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

[2023] SGHC 353

Admiralty in Rem No 20 of 2023 (Summons No 1070 of 2023)

Between

Vallianz Shipbuilding & Engineering Pte Ltd

… *Claimant*

And

Owner of the vessel "ECO SPARK"

… *Defendant*

JUDGMENT

[Admiralty and Shipping — Admiralty jurisdiction and arrest — Action in rem — Definition of "ship" under section 2 of the High Court (Admiralty Jurisdiction) Act 1961 — Meaning of "vessel used in navigation" — Whether barge converted to floating fish farm is a "ship" under section 2 of the High Court (Admiralty Jurisdiction) Act 1961]

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Vallianz Shipbuilding & Engineering Pte Ltd
v
Owner of the vessel "ECO SPARK"

[2023] SGHC 353

General Division of the High Court — Admiralty in Rem No 20 of 2023
(Summons No 1070 of 2023)
S Mohan J
10 July 2023

18 December 2023 Judgment reserved.

S Mohan J:

1 *You may have seen many a quaint craft in your day, for aught I know;—square-toed luggers, mountainous Japanese junks; butter-box galliots, and what not; but take my word for it*,[1] it is at times not an easy quest to define what makes or does not make a floating craft a ship. The application before me raises this perennial question, *viz*, what makes a vessel a "*ship*" for the purposes of validly invoking the court's admiralty jurisdiction? It might come as no small surprise to some but this deceptively simple question is one to which there appears to be no clear (and some might argue, consistent) answer in the wealth of jurisprudence on this topic amongst the courts in the Commonwealth. Indeed, as Lord Justice Scrutton famously commented in *Merchants Marine Insurance*

[1] Reference to Herman Melville, Moby-Dick, Chapter 16.

Co Ltd v North of England Protection & Indemnity Association (1926) 26 Ll L Rep 201 (*"Merchants Marine"*) at p 202:

> One might possibly take the position of the gentleman who dealt with the elephant by saying he could not define an elephant, but he knew what it was when he saw one, and it may be that is the foundation of the learned Judge's judgment [in the court below], that he cannot define "ship or vessel" but he knows this thing is not a ship or vessel. …

2 This case would also appear to be the first time this question is squarely before our courts, particularly in the context of the threshold definition of "ship" under s 2 of the High Court (Admiralty Jurisdiction) Act 1961 (2020 Rev Ed) ("HCAJA"). I characterise it as a "threshold" question because unless the object in question is a "ship" as defined in s 2 of the HCAJA, the court's admiralty jurisdiction and consequently, the ability to invoke the powerful remedy of an admiralty arrest of that "ship" will not avail a claimant. This case therefore affords an excellent opportunity for me to consider the available caselaw both here and elsewhere, and attempt to distil from them some general principles for the benefit of the admiralty Bar, not least so that the proverbial "elephant" might be easier to define in future cases.

3 In HC/SUM 1070/2023 ("SUM 1070"), the defendant, as the owner of the "ECO SPARK", seeks to, *inter alia*, (i) strike out and set aside the admiralty originating claim *in rem* commenced by the claimant against the "ECO SPARK" in HC/ADM 20/2023 ("ADM 20") and (ii) to set aside the warrant of arrest issued against the "ECO SPARK" in HC/WA 6/2023 ("WA 6"). The sole basis upon which the defendant brings the application is that the "ECO SPARK" (a steel dumb barge subsequently converted into a floating fish farm) is *not* a "ship" within the meaning of s 2 of the HCAJA, and therefore, the General Division of the High Court is not seized with admiralty jurisdiction. In the alternative, if the action is not struck out or set aside, the defendant applies under

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s 6 of the International Arbitration Act 1994 (2020 Rev Ed) ("IAA") for ADM 20 to be stayed in favour of arbitration.

4 For the reasons elaborated upon in this judgment, I find and hold that the "ECO SPARK" *is* a "ship" within the meaning of s 2 of the HCAJA and accordingly, the admiralty *in rem* jurisdiction of the court was properly invoked by the claimant. Consequently, I dismiss so much of SUM 1070 that seeks (i) to strike out/set aside ADM 20; (ii) to set aside WA 6; and (iii) consequential orders that the claimant releases the "ECO SPARK" from arrest and pays the defendant damages for wrongful arrest and detention.

5 With regard to the alternative prayer in SUM 1070 for a stay of proceedings in favour of arbitration, as it was not disputed by the claimant that its claim was subject to an arbitration agreement between the claimant and the defendant that fell within the ambit of the IAA, I grant the defendant's application for a stay of ADM 20 in favour of arbitration, but subject to the condition set out in s 7(1)(*a*) of the IAA which I impose, *ie*, that the "ECO SPARK" is to remain under arrest and be retained as security for the satisfaction of any award that may be made in the arbitration between the claimant and defendant.

Facts

The parties

6 The claimant in ADM 20 is Vallianz Shipbuilding & Engineering Pte Ltd, which is a company registered in Singapore and engaged in the business of

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the building and repairing of ships, tankers and other ocean-going vessels, including the conversion of ships into off-shore structures.[2]

7 The defendant in ADM 20 is Aquaculture Centre of Excellence Pte Ltd ("ACE"), the owner of the "ECO SPARK". ACE is a company registered in Singapore and engaged in the business of operating fish hatcheries and fish farms in Singapore.[3] Purely for convenience, I shall hereafter refer to the "ECO SPARK" as the "Vessel".

Background

8 The defendant purchased and became the owner of the barge "WINBUILD 73" on 15 January 2021.[4] At that time, the barge "WINBUILD 73" was situated at a shipyard in Batam, Indonesia (the "Shipyard").[5]

9 By way of a contract between the claimant and the defendant dated 21 January 2021 (the "Contract"), the claimant agreed to convert the barge "WINBUILD 73" at the Shipyard into a "Special Service Floating Fish Farm", to be named as the "ECO SPARK".[6] The Vessel was to be constructed in accordance with the rules and under the special survey of the ship classification society Bureau Veritas ("BV"), and was to be distinguished in the register of

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2 Heng Seow Boon's Affidavit dated 13 April 2023 at p 24.

3 Heng Seow Boon's Affidavit dated 13 April 2023 at p 30.

4 Heng Seow Boon's Affidavit dated 13 April 2023 at para 7; Heng Seow Boon's Affidavit dated 13 April 2023 at p 41.

5 Heng Seow Boon's Affidavit dated 13 April 2023 at para 7; Heng Seow Boon's Affidavit dated 13 April 2023 at p 44.

6 Terrence George Leicester's Affidavit dated 14 March 2023 at para 4; Heng Seow Boon's Affidavit dated 13 April 2023 at para 8; Terrence George Leicester's Affidavit dated 14 March 2023 at pp 27–101.

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BV by the symbol "I+ Hull Special Service – Floating Fish Farm, Coastal Area".[7] The cost of the conversion was S$1,800,000.[8] The parties also agreed that the Vessel was to be delivered to "Singapore Farm Site FC131E at Serangoon Harbour" (the "Farm Site") by 18 May 2021.[9] The Contract contained an arbitration clause in Art XIII:[10]

> **ARTICLE XIII – DISPUTE AND ARBITRATION**
>
> **1. Governing law and dispute resolution**
>
> …
>
> 2.1 Any and all disputes arising out of or in connection with this Contract and any other documents relating to this Contract, including any question regarding its existence, validity or termination, shall be referred to and finally and conclusively resolved by arbitration in Singapore at the Singapore Chamber of Maritime Arbitration ("SCMA") …

10 On 22 June 2021, the parties entered into Addendum No. 1 to the Contract to revise the delivery date, in order to accommodate the defendant's delay in providing the construction drawings for the conversion of the barge and supplying equipment to be installed on the Vessel. Addendum No. 1 stated in its preamble:[11]

> Due to the [defendant's] delay in Engineering Drawings and finalized dates of [the defendant's] Supplies, the [claimant] and the [defendant] agreed to the revised Delivery Date to the 30th September 2021. …

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7 Heng Seow Boon's Affidavit dated 13 April 2023 at p 44 (Article I(3) of the Contract).

8 Terrence George Leicester's Affidavit dated 14 March 2023 at p 28.

9 Terrence George Leicester's Affidavit dated 14 March 2023 at para 5; Terrence George Leicester's Affidavit dated 14 March 2023 at p 36.

10 Terrence George Leicester's Affidavit dated 14 March 2023 at p 45.

11 Terrence George Leicester's Affidavit dated 14 March 2023 at p 103.

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11 The claimant tendered Notice of Readiness on 14 February 2022 and the Vessel was launched on 21 February 2022 in Batam, Indonesia.[12] On 27 February 2022, the Vessel was towed by an ocean tug from the Shipyard to Singapore for physical delivery to the defendant.[13] The towing voyage was approved by the Vessel's classification society. On 28 February 2022, the Vessel was physically delivered to the defendant at the Farm Site.[14] The claimant contends that the delay in delivery was due to the defendant's persistent failure to provide the necessary drawings and the equipment to be installed on the Vessel.[15]

12 After the delivery of the Vessel to the defendant at the Farm Site, disputes arose between the claimant and the defendant as to the sums payable pursuant to the Contract as amended by Addendum No. 1.[16] Between 11 October 2022 and 6 February 2023, the parties were engaged in heated correspondence on the matter. In sum, the claimant alleges that the total outstanding sum due to the claimant amounts to S$1,642,363.62; this includes the sum for conversion of 95% of the barge, various variation orders and interest on late payments, and also accounts for the defendant's payment of S$1,800,000.[17] The defendant disputes the amount of the various variation orders claimed by the claimant and

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12 Terrence George Leicester's Affidavit dated 14 March 2023 at para 19.

13 Heng Seow Boon's Affidavit dated 13 April 2023 at para 10; Terrence George Leicester's Affidavit dated 14 March 2023 at para 19.

14 Heng Seow Boon's Affidavit dated 13 April 2023 at para 11.

15 Terrence George Leicester's Affidavit dated 14 March 2023 at para 14.

16 Heng Seow Boon's Affidavit dated 13 April 2023 at paras 12, 14–18; Terrence George Leicester's Affidavit dated 14 March 2023 at paras 42–60.

17 Terrence George Leicester's Affidavit dated 14 March 2023 at para 68.

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alleges that it has a claim for the sum of S$1,300,573.35 against the claimant in respect of uncompleted works under the Contract.[18]

13 On 14 March 2023, the claimant filed an admiralty originating claim *in rem* against the Vessel in ADM 20, claiming the sum of S$1,642,363.62 and/or such other sums due from the defendant to the claimant pursuant to the Contract, in respect of the conversion of the barge into a "Special Service Floating Fish Farm". In the affidavit leading its application for a warrant of arrest against the Vessel, the claimant asserted that the court was possessed of admiralty jurisdiction over the claim as the claim fell within s 3(1)(*m*) of the HCAJA, that is, "[a] claim in respect of the construction, repair or equipment of a *ship* …" [emphasis added] and that the court's *in rem* jurisdiction over the "*ship*" *or* "*barge*" could be invoked pursuant to s 4(4) of the HCAJA.[19]

14 On the same day, the claimant sought and obtained a warrant of arrest against the Vessel in WA 6, and the Vessel was arrested later that day.[20]

15 The defendant filed its Notice of Intention to Contest on 27 March 2023; and on 13 April 2023, filed SUM 1070.

The parties' cases in SUM 1070

16 In SUM 1070, the defendant seeks the following orders:[21]

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18 Heng Seow Boon's Affidavit dated 13 April 2023 at para 12; Terrence George Leicester's Affidavit dated 14 March 2023 at para 62.

