

## JUDICIAL SALE OF ARRESTED VESSELS

### The Suitability of Taobao As a Platform for a Singapore Judicial Sale

In 2017, a Singapore registered vessel was arrested and sold by the Chinese courts on a well-known online shopping website, Taobao. There is a growing trend by the Chinese courts for arrested ships to be sold on Taobao. What are the drawbacks of a judicial sale on Taobao and should the Singapore courts follow the Chinese courts' use of Taobao as a platform for judicial sales?

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#### I. Introduction

1 An arrested ship can be sold either by way of a private treaty or by an appraisal and sale via public auction. In both England and Singapore, the latter option is almost always chosen because an appraisal and sale via public tender is a reliable method of fetching the highest possible price of the ship for the benefit of all claimants.<sup>1</sup> In fact, in Singapore, the duo decisions of *The Turtle Bay*<sup>2</sup> and *The Sea Urchin*<sup>3</sup> have emphasised that “powerful special features or special circumstances” have to be identified before a court is prepared to make an order for a private sale.<sup>4</sup> Therefore, it is extremely uncommon for a ship to be sold via a private sale.

2 The appraisal and sale via a public auction is the likely mode of sale for an arrested ship in Singapore. The Sheriff of Singapore (“the Sheriff”) plays an active role in ensuring that the procedural steps for the appraisal and sale of a ship are properly taken.<sup>5</sup> Such steps include, *inter alia*, the appraisal of the ship, the lodging of advertisements, the invitation of bids, as well as the acceptance of bids

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1 *The Margo L* [1998] 1 HKC 217 at 218–219. See also *The Turtle Bay* [2013] 4 SLR 615 at [16].

2 [2013] 4 SLR 615.

3 [2014] 2 SLR 646.

4 See *The Turtle Bay* [2013] 4 SLR 615 at [29]. See also *The Sea Urchin* [2014] 2 SLR 646 at [10].

5 See *The Turtle Bay* [2013] 4 SLR 615 at [17]–[18].

from the public.<sup>6</sup> The entire sale process is administered by the Sheriff and the courts and takes the form of a public auction where bids have to be manually submitted in a sealed envelope to the Sheriff's office located in the courts.<sup>7</sup> Successful bidders will receive written notifications prompting them to make full payment and to take delivery of the ship.

3 Interestingly, unlike the public auction in Singapore, the Chinese courts have embarked on a revolutionary process of auctioning seized properties on a consumer-to-consumer ("C2C") website called Taobao. C2C websites like Taobao are not operated by the courts but by third parties. They facilitate C2C trade by providing a platform for small businesses, entities and individual entrepreneurs to peddle items, chattels or properties via an "online store". In this regard, the Guangzhou Maritime Court has made headlines in early 2017 by selling a Singapore registered ship, "Varada Blessing", on Taobao.<sup>8</sup> According to news sources, the Guangzhou Maritime Court is a vendor registered on Taobao and it placed "Varada Blessing" on sale following an admiralty dispute. The listing on Taobao drew 33,000 viewers online and received 19 offers from six bidders. "Varada Blessing" was eventually sold for S\$16.7m.

4 The use of Taobao as a platform for judicial sales has gained much traction in China, resulting in a specialised Taobao website being created for the judicial sales managed by the Chinese courts.<sup>9</sup> The Chinese courts' reliance on the Taobao platform has been overwhelming, with more than 120 courts in Guangdong having registered to sell seized properties online.<sup>10</sup> The main steps involved in an online judicial sale in China are arguably similar to an "offline" sale in Singapore. In both situations, the ship to be sold is advertised, bids are accepted, the bids are reviewed and matched against one another, and the highest bidder wins. Unless any bid reaches the reserve price,

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6 Rules of Court (Cap 322, R 5, 2014 Rev Ed) O 70 r 22.

7 Bids are to be submitted in either Singapore or US dollars together with a deposit in a cheque or cashier's order. These are to be placed in a sealed envelope marked "Tender for [the Vessel]" and are sent to the Sheriff's Office at the Supreme Court.

8 See "Singapore-flagged Vessel Sold on Taobao for S\$16.7 Million" *Today* (22 February 2017) <<http://www.todayonline.com/business/singapore-flagged-vessel-sold-taobao-s167-million>> (accessed 15 July 2018) and "Singapore-flagged Ship 'Varada Blessing' Sells on Taobao - For S\$16.7 Million: Report" *Channel NewsAsia* (22 February 2017) <<http://www.channelnewsasia.com/news/business/singapore-flagged-ship-varada-blessing-sells-on-taobao-for-s-16--7541510>> (accessed 15 July 2018).

9 See Taobao website <https://sf.taobao.com> (accessed 15 July 2018).

10 See Mu Xuequan, "Huge Vessel 'Varada Blessing' Finally Sells on Taobao" *Xinhua* (22 February 2017) by the official press agency of the People's Republic of China, Xinhua News Agency <[http://news.xinhuanet.com/english/2017-02/22/c\\_136074573.htm](http://news.xinhuanet.com/english/2017-02/22/c_136074573.htm)> (accessed 15 July 2018).

the ship is barred from being sold<sup>11</sup> and the auction process is repeated. Notwithstanding the above, there are two cursory differences. First, the online judicial sale in China is virtually paperless as the sale takes place on the Internet via an online platform. Unlike the Singapore procedure, no written bids or deposits are physically submitted to the courts. Second, the sale procedure is administered by and operated on a third-party platform which appears to fall outside of the jurisdictional ambit of the Chinese courts. Presumably, the sale procedure is completely automated as the program controlling the online platform would assess the bids submitted. In Singapore, the entire procedure is managed by the Sheriff and the courts, and is not in any way outsourced to third parties.

5 With the advent of the digital age and C2C websites like Taobao, a question beckons as to whether Singapore should capitalise on the mass appeal of Taobao and move its judicial sale procedure onto Taobao. It is submitted that a couple of advantages would be apparent. First, the move to a paperless online system would allow the Sheriff and the courts to capitalise on technology to conduct judicial sales in a more expedient and efficient manner. A good example of how the courts have embraced technology is the launch of e-Litigation. E-Litigation is the Singapore judiciary's integrated electronic litigation system which went online on 2 January 2013. It leverages on content management systems and dynamic electronic court forms to offer users a single access point for the commencement and active management of case files throughout the litigation process. This online system streamlines the litigation process, thereby helping to improve judicial efficiency and access to justice.<sup>12</sup> Such efficiency could be mirrored upon the judicial sale of arrested ships if the sale procedure transcends to a C2C website like Taobao.

