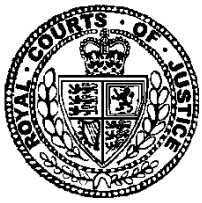

Neutral Citation Number: [2019] EWHC 2284 (Comm)

Case Nos: CL-2019-000216 AND CL-2019-000220

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building,
Fetter Lane, London, EC4A 1NL

Date: 22/08/2019

Before :

ANDREW BURROWS QC
(SITTING AS A JUDGE OF THE HIGH COURT)

- -

Between :

Clearlake Shipping Pte Ltd **Gunvor Singapore Pte Ltd**	**Claimants**
- and –	
Xiang Da Marine Pte Ltd	**Defendant**

- -
- -

Mr Thomas Raphael QC and Mr Marcus Mander (instructed by **Kennedys Law LLP**) for **Clearlake Shipping Pte Ltd**
Mr Michael Ashcroft QC and Mr Oliver Caplin (instructed by **Hill Dickinson LLP**) for **Gunvor Singapore Pte Ltd**
Ms Sara Masters QC (instructed by **Holman Fenwick Willan LLP**) for the **Defendant**

Hearing dates: 25-26 July 2019

APPROVED JUDGMENT

- -

ANDREW BURROWS QC:

1. INTRODUCTION

1. This is the 'return day' judgment in relation to two interim anti-suit injunctions ordered against Xiang Da Marine Pte Ltd (hereinafter referred to as 'Xiang Da' or 'the defendant') on applications made without notice by Clearlake Shipping Pte Ltd (in claim number CL-2019-000216) and Gunvor Singapore Pte Ltd (in claim number CL-2019-000220). I shall hereinafter refer to the latter two parties as 'Clearlake' and 'Gunvor' or, where referring to them together, 'the claimants'. The anti-suit injunctions (and linked orders) were granted by Bryan J in this court on 16 April 2019. There are several applications before me made by all the parties but I am principally concerned with whether, as the claimants submit, those interim anti-suit injunctions should continue (albeit with light amendments) or whether, as the defendant submits, the interim anti-suit injunctions should continue only with very fundamental amendments.

2. The proceedings, which the interim anti-suit injunctions are restraining, are third party proceedings brought in Singapore by Xiang Da against Clearlake and Gunvor. Those third party proceedings have arisen in relation to an action in Singapore against Xiang Da brought by China-Base Ningbo Group Co Ltd (hereinafter 'China-Base'). In so far as Xiang Da is liable to pay damages or otherwise suffers loss by reason of the claim brought against it by China-Base, it seeks an indemnity or contribution from Clearlake and Gunvor as third parties. (I interject here that, subsequent to my sending out a draft judgment to the parties, I have been informed that the claim by China-Base against Xiang Da in Singapore has been discontinued. But the third party proceedings remain extant; and those third party proceedings could still be used by Xiang Da to seek to recover loss suffered by reason of the claim brought against it by China-Base.)

2. THE FACTS, THE VARIOUS CONTRACTS, AND THE JURISDICTION CLAUSES

3. In general terms, this case involves a cif contract of sale, a voyage charterparty and voyage sub-charter, 'switch' bills of lading, letters of indemnity, and, most importantly for the present applications, jurisdiction clauses. This hearing should not be a mini-trial of disputed facts. But the essential factual basis on which I must decide these applications is not in dispute between the parties and, in any event, the main facts emerge sufficiently clearly from the documents and witness statements. In relation to the facts, I have been assisted by the judgment of Bryan J; and, of the witness statements, the first witness statement of Karnan Thirupathy, on behalf of Clearlake, dated 2 April 2019, has been particularly helpful in leading me through to the relevant documents.

4. On 5 February 2016, Clearlake voyage chartered a vessel, *Chang Hang Guang Rong* (hereinafter 'the vessel'), from Xiang Da. That voyage charterparty (the 'Clearlake charter') comprises a recapitulation ('recap' for short) which incorporates the BPVoy4 standard form charterparty and amendments made to it by the parties (**4/36-116**). The broker identified in the charterparty is China Grace Asia Pacific Ltd (hereinafter referred to as 'China Grace') (**4/38**). I should point out that, although it is not in dispute for the purposes of the applications before me that Xiang Da is the contracting party and (disponent) owner of the vessel, a company called Nanjing

Petroleum Transportation Co of China is actually named as the contracting party and (disponent) owner of the vessel at the start of the recap.

5. As regards jurisdiction, that Clearlake charter provides as follows:

'[Recap]

Amendments to BPVOY4

Clause 49 Law

Dispute which may arise out of this Charter, save as hereinafter provided. Any dispute arising out of this Charter less than USD 50,000 shall be referred to a single arbitrator in London, subject to the LMAA small claims procedure.' (**4/57**)

'[BPVoy4 form]

49. Law

The construction, validity and performance of this Charter shall be governed by English law. The High Court in London shall have exclusive jurisdiction over any dispute which may arise out of this Charter.' (**4/116**)

Therefore, reading those together, any dispute (arising out of the Clearlake charter) of less than $50,000 is to be referred to arbitration under the London Maritime Arbitrators Association small claims procedure but, in relation to any dispute involving sums greater than that, the High Court in London shall have exclusive jurisdiction.

6. It is worth adding here that there are various provisions in the recap dealing with commingling and blending of cargo, re-documentation, and splitting of bills of lading, and, in those contexts, dealing with the charterer providing letters of indemnity for the owner (see **4/43-45** and additional clauses 10 (**4/79-80**) and 15 (**4/82**)).

7. On the same day that the Clearlake charter was concluded, Clearlake in turn sub-voyage chartered the vessel to Gunvor (the 'Gunvor sub-charter') on an amended Asbatankvoy form and pursuant to a long-term contract of affreightment in force between Clearlake and Gunvor (**4/12-153**). As regards jurisdiction, that Gunvor sub-charter provides (**4/25**):

'***5. Law and Litigation Clause***

This charter shall be construed and the relations between the parties determined, in accordance with the Laws of England.

Any dispute arising out of or in connection with this charter, involving amounts in excess of US$50,000 … shall be subject to the jurisdiction of the English High Court.

Any dispute arising out of or in connection with this charter involving amounts up to and including US$50,000 … shall be referred to arbitration by a single arbitrator in London in accordance with the provisions of the London Maritime Arbitrators Association (LMAA) Small Claims Procedure.'

8. Turning to the sale contract, we can cut through some of the detail to say that by a contract concluded on 15 March 2016, and set out in writing on 28 March 2016, Gunvor agreed to sell to China-Base, cif Nansha, China, some 40,000 mt of light cycle oil (**4/207-221**). Gunvor nominated the vessel *Chang Hang Guang Rong* to perform that sale contract. The price under the sale contract was to be paid by irrevocable letter of credit.

