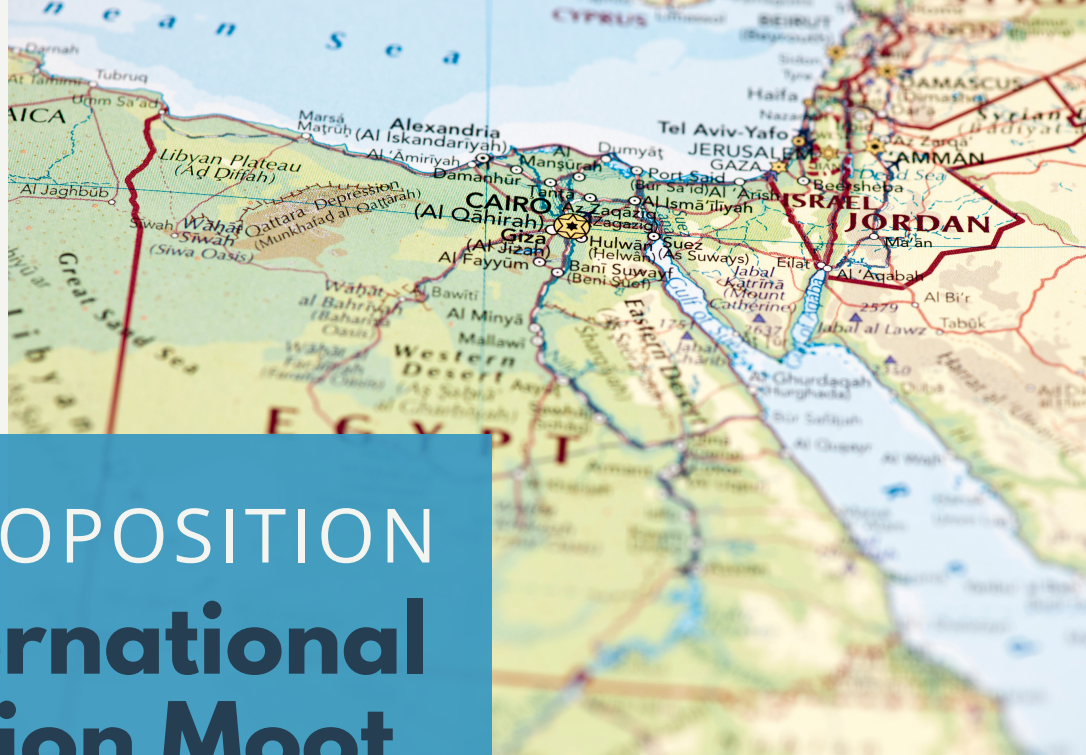




MEDIATEGURU
Sharing the gift of Mediation with the World



MOOT PROPOSITION

2nd International Arbitration Moot

Oct 12 - 16, 2022

Objective of the Moot

MediateGuru aims at promoting ADR mechanisms and nurture a strong ADR culture around the globe. In pursuance of our goal, After the grand success of the 1st International Arbitration Moot 2021 and from request from participants and universities from diverse jurisdictions, MediateGuru is pleased to organise the 2nd International Arbitration Moot 2022.

In furtherance of MediateGuru's initial aim to promote ADR practices, this competition will focus on providing a practical exposure to ADR enthusiast law students on Arbitration.

About 2nd IAM'22

MediateGuru's **2nd International Arbitration Moot 2022**, in collaboration with **L&L Partners** (formerly Luthra & Luthra Law Offices), Hosting University - **International University of Sarajevo, Bosnia and Herzegovina**, Hosting Institution - **Vivekananda School of Law and Legal Studies, New Delhi India**.