6 Second, the sale of ships on a C2C website like Taobao may appeal to a potentially larger group of buyers, thus allowing ships to be sold expeditiously and at better prices. For example, Taobao is one of the largest online commercial platforms in Asia with an outreach of millions of users. A listing on Taobao is therefore likely to be viewed by a myriad number of potential buyers. In this regard, the sale of "Varada Blessing" drew 33,000 viewers online and received 19 offers from six bidders which led to the ship to be sold for S\$16.7m. The move towards a third-party commercial platform may benefit the claimants of an *in rem*

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11 See Mu Xuequan, "Huge Vessel 'Varada Blessing' Finally Sells on Taobao" *Xinhua* (22 February 2017) <[http://news.xinhuanet.com/english/2017-02/22/c\\_136074573.htm](http://news.xinhuanet.com/english/2017-02/22/c_136074573.htm)> (accessed 15 July 2018) where "Varada Blessing" was placed on auction on Taobao twice because she failed to reach its reserve price.

12 See e-Litigation website [https://www.elitigation.sg/\\_layouts/IELS/Home/About/Elit.aspx](https://www.elitigation.sg/_layouts/IELS/Home/About/Elit.aspx) (accessed 15 July 2018).

action as a ship would be advertised to a large pool of buyers, thus possibly attracting a more favourable price.<sup>13</sup>

7 Notwithstanding the above, it is the author's humble view that the Singapore courts are unlikely to transplant its judicial sale procedure onto Taobao for the following broad reasons. First, the courts' control and administration over the sale would be reduced because the sale is managed by an external party and there are no interlocutory proceedings to advance the sale process. Second, the Chinese sale on Taobao does not appear to have uniform rules governing the sale thereby bringing out a level of uncertainty for potential buyers. Third, the bids and appraised values on Taobao are not kept a secret, thereby opening the bids and sale prices to manipulation. Fourth, a sale on Taobao may not ensure that the highest sale price is realised because advertisements on Taobao do not target prospective ship buyers. Fifth, ships sold through a Singapore judicial sale are not sold below market value and there is no guarantee that a sale on Taobao would yield a better price as compared to a traditional judicial sale. In explaining the above reasons, this article will first describe two aspects of a Singapore judicial sale and set out several differences between a Singapore judicial sale and a Chinese sale on Taobao. The article will then elaborate on the above reasons as to why the Singapore courts are unlikely to move their judicial sale procedure onto Taobao. Further, the article will also briefly discuss why the Singapore courts are unlikely to do away with the traditional judicial sale process and create their own online platform to manage the judicial sale of ships.<sup>14</sup>

## II. Description of Singapore judicial sale and Chinese sale on Taobao

8 Before this article delves into the reasons why the Singapore judicial sale will not be transplanted onto Taobao, it is important to describe and compare the differences between a Singapore judicial sale and the Chinese sale on Taobao. In doing so, this article shall first set out and explain two aspects of a Singapore judicial sale, namely:

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13 *The Margo L* [1998] 1 HKC 217 at 218–219. See also *The Turtle Bay* [2013] 4 SLR 615 at [16].

14 See Justice Chua Lee Ming, "Technology in the Singapore Courts", speech at the 2nd China-ASEAN Justice Forum (8 June 2017) where the learned judge explained the Singapore courts' plans to tap on technology and introduced new electronic platforms which the Singapore courts will be utilising in the near future. Chua J's speech did not refer to any plans to import the judicial sale procedure to an online platform.

- (a) A judicial sale is fully administered and controlled by the courts and such a sale bestows upon the purchaser a clean ship with no encumbrances.
- (b) The ship's appraisal value and the bids lodged in the sale are kept secret and not disclosed by the courts.

The article will then describe the Chinese judicial sale process on Taobao and highlight the differences between the Chinese and Singapore processes. It is submitted that the above attributes would shed light on why a court-administered sale is more desirable as compared to a sale on Taobao.

### A. *Aspects of Singapore judicial sale – Control, administration and clean title*

9 The foremost aspect of the Singapore judicial sale is that the entire process is fully administered and controlled by the courts. In this regard, the High Court Admiralty Jurisdiction Act<sup>15</sup> (“HCAJA”) allows the courts to invoke admiralty jurisdiction against the ship to be sold, whilst the Rules of Court<sup>16</sup> (“ROC”) provide the courts with the power to sell ships *pendente lite*.<sup>17</sup> Elements of the courts’ control and administration are also evident in the *in rem* proceedings. In order for any significant step to take place in the sale process, a summons has to be filed and an appropriate court order obtained.<sup>18</sup> For example, the appraisal and sale of a ship can only take place after an applicant obtains an order directing for such an appraisal and sale. Further, a ship may only be sold below her appraised value if an order directing for such a sale is obtained.<sup>19</sup> The courts’ control and administration also extend to the choice of appraisers to be appointed for the appraisal of the ship. Parties who make an application to appraise and sell ships have to appoint an appraiser from a list of appraisers approved by the courts.<sup>20</sup> Further, the courts’ control can also be seen from the fact that a ship can only be sold if admiralty jurisdiction has been invoked against her and that she is under the arrest and custody of the Sheriff.<sup>21</sup>

10 Why must the court have control over the judicial sale? The answer is simply because the court has to ensure that a judicial sale of a

15 Cap 123, 2001 Rev Ed.

16 Cap 322, R 5, 2014 Rev Ed.

17 Rules of Court (Cap 322, R 5, 2014 Rev Ed) O 29 r 4 and O 70 r 21.

18 Rules of Court (Cap 322, R 5, 2014 Rev Ed) O 70 r 21.

19 See *The Turtle Bay* [2013] 4 SLR 615 at [18].

20 Supreme Court e-Practice Directions Pt XVI, para 130A(3).

21 See Toh Kian Sing SC, *Admiralty Law and Practice* (LexisNexis, 3rd Ed, 2017) at pp 252–253.

ship is effected in such a way as to protect all claimants.<sup>22</sup> In the local case of *The Turtle Bay*, Belinda Ang Saw Ean J explained that in order for the court to protect the interests of all *in rem* claimants against the ship including the shipowner, the court has to have entire control over the sale process, thereby safeguarding the propriety and integrity of the sale process and, ultimately, instilling confidence and standing of the judicial sale from this jurisdiction.<sup>23</sup> Such confidence in the sale process is important because the effect of a judicial sale essentially cleanses the ship of all maritime claims and bestows upon the purchaser a clean ship with no encumbrances.<sup>24</sup> This power is significant because certain encumbrances such as maritime liens attach to a ship silently and cannot be removed even if the ship was sold to a *bona fide* purchaser.<sup>25</sup> The power to free a ship of all kinds of encumbrances is therefore extremely potent and is only to be wielded by the court. The court's control and administration over the sale procedure is therefore important as the effects of a sale are far-reaching and drastic.

