

Case Comment

DEFINING THE ELEPHANT IN THE ROOM ... WHAT MAKES A FLOATING CRAFT A “SHIP”

Vallianz Shipbuilding & Engineering Pte Ltd v Owner of the vessel “ECO SPARK” [2023] SGHC 353

[2024] SAL Prac 13

What makes a vessel a “ship” for the purposes of invoking the High Court’s admiralty jurisdiction? This deceptively simple question, which finds no clear answer in the wealth of jurisprudence amongst the courts in the Commonwealth, is finally addressed comprehensively for the first time by the Singapore High Court. This case comment explores the decision and implications of the recent decision by the Singapore High Court as to the factors to be considered in determining whether a vessel is a “ship” for the purposes of invoking the High Court’s admiralty jurisdiction.

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I. Introduction

1 While there is considerable case law across various jurisdictions on what constitutes a “ship”, a clear and consistent answer to the question of what constitutes a ship for the purposes of validly invoking the court’s admiralty jurisdiction had long remained elusive.

2 This issue arose for the first time in Singapore before the High Court in *Vallianz Shipbuilding & Engineering Pte Ltd v Owner of the vessel “ECO SPARK”*¹ (“*The Eco Spark*”). The Singapore High Court, after undertaking a detailed review of prior case law across various jurisdictions and noting the lack of a consistent approach and factors taken into consideration, set out a multi-factorial approach in determining whether a vessel is a “ship” for the purposes of invoking the court’s admiralty jurisdiction.

II. **The Eco Spark**

A. **The facts**

3 The claimant, Vallianz Shipbuilding & Engineering Pte Ltd (“VSE”), was the ship contractor which converted the barge in question, the “ECO SPARK” (the “Vessel”), into a special purpose floating fish farm. The defendant, Aquaculture Centre of Excellence Pte Ltd (“ACE”), is the owner of the Vessel.

4 In January 2021, VSE and ACE (collectively, the “Parties”) entered into a contract (the “Contract”) to convert a barge owned by ACE (the “WINDBUILD 73”) into a “Special Service Floating Fish Farm”, which was to be named the “ECO SPARK”, with the work to be done at a shipyard situated in Batam, Indonesia. The Parties agreed that the Vessel was to be delivered to a specific site in Singapore by 18 May 2021. The Contract also contained a dispute resolution clause providing for arbitration under the Singapore Chamber of Maritime Arbitration.

5 In June 2021, the Parties entered into Addendum No 1 to the Contract, for the purposes of revising the delivery date to 30 September 2021, in light of various delays by ACE in supplying the construction drawings for the conversion of the barge and supplying equipment to be installed on the Vessel.

6 VSE tendered the Notice of Readiness with respect to the Vessel on 14 February 2022. The Vessel was then launched later

1 [2023] SGHC 353.

in February 2022 in Batam, Indonesia, and subsequently towed to Singapore by an ocean tug for physical delivery to ACE.

7 Disputes subsequently arose as to the sums payable under the Contract between the Parties, as amended by Addendum No 1.

8 On 14 March 2023, VSE filed an *in rem* claim against the Vessel in HC/ADM 20/2023 (“ADM 20”) and obtained a warrant of arrest in aid of arbitration against the Vessel in HC/WA 6/2023 (“WA 6”). The Vessel was arrested on the same day.

9 ACE filed its Notice of Intention to Contest on 27 March 2023 and filed a summons in HC/SUM 1070/2024 (“SUM 1070”) seeking, *inter alia*, that:

- (a) the claim in ADM 20 be struck out and set aside;
- (b) the warrant of arrest against the Vessel be set aside;
- (c) VSE be ordered to release the vessel;
- (d) VSE pay damages to ACE for wrongful arrest and detention of the vessel; and
- (e) proceedings in the action be stayed pursuant to s 6 of the International Arbitration Act 1994.²

10 ACE took the position that the Vessel was not a “ship” within the meaning of s 2 of the High Court (Admiralty Jurisdiction) Act 1961³ (“HCAJA”), such that the requirements for invoking the court’s admiralty jurisdiction *in rem* against the Vessel under s 4(4) of the HCAJA were not satisfied. This was contested by VSE and the issue before the court was whether the court’s admiralty jurisdiction was properly and validly invoked under the HCAJA; in particular, whether the Vessel is a “ship” under s 2 of the HCAJA.

2 2020 Rev Ed.

3 2020 Rev Ed.