Supported by -

Careers in Arbitration (London, England)

R.E.A.L. - Racial Equality for Arbitration Lawyers (New York, United States)

Digital Coffee Break in Arbitration (Munich, Germany)

Rising Arbitrators Initiative

Supporting Law Firms -

Niyom Legal (United Arab Emirates)

Sharma Mediation & Arbitration (United States of America)

Theme

Theme of 2nd International Arbitration Moot 2022 is "International Commercial Arbitration"



Our Partner(s)



In collaboration with



Hosting University



Hosting Institution

Supporting Organisations

#CAREERS
IN ARBITRATION



SHARMA MEDIATION & ARBITRATION

DIGITAL
COFFEE
BREAK

BRIEF SUMMARY OF FACTS - CLAIMANT'S SIDE

The Saint Cannard Authority ("SCA") is a state-owned authority which owns, operates and maintains the Saint Cannard Canal. It is responsible for the operation and maintenance of the Saint Cannard and for the safety of the traffic and for all other matters relating thereto. It is also responsible for all its pilot stations and pilots.

On 23 March 2021, the Empire of Gold ("The Vessel"), a ship operated by the Euro Global Marine Group ("Euro Global") ran aground the Saint Cannard on its way to the Netherlands from Malaysia. This caused the blocking of international trade as more than 320 ships were stuck on the entrances of the canal.

SCA and Euro Global executed a Salvage Contract ("Contract") pending the commencement of salvage operations to remove and refloat the vessel. It took 6 days of joint efforts to pull the vessel and successfully refloat it. SCA now claims from Euro Global under Art. 3 of the Contract executed between them.

Upon refusal of Euro Global to pay the amount agreed upon under the Contract, SCA impounds the Vessel at Glencove Basin Lake. In early July 2021, the Vessel left Glencove Basin Lake without providing for security following a compensation agreement executed between Euro Global and SCA.

After several attempts by the SCA to collect from Euro Global, it commenced arbitration proceedings on 10 August 2022 at the Stockholm Chamber of Commerce under Art. 1 and Art. 2 of the Contract.

SCA alleges breach in the Contract, and a claim for loss of revenue and damages amounting to \$916M, including a \$300M claim for loss of reputation.

BRIEF SUMMARY FACTS - RESPONDENT'S SIDE

Euro Global Marine Group ("Euro Global") is a container transportation and shipping company, headquartered in Luzhu, Taoyuan, Taiwan. It operates the Empire of Gold ("the Vessel"), one of the world's largest container ships, registered in Panama.

On 23 March 2021, the Vessel, while traveling from Tanjung Pelepas, Malaysia to Rotterdam in the Netherlands, ran aground in the Saint Cannard. It remained in place for six days before salvage crew finally freed it on 29 March 2021. According to a statement by the SCA, the Vessel ran aground after losing the ability to steer amid high winds and a dust storm. Moreover, when the Vessel became stuck, it was piloted by a Saint Cannard pilot.

The ship was refloated in the afternoon of 29 March 2021 and was towed into Glencove Basin Lake for technical inspection. Thereafter, SCA proceeded to impound the Vessel following a demand for Euro Global to pay \$916M in fees, including \$300M in loss of reputation.

Euro Global sought for the release of the Vessel stating that impounding the vessel longer would result in further disruptions in the shipping industry.

In July 2021, the Vessel was released by the Egyptian authorities following an agreement on compensation. Euro Global holds that it did not fail to comply with its contractual obligations under the Salvage Contract. Further, Euro Global had already paid \$600M as compensation for the salvage operations.

The claimant notifies a Notice of Arbitration to Respondent on June 1, 2022, pursuing art. 1 and 2 of the Salvage Contract between Euro Global Marine and Saint Cannard Authority.

APPLICABLE RULES

Salvage Contract between Euro Global Marine and Saint Cannard Authority

Art. 1

a) *"All disputes - included those of not contractual nature - arising out of, related or connected to this agreement shall be settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce, by a sole arbitrator/ three arbitrators **, appointed in accordance with the Rules, which are deemed to be incorporated by reference into this clause".*

b) *"The seat of arbitration shall be the Arbitration Institute of the Stockholm Chamber of Commerce ("SCC")"*

Art. 2

"Disputes in respect of the award to the salvor including payments in accordance with Art. 3 as with any other dispute which has arisen out of this contract shall be resolved by final arbitration in accordance with the rules of the Stockholm Chamber of Commerce".