11 The importance of the courts' control over the judicial sale process can also be seen from a series of English cases where foreign entities had challenged the clean title bestowed on a ship sold via a judicial sale. In *The Acrux*,<sup>26</sup> a purchaser of a ship sold via an English judicial sale was informed by a claimant that Italian law may not recognise the clean title rendered upon the ship. The claimant further alleged that Italian law would allow the claimant to pursue his claim against the ship notwithstanding that the ship was purchased via a judicial sale.<sup>27</sup> In explaining the basis of the clean title bestowed upon the purchaser of a ship sold via a judicial sale, Hewson J made reference to three points. He held that a judicial sale cannot be impeached by third parties if a court had (a) competent jurisdiction in the matter; (b) exercised its powers honestly; and (c) delivered the relevant orders in an *in rem* proceeding. In a similar vein, Blackburn J in *Louis Castrique v William Imrie*<sup>28</sup> ("*Louis Castrique*") explained that the clean title imposed on a ship by a sale is conclusive against all of the world if (i) the court has lawful control and authority over the ship; (ii) the sovereign authority of the State had conferred on the court jurisdiction to sell the ship; and (iii) the court had acted properly within its jurisdiction.

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22 *Den Norske Bank ASA v Owners of the ship "Margo L"* [1997] HKEC 767.

23 See *The Turtle Bay* [2013] 4 SLR 615 at [17].

24 *The Turtle Bay* [2013] 4 SLR 615 at [11]; *The Sea Urchin* [2014] 2 SLR 646 at [8]. See also *The Tremont* (1841) 1 Wm Rob 163; *The Acrux* [1962] 1 Lloyd's Rep 405 at 409; and *The Cerro Colorado* [1993] 1 Lloyd's Rep 58 at 60 and 61.

25 *The Bold Buccleugh* (1851) 7 Moo PC 267. See also Toh Kian Sing SC, *Admiralty Law and Practice* (LexisNexis, 3rd Ed, 2017) at pp 275–276.

26 [1962] 1 Lloyd's Rep 405.

27 *The Acrux* [1962] 1 Lloyd's Rep 405 at 406.

28 (1869) LR 4 HL 414.

12 It is submitted that the above factors highlighted in *The Acrux* and *Louis Castrique* are elements of control and administration which are identical to those found in a judicial sale in Singapore.<sup>29</sup> First, one can draw parallels between the Singapore courts' admiralty jurisdiction invoked under the HCAJA and the ROC<sup>30</sup> with the "competent jurisdiction"<sup>31</sup> conferred by the State's sovereign authority.<sup>32</sup> Second, a further parallel can be drawn between the necessity for proper interlocutory procedures in the judicial sale process<sup>33</sup> and the "honest and proper exercise of the court's power" to issue *in rem* orders.<sup>34</sup> Last, the court's "lawful control"<sup>35</sup> mirrors the fact that a vessel must be under the arrest and custody of the Singapore court before a sale application can take place.<sup>36</sup> The presence of the above elements not only safeguards and justifies the clean title bestowed upon the purchase of a ship sold via a judicial sale but also highlights the importance of the courts' control and administration over a judicial sale.

13 It is further submitted that in the event the legitimacy of a judicial sale is contested, courts would zealously guard against such incursion because any challenge against the legitimacy of the sale would be a similar challenge against the court's jurisdiction and control over the sale. In the case of *The Cerro Colorado*,<sup>37</sup> the ship "Cerro Colorado" was sold by the admiralty marshal of the English court pursuant to a judicial sale. The Spanish embassy advised the admiralty marshal that the purchaser of the ship might find himself subject to substantial claims by the crew for arrears of severance pay. An advertisement which referred to the sale of the ship subsequently emerged, stating that the eventual purchaser would be encumbered with:

... several seizures, especially by virtue of a judgment of the Spanish Courts awarding its crew an amount of 700 million pesetas which is a privilege-rank debt, the enforcement of which shall remain prevailing not notwithstanding any sale under the Orders of Admiralty.

14 A further article reiterating the warning to prospective purchasers also appeared in the newspapers. These publications, if unchallenged, would impose severe consequences on the judicial sale.

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29 See para 9 above.

30 Rules of Court (Cap 322, R 5, 2014 Rev Ed) O 29 r 4 and O 70 r 21.

31 *The Acrux* [1962] 1 Lloyd's Rep 405 at 406.

32 See (a) and (ii) at para 11 above.

33 Rules of Court (Cap 322, R 5, 2014 Rev Ed) O 70 r 21. See also *The Turtle Bay* [2013] 4 SLR 615 at [18].

34 See (b), (c) and (iii) at para 11 above.

35 See (i) at para 11 above.

36 See Toh Kian Sing SC, *Admiralty Law and Practice* (LexisNexis, 3rd Ed, 2017) at pp 252–253.

37 [1993] 1 Lloyd's Rep 58.

They not only contested the legitimacy of the judicial sale but also challenged the English court's control and administration over the judicial sale procedure. Not surprisingly, the admiralty marshal made an application to court for further directions and to clarify the legal effect of a judicial sale.<sup>38</sup>

15 In his judgment, Sheen J acknowledged the negative ramifications of the publications by recognising the growing concern amongst prospective buyers who have had sight of the publications.<sup>39</sup> He also had harsh words for the publications, stating that there was "no doubt that the advertisement and the article may be treated as a contempt of court, as tending to interfere with the administration of justice".<sup>40</sup> The learned judge was clearly concerned that the public's confidence in the legitimacy of the judicial sale might ebb due to the existence of the publications. In this regard, Sheen J's reference to "the administration of justice" suggests that the learned judge acknowledged that the elements of control and administration by the courts were paramount and that the same should not be compromised by the publications. A condemnation of the publications in open court<sup>41</sup> was therefore required to show that the integrity of the court's control and administration over the judicial sale was not compromised by any external forces and that the sale had freed the ship of all encumbrances.

16 The importance of preventing any incursions against the court's control and administration over a judicial sale was also seen in *The Tremont*.<sup>42</sup> In that case, Lushington drew attention to the serious consequences which may follow if there were any doubts about the court's administration of justice and the court's right to confer perfect title to the ship. He cautioned that:

... serious injury which would be inflicted upon property of this kind sold under the jurisdiction of the Court if there were any doubt about its right to confer a perfect title to the ship.

In light of the above cases, it is clear that an essential aspect of a judicial sale is the court's control and administration over the sale because this lends credit to the integrity of the sale process. The article shall now elaborate on the second aspect of a judicial sale.

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38 *The Cerro Colorado* [1993] 1 Lloyd's Rep 58 at 58.

39 *The Cerro Colorado* [1993] 1 Lloyd's Rep 58 at 62.

40 *The Cerro Colorado* [1993] 1 Lloyd's Rep 58 at 61.

41 *The Cerro Colorado* [1993] 1 Lloyd's Rep 58 at 59.

42 (1841) 1 Wm Rob 163.



## B. *Aspects of judicial sale – Secrecy of appraised value and bids*

17 The next aspect of a Singapore judicial sale is that the appraised value and the bids are secret. Ang J provides a clear exposition on the appraisement procedure in *The Sea Urchin*.<sup>43</sup>

It is well known to maritime law practitioners that the Sheriff only consults the appraiser's valuation after all sealed bids have been received following an order to advertise and sell the vessel. Until then, the appraiser's valuation, which is received by the Sheriff in a sealed envelope, would not be opened ... The amount of the appraisal would not be revealed to the public to preserve the integrity of the judicial sale process.

