**IN THE GENERAL DIVISION OF**
**THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2024] SGHC 165**

Admiralty in Rem No 26 of 2023 (Registrar's Appeals Nos 1 and 2 of 2024)

Between

Meck Petroleum DMCC

… *Claimant*

And

(1) Owner and/or Demise Charterer of the vessel "VICTOR 1" (IMO No. 9283722)
(2) Owner of the vessel "VICTOR 1" (IMO No. 9283722)

… *Defendants*

---

# GROUNDS OF DECISION

---

[Admiralty and Shipping — Admiralty jurisdiction and arrest — Statutory liens]
[Admiralty and Shipping — Carriage of goods by sea — Bareboat charterparties — Characteristics]
[Admiralty and Shipping — Practice and procedure of action in rem — Judicial sale of vessel — Effect of judicial sale on bareboat charterparty]
[Admiralty and Shipping — Admiralty jurisdiction and arrest — Ownership of vessels]

## TABLE OF CONTENTS

# The "VICTOR 1"

## [2024] SGHC 165

General Division of the High Court — Admiralty in Rem No 26 of 2023
(Registrar's Appeals Nos 1 and 2 of 2024)
S Mohan J
31 January, 11 March 2024

28 June 2024

**S Mohan J:**

1 Can a demise charter (and any corresponding admiralty *in rem* claims against a demise charterer) survive a judicial sale of the chartered vessel, so as to: (a) allow a claimant to institute and maintain an action *in rem* against the sale proceeds of the vessel in circumstances where the liability *in personam* lies against the demise charterer; and (b) entitle the demise charterer to appear in the *in rem* action as the *in personam* defendant? These were the primary questions that were the subject of these appeals.

2 The Liberian-registered vessel "VICTOR 1" (the "Vessel") was arrested and judicially sold in one action *in rem*. Before that, the Vessel had for some time been demise chartered by the second defendant and registered shipowner, Savory Shipping Inc ("Savory"), to the first defendant, Ceto Shipping Corporation ("Ceto").

3 Sometime after the Vessel had been judicially sold and the proceeds of sale paid into court, the claimant, Meck Petroleum DMCC ("Meck"), commenced its own action *in rem* against the Vessel – or, more specifically, the sale proceeds – *vide* HC/ADM 26/2023 ("ADM 26"). Ceto then filed a Notice of Intention to Contest ("NIC") in ADM 26 as the owner and/or demise charterer of the Vessel, and Savory later did the same as the owner of the Vessel. Subsequently, Savory filed HC/SUM 3438/2023 ("SUM 3438") seeking, among other things, orders for the claim in ADM 26 to be struck out and for Ceto to be removed as a party to the action. A central dispute in SUM 3438 was over the identity of the proper *in personam* defendant.

4 At first instance, Assistant Registrar Navin Anand (the "AR") decided that Savory was the proper defendant and various orders were made on that basis. HC/RA 1/2024 ("RA 1") and HC/RA 2/2024 ("RA 2") were Meck and Ceto's respective appeals against the AR's decision.

5 After hearing the parties, I dismissed the appeals save for Meck and Ceto's appeals against the AR's costs orders, which I allowed in part. I gave brief oral reasons for my decision and while no further appeals were lodged against it, the appeals raised interesting questions that have not been directly addressed in the case law. Accordingly, I consider it useful to provide the full grounds of my decision.

## The background

6 As I mentioned at the outset, Savory was, at all material times, the registered owner of the Vessel. The Vessel was demise chartered to Ceto pursuant to a charterparty dated 28 February 2019 in the BARECON 2001

form, as amended by the parties (the "Charterparty").[1] The Charterparty was later supplemented by an addendum dated 24 December 2019 (the "Addendum").[2]

7 More will be said at the appropriate junctures about the Charterparty's terms. For present purposes, it suffices to note that cl 35.1 of the Charterparty reads:[3]

> Subject to the terms of this Charter, the period of chartering of the Vessel hereunder (the "Charter Period") shall commence on the Delivery Date and shall terminate on the date which falls 36 months after the Delivery Date.

It was common ground that 1 April 2022 was "the date which [fell] 36 months after the Delivery Date".[4]

8 On 25 March 2022, the Vessel's crew commenced HC/ADM 19/2022 ("ADM 19") and arrested the Vessel. The Vessel's appraisal and sale *pendente lite* was ordered by me on 3 October 2022.[5] The Vessel was eventually sold for SGD15,422,601.00 on 16 January 2023 and the sale proceeds were paid into court. After priorities to the sale proceeds had been determined in the usual course and payment out ordered in satisfaction of the crew's claims, certain sums remained in court.

---

1 Nikolaos Grigoriou's affidavit dated 6 November 2023 ("NG") at pp 64–99.

2 NG at pp 101–106.

3 NG at p 82, cl 35.1.

4 First defendant's written submissions dated 27 January 2024 ("1DWS") at [4(iii)]; second defendant's written submissions dated 6 December 2023 ("2DWS") at [1(c)].

5 HC/ORC 5278/2022.

9 Over a year later, on 12 April 2023, Meck commenced ADM 26 for a claim for unpaid bunkers supplied to the Vessel from April to July 2021. The defendant named in Meck's originating claim *in rem* was the "Owner and/Or Demise Charterer" of the Vessel. On 26 April 2023, Ceto, for its part, filed its NIC in ADM 26 as "Owner and/or Demise Charterer" of the Vessel.

