IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 93

Admiralty in Rem No 113 of 2014

Admiralty action in Rem against the ship or vessel "TIAN E ZUO"

Between

(1) **MT "ARCTIC BRIDGE" TANKSCHIEFFAHRTSGE SELLSCHAFT mbH & CO KG**
(2) **ARCTIC BRIDGE SHIPPING LIMITED**

… *Plaintiffs*

And

THE OWNERS AND/OR THE DEMISE CHARTERERS OF AND/OR OTHER PERSONS INTERESTED IN THE SHIP OR VESSEL "TIAN E ZUO"

… *Defendant*

JUDGMENT

[Admiralty and shipping] — [Collision] — [Regulations]

TABLE OF CONTENTS

INTRODUCTION **1**

BACKGROUND FACTS LEADING TO THE DISPUTE **3**

THE VESSELS AND HER CREW 3

RELATIVE POSITION OF THE VESSELS PRIOR TO 0247 HOURS 4

WEATHER AND TIDE CONDITIONS 5

FACTUAL NARRATIVE 7

PRELIMINARY EVIDENTIARY MATTERS **11**

EXPERT OPINION 11

Divergence in expert opinion *11*

An expert's involvement in the casualty investigations *12*

THE AVENCA VIDEO 13

OTHER PRELIMINARY MATTERS **15**

ARGUMENTS ON PLEADINGS 15

THE PLAINTIFFS' RELIANCE ON THE "BUT FOR" TEST **19**

FAULTS OF THE ARCTIC BRIDGE **27**

AGONY OF THE MOMENT AS A DEFENCE 63

FAULTS OF THE TIAN E ZUO **65**

CAUSATIVE POTENCY AND APPORTIONMENT OF LIABILITY **80**

CONCLUSION **83**

ANNEX **85**

Version No 3: 27 Oct 2020 (22:41 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

The "Tian E Zuo"

[2018] SGHC 93

High Court — Admiralty in Rem No 113 of 2014
Belinda Ang Saw Ean J
16 – 19, 23 – 24 May, 6 – 7, 12 July 2017; 27 October 2017

20 April 2018 Judgment reserved.

Belinda Ang Saw Ean J:

Introduction

1 This action arose out of two related collisions on 12 June 2014: (a) the plaintiffs' vessel, the *Arctic Bridge* of the port of Malta and the *Stena Provence* of the port of Bermuda; and (b) the defendant's vessel, the *Tian E Zuo* of the port of Hong Kong and the *Stena Provence*. As a result of the related collisions, the three named vessels sustained hull damage to varying extent. The plaintiffs and the defendant settled with the *Stena Provence* having accepted between themselves that the *Stena Provence*, a vessel at anchor, was not at fault at all for the related collisions. In the settlement, both the plaintiffs and the defendant assumed equal responsibility for the damage sustained by the *Stena Provence*. Notably, the settlement was without prejudice to the parties' right to be indemnified by the other in respect of the claims by the *Stena Provence*. In this action, the plaintiffs contend that the defendant is wholly to blame for the related collisions whereas the defendant by counterclaim argues that the plaintiffs are responsible for the related collisions and must bear 100% blame.

2 The series of events culminating in the related collisions that occurred in Singapore waters, in the Western Petroleum Anchorage B, may be described as most unusual. The detailed facts will be narrated in due course. It suffices to say for now that, factually, the *Arctic Bridge* was a vessel underway when her port anchor or anchor chain entangled the port anchor or anchor chain of the *Tian E Zuo,* which was a vessel at anchor. The entanglement started an involuntary towage of the *Tian E Zuo* that culminated in the related collisions. The defendant contends that the involuntary towage effectively propelled the *Tian E Zuo* into contacting the *Stena Provence* twice. This judgment will discuss whether there were serious faults in respect of each vessel. In terms of causative potency and blameworthiness, is one party wholly to blame or is one party by far the most at fault. The plaintiffs' case is founded on the negligence of the *Tian E Zuo* in permitting the vessel to drag her anchor initially and that the earlier anchor drag triggered a chain of events that culminated (about one hour 20 minutes later) in the *Arctic Bridge*'s involvement in the related collisions. The plaintiffs' reliance on the "but for" test focuses on earlier events and that test will be examined in the light of their argument that there was no break in the chain of events, seeing that the *Arctic Bridge* was forced to move away from her safely anchored position and had to dredge her port anchor because of the *Tian E Zuo*. If the court finds that there were faults on the part of the *Arctic Bridge*, the plaintiffs will rely on the defence of agony of the moment. Whether it applies to the two occasions identified by the plaintiffs' expert witness will be examined. If the court, on the evidence, is unable to determine the extent of the parties' blameworthiness, then liability would be apportioned equally under section 1(1) of the Maritime Conventions Act 1911, (Cap IA3, 2004 Rev Ed) ("Maritime Conventions Act").

3 All time references in this judgment are to Singapore local time (UTC

Version No 3: 27 Oct 2020 (22:41 hrs)

+8). I note that the time points used in the various sources for the occurrence of certain events appear to differ between the parties. However, nothing turns on the differences since the exact timing of the occurrences are immaterial to the outcome of this action.

Background facts leading to the dispute

The vessels and her crew

4 As stated, the related collisions involved first the *Stena Provence* and the *Tian E Zuo*, and second the *Stena Provence* and the *Arctic Bridge*. Prior to the related collisions, there was an earlier collision that involved the *Tian E Zuo*, the *Marine Liberty* and the *DL Navig8*. This earlier collision is not placed before this court as an issue for determination in the present case. The *Marine Liberty* is a bunker barge that was supplying bunkers to the *Tian E Zuo* at the material time. The *Marine Liberty* was still securely moored to the *Tian E Zuo* when the latter's anchor dragged in the prevailing squall. The two vessels drifted into close proximity with the *DL Navig8*, an oil tanker with a gross tonnage of 30,964 tonnes, breadth of 32.23 metres and an overall length of 189 metres. At 0308 hours the *Marine Liberty* collided with the *DL Navig8*. Subsequently, at about 0314 hours, the *Tian E Zuo* collided with the *DL Navig8*. As a result, these three vessels became hampered by the presence of each other in a way that prevented them from unilaterally manoeuvring to clear and break free. This predicament was the state of affairs that existed from 0330 hours until sometime between 0402 and 0406 hours. The *Marine Liberty* was freed at about 0402 hours. It is not clear precisely when the *DL Navig8* could safely move away from the *Tian E Zuo*. It could have been any time from 0402 hours to 0406 hours.

5 The *Arctic Bridge* is a Korean built chemical/oil tanker, constructed in 2005. She has a gross tonnage of 30,053 tonnes, a breadth of 32.2 metres, and

Version No 3: 27 Oct 2020 (22:41 hrs)

an overall length of 183 metres. She is also equipped with a bow thruster of power 950 kW. She was partly loaded with 19,543 tonnes of gasoline at the material time. Two members of her crew testified at the trial. They are: the master of the *Arctic Bridge*, Captain Erik Khuzhin ("Captain Khuzhin"), and the chief officer, Alexander Ignatyuk.

6 The *Tian E Zuo* is a newer and larger Chinese built chemical/oil tanker. She was constructed in 2012, has a gross tonnage of 43,718 tonnes, breadth of 32.26 metres, and an overall length of 228.6 metres. She was loaded with 56,114.984 tonnes of naphtha at the material time. Four members of her crew testified at the trial. They are: (a) the master of the *Tian E Zuo*, Captain Zou Zhizi ("Captain Zou"), (b) Wu Binggao who was the chief officer, (c) Liu Bo the second officer, and (d) Zhang Guangyan ("Zhang"), an able-bodied seaman.

Relative position of the vessels prior to 0247 hours

7 All the vessels mentioned earlier were in the Western Petroleum B Anchorage at the time the *Tian E Zuo* dragged her anchor. The movement of vessels in the anchorage falls under the oversight of West Control of the Maritime and Port Authority of Singapore ("West Control"). It is not disputed that the anchorage was congested at the material time. The *Tian E Zuo* was anchored by a single port anchor, six shackles deep. She had a north-westerly heading. The *Marine Liberty* was made fast to her starboard side. To the north of the *Tian E Zuo* was the anchored vessel, the *Kingfisher*, to the east was the *DL Navig8* and slightly further out north-east was the *Arctic Bridge*.

8 The plot in Annex 1 depicts the relative locations of the six vessels (including the *Kingfisher* and the *Stena Provence*) on 12 June 2014 at 0239

Version No 3: 27 Oct 2020 (22:41 hrs)

hours.[1] This plot was produced by the defendant's expert, Mr Hakirat Singh s/o Harnek Singh ("Mr Singh"), using Automatic Identification System ("AIS") data. For context, an AIS is a device that transmits information regarding a ship's position to a network to allow maritime authorities to track and monitor vessel movements. I have also included other plots (also from Mr Singh's report) illustrating the position of the vessels at different time periods in this judgment as a graphical reference. These other plots were drawn up with information from the Voyage Data Recorders on board the *Arctic Bridge*, the *Tian E Zuo* and the *Stena Provence*.[2] These Voyage Data Recorders store, in a secure and retrievable form, information regarding the movement and control of a ship over the period leading up to and following an incident ("VDR"). While these plots are useful, I am mindful of what I have said in *The "Dream Star"* [2018] 4 SLR 473 at [13] ("*The Dream Star*"); that they show what might have happened, not what did happen. The same comments equally apply to the defendant's video which is supposedly a video replay compilation using extracted VDR data from the VDRs of the *Arctic Bridge* and the *Tian E Zuo*. I will elaborate on this video below.

Weather and tide conditions

9 At 0245 hours, in the light of a developing squall, West Control broadcasted a warning to all ships announcing that "the area [was] experiencing strong winds [, and advised] all vessels … to keep a good anchor watch".[3] Both experts agreed that the sea was slight to rough after the onset of the squall.

---

1 DBAEIC Vol II, para 3.2.6 (HS's Report).

2 DBAEIC Vol II, Tab 1, paras 3.5.2.7, 3.5.3.8 & 3.5.4.4 (HS's Report).

3 DBAEIC Vol IV, Tab B1, p 160 (HS's Report).

Version No 3: 27 Oct 2020 (22:41 hrs)

10 According to the defendant's Preliminary Act, the squall lasted from 0245 hours to 0320 hours. While there was a squall, visibility was moderate. Those on board the *Arctic Bridge* and the *Tian E Zuo* were able to visually see each other for the most part of the entire incident. While Captain Khuzhin claimed that visibility was reduced to a mile, he could nonetheless visually observe that the stern of the *Tian E Zuo* had collided with the bow of the *DL Navig8* and that both vessels were dragging astern together. He also was able to see that at about 0330 hours, the *Tian E Zuo* had stopped dragging astern with the *DL Navig8* but the *Tian E Zuo's* bow started to turn starboard towards the *Arctic Bridge*. Captain Khuzhin estimated the distance between his vessel and the *Tian E Zuo* to be about 70 metres. However, Mr Singh has calculated the distance to be 95 metres based on VDR data.

11 Both experts agreed that the tidal steam direction was towards 119° true with a rate ranging 1.25 knots to 1.62 knots between 0245 hours and 0430 hours. While there was initially some dispute over the prevailing wind direction at the material time, I have accepted the prevailing wind direction to be, generally, westerly to south-westerly after 0246 hours. This was the direction stated by the experts in their joint statement.

12 As stated, the *Tian E Zuo* dragged her anchor in the early morning of 12 June 2014 during a squall. The plaintiffs' expert witness, Captain Jonathan Mark Walker ("Captain Walker") in his supplemental report depicted Captain Khuzhin taking navigational decisions "in a situation where it was dark, heavy rain, strong winds and in a very congested anchorage with another vessel nearby dragging its anchor and colliding".[4] He appeared to suggest that these same

---

4 PBAEIC Vol I, Tab D, para 2.15.2 (HS's Report).

Version No 3: 27 Oct 2020 (22:41 hrs)

conditions prevailed even at 0337 hours, after the squall ended. Captain Walker's description of the conditions, however, is inconsistent with the other evidence before the court. In his earlier report, Captain Walker said that the winds had abated to a fresh breeze at 0337 hours. Further, the plaintiffs' Preliminary Act records the visibility as moderate and Captain Khuzhin himself said that he could observe other vessels a mile out prior to 0337 hours.

Factual narrative

13 The *Tian E Zuo* started to drag her port anchor at about 0247 hours. Along with the *Marine Liberty* secured by mooring lines to her starboard side, the *Tian E Zuo* moved astern in the direction of the *DL Navig8*. At about 0300 hours, the *Tian E Zuo*'s engines were set at dead slow ahead followed by slow ahead in an attempt to stop her astern movement. However, at about 0308 hours, the *Marine Liberty* collided into the *DL Navig8* and thereafter, at about 0314 hours, the *Tian E Zuo* contacted the *DL Navig8*. The *Tian E Zuo*'s engines stopped around the time of her contact with the *DL Navig8*. From the communication between the respective vessels and West Control, it is apparent that the three vessels could not unilaterally move apart – their respective mooring line(s) and anchor chain(s) had either become entangled or could become entangled as the vessels were too close to each other. The *Tian E Zuo*'s stern on the starboard quarter was close to the *DL Navig8*'s bow. The *Tian E Zuo* could not use her engines to move away for fear of entanglement as her propeller was too close to the anchor chain of the *DL Navig8*.

14 As the *Tian E Zuo*, together with the *Marine Liberty* and the *DL Navig8*, continued to drift across the anchorage, the *Tian E Zuo*, at about 0320 hours, dropped her starboard anchor. However, despite both anchors being in the water, the three vessels continued to drift together towards the *Arctic Bridge*. At

Version No 3: 27 Oct 2020 (22:41 hrs)

0330 hours, the drifting ceased and the three vessels came to a stop.

15 The *Arctic Bridge* had already noticed these three vessels drawing near and was making preparations to move away. At 0317 hours to 0320 hours, Captain Khuzhin ordered the chief officer to get the engines ready. At 0325 hours, the order to heave the *Arctic Bridge*'s port anchor was given and the order was carried out at 0329 hours. Eventually, this activity at the port anchor was abandoned as it was not possible to recover the remainder of the anchor chain in sufficient time and approximately three shackles of anchor cable remained in the water. At 0329 hours, her engines were ready. According to Captain Walker, just after 0331 hours, the engines were set to dead slow ahead. By 0333 hours, the *Arctic Bridge* was said to be "moving clear" of the *Tian E Zuo*.[5] During the conversation with West Control (starting at 0334 hours), the *Arctic Bridge* confirmed to West Control that she would be able to shift north-west to another location to anchor.

16 It is useful to set out the Very High Frequency ("VHF") conversation between West Control and the *Arctic Bridge*:[6]

> West Control: ARCTIC BRIDGE currently you are too near to two vessels are you able to shift. Because these vessels are unable to move. Could you please shift?
>
> Arctic Bridge: Yes we are trying engines started and we working with the engine and trying to move our back.
>
> West Control: If able to could you move further north Sir. There is space uh north, northerly of your position Sir. Or if you want to shift westerly also can Sir.
>
> Arctic Bridge: Yes we can heave anchor and move to North West uh where there is a small place for our vessel.

---

5 PBAEIC Vol I, Tab C, para 5.3.4 (JW's Report).

6 DBAEIC Vol IV, Tab B2, pp 271–272.

Version No 3: 27 Oct 2020 (22:41 hrs)

> West Control: Ok Sir are you confident to shift? … ARCTIC BRIDGE are you confident to shift by your self?
>
> Arctic Bridge: …where to move…[inaudible]…
>
> Arctic Bridge: Please repeat where to move my vessel.
>
> West Control: ARCTIC BRIDGE are you able to shift by your self Sir?
>
> Arctic Bridge: Yes, Sir we can move [inaudible]. Now we heaving up anchor … [inaudible].
>
> Arctic Bridge: Yes Sir we can move by our self. Now we heaving up anchor.
>
> West Control: Roger roger, thank you.

17 The *Arctic Bridge* was to pass north of an anchored vessel, the *Kingfisher* and proceed north-west. However, the *Arctic Bridge* was not able to do so and moved instead towards the *Kingfisher*. In order to avoid a collision with the *Kingfisher*, Captain Khuzhin said that at about 0337 hours, he ordered slow ahead on the engines and hard to port on the helm. According to the plaintiffs, as the *Arctic Bridge* turned to port, her bow went through the wind and the tidal stream. With her movement somewhat hampered by the action of the dredging port anchor, the *Arctic Bridge* was set towards the *Tian E Zuo* in a south-easterly direction, astern. In going astern, the *Arctic Bridge* crossed the bow of the *Tian E Zuo* at about 0343 hours. Subsequently, at about 0346 hours, the *Arctic Bridge*'s engines were put to slow ahead. Moving ahead, she passed the bow of the *Tian E Zuo* a second time. At about 0349 hours, the *Arctic Bridge* cleared the bow of the *Tian E Zuo*. According to the plaintiffs, the *Arctic Bridge*'s intention was to increase her distance between the *Tian E Zuo,* the *Marine Liberty* and the *DL Navig8*. The plaintiffs also indicated that 0350 hours was the most likely time at which the two vessels' anchors or anchor chains became entangled. The entanglement resulted in the *Tian E Zuo* being towed by the *Arctic Bridge* for about 20 minutes whilst she proceeded north-west from about 0350 hours. Captain Khuzhin's affidavit evidence-in-chief stated that, at

Version No 3: 27 Oct 2020 (22:41 hrs)

about 0408 hours, the *Arctic Bridge* was parallel to the *Stena Provence* at a distance of about 50 metres. At 0410 hours, the bow of the *Tian E Zuo* collided with the port quarter of the *Stena Provence* at a speed of about 3 knots over the ground. The impact caused the bow of the *Stena Provence* to turn to port, towards the *Arctic Bridge*. At about 0411 hours, the port bow of the *Stena Provence* made contact with the *Arctic Bridge*. At the time of the collision, the *Arctic Bridge* was on a heading of about 284°. The *Arctic Bridge* maintained her forward movement, towing the *Tian E Zuo* along after the contact at 0411 hours. As a result, a second collision occurred between the *Tian E Zuo* and the *Stena Provence* at about 0427 hours. The *Arctic Bridge* contend that there was also a second collision between the *Arctic Bridge* and the *Stena Provence*. The defendant do not accept this as the second collision was not pleaded at all.

18 I conclude the summary of the factual narrative with a few observations. First, the entire sequence of events spanned over the course of about one hour 40 minutes, from 0247 hours to 0430 hours, on 12 June 2014. Secondly, although the *Arctic Bridge* was dredging her anchor, she was a vessel underway since 0333 hours. In contrast, the *Tian E Zuo* was a vessel at anchor from 0330 hours up until the time the involuntary towage started at 0350 hours (see [57] below). That the *Tian E Zuo* became a vessel underway during the period of the involuntary towage will be examined below. Finally, while there were events that occurred after 0430 hours, such as the *Arctic Bridge* slipping anchor after the related collisions to move away from the *Tian E Zuo*, these events are not material to the question of fault of the two vessels.

