

# OW Bunker bankruptcy – update from Singapore



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In most common law jurisdictions, a person who is sued, or expects to be sued, by rival claimants may seek relief from their local court by applying for a summons compelling the rival claimants to appear before the court to stake their claims. The court may then order that the issues between the rival claimants be tried together and direct who shall be the plaintiff and defendant. In legal terms, this procedure is known as an interpleader summons.

## Interpleader actions

Against the background of the ongoing OW Bunker group (OWB) saga, Steven Chong J. presiding in the High Court of Singapore recently ruled upon 13 interpleader actions filed by various purchasers (the 'Purchaser') of bunkers and heard them on a consolidated basis.

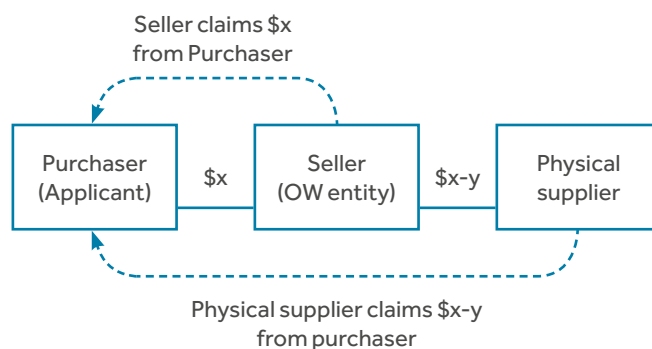
In *Precious Shipping Public Company Ltd and others v. O.W. Bunker Far East (Singapore) Pte Ltd and others*,<sup>1</sup> the various purchasers sought directions from the court, by interpleader summons, as to whether they should pay OWB (the 'Seller') with whom they had contracted, or instead pay the physical suppliers of the bunkers (the 'Physical Supplier').

The relationship between the parties is shown diagrammatically in para 7 of the judgment:

## Court decision

The Singapore court decided, rather on a technicality, that the threshold for seeking the relief of an interpleader was not satisfied in these cases and dismissed the applications. According to the judgment, to succeed in obtaining the relief of an interpleader, the Purchaser must satisfy the following conditions:

- (i) that it was under a contractual obligation to make payment for the bunkers under the Purchaser-Seller contract(s);
- (ii) that there was an expectation that the Purchaser would be sued by at least two persons, in the sense that the Purchaser must be able to show that both the Physical Supplier and the Seller have a *prima facie* case or good cause of action against the Purchaser; and
- (iii) that these claims were adverse claims for debt, monies, goods or chattels.



Whilst condition (i) seemed to have been satisfied, the Singapore court held that conditions (ii) and (iii) were not.

Counsel for the Physical Supplier advanced a 'potpourri' of possible claims against the Purchaser, including alleging claims by way of a collateral contract, bailment, fiduciary agency, retention of title, tort of conversion, unjust enrichment and by way of a maritime lien, all of which were roundly rejected by the Singapore court as failing to meet the *prima facie* or good cause of action test.

In respect of condition (iii), the court held that even if it accepted that the Physical Supplier had a *prima facie* claim against the Purchaser, which the court did not, the claims by the Seller (OWB) were not *adverse* or *competing* with the claims of the Physical Supplier.

In order for the claims to be *adverse* or *competing* with each other, the court distilled three requirements after an extensive review of precedent, as follows:

- (i) There must be symmetry: the competing claims must be made in respect of the same subject matter.
- (ii) Mutual exclusivity: the resolution of the interpleader must result in the extinction of the unsuccessful competing claim.
- (iii) Actual disagreement: the applicant must face an actual dilemma as to how he should act.

The court found requirements (i) and (ii) to be absent and explained as follows:

*'...None of the competing claims of the [Physical Supplier]...assert that the physical supplier has a contractual right to be paid the price of the bunkers under the Purchaser-Seller contract. Therefore the requirement of symmetry has clearly not been satisfied...the extinction of these competing claims [of the Physical*

*Supplier] will not have any impact on the sellers' claim [OWB] for the purchase price of the bunkers or vice versa so the requirement of mutual exclusivity is also not satisfied...the claims of the physical suppliers are not adverse to one another and are therefore not suitable for interpleader relief...'*

Incidentally, unlike the English High Court decision in *Res Cogitans*,<sup>2</sup> the Singapore High Court did not have to decide whether the Singaporean *Sale of Goods Act* applied to preclude the claim by the Seller (OWB). In this case, it was sufficient to find that the competing claims by both the Seller and the Physical Supplier were non-competing and non-adverse.

The Singapore court, having dismissed the application for an interpleader, held that it had no power to determine summarily the claim by the Seller (OWB) on its merits. That will have to be for another day.

### Conclusion

This decision suggests, at least under Singapore law, that the Physical Supplier does not have a direct claim against the Purchaser. The recourse for the Physical Supplier would instead seem to lie in proving its claim, together with the pool of creditors, against the wound-up OWB group. However, the court also appreciated that in jurisdictions other than Singapore the Physical Supplier may yet commence a claim based on a maritime lien against the Purchaser or its ship. That may be cold comfort to an owner.

For now, it would seem that, in Singapore, the relief of an interpleader summons does not afford a way out of the OW Bunker impasse. We understand that, as at the time of writing, no appeal is pending against the decision in *Precious Shipping*.

1 [2015] SGHC 187.

2 See The Standard Club [web alert](#), dated 15 July 2015, 'OW Bunker 'test' case – A disappointing UK judgment handed down yesterday'.