19 Terrence George Leicester's Affidavit dated 14 March 2023 at paras 75, 77–78.

20 Report of Arrest dated 14 March 2023.

21 Summons for Striking Out of the Whole Action or Defence dated 13 April 2023 (HC/SUM 1070/2023).

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(a) the Originating Claim (In Rem) for Admiralty filed in ADM 20, the service thereof and all subsequent proceedings herein against the Vessel be struck out and set aside;

(b) WA 6 issued against the Vessel and the service thereof be set aside;

(c) that the claimant be ordered to release the Vessel forthwith;

(d) that the claimant pay to the defendant damages for wrongful arrest and detention of the Vessel, with such damages to be assessed by the Registrar; and

(e) in the event that the first prayer is not granted, that all proceedings in this action be stayed pursuant to s 6 of IAA. Alternatively, that all proceedings in this action be stayed in the exercise of the court's inherent powers of case management.

17 The defendant submits that the orders it seeks should be granted for the following reasons:[22]

(a) the Vessel is not a "ship" within the meaning of s 2 of the HCAJA;

(b) on the basis that the Vessel is not a "ship" within the meaning of the HCAJA, the requirements for invoking the court's admiralty jurisdiction *in rem* against the Vessel under s 4(4) of the HCAJA have not been satisfied;

(c) accordingly, ADM 20 should be struck out and WA 6 set aside;

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22 Defendant's Written Submissions for HC/SUM 1070/2023 at para 5.

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(d) further, the arrest of the Vessel was carried out with malice. Accordingly, damages for the wrongful arrest and detention of the Vessel should be awarded against the claimant;

(e) in the alternative, in the event the court is not minded to strike out or set aside ADM 20, ADM 20 should be stayed in favour of arbitration as the requirements for a mandatory stay under s 6 of the IAA have been met.

18 The claimant contests SUM 1070, save for the defendant's alternative prayer for ADM 20 to be stayed in favour of arbitration (see [5]). At the hearing before me, counsel for the claimant, Mr Henry Heng ("Mr Heng"), confirmed that the claimant has no objections to the defendant's stay application and that the claimant had since commenced arbitration proceedings against the defendant.[23]

19 With regard to what I consider to be the core question in SUM 1070, *viz*, whether the Vessel is a "ship" within the meaning of s 2 of the HCAJA, it appears from the parties' submissions and affidavits that they have taken what would be best described as a "kitchen sink" approach to this question, raising a multitude of characteristics of the Vessel (both present and absent) in support of their respective positions. For context and completeness, I set out the parties' arguments below:

(a) The defendant's case:[24]

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23 Minute Sheet dated 10 July 2023 at p 1.

24 Heng Seow Boon's Affidavit dated 13 April 2023 at paras 20–24; Defendant's Written Submissions for HC/SUM 1070/2023 at paras 87–90, 93.

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(i) the Vessel is a floating fish farm and was converted from a barge to a floating fish farm;

(ii) the Vessel has no rudders or engines and is not capable of self-propulsion;

(iii) the Vessel does not have any navigational equipment and is not manned with a master or any seafaring crew;

(iv) the Vessel does not have any navigational lights;

(v) the Vessel does not transport any person, cargo or object;

(vi) since her installation on 28 February 2022 at the Farm Site, the Vessel has become immovable and will remain immovable for the duration of her operative life as a floating fish farm;

(vii) the Vessel is not registered to any flag state;

(viii) the Vessel's class status has been withdrawn and she is not classified with any classification society;

(ix) the Vessel operates under a licence issued by the Singapore Food Agency ("SFA") and is an approved structure erected within the Farm Site under a Temporary Occupation Licence ("TOL") granted by the Singapore government;

(x) the Vessel does not pay any port dues or other charges and/or tariffs to the Maritime and Port Authority of Singapore (the "MPA");

(xi) the Vessel has three spud legs (see "Figure 1" below) which have been embedded into the seabed with the assistance

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of an offshore crane.[25] Once the spud legs have been embedded in the seabed, the Vessel becomes a stable fixture which may not be towed or moved from her location without the use of an offshore crane to detach the spud legs from the seabed. The Vessel cannot be safely operated if the spud legs are not properly embedded into the seabed;

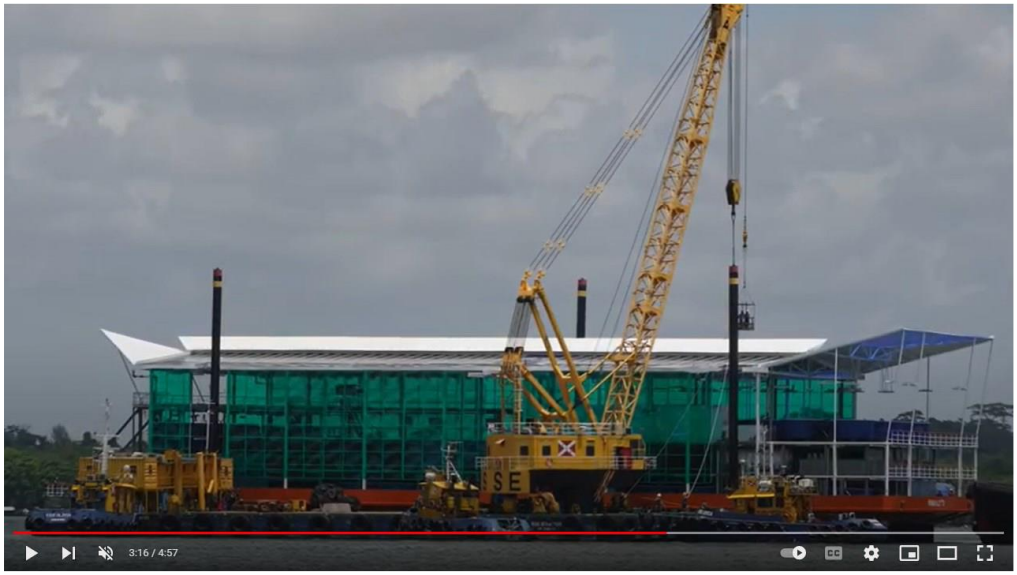

Figure 1: Photo of the Vessel with three spud legs being embedded into the seabed with the assistance of an offshore crane

(xii) if the Vessel is not "spudded down" (*ie*, where all three spud legs are lowered and embedded into the seabed), the defendant would run afoul of the conditions under which it is allowed to operate the fish farm under the SFA licence and the TOL;

[25] Heng Seow Boon's Affidavit dated 12 June 2023 at pp 47–57.

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(xiii) insofar as the Vessel may be towed, this would be for the sole purpose of bringing her to the Farm Site where she was to be installed. It was for this reason that BV issued a Certificate of Survey for the Vessel to be towed from Batam, Indonesia to Singapore by a single direct voyage;

(xiv) the Vessel does not spend any part of her operative life traversing the surface of the water;

(xv) the Vessel was constructed for the purpose of being a sea-based fish farm, and for that purpose, was not designed or constructed to be capable of traversing significant distances on the surface of the water; and

(xvi) it was not intended that any significant part of the Vessel's function was for her to be used in navigation, and the Vessel is not used in navigation.

(b) The claimant's case:[26]

(i) the Vessel was a barge pre-conversion, and remains in nature and functionality a barge post-conversion;

(ii) a barge need not be self-propelled or have engines, and this does not affect her classification as a vessel or ship;

(iii) the Vessel already had spud legs prior to conversion, *ie*, she had spud legs while she was flagged and classed as a ship;

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[26] Claimant's Written Submissions for HC/SUM 1070/2023 at paras 8, 25–41, 107–146; Terrence George Leicester's Affidavit dated 2 May 2023 at paras 8–32.

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(iv) in the "Technical Specifications" provided by the defendant to the claimant for the purposes of the conversion, the Vessel was to maintain her class with BV;

(v) post-conversion, the Vessel was launched from the Shipyard and towed to Singapore like any other barge, with her spud legs in place;

(vi) the placement of the spud legs in the seabed do not make the Vessel immovable or a permanent fixture as they are removable and retractable;

(vii) the spudding of the Vessel does not render her immovable and the defendant has been able to move its other "sister" barge from one site to another site by de-spudding the barge;

(viii) one of the SFA licence requirements is that the Vessel may be required to be moved if she is a hazard to navigation or other planned sea usage, which shows that the Vessel is capable of movement;

(ix) the fact that the Vessel is operating as a fish farm does not mean that she is no longer a ship. While the use has changed for this period of time (noting the expiry of the defendant's SFA licence on 31 January 2024), her nature and functionality as a ship remains intact;

(x) the Vessel is listed as a vessel on Marinet;

(xi) the Vessel also appears to still be under the purview of the Maritime and Port Authority of Singapore ("MPA");

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(xii) the Contract stipulated that the Vessel would be converted in accordance with Singapore flag requirements and in full compliance with BV's requirements, although the Vessel is not currently registered under any flag state and has not maintained her class status with BV or any other classification society. In any event, registration is not determinative of whether the Vessel is indeed a ship; and

(xiii) the Vessel is similar to an oil rig in that she is designed to exploit natural resources from the sea (*ie*, by drawing in fresh sea water that is pumped into the fish tanks onboard the Vessel), and oil rigs have been held to constitute ships even though they are fixed to the seabed.

Issues to be decided

20 As alluded to above at [19], the main issue for my consideration is whether the Vessel is a "ship" within the meaning of s 2 of the HCAJA for the purposes of determining whether the court's admiralty *in rem* jurisdiction was properly invoked by the claimant.

21 As to whether the Vessel should be released from arrest and whether damages for wrongful arrest and detention of the Vessel should be awarded, evidently, if the main issue is answered in the affirmative, then ADM 20 would have been validly commenced by the claimant and the arrest of the Vessel would also be valid. In that event, these further consequential issues naturally fall away.

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Whether the Vessel is a "ship" within the meaning of the HCAJA

The definitional challenge before the court

22 Under s 2 of the HCAJA, a "ship" is defined as:

> includ[ing] any description of vessel used in navigation

"Vessel" is not defined in the HCAJA. For that definition, one needs to turn to s 2 of the Interpretation Act 1965 (2020 Rev Ed) (the "Interpretation Act"), which provides that:

> "vessel" includes floating craft of every description

23 Put together, the definition of "ship" under s 2 of the HCAJA includes "floating craft of every description used in navigation". It is common ground between the parties that the Vessel is a floating craft and thus a "vessel" within the meaning of s 2 of the HCAJA. At the hearing before me, Mr Heng stated that he was not relying on the inclusive nature of the interpretation provision to argue for a definition of "ship" that went beyond what is stipulated in the Interpretation Act. Accordingly, SUM 1070 turns in large part on the definition of the phrase "used in navigation". One of the core facets of the definitional inquiry before me is whether the court should have regard to the *design* and *capability* of the Vessel *to be used* in navigation, as opposed to the *actual use* and *frequency of use* of the vessel in navigation.

