

CASE UPDATE



Singapore High Court Clarifies Impact of Arbitration Agreements on Assignments and Bills of Exchange

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Introduction

The Singapore High Court, in the recent decision of *Cassa di Risparmio di Parma e Piacenza SpA v Rals International Pte Ltd* [2015] SGHC 264, provided important clarification on the impact of an arbitration agreement, contained in underlying contract, on:

- (1) assignments to a third-party assignee of rights in that contract;
- (2) disputes surrounding a claim on bills of exchange (such as a promissory note) made by an indorsee and holder in due course of the notes.

The principle issue in the decision was whether assignees and indorsees of a bill of exchange are bound by the arbitration agreement.

The Singapore High Court was of the view that:

- (a) Subject to any express or implied agreement to the contrary, an assignee is bound – i.e. arbitration agreements are assigned with contractual rights.

The assignee of a contractual right is **entitled** to assert the benefit of the arbitration agreement found in the underlying contract against the obligor. However, the assignee is also **obliged** to submit to arbitration all disputes with the obligor falling within the scope of the arbitration agreement.

This is notwithstanding the well-established rule that an assignment can convey to the assignee only contractual benefits, and never burdens.

- (b) Whether a claim on a bill of exchange (such a promissory note) falls within the scope of an arbitration agreement is to be resolved by construing the arbitration agreement in accordance with the ordinary contextual approach to contractual construction, in order to give effect to the parties' objectively ascertained intention.

The commercial purpose behind stipulating a bill of exchange as a payment mechanism **ordinarily** leads to the conclusion that a claim on a bill of exchange is **outside the scope** of an arbitration agreement, even though this conclusion attributes to the parties an intent to fragment the resolution of their dispute.

On the facts of the case, the High Court declined to stay the court litigation that had been commenced by the indorsee and holder of the promissory note. This was despite the fact that the promissory note was issued in connection with an underlying contract that contained an arbitration agreement.

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Summary of Facts

Oltremare SRL (“Oltremare”) (the seller) and Rals International Pte Ltd (“Rals”) (the buyer, who was the defendant in the litigation) entered into a contract for the sale of goods (the “Supply Agreement”), which contained an arbitration agreement.

Rals provided eight promissory notes to Oltremare as deferred payment for the goods. Oltremare negotiated these promissory notes to its bank, Cassa di Risparmio di Parma e Piacenza SpA (“Cariparma”, the plaintiff in the litigation). Oltremare also assigned its contractual right to payment under the contract with Rals, to Cariparma. (The assignment agreement was “the Discount Contract”)

Cariparma was therefore in a position where it was both:

- (1) The indorsee and holder of the promissory notes issued by the buyer; and
- (2) The assignee of the contractual right to payment under the underlying contract between buyer and seller.

When commencing the court litigation against the buyer (Rals), Cariparma relied only on its rights as an indorsee and holder of the promissory notes. Cariparma’s Statement of Claim had made no reference to the Supply Agreement, to the Discount Contract or to its position as Oltremare’s assignee.

This was material to the Court’s reasoning. The Court was of the view that it was open to Cariparma to confine their court litigation to their rights under the promissory note and Cariparma could elect not to invoke their rights as assignee; a plaintiff is generally entitled to frame its causes of action as it chooses.

The Court commented that there was no doubt that Cariparma’s court litigation would have been stayed, had Cariparma’s action been founded on their rights as assignee.

In summary, the Court was of the view that Cariparma’s claim was legitimately confined to its rights as indorsee and holder of the promissory note, and decided that the claim was not within the scope of the arbitration agreement. Hence, the Court declined to stay the court proceedings.

Analysis on Assignment

The Court considered both English case law and academic commentary in deciding that in the absence of any contrary express or implied agreement, an assignee was bound by an arbitration agreement found in the underlying contract. This was notwithstanding the well-established rule that an assignment can convey to the assignee only contractual benefits, not burdens.

The Court noted that an arbitration agreement may be seen as a benefit or a burden, depending on whether a party wishes to arbitrate. The Court decided that a contractual right, which is subject to an arbitration agreement, has annexed to it ab initio both the right and obligation to arbitrate. If the contractual right is assigned, the right and obligation to arbitrate would similarly be transmitted by operation of the assignment. If the assignee then wishes to enforce its contractual right, it is both entitled and bound by law to do so by arbitration.

The Court also elaborated on four important consequences following from its reasoning:

- (1) What the assignor and assignee agree to in the agreement between them does not affect its analysis. The assignor and assignee cannot break apart the right and the remedy which the assignor and obligor have created ab initio as a single, indivisible whole in their contract, at least not without the obligor’s consent.

