2. ADMIRALTY, SHIPPING AND AVIATION LAW

ADMIRALTY LAW

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Introduction

2.1 After a barren spell in 2009, 2010 was a considerably more productive year so far as admiralty decisions go. A total of five decisions were handed down, two relating to admiralty jurisdiction of the court, one on the vexed (and hopefully, by virtue of this decision, now settled) question of material non-disclosure, one on the relationship between arrest and arbitration and the last on the right to arrest a vessel owned by a company under a rehabilitation.

The Catur Samudra [2010] 2 SLR 518

2.2 A wide range of issues familiar to admiralty lawyers came to be re-visited in this decision. It involved a sale and lease back agreement which was entered into between the plaintiff buyers/owners and Heritage Maritime Ltd ("Heritage" as the sellers and subsequently, demise charterers) for the vessel, *Mahakam*. It was a condition precedent under the Bareboat Charterparty that the defendants, PT Humpuss ("HIT"), would execute a guarantee to secure the due performance of Heritage's obligations under the charterparty. HIT was the parent company of Humpuss Sea Transport Pte Ltd, which was in turn the parent company of Heritage.

2.3 The New York Rule B order was subsequently discharged. The plaintiff then arrested the *Mahakam* in Malaysia. The *Mahakam* was subsequently redelivered to the plaintiff and the dispute referred to arbitration. Not content with the foreign proceedings, the plaintiff arrested the *Catur Samudra*, a vessel owned by the defendant guarantor, HIT, in Singapore. The plaintiff's action was based solely on the guarantee which was executed by HIT. HIT then filed an application to set aside the arrest on these grounds:

> (a) that the plaintiff's claim under the guarantee issued by HIT was not a claim arising out of an agreement relating to the charterparty in respect of the *Mahakam*, under s 3(1)(*h*) of the High Court (Admiralty Jurisdiction) Act (Cap 123,

2001 Rev Ed) and therefore did not come within the subject matter of admiralty jurisdiction in Singapore.

(b) HIT was not in possession or control of the *Mahakam* at the time the cause of action under the guarantee arose and therefore s 4(4)(*b*) of the High Court (Admiralty Jurisdiction) Act was not satisfied.

The challenge to admiralty jurisdiction based on s 3(1)(h) of the High Court (Admiralty Jurisdiction) Act

2.4 Before proceeding to the substantive issues raised in the case, Steven Chong JC (as he then was) made it clear (*The Catur Samudra* [2010] 2 SLR 518 at [22]–[23]) that the burden of proof was on the plaintiff to satisfy the jurisdiction requirements under s 4(4) of the High Court (Admiralty Jurisdiction) Act (Cap 123, 2001 Rev Ed) on a balance of probabilities.

2.5 Turning to s 3(1)(*h*) of the High Court (Admiralty Jurisdiction) Act (Cap 123, 2001 Rev Ed), Chong JC noted that there were two limbs governing the proper construction to s 3(1)(*h*), namely, "*arising out of*" and "*relating to*". For ease of exposition, s 3(1)(*h*) is reproduced below:

> any claim *arising out* of any agreement *relating to* the carriage of goods in a ship or to the use or hire of a ship. [emphasis added]

2.6 In relation to the expression "arising out of", Chong JC considered authorities such as *The Antonis P Lemos* [1985] AC 711, *The MARA* [2000] 3 SLR(R) 31 and *The Indriani* [1996] 1 SLR(R) 5, and concluded that the courts have consistently "leaned towards a broad interpretation of the expression 'arising out of' to enlarge the types of claims as falling within s 3(1)(*h*)": *The Catur Samudra* [2010] 2 SLR 518 at [32]. For instance, it is well settled that this provision is not confined to contractual claims and may extend to tortious claims.

2.7 As regards the expression, "relating to", Chong JC applied the House of Lord's decision of *Gatoil International Inc v Arkwright-Boston Manufacturers Mutual Insurance* [1985] 1 AC 255 ("*The Sandrina*") which held that the test for an agreement that is "relating to the use or hire of a ship", is that of a "reasonably *direct connection* with such activities" [emphasis added]: *The Catur Samudra* [2010] 2 SLR 518 at [33]. Compared with the connecting expression in s 3(1)(*h*), "arising out of", "relating to" has a considerably narrower scope.

2.8 In this connection, Chong JC considered various authorities where claims might appear to fall within s 3(1)(*h*), but was held not to do so, such as *The Tesaba* [1982] 1 Lloyd's Rep 397, *The Sandrina* itself and *The Bumbesti* [1999] 2 Lloyd's Rep 481. He noted that these cases

were made under agreements which "by themselves were not agreements relating to the use or hire of a vessel": *The Catur Samudra* [2010] 2 SLR 518 at [35]. As an aside, Chong JC's reference to *The Bumbesti* is potentially significant. It is not fully settled in Singapore (at any rate) if an arbitration award can be enforced by way of an admiralty action *in rem*: *The Bumbesti*, which yielded a negative answer, has not, until *The Catur Samudra*, been cited in any reported Singapore decisions, whereas *The Stella Nova* [1981] Com LR 200, which *The Bumbesti* expressly departed from, was cited (apparently with approval) by the Court of Appeal in *Alexander G Tsavliris & Sons Maritime Co v Keppel Corp Ltd* [1995] 1 SLR(R) 701 and in this case (*The Catur Samudra* [2010] 2 SLR 518 at [44]). However, as the issue was not squarely raised in *The Catur Samudra*, it must await judicial exploration on another occasion. Chong JC further adopted a useful *indicium* for the direct connection test, which is to pose the questions:

> (a) how did the claim arise; and
>
> (b) whether the agreement based on which the claim arose related to the use or hire of the vessel: *The Catur Samudra* [2010] 2 SLR 518 at [44].

2.9 Turning to consider the guarantee in the present case, Chong JC held that the guarantee was not an agreement relating to the use or hire of a vessel. Rather, "the sole purpose of the guarantee was to provide financial protection to the plaintiff against the risk of default by Heritage under the Bareboat Charterparty": *The Catur Samudra* at [35]. Chong JC likened the guarantee to the provision of insurance to an owner of a vessel, which was held to be outside the scope of s 3(1)(*h*) in *The Aifanourious* (1980) SC 346.

