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2. ADMIRALTY AND SHIPPING LAW

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ADMIRALTY LAW

2.1 Four admiralty law decisions were handed down by the General Division of the High Court in 2023, namely, *The Ambassador*,[1] *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills*,[2] *Hyphen Trading Ltd v BLPL Singapore Pte Ltd*,[3] and *Vallianz Shipbuilding & Engineering Pte Ltd v Owner of the vessel "ECO SPARK"*[4] ("*The Eco Spark*"). Additionally, the Court of Appeal decision of *Kuvera Resources Pte Ltd v JPMorgan Chase Bank, NA*,[5] though arising out of a letter of credit dispute, nevertheless contained observations relevant to admiralty law.

I. *The Ambassador*

A. Material facts

2.2 In *The Ambassador*, sale proceeds were paid into court following an arrest and judicial sale of a vessel. An application was made for the payment out of the sale proceeds.

2.3 The fifth intervener had obtained judgment against the defendant shipowners as mortgagee. This judgment sum exhausted the

1 [2023] SGHC 2.
2 [2024] 3 SLR 807.
3 [2023] SGHC 302.
4 [2023] SGHC 353.
5 [2023] 2 SLR 389.

sale proceeds. However, at the same time, the fifth intervener was also assigned the benefits of a judgment debt obtained by the defendant against the fourth intervener.

2.4 The sixth and seventh interveners, which had claims arising out of supplies of bunkers to the vessel, did not file any affidavit or appear at the hearing. However, they filed a request for further arguments. The sixth and seventh interveners argued that the fifth intervener ought to have first enforced the assigned judgment debt before claiming the balance from the sale proceeds.

B. Right to elect between remedies

2.5 Chua Lee Ming J rejected the request for further arguments, holding that, as a matter of law, the fifth intervener was entitled to elect to enforce its remedies as far as applicable, subject to there being no double recovery.

2.6 On the facts, there were practical reasons for the fifth interveners to seek payment from the sale proceeds, as the judgment debt was subject to interpleader proceedings in England. Furthermore, there was no risk of double recovery. The fifth intervener had stated on affidavit that it would first seek payment from the sale proceeds and thereafter look towards the judgment debt for the recovery of its remaining debt. Furthermore, the assignment of the judgment debt was security for the defendant's obligations. Payment received by the fifth intervener from the sale proceeds would correspondingly reduce the defendant's outstanding obligations. Consequently, the fifth intervener's right to payment under the assignment would be reduced accordingly.

II. *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills*

A. Material facts

2.7 In *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills*, there was an allision between a vessel and a trestle bridge. The shipowners commenced a limitation action in Singapore under the Rules of Court 2021 ("ROC 2021") against two defendants, namely the alleged owner of the trestle bridge (*ie,* the first defendant), and the head charterer (*ie,* the second defendant). The shipowners served the originating claim on the second defendant pursuant to the second defendant's agreement to submit to the Singapore court's jurisdiction and for its Singapore solicitors to accept service.

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2.8 The first defendant, who was not served, brought an application to challenge the jurisdiction of the Singapore courts. The first defendant challenged the validity of service on the second defendant, and in the alternative argued that the second defendant was not a "proper" defendant to the limitation action.

B. Validity of service on local solicitors of foreign defendant

2.9 The first defendant argued that service on local solicitors was merely a mode of service, which may only be effected after the court grants permission for the originating process to be served out of jurisdiction pursuant to O 8 r 1, read with O 33 r 3 of the ROC 2021. The first defendant also argued that a foreign defendant could only be served with proceedings under O 8 of the ROC 2021, which governed service out of Singapore and required the court's permission.

2.10 S Mohan J held that the purpose of service was two-fold. Firstly, to ensure that the party served had notice of a particular proceeding or document, and secondly, to establish the civil jurisdiction of the court over a matter pursuant to s 16(1)(*a*) of the Supreme Court of Judicature Act 1969[6] ("SCJA"). Pursuant to s 16(1)(*a*) of the SCJA, the ROC 2021 establishes rules for service of proceedings in O 7 and O 8. The key factor in determining which of the two orders applied was not whether the defendant was a Singapore-based or foreign defendant *per se*, but where the act of service was effected – in Singapore or out of Singapore.

2.11 Mohan J held that the plain reading of O 7 did not suggest any restriction in the ambit of the order to Singapore-based defendants only. Furthermore, requiring a foreign defendant that has agreed to submit to the jurisdiction of the Singapore courts and to accept service of proceedings in Singapore through its local solicitors would contravene the Ideals of the ROC 2021, particularly those of expeditious proceedings and efficient use of court resources. Lastly, Mohan J affirmed the well-established position which was consistently applied throughout the previous iterations of the Rules of Court, namely, that a foreign defendant is deemed to be served in Singapore if he accepts service through his solicitors in Singapore.