9. On 30 March 2016 two letters of credit (not one) were opened in favour of Gunvor on China-Base's application, one for $7,600,000 in respect of 16,000 mt of light cycle oil (**4/222-227**) and the other for $11,400,000 in respect of 24,000 mt of light cycle oil (**4/228-234**). It was decided to split the bills of lading so as to have two bills of lading, rather than the original one bill of lading, for the light cycle oil being sold to China-Base. We therefore see, in an email dated 1 April 2016, from Clearlake to China Grace (and a consequent equivalent email, 18 minutes later, from China Grace to the owner: **4/264**), a requirement 'due to receiver's request' for the re-documentation of the bills of lading with two replacement (ie 'switch') bills of lading and cargo manifests attached (**4/259-263**). In response, China Grace wrote to Clearlake attaching draft letters of indemnity in favour of the owner (for commingling/blending, inter-tank transfer, and re-documentation) and asking for the sending back of hard copies as soon as possible (**4/265-278**). A short while later, Clearlake sent back to China Grace (for Xiang Da) signed and letter-headed copies of the three letters of indemnity (**4/279-289**). Each of the three letters of indemnity has the same final clause (clause 5) which reads as follows:

   '*This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England*.'

   'At your request' is referring to the request of the owner. For the purposes of these applications, it is not in dispute (Clearlake reserving its position for other contexts) that that is referring to the request of Xiang Da (although, similarly to what I have pointed to in paragraph 4 above, Nanjing Tanker Corporation is actually named in the letters of indemnity as the owner).

10. Later on the same day (1 April 2016), the master of the vessel (acting on behalf of the owner, Xiang Da) signed and issued the two switch bills of lading (and cargo manifests) which were sent to China Grace (**4/290-294**) and, on the following day, Gunvor sent copies to China-Base (**4/295-306**). The two switch bills of lading are dated 1 April 2016 and each states that the relevant cargo of light cycle oil (ie 16,000 mt and 23,949.295 mt respectively) was shipped at 'Subic Bay Philippines' and that 'all the terms and exceptions contained in [the] Charter are herewith incorporated'. The vessel arrived at Nansha on 3 April 2016 and the oil was discharged between 7 and 9 April, after which the vessel departed; but, on 20 May 2016, a portion of the oil was detained by the Nansha customs authorities on the grounds that (contrary to what was stated in the shipping documents) the cargo did not originate from the port of Subic Bay (**1/34**).

11. In relation to shipments of light cycle oil by Gunvor on 36 voyages between August 2014 and May 2016, there have been criminal proceedings in Guangzhou, China against the ex-managing director of Gunvor in Singapore, Yin Dikun. By the judgment of the Guangzhou court, dated 26 September 2018 (**7/67-85**), Yin Dikun

was found guilty of smuggling by making false declarations about the place of origin of light cycle oil being shipped. He was imprisoned for 12 years; and there has been a financial confiscation order against Gunvor requiring it to pay over $54.9 million of evaded tax. But Gunvor was not a party in those criminal proceedings and submits that the Guangzhou Judgment imposes no obligation upon it.

3. THE VARIOUS LEGAL (CIVIL) PROCEEDINGS

12. On 1 April 2017, China-Base brought proceedings in the High Court of Singapore (in claim number ADM 56) against the owner of the vessel (ie Xiang Da). In that action, China-Base sought damages (including a sum of $16,131,644.41, comprising most of the purchase price, paid to Gunvor) primarily for alleged fraudulent or negligent misrepresentations in the switch bills of lading (and cargo manifests) because, it was alleged, the cargo was not loaded at Subic Bay (**4/308-318**). Xiang Da put in a defence to that claim on 16 April 2018 (**4/325-332**) denying, for example, that there were any misrepresentations and alleging that, in any event, there was no reliance on any such misrepresentations by China-Base.

13. I note for completeness that Xiang Da itself initially challenged the jurisdiction of the Singapore Court to hear the case against it brought by China-Base (**9/89-143**). This was on the ground that the switch bills of lading laid down, by reason of the incorporation of the charter terms, that the English High Court should have jurisdiction. That jurisdictional challenge by Xiang Da was dismissed by the Assistant Registrar in Singapore apparently on the essential basis that there was no bill of lading contract between China-Base and Xiang Da so that there was no relevant jurisdiction clause (**2/242**). By putting in its defence on 16 April 2018, Xiang Da submitted to the jurisdiction of the Singapore court and it then withdrew its jurisdictional appeal on 15 August 2018 (**2/245).** I am not in a position to make any comment as to whether an appeal on jurisdiction might have been successful had Xiang Da not submitted to the jurisdiction of the Singapore court and it is irrelevant to the matters I have to decide.

14. On 8 January 2019, Xiang Da gave notice of intention to bring a third party claim against both Clearlake and Gunvor (**4/355-360**). By its statement of claim dated 21 March 2019, Xiang Da set out third party proceedings seeking an indemnity or contribution from Clearlake and/or Gunvor in respect of any liability to pay damages or other loss it might suffer by reason of China-Base's claim against Xiang Da (**4/365-370**). The basis for that third party liability is put as being (but it is ultimately important to note the proposed amendments referred to in paragraph 16 below) that Clearlake and/or Gunvor are liable to Xiang Da for 'fraudulent misrepresentation and/or negligent misstatement and/or breach of duty and/or breach of contract'. What is alleged is a misrepresentation to Xiang Da by the statement 'due to receiver's request', conveyed through China Grace in an email dated 1 April 2016, and also misrepresentations to Xiang Da in, or in respect of, the switch bills of lading (and the cargo manifests). In relation to Clearlake, there is an additional basis of claim, at paragraph 9 of the statement of claim, by which Xiang Da claims to be entitled to an indemnity under a letter of indemnity dated 1 April 2016. Although it is not specified which of the three letters of indemnity is in mind (I have referred to the three letters of indemnity at paragraph 9 above), the most obvious would appear to be the re-documentation letter of indemnity.

15. So we come to the application before Bryan J by which Clearlake and Gunvor sought, and were granted on 16 April 2019, two 'without notice' interim anti-suit injunctions restraining Xiang Da's third party proceedings against them in Singapore. Bryan J's judgment is at [2019] EWHC 1536 (Comm). Bryan J granted the anti-suit injunctions. In brief summary, his reasoning was as follows:

(i) As regards Xiang Da's proceedings against Clearlake, the Clearlake charter exclusive jurisdiction clause applied to the claims for breach of the charterparty and the tortious misrepresentation claims so that Xiang Da was in breach of contract in bringing proceedings in Singapore; and there were no strong reasons not to grant the anti-suit injunction. The same also applied to Xiang Da's claim against Clearlake under the re-documentation letter of indemnity because there was no conflict between clause 5 of the letter of indemnity and the exclusive jurisdiction clause in the Clearlake charter.

(ii) As regards Xiang Da's proceedings against Gunvor, Gunvor was entitled to the anti-suit injunction on a 'quasi-contractual basis'. This basis is explained below at paragraph 25. In any event, Gunvor should be granted the injunction on the basis of vexation or oppression because England was the most appropriate forum for the resolution of the parties' dispute and, in all the circumstances, including having regard to comity, the ends of justice required the granting of the injunction. At [74], Bryan J emphasised that 'if I grant an anti-suit injunction both in relation to Clearlake and in relation to Gunvor, then all those claims which are the subject matter of the third party proceedings will … be brought in this jurisdiction.'

