceedings in more than one jurisdiction.

This is characteristic of asymmetric exclusive jurisdiction clauses, as the Court of Appeal recognised in

Hipgnosis SFH 1 Ltd v Barry Manilow

.

Q: Clause 18.4

By this provision, the Borrowers waive (i) any objection to proceedings that may be commenced in any court referred to in Clause 18 and (ii) any forum non conveniens argument in relation to such proceedings.

The words "any court referred to in this Clause 18" would appear to mean (i) England or (ii) any court in which the Lender may commence proceedings under Clause 18.3 – viz., "any other court of competent jurisdiction". It follows that the Borrowers can object if proceedings are commenced in a court which is not a court of competent jurisdiction. It was on this basis that the Borrowers took the objection, before me, that Singapore is not a court of competent jurisdiction in relation to OC 847.

It is worth adding that, although Clause 18.4 does not use the words "natural forum", the consequence of being precluded from objecting to a forum in the manner stipulated by Clause 18.4 means that the Borrowers effectively cannot dispute that it is the, or at least a, natural forum.

Clause 18.4 only imposes this stipulation in relation to the Borrowers, in the event of the Lender commencing proceedings in a jurisdiction other than England. However, that is not because England is not agreed to be a convenient or natural forum. The effect of England being designated as the anchor forum, under Clause 18.2, means that neither side can object that England is, if not the natural forum, at least a natural forum. They have agreed that it is: see Toulson LJ's proposition (7), explained by him in

Highland Crusader Offshore Partners LP v Deutsche Bank AG

, at [64]; Marshall

Asymmetric Jurisdiction Clauses

§7.79.

R: The Lender's application

Considered in the light of what I have now said about Clause 18, the Lender's application is extremely difficult.

The Lender accepts (as it must) that Clause 18.2 applies in principle to the Borrowers' claims in this action. They are claims that the Borrowers were contractually obliged to bring only in England; they could not have brought them anywhere else, including Singapore, because to do so would have been a breach of contract. The fact that there is a virtual (but not complete) overlap between the relief sought by Spec 3 in its counterclaim in ADM 33 and the relief sought by all the Borrowers in this action does not affect this.

Conversely, the Borrowers were contractually entitled to bring their claims in England, and the Lender was obliged to acknowledge the Borrowers' right to invoke the jurisdiction of the English court – as it has done.

The fact that the Lender was and is entitled to commence proceedings in other courts does not assist the Lender in its application. It simply underlines that the terms of the NAR Loan Agreement unequivocally contemplate the possibility of parallel proceedings in more than one jurisdiction. It is something that was always foreseeable.

Moreover, the fact that such parallel proceedings have now eventuated is not something that the Lender can rely on, any more than it can rely on the fact that the locations of the parties' documents and witnesses (Beijing and Shanghai, respectively) are closer to Singapore than to London. On the contrary, the Borrowers are entitled to make the point that, while the terms of Clause 18 contemplated the possibility of parallel proceedings, what made this a reality was the Lender's own decision to commence proceedings outside England.

The Lender could have chosen to bring its claims in England, as the designated jurisdiction; in which case, it would have been able to ensure that its claims and any claims brought by the Borrowers were all brought in the same jurisdiction. Instead, the Lender chose to commence proceedings elsewhere. It was fully entitled to do so, but must accept the entirely foreseeable consequence – in other words, this action.

Mr Lewis KC sought to compare this case to

Donohue v Armco Inc

. He said that the only way of avoiding parallel proceedings, and, thus, the risk of inconsistent decisions, was for this court to stay itself. The courts in Singapore would then be invited, either to consolidate ADM 33 and OC 847, or to direct that they be tried together.

There is no real comparison with

Donohue v Armco Inc

. In that case, there was an exclusive jurisdiction clause, which was not capable of capturing all the relevant disputes between all the relevant parties. New York was the only jurisdiction where it would be possible conveniently to resolve all dispute between all parties. Above all, there was no indication that, when they contracted, either party had contemplated the possibility of parallel proceedings or the risk of inconsistent judgments; so this was a peril that it was legitimate for Armco to ask the court in England to help them to avoid. The contract was entirely neutral about this. Indeed, the very fact that it contained an unqualified exclusive jurisdiction clause arguably indicated that the parties had made positive efforts to rule out the possibility of parallel proceedings – but failed because the scope and reach of their clause was insufficiently broad.