B. Factors to be considered in determining whether vessel is a “ship” under s 2 of HCAJA

11 The High Court first noted the definition of a “ship” under s 2 of the HCAJA, being that a “‘ship’ includes any description of vessel used in navigation”.⁴

12 The High Court further noted that while “vessel” was not defined under the HCAJA, s 2 of the Interpretation Act 1965⁵ provided that a “‘vessel’ includes floating craft of every description”.

13 As such, as a starting point, the High Court noted that a “ship” under s 2 of the HCAJA included a “floating craft of every description”.

14 The Singapore High Court then proceeded to undertake a thorough review of the relevant local case law, as well as the jurisprudence from the Commonwealth countries, namely, England, Australia, Canada and Ireland.

15 After reviewing the case law in the aforementioned jurisdictions, the Singapore High Court found that “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”, due to the contradictions and inconsistencies in the jurisprudence from the Commonwealth countries.⁶

16 The Singapore High Court held that the correct approach to the issue would necessarily have to be a “multi-factorial” one.⁷

17 The High Court held that determining whether a vessel was a “ship” for the purposes of invoking the court’s admiralty jurisdiction entails a box-ticking exercise. The greater the

4 High Court (Admiralty Jurisdiction) Act 1961 (2020 Rev Ed) s 2.

5 2020 Rev Ed.

6 *Vallianz Shipbuilding & Engineering Pte Ltd v Owner of the vessel “ECO SPARK”* [2023] SGHC 353 at [68].

7 *Vallianz Shipbuilding & Engineering Pte Ltd v Owner of the vessel “ECO SPARK”* [2023] SGHC 353 at [69].

number of boxes a vessel can check (*ie*, the more characteristics of a ship that a vessel possesses), the more likely it is to be found a “ship”. However, the converse was not necessarily true, in that the failure to tick *some* of such boxes did not necessarily disqualify the vessel from constituting a “ship”.

18 The High Court held that a vessel must, at an “irreducible minimum”,⁸ have the *capability* to be used in navigation as a matter of its physical design and construction, which is to say that the vessel must be navigable and built to withstand the perils of the sea, regardless of its actual current use. The High Court found that this was a significant factor in determining whether a vessel was a “ship” under s 2 of the HCAJA, due to the fact that whether a vessel is navigable is what gives rise to the risk of the vessel having the ability to remove itself from a jurisdiction in the first place, which is the very reason why a claimant would want to invoke the court’s admiralty jurisdiction to arrest the vessel.

19 Beyond the aforementioned factor, which the High Court found to be a weighty consideration, the court also set out a list of other factors that were considered in determining the issue.

20 Firstly, the High Court held that a vessel with specific physical characteristics (*ie*, “[t]he 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 are all physical indicia of a ship”)⁹ would more likely than not have the capability to be used in navigation, as these characteristics assist in the vessel’s navigation. However, it was also held that failing to possess such characteristics does not preclude a vessel from being considered a “ship”. Therefore, it remains entirely possible for a vessel without such characteristics to be deemed a “ship”.

8 *Vallianz Shipbuilding & Engineering Pte Ltd v Owner of the vessel “ECO SPARK”* [2023] SGHC 353 at [70].

9 *Vallianz Shipbuilding & Engineering Pte Ltd v Owner of the vessel “ECO SPARK”* [2023] SGHC 353 at [73].

21 Secondly, as mentioned above,¹⁰ the High Court held that the design and capability of a vessel to be used in navigation is a very important factor in determining whether it is a “ship”. Here, the High Court distinguished between a vessel being “used in navigation” and “used for navigation”, with it being sufficient that the vessel had the capability to be “used in navigation” and with there being no need for the vessel to be *currently* used for navigation (as suggested by the phrase “used for navigation”).

22 The High Court also suggested that “navigation” in this context entails the design and capability of the vessel to move or be moved from one place to another.

23 A vessel’s capability to be used in navigation may be assessed by considering various factors, including its stability, unwieldiness, and stationariness.

24 The High Court held that stability here requires considering not only whether the vessel is technically capable of traversing the surface of water, but also whether the vessel is capable of moving across water in a stable manner. Where significant external work and considerable care are needed to ensure the vessel’s stability, or where there exist risks in moving the vessel across the water, or where the movement of the vessel over water is only possible over short distances or in good weather, the vessel will be found to not have the stability to be used in navigation. The High Court further held that the seaworthiness of the vessel is very important to the navigability of the vessel.

25 As to the vessel’s unwieldiness, the High Court held that a larger or more difficult to manoeuvre physical structure would make the vessel less likely to be capable of being used in navigation.

26 As to stationariness, the degree to which a vessel is moored or secured to land and the amount of work which needs to be done to remove the vessel from moorage was also a factor in determining a vessel’s navigability.

