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

[2024] SGHC 56

Admiralty in Rem No 16 of 2022 (Summons No 2787 of 2023)

Between

KfW IPEX-Bank GmbH

… *Claimant*

And

Owner of the vessel "WORLD DREAM" (IMO No. 9733117)

… *Defendant*

JUDGMENT

[Admiralty and Shipping — Practice and procedure of action in rem — Payment out of proceeds of sale — Whether "gaming equipment" was included in a ship mortgage — Whether there is sufficient evidence that there was "gaming equipment" on board the vessel belonging to the mortgagor]
[Contract — Contractual terms — Parol evidence rule]
[Banking — Lending and security — Legal mortgages — Whether reference to the "ship" includes "gaming equipment" on board]
[Deeds and Other Instruments — Deeds — Interpretation — Whether reference to the vessel's "appurtenances" includes "gaming equipment" on board — Whether reference to the vessel's "belongings" includes "gaming equipment" on board]

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28 February 2024 Judgment reserved.

S Mohan J:

1 The "WORLD DREAM" (the "Vessel") was a large cruise ship built to carry more than 3,000 passengers. She had a variety of facilities on board for the entertainment of her passengers, such as restaurants, bars, swimming pools, a spa/fitness centre, and much else besides – in many respects, the Vessel was a floating hotel resort. In addition, spread across several locations on board the Vessel was an assortment of "gaming equipment". This included slot machines, casino tables, and smaller paraphernalia frequently used for games of chance. The question that has come before me for determination is this: was that "gaming equipment" covered by a mortgage of the Vessel?

2 HC/SUM 2787/2023 ("SUM 2787") is an application by the defendant, World Dream Limited ("WDL"), for a declaration that any "gaming equipment" that was on board the Vessel did not fall within the scope of a ship mortgage that it granted in favour of the claimant, KfW IPEX-Bank GmbH ("KfW"). For the reasons set out below, I dismiss SUM 2787.

The background

3 The factual and procedural background to SUM 2787 is not disputed.

The term loan facility and mortgage of the Vessel

4 KfW is a bank incorporated in Germany with limited liability.

5 WDL (formerly known as Chinese Percept Limited) is a company incorporated in Bermuda with limited liability. WDL was, at all material times, the lawful and registered owner of the Vessel.

6 In essence, the construction and acquisition of the Vessel was financed by a syndicated term loan from several financial institutions (the "Lenders"), of which KfW was one:

(a) Under an agreement dated 28 May 2014, the Lenders granted WDL a term loan facility for the United States dollar equivalent of EUR 606,842,214.00;[1] and

(b) That agreement was twice amended and restated by two supplemental agreements, the first dated 27 April 2020 and the second dated 25 June 2021.[2]

I will refer to the amended and restated agreement as the "Facility Agreement".

7 In addition to acting as a lender, KfW also acted on behalf of the Lenders as "Agent" and "Security Agent"[3]. The loan was therefore secured by, among

[1] Edward Simon Middleton's 1st Affidavit ("ESM-1") at 35.

[2] ESM-1 at [7].

[3] ESM-1 at [7(1)(f)].

other things, a first priority mortgage over the Vessel (the "WD Mortgage") granted by WDL in favour of KfW:

(a) The WD Mortgage was executed in the Bahamian statutory form and registered with the Bahamian authorities on 26 October 2017;[4] and

(b) The substantive terms of the mortgage were set out in a deed of covenant dated 26 October 2017 executed by WDL in favour of KfW (the "WD Deed").[5]

I will refer to the Facility Agreement, the WD Mortgage, and the WD Deed collectively as the "WD Documentation".

The Crystal Endeavour Documentation

8 At this juncture, I briefly digress to set out the key details relating to a separate transaction, the relevance of which I will address later in this judgment.

9 It is WDL's evidence that on 23 June 2021, a "similar term loan facility" was made available to Endeavour Holdings Limited ("EHL") in respect of the vessel "CRYSTAL ENDEAVOUR" (the "Crystal Endeavour").[6] EHL is a Manx company that owned the "Crystal Endeavour" at all material times. Both WDL and EHL belonged to the same group of companies that had Genting Hong Kong Limited ("GHK") as its ultimate parent company.[7]

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[4] ESM-1 at 223.

[5] ESM-1 at 227.