2.10 Chong JC further held that the guarantee could not be transformed into such an agreement under s 3(1)(*h*) simply by characterising the guarantee as a term or condition precedent to execution of the charterparty. To do so would be to relegate the "direct connection" test into the much looser "but for" test, which would be inconsistent with the weight of the authorities. Chong JC referred to the example in *The Bumbesti* where it might have been said that a charterparty would not be entered into "but for" an arbitration agreement. Yet, such an arbitration agreement was held not to fall within s 3(1)(*h*).

2.11 Interestingly, Chong JC referred to but declined to follow two decisions dealing with claims which arose from contracts collateral to a charterparty. The first is the New Zealand High Court case of *The Fua Kavenga* [1987] 1 NZLR 550, where the arrest of a vessel on the basis of a guarantee was allowed, and the second, the Canadian Federal Court case of *National Bank Leasing v Merlac Marine Inc* (1992) 52 Federal

Trial Report 15 ("*National Bank Leasing*"), where the arrest of a vessel on the basis of a guarantee bond was allowed. Smellie J, in *The Fua Kavenga*, applied the wide interpretation of the expression "arising out of", but did not take into account the narrower interpretation of the expression "relating to". The court in *National Bank Leasing* did not consider any of the leading UK authorities and instead considered the guarantee bond to be inseparably linked to the charterparty.

2.12 Rounding up on this point, Chong JC concluded that "*if the collateral agreement is not intrinsically an agreement relating to the use or hire of a vessel* such as a contract of insurance, container leasing agreement, an arbitration agreement in the charterparty or the guarantee in the present case, it would fall outside the purview of s 3(1)(*h*)" [emphasis added]: *The Catur Samudra* [2010] 2 SLR 518 at [43]. It follows that the subject matter of the claim based as it was on the guarantee, was only collateral or ancillary to the contract of carriage and fell outside of s 3(1)(*h*) of the High Court (Admiralty Jurisdiction) Act (Cap 123, 2001 Rev Ed).

The challenge to admiralty jurisdiction based on s 4(4)(b) of the High Court (Admiralty Jurisdiction) Act

2.13 The plaintiff sought to argue that HIT was "in possession or in control" of the *Mahakam* at the time when the cause of action arose (no earlier than 16 April 2009 in the present case), in order to bring themselves within s 4(4) of the High Court (Admiralty Jurisdiction) Act (Cap 123, 2001 Rev Ed). The expression, "in possession or in control" of the vessel in connection with which the claim arose, has not received much judicial discussion, outside of the obvious example of a bareboat charter. Thus the observations of Chong JC in this regard would provide useful guidance to admiralty practitioners as to the scope and meaning of the expression.

2.14 Chong JC agreed with Chao Hick Tin JC (as his Honour then was) in *The Interippu* [1990] SGHC 181, where it was held by Chao JC that the term "in possession or in control", must mean possession or control as an "independent legal right". Chong JC further referred to the cases which established that persons who would satisfy the test of being "in possession or in control" include a demise charterer (see *The Span Terza* [1872] 1 Lloyd's Rep 225); a salvor in possession (see *The Evpo Agnic* [1988] 1 WLR 1090); a purchaser under a conditional sale agreement (see *The Permina 3001* [1977–1978] SLR(R) 1); and a person in the position of a demise charterer, albeit not under a demise charter (see *The Evpo Agnic* [1988] 1 WLR 1090). Chong JC held that the "common denominator is that each of them has legally enforceable rights as regards possession or control of the vessel" (*The Catur*

Samudra [2010] 2 SLR 518 at [61]), as opposed to physical possession or control *per se*.

2.15 Chong JC considered the plaintiff's argument that ship management duties were performed by HIT, even though technical and crewing duties had already been taken over by another entity when the cause of action arose. However, Chong JC held that even taking the plaintiff's case at its best, the appointment of ship managers did not vest in them legally enforceable rights. Rather, their responsibilities over the vessel only arose because of their appointment as managers and *not as an independent legal right*. They could not, therefore, be treated as being "in possession or in control" of a vessel.

2.16 The plaintiff's argument that possession or control can be established through shareholding, direct or through another entity, was also given short shrift since it is trite that a shareholder does not own property in the company. This argument was akin to asking the court to lift the corporate veil, which the plaintiff apparently sought to do in another way, by showing that HIT (and not Heritage) was in effect the demise charterer of the vessel, but that was abandoned at the hearing. Accordingly, Chong JC held that the plaintiff had failed to show that HIT was in "possession or in control" of the *Makaham* at the time when the cause of action under the guarantee arose.

2.17 The upshot is that the arrest was set aside because two requirements in ss 3 and 4 of the High Court (Admiralty Jurisdiction) Act (Cap 123, 2001 Rev Ed) were found to be wanting.

Re TPC Korea Co Ltd [2010] 2 SLR 617

2.18 This case concerns a Korean shipping company, under rehabilitation in Korea, which had no presence, representative office or assets in Singapore. The primary question was whether s 210(11) of the Companies Act (Cap 50, 2006 Rev Ed) conferred jurisdiction on the Singapore court to issue:

> (a) a court order to convene a meeting of Singapore creditors to approve of a rehabilitation plan in Korea and more pertinently to the subject matter at hand; and
>
> (b) a pre-emptive restraining order in Singapore against any proceedings (including proceedings against vessels) brought against the Korean company.

2.19 TPC Co Ltd ("the applicant") was a company incorporated in Korea, which was in the process of rehabilitation (broadly equivalent to a Ch 11 process in the USA) in Korea. It had, as aforesaid, no presence,

representative office or assets in Singapore, save that it had interests in five vessels which sailed to Singapore regularly, thereby rendering these vessels susceptible to the admiralty jurisdiction of the Singapore courts.

2.20 The applicant's concern was that any arrest of the vessels in Singapore would jeopardise the rehabilitation process in Korea. Furthermore, the effect of the court orders under the Korean rehabilitation process already provided that any new *in rem* proceedings, based upon a security right affected by the rehabilitation process against a ship, is prohibited. In addition, any existing proceeding and arrest would be automatically stayed.

