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AUG 02 2023
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IN THE SUPREME COURT

OF THE

REPUBLIC OF THE MARSHALL ISLANDS

SYMPHONY SHIPHOLDING SA, Plaintiff-Appellant v. SEA JUSTICE LTD, Defendant-Appellee.	Supreme Court No. 2022-01292 High Court Civil Action No. 2021-835 **OPINION**

BEFORE: CADRA, C.J.; SEABRIGHT, A.J.;* and SEEBORG, A.J.**

SEEBORG, A.J., with whom CADRA, C.J., and SEABRIGHT, A.J., concur:

I. INTRODUCTION

This case concerns a 2021 allision between two ships off the coast of the People's Republic of China ("PRC"). Plaintiff-Appellant Symphony Shipholding SA ("Symphony"), the owner of the damaged vessel, brought suit in the RMI High Court. Shortly thereafter, Defendant-Appellee Sea Justice Ltd. ("Sea Justice"), which is incorporated in the RMI, moved to dismiss on the basis of *forum non conveniens*. The High Court granted the motion, reasoning that the case would be more appropriately resolved before a maritime court in the PRC, and then denied Symphony's subsequent motion for reconsideration. This appeal followed, and for the reasons set forth below, we affirm. The High Court did not abuse its discretion in dismissing the case unconditionally, refusing to stay the case pending the outcome of the PRC litigation, or denying the motion for reconsideration. Our precedent does not compel a different result.

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* Hon. J. Michael Seabright, District Judge, United States District Court, District of Hawaii, sitting as RMI Supreme Court Associate Justice by designation of the Cabinet.

** Hon. Richard Seeborg, Chief Judge, United States District Court, Northern District of California, sitting as RMI Supreme Court Associate Justice by designation of the Cabinet.

II. BACKGROUND

A. The Parties and the Allision[1]

Both parties to this action own shipping vessels. Symphony is a Greek-owned, Singaporean-operated corporation organized under the laws of Liberia that owns the (eponymous) oil tanker ship *A Symphony*.[2] Sea Justice, meanwhile, is a non-resident domestic company incorporated in the Republic of the Marshall Islands that owns the (also eponymous) cargo ship *Sea Justice*. At all times relevant to this case, *Sea Justice* was a Panamanian-flagged vessel, operated by a company registered in the PRC and crewed by Chinese nationals.

On the morning of April 27, 2021, *A Symphony* was at anchor in Chinese territorial waters off the port of Qingdao, PRC, when it was struck by *Sea Justice*.[3] Both vessels sustained damage as a result of the allision. Most consequentially, one of *A Symphony*'s cargo tanks was breached and the ship began releasing crude oil into the sea. Consequently, PRC authorities began organizing an oil clean-up operation. Following the allision, Symphony alleges *Sea Justice* "immediately sailed away from the vicinity without rendering aid." Amended Compl. ¶ 12. Symphony estimates that, between the damage to *A Symphony* and the costs of cleaning up the oil spill, it has sustained more than $300 million (USD) in damages.

B. The Litigation

The allision spawned a number of legal actions, both in the PRC and in the RMI. First, the parties each applied for limitation funds that were approved and established in the Qingdao Maritime Court. Both parties also filed substantive claims against each other in the same court.

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[1] "[I]n admiralty law an allision is the violent encounter of a moving vessel and a stationary object such as another vessel, a bridge, a pier, a wharf, or other shore side installation." 2 Thomas J. Schoenbaum, Admiralty and Maritime Law § 14:1, at 119 (6th ed. 2018).

[2] Symphony is identified in the High Court proceedings as Symphony Shipbuilding SA, rather than Symphony Shipholding SA.

[3] Sea Justice maintains the allision occurred "under the circumstance of dense fog and extremely poor visibility." Application for Constitution of Limitation Fund for Maritime Claims by Sea Justice Ltd. at 1 (Qingdao Maritime Ct. Apr. 29, 2021).

On May 6, 2021, Symphony sued Sea Justice in the RMI High Court and filed an amended complaint on July 9, alleging damages exceeding $86 million (USD). Meanwhile, the Chinese Maritime Safety Administration ("MSA") launched an investigation into the allision, and *A Symphony* was placed under arrest in the PRC pending the resolution of the investigation.