10 Meck subsequently filed its Statement of Claim ("SOC") in ADM 26 on 25 May 2023. Contrary to what was stated in its originating claim *in rem*, Meck averred in its SOC that "[t]he Defendant was at all material times, the registered owner of [the Vessel]."[6] More will be said about this inconsistency later in these written grounds.

11 Meck and Ceto eventually purported to reach a settlement agreement. By a letter dated 1 June 2023, Meck informed the court of the parties' intention to record a consent judgment. In that letter – and contrary to Meck's pleadings – Meck identified Ceto as the "Demise Charterer of the [Vessel]".[7] In any event, a consent judgment was recorded on 8 June 2023 (the "Consent Judgment").[8]

12 That was not to be the end of the matter. On 18 October 2023, Savory filed its NIC in ADM 26 as "Owner" of the Vessel. Savory then applied on 7 November 2023 (*vide* SUM 3438) for orders that Ceto's NIC and Meck's claim in ADM 26 against the "demise charterer" of the Vessel be struck out; Ceto be removed as a party to ADM 26; and the Consent Judgment be set aside.

---

6 Claimant's Statement of Claim filed on 25 May 2023 at [1.2].

7 Letter to court from claimant's solicitors, m/s Haridass Ho & Partners, dated 1 June 2023 at para 1.

8 HC/JUD 218/2023.

13 SUM 3438 was heard on 22 December 2023 by the AR, who allowed the application and ordered that:[9]

(a) Meck's claim in ADM 26 against the "demise charterer" of the Vessel be struck out;

(b) Ceto's NIC in ADM 26 be struck out;

(c) the Consent Judgment be set aside; and

(d) costs fixed at $7,000.00 (all-in) and $5,000.00 (all-in) be paid to Savory by Meck and Ceto respectively.

14 RA 1 was Meck's appeal against the entire decision of the AR, while RA 2 was Ceto's appeal against the AR's decision to strike out its NIC and the costs orders made against it (*ie*, [13(b)] and [13(d)] above).

**Ceto was not entitled to appear as the *in personam* defendant to ADM 26**

15 As I alluded to at [3] above, the overarching issue in SUM 3438 and the appeals was whether Ceto was the proper *in personam* defendant to ADM 26.

16 The starting point of this inquiry was s 4(4) of the High Court (Admiralty Jurisdiction) Act 1961 (2020 Rev Ed) (the "HCAJA"), which reads:

> (4) In the case of any such claim as is mentioned in section 3(1)(*d*) to (*q*), where —
>
> (*a*) the claim arises in connection with a ship; and
>
> (*b*) the person who would be liable on the claim in an action in personam (referred to in this

9 HC/ORC 6039/2023.

> subsection as the relevant person) was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship,
>
> an action in rem may (whether or not the claim gives rise to a maritime lien on that ship) be brought in the General Division of the High Court against —
>
> (*c*) that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of that ship under a charter by demise; or
>
> (d) any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.

17 In *The "Bunga Melati 5"* [2012] 4 SLR 546 ("*The Bunga Melati 5*"), the Court of Appeal set out a five-step test that a claimant must satisfy in order to validly invoke admiralty jurisdiction pursuant to s 4(4) HCAJA (at [112]):

> … Under s 4(4) of the HCAJA, a plaintiff has to, when challenged:
>
> (a) prove, *on the balance of probabilities*, that the jurisdictional facts under the limb it is relying on in s 3(1)(*d*) to 3(1)(*q*) exist; and show *an arguable case* that its claim is of the type or nature required by the relevant statutory provision ("step 1");
>
> (b) prove, *on the balance of probabilities*, that the claim arises in connection with a ship ("step 2");
>
> (c) identify, *without having to show in argument*, the person who would be liable on the claim in an action *in personam* ("step 3");
>
> (d) prove *on the balance of probabilities*, that the relevant person was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship ("step 4"); and
>
> (e) prove on *the balance of probabilities*, that the relevant person was, at the time when the action was brought: (i) the beneficial owner of the offending ship as respects all the shares in it or the charterer of that ship under a demise charter; or (ii) the beneficial owner of the sister ship as respects all the shares in it ("step 5").

[emphasis in original]

18 Notwithstanding the ambiguity as to the capacity in which Ceto purported to appear as a defendant (see [9]–[11] above), Meck and Ceto maintained that Ceto was indeed the 'relevant person' (as defined in s 4(4)(*b*) HCAJA and identified at step 3 of the test in *The Bunga Melati 5*). Savory took issue with the ambiguity but was otherwise prepared – at least, for the purposes of SUM 3438 and the appeals – to proceed on the basis that Ceto was indeed the 'relevant person'.[10]

19 In the premises, the crux of the dispute was whether step 5, and specifically limb (i) thereof, was satisfied. It is trite that an action *in rem* is "brought" at the time the writ *in rem* (now originating claim *in rem*) is issued: *The "Min Rui"* [2016] 5 SLR 667 ("*The Min Rui*") at [5]. It was Meck and Ceto's position that Ceto had either been the Vessel's demise charterer or beneficial owner at the time Meck's originating claim *in rem* was issued (*ie*, 12 April 2023). Savory, on the other hand, argued that neither was the case.