2.21 The application for, *inter alia*, a pre-emptive injunction was made under s 210(10) of the Companies Act (Cap 50, 2006 Rev Ed) which provides:

> **Power of Court to restrain proceedings**
>
> (10) Where no order has been made or resolution passed for the winding up of a company and any such compromise or arrangement has been proposed between the company and its creditors or any class of such creditors, the Court may, in addition to any of its powers, on the application in a summary way of the company or of any member or creditor of the company *restrain further proceedings in any action or proceeding against the company except by leave of the Court* and subject to such terms as the Court imposes.
>
> [emphasis added]

2.22 The primary issue for the court was whether it had jurisdiction to grant the application. Phillip Pillai J held in the negative, stating that s 210 of the Companies Act (Cap 50, 2006 Rev Ed) would not apply to a foreign company which has no assets in Singapore, other than interests in vessels that ply the port of Singapore: *Re TPC Korea Co Ltd* [2010] 2 SLR 617 at [19].

The jurisdiction issue

2.23 Section 210(11) is contained in Pt VII of the Companies Act (Cap 50, 2006 Rev Ed), which deals with Scheme of Arrangements, Reconstructions and Amalgamations. Section 210(11) prescribes the definition of a company under this section as follows:

> 'company' means any *corporation* or society *liable to be wound up* under this Act.

2.24 Pillai J accepted that "corporation" is defined in s 4 of the Companies Act (Cap 50, 2006 Rev Ed) to include a "foreign company", which is further defined as "a company, corporation or other body incorporated outside Singapore". However, apart from establishing that

the applicant is a "foreign company", it must also be established that it is "liable to be wound up". In this regard, Pillai J held that it would ordinarily be a foreign company with assets or other connection (such as the conduct of business) in Singapore, which would be liable to be wound up in Singapore. Fatally for the applicant, it was unable to raise any authority where a court ordered the winding up of a foreign company "whose only asset or nexus within the jurisdiction was that of vessels which ply its ports": *Re TPC Korea Co Ltd* [2010] 2 SLR 617 at [12].

2.25 The key to Pillai J's conclusion was the absence of assets of the applicant in Singapore, apart from its interests (variously in the form of demise charter, lease back and ownership) in the vessels that called on Singapore. Accordingly, he held that the court did not have statutory jurisdiction to grant the pre-emptive court orders sought by the applicant: *Re TPC Korea Co Ltd* [2010] 2 SLR 617 at [19].

2.26 Pillai J reinforced his conclusion by considering various potential negative implications of conflating the Korean rehabilitation scheme with the s 210 Companies Act (Cap 50, 2006 Rev Ed) scheme. One such (and perhaps, the most important) negative implication of subsuming the rehabilitation scheme within the rubric of s 210 was that potential Singapore creditors would be "subsumed" into the wider group of unsecured and secured creditors of the applicant, binding them to the rehabilitation process in Korea as approved by the prescribed majority group. Pillai J considered this to be contrary to the statutory logic of distributing Singapore located assets in favour of eligible Singapore creditors, regardless of events in the country of incorporation.

2.27 Pillai J further observed that to allow such a pre-emptive restraining order under the Companies Act would "displace the admiralty jurisdiction conferred on the court by the High Court (Admiralty Jurisdiction) Act (Cap 123, 2001 Rev Ed) and proceedings thereunder": *Re TPC Korea Co Ltd* [2010] 2 SLR 617 at [18]. This was especially objectionable, given that the applicant was not a company incorporated or registered in Singapore, and which has no assets in Singapore other than the interests in the vessels that might occasionally be present in Singapore.

2.28 The conclusion reached was indisputably correct on the facts. It would be shocking if a foreign entity facing rehabilitation proceedings in its home jurisdiction could by the device of an injunction obtain immunity from arrest of its vessels in other jurisdictions. That would in substance be giving extra-territorial effect to the rehabilitation regime in its home jurisdiction. The fact that the application was dismissed even

though it was not even argued *inter partes* simply demonstrates how misconceived it was.

The Engedi [2010] 3 SLR 409

2.29 *The Engedi* [2010] 3 SLR 409 raises important and interesting questions on various areas of admiralty law but because it was allowed on appeal with no written grounds of decision being handed down by the Court of Appeal, its authoritativeness is, unfortunately, difficult to assess.

2.30 The plaintiff, as disponent owners, time chartered the vessel, the *TS Bangkok*, to the defendant. The vessel grounded whilst under the time charter. The plaintiff, being potentially liable to the registered owner of *TS Bangkok* for repairs, sought:

(a) an indemnity from the defendant; and

(b) outstanding charges and expenses under the time charter hire statement. Arbitration was commenced in London, as prescribed in the time charter.

2.31 The plaintiff commenced proceedings *in rem* against the defendant's vessel, the *Eagle Prestige*. After the issue of the plaintiff's writ, but before it was served, the defendant transferred ownership of the *Eagle Prestige* to the intervener, Capital Gate Holdings, who renamed the vessel, the *Engedi*. By way of *ex parte* application, the plaintiff obtained leave of court to continue with the *in rem* proceedings and to arrest the vessel on 27 February 2009, bearing in mind the fact that the defendant was earlier placed in provisional liquidation.

2.32 The plaintiff arrested the vessel on 27 February 2009, and filed an application on 31 March 2009, for the *Engedi* to be sold *pendente lite*. On the basis that it was the owner of the *Engedi at the time of arrest*, the intervener then applied to set aside the arrest. This was successful before the assistant registrar, but the decision was overturned on appeal, with an appeal to the Court of Appeal pending. Subsequently, the application for the sale of the *Engedi* was heard and allowed.

2.33 The plaintiff then applied for all further proceedings in the action to be stayed in favour of arbitration in London under s 6 of the International Arbitration Act (Cap 143A, 2002 Rev Ed), save for:

(a) the application to sell the *Engedi*; and

(b) an application that the intervener provide security for costs of the application to set aside the arrest of the *Engedi*. The

intervener's application was dismissed by an assistant registrar but succeeded on appeal before Judith Prakash J.

2.34 Prakash J held in essence that the *in rem* aspect of the proceedings did not fall within the ambit of s 6 of the International Arbitration Act (Cap 143A, 2002 Rev Ed) and therefore could not be stayed. Prakash J based her reasoning on three main grounds.

2.35 First, Prakash J reiterated the "traditional distinction between an admiralty action *in rem* and an action *in personam*", and stressed that "the defendants of the respective actions are regarded as different parties" (*The Engedi* [2010] 3 SLR 409 at [17]) – the action *in rem* operating against the *res*, and the action *in personam* operating against the shipowner. When the shipowner enters appearance and thereby submits to jurisdiction, the action continues as a hybrid *in rem* and *in personam* action. Until that happens, the action has no *in personam* element. It is therefore incorrect to say that, in substance, the defendant in an action *in rem* is the shipowner.