And in *The Turtle Bay*:<sup>44</sup>

Once the Sheriff is commissioned to appraise and sell, he is under a duty to first appraise the vessel to ascertain the value. The Sheriff would be assisted by professional and experienced appraisers who as court appointed appraisers have to act faithfully and impartially. The amount of the appraised value is kept confidential so as not to affect the price at which bids are received. Ordinarily, the Sheriff would accept the highest bid price unless it is below the appraised value. When the court is asked to exercise its discretion to approve a judicial sale where the highest bid price is below the appraised value, the Sheriff hands over the confidential appraisement report of the court-appointed appraiser in a sealed envelope for the court's consideration. At no point in time would the amount of the appraisal be revealed to the public. In doing so, the integrity of the judicial sale process is preserved.

18 As one can see, the integrity of the judicial sale as well as the legitimacy of the ship's clean title are dependent on the secrecy of the ship's appraised value. A buyer who is aware of the appraised value would be in a prime position to manipulate the bidding process in his favour by submitting a bid which is marginally higher than the appraised value. This would go against the primary purpose of the judicial sale which is to fetch the best possible price for the benefit of all claimants.<sup>45</sup> Such manipulation would compromise the legitimacy of the bidding process and the clean title of the sold ship would be called into question. The importance of the appraised value can also be gleaned from the fact that appraisers who survey the vessel and compute the appraised value are only appointed from a list of appraisers sanctioned

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43 *The Sea Urchin* [2014] 2 SLR 646 at [17].

44 *The Turtle Bay* [2013] 4 SLR 615 at [18].

45 *The Margo L* [1998] 1 HKC 217 at 218–219. See also *The Turtle Bay* [2013] 4 SLR 615 at [16].

by the court.<sup>46</sup> This shows the significance attached to the work of the appraisers as only accredited appraisers would be commissioned to provide the appraised value.

19 Apart from the appraised value, there is also a level of secrecy surrounding the bids submitted for the auction. Bids are submitted in a sealed envelope<sup>47</sup> to the Sheriff's office in the courts and such bids are not revealed to the public.<sup>48</sup> A successful bidder will receive written notifications requesting them to make full payment and to take delivery of the ship. The secrecy of the bids is to prevent unnecessary speculation amongst bidders which, if left unchecked, would result in bidders submitting bids marginally higher than other bids, thereby preventing the judicial sale from fetching the best possible price for all claimants.

20 Ensuring the secrecy of the bids and the appraised value is therefore vital for any judicial sale to appear legitimate. Pausing here and looking back at the first aspect discussed above, one can understand why the court's control and administration are vital to the sale procedure. Such control and administration reassure the public that there are safeguards in place to ensure the secrecy of the bids and the appraised value, thereby preventing the sale prices of ships from being manipulated. It is therefore submitted that the absence of the above aspects would neither safeguard the propriety and integrity of the sale process nor instil confidence in the judicial sale.

### C. *The Chinese sale on Taobao*

21 By analysing a number of ship sale advertisements on Taobao, the four following aspects of the sale are apparent to the author.<sup>49</sup>

(a) First, every ship sale advertisement stipulates a starting price, a minimum bid increment as well as the appraised value of the ship. The advertisement may also indicate a reserve price, which is the minimum value a bid must reach before a ship can be sold, but not every ship listed on Taobao has a reserve price. Presumably, if there is no reserve price stated, the reserve price would be the appraised value of the ship.

(b) Second, a bidder begins his bid by remitting a deposit to Taobao. He then lodges a bid on Taobao for the ship of his choice. The amount of his bid must be higher than the starting

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46 Supreme Court e-Practice Directions Pt XVI para 130A(3).

47 *The Sea Urchin* [2014] 2 SLR 646 at [17]. See also para 2 above.

48 See text at n 7 above.

49 The author acknowledges that his review of the Chinese judicial sale on Taobao is restricted to a handful of sales as set out in the citations at nn 50–53 below.

price stipulated in the advertisement and every bid must be in multiples of the minimum bid increment stated in the advertisement.

(c) Third, the bids lodged in an auction are made known to the public. The auction only lasts for a predetermined period of time (usually 24 hours) but the time for bidding is extended if before the end of an auction, a bidder submits a bid higher than the last lodged bid.

(d) Last, the rule as to how one can win the auction and purchase the ship is not uniform. For example, in a number of advertisements where there is no reserve price, the rule stipulates that a sole bidder shall win the auction so long as his bid is higher than the starting price.<sup>50</sup> On the other hand, in advertisements where there is a reserve price, there must be at least two bidders whose bids have equalled or surpassed the reserve price of the ship.<sup>51</sup>

Taking into account the above aspects, a number of major differences can be gleaned from the sale processes in Singapore and China. First, the appraised value of a ship in a Taobao sale is not a secret and is made known to the public from the inception of the sale. Second, the bids lodged are also not a secret and are known to the public. Third, the duration of the Taobao sale is not fixed and may be extended if further bids are lodged. Last, the rules determining whether a Taobao sale is successful are not uniform across all auctions.

22 It is apparent from these differences that the Chinese courts do not appear to have the same judicial control over a sale as compared to the Singapore courts. This is especially so because the rules determining whether a sale is successful are not uniform. Further, there appears to be no interlocutory procedures to advance the sale process and all steps to advance the sale process are done via the platform supplied by Taobao. More importantly, a Taobao sale does not maintain the secrecy of the bids and the appraised value. It is submitted that the above differences would neither safeguard the integrity nor instil confidence in the sale procedure. This leads to the next portion of this article, which will discuss the drawbacks of a sale on Taobao.

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50 See [https://sf.taobao.com/sf\\_item/550351027396.htm?spm=a213w.7398504.paiList.4.4UfXCI](https://sf.taobao.com/sf_item/550351027396.htm?spm=a213w.7398504.paiList.4.4UfXCI); [https://sf.taobao.com/sf\\_item/37376581064.htm?spm=a213w.7398504.paiList.3.Qg7Edm](https://sf.taobao.com/sf_item/37376581064.htm?spm=a213w.7398504.paiList.3.Qg7Edm); and [https://sf.taobao.com/sf\\_item/544610363241.htm?spm=a213w.7398504.paiList.6.4UfXCI](https://sf.taobao.com/sf_item/544610363241.htm?spm=a213w.7398504.paiList.6.4UfXCI) (accessed 15 July 2018).

51 See [https://sf.taobao.com/sf\\_item/530891802601.htm?spm=a213w.7398504.paiList.14.z3ByeX](https://sf.taobao.com/sf_item/530891802601.htm?spm=a213w.7398504.paiList.14.z3ByeX) and [https://sf.taobao.com/sf\\_item/520158713064.htm?spm=a213w.7398504.paiList.20.z3ByeX](https://sf.taobao.com/sf_item/520158713064.htm?spm=a213w.7398504.paiList.20.z3ByeX) (accessed 15 July 2018).

