

1 **Joong and Shipping Co. Ltd.** Plaintiff

AND

5 **Choi Chong-sick (alias Choi Chong-sik) and** Defendant  
**Chu Ghin-ho, trading as Chang Ho Company**

10  
 (High Court)  
 (Action No. 1356 of 1994)

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 Kaplan, J. (in Chambers)  
 31st March 1994.

20 Courts practice and procedure—application for summary judgment—existence of arbitration  
 agreement—defendant seeks stay of proceedings under Article 8 of the Model Law—  
 principles on which summary judgment will be granted—Order 14, R.S.C.

25 Arbitration—plaintiff files court proceedings and seek summary judgment—defendant seeks  
 stay of proceedings under Article 8 of the Model Law—whether dispute—principles under  
 which stay will be granted

The plaintiff sought summary judgment and the defendant a stay of proceedings under  
 Article 8 of the Model Law pending a submission to arbitration.

30 **Held:**

1. **If there is anything in dispute between parties who have agreed on arbitration, then it is only right and proper that they should be held to their contractual bargain to have the disputes resolved by arbitration. (See p.440, lines 22-26.)**
- 35 2. **On the other hand, if there is no dispute between the parties, there is nothing to go to arbitration and it is appropriate to grant summary judgment. This can only be the approach if there is a clear admission as to liability and quantum. (See p.440, lines 27-31.)**
- 40 3. **The defendant has admitted the claims, as to quantum as well as to liability, in writing. (See p.440, lines 34-36.)**

Application for stay dismissed and summary judgment granted.

R. Coleman, instructed by Sinclair Roche, for the plaintiff.  
 Miss J. Park, instructed by Joseph S.C. Chan & Co., for the defendant.

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**Cases cited in the judgment:**

Guangdong Agriculture Co. Ltd. v. Conagra International (Far East) Ltd. [1993] 1 HKLR 113  
 Zhan Jiang & T. Dev Area Service Head Co. v. An Hau Co. Ltd. HCA No. 10781/1993

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**Kaplan, J.:**

I have before me an application by the plaintiff for summary judgment in the total sum of US\$166,294 which is broken down as to US\$136,294 for a demurrage claim after giving credit for despatch, and a further claim for the balance of freight in the sum of US\$30,000. The plaintiff seeks summary judgment for those sums. The defendant applies for a stay of proceedings, originally under s. 6 of the Arbitration Ordinance, but now amended to be made under Article 8 of the Model Law. 10

The law is perfectly plain and has been set out in a number of Hong Kong cases. The major case is *Guangdong Agriculture Co. Ltd. v. Conagra International (Far East) Ltd.*, a decision of Barnett, J. reported in [1993] 1 HKLR 113, which decision was followed by me in *Zhan Jiang & T. Dev Area Service Head Co. v. An Hau Company Limited* in an unreported decision HCA No. 10781/1993 handed down on the 21st January 1994. In the latter case, I made it clear that I would not refuse a Model Law stay unless the Defendant has admitted the claim unequivocally both as to liability and quantum. 15 20

In that case, I was asked to conclude that there was an admission as to liability but I was not satisfied that there was a clear admission as to quantum. If there is anything in dispute between parties who have agreed on arbitration, then it is only right and proper that they should be held to their contractual bargain to have the disputes resolved by arbitration. This court has consistently supported that view. 25

On the other hand if, in fact, there is no dispute between the parties, there is nothing to go to arbitration. This can only be the approach if there is a clear admission as to liability and quantum. Most arbitration clauses, and certainly Article 8, are predicated upon the existence of a dispute. So the law is clear. I must grant the stay unless I am satisfied that there is no dispute to go to arbitration because there is a clear admission as to liability and quantum. 30

I have had the advantage of reading two affidavits by each side, as well as the documents which they have exhibited, and I have also had the benefit of helpful submissions.

I am perfectly satisfied that the defendant has admitted both the claims for freight and demurrage. The defendant has admitted them in writing, that is in correspondence, and has admitted them as to quantum as well as to liability in the most unequivocal terms. 35

Ms. Park has attempted to argue that these letters cannot amount to admissions because they are not contained in pleadings or formal admissions or made by the parties' respective lawyers. I reject that submission. There is a clear admission in the correspondence and the court is entitled to take into account what businessmen say at the time about the nature of their own dispute. Ms. Park attempted to say that these gentlemen were not writing in their own language, but Mr. Coleman correctly pointed out that we were looking at translations from the original Korean, so these gentlemen were in fact writing to each other in their own language. 40

I am quite satisfied, as I have said, that there is absolutely no defence put forward in this case. 45

1 There is at the last moment, however, an attempt to put forward a defence that the ship had  
a capacity less than that contracted for. However, this gets nowhere near to amounting to a  
defence on the facts of this case because the defendant has never alleged that he has ever  
suffered any damage as a result of this.

5 The cargo which the defendant shipped was a cargo of 5,000 BDT of wood chip, and it has  
never been suggested that he had a larger cargo which he could not get on board the ship and  
has thus suffered any damage. I am not impressed with this last minute attempt to concoct a  
defence which has never been relied upon by the defendant itself in any correspondence.

10 I am thus quite satisfied that the claim both as to liability and quantum have been  
unequivocally admitted in the correspondence and, in those circumstances, there is really no  
reason at all for the parties to have to trouble an arbitrator. This is one of those very rare cases  
where the court can be confident that it is an appropriate case to grant Order 14 judgment and  
dismiss the application for a stay under Article 8 of the Model Law. Under Article 8, I am, of  
course, obliged to grant a stay, but I do not think I am obliged to do so if, as in this case, there  
15 is in reality no dispute between the parties. Cases, such as this, will be fairly rare, but in the  
light of the clear evidence placed before me, it cannot be right in justice nor in my judgment in  
law to require the plaintiff to abandon these proceedings and commence an arbitration when it  
is plain that the result is absolutely inevitable.

20 For those reasons, I propose to dismiss the summons for a stay and grant the plaintiff  
summary judgment for the sum claimed with interest at the judgment debt rate as from  
today.

*Application for stay dismissed and summary judgment granted.*

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D.J.P.