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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Case No. 19-1111

[Filed March 5, 2020]

CHINA SHIPPING CONTAINER LINES CO. LTD.,	)
Petitioner-Appellee,	)
v.	)
BIG PORT SERVICE DMCC,	)
Respondent-Appellant.	)

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN

ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 5th day of March, two thousand twenty.

Present:

DEBRA ANN LIVINGSTON,
RICHARD J. SULLIVAN,
WILLIAN J. NARDINI,
Circuit Judges.

For Petitioner-Appellee:

GINA M. VENEZIA (Michael J. Dehart, *on the brief*), Freehill Hogan & Mahar LLP, New York, NY

For Respondent-Appellant:

PETER SKOUFALOS, Brown Gavalas & Fromm LLP, New York, NY

Appeal from a judgment of the United States District Court for the Southern District of New York (Torres, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Big Port Service DMCC ("BPS") appeals from a March 29, 2019 judgment enjoining arbitration between BPS and China Shipping Container Lines Co. Ltd. ("CSCL") regarding the supply of marine fuel oil to a CSCL vessel. The district court recognized a decision of a Singaporean court regarding the dispute between the parties (the "Singapore Judgment"), accorded that decision preclusive effect, and concluded that CSCL could not be forced to arbitrate because there was no binding arbitration agreement between CSCL and BPS. BPS appeals, challenging various aspects of the district court's ruling. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

I. Subject Matter Jurisdiction

The district court concluded that it had subject matter jurisdiction over this dispute pursuant to our decision in *Garanti Finansal Kiralama A.S. v. Aqua Marine & Trading Inc.*, 697 F.3d 59 (2d Cir. 2012). "We review the question of subject-matter jurisdiction *de novo*." *City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 126 (2d Cir. 2011). BPS contends that the district court erred in applying *Garanti* because that case addressed the proper approach to subject matter jurisdiction in declaratory judgment actions involving issues of federal law, not, as here, the issues of contract law pertinent to arbitration. We disagree.

BPS's jurisdictional argument is, in fact, foreclosed by *Garanti*. Indeed, the precise argument BPS now advances was put forth by AM, the defendant in *Garanti*, and we rejected it. *See Garanti*, 697 F.3d at 62. Here, as in *Garanti*, the parties must be rearranged into a hypothetical coercive action that is the "mirror image" of the suit actually brought by CSCL. *Id.* at 66. That "mirror image" suit—BPS suing CSCL to compel arbitration on a maritime contract—is one over which the federal courts would have jurisdiction. *See id.* at 71 ("Although GFK, the plaintiff in this case, disclaims the existence of a maritime contract, there is no question but that we would have jurisdiction over AM's hypothetical coercive suit to enforce the contract. Thus, we have jurisdiction over this declaratory judgment action as well."). Accordingly, jurisdiction is proper in the instant declaratory judgment action.

II. Recognition of the Singapore Judgment

BPS next argues that the district court erred in recognizing the Singapore Judgment. BPS points to two purported shortcomings in the foreign proceedings that supposedly undermine the propriety of according the foreign judgment comity: the absence of a full and final judgment and the strong federal policy favoring arbitration. We need not decide whether the proper standard of review for the district court's recognition decision is abuse of discretion, *see Corporación Mexicana de Mantenimiento Integral, S. de R.L. de C.V. v. Pemex-Emploración y Producción*, 832 F.3d 92, 100 (2d Cir. 2016), or *de novo*, *see Diorinou v. Mezitis*, 237 F.3d 133, 139–40 (2d Cir. 2001), because BPS's arguments fail even under *de novo* review.

As to BPS's first argument, the Singapore Judgment resolved the relevant issue here: the existence of an arbitration agreement between CSCL and BPS. BPS conceded before the Singaporean courts that this question had to be decided in that proceeding, and BPS actively litigated the issue. Moreover, the Singapore action was not merely an *in rem* proceeding related to the arrest of CSCL's vessel. Rather, BPS sought damages arising out of its supposed contract with CSCL. Accordingly, the Singapore Judgment was not limited, as BPS now contends, but was a full decision addressing the existence of the arbitration agreement at issue.

Turning to BPS's second argument, there is a "liberal federal policy favoring arbitration." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (citation omitted). But that policy does not elevate arbitration agreements above other contracts; it solely requires enforcement, "according to their terms, of private agreements to arbitrate." *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 476 (1989); *see also New York v. Oneida Indian Nation of N.Y.*, 90 F.3d 58, 61 (2d Cir. 1996) ("[F]ederal policy alone cannot be enough to extend the application of an arbitration clause far beyond its intended scope." (citation omitted)). As BPS concedes, American courts vindicate the policy favoring arbitration through judicial proceedings that assess whether an agreement to arbitrate exists. And that is precisely the process BPS received in Singapore. The policy favoring arbitration does not require that BPS get a second hearing on this issue in the United States. BPS's argument to the contrary is without merit.

III. Preclusion and Estoppel

BPS next argues that, even if the district court properly recognized the Singapore Judgment, it erred in according it preclusive effect. Specifically, BPS contends that the Singapore court neither considered relevant U.S. law nor ruled on arbitrability, and that the question of arbitrability was not necessary to support the Singapore Judgment. "[W]e . . . generally review de novo a district court's ruling on [issue] preclusion." *Hoblock v. Albany Cty. Bd. of Elections*, 422 F.3d 77, 93 (2d Cir. 2005); *see also Diorinou*, 237 F.3d at 140. Collateral estoppel or issue preclusion "applies when (1) the identical issue was raised in a previous proceeding; (2) the issue was actually litigated and decided in the previous proceeding; (3) the party had a full and fair opportunity to litigate the issue; and (4) the resolution of the issue was necessary to support a valid and final judgment on the merits." *Republic of Ecuador v. Chevron Corp.*, 638 F.3d 384, 400 (2d Cir. 2011). Applying those factors here, we agree with the district court's conclusion that the Singapore Judgment precludes BPS from relitigating the existence of an arbitration agreement between it and CSCL.