Sea Justice then filed a motion to dismiss the RMI case. As relevant here, it argued the case should be dismissed on the basis of *forum non conveniens* ("FNC"), or, in the alternative, stayed pending the outcome of the PRC proceedings. It noted that the PRC court's extensive experience handling maritime matters, and the fact that all of the witnesses and evidence were located there, rendered that forum preferable. Further, the allision occurred in Chinese territorial waters, giving the RMI only a limited interest in litigating the dispute. Symphony opposed the motion, arguing first that the PRC court was not an adequate alternative forum because its limitation scheme permitted recovery of only "a miniscule fraction of the damages for which [Sea Justice] is liable." Opposition to Motion to Dismiss at 8. Symphony also argued that, among other considerations, the RMI had a strong interest in enforcing its laws against its corporate citizens, and the RMI was presumably a convenient forum for Sea Justice given its incorporation in this country. In addition, the High Court could rely on post-COVID technology, such as Zoom, to alleviate the burden of litigating here.

After a hearing, the High Court granted the motion to dismiss. It noted that, while the plaintiff's choice of forum is typically presumed to be valid, it is "entitled to less deference when the plaintiff does not choose its own home forum." Order Granting Motion to Dismiss ("MTD Order") at 8 (citing *Sinochem Int'l Co. v. Malay. Int'l Shipping Corp.*, 549 U.S. 422, 430 (2007)). This was the case here, since "Symphony is not an RMI corporation." *Id.* After concluding the PRC was an adequate alternative forum, it concluded that the private and public interest factors outlined in *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981), weighed in favor of dismissal. Regarding the private interest factors, the High Court predicted difficulty in obtaining cooperation from the PRC courts and the MSA, interpreting Chinese law, and handling and

translating materials produced in Mandarin. As for the public interest factors, it noted that the dearth of justices (and law clerks) in the RMI rendered the case unduly burdensome on the judiciary, which, in the High Court's view, should be focused on "domestic cases, including personal status cases, serious criminal cases, and customary land disputes." MTD Order at 16. Thus, the High Court concluded that dismissal for FNC was warranted.[4]

The High Court thereafter denied Symphony's motion for reconsideration (styled as a "motion to alter order"). In the motion, Symphony had sought to clarify that it was seeking to "top up" its recovery in the RMI, or, in other words, to have the High Court apply the Qingdao Maritime Court's findings of facts under the RMI limitation law. Symphony also pointed to our decision in *Chubb Insurance (China) Co. v. Eleni Maritime Ltd.*, No. 2016-002 (2017), to argue that the High Court was not required to defer to the PRC action. The High Court found the "top up" argument untimely raised, and it concluded *Chubb* did not compel the High Court to retain jurisdiction pending the outcome of the PRC proceedings. As Symphony had not demonstrated "highly unusual circumstances" warranting reconsideration, the High Court denied the motion.

Symphony appeals both the High Court's order granting the motion to dismiss and its order denying the motion for reconsideration. It presents the following seven questions for our review: (1) "Whether the High Court erred in finding that there is not a presumption that the RMI is a convenient forum to an RMI corporate defendant"; (2) "Whether the High Court erred by finding China is an adequate alternative forum when Symphony's recovery of damages in China from Sea Justice could be as low as 2.3% or as miniscule as 0.5%"; (3) "Whether the High Court erred by granting an unconditional dismissal when finding the amount of Symphony's recovery in China is uncertain"; (4) "Whether the High Court erred in its interpretation of *Chubb* and applicability to the case at bar"; (5) "Whether the High Court erred by finding that

[4] The High Court further "dismissed as moot" Sea Justice's motion to dismiss for failure to state a claim, and denied Symphony's motion for leave to amend, in light of the FNC analysis. MTD Order at 19–20.