Version No 3: 27 Oct 2020 (22:41 hrs)

Preliminary evidentiary matters

Expert opinion

Divergence in expert opinion

19 Each side called expert evidence on matters of seamanship. The plaintiffs called Captain Walker and, as mentioned, Mr Singh was for the defendant. In urging the court to accept Captain Walker's views, the plaintiffs compared Mr Singh's expertise and experience with that of Captain Walker. Their point is that unlike Mr Singh, Captain Walker is an experienced mariner of 18 years who has had the opportunity to command a ship as a master and that his voice of experience should be given weight.

20 Despite the comparison, the plaintiffs did not object to Mr Singh being expert witness. Put simply, the plaintiffs in accepting Mr Singh as an expert to testify in this case were satisfied that the requirements of section 47(2) of the Evidence Act (Cap 97, 1997 Rev Ed) were met. The sub-section provides that a person is qualified to be an expert if he has "scientific, technical or other specialised knowledge *based on training, study or experience*" [emphasis added]. In Mr Singh's case, he acquired his expertise as a master mariner having undergone a formal course of study in nautical science to attain his qualifications, and experience through practice in the course of his work. In brief, Mr Singh has been a Master Mariner (Singapore, Class 1) since 2000. He received training at Singapore Polytechnic in Nautical Studies, and much later pursued further education and training as an expert witness at Bond Solon Cardiff University. He has also conducted a number of casualty investigations (no less than ten instances). I note, in particular, that for some of these investigations, Mr Singh has had to interpret AIS data; data which he is called upon to interpret in the present dispute.

Version No 3: 27 Oct 2020 (22:41 hrs)

21 The plaintiffs' objections actually relate to how the court resolves conflicting opinions of expert witnesses. One approach is to consider whether the nature of the issue in question falls within the expert's particular area of expertise. Yong CJ in *Tan Mui Teck v Public Prosecutor* [2003] 3 SLR(R) 139 at [11] explained that weight may be assigned to the opinion of an expert where his familiarity with a subject is a relevant (though not sole) consideration. When an opinion on navigation of a vessel following the International Regulations for Preventing Collisions at Sea ("COLREGS") (see the Merchant Shipping (Prevention of Collisions at Sea) Regulations (Cap 179, Rg 10, 1990 Rev Ed), The Schedule) and the dictates of good seamanship is firmly within the realms of navigational judgment, Captain Walker may have an edge over Mr Singh. However, the court will ultimately assess an expert's opinion in the round, taking into account the independence of the expert and the underlying factual matrix of the case. In this case, for the reasons explained below, the differences of opinion of the experts, in most instances, could be resolved without preferring one view over the other. The differences of opinion between the experts did not have any material influence on the outcome of this action.

An expert's involvement in the casualty investigations

22 The plaintiffs submit that little or no weight should be ascribed to Mr Singh's evidence as he had "a clear conflict of interest" in acting as an expert in the proceedings.[7] He was criticised for failing to disclose his prior involvement in conducting casualty investigations on behalf of the defendant. There is no merit in the plaintiffs' assertions. First, Mr Singh did disclose his involvement in the casualty investigations on at least two instances. It is only necessary to

---

7 Plaintiffs' Closing Submissions, para 140.

Version No 3: 27 Oct 2020 (22:41 hrs)

refer to the disclosure in Mr Singh's affidavit dated 1 July 2017 at paragraph 2: "*I was involved in the investigations into the collisions* between the vessels "STENA PROVENCE" and "TIAN E ZUO" and between "STENA PROVENCE" and "ARCTIC BRIDGE"" [emphasis added].[8] Second, unlike the expert in *The Dream Star* (see at [34]), Mr Singh had not improperly supplemented the factual evidence of the crew in his testimony. His evidence was limited to his opinion of the case based on his expertise.

The Avenca video

23 The plaintiffs introduced a video made by Avenca Limited at the trial ("the Avenca video"). This video was prepared by Dr Neil Baines ("Dr Baines") along with the staff at Avenca Limited under his charge. The Avenca video purports to be a video replay compilation using extracted VDR data from the VDRs of the *Arctic Bridge* and the *Tian E Zuo*. The plaintiffs submit that the video was "the best objective and most accurate depiction of what happened" and the objections taken by the defendant in respect of the video were unreasonable.[9] The plaintiffs therefore asked to be awarded all costs connected to the preparation of the video and for bringing Dr Baines to Singapore for the trial.

24 The defendant had identified discrepancies between the video and the VDRs and wished to cross-examine Dr Baines. As it transpired, the defendant's stance on the matter was not unreasonable. At the trial proper, Dr Baines provided, in his supplemental affidavit of evidence-in-chief, additional information which sought to explain the discrepancy in the rudder angles. This

---

8 DBAEIC Vol II, Tab 1, p 4, para 2 (HS's Report).

9 Plaintiffs Closing Submissions, para 17.

Version No 3: 27 Oct 2020 (22:41 hrs)

was also the first matter he addressed in the witness box. He explained that there was incomplete information at the time when the video was made in 2015 and since then, had discovered the additional information contained in his supplementary affidavit:[10]

> … when we put together the original video we could only find at that stage the actual rudder, well, the piece of data that is indicated to be the measured rudder---rudder angle rather than the ordered rudder angle. We *subsequently realised that there was information* in the video data which related to the rudder order demands and those are plotted on page 8---on the graph on page 8. So, the blue line is the same rudder angle that appears in the video and the grey and sort of orangey-brown lines are the *more recent found data*. The point of including it was to illustrate that the rudder angle that was included in the video substantially mimics the other rudder information, but does not appear to have an offset associated with it.
>
> [emphasis added]

25 What was put in the video was only information of the rudder sensor angles and not the rudder orders as well. Instead of remaking the video with both information, Dr Baines explained that one would have to look at the video with the added graph from his supplemental affidavit. The graph shows a 7–8° variance in the rudder angle.

26 Dr Baines also accepted that the information that his company put in the video to produce a reconstruction of the events leading to the related collisions was not based entirely on the VDR data of the *Arctic Bridge* and the *Tian E Zuo* alone. For example, the anchoring circles around the bow of each vessel was not from the VDR data. It was based on information from the instructing lawyers and Dr Baines confirmed that he was in no position to verify the

---

10 Transcript Day 3, p 24, lines 30–31; p 25, lines 1–10.

Version No 3: 27 Oct 2020 (22:41 hrs)

information given. In short, Dr Baines had used the information at face value to make the video.

27 In making the video, the defendant would not have had an opportunity to witness the reconstruction and is at liberty to test the common assumptions and premises. The Avenca video is demonstrative or illustrative evidence − demonstrative evidence is not the same thing as real evidence that has independent probative force especially where the basic facts have been proved in the usual way. Thus, "[t]he person who prepared the demonstrative evidence must be called or be available for cross-examination" to vouchsafe its accuracy or fidelity (see *Halsbury's Laws of Singapore* Vol 10 and 10(2) (LexisNexis Singapore, 2016) at para 120.368).

Other preliminary matters

Arguments on pleadings

28 Both sides objected to certain submissions made by the other party on grounds of pleadings. For the plaintiffs, it was the defendant's reliance on *novus actus interveniens*. For the defendant, it was the plaintiffs' submissions on the incompetence of the *Tian E Zuo*'s crew and lack of bridge team management.

29 I start with the plaintiffs' objection to the defendant's reliance on *novus actus interveniens* in their closing submissions. The objection on grounds of pleadings is surprising when the plaintiffs have clearly shown themselves to be sufficiently apprised of *novus actus interveniens* as an issue in their two earlier lead counsel's statements (*ie*, 20 April 2017 and 2 May 2017) and later, in their opening statement for the trial.

Version No 3: 27 Oct 2020 (22:41 hrs)

30 I need only refer to one of the lead counsel's statements and propose to quote the second lead counsel's statement dated 2 May 2017 where counsel for the plaintiffs, Ms Magdalene Chew ("Ms Chew"), indicated the following as one of the "[a]dditional [i]ssues according to [the] Plaintiff[s]":

> Was there any *novus actus interveniens*? In particular, were manoeuvres of "AB" in avoiding collision with "TEZ" (which was dragging her anchor) and extracting herself (i.e. AB) from the situation prior to the said collision with SP so unreasonable that they could constitute being *novus actus interveniens* event(s)?

31 Shortly thereafter, the plaintiffs filed their opening statement on 9 May 2017. Far from suggesting that they were taken by surprise, the plaintiffs developed substantive arguments along the following lines in their opening statement:

> In order to break the chain of causation, the claimant's action '*must constitute an event of such impact that it obliterates the wrongdoing*'. It is unlikely that anything less than unreasonable conduct by the claimant will break the chain of causation. Reckless conduct will usually do so, although there is no rule of law that only recklessness is required (*Lambert v Lewis* [1982] AC 225 ("***Lambert v Lewis***")). In the collision context, the principle was described by Lord Wright in *The Oropesa* (1943) 4 Ll L Rep 86 at pg. 91 as follows: '*To break the chain of causation it must be shown that there is something which I will call ultroneous, something unwarrantable, a new cause which disturbs the sequence of events, something which can be described as either unreasonable or extraneous or extrinsic*.'
>
> …
>
> The Plaintiffs will submit that the focus should not be placed on the individual aspects of the incident; the full circumstances leading up to the collisions must be considered. In other words, the collisions should not be taken in parts. The collisions stemmed from the negligence of TEZ in allowing herself to drag anchor. She was the vessel that created the situation of danger. Not only had AB reacted reasonably, the simple fact is that AB did not create the situation of danger and TEZ should be found liable for the collisions. AB was forced to react due to the negligence of TEZ. AB took reasonable action in the

Version No 3: 27 Oct 2020 (22:41 hrs)

> circumstances to avoid a collision with TEZ and there was no break in the chain of causation.

32 The paragraphs quoted above show that the plaintiffs have discerned a case of *novus actus interveniens* from the events pleaded in the defendant's Preliminary Act. There is no merit in the plaintiffs' objection on grounds of pleadings raised in closing submissions. It cannot be said that the plaintiffs were taken by surprised by the legal conclusion derived from the various intervening events pleaded and it is puzzling why an objection on pleadings is taken at all. As a matter of pleadings, the words of a legal defence need not be specifically pleaded (*V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam* [2015] 5 SLR 1422 ("*V Nithia*") at [43]). Order 18, r 11 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) makes clear that a party *may* by his pleadings raise any point of law. It is sufficient that the pleadings disclose the *material facts* so as to give the opponent fair notice of the *substance* of a case (*V Nithia* at [43]).

33 I now turn to the defendant's objection to the plaintiffs' submission on the incompetence of the crew on board the *Tian E Zuo.* The defendant observed in its reply submissions that:[11]

> where incompetency was not pleaded at all, the [defendant] had no opportunity to adduce evidence on the abilities or training of the 'TEZ' officers and crew, their knowledge of the vessel, their will, capacity and/or suitability to perform their job.

34 The plaintiffs' pleaded case against the defendant was directed at the negligence of the crew. At first blush, the plaintiffs' arguments on the crew's lack of competency that rendered the crew unsuitable for the role on board in

---

11 Defendant's Reply Submissions, para 4.

Version No 3: 27 Oct 2020 (22:41 hrs)

their closing submissions appeared to blur the distinction between negligence and incompetence. Ordinarily, "[i]ncompetence is to be distinguished from negligence" (*The "Eurasian Dream"* [2002] Lloyd's Rep 719 at [129(3)]). The incompetence of a crew generally refers to the inadequate ability, training or proficiency of the crew. It usually goes towards issues relating to the seaworthiness of a vessel. Negligence, on the other hand, is concerned with whether the crew had acted in the manner that has fallen short of the standards expected of a seaman of ordinary care and skill in a given situation. While confusingly labelled as the crew's incompetence, the "incompetence" of the crew on board the *Tian E Zuo* is liken to negligence in the circumstances and hence could be termed as negligence.

35 As regards the defendant's objection to the plaintiffs' closing submissions on the lack of bridge management, the plaintiffs in their closing submissions accepted that lack of bridge management was not a pleaded issue. Curiously, they urged this court to make a finding on lack of bridge management on the back of the following argument:[12]

> … full weight should be accorded to this aspect of testimony of the [defendant's witnesses] given in Court, *despite not having been pleaded*, as the evidence emerged from the cross-examination of the Defendants' (*sic*) witnesses and hence the Court is entitled to make findings based on the same.
>
> [emphasis added]

36 Having not sought leave to amend the pleadings in the course of the trial, the plaintiffs' submission that the court could make a finding on an issue that is not pleaded is plainly wrong.

---

12 Plaintiffs' Closing Submissions, para 60.

Version No 3: 27 Oct 2020 (22:41 hrs)

The plaintiffs' reliance on the "but for" test

37 The plaintiffs' case is that the *Arctic Bridge* was forced to extricate herself from a situation of danger created by the negligence of those on board the *Tian E Zuo* and that the negligence set off a chain of events which culminated in the related collisions. Their approach is that but for the *Tian E Zuo* dragging anchor and coming close to the *Arctic Bridge*, the latter would not have been forced to manoeuvre from her safely anchored position. Thus what happened thereafter was causative of the defendant's negligence as the entire sequence of events was one continuous incident.

38 The defendant who is represented by counsel, Mr Loo Dip Seng ("Mr Loo"), argues that the *Tian E Zuo's* anchor drag was causatively irrelevant to the related collisions. The *Tian E Zuo's* anchor drag started at 0247 hours but the *Tian E Zuo* stopped dragging and drifting at 0330 hours. In short, the *Tian E Zuo* was a vessel at anchor, and what happened after 0330 hours were the consequences of the acts or omissions of the *Arctic Bridge* as the vessel underway in the anchorage. The *Arctic Bridge* entangled the *Tian E Zuo's* anchor or anchor chain by 0350 hours and towed the *Tian E Zuo* for about 20 minutes before she was propelled towards the anchored vessel, the *Stena Provence*. That the *Arctic Bridge* created the situation described is relevant for it will assist in determining the relative causative potency of each of the vessel's fault. This consideration is different from the plaintiffs' reliance on the "but for" test.

39 It is convenient to deal with the plaintiffs' reliance on the "but for" test at this stage bearing in mind that acceptance of this test as advocated by the plaintiffs would mean that the defendant's negligence in permitting the *Tian E Zuo* to drag her port anchor at 0247 hours is as a matter of fact and of law the

Version No 3: 27 Oct 2020 (22:41 hrs)

single effective cause or even chronologically the last cause of the related collisions that occurred between the *Stena Provence* and the *Tian E Zuo* at 0410 hours, the *Stena Provence* and the *Arctic Bridge* at 0411 hours, and a second contact between the *Stena Provence* and the *Tian E Zuo* at 0427 hours. There might have been another second contact between the *Stena Provence* and the *Arctic Bridge* but this collision, as stated, did not feature in the plaintiffs' Preliminary Act.

40 There are two limitations with the "but for" test. The first is that there are exceptions to the "but for" test. The second is that the "but for" test is concerned with factual causation; there is a further need to establish legal causation.

41 On the first point, the commentary in *Marsden and Gault on Collisions at Sea* (Sweet & Maxwell, 14th Ed, 2016) ("*Marsden*") is helpful. *Marsden* observed that "[a]lthough in general the principle is that a defendant is liable for damage only if it would not have happened but for his fault, this is not invariably so". One instance where the "but for" test would be insufficient is where there are multiple causes arising from the faults of the claimant and defendant (see *Marsden* at para 15-005).

42 As stated, the plaintiffs have premised their case on a single causative event and criticises the defendant for "chop[ping] up" the sequence of events leading up to the related collisions.[13] I disagree with the plaintiffs' criticisms as the defendant was simply identifying the existence of other causal events that were left out in the plaintiffs' analysis. Whilst the defendant accepts that the

---

13 Plaintiffs' Closing Submissions, para 168(d).

Version No 3: 27 Oct 2020 (22:41 hrs)

Tian E Zuo had dragged anchor, the defendant drew attention to the other events that played out after the *Tian E Zuo*'s initial negligence. By 0330 hours, the *Tian E Zuo* had become an anchored vessel. At the same time, she could not move away unaided as she had at her stern the *Marine Liberty* and the *DL Navig8*. Factually, the *Arctic Bridge* was the only vessel underway in the vicinity of the *Tian E Zuo*. Given how the *Tian E Zuo* ended up contacting the *Stena Provence*, how and why the related collisions happened are relevant matters of fact and law which the plaintiffs have not factored in their reliance on the "but for" test. I will elaborate on this below. For present purposes, it is necessary to assess as a matter of fact, the causal effect of the *Tian E Zuo*'s negligence arising from her dragging anchor on the subsequent manoeuvres of the *Arctic Bridge*.

43 According to Captain Walker, the *Tian E Zuo* commenced dragging anchor at about 0247 hours. She dragged astern and eventually collided into the *DL Navig8*. At about 0313 hours, the *Tian E Zuo*, the *Marine Liberty* and the *DL Navig8* tracked towards the *Arctic Bridge*. Once it became clear that a close quarters situation was developing between the three vessels and the *Arctic Bridge*, the chief officer on board the *Arctic Bridge* alerted Captain Khuzhin of the situation at 0317 hours and he started making preparations to move. However, Captain Walker's report stated that while there was "sufficient concern on 'ARCTIC BRIDGE' for the crew to prepare the engine … the risk of collision had dissipated when the 'TIAN E ZUO' subsequently drifted to the south east".[14] Arguably, this assessment goes against the plaintiffs' depiction of the *Arctic Bridge* as a vessel that was thrust into a situation of danger that continued to operate throughout until the occurrence of the related collisions. On this alone, it follows that the initial negligence of the *Tian E Zuo* can hardly

---

14 PBAEIC Vol I, Tab C, para 6.1.2 (JW's Report).

Version No 3: 27 Oct 2020 (22:41 hrs)

be said to have an influence over the subsequent manoeuvres taken by the *Arctic Bridge*.