C. Establishment of jurisdiction by submission

2.12 Mohan J further noted that regardless of whether the second defendant was validly served with the originating claim, the second

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defendant had submitted to the jurisdiction of the court. While service is one of the main avenues by which the court's jurisdiction is established, it is not the only avenue. Pursuant to s 16(1)(*b*) and s 16(2) of the SCJA, jurisdiction could be established by the defendant's submission to the court's jurisdiction even where the defendant has not been served.

D. Whether second defendant was "proper" defendant in limitation action

2.13 Mohan J held that a review of a named defendant's claim or potential claim against a shipowner, at the stage of commencement of a limitation action, would only relate to the nature of the claim being brought, and not the merits of the claim. Under O 33 r 36 of the ROC 2021, pursuant to which a limitation action is begun, the only requirement is that the claims must be those which are subject to limitation of liability, *ie,* falling within Art 2 of the Convention on Limitation of Liability for Maritime Claims 1976[7] ("LLMC 1976").

2.14 Furthermore, in a limitation action, the court is not concerned with the liability of the shipowner, but only with whether the shipowner seeking to limit its liability, if any, has met the legal requirements under the LLMC 1976 and the procedural requirements under O 33 of the ROC 2021.

2.15 However, the court does retain an inherent discretionary power to strike out proceedings which amount to an abuse of its process. In other words, where a limitation action is commenced on the basis of plainly fictitious claims, the entire limitation action may be struck out.

2.16 Nonetheless, Mohan J stated that it was not for the court at the commencement of a limitation action or in the context of a jurisdictional challenge to effectively strike out one limitation defendant's claim against the shipowner. The power to strike out proceedings was not to be exercised by the court on the basis of a mere allegation by one party and should only be exercised in a plain and obvious case.

2.17 On the facts, the first defendant did not contend that there was any abuse of process. In any event, there was also no plain and obvious case of an abuse of process.

7 19 November 1976 (entered into force 1 December 1986).

III. *Hyphen Trading Ltd v BLPL Singapore Pte Ltd*

A. Material facts

2.18 *Hyphen Trading Ltd v BLPL Singapore Pte Ltd* concerned a sale of cargo *pendente lite* under the ROC 2021. The cargo in question was a cargo of nickel briquettes, stored in a Malaysian warehouse pursuant to a Singapore court order ("ORC 1013").

B. Principles governing a sale pendente lite *under the ROC 2021*

2.19 Under the ROC 2021, an application for a sale *pendente lite* is made pursuant to O 13 r 4(1). S Mohan J held that the approach to be adopted, and relevant considerations to be taken into account, would be the same as those under the predecessor provision, O 29 r 4(1) of the Rules of Court 2014. Case law arising from the predecessor provision would also continue to be relevant.

2.20 Being a cargo of nickel, the applicable limbs of O 13 r 4(1) of the ROC 2021 were O 13 r 4(1)(*b*) and O 13 r 4(1)(*c*), namely, "that property is likely to diminish in value" and "it is desirable to sell that property for any other reason".[8]

2.21 Mohan J applied the following principles in relation to the granting of a sale *pendente lite*.

> (a) First, the court may order a sale *pendente lite* where there is good reason for it and it is in the interests of justice to do so.
>
> (b) Second, the purpose of a sale *pendente lite* is to allow the court, in an appropriate case and when it is in the overall interests of justice, to convert the property which is the subject of the dispute into cash so that its value is not eroded while the litigation ensues. The rationale is to avoid injustice caused by the reduction in value of the property pending resolution of the proceedings.
>
> (c) Last, in exercising its discretion, the court may take into account the following non-exhaustive factors, in so far as they are relevant to the facts and circumstances of the particular case:
>
> (i) whether (and if so, to what extent) the value of the property is likely to diminish or be eroded due to the

8 Rules of Court 2021 O 13 r 4(1)(*b*) and O 13 r 4(1)(*c*).

deterioration in the quality/condition of the property, even if the property is not strictly perishable;

(ii) whether (and if so, to what extent) the accruing costs and expenses in storing and maintaining the property are likely to eat into and reduce its value (*ie*, whether the property is a wasting asset);

(iii) whether any alternative security or undertaking is forthcoming from any party, including the property owner, to bear the expenses/costs of preserving the same pending the outcome of the proceedings;

(iv) whether the property has been abandoned;

(v) the sum total of claims relative to the value of the property, taking into account any reduction or diminution in value; and

(vi) whether there are third parties whose interests would be adversely affected if a sale is not ordered.

C. Application to the facts

2.22 On the facts of the case, Mohan J held that there was no evidence that the demand, and hence value, of the nickel cargo would diminish with time. The available evidence on the future market value of nickel was at best neutral or slightly in favour of an appreciation in value. The claimant, being the party applying for the sale *pendente lite*, bore the burden of showing that the market value of the cargo was likely to diminish under O 13 r 4(1)(*b*) of the ROC 2021. As the claimant did not provide satisfactory evidence on this issue, its case under O 13 r 4(1)(*b*) failed.