2.36 Approached in this manner, it was thus clear that the *res*, being the notional defendant of the *in rem* action, was not a party to the arbitration agreement (*The Engedi* [2010] 3 SLR 409 at [19]) and therefore, Prakash J was not obliged to (and did not in fact) grant a stay of the action *in rem* pursuant to s 6 of the International Arbitration Act (Cap 143A, 2002 Rev Ed). While this distinction between *in rem* and *in personam* aspects of the action would in most instances have no practical effect on the question of stay, in the circumstances of this case, it was of "utmost importance" because of the transfer of ownership of the vessel in favour of the intervener. As a result, the owner of the *res* and the defendant to the *in personam* claim were not the same – the owner of the *res* was now the intervener, and not the defendant: *The Engedi* at [21]. This aspect of the case demonstrates how the personification theory in the admiralty action *in rem*, thought to be moribund after the House of Lord's decision in *Republic of India v India Steamship Co Ltd (No 2)* [1998] 1 AC 878, may yet spring to life from time to time.

2.37 If the plaintiff and defendant were to proceed with arbitration, with the *in rem* action in Singapore stayed, the intervener would not be able to protect its interest. This was because the intervener was not a party to the arbitration agreement and had no rights in the arbitral process: *The Engedi* [2010] 3 SLR 409 at [20]. The result would have been a walkover for the plaintiff in the arbitration since the defendant company was insolvent and therefore unlikely to defend itself in the London arbitration. Prakash J further observed that the arbitral tribunal "would have no jurisdiction to hear the *in rem* claim" (*The Engedi* at [20]) and therefore "the *in rem* claim could not be" a matter that was

a subject of the arbitration agreement between the plaintiff and the defendant falling within the ambit of s 6 of the IAA" (*The Engedi* at [20]), the latter being one of the threshold requirements for invoking s 6. With respect, the expression, "*in rem* claim" is somewhat inapt: a claim which arises out of a charterparty does not have any *in rem* or *in personam* character. It is no less of a claim under a charterparty simply because a plaintiff chooses to invoke the admiralty jurisdiction of the court to arrest a vessel in order to obtain security for that claim.

2.38 The purpose of the procedure for intervention is essentially to allow a party who is otherwise not a party to an *in rem* action to protect his interest in the vessel, its sale proceeds, *etc*, to be heard in the *in rem* action. Such a purpose "would not be achieved if the plaintiff here was able to exclude the intervener from participating in the defence by removing the dispute to arbitration despite arresting property owned by the intervener or in which it had an interest capable of permitting an intervention": *The Engedi* [2010] 3 SLR 409 at [21]. This was *a fortiori* the case when the defendant was insolvent and unlikely to defend any action both in Singapore and in London. To that end, Prakash J concluded that "the drafters of s 6 of the IAA could not have intended for that provision to be used as a means of depriving third parties of their right to protect their interests": *The Engedi* at [22]. It was plainly inequitable for a plaintiff, having arrested the vessel now owned by the intervener, to prevent the intervener from defending the claim (which he would otherwise be entitled to were the proceedings not to be stayed) by invoking the London arbitration agreement, to which the intervener was not a party. In any case, even if this objection were overcome, the intervener could not be forced to litigate in another forum, namely, in the London arbitration.

2.39 By way of *obiter*, having decided not to stay the action in favour of London arbitration, Prakash J expressed her tentative opinion that the requirement for leave of court to commence proceedings against a company against which winding-up has been commenced under s 299(2) of the Companies Act (Cap 50, 2006 Rev Ed), *did not apply to foreign proceedings, including foreign arbitrations*. She reached the conclusion that the phrase "action or proceeding" in s 299(2) did not include foreign arbitrations by extrapolating from the principle that foreign proceedings were not affected by the said provision.

The Makassar Caraka Jaya Niaga III-39 [2011] 1 SLR 982

2.40 *The Makassar Caraka Jaya Niaga III-39* [2011] 1 SLR 982 raises the issue of how the concept of beneficial ownership, which is a matter of Singapore law as the *lex fori*, is to be applied to vessels that are flagged in jurisdictions with drastically different notions of ownership of

chattels. This issue is not new: having first reared its head in the post Soviet era (see, for example, *The Kapitan Temkin* [1998] 2 SLR(R) 573) and has proved to be surprisingly resilient since (see, for instance, *The Sangwon* [1999] 3 SLR(R) 919 and *The Halla Liberty* [2000] 1 HKC 659).

2.41 This case involved the arrest of an Indonesian flagged vessel, the *Makassar Caraka Jaya Niaga III-39* ("the *Makassar*"), by ANL Singapore Ltd ("ANL") on the basis that the owners of the *Makassar*, PT Djakarta Lloyd (Persero) ("PTDL"), an Indonesian State-owned company, owed it US$719,440.17 of unpaid slot fees under a slot charterparty.

2.42 ANL arrested the *Makassar* as security for its claim, invoking s 3(1)(*h*) and s 4(4) of the High Court (Admiralty Jurisdiction) Act (Cap 123, 2001 Rev Ed). The *Makassar* was registered in PTDL's name. PTDL intervened in the action and claimed that it was *not* the beneficial owner of the *Makassar* and that instead, she was owned by the State of Indonesia ("the State"). PTDL then applied to have:

(a) the *Makassar* released and the arrest set aside; and

(b) for ANL's application for summary judgment and all further proceedings stayed in favour of foreign arbitration.

2.43 Because the *Makassar* was flagged in Indonesia, the applicable *lex situs* was Indonesian law. Not surprisingly, parties adduced copious amount of evidence on Indonesian law pertaining to the ownership and transfer of ownership of vessels. While Singapore law determines issues of beneficial ownership, the court is, nevertheless, entitled to take into account foreign *lex situs* in the case of foreign flagged vessels to enable it come to a decision on beneficial ownership as a matter of Singapore law. The case ultimately turned on the relative quality of foreign law evidence adduced by each party. Related to this was the choice of an expert with the relevant expertise in the field. It followed that adducing evidence from an expert with no demonstrable specialist knowledge could seriously affect the outcome of a case: *The Makassar Caraka Jaya Niaga III-39* [2011] 1 SLR 982 at [11].