Symphony cannot return to the RMI and seek a 'top up' in this case"; (6) "Whether the High Court erred by finding that Chinese law would apply and translators will be necessary when neither issue is in play in a top up scenario"; and (7) "Whether the High Court erred in finding that the case would overburden the Court when, in a top up scenario, the Court will simply adopt the findings and conclusions of the Chinese court and, thereafter, apply RMI limitation of liability law — none of which would likely require a trial." Appellant Br. at 11. Sea Justice, for its part, frames the question presented as simply "[w]hether the High Court abused its discretion in granting Sea Justice's motion for [FNC] dismissal, and denying Symphony's motion for reconsideration." Appellee Br. at 11.

III. STANDARD OF REVIEW

Questions of law are reviewed *de novo*. *Jack v. Hisaiah*, 2 MILR 206, 209 (2002). The High Court's FNC determination and its denial of a motion for reconsideration are reviewed for abuse of discretion. In evaluating a motion to dismiss for FNC, "where the court has considered all relevant public and private interest factors, and where its balancing of these factors is reasonable, its decision deserves substantial deference." *Piper*, 454 U.S. at 257. The court's denial of a motion for reconsideration, meanwhile, should be reversed "only where no reasonable person would have acted as the trial court did." *Pac. Basin, Inc. v. Mama Store*, 3 MILR 34, 36–37 (2007); *see Platten v. HG Bermuda Exempted Ltd.*, 437 F.3d 118, 133 (1st Cir. 2006).

IV. DISCUSSION

While the parties frame the issues differently, we construe this appeal as presenting four central questions: (1) whether the High Court abused its discretion in dismissing the case on the basis of FNC; (2) whether the High Court applied our holding in *Chubb* erroneously; (3) whether the High Court abused its discretion by denying the motion to stay or denying the motion for reconsideration in light of Symphony's "top up" argument; and (4) whether the High Court abused its discretion by dismissing the case unconditionally. We answer each of these questions in the negative and affirm the High Court's decisions in full.

A. The High Court Did Not Abuse Its Discretion in Dismissing the Case on the Basis of *Forum Non Conveniens*

The doctrine of *forum non conveniens* permits a court to "dismiss an action in favor of an alternative forum when 'the chosen forum would establish . . . oppressiveness and vexation to a defendant . . . out of all proportion to plaintiff's convenience, or when the chosen forum [is] inappropriate because of considerations affecting the court's own administration and legal problems.'" *Compania Naviera Joanna SA v. Koninklijke Boskalis Westminster NV (In re Joanna SA)*, 569 F.3d 189, 200 (4th Cir. 2009) (alteration and omissions in original) (quoting *Am. Dredging Co. v. Miller*, 510 U.S. 443, 447–48 (1994)). To determine whether a case should be dismissed on this basis, courts in the RMI apply the test laid out by the U.S. Supreme Court in *Piper Aircraft Co. v. Reyno*. This test holds that dismissal for FNC is warranted where (1) there is an available and adequate alternative forum, (2) the private interest factors weigh in favor of the alternative forum, and (3) the public interest factors weigh in favor of the alternative forum. 454 U.S. at 241; *see Chee v. Zhang*, No. 2016-254, slip op. at 20 (High Ct. Oct. 16, 2017). The defendant bears the burden of persuasion on each of these points.

1. The PRC Is an Adequate and Available Alternative Forum

First, the High Court correctly determined that the Qingdao Maritime Court is an adequate and available alternative forum. Generally, an alternative forum will be adequate if the defendant is amenable to process there and the forum provides a remedy for the plaintiff's injury. *Piper*, 454 U.S. at 254 n.22. Courts frequently reject arguments that a forum is inadequate because a plaintiff's expected recovery is lower there. *E.g.*, *id.* at 254–55 (finding Scottish court adequate despite offering lesser remedy); *Hefferan v. Ethicon Endo-Surgery Inc.*, 828 F.3d 488, 495 (6th Cir. 2016) (holding German court was adequate and noting a forum is not "inadequate simply because of the likelihood of lesser damages"); *Gonzales v. Chrysler Corp.*, 301 F.3d 377, 383 (5th Cir. 2002) (rejecting argument that Mexico was an inadequate forum because it capped damages for the tortious death of a child at $2,500 USD).