First, a foreign court need not consider or apply domestic law so long as there is ultimately an identity of issues. In other words, "the legal standards to be applied must . . . be identical," but the foreign court need not apply a specific body of law. *Matusick v. Erie Cty. Water Auth.*, 757 F.3d 31, 48–49 (2d Cir. 2014) (citation omitted); *see also Greene v. United States*, 79 F.3d 1348, 1353 (2d Cir. 1996). Here, the legal standards applied were substantively the same and the

agency principles applied by the Singapore court are in accord with New York agency law. Accordingly, there is an identity of issues.

Next, the question of arbitrability was actually litigated in Singapore and was necessary to the Singapore Judgment. As explained above, BPS sought money damages from CSCL and was not simply seeking a provisional remedy when it commenced litigation in Singapore. The Singapore court dismissed BPS's suit on the ground that it did not enter into an agreement with CSCL. Thus, the issue was actually litigated and decided in Singapore. And because the foreign action was dismissed based on the absence of a contract between CSCL and BPS, that decision was necessary to the judgment.

BPS also suggests that it was not able to fully and fairly litigate in Singapore because it never obtained discovery. Not so. All the emails BPS now seeks to present to the district court were already in its possession at the time of the Singapore action as they were either to or from BPS employees. BPS was "require[d] . . . to bring forward all evidence in support of [its claim] in the initial proceeding." Restatement (Second) of Judgments § 27 illus. 4. BPS filed briefs, argued its case, and appealed the Singapore decision. Under these circumstances, BPS had a full and fair opportunity to litigate.

Finally, BPS represented in the district court, while seeking a stay of the district court proceedings in favor of the Singapore litigation, that the decision of the Singapore courts would be determinative on the issue of whether CSCL could be required to arbitrate. CSCL

argues that, as a result, BPS is estopped from contending that the result of the Singaporean action is immaterial to this question. Because we conclude that the district court properly accorded the Singapore Judgment preclusive effect, we need not address this issue.

IV. Permanent Injunction

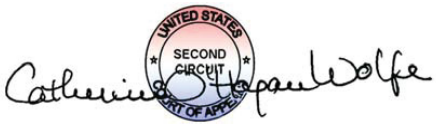
BPS also broadly asserts that the district court erred by permanently enjoining the arbitration between CSCL and BPS. "When reviewing an order granting either a preliminary or a permanent injunction, we review the district court's legal holdings de novo and its ultimate decision for abuse of discretion." *Goldman, Sachs & Co. v. Golden Empire Sch. Fin. Auth.*, 764 F.3d 210, 214 (2d Cir. 2014). We discern no error in the district court's decision.

"Federal courts generally have remedial power to stay arbitration." *Id.* at 213. Specifically, "where the court determines . . . that the parties have not entered into a valid and binding arbitration agreement, the court has the authority to enjoin the arbitration proceedings." *In re Am. Express Fin. Advisors Sec. Litig.*, 672 F.3d 113, 140 (2d Cir. 2011); *see also Societe Generale de Surveillance, S.A. v. Raytheon European Mgmt. & Sys. Co.*, 643 F.2d 863, 868 (1st Cir. 1981) (Breyer, *J.*). As discussed above, the district court properly accorded preclusive effect to the Singapore Judgment, which held that BPS and CSCL had not entered into a valid and binding arbitration agreement. Thus, the district court had the authority to permanently enjoin the arbitration proceeding.

* * *

We have considered BPS's remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk



APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

15 Civ. 2006 (AT)

[Filed January 15, 2019]

CHINA SHIPPING CONTAINER LINES CO. LTD.,	)
Petitioner,	)
-against-	)
BIG PORT SERVICE DMCC,	)
Respondent.	)

ORDER

ANALISA TORRES, District Judge:

On March 17, 2015, Petitioner, China Shipping Container Lines Co. Ltd. ("CSCL"), filed this action against Respondent, Big Port Service DMCC ("BPS"), seeking (1) an order staying a New York arbitration commenced by BPS; (2) a declaratory judgment in favor of CSCL stating that there is no agreement to arbitrate between the parties; and (3) costs, expenses, and disbursements. Pet., ECF No. 1. On March 30, 2015, BPS sought a stay of the case because the parties had

"briefed and argued before the High Court of Singapore, the question of stay of [the New York] arbitration," ECF No. 15, which the Court granted, ECF No. 18.

On December 22, 2017, the parties informed the Court that the Singapore courts had issued a final decision, but that they disagreed as to its preclusive effect on this action. ECF No. 47. The Court ordered supplemental briefing on the issue of preclusion, ECF No. 56, and on March 6, 2018, CSCL moved for an order recognizing and giving preclusive effect to the Singapore High Court's decisions, ECF No. 58. For the reasons stated below, CSCL's motion is GRANTED and its petition is GRANTED in all respects except for its request for costs, for which the Court orders further briefing.