### III. Sale of ships on Taobao would not safeguard integrity nor instil confidence in sale process

23 The first disadvantage of the sale of ships on Taobao is that such a process would neither safeguard nor instil confidence in the sale procedure. As set out earlier, the court's control and administration are key aspects that instil the public's confidence in the sale procedure. The preceding section describes how there appears to be a lack of such control and administration by reason of the varied rules for sale and the absence of interlocutory procedures. It is submitted that the lack of uniformity in the rules determining whether a sale is successful is unfair for prospective bidders because certain rules may make it easier for a bidder to win an auction. For example, it is arguably harder to succeed in a sale which has a reserve price and which requires at least two bidders whose bids have equalled or surpassed the reserve price of the ship<sup>52</sup> as opposed to a sale where there is no reserve price and where there is only a requirement of a sole bidder.<sup>53</sup> It is submitted that this may result in prospective buyers in the shipping industry shying away from court-sanctioned sales which have arbitrary rules. This in turn would make it harder to fulfil the primary purpose of all court-sanctioned sales, which is to fetch the best possible price of the ship for all claimants. The distinct lack of interlocutory procedures to advance the sale process does not lend any credence to the integrity of the sale. Interlocutory procedures are important because they ensure a fair and consistent application of due process to the court administered sale. For example, in the event a ship has to be sold below her appraised value, the relevant interlocutory application and hearing would provide any aggrieved party the requisite forum to challenge the applicant's case. It is submitted that such due process is the bedrock of the public's confidence in any court-sanctioned sale and its absence would severely derogate the public's trust in the sale.

24 Further, a court using a C2C platform like Taobao is unlikely to have effective control over the sale procedure because Taobao is managed and operated by a third party and not by a department within the courts. In this regard, the Chinese courts which sell seized items on Taobao are akin to commercial vendors who use Taobao as a transactional platform. As commercial vendors, they only have an account to monitor the bids received. As mentioned above, there is no

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52 See [https://sf.taobao.com/sf\\_item/530891802601.htm?spm=a213w.7398504.paiList.14.z3ByeX](https://sf.taobao.com/sf_item/530891802601.htm?spm=a213w.7398504.paiList.14.z3ByeX) and [https://sf.taobao.com/sf\\_item/520158713064.htm?spm=a213w.7398504.paiList.20.z3ByeX](https://sf.taobao.com/sf_item/520158713064.htm?spm=a213w.7398504.paiList.20.z3ByeX) (accessed 15 July 2018).

53 See [https://sf.taobao.com/sf\\_item/550351027396.htm?spm=a213w.7398504.paiList.4.4UfXCI](https://sf.taobao.com/sf_item/550351027396.htm?spm=a213w.7398504.paiList.4.4UfXCI); [https://sf.taobao.com/sf\\_item/37376581064.htm?spm=a213w.7398504.paiList.3.Qg7Edm](https://sf.taobao.com/sf_item/37376581064.htm?spm=a213w.7398504.paiList.3.Qg7Edm); and [https://sf.taobao.com/sf\\_item/544610363241.htm?spm=a213w.7398504.paiList.6.4UfXCI](https://sf.taobao.com/sf_item/544610363241.htm?spm=a213w.7398504.paiList.6.4UfXCI) (accessed 15 July 2018).

court application or order involved in the sale of the auctioned item. The court is also not involved in the acceptance and safekeeping of the bids as these aspects would be managed by the software or program which runs Taobao. It is submitted that such lack of control would erode the general public's confidence in the sale procedure, thereby potentially opening the court to judicial challenges as seen in *The Cerro Colorado*.

25 A stronger reason why a sale on Taobao would erode the public's confidence is the fact that the bids and the appraised values are not kept secret but are readily available to the public. It is submitted that this is a serious infraction which would severely compromise the integrity of any court-sanctioned sale. With the appraised values known to the public at the inception of the sale, bidders would invariably lodge a bid which is marginally higher than the appraised value in hopes that they can obtain the lowest possible price for themselves. The fact that the bidders have knowledge of the prevailing or latest bid may similarly encourage bidders to lodge bids which are marginally higher than the previous bids, thereby inhibiting any large increases to the ship's sale price. This runs contrary to the purpose of a court-sanctioned sale, which is to fetch the best possible price for all claimants.<sup>54</sup> In light of the above, it is therefore submitted that a sale on Taobao is unsuitable for the Singapore courts as the integrity of the sale process would be compromised.

#### **IV. Advertisements on C2C websites are ineffective and would not ensure that the Sheriff's duty to realise highest price for sale is properly exercised**

26 As mentioned in this article, a court has a duty to realise the highest price from the sale for the benefit of all interested parties.<sup>55</sup> In exercising this duty, the entire advertisement process should not only publicise the sale to a wider audience interested in bidding for the ship but also serve to notify the sale to potential claimants so that they can come forward and establish their respective maritime claims.<sup>56</sup> This notification allows prospective claimants to lodge their maritime claims and, if necessary, obtain judgment within a specified time before the court determines the priorities of all claims and orders a payment out from the sale proceeds.<sup>57</sup> As the maritime claims are pursued against the sale proceeds of the ship as opposed to the ship herself, the sale confers

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54 *The Margo L* [1998] 1 HKC 217 at 218–219. See also *The Turtle Bay* [2013] 4 SLR 615 at [16].

55 *The Silia* [1981] 2 Lloyd's Rep 534 at 535; *The Turtle Bay* [2013] 4 SLR 615 at [19].

56 *The Turtle Bay* [2013] 4 SLR 615 at [20].

57 Rules of Court (Cap 322, R 5, 2014 Rev Ed) O 70 r 21.

on the purchaser clean title of the ship.<sup>58</sup> If the Sheriff does not carry out its duty to conduct the advertisement process properly, there may be a risk that the clean title obtained by the innocent purchaser of the ship would be challenged<sup>59</sup> and the impartial reputation of the court may be tarnished.<sup>60</sup>

27 In order for the court to satisfy its duty, it is submitted that the advertisements would need to ensure that the notice of the sale is made known to not just the general public at large, but also specifically interested parties and prospective buyers. There is arguably little use in casting the advertisement net wide without specificity. The advertisements have to target interested parties who are likely to come forth to place a bid. This would include shipowners as well as agents and brokers who are in the business of the sale and purchase of ships. In practice, shipowners as well as sale and purchase brokers<sup>61</sup> would usually keep their eyes and ears peeled for prospective ship sales in newspapers and trading magazines. Advertisements are therefore placed not only in major local newspapers such as *The Straits Times* or *Lian He Zao Bao*, but also in the Singapore Government Gazette,<sup>62</sup> as well as trading magazines<sup>63</sup> such as *TradeWinds* and *Lloyd's List*.<sup>64</sup> Advertisements on trading magazines would also ensure that the notice of sale is projected to interested parties hailing from all corners of the globe. This is significant as most prospective buyers may not be based in the same

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58 See *The Sea Urchin* [2014] 2 SLR 646 at [8]; *The Acrux* [1962] 1 Lloyd's Rep 405 at 409; and *The Cerro Colorado* [1993] 1 Lloyd's Rep 58 at 60–61.