44 Captain Walker, however, indicated a reappearance of a risk of collision between the *Tian E Zuo* and the *Arctic Bridge* at about 0327 hours. Captain Walker said that at about 0327 hours, an order to heave port anchor was recorded on the *Tian E Zuo*'s VDR transcript and that the heaving of the port anchor caused the vessel to move in a north-westerly direction, across a distance of 86 metres, towards the *Arctic Bridge*. With that in mind, Captain Walker described 0327 hours as a critical period because from about 0327 hours, "[a] risk of collision … returned when those on 'TIAN E ZUO' decided to weigh their deployed port anchor". [15] This risk of collision was then said to be the reason for the *Arctic Bridge* having to move away from her anchored location and the consequential difficulties that followed:[16]

> "ARCTIC BRIDGE" should not have needed to recover her anchor as it had been lying safely to anchor since the 10th June 2014. Moreover, "ARCTIC BRIDGE" had safely remained at anchor through the same squall which displaced the anchor of "TIAN E ZUO". The direct cause of these collisions was the navigators on "TIAN E ZUO" did not exercise good seamanship and allowed their vessel to drag anchor effectively setting off a chain of events, ending with the collisions between the anchored "STENA PROVENCE" and anchored "TIAN E ZUO" and anchored "ARCTIC BRIDGE". This resulted in "ARCTIC BRIDGE" being placed in a situation, through no fault of her own, so that its Master was forced to recover it anchor in difficult circumstances. Because of the actions on board "TIAN E ZUO" it was not possible for "ARCTIC BRIDGE" to fully recover the anchor to clear the approaching "TIAN E ZUO" so was forced to dredge it to keep clear.

---

15 PBAEIC Vol I, Tab C, para 6.1.3 (JW's Report).

16 PBAEIC, Vol I, Tab C, para 6.1.1 (JW's Report).

Version No 3: 27 Oct 2020 (22:41 hrs)

In other words, but for the *Tian E Zuo* coming close, the *Arctic Bridge* would not be forced to dredge her anchor to move away from her anchored location and consequently, would not have experienced the various problems relating to the dredging of the anchor.

45 Mr Singh, in response, pointed out several problems with Captain Walker's analysis:[17]

> Captain Walker refers to the fact that at 0327 hours TEZ's drift to the east ceases, which I agree with. Further, that at that time the port anchor and cable was probably to the west of TEZ. I agree with this as well. …
>
> …
>
> Captain Walker also refers to TEZ moving to the north west between 0327 and 0332 hours. However, … the direction of movement is northerly and not north westerly.
>
> The distance moved forward, as estimated by me is, that TEZ was 108 metres and not 86 metres as is estimated by Captain Walker.
>
> What is baffling, however, is Captain Walker's attempt to consider TEZ's movement to the 'north west', as he described it, might be due to heaving of the vessel's port anchor, which he suggests moved the vessel 86 metres in distance. I find this to be an illogical proposition. This is because, any successful heaving of TEZ's port anchor while it was to the west of TEZ would simply have resulted in the vessel's bow turning to port, i.e. towards the anchor and certainly not towards the north or northwest. To suggest otherwise would defy the elementary laws of physics.

46 I agree with Mr Singh. First, the allegation that the *Tian E Zuo* had heaved anchor at about 0327 hours was not seriously pursued at trial. Secondly, Mr Singh's point that as a matter of physics, an attempt at heaving the port anchor would cause the *Tian E Zuo*'s bow to swing to port rather than starboard

---

17 DBAEIC, Vol V, para 4.4.12 (HS's Report).

Version No 3: 27 Oct 2020 (22:41 hrs)

was not rebutted. Thirdly, in any event the *Tian E Zuo* ceased drifting by 0330 hours and this was noticed by Captain Khuzhin. Thus, even if there were an initial danger, this would have ceased after 0330 hours when the *Tian E Zuo* stopped drifting and the *Arctic Bridge* herself started to manoeuvre clear. The actions the *Arctic Bridge* took after West Control's VHF conversation at 0334 hours would not have operated under the same circumstances as when the *Tian E Zuo* was initially observed to have dragged anchor towards the *Arctic Bridge*. By 0336 hours, the *Arctic Bridge* had managed to put some distance between the vessels but at 0341 hours, the *Arctic Bridge* stopped her engines which caused her to be set back onto the *Tian E Zuo*. With that set back, the distance between the two vessels was closer than when the *Arctic Bridge* had initially moved away from her anchored position. From 0343 hours to 0350 hours, the *Arctic Bridge* took a course that led to her fouling the anchor or anchor chain of the now anchored *Tian E Zuo.* Having failed to fully appreciate the fouling and picking up of the anchor or anchor chain of the *Tian E Zuo*, the *Arctic Bridge* ended up towing the *Tian E Zuo* into the port quarter of the *Stena Provence*. By reason thereof, new circumstances developed from the *Arctic Bridge*'s manoeuvres. In other words, factually, new causal events arose.

47 The second point on the limitations of the "but for" test relates to legal causation. Causation is made up of two elements – factual and legal causation. While factual causation is an important starting point to any inquiry of causation, it is not the end. Factual causation alone is insufficient to satisfy the second element of legal causation. The interplay between factual and legal causation was enunciated by the Court of Appeal in *Sunny Metal & Engineering Pte Ltd v Ng Khim Ming Eric* [2007] 3 SLR(R) 782 at [52]–[54]:

> The first broad inquiry involves causation, which, as alluded to earlier, is in turn made up of causation in fact and causation in law. Causation in fact is concerned with the question of whether

Version No 3: 27 Oct 2020 (22:41 hrs)

the relation between the defendant's breach of duty and the claimant's damage is one of cause and effect in accordance with scientific and objective notions of physical sequence. It is concerned with establishing the *physical connection* between the defendant's wrong and the claimant's damage. The universally accepted test in this regard is the "but for" test, which we will elaborate on later.

However, satisfying the "but for" test is by no means a sufficient condition because the all important "causation in law" test must be satisfied as well. The reason for this is that to adopt the "but for" test without limit would lead to absurd results. To illustrate the potential absurdity, we refer to the example provided by *McGregor on Damages* ([51] *supra*) at para 6-008. Consider that a mother gives birth to a son who, when he grows up commits murder. Adopting the question of factual causation, it is clear that if the mother had not decided to have a child in the first place, the murder would never have happened; the "but for" test is amply satisfied. She is thus a cause in fact of the murder by virtue of a physical sequence that is unbroken by scientific and objective notions of logic. Yet, it is equally true that the law regards the mother as bearing no responsibility for the murder on account of lack of negligence or other tortious activity on her part; it is the *law* which removes her from being a cause of the murder. This is causation *in law*. The rationale is to prevent indeterminate liability resulting from causation in fact alone. This concern is most aptly summarised in *Prosser and Keeton on the Law of Torts* (West Group, 5th Ed, 1984) at p 266, which we gratefully adopt:

> It should be quite obvious that, once events are set in motion, there is, in terms of causation alone, no place to stop. The event without millions of causes is simply inconceivable; and the mere fact of causation, as distinguished from the nature and degree of the causal connection, can provide no clue of any kind to singling out those which are held legally responsible.

As illustrated by the example just discussed, sometimes, the defendant's conduct sets off a sequence of events, each one of which is a necessary link in the causal chain between the initial wrong and the claimant's damage. In such cases, the court has to determine whether any of the intervening events can be said to be so significant causally as to break the causal link to be regarded as *novus actus interveniens*. ***There is usually no dispute as to what in fact happened to cause the claimant's damage; rather the question is which event will be treated as the cause for the purpose of attributing legal responsibility. The court therefore has to decide whether the defendant's wrongful conduct constituted the "legal***

Version No 3: 27 Oct 2020 (22:41 hrs)

> ***cause" of the damage. This recognises that cause assumes significance to the extent that they assist the court in deciding how best to attribute responsibility for the claimant's damage ...***
>
> [emphasis in original in italtics; emphasis added in bold-italics]

48 As highlighted by the Court of Appeal, a single act or omission may set in motion a chain of events that provides a factual link between the initial negligence and eventual damage. That said, the court must still determine the legal cause to attribute responsibility.

49 In my view, the problem with the plaintiffs' case is their approach to the question of causation. They have focused on one single event as the primary causal fault, downplaying other significant events that demonstrate that this is a case involving multiple faults each capable of contributing to the related collisions. In doing so, they have assumed that factual causation as advocated would satisfy legal causation when this is not the case. The position as described is borne out in the plaintiffs' closing submissions and Captain Walker's reports. The upshot of this is that Captain Walker expressed minimum views on the entanglement of the anchors or anchor chains of the *Arctic Bridge*, a vessel underway, and the *Tian E Zuo,* which was still at anchor, and the subsequent involuntary towage of 20 minutes leading to the related collisions. Expert's opinion of the events on or after 0350 hours are to be gathered from Mr Singh's reports. That said, I will have to weigh his evidence together with all the overall evidence when examining the matter.

50 Finally, there is one other related point, namely, the defendant's reliance on *novus actus interviens* raised in response to the plaintiffs' primary case that the initial negligence of the *Tian E Zuo* was the direct cause of the related collisions. For all the reasons stated in this judgment, it is not necessary to deal with the doctrine in this case.

Version No 3: 27 Oct 2020 (22:41 hrs)

51 I now turn to the various allegations of faults.

Faults of the *Arctic Bridge*

52 The defendant draws a distinction between a vessel underway and a vessel at anchor. This distinction is important. A vessel underway is bound, as a matter of seamanship, to keep clear of a vessel at anchor (see *Marden* at para 4-036; *The "Viper"* [1926] 24 Ll L Rep 10 at 11). Indeed, this flows from one of the most important principles underlying good seamanship – the duty to avoid, so far as possible, a close quarters situation (*The Owners and/or Demise Charterers of the Ship or Vessel "MCC Jakarta" v The Owners and/or Demise Charterers of the Ship or Vessel "Xin Nan Tai 77"* [2017] HKCFI 981 ("*MCC Jakarta*") at [72]).

53 The Hong Kong Court of First Instance in the *MCC Jakarta* explained the structure, purpose and objective of the COLREGS as follows (at [71]):

> the structure of COLREGS is designed to ensure that, whenever possible, ships will not reach a close-quarters situation in which there is risk of collision and in which decisions have to be taken without time for proper thought.

54 Captain Walker references rule 2 of the COLREGS in his report since he regarded the events in this case as exceptional. Rule 2 reads as follows:

> **Rule 2**
>
> ***Responsibility***
>
> (a) Nothing in these Rules shall exonerate any vessel, or the owner, master or crew thereof, from the consequences of any neglect to comply with these Rules or of the neglect of any precaution which may be required by ordinary practice of seamen, or by the special circumstances of the case.
>
> (b) In construing and complying with these Rules due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of vessels

Version No 3: 27 Oct 2020 (22:41 hrs)

> involved, which may make a departure from these Rules necessary to avoid immediate danger.

55 I can do no better than to adopt the explanation of Rix J in *The "Navios Enterprise" and "Puritan"* [1998] 2 Lloyd's Rep 16 on this rule. After setting out rule 2 in full, Rix J said at 24:

> In my judgment these provisions show that they are intended to apply in all circumstances, including special circumstance, albeit due regard should be had to such special circumstances and to the possibility that they may require some departure from the rules in order to avoid *immediate* danger. These principles would seem to be reflections of and to be reflected in the general law. As Mr. Justice Willmer said in *The Velox* [1955] 1 Lloyd's Rep 376 at 382:
>
> > In those circumstances, it seems to me that, although the measures demanded by the situation may be regarded as exceptional, nevertheless they were no more than those required of a seaman of ordinary care and skill, having regard to the exceptional conditions prevailing.
>
> In other words, although no seaman can be called upon to exercise more than ordinary care, when faced by exceptional circumstances he may be required by the standard of ordinary care to take exceptional precautions.

56 Rule 3 sets out the general definitions of the COLREGS. Rule 3(i) defines a vessel "underway" as a vessel that is not at anchor, or made fast to the shore, or aground. Hence, a vessel at anchor in the context of the COLREGS is simply a vessel that is made fast to the seabed by her anchor. Indeed, in the case of *The "Palembang"* [1929] 34 Ll L Rep 5 ("*The Palembang*"), the court there held that a vessel at anchor is a vessel that is "actually holden by and under the control of her anchor" (at 111).

57 I accept Ms Chew's submission that the *Tian E Zuo* was not a ship at anchor during the time she dragged her anchor in the prevailing squall (see *The "Pearl"* [2003] 2 Lloyd's Rep 188 at [46]). It is not disputed that the *Tian E*

Version No 3: 27 Oct 2020 (22:41 hrs)

Zuo was a vessel at anchor from 0330 hours until 0350 hours. During this period, she had two of her anchors in the water. In contrast, the *Arctic Bridge* was a vessel at anchor before the period 0331 hours and after 0333 hours through to the related collisions, she was a vessel underway. I will explain later why I consider the *Tian E Zuo* to be a vessel underway during the period of the involuntary towage (see [161]–[160] below).

58 Mr Loo, on behalf of the defendant, accepts that the *Tian E Zuo* failed to prevent herself from dragging anchor towards the *DL Navig8* and that she collided with the *DL Navig8* at 0314 hours. Mr Loo also accepts that there was poor lookout on board the *Tian E Zuo* during this period, in breach of rule 5 of the COLREGS (see [95] below), but say that these faults did not result in the entanglement of the anchors or anchor chains of the two vessels, the *Arctic Bridge* and the *Tian E Zuo*. The defendant further submits that the faults in navigation and seamanship that arose after 0330 hours fall entirely on the *Arctic Bridge* as the vessel underway.

59 Mr Loo's concessions on the faults identified in [58] above were proper. With these faults in mind, I turn to the experts who were of the opinion that it was reasonable for the *Arctic Bridge* to move from her anchored position with three shackles of her anchor chain in the water. The implication of this opinion is that the experts accept that the *Arctic Bridge*'s preparation to move away and her manoeuvres before 0334 hours were reasonable.

60 That said, the *Arctic Bridge*'s manoeuvres and Captain Khuzhin's decisions on navigational matters should be examined against the backdrop of the VHF conversation between West Control and the *Arctic Bridge* starting from 0334 hours, and the decision of the *Arctic Bridge* to shift to another location in the anchorage. As stated above, Captain Khuzhin noticed that the *Tian E Zuo*

Version No 3: 27 Oct 2020 (22:41 hrs)

had stopped drifting by 0330 hours. At 0334 hours to 0335 hours, any close quarters situation or risk of collision apprehended earlier by those on board the *Arctic Bridge* would have abated, judging from the VHF conversation with West Control (see [16] above). It would appear that the *Arctic Bridge*'s decision to shift to a new location to anchor was not because the *Tian E Zuo* was posing any immediate risk of collision. West Control's intention at that time was to give the *Tian E Zuo* sea room to free herself from the *Marine Liberty* and the *DL Navig8*. I have already set out the transcript of the VHF conversation between West Control and the *Arctic Bridge* (see [16] above). In that conversation, the *Arctic Bridge* was told that the *Tian E Zuo* together with the two other vessels could not extricate themselves from the aftermath of an earlier collision. I also note that, at the trial, Captain Khuzhin accepted the reason for West Control's request to the *Arctic Bridge* to shift was to give sea room to the *Tian E Zuo* to move away from the *DL Navig8* and the *Marine Liberty*. For completeness, I now set out the certified translated VDR transcript tendered by the plaintiffs between West Control and the *Tian E Zuo*:[18]

> West Control: Tian E-Zuo, the boat Arctic Bridge in front of you will go north-west for a little bit, can you shift after it goes?
>
> Tian E Zuo: The boat in front of me is extremely close to me. It is moving isn't it? But here's the problem, the anchor chain of the big boat is below my tanker. My shaft might get intertwined with its anchor chain if I move purposelessly.
>
> West Control: Message received, Captain. So now the boat behind you cannot move either, and it has to wait. *The boat Arctic Bridge is going to move further, giving you more space, and we'll see if you could move after it moves.*
>
> [emphasis added]

---

[18] Affidavit of Li Yilin, p 23.

Version No 3: 27 Oct 2020 (22:41 hrs)

61 West Control also informed the *DL Navig8* that "the ARCTIC BRIDGE [would be] shifting further north … [to] give sufficient space to the TIAN E ZUO" and that the *Tian E Zuo* would thereafter move.[19]

62 Now it is clear that West Control had twice checked with the *Arctic Bridge* whether she was "confident" to shift to another location on her own, and the *Arctic Bridge*'s reply was in the affirmative (see [16] above). Having seen West Control make similar queries of the *Marine Liberty*, the *DL Navig8* and the *Tian E Zuo* in previous conversations, I interpret this query "to shift on your self" (*sic*) to mean without pilot on board. It was open to the *Arctic Bridge* to request pilot assistance if she needed it. In addition, the *Arctic Bridge* told West Control that she was heaving her anchor when in reality she did not complete the task and instead manoeuvred with three shackles of her anchor chain in the water. Thus, to focus on the *Tian E Zuo*'s initial negligence without considering these further aspects of the case underscores the defendant's point on why the present case, after taking into consideration the overall events, is not one involving a single continuous chain of events that originated from the *Tian E Zuo*'s initial negligence. The *Arctic Bridge*'s faults, if any, must be viewed against the aforementioned circumstances.

63 The parties had devoted considerable time and effort in examining the *Arctic Bridge*'s manoeuvres from 0334 hours to 0336 hours. According to Captain Khuzhin's affidavit of evidence-in-chief, the manoeuvre to head north-west brought the ship "into the wind". He ordered starboard 25° on the helm and the engines remained slow ahead. He tried to maintain a heading of about 300° to clear the *Kingfisher*. However, at about 0336 hours, despite the

---

19 DBAEIC Vol IV, Tab B1, p 212 (HS's Report).

Version No 3: 27 Oct 2020 (22:41 hrs)

starboard helm ordered, he noticed that the *Arctic Bridge* had an approximately 10° rate of turn to port in the direction of the *Kingfisher*. He thus ordered the engines to stop as he was concerned with colliding into the *Kingfisher*. Shortly after 0337 hours, he ordered slow ahead and the helm hard to port. He decided that it would be safer to pass to the south of the *Kingfisher* instead. As a result, the *Arctic Bridge* found herself in a passage between the stern of the *Kingfisher* and the bow of the *Tian E Zuo*.

64 The *Arctic Bridge*'s difficulty in tracking north to a new anchor location north-west of the *Kingfisher* and the reasons for the difficulty– whether it was the *Arctic Bridge*'s dredging anchor action that affected her manoeuvrability or the speed at which she was proceeding on (dead slow ahead) or Captain Khuzhin's decision not to use the bow thruster, among other things – are matters not determinative of the outcome this case. Hence, it is unnecessary for this court to make a finding on Captain Khuzhin's seamanship or any breach of the rules in the COLREGS between 0334 hours to 0336 hours. This is because any finding on this point would simply serve to answer the question of why the *Arctic Bridge* found herself in the passage between the stern of the *Kingfisher* and the bow of the *Tian E Zuo* rather than answer the key question as to why the related collisions occurred and who would be legally responsible for the occurrences. In this regard, it bears mentioning my view that the "but for" test as advocated by the plaintiffs does not answer the key question. The overall events show that this case is not one involving a single continuous chain of events that stemmed from the *Tian E Zuo*'s initial negligence. In addition, only faults that are causative are relevant. Not every breach of seamanship or the COLREGS would give rise to a finding of causative fault (*The Dream Star* at [49]).