BACKGROUND

The following facts are taken from the petition and the declaration submitted by CSCL and are uncontested. *See* Pet.; Toh Decl., ECF No. 61. CSCL is the owner of the vessel M/V Xin Chang Shu (the "Vessel"). Pet. ¶ 10. CSCL contracted with OW Bunker China Limited ("OW China") for the supply of bunkers (marine fuel oil) to the Vessel. *Id.* ¶ 11. OW China then subcontracted the bunker order to OW Bunker Far East (Singapore) Pte Ltd. ("OW Singapore"), and OW Singapore entered into a contract with BPS to arrange for the physical supply of the bunkers to the Vessel. *Id.* ¶¶ 13, 18. After the bunkers were delivered to the Vessel, the parent company of OW China filed for bankruptcy. *Id.* ¶ 26. On November 12, 2014, BPS

contacted CSCL by email seeking payment for its invoice issued to OW Singapore.[1] *Id.* ¶¶ 25, 29.

I. The Singapore Action

On November 19, 2014, BPS commenced an action in Singapore (the "Singapore Action"), Toh Decl. ¶ 3, and on December 10, 2014, the Vessel was arrested in Singapore based on an application by BPS, Pet. ¶ 30. CSCL paid $2.6 million in security to the Singapore court to secure the Vessel's release. *Id.* ¶ 31. As discussed further below, on December 14, 2014, BPS served CSCL with a demand for arbitration to be conducted in New York. *Id.* ¶ 34. Then, BPS applied to the Singapore court to stay the Singapore proceedings pending arbitration. *Id.* ¶ 32. On December 30, 2014, CSCL filed an application in the same court to set aside the warrant of arrest and to dismiss BPS's suit on the basis that no contract exists between BPS and CSCL.[2] *Id.* at 33.

In March and July of 2015, an Assistant Registrar of the Singapore High Court held a hearing on BPS's application for a stay and CSCL's applications to dismiss the Singapore Action and to set aside the warrant of arrest of the Vessel (the "First Instance

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[1] This invoice contains BPS's General Terms and Conditions, which provide for arbitration in New York pursuant to the Federal Maritime Law of the United States. Pet. ¶ 19.

[2] Order 18, Rule 19 of Singapore's Rules of Court allows a pleading to be "struck out" on the grounds that "(i) it discloses no reasonable cause of action; (ii) it is scandalous, frivolous or vexatious; (iii) it may prejudice, embarrass or delay the fair trial of the action; or (iv) it is otherwise an abuse of the process of the Court."

Hearing"). Toh Decl. ¶ 7. At the hearing, BPS made submissions on the legal and factual bases for its claim that OW Singapore entered into the contract on behalf of CSCL. *Id.* ¶ 13. The Assistant Registrar dismissed the Singapore Action and ordered the security returned to CSCL. *Id.* ¶ 15. With respect to BPS's application to stay, the Assistant Registrar held that BPS could not demonstrate that CSCL was a party to the contract or that OW Singapore had entered into it on CSCL's behalf, and likewise that it could not show that BPS and CSCL were parties to the New York arbitration agreement. *Id.* ¶¶ 14–16. Specifically, the High Court held that "[BPS] has not shown, on a good arguable basis, that the Plaintiff and the Defendants were parties to the arbitration agreement." Grounds of Decision, *id.* Ex. P4 ¶ 84, ECF No. 61-4. Therefore, the Assistant Registrar declined to stay the Singapore Action in favor of New York arbitration and dismissed the application. Toh Decl. ¶ 16. The Assistant Registrar did not, however, set aside the warrant of arrest. *Id.* ¶ 15.

BPS appealed this decision, which was heard by the Honorable Steven Chong of the Singapore High Court. *Id.* ¶ 20. On December 4, 2015, Justice Chong affirmed both the decision to dismiss the proceedings and the refusal to stay the matter pending arbitration, and granted CSCL's appeal to set aside the warrant of arrest. *Id.* ¶¶ 21–23. Justice Chong held that the evidence clearly established that there was "no basis for the court to find that [CSCL] was bound by the Contract." Appeal Decision, *id.* Ex. P15 ¶ 17, ECF No. 61-15. BPS then applied to the High Court for leave to appeal Justice Chong's decisions, and the High Court

dismissed this application on May 18, 2016. Toh Decl. ¶ 27. Next, BPS asked the Singapore Court of Appeal, the highest court in Singapore, for permission to appeal the denial of a stay, which it declined to grant on November 2, 2016.[3] *Id.* ¶ 29. As a result, the Singapore court decisions refusing to stay the Singapore proceedings in favor of New York arbitration and dismissing the Singapore Action are final and unappealable. *Id.* ¶¶ 29, 32.

II. The Arbitration Demand and Instant Action

As stated, BPS served CSCL with a demand for arbitration on December 14, 2014, stating that the arbitral proceedings were to be conducted in New York City in accordance with the rules for the Society of Maritime Arbitrators, Inc. Pet. ¶¶ 34–35. On February 23, 2015, the arbitration panel set a date for the initial arbitration hearing, *id.* ¶ 43, and on March 17, 2015, CSCL commenced this action seeking an order enjoining the New York arbitration and stating that there is no agreement to arbitrate between the parties, *see generally* Pet.

Along with the filing of its petition, CSCL moved by order to show cause for a temporary restraining order and preliminary injunction enjoining the arbitration. ECF Nos. 3, 5. BPS opposed that motion, arguing, *inter alia*, that "[t]he proper court venue for the dispute is Singapore." BPS Resp. at 6, ECF No. 10. BPS explained to the Court:

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[3] The Court of Appeal granted BPS leave to appeal the decision on the arrest of the Vessel. Toh Decl. ¶ 29.

> If the High Court decides that the dispute is not arbitrable, CSCL will suffer no irreparable harm because it will not be forced to arbitrate. On the other hand, if the High Court rules that the dispute between CSCL and BPS is arbitrable, then CSCL's argument that it will be irreparably harmed by being required to arbitrate (a claim also already inherent in CSCL's argument to the High Court) fails because the High Court will have found (over CSCL's argument) that there is at least a prima facie agreement to arbitrate.