2.23 Turning to consider O 13 r 4(1)(*c*) of the ROC 2021, *ie,* whether "it is desirable to sell that property for any other reason",[9] Mohan J held that the property ought not to be sold.

(a) First, ORC 1013 provided that the costs of storing and preserving the cargo were to be paid by the claimant, but recoverable as part of the claimant's claim against the defendants. The effect of ORC 1013 was hence that the accrued and accruing costs of storing and preserving the cargo would not diminish the monetary value of the cargo, irrespective of how the court eventually ruled on the ownership of the cargo.

9 Rules of Court 2021 O 13 r 4(1)(*c*).

(b) Second, in any case, the accrued and accruing costs of preserving the cargo would not have caused any significant reduction to the value of the cargo. On the claimant's best case, the quantum of such costs would only approximate 6.35% of the value of the cargo. While the judge accepted that the exercise of discretion was not a mathematical exercise, the judge held that there would likely not be a substantial or significant diminution or deterioration in the value of the cargo due to the alleged storage and preservation costs. In short, the judge was not persuaded that the cargo was a wasting asset.

(c) Third, there was an undertaking by the claimant, and a court order in ORC 1013, for the claimant to bear the costs of maintaining and preserving the cargo. This tilted the balance away from a sale *pendente lite* being ordered.

(d) Fourth, there were no third parties whose interests would be adversely affected as the cargo was safely stored in the warehouse.

(e) Fifth, there was no risk of theft and fraud. There was no evidence of such a risk, and the claimant had checked and verified the cargo in the warehouse.

(f) Finally, while the claimant argued that parties would have hedged their positions with respect to the cargo against market price fluctuations, and hence a sale *pendente lite* would not result in any losses, the judge held such an argument did not support the claimant's case. This was because if the cargo was in fact hedged by both parties, then any diminution in value of the cargo would be neutralised or minimised.

IV. *The Eco Spark*

A. Material facts

2.24 In *The Eco Spark* the plaintiff was engaged by the defendant to convert a dumb barge, "*WINBUILD 73*", into a "Special Service Floating Fish Farm" to be named the "*ECO SPARK*". Following a payment dispute, the plaintiff commenced *in rem* proceedings and arrested the *ECO SPARK*. The central issue was whether the fish farm could be considered a "ship" for the purposes of s 2 of the High Court (Admiralty Jurisdiction) Act 1961[10] ("HCAJA"), such that admiralty jurisdiction in the form of an arrest could be invoked against it.

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B. Definition of a "ship" under the HCAJA

2.25 After an extensive review of Commonwealth authorities, S Mohan J concluded that the inquiry is a multi-factorial one. However, as an "irreducible minimum",[11] the inquiry ought to be directed towards the capability of the vessel to be used in navigation as a matter of physical design and construction, irrespective of its actual current use. In other words, it is not necessary to demonstrate that the vessel is currently used in navigation.

2.26 Mohan J considered the following factors to be relevant:

(a) The physical characteristics of the vessel. These include the ability to self-propel, being possessed of a keel or a steering mechanism such as a rudder, having a crew to man the ship, navigation lights and ballast tanks.

(b) The design and capability of the vessel being used in navigation. The term "navigation" connotes an element of direction, meaning the design and capability of the structure to move or be moved from one place to another. Salient factors include the degree of the vessel's stability, unwieldiness, and stationariness.

(i) In respect of stability, the court will consider whether the vessel is capable of being moved across the water in a stable manner. The seaworthiness of the vessel is paramount, meaning whether she can float or withstand the perils of the sea while moving or being moved across the surface of the water.

(ii) In respect of unwieldiness, the court will consider whether the vessel is large and/or difficult to manoeuvre as a physical structure. An unwieldły vessel would be less likely to be capable of being used in navigation.

(iii) In respect of stationariness, the court will consider the degree to which the vessel is moored or secured to land and the extent of work that needs to be done to remove her from her moorage for navigation to be possible.

(c) The past use of a vessel. This is indicative of the vessel's capability to be used in navigation, particularly if the base design

11 *Vallianz Shipbuilding & Engineering Pte Ltd v Owner of the vessel "ECO SPARK"* [2023] SGHC 353 at [58].

and structure remains the same. However, subsequent changes to the physical structure or design of the vessel, and whether the changes render the vessel no longer capable of being used in navigation, would be taken into account.

(d) Actual current use and frequency of use. This is not essential in determining whether the vessel is a "ship". Nonetheless, where the vessel is in current use for "traversing the surface of the water",[12] it is a strong indicium that the vessel is "used in navigation". However, the mere fact that navigation is incidental to the vessel's more specialised function would not take it outside the definition of a "ship".