2.44 In this regard, Tan Lee Meng J did remark that there were questions as to the suitability of PTDL's expert witness.

The first issue: Whether the arrest should be set aside

2.45 Tan J reiterated the following three established propositions on the issue of beneficial ownership before turning to the facts:

(a) that the beneficial owner is the person who "has the right to sell, dispose of or alienate all the shares in that ship": *The Pangkalan Susu* [1977–1978] SLR(R) 105;

(b) that the court may trace the history of ownership of the vessel from the time of its construction to ascertain who the beneficial owner is: *The Andres Bonifacio* [1993] 3 SLR(R) 71; and

(c) that a registered owner of the vessel is presumed to be the vessel's beneficial owner, and the party who asserts otherwise has the burden of rebutting this presumption: *The Kapitan Temkin* [1998] 2 SLR(R) 573.

2.46 It will be recalled that the *Makassar* was registered in PTDL's name. Accordingly, per the principle laid down in *The Kapitan Temkin*, the burden was on PTDL to displace the presumption that PTDL was the beneficial owner of the *Makassar*. Tan J noted that this would be no easy task for PTDL, taking into account the Hong Kong Court of Final Appeal's observation in *The Tian Sheng No 8* [2000] 2 Lloyd's Rep 430 that "in the general run of things, registration would be virtually conclusive, and it would take a wholly exceptional case for it to be otherwise": *The Makassar Caraka Jaya Niaga III-39* [2011] 1 SLR 982 at [16]. Further, Tan J noted that Indonesian maritime law recognised that the certificate of registration "shall serve as evidence of ownership over the vessel": *The Makassar Caraka Jaya Niaga III-39* at [17].

2.47 To rebut the presumption, PTDL advanced a number of arguments that the *Makassar* was in fact an asset owned by the Indonesian government.

2.48 PTDL argued that the use of State funds as loans to finance the construction and purchase of the vessel would have given the State equity participation in PTDL, if a Government Regulation had been passed by the State, which apparently was not the case with *The Makassar*. In the absence of such a Regulation, the *Makassar* remained State assets and was not converted into State equity participation in the borrower company, *ie*, PTDL. This required the court to consider two pieces of legislation passed in 2003 and 2004. The court agreed with ANL's expert that these statutes only came into effect long after the registration of the *Makassar* and had no retrospective effect. Faced with this obstacle, PTDL resorted to various other pieces of legislation which pre-dated the registration of the vessel in PTDL's name. These other legislations were, however, equally unhelpful and lent no support for PTDL's case that the *Makassar* was a State property.

2.49 ANL argued that the absence of such Government Regulation, in any event, could not have the effect of converting the State's loans into beneficial ownership of the shares in the *Makassar*. In this regard, Tan J, applying *The Kapitan Temkin*, noted that Indonesian law, having no concept of beneficial ownership, was of little assistance to the task of ascertaining in whom beneficial ownership is vested. Tan J further

accepted the evidence of ANL's expert witness that the State, in advancing loans to PTDL, only assumed the role of an unsecured lender and did not acquire or reserve any right of ownership or security over the *Makassar*. In other words, the provision of loans made the Indonesian State a creditor of PTDL, not the owner of the vessel. There was no resulting trust arising from the disbursements of the loan: the parties intended a loan for the construction of the vessel and that was what was put in place.

2.50 PTDL also argued that various correspondences between the Indonesian Ministries ought to be taken into account to determine the beneficial ownership of the Makassar.

2.51 First, PTDL argued that it could not have been the beneficial owner of the vessels because it had to write to the Minister of State-owned Enterprises for approval to pledge two Caraka Jaya III vessels to obtain a loan of US$3m. ANL's expert witness convincingly explained that approval was only sought because this was required under PTDL's own Articles of Association. The approval was in fact sought "from the shareholders" of the company. Tan J further accepted ANL's arguments that the seeking of approval to pledge the vessel was not inimical to PTDL being a beneficial owner because the *Pangkalan Susu* test (*The Pangkalan Susu* [1977–1978] SLR(R) 105 at [9]) of beneficial ownership did not require such an owner of a vessel to have an *absolute or unqualified* right to sell, dispose of or alienate the shares. This must, with respect, be correct because were the position otherwise, a ship owner who mortgages his vessel to a bank cannot be regarded as a beneficial owner of the vessel registered in his name merely because he needs the bank's consent before he can sell the vessel.

2.52 Second, PTDL argued that it had a *statutory* right to operate the vessel, rather than a contractual right to do so, based on various Indonesian ministerial letters that purported to reallocate "the operation" of all Caraka Jaya III vessels (of which the *Makassar* was one) to PTDL. In response, ANL's witness stated that the letters were only mere correspondence, had no legislative effect and/or were self-serving in nature. Tan J accepted the evidence of ANL's expert as to the nature and effect (or rather, lack thereof) of the correspondence.

2.53 Lastly on this issue, Tan J noted that (a) PTDL furnished no evidence of the contractual documents relating to the operation of the vessel despite claiming that it was merely the operator of the *Makassar*; (b) that, uncharacteristically in cases of this kind, the alleged owner of the vessel had not intervened in these proceedings to assert its claim to ownership; and (c) not only did the Indonesian Directorate General of Sea Communications fail to mention the State's alleged interest in the

Makassar, it in fact confirmed that PTDL was the owner of the *Makassar* and that the *Makassar* was unencumbered.

2.54 Tan J concluded that PTDL had failed to displace the presumption of ownership arising from the registration of the vessel in its name, and held that PTDL was the beneficial owner of the *Makassar*. The appeal against the assistant registrar's decision to set aside the writs and the arrest of the vessel was therefore allowed.

The second issue: Whether the proceedings should be stayed

2.55 As a subsidiary issue, the court had to consider whether the proceedings should be stayed in favour of arbitration. This depended on whether there was in fact a "dispute" between the parties to be referred to arbitration. ANL referred to a Letter of Undertaking where PTDL had admitted to owing it an "estimated US$2.8m". On this basis, ANL argued, relying on *Tjong Very Sumito* [2009] 4 SLR(R) 732, that this was an unequivocal admission and accordingly, that there ceased to be no dispute.

2.56 PTDL countered that the letter did not contain an unequivocal admission and that in any case, it was disputing the amount now. Tan J referred to *Tjong Very Sumito*, which held that even where a defendant prevaricates by first admitting and then denying a claim, there, nevertheless, exists a dispute to be referred to arbitration. In light of the very generous criterion of what amounts to a dispute for the purposes of s 6 of the International Arbitration Act (Cap 143A, 2002 Rev Ed) as laid down in *Tjong Very Sumito*, it was not surprising that a stay of the proceedings in favour of arbitration was ordered.