10 See para 18 above.

27 The High Court also stated that the past use of a vessel was a relevant consideration to the extent that it suggested the vessel’s capability to be used in navigation, especially where the vessel’s base design and structure had remained unchanged. However, where there have been changes to the vessel’s physical structure or design, it will be necessary to consider what changes were made and whether they rendered the vessel no longer capable of being used in navigation.

28 Thirdly, the court elaborated that the actual or current use of a vessel was not an essential consideration in determining whether it was a “ship”. Similarly, the frequency at which a vessel traversed the surface of water was also not a significant determination of whether it was a “ship”. The court, however, qualified that if the vessel was in fact actually or currently traversing the surface of water, this would be a strong factor indicating that the vessel was being used in navigation. The converse, however, would not be determinative.

29 The High Court further held that the extent of actual movement of a vessel is not a particularly strong factor in determining whether the vessel was actually being used in navigation given the possibility that there are various reasons for a vessel to undertake relatively few voyages. The fact that a vessel undertook few voyages does not change the fact that it is capable of being used in navigation.

30 The High Court also found that whether a vessel was used to convey persons or cargo is not a significant factor in determining whether the vessel is a “ship”.¹¹

31 Fourthly, the court held that that the classification or certification of a vessel as a “ship” is an important consideration to it being a “ship” used in navigation, the reason being that the entity which issued the certification or made the classification had already made a determination of whether the vessel was seaworthy.

11 *Vallianz Shipbuilding & Engineering Pte Ltd v Owner of the vessel “ECO SPARK”* [2023] SGHC 353 at [84].

32 Lastly, the court held that although registration to a flag state does not necessarily determine whether a vessel is a “ship”, it is a factor to be considered in deciding whether it is a “ship” or used in navigation.

C. The decision by the High Court

33 The High Court, in applying the aforesaid multi-factorial approach to the facts, concluded that the Vessel was a “ship” under s 2 of the HCAJA.

34 In reaching this conclusion, the court noted that while the Vessel was a fish farm which lacked the physical attributes of a ship (such as self-propulsion, crew and navigational lights), the lack of such physical factors was not determinative of the issue.

35 The court further noted that the Vessel used to be a steel barge, and that the fish farm was essentially built on top of the barge. That is, the design of the Vessel had remained unchanged. In relation to this, the High Court noted the Vessel’s past use as being relevant to deciding the issue.

36 The High Court noted that the Vessel was previously a Singapore-registered ship, and that it had been previously classified as a “deck barge” by the American Bureau of Shipping and a “pontoon” by the ship classification society Bureau Veritas.

37 The High Court further considered the fact that the Vessel had previously made one voyage from Singapore to the shipyard in Batam, Indonesia, where it was subsequently converted into a “Special Service Floating Farm”; and post-conversion, the Vessel was towed from Batam, Indonesia to Singapore, where it undertook a voyage in open waters across the Singapore Strait without issue. The court found that this was evidence of the Vessel’s stability, seaworthiness, and capability of being used in navigation.

38 The High Court also took into account that the Vessel, in its voyage back to Singapore, engaged in various activities

that were usually associated with seagoing vessels. First, it was noted that before the Vessel arrived in Singapore, the Vessel’s local agents declared her arrival in Marinet, the port authority’s electronic ship information database. Further, the court noted that it was likely that the Vessel, prior to its arrival in Singapore, had to obtain port clearance from the port authorities.

39 The High Court found the fact that the Vessel’s spuds were lowered and embedded four to six metres into the seabed upon its arrival in Singapore, did not render the Vessel no longer capable of navigation. The court, in considering the degree of the Vessel’s stationariness, noted that the Vessel’s spuds were removable and retractable, such that the Vessel was not permanently stationary. Further, the court noted that ACE had previously been able to move other similar floating fish farms from one site to another by de-spudding them. The court further considered that the licence from the Singapore Food Agency allowing the Vessel to operate as a fish farm had set out as a condition that the Vessel may be required to be moved from its current position.

40 The court then considered that the ship classification society Bureau Veritas had certified the Vessel as a “ship” in the towage approval certificate, for its voyage from Batam, Indonesia to Singapore.

41 The court also considered that whilst the Vessel was subsequently de-registered from the Singapore ship registry on or about 14 March 2023 and was not subsequently registered with any flag state nor classed with any classification society, the Vessel had previously been certified by a classification society (Bureau Veritas) as being a “ship” which was capable of “unrestricted navigation” in relation to the Vessel’s towage from Batam, Indonesia to Singapore. These certificates had also confirmed that the Vessel remained under the Singapore flag as at the date of issue of the certificates.