Here, the Qingdao Maritime Court qualifies as an adequate and available alternative forum. Sea Justice is subject to process in that court and it has consistently stated it would not contest jurisdiction in the PRC. In addition, Sea Justice has already established a limitation fund in the PRC, and it has sued Symphony there. The latter suit clearly demonstrates that the PRC supports such claims, in a very similar manner as those that are cognizable in the RMI. Symphony's primary objection is that the PRC is not "adequate" because its expected recovery would be substantially smaller than in the RMI. *See* Appellant Br. at 11. This argument is unpersuasive. For one thing, as the High Court noted, the fact that Symphony *could* recover a higher sum in the RMI is no guarantee that it *will* recover that much; this is a merits question that is based on how liability is ultimately apportioned between the parties. More fundamentally, a trial court should not base its assessment of adequacy by reference to the level of recovery, unless it is tantamount to "no remedy at all." *Piper*, 454 U.S. at 254. Even if Symphony is subject to a lower limitation ceiling in the PRC than in the RMI, it cannot plausibly claim it has no ability to recover. In fact, its recovery in the PRC would likely be consistent with its potential recovery in the many maritime nations that follow similar limitation regimes as does the PRC.[5] As the Fourth Circuit noted in *In re Joanna SA*, the PRC "offers a remedy and process for

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[5] Most maritime nations adhere to the 1976 International Convention on Limitation of Liability for Maritime Claims ("1976 LLMC"), and many also follow its 1996 Protocol, which "substantially increase[d] the amount of compensation" available through limitation funds. Schoenbaum, *supra* note 1, § 15:1, at 187 n.7. While the RMI is a signatory to both conventions, the Marshall Islands Limitation of Liability for Maritime Claims Act ("LLMCA"), 47 MIRC § 501 *et seq.*, governs limitation of liability in the RMI. *See Chubb*, No. 2016-002, slip op. at 9. The LLMCA, in turn, incorporates "some of the provisions of the 1996 Protocol into the domestic law." *Id.*, slip op. at 7. The PRC, by contrast, is not a formal signatory of the 1976 LLMC, but its domestic limitation regime is substantially the same. *See In re Joanna SA*, 569 F.3d at 203–04. Thus, "when applied to [maritime incidents,] a limitation fund equal to that of the fund from the 1976 LLMC results." First Decl. of Yu Changqing ¶ 8.

Putting these two concepts together, then, a limitation fund in the RMI will likely apply some of the higher limits of the 1996 Protocol, while a limitation fund in the PRC will likely apply the lower limits of the 1976 LLMC. For a discussion of how such asymmetries "encourage[] the practice of international forum shopping," see Jaime W. Betbeze, *International Forum Shopping for Limitation of Liability*, 92 Tul. L. Rev. 1093, 1098 (2018).

resolving the dispute — which happens to comport with the international norm for doing so — and thus we should not conduct a 'complex exercise[] in comparative law' to determine the exact difference [a party] may be entitled to between the different limitation funds." 569 F.3d at 204 (first alteration in original) (quoting *Piper*, 454 U.S. at 251). Further, we agree with the High Court's observation that Symphony could have protected itself against any such lower recovery by purchasing insurance and raising its rates accordingly. *See* MTD Order at 13; *Alcoa S.S. Co. v. M/V Nordic Regent*, 654 F.2d 147, 159 (2d Cir. 1980) (pointing out that it "would be far more unfair to impose an additional recovery against appellee when appellant, fully familiar with the law of the place where it maintained a permanent business, could have insured its additional risk in a prudent fashion"). We thus affirm the High Court's conclusion that the Qingdao Maritime Court is an adequate and available alternative forum.

2. The High Court Reasonably Weighed the Private and Public Interest Factors

Similarly, the High Court did not abuse its discretion in concluding that the private and public interest factors favored dismissal in this case. In general, the *Piper* private interest factors capture the burdens affecting the litigants themselves — including, for instance, the "relative ease of access of sources of proof" and the difficulty in securing the attendance of witnesses. *Piper*, 454 U.S. at 241 n.6. The public interest factors, meanwhile, reflect the burdens placed on the forum, which can include "the administrative difficulties flowing from court congestion" and the "local interest in having localized controversies decided at home." *Id.* These examples are non-exhaustive, and the entire inquiry is designed to be holistic and flexible. At the end of the day, the question is whether dismissing the case in favor of litigation in the alternative forum would "best serve the convenience of the parties and the ends of justice." *Imamura v. Gen. Elec. Co.*, 957 F.3d 98, 107 (1st Cir. 2020) (quoting *Koster v. (Am.) Lumbermens Mut. Cas. Co.*, 330 U.S. 518, 527 (1947)).