I naturally accept that, in most cases, parallel proceedings and the associated risk of inconsistent decisions are perils that parties can be assumed to wish to avoid. If so, they are entitled to ask for the court's help in avoiding them. However, in this case, that is not the bargain that the parties made. The Borrowers contracted on a basis that meant they were entitled to bring proceedings in England, and they have every right to hold the Lender to this even though the Lender wishes to enforce its own right to sue elsewhere. The fact that this may lead to inconsistent decisions is a feature of that bargain, but it is an entirely foreseeable risk that both parties must be taken to have accepted.

Moreover, while it is conceivable that parallel proceedings could lead to inconsistent judgments between these parties, the risk of that should be manageable. The mutual respect between England and Singapore will mean, realistically, that if one jurisdiction leads the way in producing a judgment that binds the parties, it will be applied in the other jurisdiction on the basis of our shared approach to *res judicata*. This is why it should not be beyond the wit of the Lender and the Borrowers in this case to work out how to avoid inconsistent judgments, or the unnecessary waste of costs, if they are genuinely concerned to do so. They simply need to identify which proceedings are mostly likely to result in a prompt judgment that captures the necessary issues and binds the necessary parties, then agree a stay or standstill in the other proceedings, pending that judgment. If, on the other hand, they are not genuinely concerned to avoid these risks, then they cannot really complain about having to face them, having effectively agreed to do so when they entered into the 2024 Finance Documents.

Mr Lewis KC also relied on Dr Marshall's book,

Asymmetric Jurisdiction Clauses

, at 7.93. This considers the scenario where the party with no option to sue elsewhere (here, the Borrowers) brings proceedings in the designated court, and the party with the option of suing elsewhere (here, the Lender) does so – i.e., the facts of this case – and says:

"To the extent that the court would constrain one set of proceedings, it is likely to be those brought by the non-option holder."

Dr Marshall cites no authorities in support of this view, which I find problematic.

First, it is significant that Dr Marshall does not assume that the court would constrain either set of proceedings. In his submissions, Mr Lewis KC skated rapidly over this missing premise, no doubt spotting it as the thin ice that it undoubtedly was for his argument. As I have endeavoured to demonstrate, if parallel proceedings in different jurisdictions were contemplated by the contract, then the combination of Toulson LJ's propositions (6) and (7), in

Highland Crusader Offshore Partners LP v Deutsche Bank AG

at [50], [63], [64], makes it unlikely that the English court would seek to constrain either set of proceedings – i.e., it will neither stay itself nor issue an anti-suit injunction. No doubt it might be possible to draft an asymmetric exclusive jurisdiction clause that could be said not to contemplate parallel proceedings in different jurisdictions, but in general this is an inherent feature of such clauses.

[2]

Second, the proposition that the English court should stay itself, in preference to constraining the foreign proceedings, is an answer for which there is no rationale. It is not obviously reconcilable with the "strong reasons" requirement that derives from

Donohue v Armco Inc

and from Toulson LJ's proposition (7). Furthermore, the problem that it would create for the non-option holder is that it has promised not to sue anywhere other than the designated forum (i.e., England). On the face of things, if the non-option holder cannot sue in the designated forum, it cannot sue anywhere at all. If one or other set of proceedings must be constrained, it therefore must make more sense for it to be the foreign proceedings: this would deprive the option-holder of the ability to sue in other jurisdictions (which it ought to be able to do), but would at least leave it able to sue in the jurisdiction which it has accepted as the designated forum.

Nevertheless, the better answer is that neither should be constrained. The English court should enable the parties to perform their bargain, rather than obliging them to deviate from it. If they have agreed to be bound by mutual promises that necessarily contemplate parallel proceedings in different jurisdictions, the court should accept this.

In this case, given that England is the designated jurisdiction and (therefore) the exclusive jurisdiction for any proceedings commenced by the Borrowers, the Lender needs to identify "strong reasons" for a stay, as Mr Lewis KC accepted. There are no such reasons, no matter whether the stay is sought on the basis that the proceedings are vexatious and oppressive (let alone by reference to any less weighty factor), or on case management grounds. If the fact of parallel proceedings is not taken into account (as must be the case), the Lender is unable to use it to make out any case as to vexation or oppression (etc.). Whether or not that fact is taken into account, the case presents no real problems of case management, and the interests of justice do not require a stay. The application therefore fails and is dismissed.

S: The Borrowers' primary application

The primary relief sought by the Borrowers is an anti-suit injunction against the Lender in respect of OC 847. This would be a considerable interference with the judicial system in Singapore, which the English court will not grant lightly, in the interests of comity:

Dicey, Morris & Collins: The Conflict of Laws

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ed), at §12-127;

Highland Crusader Offshore Partners LP v Deutsche Bank AG

, per Toulson LJ at [50(5)].

