

**HIGH COURT
MARSHALL ISLANDS**

SYMPHONY SHIPBUILDING SA, Plaintiff, v. SEA JUSTICE LTD., a Marshall Islands corporation, Defendant.	CIVIL ACTION NO. 2021-835 HCT/CIVIL/MAJ ORDER GRANTING IN PART MOTION TO DISMISS
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This case arises from the collision between two vessels within the territorial waters of the People’s Republic of China (“PRC”), off the port of Qingdao, on April 27, 2021 (the “Collision”). *See, e.g.*, First Changqing Decl. ¶ 4.

I. FACTUAL BACKGROUND

The Collision occurred when the vessel *Sea Justice* struck the vessel *A Symphony*, at anchor offshore Qingdao, damaging both vessels. *A Symphony* released part of its cargo of bitumen mix crude oil into the sea from its damaged cargo tank No. 2P (with the capacity of about 10,000 metric tons). After the Collision, the PRC authorities arranged for an oil clean-up operation to be undertaken. *See id.* ¶ 5.

A. The Parties to this Action

As alleged in the Amended Complaint, plaintiff Symphony Shipbuilding SA

(“Symphony”) is a corporation formed under the laws of Liberia. Am. Compl. ¶ 1.¹ As noted at oral argument, Symphony is a Greek-owned and Singaporean operated interest, with crew members from India and the Philippines.

Defendant Sea Justice Ltd. is a non-resident domestic company incorporated in the Republic of the Marshall Islands (“RMI”) with a registered address at: Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Republic of the Marshall Islands MH 96960 (“Sea Justice”). Yongmin Decl. ¶ 2. The vessel *Sea Justice* is entirely owned by Sea Justice, its registered owner. Yongmin Decl. ¶ 6. The International Safety Management Code (“ISM”) manager and ship manager/commercial manager of *Sea Justice* is Glory Ships Co. Ltd. (“Glory Ships”) a company registered in the PRC, with its head office in Qingdao. *Id.* ¶ 7. *Sea Justice* is a Panama-flagged general cargo ship with a gross tonnage of 24,960 that regularly trades in the East Asia region. *Id.* ¶ 8. *Sea Justice* has never traveled to, and reportedly is not likely to travel to, the RMI. *Id.* ¶ 8. As noted at oral argument, Sea Justice has no domestic connection to the RMI other than as its place of incorporation, and it is managed out of the PRC with PRC crew members.

B. RMI Proceeding Concerning the Collision

On May 6, 2021, Symphony filed the complaint in this case against Sea Justice (“Complaint”) alleging (i) negligence in failing to follow international collision regulation as

¹The Plaintiff originally named in this action, Symphony Shipbuilding SA, and the Owner of A Symphony as described in the PRC Proceedings, Symphony Shipholding S.A., created some confusion as to the real party-in-interest. At pages four and five of its November 1, 2021 response to Sea Justice’s Motion for Leave to File (1) Application for Injunction in the Qingdao Maritime Court and (2) Second Declaration of Wang Yongli, Symphony clarified that the correct name of Plaintiff is Symphony Shipholding S.A., confirming that the real party-in-interest in this proceeding and in the PRC Proceedings is identical.

required by 47 MIRC 150; (ii) negligence in failing to exercise good seamanship; and (iii) failing to render assistance without reasonable cause in violation of 47 MIRC 147. However, Symphony did not specify the amount of damages. On May 6, 2022, the Complaint was served on the Trust Company of the Marshall Islands (“TCMI”) for Sea Justice. Two months later, on July 9, 2021, Symphony filed an amended complaint based upon the same claims and alleging damages in the total of \$86,440, 273 (“Amended Complaint”).

In response to the Amended Complaint, Sea Justice, on August 27, 2021, filed its Motion to Dismiss for *Forum Non Conveniens* and Failure to State a Claim (“Motion to Dismiss”), In due course, Symphony filed its Opposition to the Motion to Dismiss (“Opposition”), and Sea Justice filed its Reply to Plaintiff’s Opposition to the Motion to Dismiss.