Id. at 7 (emphasis in original). On March 30, 2015, BPS requested a stay of this action in anticipation of the impending decision from the Singapore High Court. ECF No. 15. The Court granted the stay, noting that "there appears to be substantial overlap between the issues," and that the considerations of "judicial economy, potential prejudice, and convenience" strongly favor a stay because "'[if] the High Court decides that the dispute is not arbitrable, CSCL . . . will not be forced to arbitrate.'" ECF No. 18 at 1–2 (quoting BPS Resp.). This action remained stayed for over two years while the issues were litigated in Singapore.

DISCUSSION

I. Jurisdiction

A. Subject Matter Jurisdiction

The Court will first address BPS's argument that the petition should be dismissed for lack of subject matter jurisdiction. Resp. Opp. at 7–14, ECF No. 65. Here, the petition alleges two grounds for subject

matter jurisdiction: (1) section 3 of the Federal Arbitration Act, 9 U.S.C. §§ 3, 4, and (2) admiralty and maritime jurisdiction pursuant to 28 U.S.C. § 1333. Pet. ¶¶ 7–8. The Court only considers whether it has admiralty jurisdiction.

The federal district courts have original jurisdiction over "[a]ny civil case of admiralty or maritime jurisdiction." 28 U.S.C. § 1333(1). If a contract is a "maritime contract," it is within a federal court's admiralty jurisdiction. *CTI–Container Leasing Corp. v. Oceanic Operations Corp.*, 682 F.2d 377, 379 (2d Cir. 1982). A contract for supply of marine fuel is "maritime" in nature. *Exxon Corp. v. Cent. Gulf Lines, Inc.*, 500 U.S. 603, 612 (1991). The contracts at issue are, therefore, maritime contracts, as they were for the supply of marine fuel. *See also Hovensa LLC v. Kristensons-Petroleum, Inc.*, No. 12 Civ. 5706, 2013 WL 1803694, at *3 (S.D.N.Y. Apr. 26, 2013) ("A bunker supply contract is squarely within the scope of admiralty jurisdiction, even when one party purchases the fuel from a third party and the third party delivers the fuel to the vessel."). Nevertheless, BPS argues that the Court lacks maritime or admiralty jurisdiction because CSCL "fails to allege any claim for breach of a maritime contract." Resp. Opp. at 10. CSCL responds that subject matter jurisdiction exists in a declaratory action brought by a party claiming that it is not a party to a contract, pursuant to *Garanti Finansal Kiralama A.S. v. Aqua Marine & Trading Inc.*, 697 F.3d 59, 66 (2d Cir. 2012). The Court agrees.

In *Garanti*, the petitioner vessel owner ("GFK") commenced an action for a declaratory judgment that

it was not bound to arbitrate with the respondent bunker supplier ("AM"). *Id.* at 62. AM initiated arbitration against GFK in New York. *Id.* GFK argued that it was not bound to arbitrate because it was not a party to the contracts containing the arbitration clause. *Id.* On appeal, the Second Circuit noted that in declaratory actions, subject matter jurisdiction is often determined by looking at the nature of the claim that the defendant could bring against the plaintiff. *See id.* at 68 (noting the "core principle" that a court should "realign the declaratory judgment claims and parties as they would appear in a coercive suit" to determine jurisdiction). The Second Circuit then held that admiralty jurisdiction existed over the parties' dispute:

> If AM, the declaratory judgment defendant, had instead brought an action as plaintiff to collect on the contracts, the district court unquestionably would have had admiralty jurisdiction. This declaratory judgment action is the mirror image of that suit, and the district court thus had admiralty jurisdiction here too.

Id. at 65–66.

Garanti's holding applies here. If BPS had brought an action for payment against CSCL, that would give rise to admiralty jurisdiction. *See Fireman's Fund Ins. Co. v. Great Am. Ins. Co. of N.Y.*, 822 F.3d 620, 632 (2d Cir. 2016) (admiralty jurisdiction includes "all contracts which relate to the navigation, business, or commerce of the sea"). This declaratory judgment action, therefore, "is the mirror image of that suit," and the Court has admiralty jurisdiction. *Garanti*, 697 F.3d at 71 ("Although [] the plaintiff [] disclaims the

existence of a maritime contract, there is no question but that we would have jurisdiction over [respondent's] hypothetical coercive suit to enforce the contract. Thus we have jurisdiction over this declaratory judgment action as well.").

Accordingly, the Court holds that it has subject matter jurisdiction over this action.

B. Venue

BPS next argues that venue is improper because "none of the events giving rise to the petition occurred in whole or in part within this district." Resp. Opp. at 13. The Court disagrees.

BPS maintains that CSCL is bound to arbitrate pursuant to an arbitration clause calling for all disputes to be "referred to a three person arbitration panel in the City of New York." Resp. Opp. at 3; Skoufalos Decl. Ex. D § 18.1, ECF No. 66-4. Although CSCL alleges that it is not a party to the contract incorporating this arbitral provision, there is no dispute that BPS itself has agreed to the provision. Indeed, BPS served on CSCL a demand for arbitration which stated that the arbitral proceedings were to be "conducted in the City of New York." Skoufalos Decl. Ex. I ¶ 3, ECF No. 66-9. For BPS to now argue that the Southern District of New York is not a proper venue is "bewildering." *Doctor's Assocs., Inc. v. Stuart*, 85 F.3d 975, 983 (2d Cir. 1996). As the Second Circuit has held, "[a] party who agrees to arbitrate in a particular jurisdiction consents not only to personal jurisdiction but also to venue of the courts within that jurisdiction." *Id.*