Here, the High Court's balancing of the relevant private and public interest factors was reasonable. This case "involve[s] 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." MTD Order at 14. Symphony itself is not an RMI resident, and the RMI is "merely the state of incorporation of the registered owner of the *Sea Justice*, which is a non-resident corporation." *Id.* While the fact of Sea Justice's incorporation here would generally lean in favor of retaining jurisdiction, this is not a dispositive consideration, as Symphony suggests. Rather, in the context of the suit as a whole, "[the] RMI has nothing to do with these facts." *Id.* Even to the extent the RMI has an interest in enforcing its laws against businesses incorporated here, Sea Justice does not contest its amenability to suit in the RMI as a general matter — nor does dismissing this particular case mean Sea Justice, or other businesses like it, will always be able to avoid litigating in the RMI. Under these particular circumstances, however, the High Court reasonably concluded litigating in the PRC would be more convenient for all involved.

This conclusion is buttressed by looking to some of the logistics involved in litigating this case. Although technology could obviate some of the need to host in-person hearings in the RMI, or to transport documents here, we defer to the High Court's judgment that such solutions would not be silver bullets.[6] Although some of the translation issues raised by Sea Justice could cut both ways (that is, Sea Justice employees' testimony will need to be translated from English to Mandarin to litigate in the PRC), the High Court did not abuse its discretion by flagging this concern. Granted, some of the High Court's conclusions about the difficulty of compelling witnesses or obtaining evidence from the PRC may be somewhat speculative, but even to disregard them would not alter the result.

As to the choice of law question, both parties appear to agree that Chinese law would apply, and that this would functionally be equivalent to RMI maritime law given that both nations utilize the 1972 Convention on International Regulations for Preventing Collisions at Sea

[6] Indeed, the amount of technical difficulties that appear to have occurred purely in the hearing on the motion to dismiss demonstrates why litigating this case in the manner Symphony suggests may be easier said than done. *See, e.g.*, Transcript of Proceedings (Jan. 20, 2022) at 1–3 (consistent connectivity and sound problems during Zoom hearing).

("1972 COLREGS"). *See* First Decl. of Yu Changqing ¶ 26 ("In relation to determining liability for the collision between the two vessels the [1972 COLREGS] will be applied [in the PRC]."); 47 MIRC § 150 (adopting 1972 COLREGS into RMI law). Normally, the substantive law that applies in a maritime case is determined under the *Lauritzen* and *Hellenic Lines* factors.[7] The High Court below did not conduct this analysis, but under those factors Chinese law would likely apply — or at least, it was not an abuse of discretion to conclude as much. However, the argument that Chinese law would not be meaningfully different from RMI law is undermined by Symphony's own admissions. One of its declarants opined that, "after a review of *PRC case law* interpreting the [1972 COLREGS]," a PRC court would likely apportion fault roughly 80%-20% between Sea Justice and Symphony. First Decl. of Wang Yongli ¶ 17 (emphasis added). This suggests that, even if PRC courts work from the same regulatory standards, they have also adopted their own interpretations of these provisions. These interpretations, in turn, may well differ from those of the RMI courts, making it questionable that applying Chinese law would be a simple task. Thus, the High Court reasonably concluded, albeit without extended discussion, that applying Chinese law would burden the litigation such that dismissal was warranted.

Finally, the High Court also based its decision on the concern for docket congestion in the RMI. While the High Court was indeed correct that the resources of the RMI judiciary are constrained, the RMI court system remains fully capable of adjudicating complex cases of this nature. That said, as the High Court suggests, legitimate factors to consider include the relative strain on the alternative forum and the need in the RMI to focus on "personal status cases, serious criminal cases, and customary land disputes." MTD Order at 16.