After a November 2021 scheduling conference, Sea Justice filed its Supplemental Submission [] in Further Support of Motion to Dismiss for *Forum Non Conveniens* and Failure to State a Claim and Symphony filed its Submission Regarding the Impact of the Hague Evidence Convention the Public and Private Factors in the Forum Non Conveniens Analysis.

Finally, in February 2022, after a hearing on the Motion to Dismiss, the parties filed their proposed findings of fact and conclusions of law and their responses to the other party’s submission.

C. PRC Proceedings Concerning the Collision

Shortly after the Collision occurred, multiple legal proceedings commenced in the PRC (collectively, the “PRC Proceedings”). There are at least three separate actions underway in the PRC which relate to the Collision and together make up the PRC Proceedings: (1) Sea Justice’s limitation action, to which Symphony has already registered substantive claims; (2) Sea Justice’s

substantive claim against Symphony; and (3) Symphony's separate limitation fund established in respect of oil pollution damage under the 1992 International Convention on Civil Liability for Oil Pollution Damage ("CLC 92"). *See*, First Changqing Decl. ¶ 6. In addition, a separate investigation by the PRC Maritime Safety Administration ("MSA") into the incident has proceeded and resulted in the collection of voluminous documents and information, and the *A Symphony* remains under arrest in the port of Qingdao.

1. Sea Justice Limitation Action

On April 30, 2021, Sea Justice applied to the Qingdao Maritime Court in the PRC to establish a Limitation Fund, and on May 8, 2021, the Qingdao Maritime Court registered that application and assigned it Case No. (2021) L72MT No. 187. *Id.* ¶¶ 9-10. Public notices in respect of Sea Justice's application to set up a Limitation Fund were published by the Qingdao Maritime Court in the *People's Court Daily* on three consecutive days, respectively May 27, 28 and 29, 2021. *Id.* ¶ 11. The public notices provided interested parties with notice and an opportunity to object to the constitution of the Limitation Fund by filing with the Court an objection in writing within 30 days of the publication of notice. *See id.* The 30-day time limit passed on June 28, 2021 without any such objection being filed. *Id.* ¶ 12.

By Civil Ruling dated July 12, 2021, and served on July 16, 2021, the Qingdao Maritime Court approved Sea Justice's application to set up a Limitation Fund, and required the deposit of funds. *See id.* ¶ 13. Sea Justice constituted the Limitation Fund by making payments, via its insurer, into the Qingdao Maritime Court of RMB 2,594,200 on July 20, 2021, and a further RMB 36,942,301 on July 21, 2021 such that the total fund paid into court was RMB 39,536,501 (being the equivalent of SDR 4,251,820 plus interest as calculated in accordance with the

applicable local procedures). RMB 39,536,501 is roughly equivalent to US\$ 6,088,500. *See id.* ¶ 14.

Plaintiff Symphony has registered substantive claims against this Limitation Fund, the amount of which closely mirrors the amount claimed in this proceeding. *Id.* ¶ 15. By registering their substantive claims, the claimants on the Limitation Fund have submitted to the jurisdiction of the Qingdao Maritime Court for those claims. *See id.* ¶ 16.

In the case of Symphony, it is plain that their substantive claim against Sea Justice will mirror that of their claim made in this action. *See id.*; *see also* Second Changqing Decl. ¶ 7 (“as a matter of PRC law, now that Symphony has registered their claims and further commenced their substantive claims against the Sea Justice’s Limitation Fund before the Qingdao Maritime Court . . . they have expressly submitted those claims to the jurisdiction of the Qingdao Maritime Court, and shall be bound by the PRC laws, both procedural and substantive.”).