- (2) The legal basis of the assignee's obligation to arbitrate is fixed before any agreement between the assignor and the assignee.
- (3) An assignee therefore does not need to have notice of, or consent independently to, the arbitration agreement in order for it to be bound to arbitrate. Nothing which the assignee does or knows can result in him receiving or rejecting the obligation to arbitration separately from receiving the assigned right.
- (4) The assignee's consent to take the benefit of the substantive right in question operates in itself to bring along with it the obligation to arbitrate.

The Court opined that the above analysis did not undermine the consensual nature of arbitration. The Court drew a distinction between a party being contractually bound to arbitrate and a party having a subjective intent to arbitrate (the former alone still being consistent with the consensual nature of arbitration). The Court pointed out (on a practical level) that an assignee has the opportunity to review the substantive agreement between the assignor and the obligor and would thus have the opportunity to take the necessary steps to ascertain and/or modify its post-assignment position.

The Court stated at paragraph 122 of its judgment:

"Further, on a practical level, every assignee has the opportunity to review – before he takes an assignment – the substantive agreement between the assignor and the obligor which sets out the rights to be assigned as well as any arbitration agreement and any express choice of law agreement which may govern all of those rights. The assignee therefore has an opportunity to take all necessary steps, with the benefit of professional advice if necessary, to ascertain his own post-assignment position, to bargain for protections against any post-assignment risks he is unwilling to take, and to price in any such risks which cannot be mitigated by contract. This includes the risk, if that is how the assignee sees it, of being bound by the arbitration agreement. In that sense also, the conditional benefit principle does not undermine the consensual nature of arbitration."

Analysis on Bills of Exchange

The Court re-affirmed the position that the commercial purpose of a bill of exchange, as a payment mechanism, is to function as a substitute for cash. Thus, a payee of a bill of exchange is entitled to ignore any underlying contractual dispute with the drawer, and frame its claim (and seek summary judgment) on the bill alone.

The Court considered case law from England, Hong Kong, Australia and Singapore and commented that ordinarily, a claim on a bill of exchange is outside the scope of the arbitration agreement, even though this conclusion attributes to the parties an intent to fragment the resolution of their dispute. However, this conclusion would differ where, say, the parties' arbitration agreement makes express provision bringing a claim on a bill of exchange within the scope of that arbitration agreement.

The Court was also of the view that the present case was distinguishable from a previous Singapore High Court decision in *Piallo GmbH v Yafiro International Pte Ltd* [2014] 1 SLR 1028 ("*Piallo*").

Piallo concerned a distributorship agreement between a manufacturer and a distributor which contained an arbitration agreement. In settlement of a dispute the distributor drew and delivered 15 post-dated cheques to the manufacturer, which were then countermanded before presentation. The manufacturer commenced action on the dishonoured cheques, and the distributor sought a stay of court proceedings in favour of arbitration. The Court there granted the stay, holding that the claim in respect of the cheques was within the scope of the arbitration agreement.

CASE UPDATE



The Court distinguished the present case from *Piallo*.

- (1) First, Cariparma is not a payee of the promissory notes, but an indorsee.

The Court pointed out that in *Piallo*, the litigants were the payee and drawer of the cheques **and also counterparties to the underlying distributorship agreement**; this set the context of the cheques and the arbitration agreement which bound them both. In this case, the Court was of the view that it was unlikely that Cariparma and Rals could have intended (objectively) to bring claims by indorsees on the bill within the scope of the arbitration agreement.

The Court further opined that it was hard to believe that any right-thinking merchant would agree to give up his rights on a dishonoured bill of exchange, in the sense of the breadth of options available to him in terms of enforcement and/or dispute resolution. On the facts, the choice of the payment mechanism of promissory notes appeared to have been a considered commercial choice by Oltremare and Rals, which suggested even more strongly that it would have been in Oltremare and Rals' interests to maximise the procedural rights of Oltremare's indorsee to claim on the bill.

- (2) Second, both Cariparma's claim and Rals' defences to the claim were wholly distinct from the Supply Agreement

In considering the potential defences to Cariparma's narrowly-defined claim on the promissory notes, the Court noted that the critical potential defence raised by Rals (namely, the argument that Cariparma was not a holder in due course of the bill) would be squarely confined within the Bills of Exchange Act, and required no inquiry into the Supply Agreement or the performance of obligations under it. The only relevant considerations were the circumstances in which Oltremare negotiated the notes to Cariparma. Therefore, the claim did not fall within the scope of the arbitration agreement.

Further, the Court noted that the defences of total failure of consideration or a partial quantified failure of consideration had not been sufficiently made out by Rals as defences, and in any case could only be invoked between immediate parties on a bill and not by a drawer of a bill as against a holder in due course (such as Cariparma).

Leave to Appeal

Separately from the Court's decision, the Court also granted leave to Rals to appeal against its decision. The Court acknowledged that its decision may be conceptually irreconciliable with *Piallo*, and may well require Singapore law to choose one approach over another.