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Ship Arrest in Singapore: Singapore High Court decides that a “floating fish farm” amounts to a ship for the purposes of invoking the Court’s Admiralty Jurisdiction

Introduction

What is a Ship? The question may seem quite seemingly straightforward but it doesn’t necessarily have an easy answer. That is why courts of different jurisdictions have grappled with interpreting the meaning of a “ship” for the purposes of specific maritime legislations in effect in those jurisdictions time and time again.

Singapore, being one of the busiest maritime jurisdictions in the world, is no stranger to these issues. In this client update, our shipping lawyers aim to examine a recent judgment of the Singapore High Court that dealt with this issue.

In the recent case of Vallianz Shipbuilding & Engineering Pte Ltd v Owner of the vessel “ECO SPARK,” [2023] SGHC 353, the High Court of Singapore was asked to decide whether a floating fish farm is deemed a “ship” for the purposes of section 2 of the High Court (Admiralty Jurisdiction) Act (“HCAJA”).

Under Section 2 of the HCAJA, a “ship” is defined as: including any description of vessel used in navigation. However, “Vessel” is not defined in the HCAJA. Instead, the definition of the word “Vessel” can be found in Section 2 of the Interpretation Act 1965 (2020 Rev Ed) (the “Interpretation Act”), which provides that: “vessel” includes floating craft of every description.

Background and Facts

The Plaintiff, Vallianz Shipbuilding & Engineering Pte Ltd (“Vallianz”) was engaged in the business of building and repairing of ships, tankers and other ocean-going vessels, including the conversion of ships into off-shore structures.

The Defendant, Aquaculture Centre of Excellence (“ACE”) ACE was engaged in the business of operating fish hatcheries and fishfarms in Singapore. ACE purchased “WINBUILD 73” on 15 January 2021, which was a barge situated in a shipyard in Batam, Indonesia (“the Shipyard”).

Vallianz and ACE entered into an agreement (the “Contract”) to convert the Vessel at the shipyard into a “Special Service Floating Fish Farm”, to be named the “ECO SPARK” (the “Vessel”).

Following the delivery of the Vessel, disputes between the parties arose in relation to payment under the Contract. Vallianz commenced in rem proceedings and arrested the Vessel.

The key issue in question was whether the Vessel fell within the definition of “ship”, such that the court’s admiralty jurisdiction under section 2 of the HCAJA can be validly invoked against the Vessel.

The Court’s Decision

The Court in that case decision held that the ECO SPARK was in fact a ship, for the purposes of invoking the court’s admiralty jurisdiction under the HCAJA.

The Court observed “any attempt at deriving a concrete and neatly demarcated definition of a “ship” or vessel “used in navigation” is likely to be a contrived and futile exercise”. The Court held that the inquiry should be multi-factorial” and various factors that ought to be considered in assessing whether a vessel is a ship includes:

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

- b. Its design and capability of being used in navigation (with related factors including the degree of the vessel's stability, unwieldiness and stationariness);
- c. Its previous use;
- d. Its classification and certification; and
- e. Its registration and flag

In reaching the conclusion that the ECO SPARK was in fact a ship, the Court considering the following relevant facts:

1. The Vessel was previously used as a barge and was capable of being used in navigation before any conversion works began.
2. Even though the "Special Service Floating Fish Farm" was built on top of the existing structure of the Vessel, the basic design and structure of the Vessel remained unchanged and the Vessel remains change of navigation.
3. The Vessel was not rendered incapable of navigation by reason of being spudded down into the seabed as the spuds were removable and retractable such that the Vessel was not permanently stationary.
4. When the Vessel was undergoing her voyage under tow from Indonesia to Singapore, she was classed with the ship classification society Bureau Veritas and flew the Singapore flag.
5. The parties intended and were aware that the Vessel would be classed and that her class was maintained with Bureau Veritas in the course of her usage as a floating fish farm as a special service ship.

Key Takeaways

This is the first Singapore case authority that establishes a framework that can be used to assess whether a vessel is a "ship" under the HCAJA. It is interesting to note that a layman's understanding of what a "ship" may differ from the definition of a "ship" in the context of the HCAJA. Importantly, the multi-factorial inquiry adopted by the Court should centre around the capability of the vessel to be used in navigation. This also means that the actual use of the vessel, though potentially relevant to the inquiry, may not be determinative of the issue of whether the vessel is a "ship" under the HCAJA.

It is also important to note that although the

physical characteristics of a vessel that aid in navigability is relevant to the inquiry, such characteristics may not be determinative and a vessel lacking in these characteristics may still be a "ship" under the HCAJA.

Lastly, parties ought to be cautious that the framework used to assess whether a vessel is a "ship" under the HCAJA probably may not be applied in other legal contexts such as marine insurance.

This update was authored by our Partner and Head of Shipping Prakaash Silvam who is an Accredited Specialist in Maritime & Shipping Law, Senior Associate Ng Guang Yi, and Foreign Lawyer Vedanta Vishwakarma. The authors thank Brandon Lim from the University of Cambridge for assisting with the article.

Oon & Bazul LLP are regularly instructed in arrests and maritime claims against vessels. Where vessels cannot be arrested in Singapore, the team works closely with foreign lawyers to effect arrests in the most advantageous jurisdictions. The firm represents both local and international clients including international financial institutions, charterers, shipowners, bunker suppliers and P&I Clubs

Please do not hesitate to get in touch with the author directly should you have any queries.



[Prakaash Silvam](#) 

Partner

prakaash@oonbazul.com

DID + 65 6704 5390



[Ng Guang Yi](#) 

Senior Associate

guangyi@oonbazul.com



[Vedanta Vishwakarma](#) 

Foreign Lawyer

vedanta@oonbazul.com

www.oonbazul.com 

Oon & Bazul LLP
36 Robinson Road
#08-01/06 City House
Singapore 068877
Tel (65) 6223 3893
Fax (65) 6223 6491

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