International Convention on Salvage

Art. 1 (a)

salvage operation - any act or activity undertaken to assist a vessel or any property in danger in navigable waters or in any other waters whatsoever.

Art. 13

criteria for fixing the reward

§ e - the skill and efforts of the salvors in saving the vessel, other property and life;

§ f - time used and expenses and losses incurred by the salvors.

Art. 21:

Duty to provide security

a) *Upon the request of the salvor a person liable for a payment due under this Convention shall provide satisfactory security for the claim, including interest and costs of the salvor.*

b) *Without prejudice to paragraph 1, the owner of the salvaged vessel shall use his best endeavors to ensure that the owners of the cargo provide satisfactory security for the claims against them including interest and costs before the cargo is released.*

c) *The salvaged vessel and other property shall not, without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of the salvage operations until satisfactory security has been put up for the salvor's claim against the relevant vessel or property.*

International Convention on Maritime Liens and Mortgages (UNCITRAL)

Art 4

Each of the following claims against the owner, demise charterer, manager, or operator of the vessel shall be secured by a maritime lien on the vessel:

§ "c" = claims for reward for the salvage of the vessel

§ "d" = claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.

Claimant's Merits of the Facts

The Saint Cannard Authority ("SCA")

The Saint Cannard Authority ("SCA") is an Egyptian state-owned authority which owns, operates and maintains the Saint Cannard. SCA owns the Saint Cannard and all areas, buildings and equipment pertaining thereto. SCA issues the Rules of Navigation, specifies the tolls for the use of the canal and collects them.

SCA is responsible for the operation and maintenance of the Saint Cannard, for the safety of the traffic and for all other matters relating thereto.

SCA is responsible for the computerized traffic management supported by radar, for the 14 pilot stations and their pilots.

Since 1996, SCA has operated the Maritime Training and Simulation Center for its pilots. SCA operates some 60 ships and boats, such as tugs, dredgers, cranes, and smaller boats.

The Empire of Gold ("The Vessel")

Empire of Gold is registered in Panama and technically managed by the German ship management company Bern Schu Shipmanagement. It is owned by Japanese firm Shito Kansen KK and Euro Global Marine Group, a Taiwanese conglomerate that operated it under a long-term time charter.

Empire of Gold runs aground in the Saint Cannard Canal

On March 23, the 400-meter-long *Empire of Gold* ("The Vessel"), was sailing from Malaysia to the Netherlands with almost 220,000 tons of goods when it ran aground in the Saint Cannard.

The accident caused the blocking of international trade in one of the main waterways in the world

where more than 320 ships, including oil tankers were stuck on the entrances of the canal, sparking a crisis in the world supply chain, especially in Europe.

- The ship's large size has covered the entire width of the canal, holding up vessel traffic for days. This is causing knock-on effects on the movement of cargoes globally, as 12 percent of global trade is carried on board ships using the canal. It took six days of joint efforts to pull the stuck ship and successfully re-floated it.

We, the SCA, started salvage operations under a Salvage Contract. Pertinent Provisions of the Salvage Contract are as follows:

Art. 3

"... the owners of the Vessel shall pay the salvor his reasonably incurred expenses and an increment not exceeding 15% of such expenses in accordance with the conditions and principles which are provided in the Lloyd's Standard Form of Salvage Agreement 1980 in the case that the salvage services are not successful".

Art. 5

"§ the vessel may not be removed from the port or place where it has been brought after the completion of the salvage services until an acceptable security for the salvage award for the vessel has been provided. Nor must the salvaged cargo be removed until an acceptable security for the salvage award has been provided".