Anti-suit injunctions are most readily granted where the foreign proceedings represent a breach of an English exclusive jurisdiction clause. The Borrowers did not contend that it was a breach of Clause 18 for the Lender to bring the Admiralty in rem claim in ADM 33. However, they did say that it was a breach of Clause 18 for the Lender to have commenced OC 847, for two separate reasons.

The first was Mr Khurshid KC's argument that, although the Lender could bring proceedings outside England before the Borrowers had commenced this action, the effect of the commencement of this action was to prevent the Lender from commencing any further proceedings outside England. This is the argument that I rejected for both textual and purposive reasons, when commenting on the first limb of Clause 18.3 in Section P above.

The second was the argument first raised in the Borrowers' skeleton argument, to the effect that Singapore is not a court of competent jurisdiction, in respect of the claims brought against Spec 1 and Spec 2 in OC 847. The argument proceeded on the basis that the Lender had to show that it could bring itself within Order 8 Rule 1 of the Singapore Rules of Court and within one of the limbs of paragraph 63(3)(a) to (t) of the Supreme Court Practice Directions 2021; these being the provisions which, in Singapore, are relied on for service out of Singapore with the court's approval. In fact it became apparent during his oral submissions that Mr Khurshid KC's case was really confined to saying that the Lender had not shown, and could not show, that its case in OC 847 came within one of the limbs of paragraph 63(3)(a) to (t). These have some similarities with the jurisdictional gateways in CPR PD 6B. However, they are not gateways; they are a non-exhaustive list of factors that can be relied on to show a good arguable case that the action has a sufficient nexus to Singapore.

Mr Khurshid KC devoted some time to showing me that the original limbs of paragraph 63(3) that were relied on by the Lender when it obtained approval from the Singapore court were not applicable; limb (d) (action on a contract made in Singapore or governed by Singapore law), limb (p) (cause of action arising in Singapore) and limb (r) (submission to jurisdiction or agreement to submit).

However, Mr Lewis KC showed me (citing

Shen Sophie v Xia Wei Ping

[2022] SGHC 206) that, if there were a challenge to jurisdiction in Singapore, the Lender would not be confined to those limbs, but would be able to rely on any others that might apply.

Mr Lewis KC suggested, and I accept, that the Lender would be able to rely on limb (i) (claim made to assert, declare or determine proprietary or possessory rights, or rights of security over, movable property, or to obtain authority to dispose of movable property, situated in Singapore), on the basis that OC 847 is brought in order to confirm and clarify the validity of the NAR Loan Agreement and NAR Deed. The Lender's Statement of Claim in Singapore expressly alleges, at paragraph 12, that the Lender's rights under these Finance Documents are secured by the Spec Nichole Mortgage. By succeeding in its claim in Singapore, the Lender therefore will establish its

rights, as a secured creditor, over the proceeds of the judicial sale.

The Lender probably would also be able to rely on limb (e) (breach committed in Singapore of a contract wherever made), on the basis that by making allegations in ADM 33 that the Finance Documents were invalid, the Borrowers were committing an event of default under the NAR Loan Agreement. Allegations relevant to this are made in paragraph 35 of the Statement of Claim.

I therefore accept that Singapore was a court of competent jurisdiction, within the meaning of clause 18.3. It follows that it was not a breach of Clause 18 for the Lender to bring claims against Spec 1 and Spec 2 in Singapore, in OC 847. That basis for the application for an anti-suit injunction therefore fails.

Indeed, far from being a breach of Clause 8, bringing these claims in Singapore was something the Lender was entitled to do, under Clause 18. The Borrowers therefore face essentially the same problem in relation to their application for an anti-suit injunction that the Lender did in relation to its stay application: namely, that they cannot rely on the fact of parallel proceedings in order to make out a case of vexation or oppression, because this was foreseeable from the outset.

Beyond that, an anti-suit injunction will not be granted in respect of proceedings that the relevant party has a contractual right to bring: Briggs,

Civil Jurisdiction and Judgments

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ed), at p. 446

[3]

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Royal Bank of Canada v Cooperatieve Centrale Raiffeisen-Boerenleenbank BA

, per Evans-Lombe LJ at [25];

Catlin Syndicate Limited v Adams Land & Cattle Company

[2006] EWHC 2065 (Comm), per Cooke J at [15]-[16].

T: The Borrowers' alternative application

The Borrowers' alternative application is for an anti-anti-suit injunction to restrain the Lender from bringing an anti-suit injunction in relation to this action.