16. Xiang Da has responded to that judgment and injunctions not by submitting that no anti-suit injunction should have been ordered but rather by submitting that, in the light of the amendments (**3/100**) that it wishes to make to the statement of claim in the third party proceedings in Singapore, much of Bryan J's reasoning is no longer applicable so that the anti-suit injunctions can continue but only with fundamental amendments. As I understand it, the draft amendments to its statement of claim were provided by Xiang Da to Clearlake and Gunvor on 7 June 2019. The amendments to the statement of claim make clear that:

(i) Xiang Da's third party claim against Clearlake is solely based on the letter of indemnity claim (in paragraph 9 of the statement of claim); and, as explained in paragraph 14 above, of the three letters of indemnity, it would appear that this refers to the re-documentation letter of indemnity.

(ii) Xiang Da's third party claim against Gunvor is solely brought in tort for fraudulent and/or negligent misrepresentations (or other breach of duty in tort). Any possible contractual claim against Gunvor has been abandoned.

Xiang Da reinforces this by undertaking to the Court that it will not pursue any claims against Clearlake or Gunvor before the Singapore courts save for those set out in the amended third party proceedings. (But it should be borne in mind that this undertaking relates only to proceedings in Singapore so that it does not preclude Xiang Da bringing proceedings against Clearlake and/or Gunvor in England.)

17. Xiang Da's approach was succinctly explained by Sara Masters QC, counsel for Xiang Da, in her skeleton argument:

'In this hearing, Xiang Da seeks to vary the ASIs granted to Clearlake and to Gunvor. Xiang Da accepts that any claims brought against Clearlake under the Charter are subject to the Charter Jurisdiction Clause. In the Third Party Proceedings in Singapore, Xiang Da wishes to pursue only those claims which are not subject to the Charter Jurisdiction Clause. Those claims are (1) a claim for an indemnity pursuant to a letter of indemnity issued by Clearlake and enforceable by Xiang Da…; and (2) a claim in tort for fraudulent and/or negligent misrepresentation against Gunvor…'

4. THE LAW ON ANTI-SUIT INJUNCTIONS

18. I now need to set out the main legal principles applicable to the grant of anti-suit injunctions. These principles are not in dispute between the parties. As has emerged from a number of cases (see, for example, the judgment of Millett LJ in *Aggeliki Charis Compania Maritima SA v Pagnan SpA, The Angelic Grace* [1995] 1 Lloyd's Rep 87, 96), although the grant of an injunction, including an anti-suit injunction, is ultimately a discretionary decision for the court (under s 37(1) of the Senior Courts Act 1981), there are two main grounds for granting an anti-suit injunction (which I shall assume, for simplicity, and as is the case here, are to restrain foreign proceedings).

(i) The first main ground is that the foreign proceedings constitute the breach of a jurisdiction clause in a contract between the parties. Where that is so (and it is a question of contractual interpretation whether the jurisdiction clause covers the dispute in question) an anti-suit injunction will be granted unless there are strong reasons not to do so. In the words of Lord Bingham in *Donohue v Armco Inc* [2001] UKHL 64, [2002] 1 Lloyds Rep 425, at [24]:

'*the general rule is clear: where parties have bound themselves by an exclusive jurisdiction clause effect should ordinarily be given to that obligation in the absence of strong reasons for departing from it. Whether a party can show strong reasons, sufficient to displace the other party's prima facie entitlement to enforce the contractual bargain, will depend on all the facts and circumstances of the particular case.'*

This can be, and has been, helpfully referred to as 'the contractual basis'. The root idea is very simple. In English law, a prohibitory injunction is the primary remedy in the context of enforcing a negative contractual obligation (*Doherty v Allman* (1878) 3 App Cas 709, 720; *Araci v Fallon* [2011] EWCA Civ 668); and all that the court is here doing is restraining, by a prohibitory anti-suit injunction, the breach of a particular type of negative contractual obligation.

(ii) The second main ground is that the foreign proceedings are otherwise vexatious or oppressive. Under this ground (as stressed, for example, in Toulson LJ's judgment in *Deutsche Bank AG v Highland Crusader Partners LP* [2009] EWCA Civ 725, [2010] 1 WLR 1023, at [50]), it is necessary to be satisfied that England is clearly the more appropriate forum for the trial of the action (what is sometimes referred to as 'the natural forum') and that it is necessary in the interests of justice to grant the injunction taking into account considerations of comity. In *Elektrim SA v Vivendi Holdings I Corporation* [2008] EWCA Civ 1178, [2009] 1 Lloyd's Rep 59, at [84] and [121], Lawrence Collins LJ clarified that, taken together with other matters, the inherent weakness of a claim may here be an important factor. His Lordship also emphasised,

at [83], that 'the categories of factors which indicate vexation or oppression are not closed…'.

19. It is not entirely clear what standard of proof needs to be satisfied for an interim anti-suit injunction to be granted. But at least in relation to whether there is a binding jurisdiction clause, it was laid down in, for example, *Transfield Shipping Inc v Chiping Xinfa Huayu Alumina Co Ltd* [2009] EWHC 3629 (QB), especially at [50], by Christopher Clarke J, that the claimant seeking the anti-suit injunction must show that there is a 'high degree of probability' that it would establish at trial that there was a binding jurisdiction agreement. Although I shall not explicitly refer to this standard again, I shall assume throughout that the claimant must establish to a 'high degree of probability' that, at a trial, a final anti-suit injunction would be granted.

20. The legal principles that I have set out in paragraph 18 may be regarded as well-established and straightforward. But there is a further aspect of the law before me that is not so straightforward (although it was the application of the relevant legal principles, rather than the principles themselves, that appeared to divide the parties). This is the extent to which an exclusive jurisdiction clause in a contract (between A and B) can be enforced (by B against A) by an anti-suit injunction so as to prevent tort proceedings against a third party (ie by A against C) (assuming that, subject to this third party point, the tort proceedings would otherwise by covered by the jurisdiction clause). Relevant cases on this question include *Credit Suisse First Boston (Europe) Ltd v MLC (Bermuda) Ltd* [1999] 1 Lloyd's Rep 767, at 777-778 (*per* Rix J); *Donohue v Armco Inc* [2001] UKHL 64, [2002] 1 Lloyd's Rep 425; *Horn Linie Gmbh & Co v Panamericana Formas E Impresos SA, The Hornbay* [2006] EWHC 373 (Comm), [2006] 2 Lloyd's Rep 44 (Morison J); *Winnetka Trading Corp v Julius Baer International* [2008] EWHC 3146 (Norris J); *Vitol SA v Arcturus Merchant Trust Ltd* [2009] EWHC 800 (Comm) at [36] (*per* Blair J); *Morgan Stanley & Co International Plc v China Hasihen Juice Holdings Co Ltd* [2009] EWHC 2409 (Comm) (Teare J); *Royal Bank of Scotland v Highland Financial Partners LP* [2012] EWHC 1276 (Comm), [2012] 2 CLC 109 (Burton J); *Cavendish Square Holding BV v Joseph Ghossoub* [2017] EWHC 2401 (Comm), at [69] – [84] (*per* Laurence Rabinowitz QC); and *Dell Emerging Markets v IB Maroc* [2017] EWHC 2397 (Comm), [2017] 2 CLC 417, at [11] – [21] (*per* Teare J). To put this specific issue in the broader context of the general law of contract, the case of *Snelling v John G Snelling Ltd* [1973] QB 87 is well-known as illustrating the general principle that, where there is a contract between A and B, by which A promises B not to sue C, B as the contracting party may obtain a stay of proceedings to stop A proceeding against C.