24 At this juncture, I digress to address two preliminary points that are relevant to the proper determination of the main issue. The first pertains to the standard of proof and the second pertains to the approach the court should take on matters concerning its admiralty jurisdiction.

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25 On the matter of the applicable standard of proof, whether an object is a "ship" as defined in the HCAJA is, in my judgment, a *jurisdictional fact* and thus would have to be established by the claimant to the standard of the balance of probabilities. In this regard, the principles as laid down by the Court of Appeal in *The "Bunga Melati 5"* [2012] 4 SLR 546 ("*The Bunga Melati 5*") at [112] are instructive:

> 112 In summary, we re-state the various steps and respective standards of proof for a plaintiff to invoke admiralty jurisdiction in Singapore. Under s 4(4) of the HCAJA, a plaintiff has to, when challenged:
>
> (a) prove, *on the balance of probabilities*, that the jurisdictional facts under the limb it is relying on in s 3(1)(*d*) to 3(1)(*q*) exist; and show *an arguable case* that its claim is of the type or nature required by the relevant statutory provision ("step 1");
>
> (b) prove, *on the balance of probabilities*, that the claim arises in connection with a ship ("step 2");
>
> (c) identify, *without having to show in argument*, the person who would be liable on the claim in an action *in personam* ("step 3");
>
> (d) prove, *on the balance of probabilities*, that the relevant person was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship ("step 4"); and
>
> (e) prove, *on the balance of probabilities*, that the relevant person was, at the time when the action was brought: (i) the beneficial owner of the offending ship as respects all the shares in it or the charterer of that ship under a demise charter; or (ii) the beneficial owner of the sister ship as respects all the shares in it ("step 5").

26 Establishing that the object in question is a "ship" to the standard of the *balance of probabilities* would be necessary in order for "step 1" and "step 2" as enumerated in *The Bunga Melati 5* to be satisfied by a claimant, whereas it would only be necessary for the claimant to show an *arguable case* that its *claim* was of the type and nature envisaged in s 3(1)(*d*) to 3(1)(*q*) of the HCAJA. I note that in *Merchants Marine* (at p 203 col 1), after observing that it was of no

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use trying to define what a "ship or vessel" was in that case, Scrutton LJ concluded that "the only thing I can do in this case is to treat it is *as a question of fact* and to say that I am not satisfied that the learned Judge was wrong" [emphasis added]. I agree that the question of whether a vessel or structure is or is not a ship within the meaning of the HCAJA is a question of fact and one that goes to the root of the court's jurisdiction. It is thus a jurisdictional fact to be established on the balance of probabilities.

27 As to the second point at [24], the approach of the courts here and in the United Kingdom has been to "give a broad and liberal construction to the statutory provisions conferring admiralty jurisdiction on the courts": *The "MARA"* [2000] 3 SLR(R) 31 at [15]; *The Bunga Melati 5* at [116]. This is also the approach of the courts in Australia. In the case of *Guardian Offshore AU Pty Ltd v SAAB Seaeye Leopard 1702 Remotely Operated Vehicle Lately on Board the Ship 'Offshore Guardian' and another* [2021] 1 Lloyd's Rep 201 ("*Guardian Offshore*"), the Federal Court of Australia explained (at [46]):

> 46 Therefore, the definition of "ship" forms part of the legislative provisions by which admiralty jurisdiction is conferred on this Court. Consequently, it is a provision that "should be interpreted liberally and without imposing limitations not found in the express words" … This is because to do otherwise would compromise the evident purpose of conferring jurisdiction to effectively facilitate the *in rem* jurisdiction that has been a long standing feature of admiralty law due to the ability of ships to be readily removed from a jurisdiction and thereby defeat legitimate claims.

A survey of the local and foreign jurisprudence

28 Singapore jurisprudence on the definition of a "ship" is sparse. This has made it necessary to cast the net wider, and to examine the available case authorities from other jurisdictions where courts have had to interpret the same. However, I preface my analysis with a word of caution – the jurisprudence must

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be looked at bearing in mind the context and/or purpose for which the definition was proposed in any particular case, as well as the specific phraseology in the relevant statute defining a "ship". For example, the definition of a "ship" for the purposes of deciding whether a collision is covered under an insurance policy or determining whether an offence has been committed may differ from the definition of a "ship" under the HCAJA for the purposes of conferring admiralty jurisdiction and the right to arrest a ship.

Singapore

29 In *See Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd and others* [2012] 3 SLR 227 ("*See Toh Siew Kee*"), the court was concerned with the question of whether the claimant's claim for personal injuries against the owners of the "Asian Hercules" was time-barred under s 8(1) of the Maritime Conventions Act 1911 (Cap IA3, 2004 Rev Ed) ("MCA"), which provided that:

> **Limitation of actions**
>
> **8.**—(1) No action shall be maintainable to enforce any claim or lien against a ship or her owners in respect of —
>
> (*a*) any damage or loss to another *ship*, her cargo or freight, or any property on board her, or damages for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former ship, whether such ship be wholly or partly in fault; or
>
> (*b*) any salvage services,
>
> unless proceedings therein are commenced within 2 years from the date when the damage, loss or injury was caused or the salvage services were rendered.
>
> [emphasis added]

30 This depended on whether the claimant was standing on the ramp of the "Namthong 27" when he was hit by the mooring wire of the "Asian Hercules" and whether the "Namthong 27" was considered a "ship" under the MCA (at

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[33]). In determining the latter question, Woo Bih Li J (as he then was) had recourse to s 2(1) of the Interpretation Act 1965 (Cap 1, 2002 Rev Ed), which provided:

> "ship" includes *every description of vessel used in navigation* not exclusively propelled by oars or paddles
>
> [emphasis added]

31 Woo J adopted Justice Sheen's definition in *Steadman v Scofield* [1992] 2 Lloyd's Rep 163 ("*Steadman*") at p 166 that the phrase "used in navigation" "conveys the concept of transporting persons or property by water to an intended destination", and held that the "Namthong 27" was a vessel "used in navigation" as it was "constructed for navigation at the material time … and it was meant to transport wood chips … from one port to another" (at [35]). The inability of the "Namthong 27" to self-propel (being a dumb barge that had to be towed by tugboats) was not fatal to its classification as a "ship" (at [34] and [36]).

England

32 A significant number of English decisions have dealt with the question of what makes a vessel a "ship" but they do not all speak with one voice. Some of the earlier cases suggest that the assessment of whether a vessel is "used in navigation" looks to its *actual use*, while cases decided more recently suggest that the answer depends on whether it is *designed* and *capable* of being used for navigation, *irrespective of the actual current use* – I hark back to what I described as "one of the core facets of the definitional inquiry" at [23] above.

33 I begin with *The Mac* (1882) 7 PD 126 ("*The Mac*"), which dealt with the issue of whether the court had jurisdiction pursuant to s 458 of the Merchant Shipping Act 1854 (c 104) (UK) (the "UK MSA 1854") to award salvage in

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respect of services rendered to a hopper barge which had been found adrift without any person on board her. The section provided that:

> **Salvage in the United Kingdom.**
>
> **458.** In the following Cases, (that is to say,)
>
> Whenever any *Ship* or Boat is stranded or otherwise in Distress on the Shore of any Sea or Tidal water situate within the Limits of the United Kingdom, and Services are rendered by any Person,
>
> (1.) In assisting such *Ship* or Boat;
>
> (2.) In saving the Lives of the Persons belonging to such Ship or Boat;
>
> (3.) In saving the Cargo or Apparel of such Ship or Boat, or any Portion thereof;
>
> And whenever any Wreck is saved by any Person other than a Receiver within the United Kingdom;
>
> There shall be payable by the Owners of such Ship or Boat, Cargo, Apparel, or Wreck, to the Person by whom such Services or any of them are rendered or by whom such Wreck is saved, a reasonable Amount of Salvage, together with all Expenses properly incurred by him in the Performance of such Services or the saving of such Wreck …
>
> [emphasis added]

34 The question before the English Court of Appeal was whether the hopper barge was a "ship" within the meaning of s 2 of the UK MSA 1854:

> "Ship" shall include every Description of Vessel used in Navigation not propelled by Oars

35 Lord Chief Justice Coleridge held that the hopper barge constituted a "ship" as she "could take men on board", conveying them by water, protected from the water and the weather (pp 128–129). Lord Justice Brett came to the same conclusion, reasoning that the hopper barge was "built for a particular purpose, she was built as a hopper-barge; she has no motive-power, no means of progression within herself. Towing alone will not conduct her, she must have

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a rudder, and therefore she must have men on board to steer her". The hopper barge was "used for carrying men and mud; she [was] used in navigation; for to dredge up and carry away mud and gravel is an act done for the purposes of navigation" (at p 130).

36 In *Merchants Marine*, the English Court of Appeal held that a floating crane (*ie*, a crane mounted on a floating pontoon) was not a "ship" within the meaning of the rule below in a protection and indemnity ("P&I") insurance policy issued by the defendant as the plaintiff's P&I insurer:

> The damages which the member or owner may become liable to pay and shall pay in respect of damage done by the steamship or by any person employed about the same – to any harbour, dock or pier, or quays or works connected therewith, or to jetties, erections or any fixed or movable things other than *ships and vessels*.
>
> [emphasis added]

37 The court focused on the floating crane's navigability, or lack thereof, given its "most unwieldy structure" (at pp 202–203). Lord Justice Barnes held (at p 202):

> One has to consider not only the *structure of the floating crane* but the *purposes for which it is capable of being used* and *the purposes for which, taking its life history, it has been used* …
>
> Now what do we find with regard to the structure? It is in fact a structure upon which a crane is fixed, and permanently fixed. It has no motive power of its own. I do not attach much importance to that, but it is an incident. It is not capable of being steered: it has no rudder. I think that again is only an incident, but I think it is rather an important incident. It is undoubtedly capable of being moved, but *it is obviously so unseaworthy that it can only be moved short distances, or comparatively short distances, and only when the weather is exactly favourable. It is a most unwieldy structure*. Its arm, or jib, is 70 ft. long: it is fixed athwart the platform, with two fixed struts, and obviously, upon looking at it, it is a *most unseaworthy structure*. …
>
> [emphasis added]

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38 In *Polpen Shipping Co Ltd v Commercial Union Assurance Co Ltd* [1943] KB 161 ("*Polpen*"), the court was tasked with determining whether a flying boat was a "ship or vessel" within the meaning of an insurance policy, which covered a loss by collision between the plaintiffs' motor vessel and "any other ship or vessel". In deciding the question, Justice Atkinson turned to the definition under s 742 of the Merchant Shipping Act 1894 (c 60) (UK) ("UK MSA 1894"):

> **742 Definitions.**
>
> "VESSEL" includes any ship or boat, or any other description of vessel used in navigation;
>
> "SHIP" includes every description of vessel used in navigation not propelled by oars;

39 Atkinson J held that the flying boat was not a "ship or vessel" (at 167):

> I do not want to attempt a definition, but if I had to define "ship or vessel" I should say that it was any hollow structure intended to be used in navigation, i.e., *intended to do its real work on the seas or other waters, and capable of free and ordered movement thereon from one place to another.* A flying boat's real work is to fly. It is constructed for that purpose, and its ability to float and navigate short distances is merely incidental to that work. …
>
> [emphasis added]

40 In *Steadman*, the defendants argued that the plaintiff's cause of action was time-barred under s 8 of the Maritime Conventions Act 1911 (c 57) (UK) (the "UK MCA 1911"), which was *in pari materia* with our own MCA (see [29] above).