59 See Lief Bleyen, *Judicial Sales of Ships – A Comparative Study* (Hamburg Studies on Maritime Affairs, vol 36) (Jürgen Basedow *et al* eds) (Switzerland: Springer International Publishing, 2016) at p 147. See *The Cerro Colorado* [1993] 1 Lloyd's Rep 58 at 60–61, where Sheen J referred to *The Acrux* [1962] 1 Lloyd's Rep 405 and agreed with Hewson J that there would be far-reaching effects if clean title given by a court could be challenged.

60 *Bank of Scotland plc v The Owners of the MV "Union Gold"* [2013] EWHC 1696 (Admlty). See also *The Turtle Bay* [2013] 4 SLR 615 at [28].

61 Sale and purchase brokers (S&P brokers as they are widely known) are independent contractors who act as agents for principals in connection with the sale and purchase of ships. See Iain Goldrein QC, Matt Hannaford & Paul Turner, *Ship Sale and Purchase* (London: Informa, 6th Ed, 2012) at paras 2.1.1–2.1.2.

62 See *Singapore Precedents of Pleadings* (Jeffrey Pinsler SC editor-in-chief) (Sweet & Maxwell, 1st Ed Reissue, 2010) at p 69. See also O 70 r 21(2)(c) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) where the rules provide that the Sheriff shall publicise, *inter alia*, the notice of the sale of the ship "in the Gazette and such newspaper or publication".

63 See *Singapore Civil Procedure 2017* (Foo Chee Hock ed) (Sweet & Maxwell, 2018) at p 1255, para 70/22/2.

64 See, for example, *The Cerro Colorado* [1993] 1 Lloyd's Rep 58 at 58 where the advertisement was lodged on *Lloyd's List*. See also Lief Bleyen, *Judicial Sales of Ships – A Comparative Study* (Hamburg Studies on Maritime Affairs, vol 36) (Jürgen Basedow *et al* eds) (Switzerland: Springer International Publishing, 2016) at p 111 where advertisements may be lodged in an international journal.

jurisdiction as the sale, especially for a small country like Singapore.<sup>65</sup> Advertisements on the aforementioned platforms would therefore ensure that the appropriate interested parties are notified of the prospective sale.

28 On the other hand, it is submitted that advertisements on C2C websites such as Taobao are ineffective and would not ensure that the Sheriff's duty to realise the best price for the sale is properly exercised. First, C2C websites do not use the same advertisement methods which form part of a court-administered judicial sale. For instance, C2C websites do not utilise major local newspapers, the *Government Gazette* and trading magazines to advertise the sale to the world at large.<sup>66</sup> The aforementioned advertisement methods have been acknowledged by the Singapore High Court to be the normal and usual mode of advertising a judicial sale.<sup>67</sup> It is submitted that this implicitly shows the court's endorsement of such advertising methods, which are effective at disseminating information of the sale to interested parties. In the absence of such traditional advertising methods, C2C websites usually rely on online advertising methods such as search engine marketing, e-mail marketing and display advertising. However, such online advertising methods have progressively<sup>68</sup> been subject to regulations which may hinder their effectiveness. For instance, anti-spam law<sup>69</sup> has been legislated in Singapore to prevent the transmission of unsolicited and bulky e-mails. Essentially, such laws would weaken the effectiveness of the e-mail marketing techniques utilised by C2C websites. Likewise, the authorities have growing concerns that Internet users are increasingly bothered by nouveau media marketing techniques such as search engine marketing and display advertising methods.<sup>70</sup> The

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65 See *The Sea Urchin* [2014] 2 SLR 646 at [12] where the prospective buyer for a sale in Singapore was a company incorporated in the Marshall Islands. See also *The Acrux* [1962] 1 Lloyd's Rep 405 at 408 where the buyer for a sale in England was a Monrovia company. See also Lief Bleyen, *Judicial Sales of Ships – A Comparative Study* (Hamburg Studies on Maritime Affairs, vol 36) (Jürgen Basedow *et al* eds) (Switzerland: Springer International Publishing, 2016) at p 133, where the author opines that bids by sealed tenders make it easier for overseas interested parties to participate in the judicial sale.

66 Whilst the author appreciates that advertisements can be separately made when the auction takes place on consumer-to-consumer ("C2C") websites, the scope of this article only discusses a scenario where the entire judicial sale process is transplanted onto the C2C website.

67 *The Turtle Bay* [2013] 4 SLR 615 at [17] and [20].

68 See Karthik Ashwin Thiagarajan, "The Spam Control Act 2007" [2007] SingJLS 361 where the author explains that efforts to ascertain the nature and extent of unsolicited e-mails in Singapore has been undertaken since 2003.

69 Spam Control Act (Cap 311A, 2008 Rev Ed).

70 See the Media Literacy Council's views at <https://www.betterinternet.sg/Resources/Resources-Listing/Youth---digital-advertising> (accessed 11 November 2018).

Info-communications Media Development Authority of Singapore has established the Media Literacy Council to educate the public on possible negative and harmful effects of media marketing. In one of their publications, the Media Literacy Council has advised the public to, if necessary, utilise web and mobile filters to block unwanted content.<sup>71</sup> Indeed, in this day and age, online filtering tools<sup>72</sup> are ubiquitous and many Internet users are well versed at employing such filters to weed out unnecessary content. In fact, Internet users usually operate such filters and advertisement blockers passively on a computer system to ensure that their usage of the Internet is not distracted by unwanted content. As such, if the online advertising methods of C2C websites are utilised in complete exclusion to the traditional advertising methods, it is questionable whether the general public would have proper notice of the sale of the ship. It is therefore submitted that the omission of traditional advertising methods (which have been endorsed by the court) in favour of online advertising methods, is detrimental to the judicial sale process.

29 Second, C2C websites such as Taobao are predominantly C2C or business-to-consumer platforms which cater to the needs of consumers.<sup>73</sup> Consumers are “individuals who, otherwise than exclusively in the course of business” purchase goods or services from vendors or suppliers.<sup>74</sup> As such, when consumers are involved, the nature of their transactions would invariably be on a smaller scale or in a domestic context as their transactions are not for business purposes but are more likely to be for personal consumption or use.<sup>75</sup> On the other hand, the sale of ships, especially trading vessels,<sup>76</sup> does not fall under the ambit of C2C or business-to-consumer transactions. Instead, ship sales would fall under business-to-business transactions. As C2C websites such as Taobao do not specifically cater to business-to-business

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71 See the Media Literacy Council’s views at <https://www.betterinternet.sg/Resources/Resources-Listing/Youth---digital-advertising> (accessed 11 November 2018).

72 Examples cited by the Media Literacy Council include K9 Web Protection, Net Nanny, Mobicip, Norton and McAfee. See also Karthik Ashwin Thiagarajan, “The Spam Control Act 2007” [2007] SingJLS 361 at 377.