***The Eagle Prestige* [2010] 3 SLR 294**

2.57 *The Eagle Prestige* [2010] 3 SLR 294 ("*The Eagle Prestige*") may, in some ways, be seen as a prologue to the Court of Appeal's decision in *The Vasiliy Golovnin* [2008] 4 SLR(R) 994. It develops on two primary themes discussed in *The Vasiliy Golovnin*, namely, the relevance of any questions of merit at the stage where a warrant of arrest is applied for or challenged as well as the plaintiff's duty of disclosure when applying for a warrant of arrest. It also seeks to clarify (by a contextual reading) various aspects of the Court of Appeal decision related to these themes.

2.58 The plaintiffs sub-chartered the *TS Bangkok* to the defendants, EP Carriers Pte Ltd. While berthing at Tanjong Priok, Indonesia, *TS Bangkok* grounded, thereby sustaining hull and propeller damage. The plaintiffs alleged that the grounding was due to the defendants

directing the *TS Bangkok* to berth at an unsafe port, which was a breach of the sub-charter.

2.59 The head owners of the *TS Bangkok* then sought to recover the costs of the repairs from the plaintiffs. In turn, the plaintiffs sought to recover or be indemnified for the said costs from the defendants. Pursuant to this, the plaintiffs issued a writ *in rem* on 2 December 2008.

2.60 On 27 February 2009, the plaintiff arrested the *Eagle Prestige*, a vessel owned by the defendants. Prior to the arrest, the vessel was sold to the intervener on 22 December 2008. The intervener applied for the setting aside of the warrant of arrest (but not the writ *in rem*) and damages for wrongful arrest for failure of full disclosure. The assistant registrar, on hearing the intervener's application, ordered that the warrant of arrest be set aside for material non-disclosure. Against that decision, the plaintiff appealed.

2.61 The grounds of the intervener's application were as follows:

> (a) Failure on the part of the plaintiff to make full and frank disclosure of material information in the affidavits leading to the warrant of arrest. The allegedly undisclosed information included (i) the presence of a clause in the sub-charterparty, which would allegedly absolve the defendants from all liability; and (ii) the fact that the plaintiffs were disputing the same claim with the head owner, as that which they brought proceedings against the defendant;
>
> (b) Failure of the plaintiff to demonstrate a "good arguable case" against the defendants; and
>
> (c) Plaintiff's claim was premature as the head owners had not started legal proceedings against the plaintiffs.

2.62 Given the nature of the intervener's application, Belinda Ang Saw Ean J identified three primary issues for determination:

> (a) whether at the application for a warrant of arrest ("the application stage"), the arresting party is required to show that it has a "good arguable case" on the merits of the claim.
>
> (b) Whether the arresting party is required to show, at the stage when the warrant of arrest is being challenged ("the challenge stage"), that it has a "good arguable case" on the merits of the claim; and
>
> (c) whether the duty of disclosure in applications for warrant of arrest extends to cover plausible defences on the merits of the claim;

The first and second issue

2.63 The intervener argued that, purportedly applying *The Vasiliy Golovnin* [2008] 4 SLR(R) 994, the plaintiff is required to show that he has a good arguable case *on the merits*, at both the *application* stage and the *challenge* stage: *The Eagle Prestige* [2010] 3 SLR 294 at [39]. The intervener relied on two paragraphs of *The Vasiliy Golovnin* where V K Rajah JA held (*The Vasiliy Golovnin* [2008] 4 SLR(R) 994 at [51]–[52]) that:

> While there is no need to establish a conclusive case at the outset, *there is certainly a need to establish a good arguable case, before an arrest can be issued*. This determination plainly requires a preliminary assessment of the merits of the claim …
>
> The standard to be applied in Singapore at this early stage of the matter, if there is a challenge on the merits, is indeed the 'good arguable case' yardstick … The plaintiff does not have to establish at this stage that he has a cause of action that might probably prevail in the final analysis. Karthigesu JA has rightly pointed out in *The Jarguh Sawit* (CA) that the plaintiff need only show that he has a 'good arguable case' that his cause of action falls within one of the categories provided for in s 3(1) of the High Court (Admiralty Jurisdiction) Act …

2.64 Belinda Ang Saw Ean J rejected this argument. Her Honour clarified that the Court of Appeal in *The Vasiliy Golovnin* distinguished between two different challenges: (a) a procedural challenge to jurisdiction whether pertaining to the existence or exercise of such jurisdiction; and (b) a substantive challenge on the merits in the context of a striking out application under O 18 r 19 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed): *The Eagle Prestige* [2010] 3 SLR 294 at [41]. She re-affirmed (*The Eagle Prestige* at [43]) the orthodox view that where a challenge is mounted on the basis that a claim does not come within s 3(1) of the High Court (Admiralty Jurisdiction) Act (Cap 123, 2001 Rev Ed), as long as the plaintiff's claim is not "so frivolous as to be dismissed in limine, the plaintiff does not have to establish at the outset that he has a cause of action substantial at law", quoting from Toh Kian Sing, *Admiralty Law & Practice* (LexisNexis, 2nd Ed, 2007) at pp 45–46. However, the plaintiff does have to show a *good arguable case* that the cause of action falls within one of the heads of subject matter jurisdiction in s 3(1): *The Eagle Prestige* at [46].

2.65 Ang J went on to state that *when jurisdiction* in rem *is challenged*, usually under O 12 r 7 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed), the proper standard of proof on the existence of particular facts or a particular state of affairs is on a *balance of probabilities*: *The Eagle Prestige* at [49]. Drawing support from cases such as *The Catur Samudra* [2010] 2 SLR 518, *The Alexandrea* [2002]

1 SLR(R) 812 and *The Andres Bonifacio* [1991] 1 SLR(R) 523, her Honour concluded (*The Eagle Prestige* at [49]) that:

> It is clear that where jurisdiction *in rem* is based on the existence of particular facts or a particular state of affairs, a challenge to jurisdiction can only be resisted by establishing the facts on which it depends. In the event, the particular facts or state of affairs must be established on the balance of probabilities in the light of all the affidavit evidence before the court to determine whether there is jurisdiction *in rem*. … A review of those cases will show that where, for instance, the nature of the claim requires, for example, the establishment of factual preconditions in s 3(1) or contemplates a s 4(4) ownership question, *the* in rem *plaintiff was obliged to prove the existence of the particular jurisdictional fact and to show jurisdiction on a balance of probabilities*. [emphasis added]

2.66 Ang J also discussed the position under O 18 r 19 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) in dealing with a clearly unsustainable or unmeritorious claim: *The Eagle Prestige* at [57]. She held that it is only in respect of a striking out application under O 18 r 19 or the court's inherent jurisdiction that the validity or strength of the claim would be relevant, and that the burden would be on the defendant to show that the case is wholly and clearly *unarguable*. A defendant can make such an application at an early stage of the proceedings on the ground that the action has no chance of success and is, therefore, vexatious. *The Vasiliy Golovnin* (above, para 2.57) is one such illustration.