By agreeing to arbitrate in New York—let alone by serving a demand for arbitration in New York—BPS consented to venue in this Court for purposes of any actions regarding the arbitration clause, including this action. *Accord Victory Transp. Inc. v. Comisaria Gen. de Abastecimientos y Transportes*, 336 F.2d 354, 363 (2d Cir. 1964) ("By agreeing to arbitrate in New York, . . . the [defendant] must be deemed to have consented to the jurisdiction of the court that could compel the arbitration proceeding in New York."). Accordingly, the Court holds that venue is proper in this District.[4]

II. Foreign Judgments

CSCL moves for an order "recognizing and giving preclusive effect to the following decisions and orders issued by the Courts of Singapore" (collectively, the "Singapore Decisions"):

1. Decision of the Singapore High Court, dated August 11, 2015, Toh Decl. Ex. P4;
2. Order of the Singapore High Court, dated July 9, 2015, *id.* Ex. P9, ECF No. 61-9;
3. Order of the Singapore High Court, dated July 9, 2015, *id.* Ex. P10, ECF No. 61-10;
4. Decision of the Singapore High Court, dated December 4, 2015, *id.* Ex. P15;

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[4] Additionally, BPS argues that neither the Federal Arbitration Act nor the Declaratory Judgment Act by themselves confer subject matter jurisdiction, and that because "subject matter jurisdiction was lacking over [CSCL's] petition," "resort to state court remedies was the appropriate course of action" under N.Y. C.P.L.R. § 7500. Resp. Opp. at 8– 10, 12. As the Court has already found that there is subject matter jurisdiction over this action, these arguments fail.

5. Order of the Singapore High Court, dated September 23, 2015, *id.* Ex. P16, ECF No. 61-16;
6. Order of the Singapore High Court, dated September 23, 2015, *id.* Ex. P17, ECF No. 61-17; and
7. Order of the Singapore High Court, dated December 4, 2015, *id.* Ex. P18, ECF No. 61-18.

ECF No. 58 at 1–2.

A. Recognition

In determining the preclusive effect of a foreign judgment, a court must first formally recognize the foreign judgment. *See Alfadda v. Fenn*, 966 F. Supp. 1317, 1327 (S.D.N.Y. 1997). Under federal law, the recognition of foreign judgments is governed by principles of comity. *See Hilton v. Guyot*, 159 U.S. 113, 164 (1895); *Norex Petroleum, Ltd. v. Access Indus.*, 416 F.3d 146, 162 (2d Cir. 2005). "Federal courts generally extend comity whenever the foreign court had proper jurisdiction and enforcement does not prejudice the rights of United States citizens or violate domestic public policy." *Victrix S.S. Co. v. Salen Dry Cargo A.B.*, 825 F.2d 709, 713 (2d Cir. 1987); *see also Rapture Shipping, Ltd. v. Allround Fuel Trading B.V.*, 350 F. Supp. 2d 369, 373 (S.D.N.Y. 2004) (noting that "[w]hether a domestic court should recognize a judgment of a foreign court is governed by the principles of comity").

Recognition of the Singapore Decisions is appropriate here. First, BPS does not dispute the fact that the Singapore courts had proper jurisdiction—indeed, it was BPS that initiated the

action in Singapore and submitted to their courts the issue of whether an arbitration agreement exists between CSCL and BPS. *See* Toh Decl. ¶¶ 3, 8. Moreover, BPS proceeded to litigate the Singapore Action over a period of nearly two years without ever contending that the Singapore courts lacked jurisdiction. *See id.* ¶¶ 3–35. In fact, BPS told this Court that the "proper court venue for the dispute is Singapore" and that Singapore "undisputedly has jurisdiction over both parties." BPS Resp. at 6, 9. Second, recognition of the Singapore Decisions does not prejudice the rights of U.S. citizens because BPS is a foreign corporation organized and existing under the laws of the United Arab Emirates, Pet. ¶ 6, and is therefore not a citizen or resident of the United States.

Nor does recognition violate domestic public policy. Although BPS argues that extending comity would "run contrary to the strong domestic public policy favoring arbitration," Resp. Opp. at 27,[5] this federal policy "applies on its face only to the scope of the issues subject to arbitration, not to the threshold issue of whether there exists any agreement to arbitrate between the parties," *Monisoff v. Am. Eagle Invs., Inc.*, 927 F. Supp. 137, 138 (S.D.N.Y. 1996). Here, the parties disagree over whether there is an arbitration agreement to begin with, not the scope of the issues

[5] The Court also finds this argument disingenuous, as BPS has stated the opposite to this Court in earlier filings. *See* BPS Resp. at 8 (arguing that the Court should not "interfere with the decision of the High Court of Singapore" because "international comity and the Supreme Court's requirement of 'generous[ ] constru[ction]' of intentions of arbitrability are intertwined, forefront principles here" (alterations in original)).

subject to arbitration. Recognition of the Singapore Decisions under principles of comity is, therefore, appropriate.

B. Preclusive Effect

Under federal law, a foreign judgment can be accorded preclusive effect under principles of collateral estoppel or res judicata. *Sberbank of Russia v. Traisman*, No. 14 Civ. 216, 2015 WL 9812581, at *2 (D. Conn. Dec. 17, 2015). Collateral estoppel applies to prevent relitigation of an issue when: "(1) the identical issue was raised in a previous proceeding; (2) the issue was actually litigated and decided in the previous proceeding; (3) the party had a full and fair opportunity to litigate the issue; and (4) the resolution of the issue was necessary to support a valid and final judgment on the merits." *Interoceanica Corp. v. Sound Pilots, Inc.*, 107 F.3d 86, 91 (2d Cir. 1997) (internal quotation marks and citation omitted). Here, the elements of collateral estoppel are satisfied.