In sum, the High Court's balancing of the different factors was reasonable. We defer to the High Court's balancing of these factors, and will not overturn its decision even assuming we

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[7] These factors include "(1) the place of wrong; (2) the law of the flag; (3) the domicile of any injured party; (4) the allegiance of the shipowner; (5) the place of contract, if any; (6) the accessibility of a foreign forum; (7) the law of the forum; and (8) the base of operations of the vessel." Schoenbaum, *supra* note 1, § 15:4, at 199.

might have weighed the private and public interest factors differently in the first instance. The High Court's decision was also consistent with those of many U.S. courts facing similar facts. *See, e.g.*, *In re Joanna SA*, 569 F.3d at 201 (affirming decision to grant FNC motion in favor of PRC maritime courts); *Trotter v. 7R Holdings LLC*, 873 F.3d 435, 445 (3d Cir. 2017) (affirming FNC dismissal in favor of suit in British Virgin Islands regarding accident aboard a ship anchored in BVI waters); *A/S Dan-Bunkering Ltd. v. M/V Centrans Demeter*, 633 Fed. App'x 755, 759 (11th Cir. 2015) (mem.) (affirming grant of FNC motion in favor of suit in Hong Kong, given that "the only significant connection the Vessel has with the United States is that it was arrested while in Alabama"); *Dunsby v. Transocean, Inc.*, 329 F. Supp. 2d 890, 895 (S.D. Tex. 2004) (granting FNC dismissal and noting that "Texas has no local interest in adjudicating the claims of an Australian citizen injured in Chinese territorial waters"). We therefore conclude the High Court did not abuse its discretion in dismissing the case on the basis of FNC.

B. The High Court Correctly Concluded that *Chubb* Does Not Require Retaining Jurisdiction

Symphony contends the High Court's orders violated one of the holdings of our decision in *Chubb Insurance (China) Co. v. Eleni Maritime Ltd.* There, a Korean-flagged container ship and an RMI-registered vessel collided off the Vietnamese port of Phu My. One of the vessel owners initiated a limitation suit in Hong Kong; other suits were brought in South Africa, India, and, eventually, the RMI. The particular issue before us was whether a provision of the 1996 Protocol, *see supra* note 5, had been incorporated into the domestic law of the RMI. Relevant here, however, we concluded that there "is no law *requiring the High Court to defer* to the Hong Kong limitation suit and limitation fund established under the lower limits of the 1976 Convention." *Chubb*, No. 2016-002, slip op. at 7 (emphasis added). From this sentence, Symphony concludes that Sea Justice is "trying to use a motion to dismiss for [FNC] to circumvent" the *Chubb* ruling. Appellant Br. at 12.

This argument is misplaced. Perhaps most importantly, Symphony reads the sentence out

of context. As noted above, *Chubb* turned on whether one provision of the 1996 Protocol had been incorporated into RMI domestic law; if it had been, then the High Court would have been *required* to defer under the RMI's treaty obligations. *See Chubb*, slip op. at 4. The conclusion that the High Court need not defer to another proceeding thus followed directly from our holding that the relevant provision was not part of RMI law. Even taking the sentence at face value, though, *Chubb* is distinguishable for at least two reasons. First, the underlying decision arose on a motion for summary judgment, rather than a motion to dismiss for FNC. In other words, the question of whether the action would be better litigated in another forum was simply not before the High Court. Second, the fact that the High Court *can* entertain a maritime suit in parallel with one in a foreign forum does not mean it *must* do so. The propriety of retaining jurisdiction in the face of an FNC motion is analyzed under the *Piper* test, as discussed above. Thus, nothing in *Chubb* requires the High Court to retain jurisdiction and deny a properly raised motion to dismiss on the basis of FNC.

C. The High Court Did Not Abuse Its Discretion in Denying the Motion to Stay, Nor in Denying the Motion for Reconsideration

Symphony further contends on appeal that the High Court abused its discretion by rejecting its so-called "top up" argument. It claims its objective throughout this litigation has simply been to have the High Court apply the PRC court's findings of facts under maritime law. This would allow it to use the RMI's limitation regime to "top up" its recovery beyond whatever it may end up recovering in the PRC case. Thus, it argues the High Court should have stayed the action pending the resolution of the PRC case, rather than dismiss the case altogether. The subject of such a "top up" constituted a large portion of Symphony's motion for reconsideration.