41 The hurdle that the plaintiff had to cross in *Steadman* was to satisfy the court that the plaintiff's *jet ski* was a "vessel" within the meaning of s 8 of the UK MCA 1911. Based on s 10 of the UK MCA 1911, the meaning of "vessel" was the same as that contained in s 742 of the UK MSA 1894 (*ie*, the same definition reproduced at [38] above).

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42 Sheen J held that the plaintiff's claim was not time-barred as the jet ski was not a "vessel" and was not "used in navigation". According to Sheen J, the phrase "used in navigation" conveys the "concept of transporting persons or property by water to an intended destination" and "navigation" refers to the "planned or ordered movement from one place to another". While a jet ski is capable of traversing the surface of water (and at a very high speed indeed), its purpose is "not to go from one place to another" (at p 166).

43 In *R v Carrick District Council, ex parte Prankerd* [1999] QB 1119 ("*The Winnie Rigg*"), the applicant applied for judicial review by way of an order of prohibition to restrain Carrick District Council, the harbour authority for the harbour in which the applicant moored her private motor yacht, the "Winnie Rigg", from levying distraint on the yacht for arrears of mooring charges. One of the bases of her application was that the council had acted *ultra vires* in that the "Winnie Rigg", which had been stationary at its mooring for a substantial period of time (15 years), was not a vessel "used in navigation" within the meaning of s 57(1) of the Harbours Act 1964 (c 40) (UK) ("Harbours Act 1964"), and therefore s 44 of the Harbours, Docks and Piers Clauses Act 1847 (c 27) (UK) and s 26(3) of the Harbours Act 1964, which conferred the power to distrain on a harbour authority, did not apply.

> **Harbours Act 1964**
>
> **57 Interpretation.**
>
> "ship", where used as a noun, includes every description of vessel used in navigation …

44 The court held that the "Winnie Rigg" was a "ship" within the meaning of s 57(1) of the Harbours Act 1964, drawing a distinction between the *capability* of being used for navigation ("used in navigation") and the *actual*

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current use of the ship for navigation purposes ("used for navigation") as such (at p 1126):

> The relevant phrase is "used in navigation" as contrasted with the phrase "used for navigation". The phrase *"used for navigation"* connotes that the *actual current use of the ship is for navigation purposes*; by way of contrast, the phrase *"used in navigation"* connotes that (*irrespective* of the actual current use) *the ship is* ***actually or potentially capable*** *of being used for navigation.* According to the ordinary use of the English language a ship *remains "used in navigation" though rendered incapable of navigation, so long as there is a reasonable expectation that it will regain its capacity to navigate* … In deciding whether a ship is "used in navigation", it is a relevant consideration that it has its own means of propulsion and direction, but this is not essential … A craft which is capable of transporting persons or property from one place to another is used in navigation though it is incapable of independent movement and the necessary element of ordered movement is supplied by another vehicle …
>
> [emphasis added in italics and bold]

45 *Perks v Clark (Inspector of Taxes) and other suits* [2001] 2 Lloyd's Rep 431 ("*Perks*") was an income tax case concerning three taxpayers who were employed during the years of assessment on mobile offshore oil-drilling rigs, the issue being whether their earnings were "emoluments from employment as a seafarer" under para 3(2A) of Schedule 12 of the Income and Corporation Taxes Act 1988 (c 1) (UK) (at [1]). The same paragraph defined "employment as a seafarer" to mean:

> … employment consisting of the performance of duties on a *ship* (or of such duties and of others incidental to them).
>
> [emphasis added]

As the word "ship" was not defined in the aforementioned Act, reliance was placed on the definition of "ship" under the UK MSA 1894 (see [38] above).

46 The English Court of Appeal found that the rigs were "ships" as they were "capable of, and used for, navigation" (at [43]), stating that (at [42]):

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> … so long as "navigation" is a *significant part* of the function of the structure in question, *the mere fact that it is incidental to some more specialised function*, such as dredging or the provision of accommodation, *does not take it outside the definition*. … "navigation" does not necessarily connote anything more than "movement across water"; the function of *"conveying persons and cargo from place to place" (in the judge's words) is not an essential characteristic*.
>
> [emphasis added]

47 In what appears to be a reference to the ruling in *The "Von Rocks"* [1998] 2 Lloyd's Rep 198 ("*The Von Rocks*") (discussed below at [56]–[61] below), the court in *Perks* pointed out that it was not suggested that the "relative infrequency of movement" was a reason for challenging the finding that the rigs were "ships", and that counsel for the respondents "*realistically accepted* that in most cases *the categorisation of a structure, as a ship or not,* ***should be governed by its design and capability, rather than its actual use at any time****"* [emphasis added] (at [43]).

48 In *Michael v Musgrove (t/a YNYS RIBS) Sea Eagle* [2011] EWHC 1438 (Admlty) ("*The Sea Eagle*"), a passenger suffered a back injury while on the "Sea Eagle", a rigid inflatable boat. The defendant argued that the personal injury claim was time-barred under the 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (13 December 1974), 1463 UNTS 19 (entered into force 28 April 1987) ("Athens Convention"). The defendant could only rely on the Athens Convention if the "Sea Eagle" fell within the definition of a "ship" under Art 1:

> "ship" means only a seagoing vessel …

49 The Admiralty Registrar held that the "Sea Eagle" was a ship "in the sense of being a vessel capable of being used, and actually used, in navigation" (at [30]), and made the following observations (at [28]):

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> With respect to being a ship this may include any vessel used in navigation and, for these purposes, I think that this means *capable of being used in navigation whether or not she is actually being used in navigation at the relevant time*. Thus there may be structures which may be *vessels capable of being used in navigation which, although designed to be capable of navigation, may not actually be used in that capacity and may not have been for some time*. Examples of such ships are HMS *Victory*, HMS *Warrior* and those vessels moored in the Thames and used as restaurants or livery halls. They were *designed as ships, have been used in navigation and, in my view they remain ships*.
>
> [emphasis added]

50 The Admiralty Registrar also considered the fact that the "Sea Eagle" was certificated as a small commercial vessel under the relevant legislation to be indicative that "she is to be treated as such" (at [30]).

51 In *The Environmental Agency v Gibbs and another* [2016] 2 Lloyd's Rep 69 ("*Gibbs*"), a case which the defendant relies on heavily, the court had to consider whether houseboats constituted "vessels" within the meaning of Art 2 of the Environment Agency (Inland Waterways) Order 2010 (SI 2010 No 699) (UK) (the "Environment Agency (Inland Waterways) Order 2010"):

> "vessel" includes every description of vessel with or without means of propulsion of any kind and includes anything constructed or used to carry persons, goods, plant or machinery, or to be propelled or moved, on, in or by water …

52 The houseboats consisted of (i) a raft made of blocks of polystyrene and concrete; and (ii) living quarters placed on the raft. The corners of the raft had round brackets through which poles were put which were driven into the bed of the marina to hold the structure in place. The structure was further held in place by chains and sea anchors (at [66]). All three judges came to the same conclusion that the houseboats were not "vessels".

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53 Lord Justice Lindblom reasoned that "the evident *instability* of the whole structure once assembled, its *lack of navigability* and the *awkwardness of moving it from one place to another*" [emphasis added] rendered them "floating houses" and not vessels meant to be propelled or moved across the water.

54 Similarly, Justice Teare held that in order for an object to be a "vessel" it must have "the ability to make ordered progression over the water from one place to another" (at [63]). Whilst the houseboats were technically capable of being moved, they required great care to be exercised to ensure that during the movement the structure remained stable (at [69]). Such capability of movement was "theoretical rather than practical", given that this would have required removing the poles, chains and sea anchors and towing the structure by a workboat, with another boat or pontoon assisting to provide stability (at [66]). Further, any movement was only possible over short distances and in favourable weather conditions (at [69]).

55 Justice Holroyde found that the houseboats were essentially "fixed structures secured to the land" and "capable of moving only to the limited extent that they rise and fall on their supporting poles … any more substantial movement of such a houseboat, once it had been established in its position, was theoretical rather than a real possibility". The houseboats lacked the stability to be moved, and "any movement would necessarily be a slow and careful affair, attended by risks" (at [99]).

Ireland

56 The subject of *The Von Rocks* was a backhoe dredger which was used to deepen the waters in harbours, channels and estuaries. It consisted of a floating platform with no bow, no stem, no anchors, no rudder or any means of steering,

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and no keel or skeg. Nor did it have any means of self-propulsion. When not in operation, it was a floating platform comprising ten individual pontoons bolted together. When in use, it was held in position on the seabed by three spud legs which were capable of being hydraulically lowered and raised.

57 The "Von Rocks" was arrested pursuant to an *ex parte* application made on behalf of the plaintiffs and the defendants challenged the validity of the arrest by arguing that the "Von Rocks" was not a "ship" within the meaning of the Jurisdiction of Courts (Maritime Conventions) Act 1989 (SI 1989 No 332) (Ireland) ("Jurisdiction of Courts (Maritime Conventions) Act 1989"), which gave effect in Ireland to the International Convention on the Arrest of Sea Going Ships 1952 (10 May 1952), 439 UNTS 193 (entered into force 24 February 1956). Article 2 of that convention provided that:

> A *ship* flying the flag of one of the Contracting States may be arrested in the jurisdiction of any of the Contracting States in respect of any maritime claim …
>
> [emphasis added]

Section 13(2) of the Jurisdiction of Courts (Maritime Conventions) Act 1989 provided:

> For the purpose of the [International Convention on the Arrest of Sea Going Ships 1952] and this Act, unless the context otherwise requires —
>
> 'Ship' includes every description of vessel used in navigation;
>
> 'Vessel' includes any ship or boat, or any other description of vessel used in navigation.