First, the issue of whether an arbitration agreement exists between the parties was raised by BPS in the Singapore Action, and the Court rejects BPS's argument that the Singapore proceedings were limited to the issue of the Vessel's arrest. The extensive records from the Singapore Action submitted in this case belie this argument. *See generally* Toh Decl. and accompanying exhibits. Although BPS initiated the Singapore Action by applying for an arrest of the Vessel, the proceedings went far beyond that initial

arrest.[6] It was BPS that asked the Singapore courts to decide the issue of whether the parties should be directed to arbitration,[7] Toh Decl. ¶ 5, and BPS agreed that the question of whether there was an arbitration agreement between the two parties could be resolved by consideration of whether there was any contract to begin with between the parties,[8] *id.* ¶ 9. Further, BPS told this Court that the Singapore court should and would decide the question of arbitrability. BPS stated, in no uncertain terms:

- "The parties already (since December, 2014) have been (and continue) before the High Court of Singapore, arguing the same issues," BPS Resp. at 1;

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[6] The extensive proceedings which took place before the Singapore courts, beginning when BPS commenced the Singapore Action on November 19, 2014, continuing with a First Instance Hearing in March and July of 2015, and culminating in multiple appeals in 2015, 2016, and 2017, are outlined in great detail in the Toh Declaration ¶¶ 3–35.

[7] In BPS's application for a stay to the Singapore courts, it stated that the grounds for the application were that BPS "has [] concluded an arbitration agreement by which all claims or disputes are to be referred to arbitration in the City of New York" and that BPS "has commenced arbitration proceedings." Toh Decl. Ex. P2 at 4, ECF No. 61-2.

[8] The Notes of Evidence recorded by the Assistant Registrar state that "[p]arties are agreed on basic approach which is that existence of arbitration agreement depends on existence of contract" and that "[b]y extension of that, [BPS] would not have made out an arguable case that there exists an arbitration agreement and therefore their application for stay should be dismissed." Toh Decl. Ex. P5 at 1, ECF No. 61-5.

- "The proceedings between BPS and CSCL continue before the High Court, including, on the issue of arbitration," *id.* at 2;
- "On December 15, 2014, BPS sought a stay of the Singapore litigation pending arbitration, and the issue of whether there should be arbitration . . . has, since December 15, 2015 . . . been before the High Court," *id.*;
- "CSCL challenged the arrest in the High Court on or about December 26, 2014, arguing, *inter alia*, that there was no valid agreement to arbitrate as between CSCL and BPS. Both CSCL and BPS briefed their positions to the High Court and the Court held argument on March 6, 2015. The High Court on March 24, 2015 heard further argument and decision, including on the stay pending arbitration, is pending," *id.*;
- "If the High Court decides that the dispute is not arbitrable, CSCL will suffer no irreparable harm because it will not be forced to arbitrate. On the other hand, if the High Court rules that the dispute between CSCL and BPS is arbitrable, then CSCL's argument that it will be irreparably harmed by being required to arbitrate (a claim also already inherent in CSCL's argument to the High Court) fails because the High Court will have found (over CSCL's argument) that there is at least a prima facie agreement to arbitrate," *id.* at 7; and

- "Fundamentally, this Court should not countenance CSCL's attempt to have this Court interfere with the decision of the High Court of Singapore, again, before which both parties have appeared . . . to argue the same issues as CSCL presses here," *id.* at 8–9.

The Court finds, therefore, that the issue of whether an arbitration agreement exists between the parties was raised in the Singapore Action.

Second, this issue was actually litigated in Singapore. As explained, the proceedings in Singapore were extensive. *See generally* Toh Decl. and accompanying exhibits. The issue of whether there is a valid contract (with an arbitration agreement) was first presented to the Singapore High Court when the parties' three applications were filed in December 2014.[9] Toh Decl. ¶¶ 5–6. The Singapore courts engaged in a detailed analysis of the applications with a consideration of evidence, substantial written submissions by the parties, and hearings. *Id.* ¶¶ 7–13. BPS made extensive submissions on the legal and factual bases on which it asserted that a contract had been entered into, *id.* ¶ 13, and BPS's counsel agreed that "the existence of an arbitration agreement depends on the existence of [a] contract," *id.* Ex. P5 at 2:6–7. The High Court issued a decision affirming the dismissal of BPS's claims and refusing to stay the

[9] The three applications were (1) BPS's application to stay the Singapore Action pending arbitration in New York, (2) CSCL's application to dismiss the Singapore Action as frivolous, and (3) CSCL's application to set aside the arrest of the vessel and to award CSCL damages for wrongful arrest. Toh Decl. Exs. P2, P3.

matter in favor of arbitration, holding that BPS failed to show "the existence of an agreement between [BPS] and [CSCL]" and therefore that BPS also failed to show that BPS and CSCL "were parties to the arbitration agreement."[10] Grounds of Decision ¶¶ 79–85. There can be no dispute, therefore, that this issue was actually—and, extensively—litigated in Singapore.