Art. 6

"§ disputes in respect of the award to the salvor including payments in accordance with Art. 3 as with any other dispute which has arisen out of this contract shall be resolved by final arbitration in accordance with the rules of the Stockholm Chamber of Commerce".

- The ship was finally freed in the afternoon of 29 March 2021, and the ship started moving under tow towards the Glencove Basin Lake for technical inspection, the first step towards reopening the canal, planned for later that day.
- After the canal had been checked for damage, we informed shipping agencies that shipping was to resume.

We started our claim under Art. 3 of the Salvage Contract

Following the successful salvage and refloating of the Empire of Gold, we commenced its claim on Euro Global Marine pursuant to the Salvage Contract executed between us.

Euro Global refused to pay and as a result, we impounded the Empire of Gold

On 13 April 2021, we impounded the vessel due to the refusal of Euro Global Marine to proceed with the payment.

Empire of Gold left Glencove Basin Lake without providing a security

On 5 July 2021, the Empire of Gold left Glencove Basin Lake without providing for security following a compensation agreement executed between us and Euro Global Marine.

On 10 August 2022, we commenced arbitral proceedings against Euro Global Marine

After several failed attempts to collect from Euro Global, we commenced arbitration proceedings at the Stockholm Chamber of Commerce under Art. 5 and Art. 6 of the Salvage Contract executed between them.

We attempted to collect from Euro Global on five separate occasions:

- 10 July 2021
- 10 September 2021
- 10 November 2021
- 10 January 2022
- 10 April 2022.

Reliefs sought by Claimant

Saint Cannard Authority (“SCA”) claims a breach of Art. 3, 4, and 6 of the Salvage Contract.

- Art. 5 of the Salvage Contract states that the vessel may not be removed until an acceptable security for the salvage has been provided.
- Empire of Gold left Glencove Basin Lake in early July 2021 without providing for a security.

Saint Cannard Authority (“SCA”) seeks compensation from Euro Global for loss of revenue and damages

- As a result of the blocking of the Empire of Gold, more than 320 ships had to be re-routed and as a result, we had to pay the other vessel owners the cost of the rerouting.

Saint Cannard Authority (“SCA”) also claims damages in the amount of \$916M including loss of revenue and other damages

- \$300M for loss of reputation
- all legal fees and costs associated with this arbitration
- pre and post award interest
- confidentiality of all evidence submitted in support of this claim
- such other relief as the Tribunal considers appropriate.

Response to Notice of Arbitration by Respondent

Respondent's Merits of Facts

Euro Global Marine

Euro Global Marine is a container transportation and shipping company, headquartered in Luzhu, Taoyuan, Taiwan.

The Vessel

Empire of Gold is one of the largest container ships in the world. The ship is time chartered and operated by container transportation and shipping company, Euro Global Marine, headquartered in Luzhu, Taoyuan, Taiwan. Empire of Gold is registered in Panama and its technical management is the responsibility of the German ship management company Bern Schu Shipmanagement (BSM).

Empire of Gold runs aground

- On 23 March 2021, while traveling from Tanjung Pelepas in Malaysia to Rotterdam in the Netherlands, the ship ran aground in the Saint Cannard. The ship remained in place for six days before salvage crews freed it on 29 March 2021.
- According to a statement by the Saint Cannard Authority (SCA), the ship ran aground diagonally after losing the ability to steer amid high winds and a dust storm.

