



Dispute Resolution Update

Court of Appeal confirms limits to grant of a stay on case management grounds in favour of arbitration (Rex v Gulf Hibiscus)

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Arbitration analysis: What is the nature of a Singapore court's grant of a case management stay and its powers to lift such a stay or even discharge the original stay in the absence of an appeal? What should the Singapore court's approach in granting a case management stay be where the plaintiff in court litigation does not intend to commence arbitration proceedings against the other named party to the arbitration agreement? Shaun Lee, counsel in the dispute resolution group at Bird & Bird ATMD LLP in Singapore, explains the implications of the Singapore Court of Appeal's decision in this case.

[Rex International Holding Ltd and another v Gulf Hibiscus Ltd \[2019\] SGCA 56](#)

What are the practical implications of this case? Why is the decision of interest to arbitration, disputes and commercial lawyers?

The Singapore Court of Appeal's decision in *Rex v Gulf Hibiscus* confirms that the court's grant of a case management stay is part of the court's exercise of its inherent jurisdiction to manage its own internal processes and includes the power to lift any conditional stay granted where the dispute has not been resolved despite a substantial effluxion of time.

The court's case management power also extends to discharge a stay on the basis that the initial grant of the case management stay was erroneous in the first instance and even though there was no appeal against that initial grant.

In coming to its decision, the learned judges considered that the initial grant of the case management stay in *Gulf Hibiscus Ltd v Rex International Holding Ltd and another* [2017] SGHC 210 was erroneous in the first instance. This was because the claim before the Singapore court by one party to the arbitration clause did not involve the counterparty in form or substance. Further, the Singapore court plaintiff had no intention to commence arbitration against the counterparty.

What was the background?

On 21 April 2016, the respondent, Gulf Hibiscus Ltd (Gulf Hibiscus), commenced court proceedings against the appellants, Rex International Holding Limited and Rex International Investments Pte Ltd (collectively, Rex). Gulf Hibiscus alleged wrongs committed by Rex and their associated companies in relation to joint ventures between the two sides. Rex thereafter sought a stay of the proceedings on case management grounds. Rex relied on an arbitration clause found in a shareholders' agreement that had been entered into between Rex's subsidiary (being Rex Middle East Limited, RME) and Gulf Hibiscus. However, Rex were not party to the arbitration clause nor able on their own to invoke it. Further, Gulf Hibiscus's claims against Rex were not subject to any arbitration clause.

The High Court upheld the decision of the assistant registrar to grant a stay but made it subject to certain conditions. The stay was granted on terms, inter alia, that the stay would be time limited for parties to initiate the multi-tier dispute resolution process and to commence arbitration if no settlement was reached. See News Analysis:

[Singapore: defendants stay court proceedings by relying on arbitration agreement to which they were not party \(Gulf Hibiscus v Rex\).](#)

No appeal was brought against the order, but at the same time, no arbitration or other proceedings between RME and Gulf Hibiscus ensued.

As a result, the matter resurfaced in 2019 and the same High Court judge in *Gulf Hibiscus Ltd v Rex International Holding Ltd and another* [2019] SGHC 15 lifted the stay, as there had been no further progress either on settlement or the commencement of arbitration. See News Analysis: [Singapore arbitration—clarifying discretionary stays \(Gulf Hibiscus v Rex International Holding\).](#)

The High Court judge held that the nature of case management stays was such that the stay could not continue indefinitely, given its conditional nature and since liberty had been granted to the parties to apply to court to reinstate proceedings if the relevant conditions were not met. Additionally, the court was entitled to lift the stay in the event of undue delay, through the exercise of its general discretion.

Rex's primary argument in the High Court below and on appeal was that they would be required to procure RME to commence arbitration in pursuit of

a negative case, that is for a declaration of non-liability, if they desired the continuance of the stay. Rex argued that they should not be made to initiate the arbitration process and incur costs when it was Gulf Hibiscus who was alleging wrongs on Rex's part.

What did the court decide?

The Singapore Court of Appeal (Menon CJ delivering the judgment) was moved to 'make some observations on the propriety' of the stay notwithstanding that the initial grant had not been appealed against. The court held that a stay ought not to have been granted in the first place (at para [9]). This determination resolved Rex's argument that the effect of lifting the stay would be to compel RME to commence arbitration in a defensive posture. The Singapore Court of Appeal reasoned that Rex's contention was 'wholly misconceived' because it 'assumes that there are claims against RME to begin with' (at para [13]). The learned judges considered that it was 'plainly untenable' to compel Gulf Hibiscus to pursue a claim against RME despite it having no desire to do so.

In coming to its decision, the Court of Appeal held that the High Court, in its initial decision, had 'overlooked' certain matters (at para [12]). In particular, while the High Court had concluded that there was a significant overlap between the factual issues in the putative arbitration with those in the court proceedings, nevertheless, the learned judge failed to sufficiently consider 'the shape of the putative arbitration' (at para [12]) being:

- who are likely to be parties to it?
- for what relief?
- how would the issues there relate to the issues in the proceedings that were before him?
- whether the court proceedings depended on the resolution of issues that may arise in the putative arbitration?

The Court of Appeal held that if the above questions had been asked, it would have been apparent that the putative arbitration was 'a largely illusory one' because RME was not being sued by Gulf Hibiscus and had not itself suggested that it (RME) had any claims to bring against Gulf Hibiscus. The court considered that it was insufficient for the grant of the stay to be made simply on the basis that—(i) Rex could procure RME to commence arbitration if Gulf Hibiscus refused to do so, and (ii) Rex were 'ready and willing to do all things necessary to enable disputes that arise out of the [shareholders'

agreement] to be resolved expeditiously in accordance with [the arbitration clause]' as the latter could not lead to the conclusion that Rex were willing to move RME to commence arbitration. Finally, insofar as there were no relevant disputes pursuant to the shareholders' agreement, RME's commencement of arbitration would merely result in 'shadow-boxing against putative claims that had not yet been threatened'.

Further and in any event, the court would have lifted the stay because ' the continuance of the stay would have stymied the resolution of an already protracted dispute and that the dispute ought to be resolved' (at para [15]).

The Court of Appeal also held that it was open to them to independently lift the stay even though no appeal had been made against the initial grant. This was because the grant of a stay on case management grounds is part of the court's exercise of its inherent jurisdiction to manage its own internal processes. Further, the court does not become functus officio after a stay is granted and has an independent power to lift the stay (at para [16]).

Any concluding comments?

The Singapore Court of Appeal's decision makes eminent sense. It cannot be the case that related entities to the named parties of an arbitration agreement are entitled to obtain a case management stay if the dispute in court does not, in form and substance, involve the parties to the arbitration agreement. The Court of Appeal's clarification and approach strikes a balance

between upholding the parties' autonomy when entering into and being bound by an arbitration clause, the autonomy of plaintiffs to choose their forum and defendants, as well as minimising duplicative litigation (ie, in parallel court and arbitration proceedings).

The decision also provides greater clarity on the scope and ambit of the court's inherent powers of case management. Nevertheless, a future case might have to decide more fully the circumstances under which a plaintiff is entitled to apply for a lifting of a stay as opposed to appealing against grant of the stay itself.

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