Third, as detailed above, BPS had a full and fair opportunity to litigate these issues in the Singapore Action and actively did so. BPS was provided with multiple bites at the apple to convince the Singapore courts of the existence of an arbitration agreement, yet failed to do so at every step. Fourth, the resolution of the issue of whether a contract or arbitration agreement existed between the two parties was necessary to the Singapore courts' decisions on BPS's application for a stay and CSCL's application to

[10] BPS appealed this decision to the High Court, which held that the evidence clearly established that there was "no basis for the court to find that the defendant was bound by the Contract." Appeal Decision ¶ 17. BPS applied to the High Court for leave to appeal this decision, which was denied, and then BPS asked the Singapore Court of Appeal for permission to appeal, which was also denied. *See* Toh Decl. ¶¶ 27, 29. As a result, the decision by the Singapore courts to refuse to stay the Singapore proceedings in favor of New York arbitration is final. *Id.* ¶ 29.

strike.[11] The entire action, in fact, centered around BPS's allegation that such an agreement existed.[12]

BPS cannot relitigate the issue of whether there is an arbitration agreement between BPS and CSCL, because the Singapore courts have already held that that there is not. *See* Grounds of Decision; Toh Decl. Ex. P14 at 9 ("There was . . . no basis for the court to find that [CSCL] was bound by the Contract."). The Court, therefore, finds that the Singapore Decisions should be given preclusive effect under principles of collateral estoppel.[13]

III. Judicial Estoppel

CSCL also argues that BPS should be barred under principles of judicial estoppel "from arguing that the result of the Singapore Action is immaterial to the

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[11] Indeed, the Assistant Registrar's Grounds for Decision state his finding that BPS has not shown "the existence of an agreement" between BPS and CSCL, which he notes "fatally undermines [BPS's] Stay Application." Grounds of Decision ¶ 79.

[12] BPS's counsel's statement that he "agree[s] that the existence of an arbitration agreement depends on the existence of [a] contract," Toh Decl. Ex P5 at 2:6–7, shows BPS's knowledge that the issue of whether a valid contract existed between the parties—and by extension, whether there was a valid arbitration agreement—was a necessary issue for the Singapore courts to address before they could resolve BPS's application for a stay in favor of arbitration.

[13] This conclusion does not change because, as BPS argues, the Singapore courts failed to consider potentially dispositive U.S. case law. Resp. Opp. at 23. BPS chose to file its lawsuit in Singapore, and as such, could not have reasonably expected that the Singapore courts would consider U.S. case law on the issues.

issue of whether CSCL can be ordered to arbitration." Pet. Reply at 11, ECF No. 69. The Court agrees.

Generally speaking, the doctrine of judicial estoppel "prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (citation omitted). The doctrine serves two dual purposes: to "preserve the sanctity of the oath" and to "protect judicial integrity by avoiding the risk of inconsistent results in two proceedings." *Simon v. Safelite Glass Corp.*, 128 F.3d 68, 71 (2d Cir. 1997). Although the doctrine typically applies when a party seeks to rely on a position that is inconsistent with a position previously taken in a prior proceeding, the doctrine also prevents reliance on inconsistent positions in the same action. *See Intellivision v. Microsoft Corp.*, 484 F. App'x 616, 620 (2d Cir. 2012).

"In evaluating whether to apply the doctrine of judicial estoppel, courts generally look for the existence of three factors: (1) that a party's new position is 'clearly inconsistent' with its earlier position, (2) that the party seeking to assert this new position previously persuaded a court to accept its earlier position, and (3) that the party 'would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.'" *Intellivision*, 484 F. App'x at 619 (quoting *New Hampshire*, 532 U.S. at 750–51). All three factors are present here. First, BPS urges the Court to dismiss the petition and order discovery on "the requirement that [CSCL] arbitrate its dispute with [BPS]." Resp. Opp. at 30. This is clearly inconsistent with BPS's early

position that "[i]f the High Court decides that the dispute is not arbitrable, CSCL . . . will not be forced to arbitrate." BPS Resp. at 7. Next, BPS previously persuaded this Court to accept its earlier position—indeed, the Court relied on BPS's representation, and quoted this very statement by BPS, when it ordered a stay in this action pending "the Court's receipt of the Singapore High Court decision." ECF No. 18 at 2. Finally, permitting BPS's "opportunistic, last-minute about-face" would unfairly advantage BPS and impose an unfair detriment on CSCL.[14] *Intellivision*, 484 F. App'x at 621. CSCL litigated the issues in Singapore for years, incurring significant costs, fees, and expenses, in reliance on BPS's statements that if Singapore courts found that the dispute is not arbitrable—which it did—then CSCL would "not be forced to arbitrate." BPS Resp. at 7.

Judicial estoppel is, therefore, appropriate, and bars BPS from arguing that CSCL can be ordered to arbitrate.

IV. Petition for Injunctive and Declaratory Relief

The Court now turns to CSCL's petition for injunctive and declaratory relief. CSCL seeks (1) an

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[14] In 2015, when BPS argued to the Court that it should dismiss CSCL's petition, it stated that "[i]t is clear that CSCL, fearing the High Court will order arbitration . . . is now trying to convince this Court to agree to a collateral attack on the dispute already thoroughly briefed and argued before the High Court of Singapore." BPS Resp. at 3. Now, three years later, BPS employs this same tactic, arguing that the Court cannot give preclusive effect to the Singapore Decisions—essentially because the High Court did not rule in its favor. BPS cannot have it both ways.

order permanently enjoining the New York arbitration commenced by BPS; (2) a declaratory judgment in favor of CSCL stating that there is no agreement to arbitrate between the parties; and (3) costs, expenses, and disbursements. *See* Pet.