20 Although step 5 relates to a 'jurisdictional fact' that should ordinarily be determined on a balance of probabilities, the court cannot realistically make any conclusive findings unless the issue is tried at the interlocutory stage of the proceedings. Therefore, if the defendant is prepared to rely only on affidavit evidence at the interlocutory stage, the court will proceed to determine the disputed issue on a preliminary or *prima facie* basis: *The Bunga Melati 5* at [129]–[130].

---

10 2DWS at [13]–[14].

21 SUM 3438 and the appeals were argued on the strength of affidavit evidence alone, and there was no indication from the parties that any part of the inquiry should be tried as a preliminary matter. My determinations set out below should therefore be understood in that light (*ie*, as findings made on a *prima facie* basis for the purpose of deciding the appeals).

***Ceto was not the demise charterer of the Vessel at the time ADM 26 was brought***

22 I begin with the question of whether Ceto continued to be the Vessel's demise charterer as of 12 April 2023. It was Savory's position that Ceto had ceased to be the demise charterer of the Vessel on either:

(a) 1 April 2022, on which date the Charterparty came to an end pursuant to cl 35.1 therein (see [7] above); or

(b) 16 January 2023 at the very latest, on which date the judicial sale of the Vessel was completed.

On either view, Ceto had ceased to be the Vessel's demise charterer well before ADM 26 was brought on 12 April 2023. Meck and Ceto rejected both of these contentions for reasons that I will come to shortly, but for present purposes it suffices to say that I agreed with Savory. In the discussion that follows, I will first address the effect that the judicial sale had on the Charterparty, before considering whether the Charterparty came to an end any sooner by operation of cl 35.1.

*The Charterparty expired upon completion of the Vessel's judicial sale on 16 January 2023 at the very latest*

23 Counsel for Meck, Ms Sharmini Yogarajah, advanced the interesting argument that because the proceeds of the judicial sale lying in court

notionally represented the Vessel, any rights to (or interests in) the Vessel subsisting prior to the judicial sale would have survived the sale and thereafter been attached or transferred to the proceeds.[11]

24 Counsel for Ceto, Mr R. Govin, largely adopted the same fiction[12] but went even further in arguing that rights to (or interests in) the Vessel subsisting prior to its *arrest* would have 'followed' the Vessel into its notional form of the sale proceeds after the judicial sale was completed. On either view, the judicial sale of the Vessel had no effect whatsoever on the Charterparty, which *continued to exist* over the proceeds representing the Vessel.

25 In my judgment, these arguments, interesting as they were, fundamentally misunderstood the purpose – and therefore, the limits – of the legal fiction invoked as their underlying basis. It is trite that upon the completion of the judicial sale of a vessel, clean title passes to the purchaser free from all liens and encumbrances, and any rights of action *in rem* against the previous owners and/or demise charterers can no longer be levied against that vessel thereafter: *The "Turtle Bay"* [2013] 4 SLR 615 at [11]. If the result of that were to categorically extinguish all subsisting rights of action against the vessel, it would mean that an admiralty claimant's rights would depend on the timing of the judicial sale for their survival. It was to guard against such arbitrary and severe results – especially where an arrested vessel is sold *pendente lite* – that the courts of admiralty devised a legal fiction by which the vessel's sale proceeds are treated as notionally representing the vessel: *The*

---

11 Claimant's written submissions dated 6 December 2023 ("CWS") at [14]–[17].

12 1DWS at [30]–[36].

*"Acrux"* [1962] 1 Lloyd's Rep 405 at 409; *The Convenience Container & Ors* [2007] 4 HKC 484 at [91]–[92].

26 Importantly, this fiction only preserves rights of action *in rem* and not contractual rights or obligations *per se*. If, for example, a contractual breach gives rise to a claim attracting admiralty jurisdiction, it would be incumbent on the claimant to commence an action *in rem* and thereby crystallise his statutory lien. He delays doing so at his peril, for a statutory lien that has not been so crystallised is defeasible by a subsequent change in the vessel's ownership. If, however, the statutory lien is crystallised timeously, then the action will proceed and notwithstanding a judicial sale, the action will continue against the sale proceeds standing in the actual vessel's stead. Different practical considerations arise where maritime liens and possessory liens are concerned, but the legal fiction operates, in essence, to preserve such interests in the same manner. Thus, properly understood, the legal fiction has nothing to say about whether contractual claims underpinning a prospective statutory lien can survive the judicial sale of the relevant vessel.

27 In my view, the learned AR correctly reasoned that "the hallmark of the demise charter is the transfer of possession and control of the vessel from the owner to the charterer" (following *The "Chem Orchid"* [2015] 2 SLR 1020 ("*The Chem Orchid*") at [66]), so that the Charterparty came to an end when possession of the Vessel was irretrievably lost. This happened, at the very latest, when the judicial sale was completed on 16 January 2023.[13]

---

13 Certified transcript of the hearing of HC/SUM 3438/2023 on 22 December 2023 ("Transcript of SUM 3438") at p 23, lns 13–25.

28 On a contractual analysis, the impossibility of performing (or continuing to perform) the Charterparty in such circumstances must have meant that the Charterparty had come to an end for one of two reasons (and here I assumed for argument's sake that the Charterparty had not been terminated earlier on 1 April 2022). The first was that there had been a repudiatory breach of the Charterparty that was not waivable because the breach was irremediable. The second was that the Charterparty had been frustrated. Either result could be reasonably arrived at without resort to legal fictions of any kind.