58 The Irish Supreme Court held that the "Von Rocks" was a "ship" and thus that the arrest was proper. Notably, Justice Keane held that at an irreducible minimum, the definition of a "ship" is that the craft must not only be capable of

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traversing significant water surfaces, but must do so *regularly* in its operative life (at pp 206–207):

> The authorities, some of which are not easy to reconcile, demonstrate that it would be difficult, and not particularly helpful, to attempt to formulate a general definition of a "ship" or "vessel" applicable to every case. With that *caveat*, however, one can, as a starting point take it that, *as an irreducible minimum, the object under consideration must not merely be capable of traversing the surface of water, but must spend a reasonably significant part of its operative life in such movement.*
>
> …
>
> The preponderance of judicial opinion would support the view that provided the craft was built to do something on water and, for the purpose of carrying out that work, was so designed and constructed as to be capable of traversing significant water surfaces *and did in fact regularly so traverse them*, it is capable of being classified as a "ship" …
>
> [emphasis added]

59 Keane J held that it was not essential that the craft should be capable of self-propulsion and neither was it necessary for there to be a steering mechanism, such as a rudder (at pp 206–207). The movement of traversing the surface of the water, which renders the craft a "ship", may be the result of towing, as in the case of barges and floating cranes (at p 207). He also found that the fact that the carriage of cargo or passengers is not the exclusive or even the primary object for which the craft is being used is not a decisive consideration (at p 207).

60 Keane J cast doubt on the decision of Sheen J in *Steadman*, insofar as it required that the purpose of the craft must be "to go from one place to another". He disagreed that a necessary characteristic of a "ship" must be that it moves from one point to another or that it has an intended destination (at p 207).

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61 Ultimately, the Irish Supreme Court found that the "Von Rocks" was a ship, and one of the considerations was certification by the regulatory authorities (at p 208):

> The "Von Rocks" undoubtedly lacks some of the characteristics one would normally associate with a "ship". It is not self-propelled, it normally is not manned by a crew and it has no form of rudder or other steering mechanism. But it is a structure *designed and constructed for the purpose of carrying out specific activities on the water, is capable of movement across the water and in fact spends significant periods of time moving across the seas from one contracting site to another*. It was indeed in the course of just such a voyage that it met with the mishap which has given rise to the present proceedings. If it is to do its normal work, *it must be in a seaworthy condition and, it would seem, the regulatory authorities here and elsewhere treat it as subject to compliance with the normal requirements as to sea going vessels*.
>
> [emphasis added]

Australia

62 In *Guardian Offshore*, the Federal Court of Australia had to decide, in the context of an application to set aside the arrest of a remotely operated vehicle ("ROV"), whether the ROV arrested by the claimant was a "ship" within the meaning of s 3 of the Admiralty Act 1988 (Cth):

> "ship" means a vessel of any kind *used or constructed for use in navigation* by water, however it is propelled or moved, and includes:
>
> (a) a barge, lighter or other floating vessel;
>
> (b) a hovercraft;
>
> (c) an off-shore industry mobile unit; and
>
> (d) a vessel that has sunk or is stranded and the remains of such a vessel;
>
> but does not include:
>
> (e) a seaplane;
>
> (f) an inland waterways vessel; or

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> (g) a vessel under construction that has not been launched.
>
> [emphasis added]

63 The court held that the ROV was not a ship within the meaning of the terms of the statute (at [81]–[82]). Although the ROV was technically capable of navigation, its ability to do so was "relatively confined" (at [84]). It was not towed but rather, "loaded onto a vessel and transported as cargo" (at [85]). Importantly, the ROV "[did] not have a capacity to float or withstand the perils of the sea whilst being towed"; the ROV could not be described as "seaworthy" in any relevant sense (at [87]). The court also observed that the ROV was not registered as a ship (at [89]).

Canada

64 In *R v Saint John Shipbuilding & Dry Dock Co* [1981] FCJ No 608 ("*Saint John Shipbuilding*"), the Federal Court of Canada had to decide whether it was seized of admiralty jurisdiction under the Federal Court Act 1970 (Cth) ("Federal Court Act") over a case involving a floating crane, the "Glenbuckie". Section 22(1) of the Federal Court Act empowered the Trial Division to adjudicate on questions of admiralty law and s 22(2) provided:

> **Maritime jurisdiction**
>
> **(2)** Without limiting the generality of subsection (1), for greater certainty, the Federal Court has jurisdiction with respect to all of the following:
>
> …
>
> (*e*) any claim for damage sustained by, or for loss of, a *ship* including, without restricting the generality of the foregoing, damage to or loss of the cargo or equipment of, or any property in or on or being loaded on or off, a ship;
>
> …
>
> (*h*) any claim for loss of or damage to goods carried in or on a *ship* including, without restricting the generality of

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> the foregoing, loss of or damage to passengers' baggage or personal effects;
>
> (*i*) any claim arising out of any agreement relating to the carriage of goods in or on a *ship* or to the use or hire of a *ship* whether by charter party or otherwise;
>
> …
>
> [emphasis added]

Section 2 of the Federal Court Act in turn provided:

> "ship" includes any description of vessel, boat or craft *used or capable of being used* solely or partly for marine navigation without regard to method or lack of propulsion.

65 The court found that the "Glenbuckie" was a "ship" within the meaning of the Federal Court Act, noting that she was "capable of being moved from place to place and was so moved from time to time, as it was in this case to unload the cargo from [another ship]" and that she was also "capable of carrying people and obviously had to do so to enable the crew to carry out their duties" (at [29]).

66 In *R v "Star Luzon" (The)* [1983] BCJ No 2027 ("*The Star Luzon*"), the respondents appealed the decision of the Provincial Court of British Columbia which found the "Star Luzon" and the "Burrard Yarrows" guilty of discharging a pollutant into Canadian waters, contrary to s 752 of the Canada Shipping Act, RS 1970, c 27 (Can) ("Canada Shipping Act"):

> Any person who and any *ship* that discharges a pollutant in contravention of any regulation made pursuant to section 728 is guilty of an offence and liable on summary conviction to a fine not exceeding one hundred thousand dollars.
>
> [emphasis added]

In turn, s 2 of the Canada Shipping Act provided:

> "ship" includes

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> (*a*) every description of vessel used in navigation and not propelled by oars, and
>
> (*b*) for the purpose of Part 1 and sections 647 to 652, every description of lighter, barge or like vessel used in navigation in Canada however propelled …
>
> "vessel" includes any ship or boat or any other description of vessel used or designed to be used in navigation. …

67 The British Columbia Supreme Court upheld the Provincial Court's findings that the "Burrard Yarrows" was not a "vessel" within the meaning of the Canada Shipping Act (at [19]). The Judge below had determined that the "Burrard Yarrows" was a "floating drydock" (at [8] of the Provincial Court's judgment). Importantly, the judge focused on the extensive work that would have been required in order for the "Burrard Yarrows" to be moved, such that it could not be described as being "used in navigation" (at [8]–[9] of the Provincial Court's judgment):

> 8. I found as a fact that the 'BURRARD YARROWS' is a floating drydock. … It was built in Hiroshima, Japan and towed to Burrard Yarrows' facilities in North Vancouver in August of 1981. It has been moored there ever since. It is *connected to the shore by 'gripper arms' and bolted to a concrete pier which allow it to be raised and lowered while remaining centered.* … All of its services are permanently coupled to the shore. It no longer has navigation lights nor couplings which were in place at the time it was towed from Japan. Since then, there has been added to it a fifteen-ton crane, aprons, and a communication bridge. Its sole function is to raise other ships for repairs, and that is accomplished by the filling and emptying of tanks in its hull.
>
> 9. I found as a fact that the 'BURRARD YARROWS' *could be towed to provide drydock facilities elsewhere.* That could occur, however, *only after extensive work to remove it from its present moorage and to ready it for towing*. I further found that even if it were moved, it could not be said that the 'BURRARD YARROWS' would be used or be then designed to be used in navigation. Its use would remain that of a drydock and *even while being towed, it would be difficult to conceive of it as anything but cargo*. It would be an item of machinery being transported from A to B by the most efficient means possible, that is, towing. In that connection, I found that the 'BURRARD YARROWS' has not been used in navigation even though it was towed to Vancouver from its place of manufacture in Japan.

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[emphasis added]

Factors to be considered

68 As one might surmise from the summary of the jurisprudence above, any attempt at deriving a concrete and neatly demarcated definition of a "ship" or vessel "used in navigation" is likely to be a contrived and futile exercise, much like attempting to exhaustively define an elephant. For every characteristic that a court deems determinative in one case, there is almost always another decision disagreeing with the importance placed on that factor.

69 In my judgment, the inquiry is necessarily multi-factorial. The list of ship-*indicia* is not a short one – for example, self-propelling, having a keel, rudder, navigation lights, being manned by a crew, conveying persons or cargo from one point to another, to name a few. The more of such characteristics that a vessel can check against, the more likely the vessel is a "ship". At the same time, the *failure* to tick some of these boxes does not necessarily mean that the vessel cannot constitute a "ship". As was succinctly noted by Justice Colvin in *Guardian Offshore* (at [80]):

> 80 … the cases tend to review the purpose, attributes and capabilities of the structure in issue and then draw a conclusion by reference to all of those matters as to whether the structure meets the definition. In effect, the cases consider the extent to which the particular structure lacks what might be described as the usual attributes associated with the concept of a vessel that can navigate by water and whether the departure is so great that it can [no] longer be given the relevant description.

70 Leaving aside these specific characteristics or attributes, I revert to what I referred to as "one of the core facets of the definitional inquiry" (see [23] above). In my judgment, at an "irreducible minimum", that inquiry should be directed towards the *capability* of the vessel to be used in navigation as a matter of its physical design and construction, *ie*, whether it is *navigable* and built to

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withstand the perils of the sea, *irrespective* of its actual current use. This is also what I understand the phrase "used in navigation" to mean, which is an indispensable qualifier to the definition of a "ship" under various statutes across a number of jurisdictions.

71 In the context of the HCAJA which confers admiralty jurisdiction, I am fortified in my view that if a vessel is designed and capable of being used in navigation, that should be a weighty consideration that that vessel falls within the definition of a "ship" under s 2 of the HCAJA. Among others, the navigability of a vessel is what gives rise to the risk and danger of it having the ability to be removed from a jurisdiction, thereby defeating legitimate *in rem* claims. That in turn is one of the reasons a claimant would wish to invoke the court's admiralty jurisdiction and arrest a vessel. As explained in *Guardian Offshore*, this is also one of the reasons why statutory provisions conferring admiralty jurisdiction on the courts are construed liberally (see [27] above).

72 Bearing in mind the comments at [68]–[71] above and having considered the authorities carefully, I detail in my analysis below the various factors that ought to be considered in determining whether a vessel is a "ship".

Physical characteristics of the vessel

73 The ability to self-propel, being possessed of a keel or a steering mechanism such as a rudder, having a crew to man the ship, navigation lights, and ballast tanks are all physical *indicia* of a ship. A vessel possessing all or a combination of these physical characteristics is more likely than not to be capable of being used in navigation, as these characteristics aid in the navigability of the vessel. However, as the authorities make abundantly clear, the *absence* of these physical *indicia* is not determinative and a vessel lacking these elements may still be a ship: *See Toh Siew Kee* at [36]; *The Mac* at p 130;

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Merchants Marine at p 202; *The Winnie Rigg* at p 1126; *The Von Rocks* at p 208 (see [31], [35], [37], [44] and [61] above).