Version No 3: 27 Oct 2020 (22:41 hrs)

65 I now turn to the events that occurred after 0336 hours. The *Arctic Bridge* had abandoned the plan to clear north-west of the *Kingfisher* and Captain Khuzhin purportedly decided to clear south of the *Kingfisher* (see [70] below). As mentioned, Captain Khuzhin adjusted his rudder from starboard to helm hard to port shortly after 0337 hours and ordered slow ahead. Between 0338 hours to 0339 hours, Captain Khuzhin ordered midships on helm. In his affidavit of evidence-in-chief, Captain Khuzhin explained that he did so having satisfied himself that the *Arctic Bridge* had cleared the *Kingfisher*. However, as the *Arctic Bridge* turned to port, her bow passed through the wind and at about 0339 hours, the wind was almost at her starboard beam. As a result, the *Arctic Bridge* began to set bodily to the south-east in the direction of the *Tian E Zuo*. The defendant submits that the *Arctic Bridge* was at fault for failing to proceed south to clear the stern of the *Kingfisher* but instead continuing her turn to port, moving towards the *Tian E Zuo*. In the defendant's view, this constituted a breach of rules 8(a) and (d) of the COLREGS:

Rule 8

Action to avoid collision

(a) Any action to avoid collision shall be taken in accordance with the Rules of this Part and shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship.

(b) Any alteration of course and/or speed to avoid collision shall, if the circumstances of the case admit, be large enough to be readily apparent to another vessel observing visually, or by radar; a succession of small alterations of course and/or speed should be avoided.

(c) If there is sufficient sea-room, alteration of course alone may be the most effective action to avoid a close quarters situation provided that it is made in good time, is substantial and does not result in another close quarters situation.

(d) Actions take to avoid collision with another vessel shall be such as to result in passing at safe distance. The effectiveness

Version No 3: 27 Oct 2020 (22:41 hrs)

> of the action shall be carefully checked until the other vessel is finally past and clear.

66 If the *Arctic Bridge* had cleared south of the *Kingfisher*, so the argument developed, she would be sailing in the direction away from the *Tian E Zuo* and would have cleared both the *Kingfisher* and the *Tian E Zuo*. In this regard, Captain Khuzhin, during cross-examination, testified as follows:[20]

> Mr Loo: Alright. Let's go back to the position at 0339 hours. Alright, at this time, do you agree with me that if your vessel had maintained her course, alright, going southwest, she would have cleared both KINGFISHER as well as TIAN E ZUO?
>
> Captain Khunzhin: Yes, I agree with that.
>
> Mr Loo: Okay. Let's look at the next minute, 03:40. Alright? Now, your heading has turned portside a little bit, but you're still pointing southwest. So my question here for you is this, do you agree with me that even now, if you maintain ARCTIC BRIDGE course in this heading by increasing her engine speed, she would have cleared both KINGFISHER and TIAN E ZUO?
>
> Captain Khunzhin: Yes.
>
> Mr Loo: Alright. Let's look at 0341, alright. At 0341, your vessel has now moved eastwards and gotten nearer to TIAN E ZUO, alright. But her heading is still southwest but more to the south, okay. So again, I ask you the same question, alright. If you had maintained your vessel's forward movement with this heading you would have cleared TIAN E ZUO as well as KINGFISHER correct?
>
> Captain Khuzhin: Yes, correct.
>
> Mr Loo: Okay. Now, up to this point in time, do you agree with me that you never increased engine speed at all?
>
> Captain Khuzhin: Yes.

67 Captain Khuzhin accepted that had the *Arctic Bridge* proceeded forward at an increased engine speed, between 0339 hours to 0341 hours, the *Arctic Bridge* would have been able to clear both the *Kingfisher* and the *Tian E Zuo*.

---

[20] Transcript Day 2, p 55, lines 21–31 to p 56, lines 1–10.

Version No 3: 27 Oct 2020 (22:41 hrs)

The significance of Captain Khuzhin's testimony is that the related collisions would not have happened if the aforesaid manoeuvre were taken.

68 Ms Chew in re-examination sought clarification of Captain Khuzhin's explanation for not clearing south of the *Kingfisher*:[21]

> Ms Chew: … So can you explain to the Court what you were trying to say? So you're question was, "Do you agree with me that if your vessel had maintained her course going southwest, she would have cleared both Kingfisher as well as TEZ"? So maybe you can explain to the Court now what you were trying to explain during cross.
>
> Captain Khuzhin: What I wanted to say at that moment, yes, I could have distanced myself if I went southwest. But because *the picture is not representing the positioning of other vessels around this area*, so you cannot judge whether this suggested a course heading of southwest was secure or not---safe or not.
>
> [emphasis added]

69 I find Captain Khuzhin's answer in re-examination as an attempt to obfuscate his clear answer during cross-examination. As the radar screenshots of the *Arctic Bridge* show, there were no nearby vessels that would have hindered a safe passage forward.[22] Moreover, Captain Khuzhin's answer did not address his failure to employ a higher engine speed to successfully clear south of the *Kingfisher*.

70 I pause here to note an inconsistency between Captain Khuzhin's affidavit evidence-in-chief and his oral testimony on the matter of his failure to clear south of the *Kingfisher*. Captain Khuzhin, in his affidavit of evidence-in-chief, expressed difficulty in clearing south of the *Kingfisher* due to the

---

21 Transcript Day 3, p 15, lines 6–18.

22 ACBOD, pp 178–184 (Radar).

Version No 3: 27 Oct 2020 (22:41 hrs)

unfavourable elements that operated against the *Arctic Bridge*. Captain Khuzhin's answer during re-examination, however, had nothing to do with the wind conditions faced by the *Arctic Bridge* at the material time. It is clear that the answer he gave during re-examination was a mere afterthought.

71 In justifying the *Arctic Bridge*'s failure to clear south of the *Kingfisher*, Captain Walker opined on something that Captain Khuzhin did not talk about – that the port anchor of the vessel had caught on to something in the seabed and was holding fast:[23]

> Mr Loo: … But what we need to know is this: Had she used a higher engine power, could she have safely cleared both KINGFISHER and TIAN E ZUO?
>
> Captain Walker: Yah, but I---I---just saying---
>
> Mr Loo: The answer is "Yes, possible," right?
>
> Captain Walker: Yes, possible. But as I said, from what I have seen of the radar images and certainly the way the vessel was moving, there was a---the---the---the force of the anchor on that vessel was particularly powerful. Whether---whether it caught on something on the seabed, that is what it looks like very, very clearly. It's caught something.

72 He also explained that under the circumstances, not only would the *Arctic Bridge* be hampered from proceeding forward, but that if she had done so, the vessel would only be pulled further to port thereby risking a collision with the *Tian E Zuo*. I do not accept Captain Walker's evidence: there is no factual basis for his opinion, and is at best speculative.

73 In his report, Captain Walker explained that the *Arctic Bridge* was unable to clear north of the *Kingfisher* as the "dredging was either affecting

---

[23] Transcript Day 8, p 114, lines 12–22.

Version No 3: 27 Oct 2020 (22:41 hrs)

progress or [the anchor] had been caught on an unknown subsea obstruction".[24] However, the contention in the report that the anchor had caught an unknown subsea obstruction was made without factual reference. It must be emphasised that in his report, Captain Walker was referring to the port anchor becoming embedded to explain why the *Arctic Bridge* could not proceed north of the *Kingfisher*. However, at the trial, Captain Walker began to hinge his explanation for various other events on the same speculation. Apart from seeking to justify the *Arctic Bridge*'s failure to clear south of the *Kingfisher* on the basis of the embedded anchor, he later appeared to reason that the astern movement and forward movement of the *Arctic Bridge* at about 0341 hours to 0350 hours was the *Arctic Bridge*'s attempt to dislodge the embedded anchor.[25] However, when asked if he could point out the factual basis of his explanations, Captain Walker could not provide an answer:[26]

> Court: Show me the fact that the anchor caught something and impeded the navigation of it - ARCTIC BRIDGE, that is a new situation that the master found himself in and then everything else that happened thereafter was due to the fact that the anchor was imbedded (*sic*) and he couldn't move?
>
> Captain Walker: Yah, yes. But---but what I would say about that is, like I'm again repeating, it's not a normal usual thing to do with your anchor---
>
> Court: Yes … But knowing that he had three shackles in the water, he moved and found that his movement was impeded, alright. And then whatever action he took subsequently was really to free his ship.
>
> Captain Walker: Yah. Well I think, what he was doing in that particular time, he was---he was very concerned about the close proximity with his bow with KING FISHER.

---

24 PBAEIC Vol I, p 368, para 4.5.1.xv (JW's Report).

25 Transcript Day 9, p 134, lines 10–30.

26 Transcript Day 9, p 133, lines 28–30; p 134, lines 1–12.

Version No 3: 27 Oct 2020 (22:41 hrs)

74 While the weight of the port anchor in the water might have somewhat hampered the manoeuvrability of the *Arctic Bridge*, it is a different matter to assert that the anchor had become embedded into the seabed. An embedded anchor would have been a completely new development quite different from the earlier time the *Arctic Bridge* dredged anchor to move away from the *Tian E Zuo* at around 0331 hours. Moreover, Captain Khuzhin's evidence did not extend so far as to suggest that the anchor was embedded in the seabed. All that was mentioned is that the weather conditions and the weight of the port anchor in the water had affected the manoeuvrability (or movements) of the *Arctic Bridge*. In any event, had the anchor truly been embedded, the *Arctic Bridge* would not have been able to navigate as she would have effectively become a vessel at anchor. No such assertion was ever made. For these reasons, I do not accept Captain Walker's opinion the *Arctic Bridge*'s port anchor had become firmly embedded in the seabed.

75 Apart from his view that the *Arctic Bridge* ought to have increased engine speed and cleared the *Tian E Zuo*, Mr Singh did not provide further assistance in relation to the justifications mentioned by Captain Khuzhin and Captain Walker on the failure to clear south of the *Kingfisher*.

76 With the finding that the *Arctic Bridge*'s anchor was not embedded and was not holding fast to the seabed, coupled with the heading of the *Arctic Bridge* at the material time (*ie*, 280.9° at 0337 hours, 263.2° at 0338 hours, 240.9° at 0339 hours and 224.0° at 0340 hours), as well as the fact that it was open to the *Arctic Bridge* to employ a higher engine speed, it follows that the option to clear south of the *Kingfisher*, putting herself away from the *Tian E Zuo*, was available as a viable option, and I so find. There was no justification as to why the *Arctic Bridge* did not clear south of the *Kingfisher*. In this regard, the composite failure of the *Arctic Bridge* was in her not taking this option and in continuing to turn

Version No 3: 27 Oct 2020 (22:41 hrs)

to port, in the direction of the *Tian E Zuo*. I find this to be poor seamanship on the *Arctic Bridge*'s part.

77 Aside from the option to pass south of the *Kingfisher*, the experts also discussed the possibility of the *Arctic Bridge* holding position to recover her port anchor between 0337 hours to 0341 hours. Although this opportunity to hold position was raised by Captain Walker, he opined that recovery of the port anchor would be difficult and that the decision of Captain Khuzhin's hard to port order was reasonable in the circumstances. In this respect, Captain Walker in an earlier part of his report said:[27]

> [h]ad [Captain Khuzhin] tried to hold his vessel in position using engine and rudder in such a confined space, it is unlikely that the anchor could be recovered given the potential strain on the cable at this time. If he could only hold the vessel in a position between 'KINGFISHER' and 'TIAN E ZUO' using engine and helm, he would be reliant on other ships to give him space as he gave 'TIAN E ZUO' earlier.

78 He later concluded that:[28]

> However, whilst I believe that there was an opportunity to hold his vessel in position to allow recovery of his anchor after 0336 hours, I can understand the difficulties he faced which resulted in the actions he took at that time.

79 When it came to the trial, Captain Walker explained the difficulty of recovery citing the anchor as being well-embedded in the seabed:[29]

> Mr Loo: Alright? And we have looked at, just now, the relative positions of ARCTIC BRIDGE. Do you still hold that view, that during this period, he could have recovered his port anchor?

---

27 PBAEIC Vol I, Tab C, para 5.4.5 (JW's Report).

28 PBAEIC Vol I, Tab C, para 6.1.9 (JW's Report).

29 Transcript Day 8, p 110, lines 18–28,

Version No 3: 27 Oct 2020 (22:41 hrs)

> Captain Walker: His---he would have great difficulty. That's what I could say. What I---what I'm talking about is actually holding on to the anchor---holding on to the anchor. And if you're going to hold on to the anchor, then it's going to be very difficult to---to recover it to start heaving it in. You could try, but it would probably very difficult to do so. This anchor was---this anchor was *really well-embedded*, so it would clearly sh---be difficult to recover it.
>
> [emphasis added]

80 I have already rejected as speculative his view that the *Arctic Bridge*'s anchor was well-embedded. Mr Singh's evidence on the matter is unhelpful. Whilst he considers it pointless to hold position if the anchor cannot be recovered, he does not opine one way or the other whether the port anchor could be recovered if the *Arctic Bridge* attempted it at that time. I also note that this option was not asked of Captain Khuzhin much less stated in his affidavit of evidence-in-chief that he contemplated recovering the port anchor at that time. In the circumstances, I reach no conclusion on this particular option to recover the port anchor.

81 Continuing with the narrative, between 0341 hours to 0343 hours, the *Arctic Bridge*'s engines stopped.[30] This resulted in her going astern and eventually coming into close proximity with the *Tian E Zuo*. At about 0344 hours, the *Arctic Bridge* was effectively in the same position as she was at when she first started to navigate from her anchored position to clear away from the *Tian E Zuo*. The defendant submits that the *Arctic Bridge*'s decision to stop her engines from 0341 hours to 0343 hours was a serious fault as this was the action that resulted in the *Arctic Bridge* drifting astern and coming into a close quarters situation with the *Tian E Zuo*. The defendant, in particular, highlighted that the decision to stop engines was a breach of rule 8(d) of the COLREGS.

---

[30] Transcript Day 3, p 56, lines 15–20

Version No 3: 27 Oct 2020 (22:41 hrs)

82 According to Mr Singh's report, there was no reason to stop the engines for two minutes:[31]

> I can see no reason for [the *Arctic Bridge*] to keep engines stopped for two minutes, which in my view was an unwarranted delay given the need for timely actions when faced the scenario as had existed at the material time. Moreover, an experienced mariner would know that drift would be exacerbated if engines are stopped.

83 He further added in his supplemental report that the decision to stop the engines was unreasonable:[32]

> In fact, [the *Arctic Bridge*] would not have fallen back towards [the *Tian E Zuo*] <u>but for</u> [the *Arctic Bridge*'s master] stopping his engines at about 0341 hours. Because of that, the fact that [the *Arctic Bridge*'s master] stopped his engine from about 0341 to 0343 hours was unreasonable and disclosed a lack of situational awareness.
>
> [emphasis in the original]

84 Captain Walker also accepted that it was wrong for Captain Khuzhin to have stopped the *Arctic Bridge*'s engines but he sought to justify the decision:[33]

> Mr Loo: Right? But having seen the plots, alright, do you think, alright, it was proper seamanship for him to stop engines for ARCTIC BRIDGE when ARCTIC BRIDGE had just cleared KINGFISHER? She has also got to clear TIAN E ZUO, alright. She had a current coming from northwest setting her southeast. You have the wind, right, ni---westerly. Was it correct decision on his part to stop engine?
>
> Captain Walker: *Well, obviously, it wasn't a correct decision because it went towards TEZ.* But the---but when you look at the situation, you can actually see the movement of the rotor, the movement of this engine at that particular time. You can see he---that what he was planning was not working. And---and in that moment of time, he decided to stop his engine like he

---

31 DBAEIC Vol II, Tab 1, para 4.1.1.17 (HS's Report).

32 DBAEIC Vol V, Tab 1, para 4.5.14 (HS's Report).

33 Transcript Day 8, p 118, lines 26–30; p 119, lines 1–12

Version No 3: 27 Oct 2020 (22:41 hrs)

> said in his evidence to---to assess his situation. It would have been best, like I earlier said is to---to keep the engine going and try to just hold on the anchor to understand what is going on.
>
> …
>
> Mr Loo: So whether the anchor was actually caught on something solid and could not be free or perhaps not so solid, do you agree with me that the right thing for him to do at that time was to try and go south-westwards without stopping his engine?
>
> Captain Walker: Yes. Yes, I do agree with you. But that is looking back in hindsight. At that particular time, well, the master was facing---he---he was facing a---a---an uncertain situation with an anchor down not knowing what that anchor would actually---how it would affect him at all, and it's---it's not going where it wants to go.
>
> [emphasis added]

85 Captain Walker's justification for Captain Khuzhin's decision to stop the engines – operating under the uncertainties that were the consequences of dredging anchor – is yet another attempt at drawing unwarranted links to the initial difficulties faced by the *Arctic Bridge* when she had to dredge anchor to move away from the *Tian E Zuo* before 0334 hours. I am not persuaded by Captain Walker's justification.

86 I find that the decision to stop the engines was a serious fault despite Captain Khuzhin's insistence that having stopped the engines, he did not lose control of the vessel. During re-examination, Captain Khuzhin tried to justify his decision to stop the engines:[34]

> Ms Chew: Captain, why did you disagree with my learned friend when he suggested it was poor seamanship on your part to stop the engine when that meant you would lose control of your ship?

---

[34] Transcript Day 3, p 16, lines 5–11.

Version No 3: 27 Oct 2020 (22:41 hrs)

> Captain Khuzhin: I would have not lost control over my vessel at any time because the engine was ready and I could continue moving at any point in time. I stopped the engine so that I could evaluate the situation. And the main engine was stopped for only 2 minutes.

87 Quite clearly Captain Khuzhin's claim that he had control of his vessel even though he had stopped the vessel's engines is unbelievable. The fact of the matter is that having stopped the *Arctic Bridge*'s engines for two minutes, the *Arctic Bridge* drifted astern and created a close quarters situation with the *Tian E Zuo*, which was a vessel at anchor. As stated at [52] above, a vessel underway is to keep clear of a vessel at anchor.

88 To elaborate on the astern movement, the wind direction between 0341 hours to 0343 hours was in a general south-westerly direction with speeds between 17.5 knots to 25.40 knots; the tidal stream remained at 119° true with a speed of about 1.46 knots. In the two minutes during which her engines stopped, influenced by the elements, the *Arctic Bridge* drifted astern past the *Tian E Zuo*'s bow. The *Arctic Bridge* was observed to go astern, moving from port side to the starboard side of the *Tian E Zuo*, ahead of the *Tian E Zuo*'s bow. The *Arctic Bridge*'s bow was eventually observed to be almost perpendicular to that of the bow of the *Tian E Zuo*.