In its motion for reconsideration, Symphony conceded the "top up" argument may have been "lost" in its opposition to the motion to dismiss. In reality, it simply did not make that argument anywhere in its opposition, nor did it ever request the High Court to stay the case rather than grant the motion to dismiss. Rather, Symphony clearly contemplated a trial on the

merits in the High Court, even noting it "envision[ed] the trial as either entirely remote via Zoom, or with counsel in the court room accompanied by their respective trial technicians who will display in electronic form . . . witness testimony, documents, images, video and the like."[8] Opposition to Motion to Dismiss at 17. Whatever the merits of the "top up" argument had it been raised in the opposition (or at oral argument, for that matter), Symphony raised it too late. The High Court thus did not abuse its discretion in refusing to grant a stay, and Symphony provides no support for its contention that granting a stay should have been the High Court's "default position of the court." Appellant Br. at 18.

The High Court was equally justified in rejecting this argument when it was presented in the motion for reconsideration. Relying on case law from the U.S. Ninth Circuit Court of Appeals, the High Court concluded Rule 59(e) of the Marshall Islands Rules of Civil Procedure is not designed to "provide litigants with 'a second bite at the apple.'" Order Denying Plaintiff's Motion to Alter Order at 4 (quoting *Weeks v. Bayer*, 246 F.3d 1231, 1236 (9th Cir. 2001)). We affirm the High Court's order and clarify that, under Rule 59(e), reconsideration should not be granted absent highly unusual circumstances, unless (1) the High Court is presented with newly discovered evidence, (2) the High Court committed clear error, or (3) there is an intervening change in the controlling law. Because Symphony did not present any valid grounds for reconsideration, and mainly reargued points already raised and rejected in its opposition to the motion to dismiss, the High Court did not abuse its discretion in denying the motion.

D. The High Court Did Not Abuse Its Discretion in Dismissing the Case Unconditionally

Finally, Symphony argues that the High Court abused its discretion when it did not attach conditions to its dismissal for FNC. Symphony's brief does not suggest what conditions the High

[8] Symphony argues that the High Court erred in various ways in its *Piper* analysis because it did not consider that it would be dealing with a "top up" scenario. *See* Appellant Br. at 11 (questions 5–7). Given that this argument was not timely raised, the High Court plainly cannot have been expected to consider this possibility.

Court should have imposed, nor does Symphony appear to have done so in opposing the motion to dismiss; thus, this argument also appears untimely. In any event, it is similarly unsupported. Symphony cites to no RMI case law (nor U.S. case law) *requiring* a court to impose any conditions when granting a motion to dismiss for FNC. In fact, the primary case on which Symphony relies states that "[d]istrict courts are *not required* to impose conditions on [FNC] dismissals, but it is an abuse of discretion to fail to do so when 'there is a justifiable reason to doubt that a party will cooperate with the foreign forum.'" *Carijano v. Occidental Petrol. Corp.*, 643 F.3d 1216, 1234 (9th Cir. 2011) (emphasis added) (quoting *Leetsch v. Freedman*, 260 F.3d 1100, 1104 (9th Cir. 2001)); *see, e.g.*, *Dunsby*, 329 F. Supp. 2d at 896 (granting motion to dismiss for FNC with requirement that plaintiff file a lawsuit in Australia within 90 days and that defendants submit to that court's jurisdiction). This is not a concern here given that, as Sea Justice points out, "the parties had already served substantive claims on each other" when this case was filed and had already begun "litigating in the PRC forum on claims that mirror[] Symphony's [RMI] claims." Appellee Br. at 21. The High Court therefore did not abuse its discretion by dismissing the case without conditions.

V. CONCLUSION

For the reasons explained above, the orders of the High Court dismissing the case on the basis of *forum non conveniens* and denying the motion for reconsideration are AFFIRMED.

Dated: July 31, 2023

/s/ Daniel N. Cadra
Chief Justice

Dated: July 31, 2023

/s/ J. Michael Seabright
Associate Justice

Dated: July 31, 2023

/s/ Richard Seeborg
Associate Justice