Design and capability (of being used in navigation)

74 As alluded to earlier (at [70]–[71] above), the design and capability of being used in navigation is critical to the definition of a ship. In this regard, I agree with the distinction drawn by Justice Lightman in *The Winnie Rigg* between "used *in* navigation" and "used *for* navigation" [emphasis added] (see [44] above). The latter requires *actual current use* of the vessel for navigation purposes, while the former connotes that the vessel is *capable* of being used for navigation. The Admiralty Registrar in *The Sea Eagle* shared the same view, stating that "used in navigation" means "*capable of being used in navigation* whether or not she is *actually being used in navigation* at the relevant time" [emphasis added] (see [49] above). This understanding of the term "used in navigation" was also accepted in *Perks* (see [47] above).

75 Further, I am of the view that the term "navigation" connotes an element of direction, meaning the design and capability of the structure to move or be moved from one place to another: see *Steadman* at p 166 (see [42] above). In this regard, I echo the views expressed in *The Sea Eagle* at [28] that structures such as gas floats, floating stages and jet-skis are not capable of being used in navigation simply because they were not designed as structures to move or be moved from one place to another, and in the case of jet-skis, they are structures or machines designed for "messing about" on the water.

76 How, then, should a vessel's capability of being used in navigation be assessed? In my view, and as borne out by a number of the cases, the salient and related factors include the degree of the vessel's stability, unwieldiness and stationariness.

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77 First, in respect of stability, the court considers not just whether the vessel is technically capable of traversing the surface of water (as any object that is able to float on water could), but more importantly, whether the vessel is capable of being moved across the water in a stable manner. In *The Von Rocks*, the court paid notice to the fact that there was a "stability book" in respect of the "Von Rocks", which set out conditions applicable to its towage (at p 204). If significant external work and great care are required to ensure the vessel's stability, or there are attendant risks in moving the vessel across the water owing to her design and structure, or where movement of the vessel is only possible over short distances and in favourable weather conditions, then the vessel lacks sufficient stability for it to be capable of being used in navigation: *Gibbs* at [33], [66], [69] and [99] (see [53]–[55] above). In assessing the navigability of a vessel, the seaworthiness of the vessel is paramount, meaning whether she can float or withstand the perils of the sea while moving or being moved across the surface of the water: *Merchants Marine* at p 202, *Guardian Offshore* at [87]; *The Von Rocks* at p 204 (see [37] and [63] above).

78 Second, and relatedly, if a vessel is a "most unwieldy structure", meaning that she is large and/or difficult to manoeuvre as a physical structure, it is unlikely that she is capable of being used in navigation: *Merchants Marine* at p 202 (see [37] above).

79 Third, the stationariness of a vessel is *a* factor that undermines her navigability. This essentially looks to the degree to which the vessel is moored or secured to land and the extent of work that needs to be done to remove her from her moorage for navigation to even be possible: *The Star Luzon* at [8]–[9] (see [67] above).

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80 Given that a vessel's capability of being used in navigation is very much dependent on her design and physical structure, *past use* of the vessel is also a relevant consideration, insofar as past use of the vessel is indicative of that vessel's capability to be used in navigation, particularly if the base design and structure remain the same: *The Sea Eagle* at [28] (see [49] above). However, regard must be had to any changes in the physical structure or design of the vessel and whether those are such as to render the vessel no longer capable of being used in navigation: see *The Star Luzon* at [8]–[9] (see [67] above).

Actual current use and frequency of use

81 For the reasons articulated in the section above, I am of the view that the *actual current* use of the vessel in navigation is *not* essential to satisfy the definition of a "ship" as a vessel being "used in navigation". The obvious corollary is that the *frequency* of the vessel traversing the surface of the water is, in my judgment, also not crucial to the determination of whether a vessel is a "ship". To the extent that *The Von Rocks* held otherwise (see [58] above), I respectfully disagree.

82 However, if a vessel is actually currently traversing the surface of the water, that would be a strong and perhaps conclusive *indicium* that it is a vessel "used in navigation", for it is indeed direct evidence that the vessel is capable of being used in navigation. Therefore, the more important question that remains is whether the actual current use of the vessel must be of *a certain nature and/or take a certain form*, in order for it to be a strong and conclusive *indicium* of the vessel being "used in navigation".

83 The first of such suggested requirements speaks to the frequency of use, namely that the vessel must spend "a reasonably significant part of its operative life in such movement" and "significant periods of time moving across the seas

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from one contracting site to another": *The Von Rocks* at pp 206–208 (see [58] and [61] above). As I indicated above at [81], I respectfully disagree, and I note that the defendant has not adduced any other authority in support of this proposition; on the other hand, I am not alone in my disagreement with *The Von Rocks* on this particular point: *Perks* at [43]. In my judgment, the extent of the *actual* movement of a vessel should not have a bearing on the finding that the vessel was actually being used in navigation. A vessel may undertake very few voyages for a multitude of reasons, for instance, if the commercial arrangements are such that the vessel is not required to transport cargo or persons regularly. One can immediately think of a number of examples, such as a cargo ship being laid-up at a shipyard for years. One could think of another example of a dumb barge moored at an offshore land reclamation site and used for an extended period of time as an equipment storage pontoon without being moved. In these examples, the infrequency, or even complete absence of, actual navigation (*ie*, "ordered movement across the water") does not and cannot change the fact that the vessel can, in actual fact, be navigated across the water (even if infrequently) and therefore, is clearly *navigable*. That element of navigability, in my view, would be sufficient to attract and justify the proper invocation of the court's admiralty jurisdiction against the vessel concerned. The infrequency of actual movement across the water should not impact the court's assessment of the vessel's *navigability*, *ie*, whether the vessel is *capable* of being used in navigation.

84 Second, it is suggested in some of the cases that to be used for the purpose of navigation means that the vessel must be used to *convey persons or cargo* from one point to another: *The Mac* at p 130; *Steadman* at p 166, *See Toh Siew Kee* at [35] (see [31], [35], [42] above). While that may often be the purpose for which a vessel traverses the surface of water, I agree with *The Von Rocks* (at p 207), *Perks* (at [42]) and *Guardian Offshore* (at [78]) that the fact

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that the carriage of cargo or passengers is not the exclusive or even the primary object for which the vessel is used is not a decisive consideration (see [46] and [59] above). In my view, this must be sound as it is not the conveyance of persons or cargo that attracts the invocation of the court's admiralty jurisdiction under the HCAJA, but the navigation, and more importantly, the navigability of the vessel.

85 Third, it is also suggested that to be "used in navigation", the vessel is "to do its real work on the seas or other waters, and capable of free and ordered movement thereon from one place to another": *Polpen* at p 167 (see [39] above). A similar proposition was expressed by Teare J in *Gibbs* at [63] and [68], namely that a significant part of the vessel's function must be navigation and the vessel's "real work" must involve being navigated across the waters.

86 This is where my cautionary tale (at [28]) rears its head, namely that one must have regard to the context and/or purpose for which the definition of a "ship" is proposed, as well as the specific phraseology in the legislation. *Polpen* was concerned with the question of whether a flying boat was a "ship or vessel" within the meaning of an insurance policy – the policy wording covered losses resulting from a collision between the plaintiffs' motor vessel and "any other ship or vessel". It is not surprising that the definition of a "ship or vessel" under an insurance policy might be construed more narrowly than the definition of the same under a legislation conferring admiralty jurisdiction on the court. *Gibbs* addressed the question of whether houseboats constituted "vessels" within the meaning of Art 2 of the Environment Agency (Inland Waterways) Order 2010 in the context of determining whether the defendant had committed an offence of keeping an unregistered vessel on a waterway under that legislation. The definition of "vessel" under Art 2 of the legislation differs from the definition of "ship" under s 2 of the HCAJA. The former provides that "vessel" includes

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"anything constructed or used to carry persons, goods, plant or machinery, or to be propelled or moved, on, in or by water"; clearly, that definition is concerned with the *function, purpose and use* of the vessel in question, which had to be primarily tied to the act of movement across water.

87 I therefore disagree that for the purposes of invoking the court's admiralty jurisdiction under the HCAJA, the test of whether the vessel's "real work" involves traversing the water surface is the applicable test. The actual current use of a vessel, even if relevant, should not be determined by whether the vessel's operational work is executed *while in navigation*. I find the statements made in *Perks* to be more persuasive, where the English Court of Appeal held at [42] that "the mere fact that [navigation] is incidental to some more specialised function, such as dredging or the provision of accommodation, does not take it outside the definition [of a "ship"]" (see [46] above).

Classification and certification

88 The classification or certification of a vessel as a "ship" is, in my judgment, an important *indicium* pointing to the vessel being a "ship" and one that is "used in navigation": *The Sea Eagle* at [30]; *The Von Rocks* at p 208 (see [50] and [61] above). The reason for this is that if a vessel is classified as a "ship", the entity responsible for classifying the vessel would have determined that the vessel is in a seaworthy condition and in compliance with its requirements as to sea going vessels.

Registration and flag

89 While registration is not determinative of the status of a vessel as a "ship", in my view, the absence and/or existence of registration to a flag state is an *indicium* as to whether a vessel is a "ship" and/or "used in navigation". This

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was one of the considerations that the court took notice of in *Guardian Offshore* at [89], and in *The Von Rocks* at p 203, where Keane J noted that the "Von Rocks" was registered in the Swedish Registry of Ships and entitled to fly the flag of Sweden.

Characteristics of the Vessel

90 ADM 20 was filed on 14 March 2023, and the warrant of arrest against the Vessel was obtained on the same day. The question I have to determine is whether, as at that date, the Vessel was a "ship" within the meaning of s 2 of the HCAJA.

91 It is not disputed that the Vessel is a floating fish farm. She has no engines and is not capable of self-propulsion. She is not manned by a master or any seafaring crew. She does not have any navigational equipment onboard or any conventional navigational lights. She does not transport any persons, cargo or objects from one place to another.[27] However, the absence of these (physical) *indicia* is not determinative of the issue and a vessel lacking these elements may still be a ship (see [73] above).

92 Before the Vessel became a floating fish farm, she was formerly a steel dumb barge known as the "WINBUILD 73". The defendant purchased and became the owner of the barge "WINBUILD 73" on 15 January 2021. The "WINBUILD 73" was situated at the Shipyard in Batam, Indonesia (see [8] above), and there is some evidence that the "WINBUILD 73" was towed from Singapore to the Shipyard in Batam, Indonesia, for the conversion works to take

[27] Heng Seow Boon's Affidavit dated 13 April 2023 at paras 21–22; Terrence George Leicester's Affidavit dated 2 May 2023 at para 9; Claimant's Written Submissions for HC/SUM 1070/2023 at paras 28–30.

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place.[28] Subsequently, and pursuant to the Contract between the claimant and the defendant, the "WINBUILD 73" was converted into a "Special Service Floating Fish Farm" known as the "ECO SPARK" (see [9] above). On 27 February 2022 (by which time she had already undergone a significant amount of conversion work – see Figure 2 below),[29] the Vessel was towed by an ocean tug from the Shipyard to Singapore for physical delivery to the defendant (see [11] above). Slightly more than a year later, ADM 20 was commenced and the Vessel was arrested.

