LP 16/2026 Reflections on a Recent Judgement by the Federal Court of Australia

On 22 April 2026, the Federal Court of Australia handed down its judgment in Mitsui O.S.K. Lines Ltd v The Ship: Yangze 22 (No 2) [2026] FCA 476, ordering a permanent stay of the action in rem commenced by the plaintiff (hereinafter referred to as "the *Vega Dream*" or "the Plaintiff") in Australia, effectively dismissing the Plaintiff's claim. The case arose from a collision between the vessels "*Vega Dream*" and "*Yangze 22*" in December 2024 within the waters of the Port of Shanghai, China. The central dispute was whether the Australian court was a clearly inappropriate forum and whether the local proceedings should be permanently stayed based on the doctrine of forum non conveniens.

I. The facts

The *Yangze 22* and *Vega Dream* collided in late December 2024 in the Beicao Fairway, Port of Shanghai. The owner of the *Yangze 22* then commenced proceedings in the Shanghai Maritime Court. In January 2025, it applied to constitute a limitation fund and for the arrest of the *Vega Dream*; in March 2025, it commenced collision damages proceedings. The *Vega Dream*'s shipowner and charterer participated in those proceedings and raised a jurisdictional challenge, which was dismissed. The Shanghai High People's Court affirmed that Chinese maritime courts had exclusive jurisdiction.

On 28 April 2025, the Plaintiff commenced an action in rem in the Federal Court of Australia under section 15(2)(b) of the *Admiralty Act 1988* (Cth). On 8 May 2025, it arrested the *Yangze 22* at Newcastle, Australia. The vessel was released after the defendant provided conditional security. The defendant then applied for a permanent stay of the Australian proceedings.

II. The dispute

The core dispute was whether the Plaintiff could maintain proceedings in Australia, claiming a triple legitimate juridical advantage: a higher limitation amount, the availability of an action in rem, and security already obtained. The defendant contended Australia was a clearly inappropriate forum and continuing the proceedings would be oppressive or vexatious.

The Australian court applied its “clearly inappropriate forum” test, which traces its lineage from the 1610 Scottish case Vernor v Elvies (inconvenience despite jurisdiction), through the English St Pierre test (“oppressive or vexatious”), to the Spiliada “more appropriate forum” test. The Australian High Court rejected Spiliada in Oceanic Sun Line v Fay (1988) and adopted the “clearly inappropriate forum” standard in Voth v Manildra Flour Mills (1990), requiring the defendant to prove the Australian forum is so inappropriate that continuing the action would be oppressive or vexatious.

Key precedents included CMA CGM FLORIDA v “Chou Shan” (collision in Chinese waters making China the natural and obvious forum) and CSR Ltd v Cigna Insurance / Henry v Henry (parallel proceedings on the same factual substratum are, in principle, vexatious and oppressive). The legal basis was clear: a plaintiff cannot “have two bites at the cherry”; once it has submitted to jurisdiction abroad, it cannot maintain that Australia is an appropriate forum.

III. Factors relevant to the application

On 22 April 2026, the Court ordered a permanent stay, with costs against the Plaintiff and leave to appeal granted. The Court gave decisive weight to eight factors:

1. The Court is not seized of the whole controversy. The Shanghai Maritime Court was already seized of 17 claims (liability apportionment, damages assessment, breaking the limit), which the Australian court could not adjudicate, risking inconsistent findings.

2. The collision occurred in Chinese territorial waters. The incident occurred within the Port of Shanghai’s fairway, and having allegedly caused pollution damage in Chinese internal waters, making China the natural and obvious forum.

3. The lex causae was Chinese law. The Chinese legal system is one based on civil law, not common law. Further, there is no geographical proximity, nor is there any legislation similar to the Trans-Tasman Proceedings Act 2010 (Cth).

4. Evidence was in China. The case involves “real” evidence in connexion with the collision in the Yangtze River and the environmental damage, necessitating a view on site.

5. Witnesses were in China. All relevant lay witnesses, experts, and third-party entities were located there, and it’s required under Chinese Civil Procedure Law that all factual witnesses present before the court and be cross examined.

6. Difficulty compelling witness attendance. Such evidence would be required to be taken on commission in China with associated expense and inconvenience.

7. Difficulty obtaining documents from Chinese state authorities, which the Australian court could not directly order.

8. Duplicative proceedings were inevitable. Regardless of what happens in this Court, the proceedings in the Shanghai Maritime Court will continue, and the Plaintiff had already registered its claim and submitted to jurisdiction of the Chinese court.

The Court rejected the Plaintiff's claimed threefold legitimate juridical advantage:

1. Variations in limits of liability in different jurisdictions are a known risk in international shipping; a single advantage cannot negate the natural forum.

2. Chinese law's pre-action ship arrest provides "quasi in rem" functionality, diminishing the substantive difference from an Australian action in rem.

3. The security obtained was contingent on the Australian proceedings and could not establish Australia as an appropriate forum.

The Court found continuing in Australia would create a risk of inconsistent findings and be oppressive. Australia was a clearly inappropriate forum, and a permanent stay was ordered. The Plaintiff did not appeal.

IV. Implications

This case reaffirms strict application of the Australian "clearly inappropriate forum" standard in maritime jurisdictional conflicts. It's established in this case that:

1. The scope of "legitimate juridical advantage" is limited. Being deprived of an advantage in one jurisdiction is not determinative of the outcome. This limits forum shopping based on liability limit differences.

2. Timing and effect of "submission to jurisdiction". By registering its claim with the Chinese court without reserving its jurisdictional challenge, the Plaintiff voluntarily submitted to jurisdiction. Thereafter, commencing an action in rem in Australia became unsustainable.

3. Criteria for the "natural and obvious forum". The combination of the collision in Chinese internal waters, pollution damage in China, all witnesses and evidence in China, and 17 related claims already before the Chinese court solidified China's position as the natural forum.

4. Comparative perspective on “action in rem”. By analysing China’s pre-action arrest system under the Special Maritime Procedure Law, the Court noted China possesses “quasi in rem” functionality, diminishing the perceived uniqueness of the Australian action in rem.

This judgment demonstrates the Federal Court’s cautious stance in maritime jurisdictional conflicts, reinforcing a judicial attitude restricting forum shopping in international maritime dispute resolution.

For more information, please contact Managers of the Association.