[6] ESM-1 at [9].

[7] ESM-1 at [5].

10 EHL, for its part, granted KfW a first priority ship mortgage over the Crystal Endeavour (the "CE Mortgage") on 29 June 2021.[8] The substantive terms of that mortgage were set out in a "Covenant Agreement" between EHL and KfW dated 29 June 2021 (the "CE Agreement").[9] It appears that unlike the WD Deed, the CE Agreement was not executed as a deed,[10] but nothing turns on this.

The events leading to the present application

11 On 18 January 2022, GHK commenced voluntary winding up proceedings in the Supreme Court of Bermuda.[11] Dream Cruises Holding Limited, which was a subsidiary of GHK, did the same on 27 January 2022.[12] The winding up orders in respect of both companies were eventually made on 7 October 2022.[13]

12 It was undisputed that those voluntary winding up applications and the making of the winding up orders by the Bermudian court constituted events of default under the Facility Agreement entitling KfW to accelerate the loan.[14] On or about 1 March 2022, notice was given to WDL demanding (among other things) immediate repayment of all sums outstanding under the Facility Agreement.[15]

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[8] ESM-1 at [9].

[9] ESM-1 at 240.

[10] ESM-1 at 251–252.

[11] Edgar Andreas Treede's 1st Affidavit ("EAT-1") at [22].

[12] EAT-1 at [29].

[13] ESM-1 at 13.

[14] EAT-1 at [24] and [31].

[15] EAT-1 at [40].

13 On 2 March 2022, KfW commenced HC/ADM 16/2022 ("ADM 16") and arrested the Vessel on the same day as security for its claims against WDL under the Facility Agreement.

14 Default judgment was entered against WDL on 19 May 2022 by consent and, following that, an order for the appraisement and sale of the Vessel was made by me on the same day. The Vessel and its bunkers were eventually sold by the Sheriff on 24 February 2023 for USD 330,000,000.00 and USD 1,175,887.00 respectively (collectively, the "Sale Proceeds").[16]

15 On 23 December 2022, WDL applied by way of HC/SUM 4527/2022 ("SUM 4527") for leave to enter an appearance in ADM 16 for the sole purpose of making the application in SUM 2787. On 17 January 2023, leave was granted by the parties' consent and SUM 2787 was filed by WDL on 7 September 2023.

16 On 27 September 2023, KfW applied by way of HC/SUM 2979/2023 ("SUM 2979") for the priority of claims against the Sale Proceeds to be determined and for payment out of the Sale Proceeds to be ordered. After hearing the parties on 23 October 2023, I allowed SUM 2979 but ordered, with the agreement of KfW and WDL, that a sum of USD 1,500,000.00 be retained in court pending the final determination of SUM 2787 (the "Ringfencing Order").

The issue: did the mortgage extend to "gaming equipment" on board the Vessel?

17 At the time SUM 2787 was filed, WDL's second prayer thereunder was, in substance, for the Ringfencing Order to be made. It is common ground that

[16] Tobias Rodewald's 1st Affidavit at [21]–[23].

that prayer is no longer in issue because I had already made the Ringfencing Order at the hearing of SUM 2979 on 23 October 2023.

18 Therefore, I need only concern myself with WDL's first prayer in SUM 2787 for a declaration that "any gaming equipment on board [the Vessel] does not fall within the scope of the ship mortgage dated 26 October 2017 over [the Vessel] in favour of [KfW] as mortgagee". Whether this declaration should be granted turns on one question: having regard to the terms of the WD Documentation, did the mortgage created thereunder include or extend to the "gaming equipment" on board the Vessel?

WDL has led insufficient evidence to clearly identify the "gaming equipment"

19 As a preliminary point, KfW objects to SUM 2787 on grounds that WDL's reference to "gaming equipment" is too ambiguous.

20 Counsel for KfW, Mr Edgar Chin, points out that the only evidence WDL adduced to explain its reference to "gaming equipment" was a spreadsheet listing various items by description along with other details (*eg*, their acquisition cost and book value) (the "Asset Listing").[17] Mr Chin argues that the Asset Listing is neither sufficient nor reliable evidence of what "gaming equipment" comprises because:[18]

(a) The Asset Listing includes a number of intangible assets and heads of expenditure (*eg*, "SHIPPING & INSURANCE", "RETURN AIRFARE", and "MEALS");

[17] ESM-1 at 254.