2. Sea Justice’s Substantive Claim Against Symphony

Sea Justice also filed a substantive claim against Symphony with the Qingdao Maritime Court on May 8, 2021, which was approved by the Qingdao Maritime Court on May 12, 2021. *Id.* ¶¶ 17-18. In that matter, the Qingdao Maritime Court will determine and apportion liability for the collision as between the two vessels, as well as the quantum of Sea Justice’s claim. *Id.* ¶

Notably, it would be very rare in the PRC for a vessel to be held liable for a collision at 100%, even if the collision is with an anchored vessel and where there was dense fog restricting visibility, as is the case in this Collision. Second Changqing Decl. ¶ 12. The plaintiff’s own declarant, Mr. Wang Yongli, states he believes that a PRC court might apportion fault “in the range of 80% - 95% to the SEA JUSTICE and 20% to 5% to the A SYMPHONY as the case may

be.” *Id.* The question of the parties’ relative liability and the appropriate apportionment thus remains open, and will be a fact-intensive inquiry. *See id.*

On May 8, 2021, Sea Justice’s local counsel in the PRC notified the PRC lawyers representing Symphony of the application of Sea Justice to set up the Limitation Fund, and further that this substantive claim was already commenced by Sea Justice before the Qingdao Maritime Court. First Changqing Decl. ¶ 17.

The filing of Sea Justice’s substantive claim was approved by the Qingdao Maritime Court on May 10, 2021. *Id.* ¶ 18. As with the substantive claim of the Symphony against Sea Justice’s Limitation Fund, and Sea Justice’s substantive claim against Symphony arose from the same Collision, it is also anticipated that these claims will be consolidated into one. Second Changqing Decl. ¶ 11.

3. Symphony Limitation Fund

On July 3, 4 and 5, 2021, notice was published advising that the Symphony also applied to set up a limitation fund in respect of oil pollution damage under CLC 92 in relation to the Collision. First Changqing Decl. ¶ 21. Pollution damage claimants have registered claims in this proceeding and are commencing claims against Symphony’s CLC 92 limitation fund. Second Changqing Decl. ¶ 13. All of these pollution damage claims will also be determined by the Qingdao Maritime Court on their merits. *Id.*

4. The MSA Investigation

In addition to the legal proceedings discussed above, the MSA also commenced an

investigation of the incident and has issued a report. *See*, First Changqing Decl. ¶¶ 22-24.² The MSA investigation includes interviews of the crew of both vessels and distills their accounts into formal witness statements. *Id.* The MSA has also gathered documentary and electronic evidence from both vessels and report back to the Qingdao Maritime Court handling the parties' substantive claims. *Id.* ¶¶ 22-23.

5. Arrest and Detention of *A Symphony*

The *A Symphony* also remains under arrest in the PRC by order of the Qingdao Maritime Court, and stands as security for salvage services of the Qingdao Port. Third Changqing Decl. ¶ 10. To investigate disputed issues of fact in relation to proceedings with the Qingdao Port, and with respect to a claim made by the *A Symphony* Interests' Ship Pollution Response Organization for clean-up costs, the Qingdao Maritime Court is investigating and retrieving relevant documents and records from the MSA in relation to a ship-to-ship cargo transfer following the incident and in relation to oil pollution clean-up activities. *See id.* ¶¶ 10-13.

II. LEGAL STANDARD

A. *Forum Non Conveniens*

A party moving to dismiss on grounds of *forum non conveniens* must show: (1) the proposed alternative forum is adequate; and (2) that the balance of private and public interest factors weigh in favor of dismissal. *See Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 254, n.22 (1981); *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947); *Ceramic Corp. of America v. Inka*

²A voluminous investigation report of the MSA with its findings concerning the Collision, running some forty-one pages long, was published (in PRC) on January 28, 2022 (available at: <https://www.msa.gov.cn/html/xxgk/tzgg/sgdc/20220128/93D989DA-CA4B-4BBC-919A-8857DE4505DF.html>).

Maritime Corp., 1 F.3d 947 (9th Cir. 1993); *Creative Technology, Ltd., v. Aztech Syst. Pte., Ltd.*, 61 F.3d 696, 703 (9th Cir. 1995).

Ordinarily, a presumption is applied to the plaintiff's choice of forum. *DTEX, LLC v. BBVA Bancomer, S.A.*, 508 F.3d 785, 795 (5th Cir. 2007). However, as in this case, a plaintiff's choice of forum is entitled to less deference when the plaintiff does not choose its own home forum. Symphony is not an RMI corporation. It is a Liberian corporation managed in Greece and with crew members from India and the Philippines. *See Sinochem Int'l Co. v. Malay. Int'l Shipping Corp.*, 549 U.S. 422, 430 (2007) (affirming *forum non conveniens* dismissal of admiralty matter in favor of the PRC forum given parallel PRC litigation, location of evidence and witnesses, and judicial efficiency); *see also Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255 n.23 (1981) (“... if the balance of conveniences suggests that trial in the chosen forum would be unnecessarily burdensome for the defendant or the court, dismissal is proper.”).