42 It was further noted by the court that the Contract between the Parties contemplated that the Vessel would be converted in accordance with Singapore flag requirements and the class requirements of Bureau Veritas.

43 The court further considered the fact that, as per communications with the Maritime and Port Authority of Singapore (“MPA”), there was evidence that it was expected that the Vessel would comply with the class requirements of Bureau Veritas not only during the voyage from Batam, Indonesia to Singapore but also throughout the Vessel’s lifespan as a floating fish farm. This indicated that the Vessel remained subject to class requirements and MPA’s regulatory purview while being used as a floating fish farm.

44 Based on the aforesaid factors, the High Court concluded that, notwithstanding that the Vessel lacked a number of the “usual attributes” of a ship,¹² the Vessel was a ship for the purposes of s 2 of the HCAJA. As such, the court dismissed ACE’s application to set aside and/or strike out ADM 20 and its application to set aside WA 6 and the arrest of the Vessel.

III. Commentary

45 The High Court’s decision has provided much needed clarity to this basic and fundamental question of what makes a vessel a “ship” for the purposes of invoking the court’s admiralty jurisdiction. The High Court’s multi-factorial approach or box-ticking exercise provides a mechanism for admiralty practitioners to better determine what structures or vessels amount to a “ship” when invoking the High Court’s admiralty jurisdiction under the HCAJA. The decision also provided much clarity on the factors to be taken into account in determining this issue.

46 In addition, the High Court held that a vessel must at an “irreducible minimum”¹³ have the *capability* to be used in navigation as a matter of physical design and construction. That is, the vessel must be navigable and built to withstand the perils of the sea, regardless of its actual current use. The High Court further clarified that the actual current use of the

12 *Vallianz Shipbuilding & Engineering Pte Ltd v Owner of the vessel “ECO SPARK”* [2023] SGHC 353 at [109].

13 *Vallianz Shipbuilding & Engineering Pte Ltd v Owner of the vessel “ECO SPARK”* [2023] SGHC 353 at [70].

vessel in traversing the surface of the water and frequency thereof, are not essential or significant factors to be taken into account in determining whether it is a “ship”. This has no doubt provided much needed clarity in the midst of the confusion and inconsistencies in the jurisprudence from the Commonwealth countries.

47 It is now clear that the fact that a vessel may lack some of the physical attributes of a ship (*ie*, not having a rudder, crew, the ability to self-propel, ballast tanks, *etc*) or that her actual current use does not entail being used in navigation or traversing the surface of water, is not a bar to a court finding that such a structure is a ship which may be arrested as part of the court’s exercise of its admiralty jurisdiction. Rather, what is fundamental is the design and construction of its structure, and its capability in terms of being used in navigation. The upshot of this is that structures which are not traditionally thought of as ships or are in the grey area or are no longer being used as a ship in the traditional sense, may be arrested if the considerations under the multi-factorial approach or box-ticking exercise are satisfied.

48 The High Court’s multi-factorial approach or box-ticking exercise in determining what constitutes a “ship” under s 2 of the of the HCAJA represents a flexible and practical approach to the issue and is particularly appropriate in this day and age where there are vessels which are capable of being used in navigation, even while not having the conventional physical characteristics of a ship.

49 The High Court, in eschewing a more traditional or rigid approach to what constitutes a “ship”, has in effect ensured that a claimant’s ability to invoke the court’s admiralty jurisdiction to arrest a vessel is not rendered otiose, particularly as we see more and more unconventional structures which are capable of being used in navigation, or vessels which were converted to something else for other purposes. These may include special purpose structures or vessels like floating fish farms, floating production storage and offloading units, floating rigs, barge rigs,

jack-up rigs and so forth, where they still retain the capability of being used in navigation.

50 It should be noted that this multi-factorial approach or box-ticking exercise does not remove all ambiguities as it is still uncertain how many boxes have to be ticked to cross the threshold to determinatively say that such a structure is a “ship”. That said, however, this ambiguity perhaps provides flexibility to the court to determine based on the peculiar facts of each particular case to make such a decision in its discretion.

51 The High Court’s decision in *The Eco Spark* has defined the elephant in the room. Admiralty practitioners now have a definitive mechanism, *ie*, to use the multi-factorial approach or box-ticking exercise to determine if a vessel or structure is a “ship” within the meaning of the HCAJA. There is no doubt that this landmark case will be referred to in future cases and lead to further developments in the law to refine this multi-factorial approach enunciated by the court.