29 I turn at this juncture to consider some of the authorities relied on by Meck and Ceto, one of which was the decision of the Supreme Court of Appeal of South Africa in *The "Tarik III"* [2022] ZASCA 136 ("*The Tarik III*"). According to Meck, that case stood for the proposition that admiralty claims against a demise charterer may be pursued *via* an action *in rem* commenced even *after* the vessel has been judicially sold – and the claims satisfied out of the sale proceeds lying in court – provided that the demise charterparty had not been terminated prior to the judicial sale.[14]

30 The brief facts of *The Tarik III* are these. The appellant ("CEB") arrested the eponymous vessel on 26 May 2014. At that time, the vessel was demise chartered to one Caliskan. The vessel was eventually sold on 4 February 2015, and a fund was constituted in its place. Seventeen parties subsequently came forward to claim against the fund; their claims were based on Caliskan's *in personam* liability. However, only two of those 17 claimants had arrested the vessel prior to its judicial sale. CEB argued that claims premised on Caliskan's *in personam* liability could only be made against the

[14] Claimant's Bundle of Authorities dated 6 December 2023 at p 4.

fund insofar as the claimants had first arrested the vessel prior to its judicial sale (at [13]).

31 Ponnan JA (with whom the rest of the majority comprising Zondi JA, Makaula AJA, and Chetty AJA concurred) rejected CEB's argument for the following reasons:

(a) The court considered the evidence and concluded that the demise charterparty remained in force up until the judicial sale had been completed (at [18]). Under s 1(3) of the South African Admiralty Jurisdiction Regulation Act 105 of 1983 (the "AJRA"), Caliskan was deemed to be the owner of the vessel "for the period of the charter by demise". Caliskan was therefore to be regarded as the owner of the vessel up until its judicial sale was completed on 4 February 2015.

(b) Importantly, s 3(11)(*b*) of the AJRA further provides that "[a] fund shall, for all purposes, be deemed to be the property sold". In Ponnan JA's view, the effect of this provision was to render the fund the deemed property of whoever owned the vessel at the time the judicial sale was completed, *ie*, Caliskan (at [38]–[39]):

> [W]hen a ship is sold … based on an arrest founded on the deemed ownership of the demise charterer, the Fund that is created … is a Fund that is deemed to be the property of the demise charterer in terms of s 3(11)(*b*), read with [s 1(3)], in respect of claims that are capable of proof based upon the liability of the demise charterer.
>
> …
>
> Absent the Fund being deemed to be owned by the charterer by demise, there would be no basis for parties with claims based on the *in personam* liability of the demise charterer to receive payment from the Fund.

(c) The learned judge went on to cite a number of South African authorities which rejected the notion that claims may only be brought against a fund provided the claimant had arrested the vessel prior to its judicial sale (at [42]–[44]).

32 The question of whether a judicial sale had the effect of terminating a hitherto subsisting demise charterparty was not expressly considered in *The Tarik III*, although the finding that "the charterparty was in effect at all material times prior to the judicial sale of the vessel" implies that the charterparty did in fact come to an end upon the vessel having been sold (at [18]). At any rate, that inquiry was arguably unnecessary because under the AJRA, Caliskan was the deemed owner of the sale proceeds lying in court (see [31(b)] above). Such a result was made possible only by the express language of the AJRA, for which there is no equivalent in our legislation.

33 For these reasons, *The Tarik III* did not assist Meck and Ceto's case.

34 Both Meck and Ceto also relied heavily on *The Chem Orchid* (at [72]) for the proposition that physical redelivery is an essential step to the termination of a demise charterparty.[15] Building on that, it was argued that in circumstances where actual (*ie*, physical) redelivery of a demise chartered vessel is not possible, the demise charterparty can only come to an end upon *constructive* redelivery of the vessel that constructively restores possession and control of the "vessel" to the shipowner.[16]

---

15 CWS at [10]–[11]; 1DWS at [19].

16 1DWS at [20]–[29].

35 It was unclear from Meck and Ceto's submissions what "constructive redelivery" would have entailed in a case like this. It was stated in Ceto's written submissions that a demise chartered vessel "can be constructively redelivered if there was some clear or unequivocal step or acknowledgement by the charterer to give effect to the redelivery".[17] This submission was presumably inspired by Tamberlin J's *obiter dicta* in *Patrick Stevedores No 2 Pty Ltd v MV "Turakina"* (1998) 154 ALR 666 (at 677) (which was considered in *The Chem Orchid* at [106]–[113]), but it was a complete non-answer to the question at hand. It appeared to me that, taking the argument at its highest, "constructive redelivery" would have presumably required the "redelivery" of the notional *res* (*ie*, the proceeds of the Vessel's judicial sale) by Ceto to Savory before the Charterparty could have come to an end.

36 There were many (and in my view, insurmountable) problems with this line of argument, the most obvious being the fact that Ceto was *never* in possession of the sale proceeds in the first place – indeed, Ceto had *nothing* in its possession that could be "redelivered" to Savory. Looking at the matter from a different angle, if Meck and Ceto's hypotheses were correct, it would have followed that a demise charterparty could potentially subsist in perpetuity in a scenario where the proceeds of a judicial sale had been exhausted to higher-ranking *in rem* claimants, such that there would be nothing left for the demise charterer to "redeliver". It was apparent to me that Meck and Ceto's arguments, taken to their logical extremes, could result in absurd outcomes and had to be rejected for that reason.