2.67 In light of the foregoing, Ang J held that the intervener's argument, that the plaintiff is required to show that he has a good arguable case *on the merits of the claim*, at both the *application* stage and the *challenge* stage, was wrong: *The Eagle Prestige* at [58]. The intervener's reliance on *The Vasiliy Golovnin* (above, para 2.57) was also misplaced because the Court of Appeal in *The Vasiliy Golovnin* had been concerned with a striking-out action, unlike the case at hand, where there was no application to strike out the claim.

2.68 The intervener further contended that the plaintiff's claim for an indemnity against the defendant was premature because the head owner had not even commenced legal proceedings against the plaintiff and, as such, the plaintiff had no arguable case against the defendant. Ang J held that this argument was untenable. First, she inferred from the failure of the intervener to apply to strike out the action and the writ *in rem* for want of sustainability that the interveners accepted that the claim was not frivolous or vexatious and that there was a *prima facie* cause of action. Second, her Honour noted that there had been a *prima facie* breach of the sub-charter at the time the writ *in rem* was issued, having chosen an unsafe berth/port. This was a breach of the sub-charter itself. Third, although the plaintiff might have been considered

to be "sandwiched" by virtue of the back-to-back charters, the plaintiff need not wait until the head owner's claim is ascertained before the charterer commences proceedings against the sub-charterer.

2.69 The intervener further argued that cl 90 of the sub-charter was an exclusion clause which served as a full defence to the plaintiff's claim. Ang J, however, agreed with the plaintiff that the clause was ambiguous and that questions would still arise as to how the clause would operate. Ang J held that these were matters to be resolved at trial: *The Eagle Prestige* [2010] 3 SLR 294 at [93]–[96]. Accordingly, Ang J held that the application to set aside the warrant of arrest on the ground that the plaintiff had failed to establish a good arguable case on the merits at the application or challenge stage was untenable.

The second issue: Non-disclosure of material facts

2.70 The law on the duty to disclose material facts in *ex parte* applications (and particularly, in the application of a warrant of arrest) was expounded by the Court of Appeal in *The Vasiliy Golovnin* (above, para 2.57). However, certain passages in *The Vasiliy Golovnin* might give rise to the impression that the duty to disclose has substantially expanded: see (2008) 9 SAL Ann Rev 54 at 56–57, para 2.13. In particular, it might be argued that a plaintiff has to disclose all plausible defences: *The Vasiliy Golovnin* [2008] 4 SLR(R) 994 at [87]. This aspect of *The Vasiliy Golovnin* decision was clarified by Ang J who also took the opportunity to further define the parameters of the duty of disclosure.

2.71 In relation to the purported duty to disclose plausible defences, which the intervener relied upon, citing *The Vasiliy Golovnin* as authority, Ang J distinguished between two cases.

2.72 In most cases, the omission to refer to defences pertaining to the merits which the defendant may raise would not generally be characterised as a failure to make full and frank disclosure. This position is consistent with the plaintiff not having to show, when he applies for a warrant of arrest, that the claim is likely to succeed ("the low threshold of the merits" enquiry: *The Eagle Prestige* [2010] 3 SLR 294 at [84]), so long as it cannot be said that the action is an abuse of process or so obviously frivolous and vexatious as to be open to summary dismissal. Matters of merit (including defences on the merit) should be dealt with later on, not at the jurisdictional stage. However, in cases which are susceptible to being viewed as an abuse of the process of arrest, or if the claim is obviously frivolous and vexatious so as to be open to summary dismissal, any fact or defence, which would deliver the "knock out blow" (*The Eagle Prestige* at [73]) to the claim summarily, must be disclosed.

2.73 Ang J rationalised the reference to "plausible defence" in *The Vasiliy Golovnin* (above, para 2.57) by reference to the fact that the case involved an implausible or plainly unmeritorious claim, even on affidavit evidence: see *The Eagle Prestige* [2010] 3 SLR 294 at [72]. Given the obvious unsustainability of the claim, it may be argued that an arrest of the vessel is itself objectionable and potentially, an abuse of process. Given the possibility that the arrest may be an abuse of process, facts which demonstrate that the claim (and therefore the arrest) is obviously unsustainable are clearly relevant to the exercise of the court's discretion whether to grant a warrant of arrest, and therefore liable to be disclosed. In short, *The Vasiliy Golovnin* was a case coming within the second category. It does not, according to Ang J, lay down a general duty to disclose *all* plausible defences.

2.74 Ang J succinctly laid down the principle in the following terms: *The Eagle Prestige* [2010] 3 SLR 294 at [75]:

> In my view, the non-disclosure of defences that the defendant could raise at the trial in answer to the plaintiff's claim (as that pertains to the ultimate merits of the action and the question of who is likely to win), are *generally* not characterised as a failure to give full and frank disclosure *unless* (and this is the qualification (*ie* Situation 2) mentioned in *The St Elefterio* (see [56] above)) they *are matters that show up the claim as an abuse of process, or one that it is so obviously frivolous and vexatious as to be open to summary dismissal and, on any reasonable view, their omission, at the application stage, is tantamount to or constitutes an abuse of process*. From a broader perspective, failure to disclose matters showing that the claim or arrest should not have been brought at all, are material facts that constitute the abuse of process. Simply put, *they constitute matters of such weight that their omission is likely to or may mislead the court in the exercise of its discretionary power of arrest* (see [72] above). [emphasis in original]

2.75 The intervener raised five alleged grounds of non-disclosure, all pertaining to defences that could be raised. Not surprisingly, in view of her Honour's clarification on the scope of the duty of disclosure of plausible defences, Ang J dismissed all five alleged grounds of non-disclosure.