89 According to Captain Khuzhin's affidavit of evidence-in-chief, the *Arctic Bridge*'s bow passed clear of the *Tian E Zuo*'s bow by about 10 to 20 metres, at about 0344 hours. This appears to be Captain Khuzhi's visual estimate. According to Captain Walker, the *Arctic Bridge*'s port side was approximately 23 metres from the bow of the *Tian E Zuo* at about 0343 hours, as measured from the Avenca video. On the other hand, Mr Singh calculated the distance between the two vessels to be approximately 42 metres at 0343 hours, and approximately 66 metres at 0344 hours (see annex 2 for a graphical

Version No 3: 27 Oct 2020 (22:41 hrs)

depiction of relative position and distance between the vessels at 0344 hours as produced in Mr Singh's report). Regardless of whichever distance is accepted by this court, in stopping her engines, the *Arctic Bridge* created a close quarters situation; she ended up passing the *Tian E Zuo* at an unsafe distance. Far from keeping clear of the *Tian E Zuo*, the *Arctic Bridge* now found herself in a similar position as she was when the *Tian E Zuo* had dragged towards her almost an hour earlier. I find this to be poor exercise of seamanship on the *Arctic Bridge*'s part as well as failure to take appropriate action to keep clear of the *Tian E Zuo* to avoid collision in accordance with rule 8.

90 Turning now to the events that transpired between 0344 hours to 0351 hours (the defendant uses the timeframe between 0345 hours to 0350 hours; in reality, nothing turns on this difference) when the *Arctic* Bridge, in passing ahead crossed the bow of the *Tian E Zuo* for the second time. Between 0345 hours to 0346 hours, the *Arctic Bridge* stopped her engines again and appeared to hold position momentarily. She then increased her engines to half ahead at 0347 hours causing her to move forward and crossed the *Tian E Zuo*'s bow for a second time. According to Mr Singh's calculations based on VDR data, the vessels were 25 metre apart at 0349 hours, barely an eighth of the *Arctic Bridge*'s length. At 0350 hours, the *Arctic Bridge* clears the *Tian E Zuo*. At 0351 hours, the *Tian E Zuo*'s heading begins to change – her bow turned, signalling the start of the involuntary towage. After 20 minutes, at about 0410 hours, the *Tian E Zuo* was towed into the port quarter of the *Stena Provence*, a vessel at anchor. Annex 3 provides a graphical depiction, extracted from Mr Singh's report, of the respective headings and movements of the *Arctic Bridge* and the *Tian E Zuo* between 0351 hours to 0408 hours.

91 I consider the manoeuvres and movements of the *Arctic Bridge* from 0344 hours to 0410 hours to be critical. This was the period during which the

Version No 3: 27 Oct 2020 (22:41 hrs)

Arctic Bridge crossed the bow of the *Tian E Zuo* and proceeded in the direction of the *Stena Provence* without appreciating that she had fouled and picked up the *Tian E Zuo*'s anchor or anchor chain. The *Tian Zuo* was dragged by the *Arctic Bridge* for 20 minutes until the first contact between the *Tian E Zuo* and the *Stena Provence*. It is the plaintiffs' case that throughout this period Captain Khuzhin did not realise that the *Tian E Zuo* was being towed by the *Arctic Bridge*. Even if, for the sake of argument, there were some situational awareness, Captain Khuzhin took no steps at all to avoid the related collisions.

92 For the reasons stated below, I find that the factual causative features of the case to be the crossing of the bow of the *Tian E Zuo* at 0347 hours at an unsafe distance, the entanglement of the vessels' anchors or anchor chains, the involuntary towage, the distance travelled during the involuntary towage, the speed and heading of the *Arctic Bridge*, and the overall lack of or inadequate situational awareness on the part of the *Arctic Bridge* that set the *Tian E Zuo* on a collision course.

93 I must, however, highlight that while the entanglement is a key causal feature, the actual timing of the entanglement is immaterial. In this regard, Mr Singh opined that the anchors or anchor chains were fouled between 0343 hours to 0344 hours, whereas Captain Walker opined that the fouling occurred at around 0350 hours. While both experts could not agree on the precise time at which the anchors or anchor chains fouled, they agreed that this question was "academic".[35] I agree; the timing of the entanglement is not determinative of the outcome of this action for two reasons. First, it is not denied that the *Arctic Bridge* fouled the *Tian E Zuo*'s anchor or anchor chain. Secondly, the

---

35 Transcript Day 9, p 38, lines 19–29; p 43, lines 6–9.

Version No 3: 27 Oct 2020 (22:41 hrs)

defendant's primary case is not dependent on the timing of the entanglement. The defendant's case is that the direct cause of the related collisions was Captain Khuzhin's failure to heed West Control's suggestion to maintain her heading of 245°, proceed for two and a half cables and stop. The point being that had the *Arctic Bridge* stopped, the *Tian E Zuo* would not have been towed towards the *Stena Provence*, irrespective of when the anchors or anchor chains of the vessels had fouled.

94 Returning to the defendant's submissions, it is the defendant's case that the *Arctic Bridge* breached rules 5, 7(a), 7(b) and 8(a) of the COLREGS during this period as not only did the *Arctic Bridge* crossed ahead of the *Tian E Zuo* at an unsafe distance, the *Arctic Bridge* failed to appreciate that the anchors or anchor chains of both vessels would likely have fouled as a result.

95 Rule 5 provides:

Rule 5

Lookout

> Every vessel shall at all times maintain proper lookout by sight and hearing as well as all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.

96 Rule 5 is an important provision. The failure to keep proper lookout would often mean that other provisions could be breached. To illustrate, if proper lookout were not maintained, the mariner denies himself the opportunity to use all available means appropriate to determine if a risk of collision exists in accordance with rule 7, and accordingly, is unable to take appropriate action to avoid collision in accordance with rule 8.

Version No 3: 27 Oct 2020 (22:41 hrs)

97 Proper lookout comprises the proper use of sight and hearing, and *an appreciation of the situation* and the risk of collision (see *Marsden* at para 5-184). I emphasise that merely keeping a lookout without applying one's mind to the developing situation is not enough. As Gross J in *The "Global Mariner" and "Atlantic Crusader"* [2005] Lloyd's Rep 699 at [80] said:

> The philosophy of [Rules 5 and 7] is both well known and apparent. They emphasize the need for those on board a vessel to *make a proper appreciation of her situation*; assumptions are to be avoided; where there is doubt, a risk of collision is deemed to exist.
>
> [emphasis added]

98 Rule 7 reads as follows:

> **Rule 7**
>
> ***Risk of collision***
>
> (a) Every vessel shall use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists. If there is any doubt such risk shall be deemed to exist.
>
> (b) Proper use shall be made of radar equipment if fitted and operational, including long-range scanning to obtain early warning of risk of collision and radar plotting or equivalent systematic observation of detected objects.
>
> …

99 Rule 8 (a) is already quoted above at [65].

100 During cross-examination, Captain Khuzhin agreed that it is wrong to cross the bow of another vessel at close quarters, however highlighted that the circumstances were extraordinary:[36]

---

36 Transcript Day 2, p 58, lines 12–15.

Version No 3: 27 Oct 2020 (22:41 hrs)

> Mr Loo: Okay. Now, would you also agree with me that it is poor seamanship to navigate a vessel, to cross ahead of another vessel's bow at close quarters?
>
> Captain Khuzhin: I agree that it is not advisable to cross the heading of another vessel but you should understand that it was in extraordinary situation.

101 He did not elaborate on why he found the situation extraordinary between 0344 hours to 0350 hours. In Captain Walker's view, Captain Khuzhin's decision to cross the bow of the *Tian E Zuo* was reasonable. And this view can be understood in two ways: (a) that the decision to cross the bow was not a fault at all; and (b) even if it were a fault, Captain Khuzhin was justified in doing so given the "extraordinary" circumstance. Taking on the second view (b) first, the plaintiffs' submit that "[t]here was no other realistic option for [the *Arctic Bridge*] at that time just as there was no other realistic option for [the *Arctic Bridge*] at 0331 [hours]".[37] Their argument is essentially that at 0344 hours, the *Arctic Bridge* had found herself back in a position similar to the initial close quarters situation with the *Tian E Zuo* at 0331 hours. Captain Khuzhin simply wanted to get away from the *Tian E Zuo*. The plaintiffs contend that defendant's criticism has the benefit of hindsight and urge the court to accept Captain Walker's comparison between the aforesaid two scenarios in that they were both similar; the point being that in both instances the *Arctic Bridge* was only trying to extricate herself from a situation that started with the *Tian E Zuo* dragging anchor at the outset.

102 In reply, the defendant submits that the comparison advanced by Captain Walker is an inappropriate analogy and adds nothing to the analysis. I agree. While it is understandable that as a result of the *Tian E Zuo*'s initial negligence,

---

37 Plaintiffs' Closing Submissions, para 160.

Version No 3: 27 Oct 2020 (22:41 hrs)

the *Arctic Bridge* had to dredge anchor and that she continued to dredge her anchor throughout the events that culminated in the related collisions, the circumstances at 0331 hours and at 0347 hours are different. There are two points to note. First, the plaintiffs again seek to use the same argument which is that the *Arctic Bridge* was forced by the initial negligence of the *Tian E Zuo* to dredge anchor and that continued to hamper the *Arctic Bridge*'s manoeuvrability. In my view, inasmuch as the dredging of the anchor affected the manoeuvrability of the *Arctic Bridge*, it was not and could not be taken as the *sole cause* of the difficulties encountered by the *Arctic Bridge* from time to time. Secondly, the state of affairs from 0331 hours have changed. Certainly by 0347 hours, an appreciable interval of time has elapsed with different events occurring since 0330 hours, when the *Tian E Zuo* became a vessel at anchor. The *Arctic Bridge* as the vessel underway was obligated to keep clear of the bow of the *Tian E Zuo* but ended up in positions that would serve to compound the risk of fouling the anchors or anchor chains of both vessels; a view held by Mr Singh as well. These reasons reinforce my view that the "but for" test as advocated by the plaintiffs is insufficient to establish both factual and legal causation. As stated, the present case is not one involving a single causal event.

103 Unlike the situation at 0331 hours, where through no fault of her own, the *Arctic Bridge* found herself in a close quarters situation with three other vessels, the close quarters situation at 0347 hours arose out of her own decision to stop the engines at 0341 hours. In other words, the difference between 0331 hours and 0341 hours is in how the situation in which the *Arctic Bridge* found herself arose.

104 I now turn to the point at [101] above that the decision to cross the bow was not a fault at all. This relates to the suggestion by the plaintiffs that the

Version No 3: 27 Oct 2020 (22:41 hrs)

Arctic Bridge had crossed or go round the bow of the *Tian E Zuo* as Captain Khuzhin wanted to collect the vessel's anchor:[38]

> The Plaintiffs' expert, JW, gave evidence that the Master of the AB's decision to go around the bow of the TEZ at about 03:45hr was reasonable because at that time, that was where his anchor was, around the bow, and the Master wanted to go and collect his anchor.
>
> [emphasis added]

105 First, Captain Khuzhin's decision to cross or go around the *Tian E Zuo*'s bow was to get away from the three vessels, the *Tian E Zuo*, the *Marine Liberty* and the *DL Navig8*, and not to "collect his anchor". Accordingly, the suggestion that the *Arctic Bridge* crossed the *Tian E Zuo*'s bow to collect anchor is an afterthought. Secondly, the mere fact of crossing at an unsafe distance and not keep clear of a vessel at anchor is poor seamanship. Thus whatever is the reason for crossing the *Tian E Zuo*'s bow, and in this case, the reason given was Captain Khuzhin's purported intention to collect the *Arctic Bridge*'s anchor, is irrelevant.

106 Mr Singh also raised the option of the *Arctic Bridge* slacking her anchor chains to gain distance and thereafter re-assess the situation at 0347 hours, instead of going around the *Tian E Zuo*'s bow. There was no agreement between the experts on its viability. Given my findings in this judgment, it is unnecessary for me to resolve this debate, which is a peripheral matter.

107 To sum up, in crossing the *Tian E Zuo*'s bow at 25 metres, the *Arctic Bridge* passed the *Tian E Zuo* at an unsafe distance and failed to fully appreciate

---

38 Plaintiffs' Closing Submissions, para 123.

Version No 3: 27 Oct 2020 (22:41 hrs)

the developing circumstances, and I so find. This is a breach of rule 5 and rule 8(a).

108 Turning to the defendant's primary case (see [93] above), as the *Arctic Bridge* was crossing the *Tian E Zuo*'s bow, at 0348 hours, West Control contacted the *Arctic Bridge* and the following conversation took place:[39]

> West Control: Where are you going to s..uh.. drop anchor over?
>
> Arctic Bridge: We are still heaving up anchor, we are have intention to move north west from my position now uh north west uh about uh about half mile to north west.
>
> West Control: Ok what is your heading now, what is your heading now?
>
> Arctic Bridge: 245° now.
>
> West Control: 245°, uhh suggest, ok you continue going 245° about two and a half cables you can drop.

109 The defendant submits that the *Arctic Bridge*'s failure to heed West Control's advice on where to anchor was a serious fault. This is because the *Arctic Bridge* was in a position where if she had kept her heading of 245°, proceeded forward and stopped two and a half cables away, the *Tian E Zuo* would not have been eventually towed towards the *Stena Provence*.[40]

110 Captain Walker sought to characterise West Control's advice as merely a suggestion and nothing more. However, as was pointed out by Mr Loo, regardless of whether West Control's statement was a suggestion or an instruction, a prudent seaman would consider it since it came from the local port authority with knowledge of the anchorage and on matters of pertaining to

---

39 DBAEIC Vol IV, Tab B1, p 223 (HS's Report).

40 Defendant's Closing Submissions, paras 71–72.

Version No 3: 27 Oct 2020 (22:41 hrs)

navigation in the anchorage; a point which Captain Walker subsequently agreed. Further, if West Control's suggestion were unsuitable for the *Arctic Bridge,* Captain Khuzhin ought to have responded by indicating so.

111 Captain Khuzhin, on the other hand, accepted during cross-examination that had the *Arctic Bridge* complied with West Control's aforesaid suggestion, the related collisions would not have happened:[41]

> Mr Loo: Alright, okay. So do you agree with me that if you had actually complied with West Control's message, alright, ARCTIC BRIDGE would not have brought TIAN E ZUO into collision with STENA PROVENCE? Do you agree?
>
> Captain Khuzhin: Yes.

112 In re-examination, Captain Khuzhin attempted to undo his admission and claimed that he tried to proceed to the direction indicated by West Control but was hampered by the port anchor. This part of the evidence was not in his affidavit of evidence-in-chief. Furthermore, his oral explanation was with hindsight reasoning:[42]

> Captain Khuzhin: Yes, I can explain because we were trying to do so.
>
> …
>
> Ms Chew: Can you explain what you mean?
>
> Captain Khuzhin: We were trying to follow the directions and do 2½ cables in the directions that we were given, but did not manage to do so.
>
> Ms Chew: Is there any reason you did not manage to do so?
>
> Captain Khuzhin: I think that the reason is what happened later when we entangled the anchor chain of TIAN E ZUO.
>
> Ms Chew: Sorry. Can you elaborate? I don't understand.

---

41 Transcript Day 2, p 62, lines 2–5.

42 Transcript Day 3, p 17, lines 1–12.

Version No 3: 27 Oct 2020 (22:41 hrs)

> Captain Khuzhin: In those weather conditions as well with the---our anchor behind the bolts, we were dredging the anchor. We did not manage to go those 2½ cables in the direction noted in a safe manner.

To overcome Captain Khuzhin's admission in cross examination (see [111] above), the plaintiffs resorted to using a list of rhetorical questions at paragraph 165 of their closing submissions. The essence of those questions is this – even if the *Arctic Bridge* had heeded West Control's suggestion, the possibility of a collision between the *Tian E Zuo*, the *DL Navig8* and the *Marine Liberty* and the *Arctic Bridge* would nonetheless exist. The rhetorical questions posed by the plaintiffs were most unhelpful and they miss the point. The court is not concerned with any collision, be it between the *Arctic Bridge* and the *Marine Liberty* or the *Arctic Bridge* and the *Tian E Zuo* or the *Arctic Bridge* and the *DL Navig8,* but with the related collisions. In any case, the rhetorical questions would not have assisted in overcoming Captain Khuzhin's admission. The pertinent point here is that the *Arctic Bridge* did not stop at any point in time prior to the first contact with the *Stena Provence*; an involuntary towage developed at about 0351 hours, and the *Arctic Bridge* increased engine speed thereafter – from half ahead at 0351 hours to full ahead at 0401 hours and she continued to go full ahead even after the first contact between the *Tian E Zuo* and the *Stena Provence*, and the *Arctic Bridge* and *Stena Provence*, respectively.

113 This leads me to my next point. The entanglement of the anchors or anchor chains alone would be insufficient to cause the related collisions. For the related collisions to occur, the *Tian E Zuo* must necessarily have been towed from where she was at anchor since 0330 hours into the port quarter of the *Stena Provence*. It would also mean that the *Arctic Bridge* must have towed the *Tian E Zuo* in a certain direction, at a certain speed, over a certain distance. In this connection, there was sufficient opportunity in the 20 minutes during the towage

Version No 3: 27 Oct 2020 (22:41 hrs)

for the crew on board the *Arctic Bridge* to have appreciated and avoided physical contact with the *Stena Provence*. This raises the question of whether the *Arctic Bridge* breached rule 5 of the COLREGS to keep a proper lookout and consequently, rule 7.

114 The defendant's raised at least three instances of the *Arctic Bridge*'s failure to keep proper lookout; each adding up to the eventual related collisions.

115 First, having passed the *Tian E Zuo*'s bow twice at an unsafe distance and not keeping clear of an anchored vessel, the *Arctic Bridge* ought to have appreciated the risk of fouling anchors. This is especially so since the *Arctic Bridge* was dredging anchor and the *Tian E Zuo* had both her anchors down. At trial, Captain Khuzhin and his chief officer claimed that they did not know the *Tian E Zuo* had her anchors down. This cannot be true. First, the plaintiffs' Preliminary Act indicated that the *Tian E Zuo* was seen to be exhibiting anchor lights. Even if the anchor lights could not have been seen given the interference from other light sources, the *Arctic Bridge* must have known that the *Tian E Zuo* had at least one anchor in the water since the *Arctic Bridge* knew that the *Tian E Zuo* was dragging one anchor. The very anchor that the *Arctic Bridge* fouled and picked up was the same anchor the *Tian E Zuo* had dragged. Under these circumstances, any suggestion to excuse the fouling of the anchor is without merit.