---

17 1DWS at [25].

37 At a more foundational level, it was unclear to me what purpose would have been served by recognising such a doctrine of "constructive redelivery". That doctrine was mooted and rejected by Steven Chong J (as he then was) in *The Chem Orchid*. In reaching his decision, the learned judge accepted the submission that "the courts typically resort to constructive analogies to address a gap in the law that, if left unaddressed, would result in an inequitable or unfair outcome" (at [102]). In his view, however, nothing in the case suggested that there would be injustice that could not be remedied without recourse to notions of "constructive redelivery" (at [104]).

38 In this case, Ceto submitted that there *was* a lacuna in the law or some potential for injustice which called for the acceptance of the doctrine,[18] but no explanation was given to make good that assertion. In the premises, I too was of the view that there was no compelling reason for me to accept the doctrine as part of Singapore law, and certainly not on the facts of the case before me.

39 Accordingly, the AR was right to distinguish the present case from *The Chem Orchid*, which was concerned only with a situation where the shipowner had purported to terminate a demise charterparty early for breach by the demise charterer. The case did not concern the effect of a judicial sale on a demise charterparty. No other authority was cited by Meck or Ceto for the proposition that physical (or even constructive) redelivery is, in all circumstances, a *sine qua non* for the effective termination of a demise charterparty. That argument, in my view, was supported by neither principle nor practice, and also involved a reading of *The Chem Orchid* that was too wide and out of context.

---

[18] 1DWS at [24].

40 Taking a step back, the reference in s 4(4) HCAJA to the "ship under a charter by demise [at the time when the action is brought]" could not, in my judgment, be read to mean "the proceeds of the judicial sale of that ship at the time when the action is brought" without doing substantial violence to its plain meaning. Nor would it have made any sense to speak of a "charterer of the proceeds of the judicial sale". Meck and Ceto's contentions could not be accepted without giving s 4(4) HCAJA a construction that its language could not reasonably bear. If Parliament had intended for the conventional legal fiction (see [25] above) to be extended in the manner argued for, clear statutory provisions – perhaps of the sort seen in the AJRA and considered in *The Tarik III* (see [31] above) – would have been enacted to make the position clear.

41 For all the foregoing reasons, I was satisfied that the Charterparty came to an end upon completion of the Vessel's judicial sale on 16 January 2023 at the very latest.

*The Charterparty came to an end on 1 April 2022 pursuant to cl 35.1*

42 Having concluded that the Charterparty must have been terminated on 16 January 2023 at the very latest, it was strictly unnecessary for me to decide if the Charterparty came to an end on 1 April 2022 pursuant to cl 35.1 therein (the text of which is set out at [7] above). However, extensive arguments were made on the point and so I set out my views here on this question.

43 Savory's position on the matter was simple: cl 35.1 meant what it said, and the Charterparty came to an end on 1 April 2022.[19] Meck and Ceto, on the

[19] 2DWS at [1(c)]; Transcript of SUM 3438 at p 8, lns 7–17.

other hand, submitted that cl 35.1 notwithstanding, the Charterparty could *not* have come to an end on 1 April 2022 because no notice of withdrawal, termination or cancellation was given pursuant to cl 5.1 of the Addendum.[20] That clause reads:[21]

> The Parties have mutually agreed to amend the [Charterparty] so that any exercise of the rights of withdrawal from, or termination and/or cancellation of, the [Charterparty] may only be exercised 72 hours after service of a written notice to Charterers. This provision shall be paramount and shall prevail over any other term of the [Charterparty] to the contrary including, but not limited to, clause 28 and 44.

44 There was no merit to the suggestion that the giving of notice under cl 5.1 was a precondition to the operation of cl 35.1. On a plain reading of cl 5.1, the duty to give notice would have only been triggered by "any exercise of the rights of withdrawal from, or termination and/or cancellation of" the Charterparty – the exercise of any of those rights connoted a discretionary act of some kind. The express effect of cl 35.1, on the other hand, was to *automatically* bring the Charterparty to an end with the effluxion of time; neither Ceto nor Savory had to *exercise* any right for cl 35.1 to achieve that result. Ms Yogarajah stressed the express paramountcy of cl 5.1 and that both clauses refer to the "termination" of the Charterparty, but neither of these features went anywhere in bridging the gap I have just referred to. Put another way, cl 5.1 simply had no relevance to the operation of cl 35.1.

45 Aside from cl 5.1 of the Addendum, no other reasons were advanced to displace the conclusion that the Charterparty had come to an end on 1 April

---

20 CWS at [6]–[9].

21 NG at p 103, cl 5.1.

2022 pursuant to cl 35.1. I would thus have also been prepared to find as such, were it necessary for me to decide the point.

46 In any event, I had already concluded that the Charterparty came to an end on 16 January 2023 at the very latest, upon completion of the Vessel's judicial sale. Thus, in either scenario, the AR's conclusion that Ceto was *not* the demise charterer of the Vessel at the time ADM 26 was brought on 12 April 2023 was unassailable.

***Ceto was not the beneficial owner of the Vessel at the time ADM 26 was brought***

47 I turn now to Ceto's alternative position, which was that Ceto had become the Vessel's *beneficial owner* by the time ADM 26 was brought.

