

The “Makassar Caraka Jaya Niaga III-39”
[2010] SGHC 313

Case Number : Admiralty in Rem No 205 of 2009 (Registrar's Appeal No 14 of 2010)
Decision Date : 25 October 2010
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Toh Kian Sing SC, Leong Kah Wah and Koh See Bin (Rajah & Tann LLP) for the appellant/plaintiff; Gan Seng Chee and Leong Kai Yuan (Ang & Partners) for the respondent/intervener.
Parties : The "Makassar Caraka Jaya Niaga III-39"

Admiralty and Shipping

25 October 2010

Judgment reserved.

Tan Lee Meng J:

1 The appellant, ANL Singapore Ltd (“ANL”), appealed against the decision of the Assistant Registrar to set aside the service of the Writ of Summons in the present action against the owners of the *Makassar Caraka Jaya Niaga III-39* (the “*Makassar*”) and to stay all further proceedings in the action in favour of foreign arbitration. The respondent intervener, PT Djakarta Lloyd (Persero) (“PTDL”), an Indonesian state-owned company, is registered in the Jakarta Registry of Shipping as the owner of the *Makassar*.

Background

2 On 15 May 2009, ANL instituted Admiralty in Rem No 175 of 2009 (“Adm No 175”) against the owners of the *Makassar* to recover the sum of US\$719,440.17 allegedly due to it under a slot charterparty that it concluded with PTDL on 1 January 2008. The Writ of Summons in Adm No 175 was served on the *Makassar* on the basis that she is beneficially owned by PTDL.

3 On 16 May 2009, ANL arrested the *Makassar*.

4 After arresting the *Makassar*, ANL instituted another action, Admiralty in Rem No 205 of 2009 (“Adm No 205”), against the owners of the said vessel in July 2009. In this second action against the owners of the *Makassar*, which is the subject matter of the present judgment, ANL claimed US\$738,662.80 for slot fees allegedly due and owing to it under invoices rendered pursuant to a slot charterparty entitled “AAX Main Agreement”, which was entered between the parties on 23 November 2001, read with an Addendum dated 7 September 2004 and a Memorandum of Understanding dated 17 March 2006.

5 PTDL intervened in the action. It contended that the *Makassar* is owned by the State and that it is merely the state-appointed operator of the vessel.

6 In relation to Adm No 175, PTDL filed SUM No 5039 of 2009 on 24 September 2009 to have the *Makassar* released and the arrest set aside. It also applied in the said Summons for a stay of all proceedings in that action on the ground that its contract with ANL required the parties to resolve

their disputes through arbitration.

7 In relation to Adm No 205, PTDL filed SUM No 5121 of 2009 on 30 September 2009 and sought an order that the service of the Writ of Summons in this action on the vessel be set aside and that all further proceedings in this action be stayed in favour of foreign arbitration.

8 Both the summonses in Adm No 175 and Adm No 205 were heard by the Assistant Registrar on 15 January 2010. After hearing the parties, the Assistant Registrar set aside the arrest of the *Makassar* and ordered the release of the vessel on the ground that the requirements under s 4 (4) of the High Court (Admiralty Jurisdiction) Act (Cap 123, 2001 Rev Ed) had not been satisfied. He also ordered that ANL's application for default judgment and the sale of the *Makassar* and all further proceedings be stayed in favour of foreign arbitration. In relation to Adm No 205, he set aside the service of the Writ of Summons on the *Makassar* and ordered that all further proceedings in this action be stayed in favour of foreign arbitration.

9 Dissatisfied with the Assistant Registrar's orders with PTDL's SUM No 5121 of 2009 in Adm No 205, ANL appealed against his decisions.

The appeal

10 There are two issues in this appeal. The first is whether or not the *Makassar* is beneficially owned by PTDL. If it is not, the Writ of Summons in Adm No 205 should not have been served on the said vessel. The issue of beneficial ownership of the *Makassar* was considered in my earlier judgment in relation to Adm No 175: see [2010] SGHC 306 ("the earlier judgment"). In that judgment, I held that the *Makassar* is beneficially owned by PTDL and overruled the Assistant Registrar's decision to set aside the Writ of Summons and release the vessel. In view of this, the question of beneficial ownership of the *Makassar* need not be re-considered in the present case. The Assistant Registrar's decision to set aside the Writ of Summons is thus overruled.

11 The second issue in this appeal relates to whether or not further proceedings in Adm No 205 should be stayed. I held in the earlier judgment that the contract between the parties requires disputes between them which arise from the AAX Main Agreement to be resolved through arbitration. The reasoning in the earlier judgment applies to the dispute in the present proceedings, which concerns additional sums allegedly owed to ANL under the said agreement. As such, I affirm the Assistant Registrar's decision to stay all further proceedings in the present case.

12 The order on costs below is set aside and each party will bear its own costs for the appeal.

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