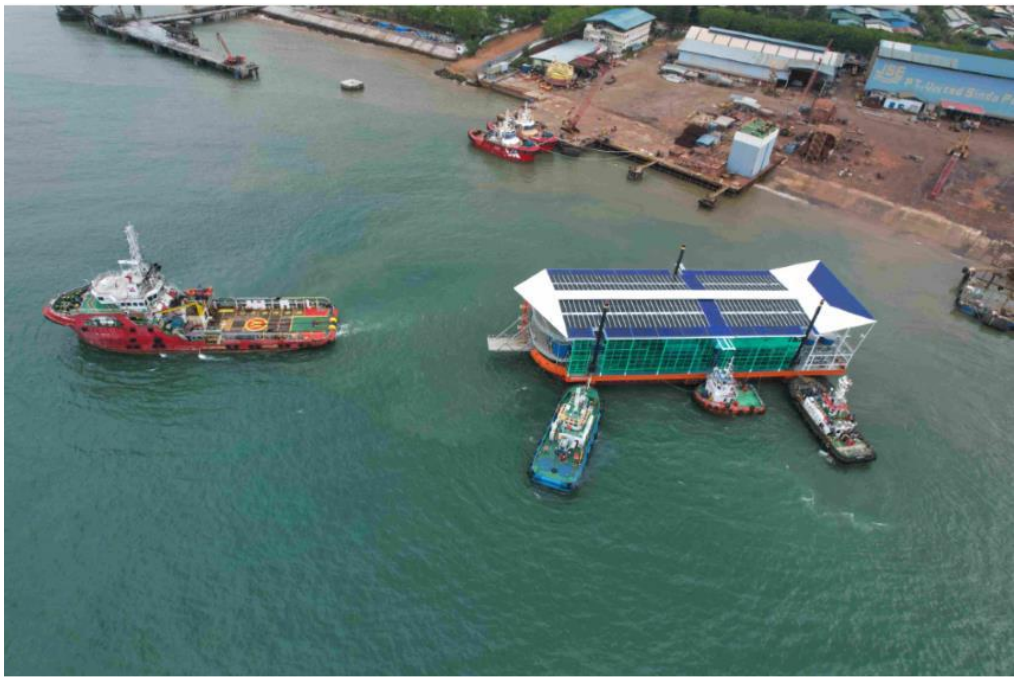

Figure 2: Photo of the Vessel being towed from the Shipyard to Singapore

[28] Terrence George Leicester's Affidavit dated 14 March 2023 at p 96; Terrence George Leicester's Affidavit dated 2 May 2023 at para 37.

[29] Terrence George Leicester's Affidavit dated 2 May 2023 at pp 17–21.

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93 From the photographs of the "ECO SPARK's" launch and towing,[30] as well as the photographs of the barge "WINBUILD 73" prior to conversion,[31] it appears that the "Special Service Floating Fish Farm" was, in essence, built on top of the existing structure of the barge "WINBUILD 73". Notably, the three spud legs were a consistent feature in the Vessel, present in *both* the "WINBUILD 73" and the Vessel (see Figure 3A and Figure 3B below). For all intents and purposes, the basic design and structure of the "WINBUILD 73" remained unchanged, and the defendant does not suggest that it was.

Figure 3A: Photo of the "WINBUILD 73" with three spud legs

30 Terrence George Leicester's Affidavit dated 2 May 2023 at pp 17–21.

31 Terrence George Leicester's Affidavit dated 19 June 2023 at pp 10–16.

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Figure 3B: Photo of the Vessel with three spud legs

94 In this regard, and as I held at [80] above, past use of the vessel is a relevant consideration. It is apparent to me that in her past life as the barge "WINBUILD 73", the Vessel undoubtedly fell within the definition of a "ship" under s 2 of the HCAJA. Counsel for the defendant, Mr Kenny Yap ("Mr Yap"), does not dispute this, but he contends that it is irrelevant as the assessment must be carried out when ADM 20 was commenced. I will return to this contention later but before that, I highlight a few more facts from the available evidence relating to the Vessel's past use.

95 The "WINBUILD 73" was a Singapore-registered ship and was initially classed by the American Bureau of Shipping as a "deck barge" and subsequently by BV as a "pontoon".[32] As I indicated above at [92], the claimant's affidavit

[32] Terrence George Leicester's Affidavit dated 2 May 2023 at pp 70–101.

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refers to the barge "WINBUILD 73" having also made at least one voyage from Singapore to the Shipyard in Batam, Indonesia, for the conversion works to take place.[33] While no details are given about this voyage, quite clearly, the "WINBUILD 73" was capable of being used in navigation before any conversion works began. In my judgment, the installation of the "Special Service Floating Farm" atop the barge structure did not result in such a significant change to the physical structure or design of the Vessel such as to render the Vessel (post-conversion) to no longer be navigable. Indeed, as mentioned at [92], after the conversion work had begun and the Vessel was launched at the Shipyard, the Vessel was towed from the Shipyard in Batam, Indonesia to the Farm Site off Pulau Ubin, Singapore – this was a voyage undertaken in open waters and which would have required the Vessel and the tug towing her to cross the Singapore Strait. Significantly, the defendant also does not seriously contest the fact that the Vessel was also a "ship" *during* the towage from Batam to Singapore. It is also not disputed that prior to the Vessel's arrival in Singapore, the Vessel's local agents declared her arrival (as "ECO SPARK") in Marinet, the port authority's electronic ship information database.[34] It also stands to reason that prior to her arrival in Singapore, the Vessel had to obtain arrival port clearance from the port authorities. These are all activities commonly associated with sea going ships.

96 The central plank of the defendant's case is that after the Vessel arrived at Singapore and the spuds were lowered and embedded at depths of four to six metres into the seabed, the Vessel became an "immovable" structure that was no longer "capable of traversing significant water surfaces" (see [19(a)] above).

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33 Terrence George Leicester's Affidavit dated 14 March 2023 at p 96; Terrence George Leicester's Affidavit dated 2 May 2023 at para 37.

34 Terrence George Leicester's Affidavit dated 2 May 2023 at pp 102–103.

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That argument might have some force if the appropriate test for "used in navigation" under s 2 of the HCAJA is that of actual current use. However, as I have explained at [70]–[71] and [74] above, that is not the appropriate test; rather, one needs to assess if the vessel is *capable of being used in navigation*.

97 The fact that a floating object is spudded down does not necessarily mean that it is no longer navigable. The question is whether the *degree* of stationariness of a vessel is such as to render the vessel incapable of being used in navigation. As explained at [79] above, this looks to the degree to which the vessel is moored (or, in this case, spudded down) and the extent of work that needs to be done to remove it from its moorage (or, in this case, to de-spud the vessel) for navigation to be possible.

98 In my judgment, the Vessel is not rendered incapable of navigation by virtue of being spudded down into the seabed. I am persuaded by the claimant's argument and evidence that these spuds are removable and retractable such that the Vessel is not permanently stationary.[35] The defendant has been able to move its other similar floating fish farms from one site to another site by de-spudding them as and when movement of the floating fish farms is contemplated or directed by the authorities.[36] I am fortified in my view by condition 2.1 in the SFA licence, which states that the Vessel may be required to be *moved* if she is a hazard to navigation or other planned sea usage – the only way the Vessel could be moved is through the same way she arrived in Singapore, *ie*, by being towed;[37] this indicates that the Vessel is not an "immovable" structure incapable of navigation. It also weakens the defendant's argument that condition 2.3 of

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35 Claimant's Written Submissions for HC/SUM 1070/2023 at para 35; Terrence George Leicester's Affidavit dated 2 May 2023 at para 16.

36 Claimant's Written Submissions for HC/SUM 1070/2023 at paras 117–118.

37 Heng Seow Boon's Affidavit dated 13 April 2023 at p 178.

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the SFA licence requires the Vessel to be securely moored and/or spudded down while it is operational.[38] I reiterate that the inquiry is not whether the Vessel was *actually used in navigation* when ADM 20 was commenced and the Vessel arrested, but whether she is *capable* of being used in navigation. The fact that the Vessel needed to be spudded down to perform her real work does not detract from the fact that, as a structure, she could be de-spudded and thereafter made navigable.

99 Further, the fact that the Vessel was towed from the Shipyard in Batam, Indonesia to the Farm Site off Pulau Ubin, Singapore without any issue is evidence of her stability, seaworthiness and capability of being used in navigation – she was not simply moved a few feet. That voyage whilst under tow involved the Vessel traversing tens of nautical miles across the open sea and being exposed to the elements. The Vessel was even certified by BV (which described the Vessel in the towage approval certificate as a "ship") for the voyage under tow from Batam to Singapore.[39]

100 Finally, I consider the factors of classification and registration of the Vessel. As at 14 March 2023, it is not disputed that the Vessel was de-registered from the Singapore ship registry and was not registered with any flag state. The Vessel was also, according to the defendant, not classed with any classification society. However, as I mentioned above at [99], post-conversion and in relation to her towage from Batam to Singapore, the Vessel was certified by BV to be a ship (specifically, a "pontoon") capable of "unrestricted navigation". The attestation and certificate of survey are both dated 18 February 2022, with the former's validity being limited to 18 March 2022 and the latter's validity

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38 Defendant's Written Submissions for HC/SUM 1070/2023 at para 90(3)(a).

39 Terrence George Leicester's Affidavit dated 2 May 2023 at pp 98–99.

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expiring on 4 March 2022. These certificates from BV also confirm that the Vessel remained under the Singapore flag, at least as at the date of the issue of those certificates – this is also not disputed by the defendant.[40] Thus, the undisputed evidence is that when the Vessel was undergoing her voyage under tow from Batam to Singapore in February 2022, she was classed with BV and flew the Singapore flag.

101 Still on the issue of classification, it was contemplated by the claimant and the defendant that the Vessel was to be converted in accordance with Singapore flag requirements and in full compliance with BV class requirements. As alluded to at [9], this is expressly reflected in the Contract. For convenience, I set out the relevant terms below:[41]

> **ARTICLE I – DESCRIPTION AND CLASS**
>
> **1. Description:**
>
> … The ECO-SPARK® will be *converted in accordance with Singapore flag requirements*.
>
> …
>
> **3. Classification, Rules and Regulations:**
>
> The ECO-SPARK®, including its machinery, equipment and outfittings shall be *constructed in accordance with the rules … of and under special survey of Bureau Veritas (herein called the "Classification Society"), and shall be distinguished in the register by the symbol of I+ Hull Special Service – Floating Fish Farm, Coastal Area.*
>
> …
>
> The OWNER shall have the sole obligation to ensure that the ECO-SPARK®'s design *adheres to the full compliance of the Classification Society*. … The OWNER shall prepare, furnish, reproduce, and make any and all submittals required for *full and complete technical design approval of the ECO-SPARK® by Classification Society and the flag state authority*. The OWNER

40 Terrence George Leicester's Affidavit dated 2 May 2023 at pp 97–99.

41 Terrence George Leicester's Affidavit dated 14 March 2023 at pp 27–51.

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shall be responsible for resolution of any and all technical comments pertaining to the design, including those related to OWNER supplied equipment or systems and shall also be responsible for *timely submittals to Classification Society and the flag state authority*, of all required documentation related to but not limited to the ECO-SPARK® and the associated conversion of the ECO-SPARK® to the Special Service Floating Fish Farm. …

ARTICLE II – CONTRACT PRICE AND TERMS OF PAYMENT

…

4. Terms of Payment:

…

The Contract Price shall be paid by the OWNER to the BUILDER in instalments as follows:

…

(b) 2nd Instalment:

The sum of Singapore Dollars 360,000.00 … 20% of the Contract Price, shall become due and payable and be paid within Seven (7) Business Days after date of the invoice. Invoice to be issued after completion of Mezzanine steel deck with *Attestation Letter from Classification Society*.