116 Second, and quite critically, the *Arctic Bridge* ought to have fully appreciated the fact that she was towing the *Tian E* Zuo. The plaintiffs submit that the *Arctic Bridge* could not have discerned the difference between dredging her anchor and towing the *Tian E Zuo*. The plaintiffs further added that the *Arctic Bridge* could not tell if the *Tian E Zuo* was moving on her own motive power even though Captain Khuzhin had acknowledged in his affidavit of

Version No 3: 27 Oct 2020 (22:41 hrs)

evidence-in-chief that as the *Arctic Bridge* moved ahead and to the west, he noticed that "the bow of [the *Tian E Zuo*] began to swing to port" and could see the *Tian E Zuo* "follow" the *Arctic Bridge*.[43]

117 Dealing first with the plaintiffs' second point that there no way of telling if the *Tian E Zuo* was using her engines during the period of the towage, this assertion is not supported by the objective evidence. The *Arctic Bridge* was clearly cognisant of the *Tian E Zuo*'s inability to move. She had remained at the same position with the two vessels at her stern since 0330 hours. I also refer to the transcript of the conversation with West Control at 0334 hours (see [16] above). Under such circumstances, even if the *Arctic Bridge* did not know the state of the *Tian E Zuo*'s engines, the *Arctic Bridge* would have, at the very least, observed at 0343 hours that the *Tian E Zuo* and the two other vessels remained entangled and that the *Tian E Zuo* had not moved, contrary to West Control's earlier message at 0334 hours. In short, a reasonable inference to be drawn from these matters is that the *Tian E Zuo* was incapable of propulsion on her own.

118 Turning to the plaintiffs' other point, it must be remembered that for more than 20 minutes, approximately between 0351 hours to 0402 hours, the *Arctic Bridge* was not only towing the *Tian E Zuo* but the two other vessels as well. The *Tian E Zuo* is a significantly larger ship with a gross tonnage of 43,718 tonnes with cargo on board, the *DL Navig8* weighing 30,964 tonnes and the *Marine Liberty* weighing 3,828 tonnes. The *Arctic Bridge* had steamed at full speed ahead for the most part during the 20 minutes of towing. Yet she did not appreciate that at full ahead she was making speeds of merely one to two knots,

---

43 PBAEIC Vol I, Tab A, para 69 (Captain Khuzhin's AEIC).

Version No 3: 27 Oct 2020 (22:41 hrs)

going down to a low of 0.9 knots at 0400 hours and a maximum speed of only 3.2 knots over the ground at the time of the first collision between the *Stena Provence* and the *Tian E Zuo* at 0410 hours. This in contrast to the vessel's capacity to travel at 12.8 knots full speed ahead as indicated in the manoeuvring characteristics section of the vessel's Capacity Plans. Mr Singh said that even taking into account the dredging action of the anchor, the greatly reduced speed of the *Arctic Bridge* would have been a red flag:[44]

> Mr Singh: … It is about the issue of resistance that was just discussed in regards to the resistance from three shackles of an anchor cable and relative to towing TIAN E ZUO, DL NAVIG8 and MARINE LIBERTY. By the time the master of ARCTIC BRIDGE had half ahead or full ahead rpm, one would expect that a master who has been on board his ship for many months would know that given a particular engine order, notwithstanding the 7 or 8 tonnes of weight from an anchor and its shackle, would achieve a certain speed within a certain number of minutes and given that the very low speeds that we---we actually saw ARCTIC BRIDGE attain … it actually shows something is very seriously pulling back on the ARCTIC BRIDGE. So, whether or not the anchor chain could be visually checked is saying secondary. It's the master's knowledge of his characteristics and handling of his vessel. That would have told him this rpm has been going for too long and the speed is too low for this rpm. He should know his own ship. …

119 There were multiple indicators of the ongoing towing that ought to concern Captain Khuzhin. Yet Captain Khuzhin did not appreciate that the *Tian E Zuo* was following the *Arctic Bridge* as the latter navigated westwards away from the *Tian E Zuo*. This was despite knowledge that the *Arctic Bridge* was dredging anchor, that the *Tian E Zuo* had at least one anchor in the water and that the *Arctic Bridge* could not achieve her expected engine speed. In these circumstances, a prudent seaman in Captain Khuzhin's position would have appreciated that his vessel's anchor chain might have fouled another vessel's

---

44 Transcript Day 9, p 120, lines 25–30; p 121, lines 1–12.

Version No 3: 27 Oct 2020 (22:41 hrs)

anchor chain. In the premises, I am unable to accept the plaintiffs' submission that the *Arctic Bridge* was unaware that she was towing the *Tian E Zuo*.

120 Captain Khuzhin was at fault in failing to observe the tow. Either there was no situational awareness or the lookout was simply inadequate to keep watch on the *Tian E Zuo*, a vessel that the *Arctic Bridge* had passed and shortly after, noticed a change in the heading. In all probability, the reality was that on the basis of inappropriate factual assumptions as regards the *Tian E Zuo*, Captain Khuzhin paid insufficient attention to the true situation of the towage and nothing was done on board the *Arctic Bridge* to alleviate the effect of the *Arctic Bridge* pulling the *Tian E Zuo*. As a result, the *Arctic Bridge* dragged the *Tian E Zuo* by her anchor or anchor chain over a distance of about one kilometre across the anchorage. This segues into the point below.

121 Third, the *Arctic Bridge* sailed close to the *Stena Provence* and that was itself a breach of good seamanship. Those on board the *Arctic Bridge* failed to keep proper lookout for the presence of anchored vessels like the *Stena Provence*. According to the chief officer of the *Arctic Bridge*, he had the *Stena Provence* in sight at 0400 hours. This was reported to Captain Khuzhin. At about 0408 hours, Captain Khuzhin candidly mentions in his affidavit of evidence-in-chief that the *Arctic Bridge* "had moved up parallel to '**STENA PROVENCE**' at about 50 metres distant" with the *Tian E Zuo* "still following astern to the starboard" and concluded that the *Arctic Bridge* had "got closer to '**STENA PROVENCE**' than … planned".[45] At trial, Captain Khuzhin accepted that his vessel had come into a close quarters situation and that it was wrong for his vessel to have done so. Yet there has been no evidence that at earlier points in

---

45 PBAEIC Vol 1, Tab A, paras 70–71 (Captain Khuzhin's AEIC).

Version No 3: 27 Oct 2020 (22:41 hrs)

time, the crew on board the *Arctic Bridge* had taken measures to determine her course. This is despite the *Stena Provence* attempting to contact the *Arctic Bridge* over VHF for at least five times at 0406 hours. Further, there was at least 10 minutes from the time the chief officer saw the *Stena Provence* to the point of first contact between the *Stena Provence* and the *Tian E Zuo*. Had the *Arctic Bridge* plotted her course during this period, she could have determined a developing close quarters situation or a risk of collision between herself and the *Stena Provence*. Steps could have then been taken to avoid a coming into close quarters with the *Stena Provence*. As Mr Singh explained:[46]

> had [the *Arctic Bridge*] kept a safe distance from [the *Stena Provence*] the collision with [the *Stena Provence*] may have been prevented or a near miss may have ensued instead of [the *Tian E Zuo*'s] bow colliding with [the *Stena Provence*].

122 As regards the *Stena Provence* attempting to contact the *Arctic Bridge* over VHF for at least five times at 0406 hours, there was no satisfactory explanation why those on board the *Arctic Bridge* did not keep a rule 5 lookout by hearing. By hearing means continually listening to VHF.

123 In his affidavit of evidence-in-chief, Captain Khuzhin attempted to explain that the *Arctic Bridge*'s navigation towards the *Stena Provence* was through no fault of the *Arctic Bridge* as the "wind in combination with dredging the anchor … made manoeuvring the vessel more difficult".[47] However, at trial, Captain Khuzhin accepted that the port anchor and the north-westerly wind (as he had then incorrectly assessed) would not have pulled the bow of the *Arctic Bridge* to starboard, closer to the *Stena Provence* but to port. The *Arctic Bridge*,

---

46 DBAEIC Vol II, Tab 1, para 4.7.9 (HS's Report).

47 PBAEIC Vol I, Tab A, para 71 (Captain Kuzhin AEIC).

Version No 3: 27 Oct 2020 (22:41 hrs)

therefore, cannot be excused for not keeping clear of the *Stena Provence,* a vessel at anchor.

124 During re-examination Captain Khuzhin added that the anchor might have jumped over from the port side to the starboard side thus resulting in the turn towards the *Stena Provence*. This explanation was neither pleaded nor mentioned in his affidavit of evidence-in-chief. I therefore reject this explanation.

125 In the light of abovementioned acts and/or omissions, I find that the *Arctic Bridge* breached rules 5 and 7 of the COLREGS. It was the composite failure in appreciating the risk of fouling, the commencement and continuance of the towage without appreciation and assessment of the situation, and not keeping clear of the *Stena Provence* that was the fault of the *Arctic Bridge*.

126 Before I turn to examine the final timeframe of the incident, there remains the issue of the speed and course of the *Arctic Bridge* maintained from the start of the involuntary towage to the first contact between the *Tian E Zuo* and the *Stena Provence*. As I mentioned above, the direction and speed at which the *Arctic Bridge* was sailing would be an important consideration as it is the combination of these factors that set the *Tian E Zuo* on a collision course. In this connection, rule 6 of the COLREGS provides that "[e]very vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions". In determining a safe speed, rule 6 also states the factors to be taken into account. These factors include "the state of wind, sea and current, and the proximity of navigational hazards" as well as "the traffic density including concentrations of… any other vessels". In this vein, rule 8(e) adds that "[i]f necessary to avoid collision or allow more time to assess the

Version No 3: 27 Oct 2020 (22:41 hrs)

situation, a vessel shall slacken her speed or take all way off by stopping or reversing her means of propulsion".

127 From 0350 hours to 0410 hours, the *Arctic Bridge*'s engine speed increased from slow ahead to full ahead. During this time, the *Arctic Bridge* gradually came close to the *Stena Provence*. The defendant contends that the *Arctic Bridge* ought to have altered her course during this period. Specifically, the defendant highlighted that the *Arctic Bridge* had persisted on course for the *Stena Provence* from 0401 hours to 0407 hours, maintaining helm on midship. The *Arctic Bridge* only went hard to port at 0407 hours. This change in direction would not have significantly altered the trajectory of the *Tian E Zuo* and as matters turned out, the first contact between the *Tian E Zuo* and the *Stena Provence* was at 0410 hours. As mentioned above at [121], the chief officer had the *Stena Provence* in sight at 0400 hours. There would have been ample time for those on board the *Arctic Bridge* to appraise and appreciate the situation and for the *Arctic Bridge* to not only alter her course but also reduce her speed. As this was not done, I agree with the defendant's contention.

128 Coming now to the final timeframe of the incident, at 0410 hours, the *Tian E Zuo* made contact with the port quarter of the *Stena Provence*. The impact caused the *Stena Provence* to turn to port towards the *Arctic Bridge*, thereby making contact with the *Arctic Bridge* at 0411 hours. There was subsequently another set of collisions. While the plaintiffs did not plead any damage in relation to the other set of collisions, this was present in the defendant's pleadings. According to the defendant, the *Arctic Bridge* continued to proceed forward after the first set of collisions and it caused the *Tian E Zuo* to come into contact for the second time with the *Stena Provence* at 0427

Version No 3: 27 Oct 2020 (22:41 hrs)

hours.[48] The defendant contends that the *Arctic Bridge* failed to appreciate the risk of further collisions. I agree.

129 The *Arctic Bridge* was sailing full ahead at 0410 hours during the first set of collisions and maintained this speed all the way up to 0414 hours before reducing her speed to below half ahead, and at 0433 hours, to dead slow ahead. At trial Captain Khuzhin accepted that in continuing forward, the *Arctic Bridge* caused the second set of collisions:[49]

> Mr Loo: Ok, Captain, you see all that? So do you agree with me that in not stopping engines and continuing northwest wards, you had caused the second contact between TIAN E ZUO and STENA PROVENCE?
>
> Captain Khuzhin: (no audible answer)
>
> Mr Loo: Do you accept that? That is the result of your action in going northwest?
>
> Captain Khuzhin: Yes I agree. But after the second contact, I could not stop my vessel.
>
> Mr Loo: Alright. That is what you say. Okay. Do you agree with me that if a vessel encounters a collision, alright, the master or the officer in command should assess the situation, and ordinarily he should stop his vessel so as to minimise or mitigate the impact of the collision?
>
> Captain Khuzhin: Yes.
>
> Mr Loo: Alright. And you agree with me that you did not do this on that occasion, right?
>
> Captain Khuzhin: Yes. I thought that there would be more material damages, so how do I stop at that moment?

130 While Captain Khuzhin did express the concern that he was not able to stop the *Arctic Bridge*, he accepted that there were steps he could have taken to

---

48 DBAEIC Vol I, Tab 1, p 15, para 50 (Captain Zou's AEIC); Defendant's Closing Submissions, para 95.

49 Transcript Day 2, p 75, lines 6–16

Version No 3: 27 Oct 2020 (22:41 hrs)

have alleviate the situation. In failing to do so, I find that the *Arctic Bridge* had failed to display good seamanship in the circumstances.

131 In summary, I have found the following to constitute the faults of the *Arctic Bridge*:

(a) The failure to clear south of the *Kingfisher* between 0336 hours to 0341 hours;

(b) The order to stop engines between 0341 hours to 0343 hours which caused the *Arctic Bridge* to drift into a close quarters situation with the *Tian E Zuo*;

(c) The passing ahead and crossing of the *Tian E Zuo*'s bow at close quarters between 0344 hours to 0351 hours thereby increased the risk of fouling and picking up the anchors or anchor chains of both vessels;

(d) The failure to stop at any point in time as she proceeded towards the *Stena Provence*.

(e) The composite breaches of rule 5 of the COLREGS for failing to appreciate the risk of fouling, the commencement and continuance of the involuntary towage, and the navigation into a close quarters situation with the *Stena Provence* that was the fault of the *Arctic Bridge* (between 0351 hours to 0410 hours);

(f) The speed and direction of the *Arctic Bridge* which set the *Tian E Zuo* on a collision course (0351 hours to 0410 hours); and

(g) The failure to appreciate a further risk of collision after the first contact between the *Tian E Zuo* and the *Stena Provence*, and the *Arctic*

Version No 3: 27 Oct 2020 (22:41 hrs)

Bridge and the *Stena Provence* respectively (between 0410 hours to 0427 hours).

Of the faults listed in this summary, only the specific faults that go towards the issue of causative potency or the apportionment of liability will be discussed in this judgment.

Agony of the moment as a defence

132 The plaintiffs submit that the faults of the *Arctic Bridge* ought to be excused as they were made in the agony of the moment. In the *locus classicus* case of *The Bywell Castle* (1879) 4 PD 219 ("*The Bywell Castle*") (see *Thorben Langvad Linneberg v Leong Mei Kuen* [2013] 1 SLR 207 at [82] where the Court of Appeal acknowledged *The Bywell Castle* to have been the likely origin of the doctrine), Cotton LJ enunciated the principle as follows (at 228):

> For in my opinion the sound rule is, that a man in charge of a vessel is not to be held guilty of negligence, or as contributing to an accident, if in a sudden emergency caused by the default of negligence of another vessel, he does something which he might under the circumstances as known to him reasonably think proper; although those before whom the case comes for adjudication are, with a knowledge of all the facts, and with time to consider them, able to see that the course which he adopted was not in fact the best.

133 In the words of James LJ (at 223):

> … But I desire to add my opinion that a ship has no right, by its own misconduct, to put another ship into a situation of extreme peril, and then charge that other ship with misconduct. My opinion is that if, in that moment of extreme peril and difficulty, such other ship happens to do something wrong, so as to be a contributory to the mischief, that would not render her liable for the damage, inasmuch as perfect presence of mind, accurate judgment, and promptitude under all circumstances are not to be expected. …

134 And in the speech of Brett LJ (at 226–227):

Version No 3: 27 Oct 2020 (22:41 hrs)

> I am clearly of the opinion that when one ship, by her wrongful act, suddenly puts another ship into a position of difficulty of this kind, we cannot expect the same amount of skill as we should under other circumstances. The captains of ships are bound to shew such skill as persons of their position with ordinary nerve ought to shew under the circumstances. But any Court ought to make the very greatest allowance for a captain or pilot suddenly put into such difficult circumstances; and the Court ought not, in fairness and justice to him, to require perfect nerve and presence of mind, enabling him to do the best thing possible.

135 In their submissions, the plaintiffs contend that the agony of the moment "principle applied to two timings", from 0329 hours to 0331 hours and from 0336 hours to 0343 hours and "continued all the way".[50] Having regard to their entire submissions, it is unclear how the plaintiffs have understood the agony of the moment. On the one hand, the plaintiffs seem to suggest that the two time points above frame the period during which the agony of the moment operated. On the other hand, the plaintiffs could have meant that two time points represented separate periods during which the agony of the moment principle applied. The introduction of the phrase "continued all the way" in their closing submissions is an extension which is imprecise. In the light of the aforesaid ambiguities, and to make sense of the arguments, I have viewed the plaintiffs' case on the agony of the moment as a response to the defendant's counterclaim. In this regard, insofar as the plaintiffs' case is that the *Arctic Bridge* was operating under the agony of the initial negligence of the *Tian E Zuo* in dragging anchor, this would simply be a re-characterisation of the "but for" test as advocated by the plaintiffs and for reasons stated above, the contention is rejected. If the defence of agony of the moment is raised in respect of individual faults of the *Arctic Bridge* as described above, the defence as a matter of law is not made out. I shall now elaborate.

---

50 Plaintiffs Closing Submissions, para 133.

Version No 3: 27 Oct 2020 (22:41 hrs)

136 As regards the faults of the *Arctic Bridge* between 0337 hours to 0351 hours, the principle is inapplicable because the agony of the moment is a relational concept. As quoted above at [132], "a vessel is not to be held guilty of negligence, or as contributing to an accident, if in a sudden emergency *caused by the default of negligence of another vessel*" (emphasis added) (see also the speeches of James LJ and Brett LJ quoted above at [133]–[134]). At 0330 hours, the *Tian E Zuo* became a vessel at anchor and remained so until the start of the involuntary towage. The *Tian E Zuo*, at anchor, committed no faults during this period and hence no agony of the moment situation could have arisen. As regards the faults of the *Arctic Bridge* from 0351 hours onwards, an agony of the moment situation never arose. There was no sudden emergency during the involuntary towage; the *Arctic Bridge* had sufficient time to react to the developing close quarters situation with the *Stena Provence* but simply failed to do so for want of situational awareness and breach of the lookout rule. In any event, the plaintiffs were not specific in the application of the principle during this timeframe. Accordingly, I reject the plaintiffs' submissions on the agony of the moment defence.

Faults of the *Tian E Zuo*

137 Having addressed the issue of pleadings and the plaintiffs' advocated position on the "but for" test, and having regard to the fact that some of the allegations initially pleaded in the plaintiffs' Preliminary Act were not pursued in their submissions, I now turn to examine the alleged breach of rule 5 by those on board the *Tian E Zuo* after the *Arctic Bridge* fouled and picked up the port anchor or anchor chain of the *Tian E Zuo* (*ie*, during the period of the involuntary towage).