B. Motion to Dismiss

In order to overcome a motion to dismiss under MIRC Rule 12(b)(6), under cases interpreting the parallel United States rule, a plaintiff is required to allege “enough facts to state a claim to relief that is plausible on its face,” taking all of the allegations in the complaint as true. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). *Twombly*'s plausibility requirement “serves not only to weed out claims that do not (in the absence of additional allegations) have a reasonable prospect of success, but also to inform the defendants of the actual grounds of the claim against them.” *Robbins v. Okla. ex rel. Dep't of Human Servs.*, 519 F.3d 1242, 1248 (10th Cir. 2008). Accordingly, to plead a plausible claim for relief, a Plaintiff must show facts that might state a claim, as “[t]hreadbare recitals of the elements of a cause of action, supported by

mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Although “[p]laintiffs are entitled to all reasonable factual inferences that logically flow from the particularized facts alleged . . . conclusory allegations are not considered as expressly pleaded facts or factual inferences.” *Rosenquist v. Economou*, 3 MILR 144, 151 (2011) (quoting *White v. Panic*, 783 A.2d 543, 549 (Del. 2001)). The Court does not “blindly accept as true all allegations, nor [does it] draw all inferences from them in plaintiffs’ favor unless they are reasonable inferences.” *Id.*

III. ANALYSIS

A. Is the PRC an Adequate Alternative Forum?

1. The PRC is an Adequate Alternative Forum Because the Defendant is Amenable to Service of Process and the Plaintiffs’ Claims Would be Cognizable in the PRC

Courts routinely find that an adequate alternative forum exists in *forum non conveniens* cases where, as here, the defendant is amenable to service of process and the foreign forum addresses the types of claims a plaintiff has brought. *See Piper*, 454 U.S. at 254 n.22 (“[o]rdinarily, this requirement will be satisfied when the defendant is ‘amenable to process’ in the other jurisdiction.”); *MSC Mediterranean Shipping Co. v. Koninklijke Boskalis Westminster NV (In re Compania Naviera Joanna SA)*, 569 F.3d 189, 202 (4th Cir. 2009) (finding the PRC to be an adequate alternative forum). In addition, to constitute an “available” alternative forum, the forum must offer an adequate remedy—however, “the alternative forum is not inadequate simply because that forum will subject the non-movant to an unfavorable change in law or lessen its recovery.” *See In re Compania Naviera Joanna S.A.*, 531 F. Supp. 2d 680, 686-87 (D.S.C. 2007); *see also Lueck v. Sundstrand Corp.*, 236 F.3d 1137, 1144 (9th Cir. 2001) (finding that “a

foreign forum will be deemed adequate unless it offers *no practical remedy* for the plaintiff's complained of wrong.”) (Emphasis supplied).

Sea Justice has expressly confirmed that it is amenable to proceeding with this action on the merits in the forum where it should proceed. As such, Sea Justice agrees that it will accept service of papers from plaintiff Symphony in this action arising from the circumstances alleged in the Amended Complaint if timely filed in the applicable PRC court, and will not assert any defense on the basis of personal jurisdiction or the venue of the action in the PRC, where it is subject to jurisdiction in any event. *See* Yongmin Decl. ¶ 18. Indeed, Sea Justice is already party to a number of pending actions in the PRC, as is Plaintiff. *See* Changqing Decl. ¶¶ 8-24.

In addition, the declaration of PRC lawyer Yu Changqing demonstrates that the PRC court will address the claims that Plaintiffs have brought against Sea Justice on the merits, and that the PRC courts in fact regularly try such cases. Upon bringing a claim, the Qingdao Maritime Court would be the competent court in which to hear Plaintiffs' claims. *See id.* ¶ 27.