(e) The classification and certification of a vessel. The classification or certification of a vessel as a "ship" is an important indicium pointing towards the vessel being a "ship".

(f) Registration and flag. The absence and/or existence of registration to a flag state is an indicium as to whether a vessel is a "ship" and/or "used in navigation".

C. Application to ECO SPARK

2.27 Applying the factors to the characteristics of the vessel *ECO SPARK*, Mohan J found that it was a "ship". While the vessel was a floating fish farm and did not possess any physical indicia of a "ship", this was not conclusive.

2.28 Mohan J found that the vessel's past use indicated that she was a "ship". The vessel was formerly a dumb barge and was towed to Singapore from Indonesia before its conversion into a fish farm. The fish farm was built on top of the barge, and the basic design and structure of the barge remained unchanged. The barge was also a Singapore-registered ship and classed by a class society. After conversion, the vessel was towed to its farm site in Singapore, during which port clearance had to be obtained for her arrival. These factors indicated that the vessel was a "ship" prior to her commencing operation as a fish farm.

2.29 Mohan J then noted that the vessel's current status did not render her incapable of navigation. While the vessel was embedded into the seabed upon arrival in Singapore, the vessel was not rendered incapable of navigation as the spuds that embedded the vessel were removable and retractable.

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12 *Vallianz Shipbuilding & Engineering Pte Ltd v Owner of the vessel "ECO SPARK"* [2023] SGHC 353 at [59].

2.30 Mohan J also stated that the fact that the vessel was towed from Indonesia to Singapore without any issue was also evidence of her stability, seaworthiness and capability of being used in navigation. Furthermore, Mohan J noted that the vessel was certified by a surveyor for the voyage under tow.

2.31 Lastly, Mohan J considered the factors of classification and registration. The vessel was de-registered from the Singapore ship registry and not registered with any other flag state or classed by any class society. However, while the vessel made her voyage from Indonesia to Singapore, she was classed and flew the Singapore flag. Moreover, the contract between the plaintiff and defendant had contemplated that the vessel would be classed not only during the conversion works and towage from Indonesia, but also throughout the course of her usage as a floating fish farm. The vessel also remained under the regulatory purview of the port authorities even as a floating fish farm, and was required to maintain her class. The fact that the defendant had failed to maintain the vessel's class did not mean that the vessel was incapable of being classed.

2.32 This is a valuable decision which brings together the different criteria that might be relevant in determining a rather fundamental question of what amounts to a ship for the purposes of invoking the court's admiralty jurisdiction. The multi-factorial, fact sensitive approach is, with respect, a clearly-correct one.

V. *Kuvera Resources Pte Ltd v JPMorgan Chase Bank, NA*

A. Material facts

2.33 In *Kuvera Resources Pte Ltd v JPMorgan Chase Bank, NA*, the Court of Appeal examined the contractual matrix of the confirmed letter of credit and the proper interpretation of a sanctions clause in a confirmed letter of credit. On the facts of the case, the question of whether a vessel was beneficially owned by a sanctioned entity, despite a change of the vessel's registered owner, was central to the issue of whether the sanctions clause was triggered.

2.34 The Court of Appeal drew an analogy between the question of beneficial ownership in the context of the sanctions clause in that case and beneficial ownership in the statutory context of invoking *in rem* jurisdiction under the HCAJA. Applying the principles gleaned from case law relating to *in rem* jurisdiction, the Court of Appeal found that the confirming bank did not adduce sufficient evidence to displace the *prima facie* inference of ownership arising from the registered owner of the vessel.

B. Beneficial ownership under the HCAJA

2.35 The Court of Appeal observed that for the purposes of invoking jurisdiction under s 4(4) of the HCAJA, there is a *prima facie* inference of ownership arising from the vessel's registered ownership, which can be displaced by evidence that someone else is the beneficial owner. This factual inquiry depends on the circumstances of the case, and there is no strict requirement to establish fraud or similarly compelling circumstances in order to go behind the registration of the ship for the purposes of identifying the beneficial ownership.

2.36 The Court of Appeal endorsed the following indicia to assist in evaluating the evidence in relation to a change of ownership, specifically in determining whether the sale of a vessel was in fact a sham (to give the false appearance that beneficial ownership has been transferred from the party who otherwise would be liable *in personam*):

> (a) the close relationship between the transferor and transferee;
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> (b) the lack of authority of person(s) executing relevant documents;
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> (c) the suspicious method and documentation used to effect the transfer and payment;
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> (d) the lack of documentation or accounts from the buyer to show that it owns or deals with ships;
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> (e) the lack of any evidence of delivery of the vessel;
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> (f) the lack of any evidence of intention or fact of payment from buyer to seller; and
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> (g) having a non-existent entity or an entity not yet capable of holding property at the time of the purported memorandum of sale as a buyer.