BPS argues that it is entitled to additional discovery and a trial on the issue of whether a contract was formed between the parties. Resp. Opp. at 29–30. The Court disagrees. "A party moving for a jury trial under [Section 4 of the Federal Arbitration Act] must show the existence of a genuine issue involving the making of the arbitration agreement." *Topf v. Warnaco, Inc.*, 942 F. Supp. 762, 766 (D. Conn. 1996) (citing *Almacenes Fernandez, S.A. v. Golodetz*, 148 F.2d 625, 628 (2d Cir. 1945)). Because the Court has already held that the Singapore Decisions are preclusive, and these decisions found that no contract exists and therefore that no arbitration agreement exists between BPS and CSCL, BPS has not shown a genuine issue of triable fact. *See Almacenes Fernandez*, 148 F.2d at 628. As explained above, BPS had multiple chances to litigate the existence of a contract in the Singapore courts, and made extensive submissions on the legal and factual bases on which a contract could have been formed between the parties. Toh Decl. ¶ 13. BPS now states that it wishes to advance a new theory concerning the existence of a contract, Resp. Opp. at 19–23, but it could have raised such theories before the Singapore courts. BPS is not now entitled to additional discovery or yet another bite at the apple in the form of a trial in this District, simply because it wants to pursue a different theory of contract law than the one it pursued in Singapore. *See id.* (arguing that the Singapore

Decisions addressed evidence of direct contacts between the parties but "did not rule on whether those contacts were sufficient to create a contract"). Singapore courts already decided the issue, and the decisions are final and unappealable. Toh Decl. ¶ 34.

Because the Court has already held that the Singapore Decisions are preclusive, the Court finds that a declaratory judgment is warranted here. The Singapore Decisions found that no contract exists between BPS and CSCL and, therefore, that no arbitration agreement exists either. *See* Grounds of Appeal; Appeal Decision. Moreover, BPS is barred under judicial estoppel from arguing that CSCL can be ordered to arbitrate. CSCL, therefore, is entitled to a declaratory judgment stating that there is no agreement to arbitrate between CSCL and BPS.

As for CSCL's request for injunctive relief, the Court permanently enjoins the arbitration demanded by BPS because there is no valid arbitration agreement between these parties. *See In re Am. Exp. Fin. Advisors Sec. Litig.*, 672 F.3d 113, 140–41 (2d Cir. 2011) (affirming right of district court to enjoin arbitration where parties have not entered into valid and binding arbitration agreement); *see also Iota Shipholding Ltd. v. Starr Indem. & Liab. Co.*, No. 16 Civ. 4881, 2017 WL 2374359, at *9 (S.D.N.Y. May 31, 2017) (enjoining underlying arbitration after finding there was no valid arbitration agreement between the parties).[15]

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[15] The Court notes that it does not have to satisfy the traditional factors courts consider in granting injunctive relief in order to enjoin the arbitration. Arbitrability is a matter of contract, and a

CSCL also seeks "costs, expenses, and disbursements in prosecuting this action and the action in Singapore," Pet. at 8, but has not otherwise moved for them. The Court, therefore, will order further briefing on the issue.

CONCLUSION

For the foregoing reasons, CSCL's motion for an order recognizing and giving preclusive effect to the Singapore Decisions is GRANTED. CSCL's petition for injunctive relief and declaratory judgment is also GRANTED. The underlying arbitration is permanently ENJOINED because there is no valid agreement to arbitrate between CSCL and BPS.

By **March 1, 2019**, CSCL's counsel is directed to submit their request for costs, expenses, and disbursements. By **March 22, 2019**, BPS's counsel shall file their opposition papers, if any.

The Clerk of Court is directed to terminate the motion at ECF No. 58.

SO ORDERED.

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party cannot be forced to arbitrate a claim absent a valid and binding arbitration agreement. *In re Am. Exp.*, 672 F.3d at 141. A court's finding that there is no agreement to arbitrate is all that is required to enable it to enjoin an arbitration. *See, e.g.*, *TicketNetwork, Inc. v. Darbouze*, 133 F. Supp. 3d 442, 454 (D. Conn. 2015) (enjoining arbitration without analyzing traditional injunction favors); *Iota Shipholding,* 2017 WL 2374359, at *9 (same).

Dated: January 15, 2019
New York, New York

ANALISA TORRES
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

15 CIVIL 2006 (AT)

[Filed March 29, 2019]

CHINA SHIPPING CONTAINER LINES CO. LTD.,	)
Petitioner,	)
-against-	)
BIG PORT SERVICE DMCC,	)
Respondent.	)

JUDGMENT

It is hereby **ORDERED, ADJUDGED AND DECREED**: That for the reasons stated in the Court's Order dated January 15, 2019, CSCL's motion for an order recognizing and giving preclusive effect to the Singapore Decisions is granted; CSCL's petition for injunctive relief and declaratory judgment is also granted; the underlying arbitration is permanently enjoined because there is no valid agreement to arbitrate between CSCL and BPS.

DATED: New York, New York
March 29, 2019

RUBY J. KRAJICK
_____
Clerk of Court

BY: /s/_____
Deputy Clerk

APPENDIX D

9 U.S.C. § 3. Stay of proceedings where issue therein referable to arbitration

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

9 U.S.C. § 4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in

writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

9 U.S.C. § 16. Appeals

(a) An appeal may be taken from--

(1) an order--

(A) refusing a stay of any action under section 3 of this title,

(B) denying a petition under section 4 of this title to order arbitration to proceed,

(C) denying an application under section 206 of this title to compel arbitration,

(D) confirming or denying confirmation of an award or partial award, or

(E) modifying, correcting, or vacating an award;

(2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title; or

(3) a final decision with respect to an arbitration that is subject to this title.

(b) Except as otherwise provided in section 1292(b) of title 28, an appeal may not be taken from an interlocutory order--

(1) granting a stay of any action under section 3 of this title;

(2) directing arbitration to proceed under section 4 of this title;

(3) compelling arbitration under section 206 of this title; or

(4) refusing to enjoin an arbitration that is subject to this title.

28 U.S.C. § 1651. Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.