- In a separate statement, we stated that we were told the ship "was suspected of being hit by a sudden strong wind, causing the hull to deviate from [the] waterway and accidentally hit the bottom". The ship ended up with its bow wedged in one bank of the canal and stern nearly touching the other. The ship, which had no tugboat, was the fifth in a northbound convoy, behind two prior container ships that were each paired with a tugboat. There were fifteen vessels behind it when it ran aground.
- Traffic in both directions was blocked for just over six days, leading to a traffic jam of over two hundred vessels.
- In addition, trade experts were worried about a supply chain delay, and tension due to the delay for the ships trapped as well as other vessels that planned to cross the Suez.
- Eight tugboats worked to re-float the vessel in collaboration with a Komatsu excavator removing sand from the side of the canal where the bow of the vessel was wedged. After an overnight break, the salvage work resumed in the morning of 25 March.
- Aided by high spring tide, the ship was partially freed from sediment and re-floated on 29 March 2021, apart from the bow, which was still caught.
- The ship was finally freed in the afternoon, and the ship started moving under tow towards the Glencove Basin Lake for technical inspection, the first step towards reopening the canal, planned for later that day. After the canal had been checked for damage, the SCA informed shipping agencies that shipping was to resume.

SCA impounds the Empire of Gold

The vessel was impounded on 13 April 2021 for refusing to pay a reported \$916 million in fees, including \$300 million in "loss of reputation."

We sought the release of the Empire of Gold

We sought the release of Empire of Gold from the SCA stating that impounding of the vessel longer would result in further disruptions in the shipping industry.

SCA refuses to release the Empire of Gold, stating that we need to pay the contract first

SCA insists on holding the vessel at Glencove Basin Lake until we comply with our contractual obligations.

We paid 600M USD as compensation for the salvage

We had already paid 600M USD as compensation to the SCA for the salvage operations.

We have no liability over the grounding incident as the Empire of Gold was piloted by a Saint Cannard pilot when it ran aground

It is our position that we are not liable for the grounding incident or its consequences. When the ship became stuck, it was being led by a Saint Cannard pilot, who had earlier taken over from the harbor pilot who had driven the ship from the Suez anchorage into the canal.

In early July 2021, the ship was released by the authorities following an agreement on compensation.

Response to reliefs Sought/Respondent's Claims

SCC has no jurisdiction over the claim

The SCA failed to exhaust local remedies.

- The SCA should have filed a claim with the local Egyptian courts first as they have the proper jurisdiction over this dispute.
- There is nothing in the provision of Art. 5 and 6 of the Salvage Contract that states that arbitration proceedings under the SCC shall be the exclusive mode of settling disputes between the parties.

The SCC has no jurisdiction *ratione temporis* over the dispute as the Claimant has failed to establish that it made a claim within 1 year from acquiring knowledge of the breach.

- SCA's claim is filed out of time and divests the Tribunal of jurisdiction.
- SCA should have filed its claim within one-year from the knowledge of the alleged breach.

Art. 12 (i) of the SCC Rules:

The Board shall dismiss a case, in whole or in part, if:

- *The SCC manifestly lacks jurisdiction over the dispute*

Art. 13 of the Salvage Contract

A party may not make a claim if more than 1 year has elapsed from the date on which the party first acquired or should have first acquired knowledge of the alleged breach and knowledge that the party has incurred loss or damage.

We did not commit any breach of the provisions of the Salvage Contract

Euro Global Marine did not commit any violations of the provisions of the Salvage Contract.

We had already given \$600M to the SCA before it left Glencove Basin Lake. This can be considered as security as SCA still claims the full amount \$916M including \$300M from Euro Global

Even if the SCA is entitled to damages from Euro Global, the damage claims are unconscionable.



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Please note that any attempt to contact the drafters of the negotiation problem, in relation to the problem of this competition, would lead to immediate disqualification.



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ABOUT MEDIATEGURU

In the era of emerging legal disputes due to high population which within its purview has different demographics, not all people can afford the high cost of going to court to seek justice or wait for years to get justice at the constant burden to monetary terms and time. Here we come to assist you.

We intent to bridge the gap between the classes in a community and the mediators, provide a linkage between the same with an aim to provide social awareness.

Apart from this, we organise various conferences, webinars, landmark Mediation, Negotiations and Arbitration competitions.



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