Version No 3: 27 Oct 2020 (22:41 hrs)

138 The plaintiffs contend that the *Tian E Zuo* was in a better position to have been aware that she was being towed. Had those on board the *Tian E Zuo* been keeping proper lookout, they would have noticed that the *Tian E Zuo* was being towed and could have alerted the *Arctic Bridge*. The contention is that the *Arctic Bridge* did not know that the *Tian E Zuo's* engines was stopped, or if the *Tian E Zuo* was moving on its own engine propulsion. In response, the defendant submits that because the *Tian E Zuo* had two of her anchors in the water and had been at anchor since 0330 hours, those on board did not expect the *Tian E Zuo* to move and did not immediately understand the reason for her forward movement. The defendant further submits that as a vessel at anchor, she could not be faulted.

139 I propose to deal first with the dispute relating to the lookout on board the *Tian E Zuo* before turning to address the defendant's further submissions that as a vessel at anchor, she could not be faulted. For the reasons I will come to in due course, my findings on the faults of the *Tian E Zuo* depart from how the parties have interpreted the evidence; which I do not accept as correct. As I have said elsewhere, "[t]his is not controversial since the court is not bound to confine its decision to the version advanced by the parties, if, as was the case here, the evidence or the reading of it showed otherwise" (*Koon Seng Construction Pte Ltd v Chenab Contractor Pte Ltd* [2008] 1 SLR(R) 375 at [9]).

140 As stated, the plaintiffs' position is that those on board the *Tian E Zuo* did not realise that they were being towed as none of the crew members kept a proper lookout. They highlighted that Captain Zou failed to realise that the *Tian E Zuo* started to move at 0350 hours and that he only noticed that the vessel was moving at 0404 hours. They also emphasised that the second officer, who was supposed to be monitoring the radar, had failed to notice the movement of the *Tian E Zuo*. The chief officer, who was supposed to keep a lookout at the bow

Version No 3: 27 Oct 2020 (22:41 hrs)

of the *Tian E Zuo*, likewise failed to notice that the vessel was moving forward. Captain Zou claimed, in his affidavit of evidence-in-chief, to have only realised that his vessel was moving at 0404 hours and was confused by what was causing the vessel to move ahead.

141 Having examined the overall evidence on this area, I am not persuaded by the plaintiffs' arguments on poor lookout as they saw it. In this regard, I also do not believe Captain Zou's testimony that he had only realised that his vessel was moving at 0404 hours and that he was earlier confused by what was causing the vessel to move ahead.[51] In my judgment, the evidence is to be explained on the footing that those on board the *Tian E Zuo,* to begin with, were more interested in monitoring the *Marine Liberty* and the *DL Navig8* as they cleared the *Tian E Zuo's* stern during the period of time unexpected assistance was being rendered by the *Arctic Bridge*, as she pulled the *Tian E Zuo* away from her anchored position. Viewed from this assessment of the evidence, it can fairly be said that the *Tian E Zuo* failed in due time to use her engines to keep clear of the *Stena Provence*. Neither did the *Tian E Zuo* use sound signals to warn the *Arctic Bridge*, whose engines had been kept at full ahead all the time that she was pulling the *Tian E Zuo* towards the *Stena Provence*. Specifically, I find that at about 0355/0400 hours Captain Zou appreciated that the *Tian E Zuo* was moving and heading in a similar direction as the *Arctic Bridge*. I also find that those on board the *Tian E Zuo* had appreciated the appearance of opportune moments represented by her trailing behind the *Arctic Bridge* that could and did enable the *Tian E Zuo* to come clear of the *Marine Liberty* and the *DL Navig8*. I further find that those on board the *Tian E Zuo* waited for the *Marine Liberty* and the *DL Navig8* to clear away from her stern and that the *Tian E Zuo*'s

---

[51] Transcript Day 4, p 74, lines 4–29; DBAEIC Vol I, Tab A, para 42.

Version No 3: 27 Oct 2020 (22:41 hrs)

engines was ready for use before and by the time Captain Zou gave astern orders at 0407 hours in an attempt to avoid the *Stena Provence*. And I find that the *Tian E Zuo* took belated actions to avoid a collision and that she made contact with the port quarter of the *Stena Provence*. In the context of good watch keeping to determine if any risk of collision exists, I find that the *Tian E Zuo*'s appraisal of the developing situation at her stern did not include a lookout and assessment of the situation in front of her as the *Arctic Bridge* navigated ahead and the presence of the anchored vessel, the *Stena Provence*. I shall now elaborate on the evidence and the breach of rules 5 and 7 bearing in mind the failures to keep a proper lookout and availability of information to negate the risk of collision.

142 I begin with the question posed by Ms Chew to Captain Zou as to what he was doing at about 0350 hours, when the heading of the *Tian E Zuo* was observed to have changed due to the commencement of the involuntary towage:[52]

> Ms Chew: Yes. That was at 0350. And then at paragraph 40, at 0404, you suddenly realised your own vessel is moving. What were you doing before 0404?
>
> Captain Zou: I was observing ARCTIC BRIDGE but at the same time I was also trying to contact the control so that they could send a tug boat because I wanted to move away from DL Navig8.

143 Captain Zou explained that he was trying to contact West Control to arrange for a tugboat to assist the *Tian E Zuo* in moving away from the *DL Navig8*. This is also borne out in the VHF conversation between West Control and the *Tian E Zuo* as recorded in the certified transcript tendered by the plaintiffs (the transcript records West Control as Port Control; this difference is

---

[52] Transcript Day 4, p 74, lines 4–8.

Version No 3: 27 Oct 2020 (22:41 hrs)

immaterial). Captain Zou was advised to seek the assistance of an emergency tug to pull the *Tian E Zuo* clear of the two vessels at her stern:[53]

> Port Control: That is feasible if you have ___. You can apply for a pilot if the timing is appropriate, Captain. You know the situation better than me because you are at the scene. I suggest that you use the boat thruster to get your bow out first. Over.
>
> Crew 6: But I don't have a boat thruster.
>
> Port Control: Then you should call your agent, if you need an emergency tug. And you can arrange--
>
> Crew 6: I want to apply for a boat thruster and a pilot. Without a thruster, everything would be stuck, and I cannot move. We are seriously too close. Once I move and intertwined its anchor chain, we will all be doomed.

144 At round about the same time, the *Tian E Zuo* found herself moving forward with her anchor cables pulling in opposite directions. As I have mentioned above, at about 0350 hours, the heading of the *Tian E Zuo* began to turn to port. Her change of heading was a sign of manoeuvring. By 0351 hours, the anchors or anchor chains of both vessels had become entangled. Around this time, those on board began raising suspicions that they were being towed. According to Captain Walker, the second officer was heard on the VDR making the following statements at about 0352 hours: "How come the ship shake so violently"; "The ship shake"; and "It is hit the anchor chain, that ship in the front".[54] However, despite the concerns raised by the second officer in the bridge, there appeared to be no response from Captain Zou who was also there in the bridge. As these statements were made in mandarin, Captain Walker had a colleague provide the translation. At the trial, Mr Loo raised certain doubts as to the accuracy of the translation from Mandarin to English. While the

---

53 Affidavit of Li Yilin, p 56.

54 PBAEIC Vol I, Tab C, para 4.4.33 (JW's Report).

Version No 3: 27 Oct 2020 (22:41 hrs)

statements highlighted by Captain Walker were not tendered as translations of a qualified translator, I note that Mr Singh, in his report, had also picked up on a similar conversation and indicated that the conversation took place at about 0351 hours:[55]

> Is the anchor caught?
>
> Caught the anchor?
>
> Is the front anchor?
>
> Is it because of the ship in front?
>
> No, no, no it left already.

145 Similarly, in a certified translated VDR transcript tendered by the plaintiffs, the conversation on board the *Tian E Zuo* was consistent with a suspicion that the anchor chains of the *Tian E Zuo* had become entangled:[56]

> Master: Is our anchor chain intertwined with the boat in front of us?
>
> Crew 1: Is the front boat responsible?
>
> Crew 6: No.

146 Although the speakers in the transcript was not clearly identified and that the possibility of entanglement was dismissed, it is plain that the possibility of entanglement was raised and had, at the very least, come to Captain Zou's attention.

147 As stated, Captain Zou claimed, in his affidavit of evidence-in-chief, to have only realised that his vessel was moving at 0404 hours and was confused by what was causing the vessel to move ahead. He further claimed that he only

---

55 DBAEIC Vol II, Tab 1, para 4.6.1.3 (HS's Report).

56 Affidavit of Li Yilin, p 56.

Version No 3: 27 Oct 2020 (22:41 hrs)

appreciated that his vessel was being towed after the first contact between the *Tian E Zuo* and the *Stena Provence*, and the *Arctic Bridge* and the *Stena Provence*, respectively. Captain Zou's evidence, however, is untenable and I find his testimony unbelievable in the light of the other objective evidence before me. I find that Captain Zou appreciated that the *Tian E Zuo* was moving forward at an earlier point in time, at about 0355/0400 hours, and he also appreciated that his vessel was being towed by the *Arctic Bridge*. Apart from the VDR conversations I have highlighted above indicating suspicion that the *Arctic Bridge* had entangled the *Tian E Zuo*'s anchor chain and was being towed, the affidavits of evidence-in-chief of at least two of the defendant's witnesses show that those on board noticed signs of the entanglement as early as 0400 hours and that they reported these developments to Captain Zou. The chief officer, who was stationed at the bow of the vessel, in his affidavit of evidence-in-chief, said:[57]

> The "ARCTIC BRIDGE" then went astern, moving back across "TIAN E ZUO"'s bow, passing very close ahead of our ship's bow at 30 to 40 metres distant. I continued to report the situation to the Master concerning the "ARCTIC BRIDGE"'s movement as she was very close ahead of our ship.
>
> After that, as I was standing on the port, I *saw our port anchor cable become very tight* and I could see another Kenter shackle above the water level.
>
> I was concerned that there was too much weight on our port anchor cable and *reported the situation to the Master* …
>
> …
>
> [emphasis added]

---

57 DBAEIC Vol I, Tab 2, paras 20–22 (TEZ's CO AEIC).

Version No 3: 27 Oct 2020 (22:41 hrs)

148 In short, the chief officer reported two matters to Captain Zou: the *Arctic Bridge* movement close ahead of the *Tian E Zuo* and the port anchor cable (which was the same anchor that was fouled) becoming "very tight".

149 Zhang, the able-bodied seaman, stated in his affidavit of evidence-in-chief that he had noticed the *Tian E Zuo* move forward at about 0400 hours:[58]

> I was relieved of my duty as helmsman at about 0400 hours by able bodied seaman Deng Zihui. I then went to the bridge wing and saw the "TIAN E ZUO" *moving away from the bunker barge and the first vessel we had a collision with.* I saw that the "TIAN E ZUO was *making way in a forward direction.*
>
> I went back to the bridge and saw on the radar that "TIAN E ZUO" was moving ahead but that our main engine was on astern movement at that time.

150 Notably, Zhang went off duty when he was stationed at the bow. It was more probable than not that Zhang went to the bridge to report what he saw earlier to Captain Zou. When he got to the bridge wing, he saw the *Tian E Zuo* moving away from the *Marine Liberty* and the *DL Navig8*. Inside the bridge, he saw on the radar the *Tian E Zuo* moving forward but the main engine was on astern movement.

151 Besides the crew on board the *Tian E Zuo*, the vessels anchored close by the *Tian E Zuo* also contemporaneously noticed her moving forward around 0401 hours. Indeed, the *DL Navig8* was observed to have called West Control at that time stating:[59]

> DL Navig8: Yes I report again the situation now. So TIAN E ZUO is uh moving. Moving. His vessel and my anchor shackle just

---

58 DBAEIC Vol I, Tab 4, paras 16–17 (TEZ's AB's AEIC).

59 DBAEIC Vol IV, Tab B1, p 236 (HS's Report).

Version No 3: 27 Oct 2020 (22:41 hrs)

> holding so just I follow his vessel, just I follow his vessel. So I cannot clear from him. I cannot clear the proper.

152 Shortly thereafter at about 0403 hours, the *Kingfisher* called West Control regarding the similar sighting:[60]

> Kingfisher: Yes Sir just wanted to know that the vessel on my port quarter TIAN E ZUO whether the vessel has a pilot on board and they are picking up anchor.

153 Interestingly, the incident report of the *Tian E Zuo* signed by Captain Zou recorded that the following matters happened at 0355 hours:[61]

> ARCTIC BRIDGE passed over the bow of the Vessel at a distance of 40 meters (it is estimated that the propeller or the rudder twined onto the port anchor chain of the Swan Vessel), and the Vessel started moving forward.

This report, written on the day of the Incident and signed off by Captain Zou, was an exhibit to Captain Zou's affidavit of evidence-in-chief. This incident report contradicts his affidavit of evidence-in-chief, *ie*, that he noticed the vessel moving only at 0404 hours.

154 In the light of the overall evidence above, it was more probable than not, and I find, that by about 0400 hours, Captain Zou, the chief officer, the second officer and Zhang were aware that the *Tian E Zuo* was being towed and Captain Zou permitted the towage to continue for a duration of 20 minutes to enable the *Tian E Zuo* to become free of the *Marine Liberty* and the *DL Navig8*. I also find the conversations in the bridge telling of the sentiments of those on board even though the time of the conversations and the speakers (in particular crew 6) were

---

60 DBAEIC Vol IV, Tab B1, p 238 (HS's Report).

61 Affidavit of Li Hua, p 30.

Version No 3: 27 Oct 2020 (22:41 hrs)

not identified by name. The fact of the matter is that the conversations took place:[62]

> Crew 3: The boat is pushed away right?
>
> Crew 6: *Captain, over here. The boat is leaving. If the situation is steady then things will be solved. The stern is coming out, it's good. Now the boat… Only if the situation can be steady.*
>
> Crew 1: How are we supposed to operate with this boat going forward?
>
> Master: *The power is strong, dragging the anchor forward.*
>
> Crew 6: *This is good.*
>
> Crew 6: *It's coming out.*
>
> Crew 6: No *our vessel is still going forward*, its moving.
>
> Master: No it's not.
>
> Crew 6: No way. There is something wrong. Go ask Chief Officer.
>
> Master: Chief Officer, how are the two anchors?
>
> Crew 6: *It's too fast.*
>
> Master: How are the two anchors?
>
> Crew 6: *We need to astern. We can't hold on.*
>
> Master: *Can we astern*?
>
> Crew 6: Yes, *yes we can. Too fast, this can't be good.*
>
> Master: How many shackles now?
>
> Master: The anchor needs to be release.
>
> Crew 1: Answer the phone for me. Put the anchor chain backwards. We astern first.
>
> Master: We can't start the engine.
>
> Crew 6: Yes we can.
>
> Master: It won't start.
>
> [emphasis added]

---

62 Affidavit of Li Yilin, p 59.

Version No 3: 27 Oct 2020 (22:41 hrs)

155 The statement by crew 6 that the stern was "coming out" and that if the "situation" continued to develop favourably, "things will be solved" (meaning the situation with the *Marine Liberty* and the *DL Navig8* at her stern) lends support to the view that those on board the *Tian E Zuo* were opportunistic in the circumstances. As it turned out, from the period between 0402 hours to 0406 hours, the *Marine Liberty* and the *DL Navig8* were able to disengage from the *Tian E Zuo*. In his affidavit of evidence-in-chief, Captain Zou stated that at 0407 hours, he checked the stern of the *Tian E Zuo* before ordering slow astern. The time at which Captain Zou checked the stern of the *Tian E Zuo* was after the *Marine Liberty* and the *DL Navig8* departed. In short, Captain Zou had hitherto focused on the *Marine Liberty* and the *DL Navig8* and I find that Captain Zou had waited for "things to be solved" before deciding to take action to counter the forward movement of the vessel which he, all the while, had appreciated. By the time the astern orders were taken, it was too late and the collision with the *Stena Provence* happened at 0410 hours.

156 The plaintiffs, as well as Captain Walker, criticised the *Tian E Zuo*'s crew for failing to keep a lookout and to alert the *Arctic Bridge* of the entanglement and the involuntary towage. It was argued that the crew's inaction was consistent with incompetence, lack of situational awareness and poor bridge management. In my view, the plaintiffs and Captain Walker, had simply misinterpreted the evidence: what played out was Captain Zou's decision to capitalise on the unexpected opportunity to free his vessel from the *Marine Liberty* and the *DL Navig8*. When queried by Ms Chew on the violent shaking as identified by Captain Walker above, Captain Zou said that he might have been busy at that point in time. On further questioning, he explained that he did

Version No 3: 27 Oct 2020 (22:41 hrs)

not pay attention as he could have been attempting to arrange for a tugboat assistance to disengage the *Tian E Zuo* from the two other vessels:[63]

> Ms Chew: Right. Okay. Now, there is also some audio captured on the VDR where the officer on watch asked why the ship is shaking so violently around 03:52.
>
> Captain Zou: I did not notice this at that time. Maybe I was busy with something at that time.
>
> Ms Chew: So you don't remember anyone telling you the ship is shaking violently?
>
> Captain Zou: Yes.
>
> …
>
> Ms Chew: So what do you think you were busy with at that time?
>
> Captain Zou: I was trying to get a tugboat so that I could---we could be separated from DL NAVIG8.

157 His answers are plainly evasive. The testimony of the second officer, the chief officer, and Zhang at trial suggested that those on board the *Tian E Zuo* knew about the towage but simply deferred to Captain Zou's decision on the towage. The second officer alluded to Captain Zou's knowledge of the situation and that the crew had to follow Captain Zou's instructions and could not do things on their own:[64]

> Ms Chew: Alright. Now between the ARCTIC BRIDGE crossing your bow, 22(b) which is 03:45, and the collision, 22(c) which was at 04:10, can you confirm what you were doing on the bridge?
>
> Second officer: I was following the master's instruction and I was doing what the master told me to do.
>
> …

---

63 Transcript Day 4, p 75, lines 10–19.

64 Transcript Day 6, p 10, lines 1–5; lines 9–15.

Version No 3: 27 Oct 2020 (22:41 hrs)

> Ms Chew: Were you keeping---were you monitoring the ship's position on the radar still?
>
> Second officer: Yes. I was monitoring the movement of the vessels on the radar but I did not record down the exact position of the vessel.
>
> Ms Chew: Okay, why did you not notice that your vessel was moving between 03:52 and 04:10?
>
> Second officer: Because at that time, the master was also on the bridge and we had to follow the master's instruction on the bridge, we could not just do things on our own.