21. It will be helpful to refer immediately to two fairly lengthy passages from two of those cases. In *Donohue v Armco Inc* the House of Lords unanimously decided that, although Mr Donohue had the benefit of a contractual exclusive English jurisdiction clause, there were on the facts strong reasons not to grant him an anti-suit injunction enforcing that jurisdiction clause restraining tort proceedings against him in New York. The leading speech was given by Lord Bingham. But, on the point I am here considering, Lord Scott, in his concurring speech, considered in some detail the possibility of an anti-suit injunction being ordered to restrain tort proceedings against a third party who was a joint tortfeasor with the contracting party. He said this:

'[60] There is a point of construction of the exclusive jurisdiction clause that it is convenient to deal with at this point. It is accepted that the clause is not restricted to

contractual claims. A claim for damages for, for example, fraudulent misrepresentation inducing an agreement containing an exclusive jurisdiction clause in the same form as that with which this case is concerned would, as a matter of ordinary language, be a claim in tort that arose "out of or in connection with" the agreement. If the alleged fraudulent misrepresentation had been made by two individuals jointly, of whom one was and the other was not a party to the agreement, the claim would still be of the same character, although only the party to the agreement would be entitled to the benefit of the exclusive jurisdiction clause. The commencement of the claim against the two alleged tortfeasors elsewhere than in England would represent a breach of the clause. The defendant tortfeasor who was a party to the agreement would, absent strong reasons to the contrary, be entitled to an injunction restraining the continuance of the foreign proceedings. He would be entitled to an injunction restraining the continuance of the proceedings not only against himself but also against his co-defendant. The exclusive jurisdiction clause is expressed to cover "any dispute which may arise out of or in connection with" the agreement. It is not limited to "any claim against" the party to the agreement. To give the clause that limited construction would very substantially reduce the protection afforded by the clause to the party to the agreement. The non-party, if he remained alone as a defendant in the foreign proceedings, would be entitled to claim from his co-tortfeasor a contribution to any damages awarded. He could join the co-tortfeasor, the party entitled to the protection of the exclusive jurisdiction clause, in third party proceedings for that purpose. The position would be no different if the claim were to be commenced in the foreign court with only the tortfeasor who was not a party to the exclusive jurisdiction clause as a defendant. He would be able, and well advised, to commence third party proceedings against his co-tortfeasor, the party to the exclusive jurisdiction clause.

[61] In my opinion, an exclusive jurisdiction clause in the wide terms of that with which this case is concerned is broken if any proceedings within the scope of the clause are commenced in a foreign jurisdiction, whether or not the person entitled to the protection of the clause is joined as defendant to the proceedings. An injunction restraining the continuance of the proceedings would not, of course, be granted unless the party seeking the injunction, being someone entitled to the benefit of the clause, had a sufficient interest in obtaining the injunction. It would, I think, be necessary for him to show that the claim being prosecuted in the foreign jurisdiction was one which, if it succeeded, would involve him in some consequential liability. It would certainly, in my opinion, suffice to show that if the claim succeeded he would incur a liability as a joint tortfeasor to contribute to the damages awarded by the foreign court.

[62] This point is of direct relevance in the present case. In the New York proceedings …, several claims are made but most of them are based upon the allegation that Mr Donohue, Mr Atkins, Mr Rossi and Mr Stinson conspired together fraudulently to extract in various ways substantial sums of money from the Armco group of companies. If the allegations can be made good, the liability of the conspirators would be a joint and several liability. There are substantial issues as to which of the claims fall within the language of the exclusive jurisdiction clause but I think it is clear that some of them do. Of the four alleged conspirators only Mr Donohue and Mr Atkins are contractually entitled to the benefit of the exclusive jurisdiction clause. Mr Atkins has settled with Armco, so it was Mr Donohue alone

who commenced an action in this country for an injunction enforcing the clause. If Mr Donohue is entitled to an injunction enforcing the clause he is entitled, in my opinion, to an injunction that bars the continuance of the claims in question not only against himself but also against Mr Rossi and Mr Stinson with whom he is jointly and severally liable. If claims against Mr Donohue are within the clause, then so too are the corresponding claims against Mr Rossi and Mr Stinson. Mr Rossi and Mr Stinson are not contractually entitled to enforce the clause, but Mr Donohue is, in my opinion, entitled to ask the court to enforce it by restraining the prosecution in New York of all claims within its scope in respect of which Mr Donohue would be jointly and severally liable.'

22. In *Cavendish Square Holding BV v Joseph Ghossoub* one of the questions facing Laurence Rabinowitz QC, siting as a Deputy High Court Judge, was whether an exclusive jurisdiction clause in a contract between Mr Ghossoub (A) and Cavendish Square Holding BV (B) could be enforced (by B against A) by an anti-suit injunction so as to prevent proceedings against third parties (ie by A against C). It was held that it could not because, as a matter of interpretation, the exclusive jurisdiction clause did not extend to cover claims against third parties. After reviewing several of the authorities listed in paragraph 20 above, Laurence Rabinowitz QC summarised the legal position as follows:

'[82] In light of the consideration given to this question by earlier authorities, it seems to me possible to make the following observations:

(1) Whether an exclusive jurisdiction clause should be understood to oblige a contractual party to bring claims relating to the contract in the chosen forum even if the claim is one against a non-contracting party, requires a consideration of the contract as a whole including not just the language used in the exclusive jurisdiction clause but also all other terms in the contract that may shed light on what the parties are likely to have intended.

(2) The principle that rational businessmen are likely to have intended that all disputes arising out of or connected with the relationship into which they had entered would be decided by the same court cannot apply with the same force when considering claims brought by or against non-contracting third parties. More particularly, whilst it is well established that the language of an exclusive jurisdiction clause is to be interpreted in a wide and generous manner, the starting position in considering whether disputes involving a non-contracting third party might come within the scope of the clause must be that, absent plain language to the contrary, the contracting parties are likely to have intended neither to benefit nor prejudice non-contracting third parties.

(3) Where it is clear from the express terms that the contracting parties have turned their minds to the position of third parties and more particularly whether such third parties are to benefit or bear the burden of rights and obligations agreed between the contracting parties, the absence of any express language in the exclusive jurisdiction clause that provides for the application of that term in relation to claims brought by or against third parties may be an indication that the clause was not intended either to benefit or prejudice such third parties.

(4) Where the exclusive jurisdiction clause is silent on the question, the fact that any provision in the contract dealing with third parties indicates an intention that third parties should not acquire rights as against the contracting parties by virtue of the contract, may be a further indication that the clause was not intended either to benefit or prejudice such third parties.

(5) Where a particular interpretation of the exclusive jurisdiction clause produces a material contractual imbalance because for example it results in one party to a dispute relating to the contract being subjected to an obligation to bring proceedings in the chosen jurisdiction in circumstances where the other party to the dispute is not similarly obliged, or where that interpretation would require a claim against a non-contracting third party to be brought in the agreed jurisdiction even where the chosen forum may not actually have jurisdiction over such a claim against that party, this too may be an indication that the clause was not intended to so apply because such a result is unlikely to be what the contracting parties as rational businessmen would have agreed.