2.37 Overall, the Court of Appeal observed that the change of ownership of a vessel was a factual issue capable of being proved. The party seeking to displace the *prima facie* inference of ownership arising from the vessel's registration bears the burden of proving beneficial ownership.

2.38 Although this decision was based on the rather different context of a letter of credit claim, the court's pronouncement on beneficial

ownership principles would no doubt be closely studied by admiralty lawyers.

SHIPPING LAW

2.39 In 2023, Justice Kwek Mean Luck ("Justice Kwek") in the General Division of the High Court (the "General Division") handed down one judgment relating to shipping law in *Marchand Navigation Co v Olam Global Agri Pte Ltd*[13] ("*Marchand Navigation*"). This case dealt with interesting issues as to the rights of an owner against a charterer and subcharterer in relation to a lien and arbitration clause in a charterparty between the owner and charterer, to which the subcharterer was not a party.

I. Material facts

2.40 In this case, the claimant, Marchand Navigation Company ("Marchand"), as owners of the vessel *Maria Theo 1* (the "Vessel"), time chartered the Vessel to the second defendant Sinco Shipping Pte Ltd ("Sinco") pursuant to a charterparty dated 29 April 2022 (the "Charterparty") based on the New York Produce Exchange ("NYPE") standard form. Sinco in turn subchartered the Vessel to the first defendant, Olam Global Agri Pte Ltd ("Olam"), under a voyage charterparty (the "Voyage Charter").[14] Marchand stood in the position of the owner, with Sinco as the charterer and Olam as the subcharterer. There was no direct contract between Marchand and Olam.[15]

2.41 This case turned on the interpretation of two clauses in the Charterparty. The first was cl 18 which pertained to the shipowner's "lien" over sub-freights, sub-hires or demurrages and time for detention.[16] Clause 18 provided:

> 18. That the Owners *shall have a lien upon* all cargoes, and all sub-freights or hire or sub-hires or *demurrages* and time for detention, if any *for any amounts due under this Charter*, including General Average contributions, and the Charterers to have a lien on the Ship for all monies paid in advance and not earned, and any overpaid hire or excess deposit to be returned at once. Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which might have priority over the title and interest of the owners in the vessel. [emphasis added]

13 [2024] 3 SLR 1695.
14 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [3].
15 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [6].
16 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [1].

2.42 The second was cl 17, which was an arbitration clause which referred to cl 46 of the rider clauses to the Charterparty.[17] The clauses together (the "Arbitration Clause") provided:

> 17. Arbitration, if any, to be in London and English Law to apply for both substance and procedures. See clause 46.
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> …
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> **Clause 46 – BIMCO Law and Arbitration Clause 2020 (English Law | London Arbitration)**
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> (a) This contract shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this contract shall be referred exclusively to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this clause. The seat of arbitration shall be London even where any hearing takes place in another jurisdiction.

2.43 Disputes arose between Olam and Sinco under the Voyage Charter. Following negotiations, Olam and Sinco came to a consensus that Olam owed Sinco US$190,112 (being demurrage in the sum of US$192,812 less dunnage and hold cleaning in the sum of US$2,700) under the Voyage Charter.[18]

2.44 In the meantime, there were also disputes between Marchand and Sinco under the Charterparty. On 11 January 2023, Marchand issued a notice of exercise of the cl 18 lien to Olam (with Sinco in the loop), (the "11 January 2023 Notice"), informing Olam that Sinco had breached the Charterparty by failing to pay hire due and owing to Marchand. The 11 January 2023 Notice set out the entirety of cl 18, and the amount claimed by Marchand from Sinco. Marchand instructed Olam to "treat this message as Notice of Lien over any balance of freight(s) and/or hire(s) and/or demurrage due". Marchand requested confirmation of the amounts due from Olam to Sinco, and payment of the same to Marchand instead of Sinco. Marchand also asserted that it reserved the right to recover these amounts from Olam should Olam ignore the notice and make payment to Sinco.[19]

2.45 It was not disputed that the 11 January 2023 Notice was valid and had been issued to Olam before Olam made payment of the US$190,112 to Sinco.[20]

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17 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [5].
18 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [6].
19 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [7].
20 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [7].

