

SINGAPOREAN MARITIME LAW: THE YEAR IN REVIEW

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15 October 2010

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- Singapore is not a party to the Arrest Convention.
- The High Court (Admiralty Jurisdiction) Act, sole governing legislation. Body of case law, and English law is of persuasive value although not binding on Singapore Courts.
- 3 basic conditions :
 - (i) maritime claim as defined in Section 3(1) of the Act:
 - d. damage done by a ship;
 - g. loss/damage to goods carried in a ship;
 - h. agreement relating to carriage of goods in a ship or to the use or hire of a ship;
 - l. goods or materials supplied to a ship for her operations and maintenance.

- (ii) Sect 4(4)(b) : party who would be liable on the claim when the cause of action arose was the owner or charterer or person in possession or control of the ship; &
- (iii) Sect 4(4)(b)(i) & (ii) : this same party is the demise charterer/ beneficial owner of same ship, or beneficial owner of any other ship, at the time the action is brought.

NB. maritime liens, mortgages enforced against the ship. (ii) & (iii) not applicable.

- What is a ship? 'any description of vessel used in navigation'.
- Bunkers? no.
- Cargo? limited to instances where a maritime lien or charge over the cargo.

- Section 3(1)(h) – claim relating to carriage of goods in a ship or to the use or hire of a ship.
- THE CATUR SAMUDRA [2010] 2 SLR 518 (no admiralty jurisdiction for a claim arising out of a performance guarantee).
 - Sale & lease back transaction for vessel Mahakam made between P & Heritage, with a performance guarantee from D, covering Heritage’s obligations;
 - Heritage defaulted, P regained possession of Mahakam, & arrested Catur Samudra;
 - Sect 3(1)(h) construed narrowly, declined to follow a New Zealand decision of *The Fua Kavenga* and a Canadian decision of *National Bank Leasing*.
 - Singapore Courts will review decisions from other common law jurisdictions and decide whether the grounds of such decisions are helpful.

- Sect 4(4)(b) – separate test on merits of the claim on invocation?
- The VASILIIY GOLOVNIN [2008] 4 SLR 994 (CA held that P must prove his claim on a good arguable case basis when the arrest is challenged; duty of disclosure extends to all plausible defences that may be reasonably raised by the D).
- Facts are quite extreme.
- Duty of disclosure in an ex p application.
- Damages for wrongful arrest.

- THE EAGLE PRESTIGE [2010] 3 SLR 294 (HC held that there is no separate test on merits, liability is assumed under the ‘would be liable’ wording; duty of disclosure limited to material facts that go towards the Court’s exercise of its admiralty jurisdiction, as well as those that will show up the arrest application as an abuse of the arrest process).
- Balance has now been restored. Will CA agree with the HC?

- THE ASIA STAR [2010] 2 SLR 1154 (CA – an aggrieved party found to have acted unreasonably in their efforts to mitigate losses).
- voyage charter, owners failed to present the vessel at load port within time and vessel was also found unsuitable to receive the cargo. charterers rejected the vessel and no cargo was loaded.
- a replacement vessel was available but charterers couldn't reach agreement on freight. CA found charterers acted unreasonably in failing to engage an available alternative vessel. charterers only entitled to the difference between the freight it would have paid for the replacement vessel and the freight it was originally bound to pay for the owners' vessel.

- reasonableness has to reflect commercial and fact-sensitive fairness at the assessment stage of the legal inquiry. a flexible concept that will bar an aggrieved party from profiting or behaving unreasonably at the expense of the defaulting party and confers on the courts considerable discretion in evaluating the facts of the case at hand in order to arrive at a commercially just determination.
- the potential expected loss(\$2m) was far greater than the additional outlay(\$400k) required of the charterer to charter the replacement vessel. not unreasonable to expect the charterer to incur that outlay, considering the damages it faced if it did nothing. objectively, reasonableness requires the aggrieved party which has to incur substantial additional expenditure in chartering a replacement vessel to notify the defaulting party of any alternative vessels available for charter as well as the particular course of action which it proposes to take in mitigation.

- Pro- arbitration & judicial non-intervention decisions from Singapore.
- THE ENGEDI [2010] 3 SLR 409 (stay in favour of arbitration granted despite objections that new owners, as interveners, were not party to the arbitration agreement).
- former owners went into liquidation but writ issued before transfer of ownership and liquidation. distinction between in rem and in personam liabilities considered but CA exercised discretion to stay.
- JIANGSU HANTONG [2010] 2 SLR 293 (stay granted despite no prior denial of the claims).
- ‘dispute’ very liberally construed. Unless there is clear admission in terms of liability and quantum, parties should proceed with arbitration.

- TRANSOCEAN OFFSHORE [2010] 2 SLR 821 (conflicting dispute resolution clauses, stay refused).
- 1st – drilling contract (Singapore arbitration).
- 2nd – escrow contract (made after the 1st, Singapore Courts' jurisdiction).
- D failed to pay deposit into escrow account in breach of escrow contract. P made its claim in Court.
- HC construed the contracts, gave 4 reasons for refusing to stay the action:
 - Escrow matters outside the scope of the 1st contract;
 - Arbitration clause 'disputes in connection with' not wide enough;
 - Escrow contract was a more specific contract, therefore prevailed over the arbitration clause in the 1st contract; &
 - Escrow contract, made later, operated as a waiver of the right to arbitrate under the 1st contract.

THANK YOU