(6) The fact that there is nothing in the contract that might indicate a rational limit in terms of the identity of non-contracting third parties whose rights and interests might be affected by the application of an exclusive jurisdiction clause might provide a further indication that the clause was only intended to affect the rights and interests of the contracting parties.

(7) It follows that where contracting parties intend that any claim relating to the contract be subject to the exclusive jurisdiction clause even where it is one brought by or against a non-contracting party, clear words should be used expressly setting out this intention, the parties to be affected and, if relevant, the manner in which submission of any non-contracting parties to the jurisdiction of the chosen court is to be ensured.'

23. In principle, and consistently with what Lord Scott and Laurence Rabinowitz QC have said and with the other authorities listed in paragraph 20 above, I would express the correct approach to this question (of whether the contracting party (B) can enforce against the other contracting party (A) an exclusive jurisdiction clause, by an anti-suit injunction, so as to prevent tort proceedings by the other contracting party (A) against a third party (C)) in the following way:

(i) It is a matter for the interpretation of the jurisdiction clause whether the clause extends to cover the tort proceedings against the third party. Applying the general law of contract, the correct approach to that question of interpretation requires the application of the modern contextual and objective approach. One must ask what the clause, viewed in the light of the whole contract, would mean to a reasonable person having all the relevant background knowledge reasonably available to the parties at the time the contract was made (excluding the previous negotiations of the parties and their declarations of subjective intent). Business common sense and the purpose of the term (which appear to be very similar ideas) may also be relevant. Important cases of the House of Lords and Supreme Court recognising the modern approach, which marks a shift from an older more literal approach, include *Investors Compensation Scheme v West Bromwich Building Society* [1998] 1 WLR 896, HL, especially at 912-913 (*per* Lord Hoffmann giving the leading speech), *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50, [2011] 1 WLR 2900, *Arnold v Britton* [2015] UKSC 36, [2015]

AC 1619, and *Wood v Capita Insurance Services Ltd* [2017] UKSC 24, [2017] AC 1173. I have summarised elsewhere that modern approach: see, eg, *Greenhouse v Paysafe Financial Services Ltd* [2018] EWHC 3296 (Comm) at [11]. The Court of Appeal's emphasis in *UBS AG v HSH Nordbank AG* [2009] EWCA Civ 585, [2009] 2 Lloyd's Rep 272, at [82] (*per* Lord Collins) and *Sebastian Holdings Inc v Deutsche Bank AG* [2010] EWCA Civ 998, [2011] 1 Lloyd's Rep 106, at [39] (*per* Thomas LJ) on interpreting jurisdiction clauses 'widely and generously' and adopting 'a broad and purposive construction' can be regarded as consistent with that modern approach.

(ii) If, as a matter of interpretation, the jurisdiction clause does extend to cover the tort proceedings against the third party, the contractual basis for an anti-suit injunction applies so that, as regards an application by the contracting party (B), the injunction will be granted unless there are strong reasons not to do so.

(iii) Applying privity of contract, only the contracting party (B) and not the third party (C) can enforce the jurisdiction clause (against A) by an anti-suit injunction on the contractual basis (unless an exception to privity of contract applies). But the jurisdiction clause may be a relevant factor in granting the third party (C) an anti-suit injunction on the alternative basis that the foreign proceedings are vexatious or oppressive. (It is also presumably possible in certain circumstances that the jurisdiction clause, even though not contractually enforceable by the contracting party (B) in favour of the third party (C), may be a relevant factor in granting the contracting party (B) an anti-suit injunction against the other contracting party (A) on the basis that the foreign proceedings are vexatious or oppressive.)

24. In expressing the correct approach in the way I have just done, I accept that Laurence Rabinowitz QC in the *Ghossoub* case was correct that, absent express words as to the jurisdiction clause extending to claims against non-parties, the starting point in interpreting a jurisdiction clause (covering, let us say, 'all disputes arising out of the contract') will be that only the parties to the contract are covered. But I also agree with Lord Scott in the *Donohue* case that, where one has an alleged joint tort committed in relation to a contract by a contracting party and a non-contracting party, the objective interpretation of the jurisdiction clause (covering all disputes 'arising out of the contract') will tend to include a tort claim against the non-party because this will help to prevent forum-fragmentation on essentially the same issues. Such fragmentation is contrary to what the parties are likely to have objectively intended. Ultimately there may be no real conflict between the speech of Lord Scott and the judgment of Laurence Rabinowitz QC because the resolution of the issue turns on the interpretation of the particular contract in the light of the particular facts.

25. I should add for completeness, in relation to the law, that Michael Ashcroft QC, counsel for Gunvor, does not now rely on what has been referred to – in terminology that is unfortunate (given the well-known confusion that has historically been caused in relation to the law of unjust enrichment by this very terminology) – as the 'quasi-contractual' ground for an anti-suit injunction. This ground for an anti-suit injunction appears to apply where there are foreign proceedings for breach of contract, there is an English jurisdiction clause in that contract, and the party seeking the anti-suit injunction denies that it is a party to that contract. Cases applying, or discussing, this ground for an anti-suit injunction include *Sea Premium v Sea Consortium* (unreported, 11 April 2011, at pp 22-23 of the transcript, *per* David Steel J); *The MD Gemini* [2010] EWHC 2850, [2012] 2 Lloyd's Rep 672, at [15] (*per* Popplewell J);

Shipowners' Mutual Protection and Indemnity Assoc (Luxembourg) v Containerships Denizcilik Nakliyat Ve Ticaret AS, The Yusuf Cepnioglu [2016] EWCA Civ 386, [2016] 3 All ER 697 at [22]-[35] (*per* Longmore LJ) and [48]-[56] (*per* Moore-Bick LJ); *Dell Emerging Markets (EMEA) v IBMaroc.com SA* [2017] EWHC 2379 (Comm) at [22]-[34] (*per* Teare J); and *Qingdao Huiquan Shipping Co v Shanghai Dong He Xin Industry Group Co Ltd* [2018] EWHC 3009 (Comm) (Bryan J). This ground was also applied by Bryan J, in relation to Guvnor's claim, at the 'without notice' hearing in this case: see [2019] EWHC 1536 (Comm) at [35]-[37], [72]. But now that Xiang Da has made clear that the claim against Gunvor is solely for tortious misrepresentation, and any contractual claim against Gunvor has been abandoned, this 'quasi-contractual' ground for an anti-suit injunction falls away and has therefore not been pursued by Gunvor.

5. APPLICATION OF THE LAW ON ANTI-SUIT INJUNCTIONS

26. Having set out the law on anti-suit injunctions, I can now apply it to the three main issues before me which, although closely connected, need to be separated out. They are:

(1) Is Clearlake entitled to an interim anti-suit injunction to prevent Xiang Da's letter of indemnity claim against Clearlake proceeding in Singapore?

(2) Is Gunvor entitled to an interim anti-suit injunction to prevent Xiang Da's tortious misrepresentation claims against Gunvor proceeding in Singapore?

(3) Is Clearlake entitled to an interim anti-suit injunction to prevent Xiang Da's tortious misrepresentation claims against Gunvor proceeding in Singapore?

I shall deal with each of these in turn although, as will become clear, my decision on the second issue renders it unnecessary for me to answer the third.