48 Before me, Mr Govin submitted that the question of where beneficial ownership laid could not be summarily determined at the interlocutory stage on affidavit evidence alone, and that the matter should instead be resolved at trial (whether in Singapore or elsewhere). I did not understand this to be a suggestion that the parties wished for the question to be tried at the interlocutory stage. No application was made to the court for such a trial; indeed, no affidavit evidence was even filed on behalf of Ceto in SUM 3438. I therefore disregarded these objections and proceeded to determine the issue on a preliminary basis and according to the affidavit evidence before me (for the reasons explained at [20]–[21] above).

49 I took as my starting point the established principle that a vessel's certificate of registration is *prima facie* evidence of legal *and* beneficial ownership: *The "Min Rui"* at [33]. In this case, the Vessel's certificate of

registration named Savory as its sole owner.[22] The burden was thus on Ceto to prove that it (and not Savory) was the beneficial owner of the Vessel at the time ADM 26 was brought.

*The parties' submissions*

50 Ceto's claim to beneficial ownership of the Vessel was predicated on the Charterparty also having provided for the conditional sale of the Vessel by Savory to Ceto upon its expiry. Clause 39.1 of Charterparty (as amended by cl 6.1 of the Addendum) reads:[23]

> 39.1 Purchase and Sale Obligations
>
> On expiration of this charter, and *provided that the Charterers have paid all hire and any other sums due under this Charter and provided that the Charterers have also paid all management fees and any other sums due under the Management Agreement to Delfi*, it is agreed that Owners will sell the Vessel to Charterers for no further consideration, that title to the Vessel will automatically transfer to Charterers and Charterers will automatically be required to purchase and will be deemed to have purchased the Vessel. The sale will be in accordance with the MOA appended to this Contract.
>
> [emphasis added]

51 The "MOA" referred to in the final sentence of cl 39.1 was a Memorandum of Agreement dated 28 February 2019 in the SALEFORM 2012 form, as amended by the parties.[24] The purchase price was stated as US$12,000,000.00 less a downpayment of US$5,000,000.00 and any hire paid

---

22 NG at p 25.

23 NG at pp 103–104, cl 6.1.

24 Mehmet Özgür Yaycıoğlu's reply affidavit dated 1 December 2023 ("MOY") at pp 58–69.

in accordance with the Charterparty.[25] It was not disputed that, having regard to the hire paid by Ceto to Savory, the contract price had been reduced to nil.

52 Importantly, the transfer of title pursuant to cl 39.1 was expressed as conditional on Ceto's payment of:

(a) "all hire and any other sums due under" the Charterparty; and

(b) "all management fees and any other sums due under the Management Agreement to Delfi".

For context, Delfi S.A. ("Delfi") provided ship management services to the Vessel under a Management Agreement dated 28 February 2019 (the "Management Agreement"). That agreement was terminated on 21 May 2020.[26]

53 The submission by Mr Derek Tan, counsel for Savory, was simple: there *were* sums outstanding under the Management Agreement to Delfi at the time the Charterparty expired, and so there could have been no transfer of beneficial title to the Vessel *per* the clear wording of cl 39.1. Whether sums were likewise due under the Charterparty was, to that extent, irrelevant.

54 Meck and Ceto did not seriously dispute the fact that sums were outstanding under the Management Agreement to Delfi. No affidavit evidence was filed by Ceto to challenge that contention, or even to assert that Ceto had become the beneficial owner of the Vessel. Meck and Ceto's argument was that beneficial ownership of the Vessel passed upon Ceto having paid the full

---

25 MOY at p 59, cl 1.

26 NG at p 125, para 10 and p 127, para 14.

contract price under the MOA, and that non-compliance with a condition in cl 39.1 was not a bar to that transfer.[27]

*Ceto's non-compliance with a condition in cl 39.1 precluded any transfer of beneficial title to the Vessel*

55 I was unable to accept Meck and Ceto's submissions. I was referred to a number of authorities for the fairly trite proposition that beneficial title to property may pass by contract insofar as the intended transferee is entitled to the remedy of specific performance. However, none of them go so far as to say that a transferee who fails to meet an *express* obligation – the discharge of which is a condition precedent to the transfer – may yet be regarded in equity as the beneficial owner of the property.

56 In fact, it was observed in the case of *Bevin v Smith* [1994] 3 NZLR 648 – which Ceto itself referred to[28] – that "[t]he equitable interest of a purchaser always is contingent upon payment of the purchase price in due time *and performance of any other obligations arising as terms of the settlement*" [emphasis added] (at 665). The construction of cl 39.1 advanced by Meck and Ceto would have required me to ignore the plain effect that its express conditions were intended to have.

57 I was also referred to the Court of Appeal's decision in *The "Pangkalan Susu/Permina 3001"* [1977-1978] SLR(R) 105 ("*The Permina 3001*").[29] In that case, the vessel "Bruce Ruthi II" had been time chartered by the appellant ("Rasu") to the first respondent ("Pertamina"). After Pertamina

---

27 CWS at [25]–[27]; 1DWS at [43]–[45].

28 1DWS at [43].

29 CWS at [24].

fell into arrears for hire, Rasu commenced an action *in rem* and arrested the vessel "Pangkalan Susu" (also known as the "Permina 3001"). As it turned out, the registered owner of the "Pangkalan Susu" was the second respondent ("Ozark"), who had transferred full possession and control of – but not title to – the vessel to Pertamina pursuant to a conditional sale agreement.