158 Similarly, when queried if he found it unusual that the vessel was moving forward despite having two anchors in the water and that the anchors were pulling in opposite directions, the chief officer simply replied stating that he awaited Captain Zou's orders:[65]

> Ms Chew: Did you not think it was strange that your vessel was moving forward even though the engine was stopped and you had two anchors deployed and that your port anchor chain was forward of your vessel, and your starboard anchor chain was aft of your vessel and both were tight? Did you not find this whole situation very strange?
>
> Chief officer: I didn't really think much about this. I only report this to the master and I waited for his order.

159 The defendant in its closing submissions contends that there was no reasonable opportunity to take steps to alleviate the situation prior to 0407 hours as the *Marine Liberty* was tied alongside her and the *DL Navig8* was close to her stern. In other words, the *Tian E Zuo* could not have used her propellers prior to 0407 hours as the two other vessels had not moved away from the *Tian E Zuo*'s stern. I am not persuaded for the reason already stated above. Besides, between 0400 hours to 0410 hours, the *Tian E Zuo* could have contacted the *Arctic Bridge*. In this regard, defendant argues that any attempts to contact the

---

65 Transcript Day 5, p 27, lines 16–22.

Version No 3: 27 Oct 2020 (22:41 hrs)

Arctic Bridge would have been in vain as demonstrated by the *Arctic Bridge*'s unresponsiveness to previous attempts. In my view, the *Arctic Bridge*'s unresponsiveness is hindsight reasoning; it does not excuse the *Tian E Zuo* for not contacting the *Arctic Bridge*. After all good watch keeping requires the mariner to use all available means and this includes the use of VHF to contact the *Arctic Bridge* or West Control. Moreover, it was open to the *Tian E Zuo* to have sounded warning signals during the period that she was being towed. Indeed, Mr Singh held the opinion that the *Tian E Zuo* could have sounded the appropriate signal when in doubt. In this relation, Rule 34 of the COLREGS provides that:

> when vessels in sight of one another are approaching each other and from any cause either vessel fails to understand the intentions or actions of the other, or is doubt whether sufficient action is being taken by the other to avoid collision, the vessel in doubt shall immediately indicate such doubt by giving at least five short and rapid blasts on the whistle …

160 As stated earlier, a good watch keeping is to determine if any risk of collision exists. The *Tian E Zuo* did not keep a proper lookout of what was in front of her, namely the direction of the *Arctic Bridge* and the *Stena Provence.* Those on board the *Tian E Zuo* were concerned with the disengagement of the two vessels at the stern. A good lookout means appreciating and assessing the presence of the *Stena Provence.* In this case, the lookout and consideration of the presence of the *Stena Provence* fell short of good watch keeping. The *Stena Provence* was already too close to the *Tian E Zuo* by the time the astern orders were made. Accordingly, the *Tian E Zuo* breached rule 5 and consequently, rule 7 of the COLREGS.

161 I now come to the defendant's argument that the *Tian E Zuo* is to be regarded as a vessel at anchor during the period of the involuntary towage. The defendant, in its submissions, referred me to *The "Foreric"* [1926] 24 Ll L Rep

Version No 3: 27 Oct 2020 (22:41 hrs)

329 ("*The Foreric*") which was a case involving three vessels and the fouling of anchors. The *Sedburgh* had anchored too close to the *Foreric* and in the course of attempting to move away, picked up the *Foreric*'s anchor and towed the latter into collision with the *Belvedere*, which was at the relevant time at anchor. In addressing the contention that the *Foreric* should have displayed signals to alert others that they were being towed, the Lordships said that they (at 332):

> do not consider that this involuntary dragging was 'towing' within the meaning of the regulations, and vessels quietly at anchor cannot be expected to have two red lights trimmed for hoisting to show that they are out of control in case of a stranger coming in the night and starting them on an involuntary voyage.

162 The *Foreric* decision does not assist the defendant. Having had her anchor fouled and finding herself dragged away from her anchored position by the *Sedburgh* towards the direction of the *Belvedere*, their Lordships began their analysis by treating the *Foreric* as a vessel underway (at 331):

> After the cable connecting the *Sedburgh* and the *Foreric* had fouled the *Belvedere*'s cable, as it must have done, the *Foreric* would have proceeded under the way already on her, and the strain on the cable across her stern, as well as across the *Belvedere*'s cables, would have increased considerably, and probably it then parted and left its mark on the *Forerics*'s stern before the actual collision between the vessels.

Having done so, the precise question for their Lordships was whether the manner in which the *Foreric* as a vessel underway could be considered a vessel involved in "towing" within the meaning of the relevant regulation and if so, whether she had to exhibit regulation lights. In my view, applying the test in *The Palembang* (see [56]) above), a vessel whose anchor has been fouled and picked up by another vessel and consequently dragged away from her anchored position is no longer holden by and under control of her anchor and is therefore

Version No 3: 27 Oct 2020 (22:41 hrs)

not a vessel at anchor. Accordingly, the *Tian E Zuo* was a vessel underway during the period of the involuntary towage.

163 Now the related collisions comprise of two sets of collisions: (a) the contact between the *Tian E Zuo* and the *Stena Provence* at 0410 hours, and the contact between the *Arctic Bridge* and *Stena Provence* at 0411 hours; and (b) the contact between the *Tian E Zuo* and the *Stena Provence* at 0427 hours. I have already dealt with the circumstances leading to the first contact between the *Tian E Zuo* and the *Stena Provence* above. As regards the second contact, the collision at 0427 hours was the result of the *Arctic Bridge* continuing to navigate full ahead despite having already made contact with the *Stena Provence* earlier at 0411 hours. After the first contact, the *Tian E Zuo* was observed reducing her engine speed before coming to a complete stop at 0418 hours. The *Tian E Zuo* remained at the stern of the *Stena Provence* during this time; the *Tian E Zuo* stopped her engines even though she was still being dragged along by the *Arctic Bridge* at full ahead. The *Arctic Bridge* towed her into a second collision with the *Stena Provence* at 0427 hours. A good lookout means appreciating and assessing the presence of the *Stena Provence* and to determine if a risk of collision exists. Not only was there a breach of rule 5, Captain Zou's decision to stop her engines at 0418 hours meant that he would have no control of the *Tian E Zuo*. There is therefore fault on the part of the *Tian E Zuo* for the collision with the *Stena Provence* at 0427 hours.

Causative potency and apportionment of liability

164 I now come to the question of liability. In apportioning liability, the court considers the relative blameworthiness and causative potency of the faults of each vessel. As summarised in *The "Samco Europe" and "MSC Prestige"*

Version No 3: 27 Oct 2020 (22:41 hrs)

[2011] 2 Lloyd's Rep 579 at [81], and subsequently adopted in *The "Nordlake" and the "Seaeagle"* [2016] 1 Lloyd's Rep 656 ("*The Nordlake*"):

> Apportionment of [liability] for a collision depends upon an assessment of the blameworthiness and causative potency of both vessels: see the *British Aviator* [1965] 1 Lloyd's Rep 271 at 277 per Willmer J. The assessment is of the relative degree of responsibility of each vessel …

165 In relation to the relative blameworthiness of the vessels, this is a qualitative as opposed to a quantitative assessment. As Teare J in *The Nordlake* puts it, "[th]e number of faults on one side or the other is not decisive. It is the nature and quality of a ship's faults, rather than their number, that matter" (at [149(i)]).

166 In relation to causative potency, the court is concerned with the causative impact each fault has on the eventual collision and loss. To use the words of the court in *The Nordlake* (at [149(iii)]):

> Causative potency has two aspects. The first is the extent to which the fault contributed to the fact that the collision occurred. The second is the extent to which the fault contributed to the damage.

167 I have earlier identified the factual causative features of this case that culminated in the related collisions (see [92] above); namely, the crossing of the bow at 0347 hours, the entanglement, the involuntary towage, the distance travelled during the towage, the speed and heading of the *Arctic Bridge*, and overall lack of situational awareness and manifest inaction(s) that set the *Tian E Zuo* on a collision course. This is because it is the accretive effect of each of these features present in this case that resulted in the related collisions and the damage sustained by the vessels. Thus, in terms of the causative potency of the *Arctic Bridge*'s faults, it is the *Arctic Bridge* in crossing port to the bow of the *Tian E Zuo* at an unsafe distance, at about 0347 hours, and thereafter,

Version No 3: 27 Oct 2020 (22:41 hrs)

proceeding full ahead in the direction of the *Stena Provence* without stopping and without keeping a good visual lookout and monitoring the progress of the *Tian E Zuo* at her stern, that were the faults that linked the *Arctic Bridge*'s negligence with the damage sustained in the related collisions. By so doing, the effect of the entangled anchor chains on the related collisions manifested: the entangled anchors or anchor chains enabled the *Arctic Bridge* to drag the *Tian E Zuo* from her anchored position, and without fully appreciating that the *Arctic Bridge* was dragging the *Tian E Zuo*, an involuntary towage lasting 20 minutes at full ahead in the direction of the *Stena Provence* ensued, and culminated in the first contact at 0410 hours. Further, despite having contacted the *Stena Provence* herself at 0410 hours, the *Arctic Bridge* (whether or not fully appreciating that she was still towing the *Tian E Zuo*) continued to navigate full ahead thereby dragging the *Tian E Zuo* into a second collision at 0427 hours. The causal link to the further damage to the *Stena Provence* and the *Tian E Zuo,* was the *Arctic Bridge*'s failure to take preventive action(s) to prevent the second collision.

168 Turning then to the causative potency of the faults of the *Tian E Zuo*, her failure to keep proper lookout ahead of the *Tian E Zuo* for the *Arctic Bridge* and the *Stena Provence* must be taken to be causatively potent as it contributed to the eventual related collisions. I have earlier found that the *Tian E Zuo* was a vessel underway during the involuntary towage and also explained that vessels underway have an obligation to keep clear of other anchored vessels. In taking advantage of the involuntary towage, the *Tian E Zuo*'s attention was focused on disengaging herself from the two other vessels at her stern and failed to fully appreciate the presence and proximity of the *Stena Provence*. Put another way, Captain Zou had not given particular attention to the *Stena Provence* any earlier than 0407 hours. Whilst Captain Zou took no action with reference to the *Arctic*

Version No 3: 27 Oct 2020 (22:41 hrs)

Bridge, the *Tian E Zuo* took action with reference to the *Stena Provence* too late to be effective to avoid the eventual collision. Thus inasmuch as the *Arctic Bridge* is to be blamed for the dragging the *Tian E Zuo* into the port quarter of the *Stena Provence*, the *Tian E Zuo*'s delayed action to avert a collision with the *Stena Provence* also reflects her contribution to the related collisions. I have also considered the *Tian E Zuo* stopping her engines at 0418 hours when the *Arctic Bridge* still continued to sail at full ahead pulling the *Tian E Zuo* as a fault that is causatively potent as this contributed to the second contact between the *Tian E Zuo* and the *Stena Provence*.

169 In terms of the relative blameworthiness, there were serious faults as described in respect of each vessel. Having regard to the causative potency and blameworthiness, both vessels are equally to blame and a fair apportionment is 50:50.

Conclusion

170 For the reasons stated, I concluded that responsibility for the collision must be divided equally between both vessels for the related collisions. There will be judgment on the claim and counterclaim accordingly. As the issues in the main action and the counterclaim overlap, there ought to be one set of costs. The parties are to make submissions by letter (limited to two pages) on how the issue of costs should be dealt with, bearing in mind that damages have to be assessed before the Registrar. The submissions on costs are due ten days from this judgment.

Version No 3: 27 Oct 2020 (22:41 hrs)

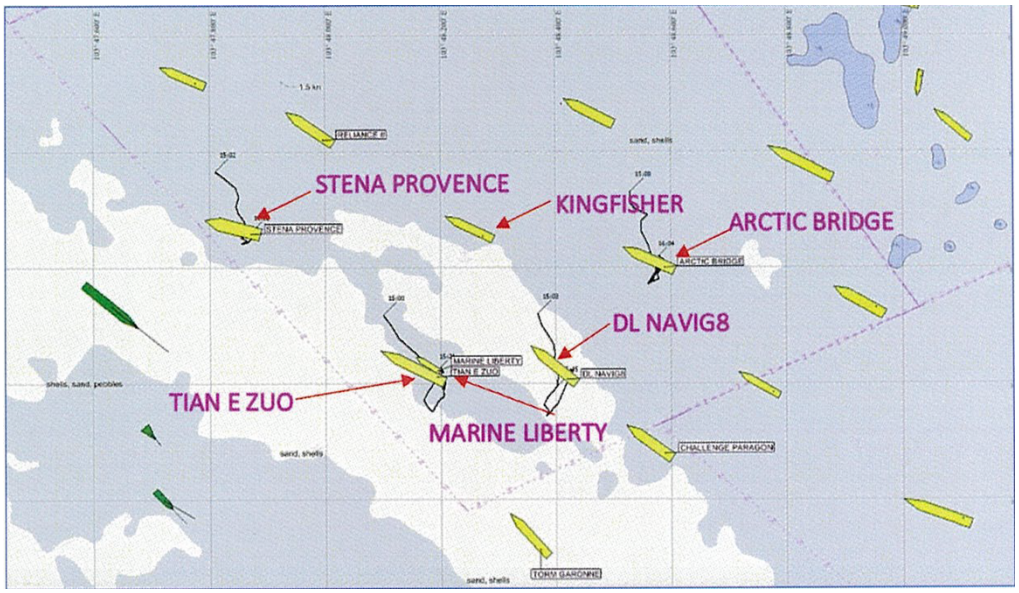
Belinda Ang Saw Ean
Judge

Chew Sui Gek Magdalene, Lee Soo Pin Victoria and Wong Teck Ming (AsiaLegal LLC) for the first and second plaintiff;
Loo Dip Seng and Tan Siew Chi (Ang & Partners) for the defendant.

Version No 3: 27 Oct 2020 (22:41 hrs)

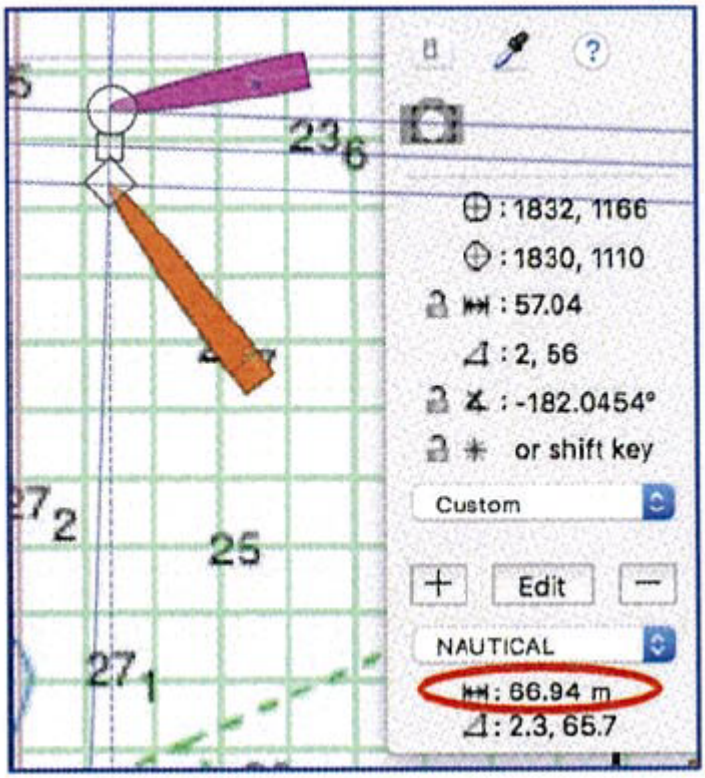
Annex

A.1 Annex 1: Relative position of the vessels as produced in Mr Singh's report.



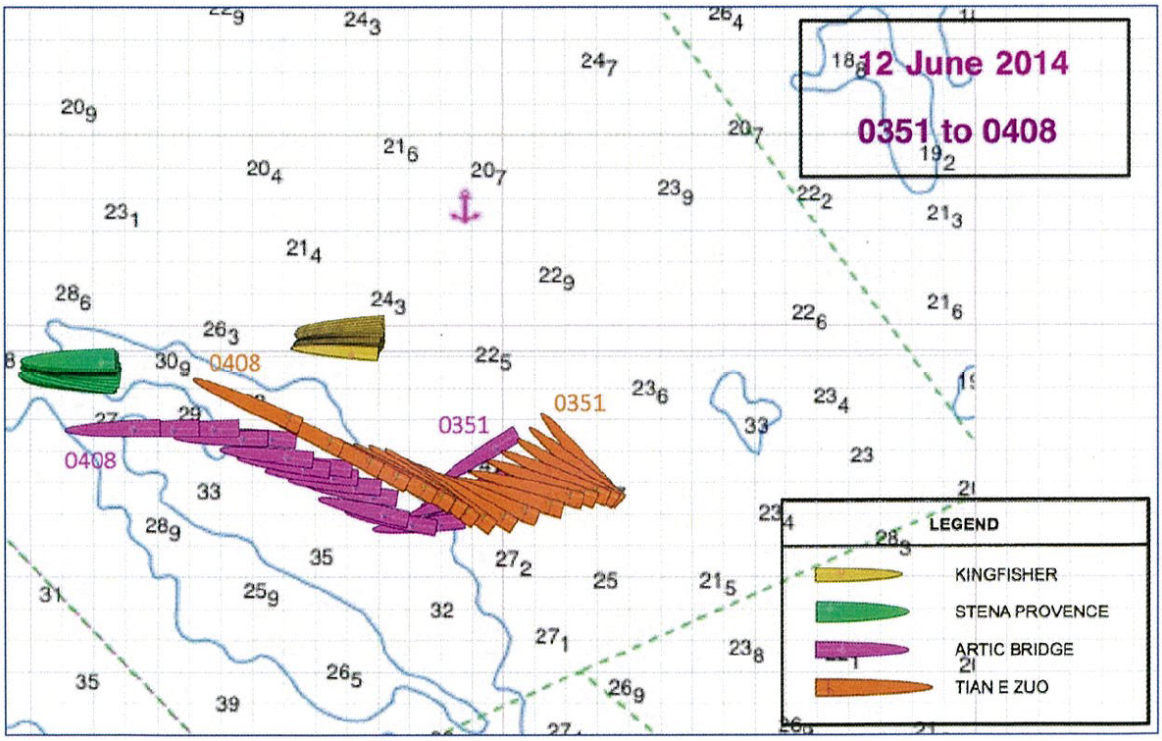
Version No 3: 27 Oct 2020 (22:41 hrs)

A.2 Annex 2: Relative position and distance between the vessels at 0344 hours as produced in Mr Singh's report.



Version No 3: 27 Oct 2020 (22:41 hrs)

A.3 Annex 3: Graphical depiction of the movement of the *Arctic Bridge* and the *Tian E Zuo* between 0351 hours to 0408 hours as produced in Mr Singh's report.



Version No 3: 27 Oct 2020 (22:41 hrs)