(1) Is Clearlake entitled to an interim anti-suit injunction to prevent Xiang Da's letter of indemnity claim against Clearlake proceeding in Singapore?

27. The situation we have is that the claims brought by Xiang Da against Clearlake on the re-documentation letter of indemnity (see paragraph 9 of the amended statement of claim) are also claims arising in relation to the performance of the Clearlake charter and hence constitute a dispute arising out of the Clearlake charter. Two contracts are therefore in play: the re-documentation letter of indemnity given by Clearlake to Xiang Da and the Clearlake charter between Clearlake and Xiang Da. It further follows that there are two jurisdiction clauses in play. These have been set out at paragraphs 5 and 9 above.

28. Where there is more than one possible applicable jurisdiction clause agreed by the parties, it is a question of interpretation how they should be applied. But, taking the modern objective and contextual approach to contractual interpretation (see paragraph 23(i) above), the starting point is that consistency is likely to have been intended so that, if possible, the clauses should be interpreted so as to be consistent with one another. If that is not possible, and the clauses conflict, then additional ideas come to the fore, such as that the jurisdiction clause in the contract which is 'closer to the claim' was intended to apply (see, eg, *Credit Suisse First Boston (Europe) Ltd v MLC*

(Bermuda) Ltd [1999] 1 Lloyd's Rep 767, at 777 (*per* Rix J); *PT Theiss Contractors Indonesia v PT Kaltim Prima Coal* [2011] EWHC 1842 (Comm) at [41] (*per* Blair J); and *Trust Risk Group SpA v AmTrust Europe Ltd* [2015] EWCA Civ 437, [2017] 1 CLC 456 at [48] (*per* Beatson LJ)).

29. I agree with the submissions of Thomas Raphael QC, counsel for Clearlake, that here the clauses can, and should, be read as being consistent with each other albeit that, in this particular situation of overlap, the consistent interpretation renders superfluous the jurisdiction clause in the letter of indemnity. The exclusive jurisdiction clause in the Clearlake charter applies because the English jurisdiction required by that clause is consistent with any insistence by Xiang Da on Clearlake submitting to the English jurisdiction. That there is consistency was also the view taken by Bryan J in his judgment in this case. He said:

'[50]… There is … no conflict between those clauses, between the charter and the LOI clauses, and the jurisdiction clause in the charter mandatorily requires both parties to refer all disputes to the English courts, whereas, at its lowest, clause 5 of the LOI simply does no more than require one of the parties to submit to the English jurisdiction if requested to do so. So there is no conflict. It either does not deal with the situation at all or only deals with it in certain circumstances.'

30. What about the apparent inconsistency between the letter of indemnity jurisdiction clause and the charterparty jurisdiction clause in the sense that the latter, but not the former, requires that small claims should go to London arbitration not the courts? The answer to that is that we are not here concerned with a small claim and there is therefore no need for me to resolve a hypothetical issue. All I will say is that, even if we were concerned with a small claim, one might readily resolve that conflict by deciding, for example, that, because there is a very specific provision in relation to small claims, that provision should apply to a small claim even if Xiang Da were insisting that the dispute should be resolved by the English courts.

31. It follows from the exclusive jurisdiction clause being applicable that, unless there are strong reasons to the contrary, an anti-suit injunction should be granted to Clearlake to prevent Xiang Da's letter of indemnity claim against Clearlake proceeding in Singapore. There are no such strong reasons. Although the main claim by China-Base against Xiang Da was brought in Singapore not England – and even if that claim had not been discontinued (see paragraph 2 above) - that does not itself constitute a strong reason to deny the anti-suit injunction. On the contrary, as shall be seen below, my decision on issue (2) is that Gunvor is entitled to an anti-suit injunction to prevent Xiang Da's tortious misrepresentation claims against Gunvor proceeding in Singapore; and there is very good reason, in avoiding forum-fragmentation on the same issues, to have all third party proceedings (by Xiang Da against Clearlake and Gunvor) heard in the same jurisdiction (ie England).

32. My conclusion on this first issue, therefore, is that Clearlake is entitled to an interim anti-suit injunction to prevent Xiang Da's letter of indemnity claim against Clearlake proceeding in Singapore.

(2) Is Gunvor entitled to an interim anti-suit injunction to prevent Xiang Da's tortious misrepresentation claims against Gunvor proceeding in Singapore?

33. It is not disputed that there can here be no contractual basis for an anti-suit injunction being granted to Gunvor. This is because Gunvor is the sub-charterer from Clearlake so that there is no contractual relationship – and hence no contractually binding jurisdiction clause - between Gunvor and Xiang Da.

34. However, in the exercise of my discretion, I consider that an anti-suit injunction should be granted to Gunvor to prevent Xiang Da's tortious misrepresentation claims against Gunvor proceeding in Singapore because it would be vexatious or oppressive for the tort claim against Gunvor to be heard in Singapore. This is for the following reasons:

(i) There is an exclusive English jurisdiction clause in the Clearlake charter as well as in the Gunvor sub-charter, and in the switch bills of lading by reason of the incorporation of the charter terms. This indicates that, although Xiang Da, Clearlake and Gunvor are all incorporated in Singapore, England is, in the required sense, the natural forum for the third party claims. As Bryan J said, at [74], 'England is the most appropriate forum for the resolution of the parties' dispute.'

(ii) Xiang Da has manipulated its third party claims to try to avoid being caught by the exclusive jurisdiction clause in the Clearlake charter. It was Clearlake (through China Grace), not Gunvor, that directly dealt with Xiang Da. The email of 1 April 2016, containing the alleged misrepresentation 'due to receiver's request', was directly provided to Xiang Da (through China Grace) by Clearlake not Gunvor. In other words, despite the criminal case mentioned in paragraph 11 above, the most obvious tortious misrepresentation claim, open to Xiang Da, would be against Clearlake not Gunvor; and it appears that the claim against Gunvor rests on the misrepresentations being passed on by Clearlake to Xiang Da. If Gunvor were to be held liable to Xiang Da for tortious misrepresentation, it is hard to see why Clearlake would not also be so liable; and certainly one would normally expect Clearlake to be sued for tortious misrepresentation if Xiang Da were suing Gunvor for such misrepresentations. Yet such a claim against Clearlake would have fallen within the exclusive jurisdiction clause in the Clearlake charter; and, had the misrepresentation claim been brought against Clearlake in England (as required by the exclusive jurisdiction clause in the Clearlake charter) it would plainly have constituted unacceptable forum-fragmentation on the same issues for the misrepresentation claim against Gunvor to have been heard in Singapore. Although I reject the submissions, forcibly put on behalf of Gunvor (and Clearlake), that the tort claim against Gunvor is hopeless (so that I do not think that this case is equivalent to *Shell International Petroleum Co v Coral Oil Co Ltd (No 2)* [1999] 2 Lloyd's Rep 606), I consider that the bringing of the tortious misrepresentation claim solely against Gunvor and not against Clearlake is a procedural manoeuvre designed to evade the exclusive jurisdiction clause. It may well be that this precise type of procedural manoeuvre has not previously triggered an anti-suit injunction on the ground of being vexatious or oppressive; but, as we have seen at paragraph 18(ii) above, the categories of what counts as vexation or oppression should not be regarded as closed.

