

Insurer fails to stay Thai hotel owner's pandemic claim

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The Amanpuri resort in Phuket (Credit: Aman Group)

The owner of a luxury hotel in Phuket that was forced to close because of the covid-19 pandemic can proceed with a lawsuit against its insurer, after a Singapore court found that disputes over how to interpret the insurance policy had been carved out from the arbitration clause.

On **16 November**, **Justice Chua Lee Ming** in the Singapore High Court said Singaporean insurer MS First Capital Insurance was not entitled to a stay of litigation brought by British Virgin Islands-registered Silverlink Resorts in favour of arbitration.

PK Wong & Nair acts for Silverlink, while the insurer is using LVM Law Chambers.

Silverlink is the holding company for the Aman Group, which owns and manages various luxury hotels including the Amanpuri resort on the Thai island of Phuket. The group is based in Singapore and owned by Russian businessman Vladislav Doronin.

The dispute arose after the governor of the province of Phuket ordered the closure of all hotels in Phuket in April in light of the covid-19 pandemic, and Thailand's civil aviation authority banned all international flights to the country.

Silverlink made a claim under its policy with MS First based on these measures, which the insurer rejected on the ground that Silverlink could not bring a claim for business interruption until it had established an admissible claim for material damage loss.

The hotel owner launched the Singapore court proceedings in May, seeking a declaration that it could claim for business interruption without having to establish a claim for property damage; and that its claim over the Amanpuri was valid.

The insurer applied for a stay of the litigation on the basis that the dispute was covered by an arbitration agreement, but the stay was denied by an assistant registrar, leading to the latest appeal by MS First.

The policy provided for mediation and arbitration of disputes over the policy but also contained a jurisdiction clause stipulating that any dispute “regarding the interpretation or application” of the policy should be submitted to a competent court in Singapore.

Chua J rejected the insurer’s arguments that the parties had intended to resolve substantive disputes in arbitration and to resolve disputes arising out of any such arbitration in the Singapore courts in the exercise of their supervisory jurisdiction.

The judge said that the parties’ intention was for the jurisdiction clause to “carve out” disputes regarding the interpretation or application of the policy from the scope of the arbitration clause. He also agreed with Silverlink that such a carve-out made commercial sense by allowing such disputes to be resolved efficiently.

Silverlink Resorts Ltd v MS First Capital Insurance Ltd [2020] SGHC 251

Bench

- **Chua Lee Ming J**

Counsel to Silverlink Resorts

- PK Wong & Nair LLC

Suresh Nair and **Joel Yeow** in Singapore

Counsel to MS First Capital Insurance

- LVM Law Chambers LLC

Lok Vi Ming SC, **Lee Sien Liang Joseph**, **Pak Waltan** and **Qabir Singh** in Singapore

Documents

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