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6 MAY 2019

Anti-Arbitration Injunctions: A Spanner in the Works?

Nautical Supreme Sdn Bhd v Jaya Sudhir Jayaram & Ors^[1]

Many often think that only signatories to an arbitration agreement can control an arbitration. What, however, can third parties do if an arbitration touches upon their interests?

In *Nautical Supreme*, the Court of Appeal confirmed that third parties can obtain injunctions to restrain arbitration proceedings (i.e. anti-arbitration injunctions) — a risk that arbitral parties are often unaware of. However, such injunctions are exceptional remedies and, with this latest decision, will now only be granted on grounds completely different from those applied in previous Malaysian cases.

The decision concerns a shareholders' agreement containing an arbitration clause. The plaintiff was not a shareholder and thus not a party to the underlying arbitration clause. When a dispute involving the plaintiff's business interests arose, the shareholders commenced arbitration in the plaintiff's absence. The plaintiff applied to court for an anti-arbitration injunction. Although granted by the High Court, the Court of Appeal refused to uphold the anti-arbitration injunction.

The decision is significant because it revamps the Malaysian law on anti-arbitration injunctions. Recognising that anti-arbitration injunctions are different from conventional interlocutory injunctions, the court created a separate test for them that aligns Malaysian law with prevailing international jurisprudence. More importantly, the court emphasised that this was an exceptional remedy, with judicial discretion to be exercised sparingly and with due regard to any pending arbitration and the objective and principles of the Arbitration Act 2005.

Ultimately, *Nautical Supreme* shows the commercial astuteness of Malaysian courts. While reaffirming its pro-arbitration inclination, the court has also shown its awareness of the need to balance this policy with the interest of third parties. The case shows Malaysia's commitment to becoming a leading arbitration hub.

Chambers)

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Published by the Energy, Infrastructure & Projects and International Arbitration Practice Group

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[2019] 3 CLJ 628 (CA)