2.46 Sinco objected to Marchand's exercise of the lien, claiming that no sums were due and owing under the Charterparty and that Olam was to pay the US$190,112 owed to Sinco, not Marchand.[21]

2.47 Olam was therefore faced with two competing claims, one from Marchand and the other from Sinco. It was prepared to hold onto the monies or to pay the same into an escrow pending resolution of the dispute between Marchand and Sinco.[22] However, despite Olam's efforts, no amicable resolution could be reached, and Marchand commenced proceedings by way of an originating application against Olam for payment of the US$190,112, where it sought the following orders:

> (a) a determination that Marchand may exercise the cl 18 "lien" contained in the Charterparty, in respect of all freight and/or demurrage owed by Olam to Sinco under the Voyage Charter; and
>
> (b) that pursuant to cl 18, Olam shall pay to Marchand all hire, freight and/or demurrage due and owing from Olam and Sinco, being the sum of US$190,112.[23]

2.48 Subsequently, Sinco was added to the proceedings. The sum of $190,112 was ordered to be paid into court pending final determination of Marchand's application.[24]

2.49 Olam was ready and willing to make payment but was not in a position to determine who it should pay. It therefore took no position on the issues.[25]

2.50 Up to the time of hearing of the originating application, neither Marchand nor Sinco had taken any steps to initiate or commence arbitration proceedings.[26]

II. The parties' cases

A. Marchand's case

2.51 Marchand took the position that there were "amounts due under the Charterparty" in the sum of US$406,401.47 being the amounts paid by

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21 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [7].
22 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [8].
23 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [4].
24 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [8].
25 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [9].
26 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [5].

Marchand in respect of the bunkers and it relied on cl 18, which provided "[Marchand] **shall** have a lien upon all cargoes, and all sub-freights or hire or demurrage and time for detention, if any *for any amounts due under* [the Charterparty] including General Average Contributions …" [emphasis added in bold and italics].[27]

2.52 Marchand's submissions were based on the following:

(a) bunkers in the amount of US$406,401.47 were supplied by Integr8 Fuels Inc ("Integr8") to the Vessel on 28 June 2022, during the period of the Voyage Charter between Sinco and Olam (the "Integr8 Sum");

(b) Sinco had acknowledged that Integr8 was its bunker creditor in its list of creditors set out in the affidavit filed for the purposes of an application filed by Sinco for a Scheme of Arrangement ("Sinco's Application");

(c) Sinco intended to repay the bunker creditors in full as part of its Scheme of Arrangement proposal;

(d) on 2 March 2023, at the hearing of Sinco's Application, the judge noted that Sinco intended to pay off its bunker creditors in its Scheme of Arrangement proposal;

(e) after Sinco defaulted on payment for the Integr8 bunkers, Marchand paid the Integr8 Sum after Integr8 had threatened to arrest the Vessel; and

(f) after Marchand paid Integr8, Integr8 assigned its claim against Sinco to Marchand in full which was evidenced in a written settlement agreement, remittance records made by Marchand to Integr8 and an email dated 21 February 2023 where Integr8 notified Sinco of the assignment and that Marchand was thus Sinco's creditor.[28]

2.53 Marchand submitted that the phrase "any amounts due under [the Charterparty]" in cl 18 would clearly include the cost of bunkers which were ordered by Sinco, but paid for by Marchand, and for which Marchand was entitled to reimbursement. This was because disbursements made by owners of a vessel, which, by the terms of the charter, were the responsibility of the charterers and in respect of which the owners were entitled to reimbursement, were sums for which the cl 18 lien could be exercised.[29] In support, Marchand relied on an

27 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [10].
28 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [11].
29 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [13].

extract from *Time Charters* by Terence Coghlin *et al*[30] ("*Time Charters*") which provided that "amounts due under [a] Charter" would include "*disbursements made by the owners which by the terms of the charter, are the responsibility of the charterers and in respect of which the owners are entitled to reimbursement …*" [Justice Kwek's emphasis in *Marchand Navigation*].[31]

2.54 Marchand further submitted that the 11 January 2023 Notice was an effective exercise of the lien and that the floating charge in cl 18 had crystallised and it was accordingly entitled to the US$190,112 as demurrage due from Olam to Sinco under the Voyage Charterparty.[32]

2.55 Marchand also submitted that the Arbitration Clause did not apply because there was *no dispute* referrable to arbitration given that Sinco had admitted that the Integr8 Sum was due and owed. Even if, however, the Arbitration Clause applied, Marchand submitted that it did not affect Marchand's exercise of its rights under cl 18.[33]

B. Sinco's case

2.56 Sinco submitted that the disputes had to be resolved through arbitration in London pursuant to the Arbitration Clause. It submitted that there were no sums due and owing under the Charterparty, that the Integr8 claim should also be pursued in arbitration and that the terms of the Charterparty did not permit the exercise of a lien for a payment of bunkers and Marchand should not be claiming payment from Olam under the lien.[34]

III. The issues

2.57 Before delving into the substantive issues, the court highlighted that the crux of this case was on *Olam's position as a subcharterer,* who was not a party to the Charterparty, as opposed to the contractual rights and obligations as between Marchand and Sinco under the Charterparty. The question was not whether Marchand's exercise of cl 18 as a matter between Marchand and Sinco under the terms of the Charterparty was