[18] Claimant's Written Submissions ("PWS") at [7].

(b) Of the tangible assets that are listed, some bear no apparent relation to gaming whatsoever (*eg*, "TAPE MEASURE", "HOT GLUE GUN", and "RETRACTABLE KNIFE"); and

(c) The spreadsheet itself has nothing to say on whether the items listed therein were on board the Vessel *at the time* she was arrested and/or sold.

21 Ms Vivian Ang, appearing for WDL, contends that before SUM 2787 was taken out, KfW never disputed that there had been "gaming equipment" owned by WDL on board the Vessel.[19] Moreover, KfW never objected to the Ringfencing Order being made at the hearing of SUM 2979.[20] She submits that KfW cannot now be heard to challenge SUM 2787 on evidential grounds that could and should have been raised earlier.

22 Ms Ang further submits that the identification and valuation of the "gaming equipment" are matters relevant only to the quantification of WDL's claim. Therefore, those matters should only be determined if and after this Court grants the declaration WDL seeks.[21] The real question at this stage is one of principle, namely, whether the "gaming equipment" (as a class of objects considered in the abstract) came within the scope of the mortgage over the Vessel.

23 I disagree with the position taken by WDL. In my view, while there may well be ancillary matters that will have to be ironed out after declaratory relief is granted, *identifying* – even if only on a *prima facie* basis – the subject matter

[19] Defendant's Reply Submissions ("DRS") at [10].

[20] DRS at [10]; PWS at [31(b)].

[21] DRS at [13].

of the relief sought is not one of them. It is simply not enough to assume in the abstract that there was "gaming equipment" belonging to WDL on board the Vessel at the time the Vessel was arrested and/or sold. There must be *some* degree of specificity as to what those objects are in order to satisfy the Court that the declaration, if made, will not be in vain. In my view, the evidence led by WDL is insufficient for that purpose. Whether sums have been retained from the Sale Proceeds pending the determination of this application is beside the point.

24 In the circumstances, I am persuaded that KfW's evidential objection alone is sufficient for me to dismiss SUM 2787. However, KfW was in any case prepared to meet the application on its legal merits (*ie*, by showing that the "gaming equipment" fell within the scope of the mortgage) and advanced substantive arguments in support of its position.[22] In addition, and for the sake of argument, KfW was prepared to interpret "gaming equipment" in SUM 2787 as "referring to gambling or casino equipment".[23]

25 In the paragraphs that follow, I will explain why SUM 2787 would fail even if I looked past (or were wrong on) the evidential difficulties discussed above. In the rest of this judgment, I will adopt a generic interpretation of the words "gaming equipment", *ie*, as tangible objects permitting passengers to engage in gaming. I will also proceed on the assumption that such objects were on board the Vessel at the time she was arrested and judicially sold.

The relevant contractual provisions

26 I begin by setting out the relevant terms of the WD Documentation.

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[22] PWS at [8].

[23] PWS at [8].

The terms of the WD Mortgage

27 As I mentioned above at [7(a)], the WD Mortgage is in the standard Bahamian statutory form. It records WDL's agreement to:[24]

> mortgage to [KfW] all sixty four sixty-fourth (64/64th) shares of which we are the Owners in the *Ship above particularly described* and in her boats, guns, ammunition, small arms and appurtenances.
>
> [emphasis added]

28 The words "above particularly described" refer to the following details set out in fields at the top of the form:[25]

(a) Official Number;

(b) IMO Number;

(c) Name of Ship;

(d) Port of Registry;

(e) Propulsion and Engine Details;

(f) Vessel Dimensions; and

(g) Particulars of Tonnage.

The terms of the WD Deed

29 I turn to the WD Deed. Clause 1.1 of the WD Deed defines the word "Ship" in the following terms:[26]

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[24] ESM-1 at 223.

[25] ESM-1 at 223.

[26] ESM-1 at 229.

> Ship means the vessel described in the Schedule and includes any share or interest in it and its engines, machinery, boats, tackle, outfit, equipment, spare gear, fuel, consumable or other stores, belongings and appurtenances whether on board or ashore and whether now owned or later acquired by the Owner and also any and all additions, improvements and replacements made in or to such vessel or any part of it or in or to its equipment and appurtenances.