SHIPPING LAW

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2.76 In 2010, the courts had opportunity to rule on two disputes of general interest to the shipping community. One related to the duty to mitigate damages arising from breach of a charter party and the other to the term on which freight was booked, *ie*, "free in stowed l/s/d/liner out hook".

Damages for breach of charter party

2.77 The first instance judgment of *The Asia Star* [2009] SGHC 91 was discussed in (2009) 10 SAL Ann Rev 38 at 38–39, paras 2.3–2.6. At issue was the damages payable for breach of a Vegoilvoy charter party. The decisions of the High Court and the Court of Appeal finding that the defendant shipowner had breached the charter party were summarised in (2006) 7 SAL Ann Rev 39 at 45–46, paras 2.24–2.31 and (2007) 8 SAL Ann Rev 23 at 35, para 2.42. The vessel did not reach the plaintiff charterer's nominated ports for loading at the stipulated time. On arrival at a loadport, the cargo tanks were found to be in poor condition. The shipowner was found to be in breach of its obligation to provide epoxy-coated tanks under an express term of the Vegoilvoy charterparty, thereby entitling the plaintiff charterer to reject the vessel.

2.78 At the assessment of damages, the assistant registrar found that the charterer had acted unreasonably in failing to engage an available alternative vessel, the *Puma*, and in trying to obtain a lower freight rate. He decided that the proper measure of damages was the total amount of freight the charterer would have paid for the *Puma* less the freight it was originally bound to pay for the *Asia Star*. Both parties appealed from the decision of the assistant registrar on the assessment of the damages payable by the defendant for the breach.

2.79 In deciding the appeal from the assistant registrar, Judith Prakash J found that although the plaintiff had a duty to mitigate after it accepted the defendant's repudiation, it had acted reasonably in attempting to mitigate its loss. The terms offered by the owners of the *Puma* were not favourable and the plaintiff was not obliged to accept the terms of the *Puma* without negotiation, given the difficult position it was in. She therefore increased the damages awarded.

2.80 On further appeal, the Court of Appeal reversed the decision of Prakash J: *The Asia Star* [2010] 2 SLR 1154. The Court of Appeal restated the well-settled rules of mitigation. First, the aggrieved party must take all reasonable steps to mitigate its loss, and cannot recover damages for any loss it could have avoided but failed to avoid due to its own unreasonable action or inaction. Second, the aggrieved party who goes beyond what the law requires of it and avoids incurring any loss at all will not be entitled to recover any damages. Third, the aggrieved party may recover any expenses incurred in the course of taking reasonable steps to mitigate its loss. The burden of proving that the aggrieved party has failed to fulfil its duty to mitigate falls on the defaulting party. The aggrieved party is not required to act in a way which exposes it to financial or moral hazard, such as taking steps which might jeopardise its commercial reputation or partaking in hazardous litigation against a third party to reduce its loss. The principle 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 reasonableness inquiry is very much a factual one.

2.81 The Court of Appeal agreed with the judge below that the mere act of negotiating for a more advantageous deal could not in itself be regarded as unreasonable. They, however, disagreed that the charterer had acted reasonably in refusing to commit to the final freight rate offered by the *Puma*. The Court of Appeal found that the difference of US$399,500 between the charterer's offer and the *Puma* offer was not, proportionately, too great an outlay to avoid the far greater damages that would be incurred by not securing the alternative vessel. On the evidence, they rejected the charterer's argument that it could not afford to pay the freight demanded by the *Puma*.

"Free in stowed l/s/d/liner out hook"

2.82 In *Subiaco (S) Pte Ltd v Baker Hughes Singapore Pte* [2011] 1 SLR 129, the defendant booked space on the vessel *Achilles* owned by the plaintiff for the carriage of a cargo of barite from Haiphong, Vietnam, to two discharge ports in Australia. The freight rate was described in Box 10 of the booking note as "US$100.00 per revenue tonne free in stowed, l/s/d/ liner out hook". The No 2 deck crane and the starboard bridge wing of the *Achilles* were damaged during loading of the cargo at Haiphong. Two liner bills of lading in Conline 1978 standard form were issued after the loading, but these did not incorporate the term "free in stowed/l/s/d/liner out" ("f i s l/s/d term") from Box 10 of the booking note.

2.83 The plaintiff sued the defendant for damages for breach of the contract represented by the booking note. The plaintiff's case was

essentially that the f i s l/s/d term, when viewed in the fact matrix in which the parties were operating at the time, meant that the defendant had agreed to load, stow and secure the cargo, and engage the stevedores necessary for these operations. This was denied by the defendant who argued that the clause only meant that the loading operations were to be free of cost to the plaintiff.

2.84 Belinda Ang J started with the premise that, in the absence of express agreement, it is the shipowner's responsibility to load and stow the goods. Any departure from such a duty must be based on express terms, and not arise by implication of law or from the contract of carriage. In the context of Box 10 which dealt with freight rate, the judge held that the f i s l/s/d term did not on its own transfer the risk of loading from the plaintiff to the defendant. It only dealt with the expense of the loading. She was reinforced in this finding by other clauses in the booking note which suggested that responsibility for the loading operations at load port remained with the shipowner. For example, cl 8 provided that loading and discharge were to be arranged by the carrier's agent unless otherwise agreed. The f i s l/s/d term did not override this.

2.85 The plaintiff took a contextual approach to interpretation and submitted on the facts that the f i s l/s/d term had an "extended meaning" that transferred both expense and risk of cargo operations to the shipowner. Belinda Ang J noted that the attempt to introduce extrinsic evidence was defeated by a clause in the booking note which provided that "this Contract shall be performed subject to the terms contained on Page 1 and 2 which shall prevail over any previous arrangements." This provision negated the plaintiff's arguments based on terms introduced by conduct or previous course of dealings. The course of dealings and conduct arguments also failed on the evidence. There was no established course of dealings to justify an extended meaning that transferred the risk of cargo operations to the defendant. The evidence did not establish either that the stevedores were appointed by the defendant, but even if they were, the judge held that there was no general rule that the appointment of stevedores by the charterer necessarily transferred the responsibility for loading to the charterer. There being no words in the booking note, or even in the bills of lading, that expressly or inferentially transferred the responsibility for loading to the defendant, the plaintiff's action was dismissed with costs.

AVIATION LAW

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2.86 In 2010, no cases on aviation law were reported in the Singapore Law Reports.