30 Terence Coghlin *et al*, *Time Charters* (Informa Law, Routledge, 7th Ed, 2014).
31 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [14], citing Terence Coghlin *et al*, *Time Charters* (Informa Law, Routledge, 7th Ed, 2014) at para 30.3.
32 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [15].
33 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [16].
34 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [17].

proper or improper.[35] To resolve the issues, the court considered the sub-issues as to whether Marchand's payment of the unpaid bunkers (*ie*, the Integr8 Sum) on behalf of Sinco was "an amount due under the Charterparty" under cl 18 and whether there was a "dispute" referrable to arbitration under the Arbitration Clause.[36]

IV. The Court's findings

A. Whether Integr8 Sum was amount due under Charterparty

2.58 Clause 18 entitled Marchand to a lien on all demurrages. It was not contested that there was demurrage in the sum of US$190,112 owing from Olam to Sinco under the Voyage Charter. This sum, therefore, could in principle be subject to the lien in Clause 18.[37]

2.59 Justice Kwek found that the phrase "any amounts due under this Charter" was on a plain reading wide enough to encompass the Integr8 Sum.[38] He found on the evidence that the bunkers had been stemmed during the term of the Charterparty, and that Sinco did not pay Integr8 although it was obliged to do so. Marchand had paid Integr8 on behalf of Sinco to avert a threat of an arrest and as part of the settlement between Marchand and Integr8. Integr8 then assigned the full claim for the Integr8 Sum to Marchand and Integr8 had expressly informed Sinco of the assignment.[39]

2.60 Justice Kwek was fortified by the principle set out in *Time Charters* that owners' liens can be exercised in respect of hire and other sums due from the charterers under the charter. This included disbursements made by the owners which by the terms of the charter, were the responsibility of the charterers and in respect of which the owners were entitled to reimbursement under the terms of the charter.[40]

2.61 He gathered further support from two cases. These were *Samuel v West Hartlepool*[41] ("*Samuel*"), where Walton J held that the owners' lien covered the cost of fuel and other disbursements incurred on the voyage, which were the responsibility of the charterers and thus qualified as "amounts due under this Charter" under cl 18, and *Alpha*

35 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [18].
36 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [19].
37 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [20].
38 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [22].
39 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [23].
40 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [24].
41 (1906) 11 Com Cas 115; (1907) 12 Com Cas 203.

Marine Corp v Minmetals Logistics Zhejiang Co Ltd[42] ("*Alpha Marine*") where the owners had successfully claimed for payment of bunkers consumed in the performance of the charterparty on the basis that the charterers were obliged under the charterparty to pay for shortfall in the fuel on redelivery. The court in *Alpha Marine* considered, in *obiter*, that the owners' liquidated claim in relation to the bunkers was indeed a sum due under the charterparty.[43]

2.62 Clause 2 of the Charterparty provided that "whilst on hire the Charterers shall provide and pay for all the fuel except as otherwise agreed". This meant that Sinco was under an express obligation to provide and pay for all the fuel during the term of hire.[44] Marchand had paid the Integr8 Sum when it was the responsibility of Sinco to do so, and Marchand was entitled to be reimbursed, thus placing the case within the principles identified in *Time Charters* and *Samuel*. The facts of this case and weight of the authorities led Justice Kwek to conclude that the payment of bunkers by Marchand to Integr8 on behalf of Sinco would be regarded as "an amount due under this Charter" for the purposes of cl 18.[45]

2.63 This was not, however, the end of the matter as Sinco disputed that any sum was owing under the Charterparty and claimed that the use of the Integr8 Sum as justification of the exercise of the lien by Marchand was an issue that ought to have been referred to arbitration.[46] Justice Kwek turned to consider the issues relating to the Arbitration Clause.

B. Issues relating to Arbitration Clause

2.64 Here, Justice Kwek identified two sub-issues. The first was whether there was a "dispute" within the meaning of the Arbitration Clause which had to be referred to arbitration. Secondly, even if such a dispute existed *as between Marchand and Sinco*, whether Marchand was prevented from exercising the lien under cl 18 *as against Olam* who was a third party that was not privy to the Charterparty.[47]

42 [2021] Bus LR 1391.
43 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [24]–[27].
44 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [28].
45 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [29].
46 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [29].
47 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [31].