30 The Schedule referred to in cl 1.1 sets out the following details in respect of the Vessel:[27]

(a) Name;

(b) Flag;

(c) Port of Registry;

(d) Official Number; and

(e) IMO Number.

The terms of the CE Agreement are irrelevant

31 The parties submitted at length on the relevance (or irrelevance) of the CE Agreement to the interpretation of the WD Documentation. The disagreement relates specifically to the definition of "Ship" in cl 1.1 of the CE Agreement:

> Ship means the vessel described in the Schedule (Information) and includes any share or interest in it and its engines, machinery, boats (including, without limitation, tenders and submersibles), tackle, outfit, equipment (including, without limitation, expedition equipment and/or any *on-board gaming equipment* owned from time to time by the Owner), spare gear, fuel, consumable or other stores, belongings (including furniture and/or artwork from time to time owned by the Owner) and appurtenances whether on board or ashore, together with any rights or interest in any relevant computer

[27] ESM-1 at 235.

> software relating to, or used on-board, and whether now owned or later acquired by the Owner and also any and all additions, improvements and replacements made in or to such vessel or any part of it or in or to its equipment and appurtenances."
>
> [emphasis added]

32 Ms Ang emphasises that the specific reference to "on-board gaming equipment" in cl 1.1 of the CE Agreement is absent in cl 1.1 of the WD Deed (see [29] above).[28]

33 Mr Chin unsurprisingly objects to this comparison on grounds that the CE Agreement is parol evidence that cannot be relied on to interpret the WD Deed, especially since WDL was not privy to the CE Agreement (which involves a different owning entity – *ie*, EHL – as mortgagor).[29]

34 Ms Ang accepts that the CE Agreement is not relevant extrinsic evidence that can be relied upon to interpret the WD Documentation. However, she submits that WDL is relying on the CE Agreement not as extrinsic evidence, but simply to demonstrate how easily the parties could have expressly extended the mortgage of the Vessel to specifically cover the "gaming equipment" if that was the result they intended. Moreover, Ms Ang contends that the parties must have been alive to the issue because:

(a) The same law firm (*ie*, Norton Rose Fulbright) represented KfW in both transactions; and

(b) The second supplemental agreement (dated 25 June 2021) modifying the Facility Agreement was concluded (i) two days *after* the term loan facility in respect of the Crystal Endeavour

[28] Defendant's Written Submissions ("DWS") at [35]–[36].

[29] PWS at [43]–[44].

was granted (on 23 June 2021), and (ii) only four days before the CE Agreement and CE Mortgage were executed (on 29 June 2021).

35 It is clear that the CE Agreement is not legally admissible as relevant parol evidence. To the extent that WDL relies on it to illustrate that the WD Documentation could have been easily worded to expressly include the "gaming equipment", reference to the CE Agreement is, in my view, neither relevant nor necessary in light of my decision below on the proper construction of the relevant terms in the WD Documentation.

The "gaming equipment" came within the reference to the "ship"

36 Having considered the competing arguments, I am satisfied that the reference to the "Ship" in the WD Mortgage includes the "gaming equipment". Let me elaborate.

The relevant authorities on the meaning of "ship"

37 The parties agree that *Coltman v Chamberlain* (1890) 25 QBD 328 ("*Coltman*") is persuasive authority on the meaning of the word "ship" as it appears in ship mortgages. However, both sides advance differing interpretations of that case.

38 *Coltman* was concerned with a mortgage of a fishing vessel. The mortgagor agreed to mortgage "sixty-four sixty-fourths shares, of which I [the defendant] am the owner in the ship above particularly described, and in her boats, guns, ammunitions, small-arms, and appurtenances". It is to be noted that these words are practically identical to those appearing in the WD Mortgage (see [27] above).

39 A contest subsequently arose between the mortgagee and another creditor of the mortgagor (who was by then deceased) over certain articles on board (or previously on board) the vessel. Some of those articles were used not for the navigation of the vessel but for fishing. The question was whether title to those articles passed with the mortgage. Charles J concluded that it did because those articles came within the reference to the "ship" in the mortgage.

40 Mr Chin submits that *Coltman* is authority for the proposition that the word "ship" encompasses any object that is either (a) necessary to the navigation of the ship, and without which no prudent person would sail, *or* (b) necessary to the prosecution of the adventure.