The Qingdao Maritime Court is among the Maritime Courts first established in the PRC in 1984, and is one of eleven Maritime Courts established in the PRC. *Id.* The Qingdao Maritime Court employs nearly a hundred people, including judges who operated as mariners prior to their judicial position, and handles several thousand maritime cases each year. *See id.* ¶ 28.

The procedures available to Plaintiffs for the development of evidence, taking of testimony and trial are robust, and provide for detailed discovery, including the standard Marine Accident Investigation Form, the review of evidence collected by the MSA, and expert testimony as necessary, including the ability of the Court to summon experts, and a right to appeal. *See id.*

¶¶ 29-30. The PRC is an adequate alternative forum in which to proceed with this action. *See, e.g., MSC Mediterranean Shipping Co.*, 569 F.3d 189.

Plaintiffs' claims in this action would thus be recognized under PRC law such that the particular PRC court having jurisdiction over the action would consider the merits of the action and Symphony's claims against Sea Justice. *See Id.* ¶ 32.

Sea Justice has also already deposited more than 39 Million PRC Yuan (RMB), which exceeds approximately \$6M USD, into its limitation fund. First Changqing Decl. ¶ 14. In the wake of the injunction application filed in the PRC, Sea Justice also posted additional counter-security in the amount of RMB 20 million or an additional approx. \$3.1M USD. Third Changqing Decl. ¶ 6.

2. Symphony Argues that the PRC Is Not an Adequate Forum Because its Potential Recovery under PRC Law Is Much less than under RMI Law

Plaintiff Symphony's [Proposed] Order filed February 10, 2022, states as follows regarding the sufficiency of recovery under PRC law versus RMI law.

The net result is that, while Symphony faces liability to the limit of its \$74.2M Limitation Fund *plus* pollution liability of \$43.4M (total of \$117.6M), Sea Justice can limit its liability to \$6.1M under PRC law.

The third-party pollution claims total \$147.8M (after the exhaustion of the Symphony limitation fund) comprised of: Aquaculture = \$120.9M, clean-up = \$13.6M, and the MSA claim = \$13.3M. These claims plus Symphony's \$117.6M claim total \$265.4M, which will be apportioned pro rata from the Sea Justice limitation fund of \$6.1M. This results in Symphony recovering \$2.7M, or 2.3% of its \$117.6M claim in the PRC. By comparison, Sea Justice cannot limit its spill-related liability in the RMI.

In this regard, Symphony argues that its potential recovery in the PRC is so small compared to its potential recovery in the RMI that the PRC recovery is "no remedy" at all. Therefore, the PRC is

not an “adequate” jurisdiction. However, Symphony’s argument fails for several reasons.

First, as noted above, an “alternative forum is not inadequate simply because that forum will subject the non-movant to an unfavorable change in law or lessen its recovery.” *See In re Compania Naviera Joanna S.A.*, 531 F. Supp. 2d 680, 686-87 (D.S.C. 2007) (citing *Piper*, 454 U.S. at 254). This is true even if the potential recovery in the alternative forum is significantly less than the potential recovery in the plaintiff’s preferred forum. *See id.* at 687 (granting motion for *forum non conveniens* dismissal where potential recovery in U.S. action was more than \$100 million, and where plaintiff’s claims in the PRC action were subject to subordination, potentially resulting in no recovery at all); *see also Gonzales v. Chrysler Corp.*, 301 F.3d 377, 381-382 (5th Cir. 2002) (finding that Mexico was still an adequate forum, even though it had a statutory damages cap that would limit Plaintiff’s recovery to \$2,500 in damages for death of his three-year-old son). A holding that a plaintiff can defeat a motion for *forum non conveniens* dismissal on grounds that the alternative forum’s law is less favorable to its chance of recovery would entirely undermine the doctrine, “for a plaintiff rarely chooses to bring an action in a forum, especially a foreign one, where he is less likely to recover.” *Fitzgerald v. Texaco, Inc.*, 521 F.2d 448, 453 (2d Cir. 1975).