58 It was Rasu's case in the appeal that Pertamina *was* nevertheless the beneficial owner of the "Pangkalan Susu", so that admiralty jurisdiction had been rightly invoked against it. In rejecting that argument and dismissing Rasu's appeal, emphasis was placed on the fact that the conditions in the sale agreement had not been fully met (at [19]):

> Furthermore, the agreement relied on is a conditional sale agreement under which the purchase price is payable in 72 equal monthly instalments. Until payment of the full purchase price the *Permina 3001* remains registered in the name of and owned by Ozark Shipping Co SA who has the right to rescind the agreement and retake possession of the ship in the event of, *inter alia*, failure to pay any instalment on due date. At the material date only five of the monthly instalments had become payable and been paid. In these circumstances we are of the opinion that even at the instance of Pertamina, equity would not regard Pertamina as the equitable owner of the ship with the bare legal title in Ozark Shipping Co SA. At the material date, Ozark Shipping Co SA had some beneficial interest in the ship which, in our judgment, is sufficient to disentitle Rasu Maritima SA from successfully invoking the admiralty jurisdiction of the court under s 4(4) of our Act.

59 Meck relied on the foregoing passage to contend that full payment of the Vessel's purchase price was all that had been required for beneficial title to vest in Ceto (as would have presumably occurred in *The Permina 3001* had Pertamina paid all 72 instalments of the purchase price).[30] That, in my view, was not a correct reading of the Court of Appeal's decision. The condition that

---

30 CWS at [25].

was unfulfilled in that case was full payment of the vessel's purchase price, but it did not follow that full payment of the vessel's purchase price was all that had been required for beneficial title to pass.

60 Ultimately, the question of whether (and to what extent) beneficial title passes under a conditional agreement for the sale and purchase of a ship depends in every case on giving the terms of the agreement their proper construction. In my judgment, the plain effect of cl 39.1 was to withhold title to the Vessel from Ceto unless and until it had, *inter alia*, discharged its payment obligations to Delfi. This was a hurdle that Meck and Ceto were unable to cross.

61 Finally, it is worth emphasising that SUM 3438 was not the first instance in which Ceto had staked its claim to beneficial ownership of the Vessel. In Case No. CL-2022-000277 before the English High Court, Ceto sought a declaration that:[31]

> Clause 39.1 of the Charter (as amended by the Addendum), on its proper construction, means that the title of the Vessel automatically transfers from the Defendant to the Claimant upon the expiry of the Charter on 1 April 2022, notwithstanding any disputed sums allegedly claimed by … Delfi in respect of the Original Management Agreement.

Ceto's claim was dismissed by Mr Justice Andrew Baker, whose decision is set out in *Ceto Shipping Corporation v Savory Shipping Inc* [2022] EWHC 2636 (Comm).

62 I was fortified in my decision by Baker J's findings. It was Ceto's position in the English proceedings that (at [24]):

---

[31] NG at p 314, para 12.

> … upon the proper construction of Clause 39.1 "sums … due under the Management Agreement to Delfi" refers, and refers only, to sums that the claimant admits to be due to Delfi, or disputes in bad faith, and sums that, having been disputed by the claimant in good faith, have been determined by arbitration or judgment to be due to Delfi.
>
> [emphasis in original omitted]

63 In rejecting Ceto's proposed construction of cl 39.1, Baker J held that the clause meant what it says and title could not have passed because of the sums outstanding to Delfi (at [38]):

> … Clause 39.1 indicates a joint intention that there be no payment obligation outstanding on the claimant's side, before title passed. The transfer of title, Clause 39.1 appears to be saying, is intended to occur only if there is a clean slate as regards the claimant's indebtedness to *inter alia* Delfi. That would not be achieved if title would pass even though there were US$2 million owed to Delfi and unpaid under its management agreement.

64 In the result, the learned judge declared that, on a proper construction of cl 39.1, Savory was "under no obligation to transfer title, if upon the expiry of the Charter [Ceto] owed management fees or any other sum to Delfi under the Management Agreement".[32] That was the same interpretation of cl 39.1 that I arrived at. Thus, given Ceto's concession that there were in fact management fees or other sums due to Delfi under the Management Agreement, there was simply no justification, even on a *prima facie* basis, to conclude that Ceto had acquired beneficial title to the Vessel pursuant to cl 39.1.

65 I reiterate that the conclusion I have reached is only a *preliminary* one made for the *limited purpose* of determining if Ceto was entitled to file its NIC and appear in ADM 26 as the *in personam* defendant for the purposes of s 4(4)

---

[32] NG at pp 322–323, para 1.

HCAJA. It is not intended to impinge on the substantive contest between Savory and Ceto over beneficial ownership of the Vessel, or their respective entitlements to the remaining sale proceeds presently lying in court.

***The appeals against the AR's substantive orders were dismissed***

66 In deciding to strike out Ceto's NIC in ADM 26, the learned AR reasoned that:[33]

> Under O 33 r 2(4) of the ROC 2021, the party that is to file the notice of intention to contest or not contest is the defendant to the originating claim. This is significant as only the named defendant can file the notice of intention to contest or not contest as of right; other persons interested in the Vessel must obtain permission to intervene in the proceedings.
>
> The claimant in its statement of claim identified the defendant in ADM 26/2023 as the registered owner of the Vessel. It is accepted by all parties that Ceto was never the registered owner of the Vessel, and Ceto was thus not entitled to file the NIC as defendant. As Ceto had no right to file the NIC, I strike out the NIC filed on 26 April 2023 pursuant to O 9 r 16(4) of the ROC 2021.