73 See Letter to Shareholders of Alibaba Group Holding Limited from Chief Executive Officer Daniel Zhang (13 October 2016) and Letter to Shareholders of Alibaba Group Holding Limited from Executive Chairman Jack Ma (13 October 2016) where the emphasis of Taobao’s business is to cater to consumers. As Alibaba Group Holding Limited is listed on the New York Stock Exchange, these documents are publicly available.

74 See s 2 of the Consumer Protection (Fair Trading) Act (Cap 52A, 2009 Rev Ed).

75 The smaller scale of the transactions entered into by consumers, coupled with the consumers’ weaker bargaining position, is the reason why consumers have to be offered protection under the framework of the Consumer Protection (Fair Trading) Act (Cap 52A, 2009 Rev Ed). See *Speedo Motoring Pte Ltd v Ong Gek Sing* [2014] 2 SLR 1398 at [33]–[34].

76 These include bulk carriers, chemical and product tanks as well as container ships.



transactions, the vast majority of the users of Taobao are therefore unlikely to be commercial buyers of ships. In fact, it is doubtful whether shipowners as well as sale and purchase brokers would place due attention on C2C websites such as Taobao to garner intelligence on ship sales. For this reason, the advertising methods on Taobao may not be effective as they do not target the correct group of people. The Sheriff's duty to realise the best price for the sale would therefore be hampered should Taobao be used for the judicial sale of ships.

30 Third, the geographical reach of Taobao is also limited. C2C websites usually cater to consumers in a particular region or of a certain language. For instance, Taobao may be well known but its business is mainly focused in Asia, predominantly the mandarin-speaking countries such as China, Taiwan and Hong Kong.<sup>77</sup> Other C2C websites also have similar geographical limitations. For example, eBay Inc<sup>78</sup> and Amazon.com<sup>79</sup> cater to a more Western and English-speaking audience whilst Rakuten Inc caters specifically to Japanese-speaking users. As mentioned above, it is key that the notices advertising the sale need to reach out to the international arena as prospective buyers may hail from a different jurisdiction from the sale. Reaching out to prospective buyers from a variety of regions would increase not only the number of bids but also the chances of obtaining bids which are higher than the appraised value of the ship.<sup>80</sup> In this way, the Sheriff's duty to realise the highest price for the sale of the ship would be properly exercised. It would therefore be imprudent to tap on the advertising methods of Taobao and

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77 See Alibaba Group Holding Limited, *March Quarter 2017 and Full Fiscal Year Results* (18 May 2017) at pp 4, 6 and 10 <<https://www.alibabagroup.com/en/ir/presentations/pre170518.pdf>> (accessed July 2018) where the statistics therein show that Taobao's holding company, Alibaba Group Holding Limited ("Alibaba") had about 450 million active buyers at the start of 2017 and that 77% of Alibaba's revenue was derived from commerce retail in China. See also *Letter to Shareholders of Alibaba Group Holding Limited from Executive Chairman Jack Ma* (13 October 2016), where Jack Ma described plans to extend the reach of Alibaba and Taobao outside of China.

78 See eBay Inc, *Q1 2017 Financial Highlights* (19 April 2017) at p 6 where the statistics therein show that the gross merchandise volume ("GMV") in the US for the first quarter of 2017 amounts to US\$8.836bn whilst the GMV from international sources for the first quarter of 2017 amounts to US\$12.113bn. This would mean that about 42% of eBay Inc's GMV of the first quarter of 2017 was from the US.

79 See Amazon.com, *Q1 2017 Financial Results* (27 April 2017) at p 8 where the statistics therein show that the net sales in the US for the first quarter of 2017 amount to US\$20.992bn whilst the net sales from international sources for the first quarter of 2017 amount to only US\$11.061bn. This would mean that the US accounts for about 59% of Amazon.com's net sales in the first quarter of 2017.

80 See Lief Bleyen, *Judicial Sales of Ships – A Comparative Study* (Hamburg Studies on Maritime Affairs, vol 36) (Jürgen Basedow *et al* eds) (Switzerland: Springer International Publishing, 2016) at p 133.

to completely forsake the traditional advertising methods endorsed by the courts.

#### V. No guarantee that sale prices on C2C websites like Taobao would fetch better sale price than court-administered sale

31 At first glance, the sale of “Varada Blessing” on Taobao, which yielded a value of S\$16.7m, may suggest that Taobao is a viable platform for selling ships. One may assume that the sale of a ship on Taobao is likely to yield a higher value, presumably because of Taobao’s standing and recognition by the online community. However, the sale price of a ship depends on a large variety of factors such as her size, age, speed, hull type, power and whether there is a market demand for the ship’s type.<sup>81</sup> In fact, in comparing the sale prices of “Varada Blessing” and other ships sold by the Singapore courts, one would find that the sale price of ships is very much dependent on the gross register tonnage (“GRT”) of that particular ship. Take, for example, the following ships which were sold by the Singapore courts:

Name of ship	Gross register tonnage	Year built	Sale price
Imbak <sup>82</sup>	7,000 GRT	2008	US\$5,000,000
Ao Hong Ma <sup>83</sup>	51,000 GRT	2011	US\$8,500,000
Ambassador <sup>84</sup>	80,000 GRT	1997	S\$10,251,001
Varada Blessing	157,000 GRT	1993	S\$16,700,000

32 As one can see from the table, an increase in a ship’s GRT proportionately pushes up the sale price notwithstanding the age of the ship. With “Ambassador”, which is 80,000 GRT, being sold at about S\$10m, it is submitted that a vessel of a similar age but twice the GRT of “Ambassador” is likely to fetch a higher price. If “Varada Blessing”, which is of similar age but about twice the GRT of “Ambassador”, was

81 Jeroen Frederik *et al*, *Second Hand Vessel Value Estimation in Maritime Economics: A Review of the Past 20 Years and the Proposal of an Elementary Method* (2011) 13(2) *Maritime Economics & Logistics* 213. See *The New Flamenco* [2016] 1 Lloyd’s Rep 383 (CA) at [30] and *The New Flamenco* [2017] 2 Lloyd’s Rep 177 at [18] and [28].

82 See ADM 10/2015. See also *The Straits Times* Notices on Thursday, 22 October 2015.

83 See HC/ADM 18/2016. See also *The Straits Times* Notices on Thursday, 21 July 2016.

84 See HC/ADM 17/2017. See also *The Straits Times* Notices on Tuesday, 2 May 2017.

sold by the Singapore courts, it is likely that she would have fetched a similar price to the one in the Taobao sales. Some may consider that because Taobao is internationally recognised and popular, it would naturally be able to fetch a better price for any sold ship. However, it is submitted that this is a misconception as there is no empirical evidence that ships sold on Taobao would fetch a better price than ships sold under court-sanctioned sales.