Second, there is no assurance that Symphony’s net claim against Sea Justice will equal the \$117.6 million they seek or more. If the matter were to proceed in the RMI, the Court would be called upon to determine and apportion liability for the collision as between the two vessels, as well as the quantum of the parties’ claims. As noted above, “in the PRC it is rare for a vessel to be held liable for a collision at 100%, even if the collision is with an anchored vessel and where there was dense fog restricting visibility, as is the case in this incident. The same may be

true if this Court hears the parties' competing claims. The question of the parties' relative liability and the appropriate apportionment remains open, and would be a fact-intensive inquiry.

Third, "adequate" recovery for vessels carrying oil in the PRC is not the same as an "adequate" recovery for vessels carrying oil in the RMI. Vessel owners who ship oil to the PRC, and their insurers, are deemed to have knowledge of the applicable laws of liability, including strict liability for oil spills. To avoid loss associated with the risk of strict liability for oil spills, the vessel owners can purchase insurance and raise their rates to cover their increased risks. Similarly, their insurances can raise their rates. On the other hand, vessel owners and their insurances do not have to increase their rates to cover the risk of strict liability for oil spills in jurisdictions such as the RMI. Plaintiff Symphony and its insurers cannot claim that they are being treated unfairly in the PRC because their liability would be less if the Collision occurred in the RMI.

For the above reasons, the Court concludes that the PRC is an "adequate forum."

Moreover, the private and public interest factors strongly favor litigating this action in the PRC.

B. The Private and Public Interest Factors Strongly Favor Litigating this Action in the PRC Due to the Location of Significant Witnesses and Evidence, Applicability of PRC Law, and the Interest of the PRC in Adjudicating the Dispute

Even if an adequate alternative forum exists, a court must also consider the balance of private and public interest factors to determine whether to dismiss on grounds of *forum non conveniens*. *Lockman Found. v. Evangelical Alliance Mission*, 930 F.2d 764, 769 (9th Cir.1991) (citing *Gulf Oil*, 330 U.S. at 508–09, 67 S.Ct. at 843).

The private interest factors include the following: (1) relative ease of access to sources of

proof; (2) the availability of compulsory process for attendance of unwilling witnesses, and cost of obtaining attendance of willing witnesses; (3) possibility of viewing subject premises; (4) all other factors that render trial of the case expeditious and inexpensive. *Zipfel v. Halliburton Co.*, 832 F.2d 1477, 1485 (9th Cir.1987) (citing *Gulf Oil*, 330 U.S. at 508, 67 S.Ct. at 843).

The public interest factors include the following: (1) administrative difficulties flowing from court congestion; (2) imposition of jury duty on the people of a community that has no relation to the litigation; (3) local interest in having localized controversies decided at home; (4) the interest in having a diversity case tried in a forum familiar with the law that governs the action; (5) the avoidance of unnecessary problems in conflicts of law. *Id.*

1. The Private Interest Factors Strongly Favor the PRC Forum

The private interest factors strongly favor the PRC forum. First, the relative ease of access to sources of proof favors the PRC as the forum for a trial. The circumstances of this case involve a casualty that occurred in PRC waters, resulting in a large-scale investigation and clean-up effort and involving numerous witnesses located in the PRC—including the entire crew of the *Sea Justice*, as confirmed by a director of *Sea Justice*. Yongmin Decl. ¶ 9 (“All the crew on board *Sea Justice* are Chinese nationals . . .”). RMI has nothing to do with these facts, and is merely the state of incorporation of the registered owner of the *Sea Justice*, which is a non-resident corporation. Yongmin Decl. ¶¶ 2, 8.

Second, the MSA’s investigation of the oil spill involved a review of documentary and electronic evidence as well as interviews of the crews of both vessels, who would all be unavailable to be compelled to testify in the RMI and unlikely to travel to RMI to testify. *See MSC Mediterranean Shipping Co.*, 569 F.3d at 193, 196 (affirming dismissal in favor of Tianjin

Admiralty Court on *forum non conveniens* grounds in collision case where “multiple actions relating to the collision were filed first in the China,” and the MSA in the PRC “conducted an investigation of the collision, interviewing witnesses, making diagrams, and retaining documents.”); *see id.* at 201 (“The collision occurred in Chinese territorial waters and was investigated by Chinese officials. . . . [a]ll of the evidence is located in China or some other foreign jurisdiction”). Changqing Decl. ¶¶ 8-24 (detailing pending proceedings); Yongmin Decl. ¶ 10 (stating that the Master of the *Sea Justice* prepared and filed an incident report in Chinese).