(iii) In the light of what I have decided in relation to the letter of indemnity claims by Xiang Da against Clearlake – which will be heard in England and not Singapore –

there is very good reason (as I have already said in paragraph 31), so as to avoid forum-fragmentation on the same issues, to have all third party proceedings (by Xiang Da against Clearlake and Gunvor) heard in the same jurisdiction (ie England). There is no obvious prejudice to Xiang Da in having all the third party proceedings heard in England rather than Singapore; and, while it may be that there would have been some overlap between the issues in the third party proceedings and the issues in the main claim by China-Base against Xiang Da – had that claim not been discontinued (see paragraph 2 above) - that would have been insignificant compared to the overlap of issues that would occur if the third party proceedings were split as between England and Singapore.

(iv) In the light of what I have just said in points (i) - (iii), I am satisfied that it is necessary in the interests of justice to grant the injunction taking into account considerations of comity.

35. My conclusion on this second issue, therefore, is that Gunvor is entitled to an interim anti-suit injunction to prevent Xiang Da's tortious misrepresentation claims against Gunvor proceeding in Singapore.

(3) Is Clearlake entitled to an interim anti-suit injunction to prevent Xiang Da's tortious misrepresentation claims against Gunvor proceeding in Singapore?

36. This raises the interesting question of interpretation discussed in paragraphs 20 to 24 above. The exclusive jurisdiction clause is in the Clearlake charter. The parties to that charter are Xiang Da and Clearlake. Gunvor is not a contracting party. The question is whether the reference in the exclusive jurisdiction clause to disputes arising out of the charter, on its correct interpretation, can apply to the claims by Xiang Da against Gunvor for tortious misrepresentation. Although Gunvor, not being a contracting party (and leaving aside what has been referred to, see paragraph 25 above, as the 'quasi-contractual' basis), cannot itself seek an anti-suit injunction for breach of that exclusive jurisdiction agreement, the question here is whether Clearlake should be granted an anti-suit injunction on the contractual basis in relation to Xiang Da's tort claim against Gunvor.

37. I have set out, in paragraph 23 above, the correct approach to this question of interpreting the jurisdiction clause in the Clearlake charter. In this case, the application of that law (ie the question of contractual interpretation raised) does not admit of an easy answer. At root, one is asking whether Clearlake and Xiang Da objectively intended that Xiang Da's tortious misrepresentation claims against Gunvor should be covered by that jurisdiction clause. The starting point in answering that is that, not least because there is no express reference to Gunvor, the clause does not extend to cover (tort) claims against Gunvor. But as against that there are the following five factors:

(i) The misrepresentation claims against Gunvor may be said to constitute 'a dispute arising out of this charter'. The alleged misrepresentations arose in relation to the performance of the Clearlake charter.

(ii) There is nothing in the Clearlake charterparty expressly indicating that the jurisdiction clause should not apply in relation to Xiang Da's tort claims against Gunvor.

(iii) There is a close relationship between Clearlake and Gunvor. Both are part of the Gunvor Group and Clearlake is the chartering arm of the group. In that role, it had a long-term contract of affreightment with Gunvor and it was pursuant to that contract that the Gunvor sub-charter was entered into.

(iv) It is clear that, had Clearlake been sued by Xiang Da for the tort of misrepresentation in relation to the Clearlake charter, that would have been caught by the exclusive jurisdiction clause. Similarly, had Xiang Da sued both Clearlake and Gunvor for the (same) misrepresentations, it would appear that the jurisdiction clause would have applied not only as regards Clearlake but also as regards Gunvor. If that is correct, it is not clear that it can make a significant difference that Xiang Da has chosen to sue only Gunvor for misrepresentation and not Clearlake.

(v) Clearlake has an interest in the proceedings by Xiang Da against Gunvor. This is because, for at least two reasons, there is potential prejudice to Clearlake if the claim by Xiang Da against Gunvor goes ahead in Singapore. First, if Gunvor is found liable to Xiang Da, there is a realistic prospect of Gunvor having a contribution (or indemnity) claim against Clearlake as a joint and several tortfeasor. It is therefore of importance to Clearlake that the English courts make the determination of Gunvor's tort liability to Xiang Da. Secondly, I have decided on issue (1) above (see paragraphs 27-32) that Xiang Da's claims against Clearlake based on the re-documentation letter of indemnity should be heard in England not Singapore. There is a close link between those claims and the tort claim brought by Xiang Da against Gunvor and it is in the interests of Clearlake to avoid forum-fragmentation (and the waste of resources involved) by having all third party proceedings (by Xiang Da against Clearlake and Gunvor) heard in the same jurisdiction (ie England).

38. In the light of what I have decided on issue (2) above (see paragraphs 33-35), it is unnecessary for me to express a concluded view on whether those five factors outweigh the starting point that Gunvor is not covered. In other words, it is unnecessary for me to decide what I consider here to be a difficult question of contractual interpretation; and I prefer to express no concluded view on it.

39. I add for completeness that it is also unnecessary for me to decide whether, putting to one side the contractual basis, Clearlake should in any event be granted an anti-suit injunction to prevent Xiang Da's tort claim against Gunvor proceeding in Singapore because, looking at matters from Clearlake's perspective, it would be vexatious or oppressive for the tort claim against Gunvor to be heard in Singapore. This again is not an entirely straightforward question and, as it is unnecessary for me to do so, I again prefer to express no concluded view on it.

6. ADDITIONAL MATTERS

(1) Amendments to Clearlake's statement of case

40. Clearlake seeks permission to amend its statement of case (under CPR 17.1 and 17.3) to make light amendments (**8/522-524**) which reflect the amendments in Xiang Da's third party claims. Xiang Da does not dispute the jurisdiction of the English court in relation to those amended claims. But Sara Masters QC, for Xiang Da, does submit that I should not allow the amendments by which Clearlake seeks a negative declaration that Gunvor has no liability to Xiang Da in respect of the alleged

misrepresentations. This is on the basis that Clearlake has no real prospect of success in seeking that negative declaration.

41. I was referred by the parties to *Rolls-Royce plc v Unite the Union* [2009] EWCA Civ 387, [2010] 1 WLR 318 and *Milebush Properties Ltd v Tameside MBC* [2011] EWCA Civ 270, [2011] PTSR 1654 for statements as to the relevant principles applicable to declarations. Although he was dissenting on the facts, Aikens LJ's summary of the relevant principles, at [120] in the former case, is especially helpful and was relied on by the Court of Appeal in the *Milebush* case (although, as we shall see, Moore-Bick LJ thought that Aikens LJ's point (2) was expressed too narrowly). Aikens LJ said the following:

'*[120] … I think that the principles in the cases can be summarised as follows. (1) The power of the court to grant declaratory relief is discretionary. (2) There must, in general, be a real and present dispute between the parties before the court as to the existence or extent of a legal right between them. However, the claimant does not need to have a present cause of action against the defendant. (3) Each party must, in general, be affected by the court's determination of the issues concerning the legal right in question. (4) The fact that the claimant is not a party to the relevant contract in respect of which a declaration is sought is not fatal to an application for a declaration, provided that it is directly affected by the issue… (5) The court will be prepared to give declaratory relief in respect of a "friendly action" or where there is an "academic question" if all parties so wish, even on "private law" issues. This may particularly be so if it is a "test case", or it may affect a significant number of other cases, and it is in the public interest to decide the issue concerned. (6) However, the court must be satisfied that all sides of the argument will be fully and properly put. It must therefore ensure that all those affected are either before it or will have their arguments put before the court. (7) In all cases, assuming that the other tests are satisfied, the court must ask: is this the most effective way of resolving the issues raised. In answering that question it must consider the other options of resolving this issue.*'