(1) Whether there was "dispute" within meaning of Arbitration Clause which had to be referred to arbitration

2.65 As to the first sub-issue, Justice Kwek took guidance from *Tjong Very Sumito v Antig Investments Pte Ltd*,[48] *Getwick Engineers Limited v Pilecon Engineering Limited*[49] and *Gulf International Holding Pte Ltd v Delta Offshore Energy Pte Ltd*.[50] These cases established that courts would only find that something fell outside the scope of a "dispute" as defined in arbitration clauses in exceptional situations where there has been a "clear and unequivocal admission" such that "it could be said that there exists no dispute mandatorily referable to arbitration". A "mere assertion of a dispute" was sufficient for the purposes of the Arbitration Clause.[51]

2.66 Although there was a clear expressed intention by Sinco to repay its bunker creditors (including Integr8) and there was Integr8's undisputed assignment of the entire claim for the Integr8 Sum to Marchand,[52] Sinco disputed the use of the Integr8 Sum as justification for the exercise of the lien by Marchand and submitted that this claim ought to have been resolved by arbitration.[53] Justice Kwek distinguished an open-and-shut case from a clear and unequivocal admission. He was unable to find in this case that Sinco had made a sufficiently "clear and unequivocal" admission to enable him to find that there was no "dispute" referrable to arbitration under the Arbitration Clause.[54]

(2) Whether Marchand was entitled to exercise lien against Olam

2.67 However, Justice Kwek found that the presence of such a dispute did not prevent Marchand's exercise of the lien under cl 18 as against Olam and that Olam was entitled to make payment of the US$190,112 to Marchand for the purposes of these proceedings.[55] He said that there were three reasons for this.

2.68 First, Olam was not a party to the Charterparty and was *not* bound to arbitrate pursuant to the Arbitration Clause which it was not privy to. Olam was entitled to a determination by the court of its rights and obligations as a subcharterer in receipt of the 11 January 2023 Notice. Olam had no control over arbitration proceedings between Marchand

48 [2009] 4 SLR(R) 732.
49 [2002] 1020 HKCU 1.
50 [2023] SGHC 151.
51 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [32]–[33].
52 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [34].
53 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [35].
54 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [35]–[36].
55 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [37].

and Sinco and was in no position to compel them to arbitrate their dispute. Marchand and Sinco had also taken no steps to arbitrate the dispute and unless they did so the dispute between them would continue to be left in the doldrums. Justice Kwek was of the view that the scope of a subcharterer's obligations upon its receipt of a valid notice of exercise of a lien should not depend on, or be significantly altered by, the presence of an arbitration clause or the presence of a subsisting dispute referrable to arbitration as between the owner and charterer.[56] This was especially so because the effect of cl 18 extended beyond the parties privy to the Charterparty and could affect third-party subcharterers such as Olam, and indeed sub-subcharterers (if any exist) further along the chain. Clause 18 would lose its bite if any apparent dispute along the chain would be sufficient to preclude its exercise.[57]

2.69 Second, the Arbitration Clause only obliged the *parties to the Charterparty* to submit to arbitration where there was a dispute arising out of or in connection with the Charterparty. The Arbitration Clause did not affect the operation of the lien under cl 18 against a subcharterer. A subcharterer was not required to await the final determination of any dispute between the owner and the charterer.[58] Justice Kwek emphasised, however, that his conclusion did not purport to determine the merits of any arbitrable dispute *as between Marchand and Sinco* that fell within the scope of the Arbitration Clause, such as the issue of the *propriety* of Marchand's exercise of cl 18 which was a matter of contract between Marchand and Sinco under the terms of the Charterparty.[59]

2.70 Third, support was taken from the case of *Care Shipping Corporation v Latin American Shipping Corporation*[60] ("*Care Shipping*"), where the facts were similar to the present case. In *Care Shipping*, the owners of the vessel, Care, gave notice of the lien in cl 18 to the subcharterer and sub-subcharterer of the vessel. The lien in that case was not materially different from the present. The head charterer, Naviera, disputed the exercise of such a lien and claimed that no amounts were due under the head charter. The dispute between the owners and head charterer was pending determination under ongoing arbitration proceedings which Care and Naviera agreed would finally determine the rights between them. The court, nevertheless, found that the purpose of the litigation was to determine to whom the moneys purportedly subject to the lien was to be paid in the time being. In this regard, the court ruled

56 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [38].
57 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [38].
58 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [39].
59 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [40].
60 [1983] 1 QB 1005.

in favour of the owners and held that the moneys claimed under the lien belonged to the owners.[61]

2.71 The fact that there appeared to be a dispute between Marchand and Sinco that could have been referrable to arbitration did not prevent Marchand's exercise of the lien under cl 18 as against a subcharterer, Olam. Having received the 11 January 2023 Notice, Olam was entitled to make payment of the US$190,112 to Marchand in discharge of Olam's debt to Sinco.[62]

V. Conclusion

2.72 This case is interesting in that it illustrates how the court construed what is an "amount due under the Charterparty"[63] for the purposes of the particular lien clause in the Charterparty. It further illustrates that even if it is disputed by the charterer that such amount is due under the charterparty, which dispute should be referred to arbitration pursuant to the arbitration clause in the charterparty, such a dispute would not prevent the exercise of the lien by the owner against the subcharterer who is not privy to the arbitration clause.

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61 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [41].
62 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [41]–[42].
63 *Marchand Navigation Co v Olam Global Agri Pte Ltd* [2024] 3 SLR 1695 at [19].