Third, if the case were tried in the RMI, it may be necessary for the RMI court to seek the assistance of a PRC court for aid in obtaining or giving evidence (for example, to obtain records from the MSA investigation, witness statements, materials from claims made in the PRC Proceedings, or discovery from PRC nationals). *See, e.g., id.* ¶ 16. However, the RMI is not a signatory to the Hague Evidence Convention — only the PRC is. Third Changqing Decl. ¶ 20 (finding “the Hague Evidence Convention is therefore not applicable should a request of the Marshall Islands court be made to a Chinese court for such judicial assistance.”).

In addition, there is no bilateral treaty for judicial assistance between the PRC and the RMI, nor are there diplomatic relations between the PRC and the RMI. As such, in the PRC a direct request of an RMI court to a PRC court to render judicial assistance will be rejected. *Id.* ¶¶ 16-20.

Accordingly, it appears “practically impossible” for a PRC court to render judicial assistance in response to a request from an RMI court; a PRC court also may refuse judicial assistance on the basis that there are already parallel proceedings addressing the parties’ claims ongoing in the PRC. *See id.* ¶ 22.

Fourth, if the claims were to proceed in this forum, there is a high likelihood that PRC law would apply to the plaintiff Symphony's claims and that the parties would need to employ translators from Chinese to English for the documentary evidence and the witness testimony, which would be far more difficult and expensive to conduct in the RMI. *See, e.g., Yongmin Decl.* ¶¶ 9-12 (detailing scope of materials in Chinese). By now, the parties must have already borne the costs of translating English and other languages to Chinese, as necessary, in proceeding before the Qingdao Maritime Court.

In short, the standard private interests factors strongly favor the PRC forum over the RMI forum. Next, the Court must consider comparative public interest factors.

2. The Public Interest Factors Favor the PRC Forum

Several public interest factors favor the PRC forum. First, this Court, the RMI High Court, is very small. Presently the High Court is staffed with only two justices. With one of the justices absent for most of 2020 and 2021 due to serious health problems, the High Court's workload has been covered by one justice until recently. Hopefully, a third justice will be added this summer. However, even with three justices, the High Court justices may still need to work on weekends.

Second, although High Court justices hear maritime cases and non-resident corporate cases that are filed from time-to-time, their main focus is, and should be, on domestic cases that have direct impact on the citizens and residents of the RMI. This may be a very interesting case, and the briefing has been excellent; however, the High Court needs to focus on domestic cases, including personal status cases, serious criminal cases, and customary land disputes. The workload this case places on the High Court is significant.

Third, the PRC forum is much better suited to hear this case. As noted above, the Qingdao Maritime Court is among the Maritime Courts first established in the PRC in 1984, and is one of eleven Maritime Courts established in the PRC. *See* Changqing Decl. ¶ 27. The Qingdao Maritime Court employs nearly a hundred people, including judges who operated as mariners prior to their judicial position, and handles several thousand maritime cases each year. *See id.* ¶ 28. Further, this dispute, in multiple proceedings, is already before the Qingdao Maritime Court. *See* Section I.C. above. The Qingdao Maritime Court is a special jurisdiction court designed for this kind of case and it has the staff and expertise to hear the case as a matter of course. This case appears to place no burden on the Qingdao Maritime Court that it has not already assumed.

In response, Symphony argues that technology allows cases like this to be tried almost anywhere. Although huge amounts of data can be transmitted anywhere there is a decent internet connection, including the High Court, that does not mean the High Court can process all that data. For cases such as this one, the High Court assigns one justice and High Court justices have no law clerks. Hence, the sole High Court justice must review hundreds of pages of submissions and many case citations. The resources of the High Court cannot be compared to those of the Qingdao Maritime Court, where most of the work on this dispute has been done. For these reasons, the Court does not find Symphony's technology argument to be compelling.