There is no realistic basis for any apprehension that the Lender is likely to apply for an anti-suit injunction. There were one or two desultory references to the Lender reserving the right to "take such steps as it sees fit, including but not limited to seeking injunctive relief" in correspondence in August 2025. Nothing of significance has happened since then, and it is striking that the Borrowers did not even think to apply for an anti-anti-suit injunction until extremely recently.

Even if the Lender might apply for an anti-suit injunction, the application would be bound to fail. The application would of course be considered by the court in Singapore, not by this court. However, in exercising its discretion, the court in Singapore would be affected by the same contractual considerations as I have taken into account, as well as the same concerns about comity.

As a matter of English law, Clause 18 gives the Borrowers an unqualified contractual right to sue in England. For the Lender to seek an anti-suit injunction to restrain the Borrowers (or any of them) from exercising this contractual right would itself be a breach of contract: as well as the authorities cited in paragraph 154 above, see also the explanation of

Sabah Shipyard (Pakistan) Ltd v Islamic Republic of Pakistan

[2002] EWCA Civ 1643

in

Highland Crusader Offshore Partners LP v Deutsche Bank AG

, per Toulson LJ at [112].

N. B., this does not mean that the Lender has no way of arguing that the Borrowers' claims should not proceed in England. It means, rather, that the effect of the parties' agreement in Clause 18 is that the right jurisdiction for the Lender to mount that argument is England. This, of course, is precisely what the Lender has done, by way of its own application before this court.

This is a yet further reason why I would expect the court in Singapore to refuse to grant an anti-suit injunction: because all the Lender's arguments have already been advanced in the most appropriate court for the determination of the Lender's objections to the Borrowers' claims being pursued in England (i.e., this court), and rejected. There is simply no reason to give the Lender a chance to run the same arguments again, when these arguments have already been the subject of judicial decision.

I therefore regard it as inconceivable that the courts of Singapore would ignore the Borrowers' clear contractual rights, and would interfere with English judicial process, by granting an anti-suit injunction, even if the Lender were to apply for one.

I therefore have rejected both the Borrowers' primary application and their alternative application. The Borrowers' application therefore fails and is dismissed.

U: The judgment of Justice Pang

It is of some satisfaction to me that my conclusions in relation to the construction of Clause 18 have precisely matched those of Justice Pang. Under the terms of Clause 18, on its true construction, Spec 3 was entitled to take part in this action. For it to do so therefore was not a breach of Clause 18, nor was it vexatious or oppressive. The appropriate and natural forum for the determination of the Lender's objections to the Borrowers' claims being pursued in England, is England.

[4]

V: Conclusion

If the Borrowers wish to pursue their claims in England, and the Lender wishes to pursue parallel claims in Singapore, this is what they must both be allowed to do. It may well be objectively sensible for one of them to yield to the other's preference and agree to stay its own claims – either in England or in Singapore. However, common sense is not something the court can or should force upon either of them. They will have to find their own path to pragmatism.

Unless and until they do, this action will proceed, irrespective of what may occur in the proceedings in Singapore. Upon handing down this judgment, I therefore will give case management directions, having heard from counsel.

Note 1 This is a quotation from Fentiman

International Commercial Litigation

, at §2.70

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Note 2 At least, outside the ambit of the Brussels I Regulation. It is interesting that the same wording was regarded by Gloster J in

Lornamead Acquisitions Ltd v Kaupthing Bank

as implicitly excluding parallel proceedings, because it had to be read in the context of the Lugano Convention; but was then considered by Popplewell J in a non-EU context, and described in terms that appear to have countenanced parallel proceedings – see

Mauritius Commercial Bank Ltd v Hestia Holdings Ltd

at [40], where he noted that MCB agreed to exclusive English jurisdiction, subject to its right to bring claims abroad “which may overlap”. Furthermore, in the EU context, the parties’ intention cannot have been that the designated court would be stayed rather than the foreign court, or vice versa; it must have been that the court first seised – which could be either – should proceed, and all other courts should stay themselves/decline jurisdiction.

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Note 3 “...if the parties have agreed that the foreign proceedings may be brought even though there may be concurrent proceedings in England, the idea that it may be wrongful to bring them is almost unarguable: the maxim that

volenti non fit injuria

will be a good guide when looking for a wrong.” (citing:

Royal Bank of Canada v Cooperatieve Centrale Raiffeisen-Boerenleenbank BA

and

Highland Crusader Offshore Partners LP v Deutsche Bank AG

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Note 4 N. B., I do not go so far as to say that England is the appropriate and natural forum for the determination of all the issues between the parties. In so far as the parties have agreed that the Lender can bring proceedings elsewhere, any competent jurisdiction chosen by the Lender must be treated as appropriate and natural for any claims commenced there by the Lender – not least, of course, Singapore.

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