67 As a matter of procedure, I did not think that Ceto's NIC was liable to be struck out for the sole reason that Meck had later identified (by its SOC) the defendant in ADM 26 as the registered owner of the Vessel. A party is entitled as of right to enter an appearance in an action *in rem* as the defendant so long as that party answers to the requirements of the 'relevant person' as set out in s 4(4) HCAJA: *Wei Hsing Food (S) Pte Ltd v The Owners or Demise Charterers of The Ship or Vessel 'The Neptune'* [2005] 5 MLJ 702 ("*The Neptune*") at [33]. A party who qualifies as the proper defendant under s 4(4) HCAJA cannot be precluded from entering an appearance simply because it

---

33 Transcript of SUM 3438 at p 24, lns 8–19.

does not answer to the claimant's description of the defendant in the former's statement of claim.

68 However, nothing in the final analysis turned on this given my conclusion that Ceto was neither the Vessel's demise charterer nor its beneficial owner at the time ADM 26 was brought. Ceto simply had no standing to appear in ADM 26 as the *in personam* defendant. The AR was therefore right to strike out Ceto's NIC and set aside the Consent Judgment.

69 Given that there could have been no demise charter of the Vessel subsisting at the time ADM 26 was brought, the AR was also correct in concluding that only the owner of the Vessel could appear as the *in personam* defendant to Meck's claims.[34] The AR's decision to strike out Meck's claim against the Vessel's demise charterer was therefore also justified.

**The appeals against the AR's costs orders were allowed in part**

70 Having dismissed the appeals against the AR's substantive orders, I next considered the AR's costs orders. Having prevailed, Savory was (as the AR correctly concluded) entitled to costs in SUM 3438. In my view, however, Savory was not blameless for the way in which the proceedings unfolded, and its conduct was not entirely reasonable.

71 First, Savory had filed a caveat against the Vessel's release in ADM 19 on 18 August 2022.[35] That meant that by 18 August 2022 *at the very latest*, Savory was (or must have been) aware that: (a) the Vessel had been arrested in

---

34 Transcript of SUM 3438 at p 23, lns 32–33.

35 HC/CAVA 14/2022.

connection with ADM 19; and (b) Ceto had been defending ADM 19 as the Vessel's demise charterer.

72 Taking this into account and Savory's position that the Charterparty came to an end on 1 April 2022, it was incumbent upon Savory to promptly file its NIC in ADM 19. Had it done so, the dispute between Ceto and Savory in respect of their rights to the Vessel would very likely have surfaced in time to obviate the (now wasted) efforts of Ceto and Meck in ADM 26. As it turned out, Savory only entered an appearance in ADM 19 over a year later on 24 October 2023.

73 Second, Mr Nikolaos Grigoriou himself deposed (on behalf of Savory as its Chief Operating Officer) that Savory had been made aware of HC/ADM 39/2022 ("ADM 39") as early as July 2022.[36] For context, ADM 39 was a separate action by Seven Seas Maritime Services (Singapore) Pte. Ltd. against the Vessel for unpaid goods and materials supplied to it. At the time Savory came to learn of ADM 39 in July 2022, Savory must have regarded the Charterparty as having come to an end some three months prior. Savory must also have known that Ceto was defending ADM 39 as the Vessel's demise charterer. In those circumstances, Savory ought to have promptly entered an appearance in ADM 39 as the owner of the Vessel. Savory only did so on 27 October 2023.

74 Third, it was also Mr Grigoriou's evidence that Savory only came to learn of ADM 26 on or about 7 October 2023.[37] Even if I had accepted that averment at face value, Ceto could not have been entirely at fault for its

---

36 NG at [27].

37 NG at [28].

involvement in ADM 26 because Savory – having failed to appear in both ADM 19 and ADM 39 until October 2023 – never communicated its intention to defend *in rem* claims against the Vessel *qua* shipowner despite having known from 18 August 2022 (if not earlier) that the Vessel was under arrest. Again, had Savory done so, Meck and Ceto would likely have been spared of their efforts in ADM 26.

75 Overall, I took the view that Savory's dilatory conduct was not entirely reasonable, and that it resulted in costs and judicial resources having been unnecessarily incurred and put to waste. I therefore did not think that Savory should have been awarded costs at the levels ordered by the AR below. In my view, it was appropriate that Savory should be deprived of a substantial amount of costs it would otherwise have been entitled to following the AR's decision in SUM 3438.

76 I thus partially reversed the AR's order on costs and instead ordered that:

(a) Meck was to pay Savory $3,000.00 (all-in) as costs below; and

(b) Ceto was to pay Savory $2,000.00 (all-in) as costs below.

77 Save as aforesaid, both the appeals were dismissed.

**Conclusion**

78 Bearing in mind the limited extent to which the appeals were allowed, I fixed costs of the appeals in the amounts of $5,000.00 (all-in) for RA 1 and $3,000.00 (all-in) for RA 2, to be paid by Meck and Ceto respectively to Savory.

S Mohan
Judge of the High Court

Subashini d/o Narayanasamy and Yogarajah Yoga Sharmini (Haridass Ho & Partners) for the claimant;
Govintharasah s/o Ramanathan (Gurbani & Co LLC) for the first defendant;
Tan Jet Wah Derek (Stoa Law Corporation) for the second defendant.