Fourth, the public interest in having localized controversies decided at home favors the PRC Forum. As noted above in the factual background, this case involves oil being shipped to the PRC, not the RMI. The economic, legal, and insurance risks relate to shipments of oil into the PRC, not the RMI. The Collision and resulting oil spill, and large-scale investigation and

clean-up occurred, or are occurring, in PRC waters, not RMI waters. The *Sea Justice* is managed out of the PRC, not the RMI. For these reasons, the PRC’s public interest in resolving this “localized controversy” under PRC law dwarfs the Marshall Island’s interest in adjudicating a dispute involving a non-resident corporation without other connections to the RMI.

For the above reasons, the Court finds that public interest factors, like the private interest factors, strongly favor the PRC forum.

C. The First Amended Complaint and Motion for Leave to Amend

Symphony alleges in its Amended Complaint that the *Sea Justice* struck the *A Symphony* while the *A Symphony* was at anchor off the port of Qingdao, the PRC, on April 27, 2021. Am. Compl. ¶¶ 6-7. Symphony alleges the Collision caused damage to the hull, loss and damage to cargo and equipment, pollution of the surrounding waters, and “other damage, as yet unknown.” *See id.* ¶¶ 8-11. Symphony alleges that after the Collision, the *Sea Justice* sailed from the vicinity without rendering aid. *See id.* ¶ 12.

On these threadbare facts, Symphony alleges, in conclusory fashion, that the Collision occurred either because *Sea Justice* negligently failed to follow unspecified international collision regulations as required by 47 MIRC § 150; or that the *MV Sea Justice* purportedly “fail[ed] to exercise good seamanship.” *See* Am. Compl. ¶¶ 13-14. Symphony also alleges generally that “[f]ailing to render assistance without reasonable cause is a violation of 47 MIRC § 154.” Am. Compl. ¶ 15. Symphony notably does not allege facts in the First Amended Complaint reflecting (i) the international collision regulations that it claims *MV Sea Justice* failed to follow; (ii) in what manner the *MV Sea Justice* did not exercise good seamanship; or (iii) that the *MV Sea Justice* did not render assistance without reasonable cause. *See* Am. Compl. ¶¶ 13-

15.

The proposed Second Amended Complaint attempts to address some of these deficiencies, but does not allege facts that would make a difference with respect to the Court's *forum non conveniens* analysis, namely whether the PRC is an available and adequate alternative forum or with respect to the private and public interest factors to be weighed.

Symphony's proposed Second Amended Complaint will not overcome a motion to dismiss for *forum non conveniens*, so its motion for leave to amend should be denied as moot. "A court properly may deny a motion for leave to amend as futile when the proposed amended complaint would be subject to dismissal for any reason." *Dirtt Envtl. Sols., Inc. v. Henderson*, No. 1:19-cv-00144-DBB, 2021 U.S. Dist. LEXIS 98313, at *2-3 (D. Utah May 21, 2021) (denying motion for leave to amend where amendment did not—and could not—change "key facts relevant to the court's *forum non conveniens*" analysis).

Like in *Dirtt Environmental*, Symphony's proposed Second Amended Complaint does not change the facts that (1) the vast majority of the relevant witnesses and documentary evidence are located in the PRC; (2) the majority of the witnesses and evidence will require a PRC interpreter, or translation, which would significantly lengthen any proceeding in the RMI; (3) this case would involve application of PRC law; and (4) there are a number of pending proceedings ongoing in the PRC, which is an adequate alternative forum in which Symphony's claims can be heard.

IV. CONCLUSION

For the above reasons, the Motion to Dismiss is granted in part and this action is dismissed on the grounds of *forum non conveniens* so that Symphony's claims may be heard in

the PRC. Plaintiff's pending motion for leave to amend is denied as moot. Also, the defendant's pending motion to dismiss for failure to state a claim is dismissed as moot. Accordingly, the Court dismisses this matter with the parties to bear their own costs.

So Ordered and Entered.

Carl B. Ingram
Chief Justice, High Court
Date: March 18, 2022