(c) 3rd Instalment:

The sum of Singapore Dollars 360,000.00 … 20% of the Contract Price, shall become due and payable and be paid within Seven (7) Business Days after date of the invoice. Invoice to be issued upon completion of upper steel deck with *Attestation Letter from Classification Society*.

(d) 4th Instalment

The sum of Singapore Dollars 360,000.00 … 20% of the Contract Price, shall become due and payable and be paid within Seven (7) Business Days after date of the invoice. Invoice to be issued upon Launching of the ECO-SPARK® with *Attestation Letter from Classification Society*.

…

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ARTICLE IV – APPROVAL OF PLANS AND DRAWINGS AND INSPECTION DURING CONVERSION OF ECO-SPARK®

…

3. Inspection by Representative:

The necessary inspections of the ECO-SPARK®, its machinery, equipment and outfittings shall be *carried out by the Classification Society*, other regulatory bodies and/or inspection team of the BUILDER throughout the entire period of conversion of the ECO-SPARK®, in order to ensure that the conversion of the ECO-SPARK® is duly performed in accordance with this Contract and the Specifications. …

ARTICLE V – MODIFICATIONS

…

2. Change in Class, etc.:

In the event that, after the effective date of this Contract, *any requirements as to class, or as to rules and regulations to which the conversion of the ECO-SPARK® is required to conform* are altered or changed by the Classification Society or the other regulatory bodies, authorized to make such alterations or changes, the following provisions shall apply:

> (a) If such alterations or changes are compulsory for the ECO-SPARK®, either of the parties hereto, *upon receipt of such information from the Classification Society* or such other regulatory bodies, shall promptly within 5 days transmit the same to the other in writing, and the BUILDER shall thereupon incorporate such alterations or changes into the conversion of the ECO-SPARK® …
>
> (b) … The BUILDER is to ensure the conversion of the ECO-SPARK® is *as per compliance of the latest applicable class and flag regulations applicable* as of the date of the execution of this Contract.

ARTICLE XII – INSURANCE

…

2. Application of Recovered Amount:

> (a) Partial Loss:
>
> In the event the ECO-SPARK® shall be damaged by any insured cause whatsoever prior to acceptance thereof by the OWNER and in the further event that such damage shall not constitute an actual or a constructive total loss of the ECO-SPARK®, the BUILDER shall apply the

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> amount recovered under the insurance policy referred to in Paragraph 1 of this Article *to the repair of such damage satisfactory to the Classification Society* …
>
> [emphasis added]

Appendix A to the Contract on "Technical Specifications" also required that the Vessel be constructed in compliance with BV classification rules:[42]

> **1.3 Classification**
>
> The ECO-SPARK® shall be constructed, machinery installed and spare gear provided in accordance with the latest Rules for Building & Classing of steel ECO-SPARK® of BV. with site supervision by BV Surveyor. (hereinafter referred to as classification). ***Only Hull will be classed under BV classification.***
>
> [emphasis added in italics and bold italics]

102 On the evidence before me, I am of the view that it was expected that the Vessel would not only comply with BV's requirements for the duration of the conversion works and towage from Batam, Indonesia to Singapore, but also *throughout the course of her usage as a floating fish farm*. This is evident from MPA's email dated 8 December 2021 to Mr Donald Toh of Meridian Port Agencies, who was in communication with the MPA as agents on behalf of the defendant:[43]

> The owner/operator of these barge-like, closed-containment system fish farms, shall *ensure that both the barge type fish farm and its mooring arrangements,* ***to be classed with MPA's recognized Classification Society and maintain Class throughout the period of usage.***
>
> [emphasis added in italics and bold italics]

In my judgment, this is also evidence that the Vessel remains under the regulatory purview of the MPA even as a floating fish farm.

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42 Terrence George Leicester's Affidavit dated 14 March 2023 at pp 58–59.

43 Heng Seow Boon's Affidavit dated 13 April 2023 at pp 181–183.

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103 Further, Art I(3) of the Contract (reproduced at [101] above) contemplated that the hull of the Vessel would be assigned the BV classification notation symbol of "I+ Hull Special Service – Floating Fish Farm, Coastal Area". In this regard, I take judicial notice of Part A, Chapter 1, Section 2, rule 4.16.1 of the BV Rules for the Classification of Steel Ships (from January 2020 to June 2021) (the "BV Rules"). I have considered the BV Rules on the basis that the Contract is dated 21 January 2021 (see [9] above)). I am entitled to take judicial notice of the BV Rules as the contents of these rules are, in my view, facts which are capable of being immediately and accurately shown to exist by BV, which would be an authoritative source on its own rules of classification (see *Pollmann, Christian Joachim v Ye Xianrong* [2021] 5 SLR 1111 at [46]–[54] for the applicable principles relating to judicial notice).

104 Rule 4.16.1 of the BV Rules explains the notation above:[44]

> *4.16.1 Special service*
>
> *The service notation special service is assigned to ships* which, due to the peculiar characteristics of their activity, are not covered by any of the notations mentioned above. The classification requirements of such units are considered by the Society on a case by case basis.
>
> This service notation may apply, for instance, to ships engaged in research, expeditions and survey, ships for training of marine personnel, *whale and fish factory ships not engaged in catching, ships processing other living resources of the sea*, and other ships with design features and modes of operation which may be referred to the same group of ships.
>
> *An additional service feature may be specified after the notation* (e.g. special service-training, special service-fish factory) to identify the particular service in which the ship is intended to trade. …
>
> [emphasis added]

[44] Bureau Veritas, Rules for the classification of steel ships (NR 467) (from January 2020 to June 2021), publicly accessible at BV's website: *https://marine-offshore.bureauveritas.com/previous-editions-bureau-veritas-rules*.

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In my view, the undeniable inference is that the claimant and defendant intended and were aware that the Vessel would be classed and her class *maintained* with BV in the course of her usage as a floating fish farm as a special service ship, specifically as a "Floating Fish Farm – Coastal Area".

105 Even if reference to the BV Rules is entirely ignored, there is other evidence pointing to the fact that the parties were aware that the Vessel would not just be classed up to the Vessel's arrival at the Farm Site but would continue to *maintain* her class status with BV *throughout* the course of her usage as a floating fish farm. I have referred above to Appendix A to the Contract on "Technical Specifications", where it was expressly noted that the Vessel "*shall be classed* and be built under the survey of the Classification Society – Bureau Veritas…, *for* ***operation*** *in Coastal Area*…"[45] [emphasis added in italics and bold italics].

106 The necessity for the Vessel to maintain her class with BV (as required under the Contract and by the MPA) is obvious. It is to ensure that the Vessel's (or at least her hull's) structural integrity and *seaworthiness* would be *maintained* in accordance with the rules and requirements of BV. As is well-known in the shipping industry, ships that are classed with a classification society undergo regular inspections and surveys, and even periodic drydocking for the purposes of checking and maintaining the vessel's seaworthiness, as a condition of the ship continuing to be classed by that classification society. I see no reason why it would be any different for the Vessel.

107 Mr Yap for the defendant contends that the condition imposed by the MPA in its email (see [102] above) was only until the Vessel was positioned

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45 Heng Seow Boon's Affidavit dated 13 April 2023 at p 54.

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and spudded down at the Farm Site in Singapore.[46] Mr Yap referred to a later email from the MPA where after the defendant's agents reported that the post spudding side-scan sonar survey had been completed, the MPA responded that "the project [was] now closed".[47] I disagree that that is a reasonable reading of the email from MPA I referred to at [101]. The words used by the MPA officer with regard to the Vessel maintaining class with a classification society recognised by the MPA were "*throughout* the period of *usage*" [emphasis added]. Those words are, in my view, reasonably capable of having only one meaning, *viz*, that for the *entire period* the Vessel was *used* as a floating fish farm, the Vessel was to maintain her class status. Further, it would be illogical for the Vessel to be constructed in accordance with BV rules, and assigned a BV notation for the sole purpose of towing the Vessel from Batam to Singapore, only for the Vessel to be unclassed thereafter once she had been spudded down.

108 In my judgment, the fact that the Vessel may not currently be classed or has not maintained her class status is attributable to the *defendant's* failure to do so, and not because the Vessel is incapable of being classed. But more to the point, the fact that the MPA (as the maritime and port regulator) required the Vessel to be classed and maintained in class, and that BV itself (as a classification society responsible for classifying ships) recognised that such special service floating structures as the Vessel are ships, also point to the Vessel being a ship for the purposes of s 2 of the HCAJA.

Conclusion

109 Based on my foregoing analysis, I find and hold that the Vessel *is* a "ship" within the meaning of s 2 of the HCAJA. Accordingly, the admiralty

46 Minute Sheet dated 10 July 2023 at p 3.

47 Heng Seow Boon's Affidavit dated 13 April 2023 at p 212.

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jurisdiction of the court was properly invoked by the claimant. While the Vessel does not possess a number of the "usual attributes" associated with a ship, I do not regard the absence of those attributes as representing such a drastic departure as to disqualify the Vessel from being considered a "vessel used in navigation" and thus a "ship" under s 2 of the HCAJA.

110 Accordingly, I dismiss the defendant's application to set aside and/or strike out ADM 20 as well as its application to set aside WA 6 and the arrest of the Vessel.

111 As I have found that (i) the Vessel is a "ship" within the meaning of s 2 of the HCAJA and (ii) as a result, the admiralty jurisdiction of the court was properly invoked, it follows that the arrest of the Vessel by the plaintiff was not wrongful but valid. I therefore also dismiss the defendant's application for damages for wrongful arrest and detention of the Vessel.

112 For the reasons above, I dismiss the defendant's application in SUM 1070, save for the prayer seeking a stay of ADM 20 in favour of arbitration which I grant on the terms as explained above at [5].

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113 I shall hear the parties separately on costs. I further direct that time for the filing of any appeal(s) against my decision starts to run from the date of this judgment and not after I have determined the costs of this application.

S Mohan
Judge of the High Court

Henry Heng Gwee Nam, Loh Hui-Qi Vicki and Oon Pei Yi Fiona
(Legal Solutions LLC) for the claimant;
Yap Fook Ken and Ong Shu-Lin Natalynn (Allen & Gledhill LLP)
for the defendant.

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