42. Although dissenting on whether the first instance judge had erred in law, Moore-Bick LJ, at [88] in the *Milestone* case, thought that point (2) of Aikens LJ's principles needed modification to make clear that 'the court may in an appropriate case grant declaratory relief even though the rights or obligations which are the subject of the declaration are not vested in either party to the proceedings.' He went on to say (at [88]):

'*The most important consideration is likely to be whether the parties have a legitimate interest in obtaining the relief sought, whether to grant relief by way of declaration would serve any practical purpose and whether to do so would prejudice the interests of parties who are not before the court.*'

43. While both those cases concerned positive declarations, what is here being sought is a negative declaration (ie that Gunvor is not liable to Xiang Da in tort for misrepresentation). It has now been accepted that a negative declaration can be granted provided that, as with a positive declaration, it would serve a useful purpose. In Lord Woolf MR's words in *Messier-Dowty Ltd v Sabena SA* (*No 2*) [2000] 1 WLR 2040, at 2050:

'*The deployment of negative declarations should be scrutinised and their use rejected where it would serve no useful purpose. However, where a negative declaration would help to ensure that the aims of justice are achieved the courts should not be reluctant to grant such declarations. They can and do assist in achieving justice … [T]he development of the use of declaratory relief in relation to commercial disputes should not be contained by artificial limits wrongly related to jurisdiction. It should instead be kept within proper bounds by the exercise of the courts' discretion.*'

44. It is clear to me that, applying the principles laid down in those three cases, it cannot be said that Clearlake has no real prospect of success in seeking the negative declaration that Gunvor is not liable for tortious misrepresentation to Xiang Da. On the contrary, although this is not a matter for me to decide, Clearlake has a legitimate interest in there being a declaration that Gunvor has no liability to Xiang Da for misrepresentation (and the negative declaration would serve a useful purpose) because such a declaration would remove the possibility of Gunvor having a right to contribution (or an indemnity) from Clearlake. It should also be stressed that Clearlake is of course a party to the relevant contract (the Clearlake charter) even though Gunvor is not.

45. I am also satisfied, more generally, that it would be in line with the overriding objective in CPR 1.1(1), of dealing with cases justly and at proportionate cost, to allow the amendment.

46. I therefore grant permission to Clearlake to amend its statement of case so as to allow it to seek a declaration that Gunvor has no liability to Xiang Da in respect of the alleged misrepresentations.

(2) Amendments to Gunvor's statement of case

47. Gunvor seeks permission to amend its statement of case (under CPR 17.1 and 17.3) to make light amendments (**2/209-211**). Xiang Da objects, as a matter of jurisdiction, to the amendment inserting paragraph C. Paragraph C reads:

'[The Claimant claims] A declaration that the Claimant has no liability to the Defendant in misrepresentation or tort, contrary to what is pleaded in the Proposed Third Party Claim.'

Sara Masters QC, for Xiang Da, submits that the English court does not have jurisdiction in relation to that claim for a declaration of non-liability. Michael Ashcroft QC, for Gunvor, submits to the contrary that CPR 6B PD 3.1(4A) here applies. Under that provision, service out of the jurisdiction may be permitted where:

'A claim is made against the defendant in reliance on one or more of paragraphs (2), (6) to (16), (19) or (21) and a further claim is made against the same defendant which arises out of the same or closely connected facts.'

I agree with Michael Ashcroft QC that that provision here applies (although I would express the reason for that in a slightly different way than he formulated it).

48. My reasoning is as follows. Under the amendment inserting paragraph D, which, rightly, Xiang Da does not challenge on jurisdictional grounds, Gunvor claims:

'*A declaration that the Defendant is required to submit any claims under or in respect of the Charterparty, the carriage of goods pursuant to the Charterparty or the issuance of the Switch Bills (including any alleged misrepresentations made in respect of the aforesaid), exclusively to the High Court of Justice of England & Wales.'*

In my view, paragraph D falls within CPR 6B PD 3.1(6). It is a claim (for a declaration) made in respect of a contract (ie the Clearlake charter and/or the contract contained in, or evidenced by, the switch bills of lading) where the contract 'contains a term to the effect that the court shall have jurisdiction to determine any claim in respect of the contract'. Both the Clearlake charter and the switch bills of lading have clauses specifying that the English High Court has exclusive jurisdiction. It then follows that CPR 6B PD 3.1(4A) applies to paragraph C because paragraph C includes a further claim (for a declaration of no liability for tortious misrepresentation) against the same defendant (Xiang Da) which arises out of the same or closely connected facts as those in paragraph D ie the alleged tortious misrepresentations arise in relation to the Clearlake charter and/or the switch bills of lading. I reject Sara Masters QC's submission that the question of forum in paragraph D is 'entirely separate' from the question of whether Gunvor is liable to Xiang Da for tortious misrepresentation in paragraph C. On the contrary, both claims for declarations arise 'out of the same or closely connected facts.'

49. Xiang Da's jurisdictional challenge to the amendment inserting paragraph C therefore fails. As I am also satisfied, more generally, that it would be in line with the overriding objective in CPR 1.1(1), of dealing with cases justly and at proportionate cost, to allow the amendment, I grant Gunvor permission to amend its statement of case to include paragraph C.

7. CONCLUSIONS

50. My conclusions are therefore as follows:

(i) Clearlake is entitled to an interim anti-suit injunction to prevent Xiang Da's letter of indemnity claim against Clearlake proceeding in Singapore.

(ii) Gunvor is entitled to an interim anti-suit injunction to prevent Xiang Da's tortious misrepresentation claims against Gunvor proceeding in Singapore.

(iii) Permission should be granted to Clearlake to amend its statement of case so as to allow it to seek a declaration that Gunvor has no liability to Xiang Da in respect of the alleged misrepresentations.

(iv) Permission should be granted to Gunvor to amend its statement of case to include paragraph C.

51. For these reasons, Clearlake's application dated 25 June 2019 (**1/249-254**), to amend and to continue the anti-suit injunction, succeeds; Gunvor's application dated 21 June 2019 (**2/205-211**), to amend and to continue the anti-suit injunction, succeeds; and Xiang Da's applications dated 21 June 2019 (**1/218-220** and **2/174-176**), challenging jurisdiction and to vary the anti-suit injunctions, fail.

52. I should finally add for completeness that, in the light of the clarification by Sara Masters QC of Xiang Da's objections to Clearlake's and Gunvor's amendments to their statements of case, Michael Ashcroft QC made clear that an additional application by Gunvor dated 4 July 2019 (**1/319-312**) - for an anti-suit injunction in identical form to that sought by Gunvor in its proceedings (in claim number CL-2019-000220) to be made also in the proceedings by Clearlake (in claim number CL-2019-000216) - fell away and did not need to be considered by me.

53. It remains for me to thank counsel for their helpful submissions.