33 Buyers may also have a prejudice against ships sold in a judicial sale and may be of the view that the sale price of such ships should be suppressed. This is due to a preconceived impression that ships sold at a judicial sale are poorly maintained because the ship owners do not have the financial means to put up security to release their arrested ships, thereby resulting in them being sold. It is submitted that such a notion is misconceived. First, arrested ships fall under the custody of the Sheriff and the Sheriff is entitled to seek an omnibus order from the court authorising the Sheriff's office to take all appropriate measures to maintain the ship.<sup>85</sup> Likewise, the plaintiff and an intervener are similarly entitled to seek such an omnibus order to maintain the ship. It is in the interest of the courts and all parties to the *in rem* action to maintain the ship in the best possible condition so that she can be sold at the best price for the benefit of all claimants. It is therefore incorrect to conclude that ships sold at a judicial sale are poorly maintained and thus capable of only fetching a lower price. Second, it is submitted that ships sold at a judicial sale should carry a premium because a buyer is essentially obtaining a clean ship free of any encumbrances, including maritime liens, which attach to a ship and cannot be removed even if the ship was sold to a *bona fide* purchaser.<sup>86</sup> A ship bought in a judicial sale therefore gives a peace of mind to the buyer because he can be confident that there will not be any lingering claims which may spring forth on the ship subsequently. It is therefore not unreasonable for ships sold at a judicial sale to command a premium and it is submitted that the sale prices in a Singapore judicial sale would not be inferior to those obtained from a sale on Taobao.

## VI. Is the solution to have an electronic sales platform operated and managed directly by the courts?

34 In light of the above discussion, it is submitted that there are a number of compelling reasons why a judicial sale should not be transplanted onto a C2C website like Taobao. However, one might suggest that the right way forward is to have the judicial sale process

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85 See *C Clausen Dampskibs-Rederi A/S v Ship Om Alqora (No 2)* (1985) 38 SASR 494.

86 *The Bold Buccleugh* (1851) 7 Moo PC 267. See also Toh Kian Sing SC, *Admiralty Law and Practice* (LexisNexis, 3rd Ed, 2017) at pp 275–276.

incorporated into an online platform managed directly by the courts. In this way, the courts may enjoy the advantages of technology whilst maintaining control and administration over the sale. The operation of this online platform would be akin to the e-Litigation platform. Notwithstanding the above, it is submitted that the incorporation of the judicial sale process into an online platform managed by the courts may be impractical because of the potential costs involved and the lack of economies of scale.

35 The costs of maintaining an online platform for electronic litigation are high. For instance, the development of South Korea's electronic court filing system cost US\$98m each year for 16 years.<sup>87</sup> A further example can be gleaned from the modernisation of the UK's HM Courts & Tribunal Services, which was a €75m-per-year project.<sup>88</sup> Comparatively, whilst the costs of developing e-Litigation in Singapore are lower, such costs are still significant. For example, the total project cost for e-Litigation in 2015 was S\$23.59m and this does not include another sum of S\$28.901m for the Integrated Criminal Case Filing and Management System.<sup>89</sup>

36 Although the costs were high, one of the important reasons behind the movement to electronic litigation was because the costs of operating an online platform were justified by the increasing number of cases which the courts were handling in light of the courts' vision for Singapore to be an international dispute resolution hub.<sup>90</sup> Former Chief Justice Chan Sek Keong opined that the application of information technology to the processing of legal information and the litigation process is all about efficiency and effectiveness of purpose at the most economical costs.<sup>91</sup> He highlighted that technology is never implemented for its own sake, or simply because it creates the impression of modernity. Every piece of technology which is integrated into the court administration or litigation process must achieve the desired purpose of achieving savings in the time or effort required to produce the necessary outcome. He warned that electronic filing is good

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87 Chief Justice Chan Sek Keong, opening address at the International Conference for Electronic Litigation 2011 (11 August 2011) at para 10.

88 Charlie Harrel, "Digital 'War Rooms' in Hearings, Trials and Beyond: How Technology Innovations in Singapore, the UK and the US Are Transforming the Legal Landscape" *Singapore Law Gazette* (October 2016) at p 42.

89 See "Head E: Judicature" of Singapore Budget 2015 and Singapore Budget 2014 at [https://www.singaporebudget.gov.sg/data/budget\\_2015/download/15%20Judicature%202015.pdf](https://www.singaporebudget.gov.sg/data/budget_2015/download/15%20Judicature%202015.pdf) and [https://www.singaporebudget.gov.sg/data/budget\\_2014/download/15%20Judicature%202014.pdf](https://www.singaporebudget.gov.sg/data/budget_2014/download/15%20Judicature%202014.pdf) (accessed 15 July 2018).

90 Chief Justice Chan Sek Keong, opening address at the International Conference for Electronic Litigation 2011 (11 August 2011) at para 6.

91 Chief Justice Chan Sek Keong, opening address at the International Conference for Electronic Litigation 2011 (11 August 2011) at para 4.

to have but may not justify the costs of small jurisdictions which do not have a substantial volume of litigation.

37 Bearing in mind the above words of our former Chief Justice, it is submitted that the Singapore courts are unlikely to turn to a fully electronic platform to administer the judicial sale of ships. Such a move would not be cost-effective due to the small number of judicial sale transactions carried out by the Singapore courts. For a period of about 12 years from 28 June 2006 to 6 June 2018, there were only 131 ships sold via the Singapore judicial sale process.<sup>92</sup> On average, this would equate to approximately ten ships sold every year. It is submitted that the small number of ships sold is insufficient to justify the potentially high costs of implementing and maintaining an electronic platform.

## VII. Conclusion

38 Within the last decade, technology has lured many aspects of the law into the paperless and digital arena. With electronic litigation platforms as well as online databases for cases and authorities, it all seems natural for the Singapore courts to go with the flow and join this digital trend, especially when the courts of a large country like China have migrated its judicial sale process onto a C2C website like Taobao. However, when the legal aspects of a judicial sale in Singapore are examined closely and compared to the aspects of the Chinese judicial sale conducted on Taobao, it is submitted that such a migration would not be in the interest of the Singapore courts. First, the courts' control and administration over the sale would be reduced because the sale is managed on an electronic platform which belongs to an external party and there are no interlocutory proceedings to advance the sale process. Second, the Chinese sale on Taobao does not have uniform rules in relation to the reserve prices and how a sale transaction is deemed successful. Third, the bids and appraised values are not kept a secret, thereby opening the bids and sale prices to manipulation. The above reasons would erode the public's confidence in the judicial sale process and it would therefore be against the interest of the courts to move the judicial sale process onto Taobao. Fourth, a judicial sale on Taobao may not necessarily fetch a higher sale price for the benefit of all claimants because a sale on Taobao is not specifically advertised to target prospective ship buyers. Fifth, there is no empirical evidence that ships sold by the Singapore courts are below market value and that a sale on Taobao or on any C2C website would push the sale prices up. In light of the above reasons and drawbacks, it is submitted that any movement of

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92 See list of ships sold by the Supreme Court at <https://www.supremecourt.gov.sg/services/lists/sheriff's-sales#6> (accessed 15 July 2018).

the Singapore judicial sale process to a C2C website like Taobao is very unlikely.

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