41 On the other hand, Ms Ang contends that the holding in *Coltman* is that the word "ship" encompasses any object that is (a) either necessary to (i) the navigation of the ship *or* (ii) the prosecution of the adventure; *and* (b) without which no prudent person would sail.

42 The parties' conflicting interpretations of *Coltman* appear to stem from the fact that Charles J never stated a composite definition of the word "ship" in his decision. Nevertheless, I prefer KfW's reading of *Coltman* for the following reasons.

43 First, the headnote to *Coltman* itself reads:

> A mortgage of a ship passes to the mortgagee under the word "ship" articles *necessary to the navigation of the ship or to the prosecution of the adventure* which were on board at the date of the mortgage and articles brought on board in substitution for them subsequently to the mortgage.
>
> [emphasis added]

I make two observations on the quoted passage. First, there is a distinction between (a) articles necessary "to the navigation of the ship" and (b) articles necessary "to the prosecution of the adventure". For convenience, I will refer to the former as "Navigation Articles" and the latter as "Adventure Articles". Second, it contains no reference to any standard of 'prudence'.

44 Second, Charles J himself only adopted the language of 'prudence' in relation to Navigation Articles (at 334):

> the articles comprised in the second class are articles which are in substitution for the original articles, *are necessary for the navigation of the ship, and are articles without which no prudent person would sail*.
>
> [emphasis added]

45 Third, Charles J referred to the case of *Gale v Laurie* (1826) 5 B & C 155 ("*Gale*") and concluded (at 333) that:

> [*Gale*] is to the effect that the word "ship" in s. 1 of the Act of Geo. 3, covered the fishing stores on board—that is, the *articles on board which were needful for the accomplishment of the objects of the voyage*; it is true that it is a decision on an Act of Parliament regulating the limitation of the shipowner's liability; but it is an instructive exposition of what is included in the word "ship."
>
> [emphasis added]

Charles J was plainly relying on *Gale* for the proposition that "articles on board which were needful for the accomplishment of the objects of the voyage" (*ie*, Adventure Articles) were to be regarded as a part of the "ship". Again, no reference to 'prudence' was made in reaching this conclusion.

46 Fourth, Charles J also relied (at 333) on the following extract from Wills J's decision in *In re Salmon & Woods, Ex parte Gould* (1885) 2 Mor Bky Cas 137 (at 141):

> It has been argued that 'ship' is equivalent to 'ship and its appurtenances', and to a certain extent that is doubtless so. It would include spare sails, duplicate anchors—*anything, in fact, which it would not be prudent to send a ship to sea without.*
>
> [emphasis added]

There are three points of note in the quoted extract. First, the objects referred to (*ie*, spare sails and duplicate anchors) are quite plainly more in the nature of Navigation Articles than Adventure Articles. Second, Wills J went on to describe those objects as those "which it would not be prudent to *send a ship to sea without*". The word 'prudence' is, therefore, only used in connection with Navigation Articles. Third, the generality of words I have just quoted – referring as they do to "*a* ship" rather than "*the* ship" – harks back, in my view, to concepts of seaworthiness and safe navigation, rather than the fulfilment of any commercial or personal objective.

47 Overall, I am unable to read *Coltman* as having applied the "prudence" standard in connection with anything other than Navigation Articles.

48 To support her interpretation of *Coltman*, Ms Ang cited the following extract from the Federal Court of Australia's judgment in *OW Bunker and Trading Co Ltd A/S v Ship MV "Mawashi Al Gasseem" (No 2)* [2007] FCA 1139 ("*Mawashi Al Gasseem (No 2)*") (at [18]), which in turn cited the following paragraph from Nigel Meeson, *Admiralty Jurisdiction and Practice* (LLP, 3rd Ed, 2003) ("*Admiralty Jurisdiction and Practice*") (at para 10.68):

> The scope of the mortgage in statutory form was considered in *Coltman v Chamberlain* where it was held that a mortgage of a ship passed to the mortgagee under the word "ship": "all articles necessary to the navigation of the ship or to the prosecution of the adventure, *and without which no prudent person would sail*, which were on board at the date of the mortgage and articles brought on board in substitution for them subsequently to the mortgage."
>
> [emphasis added]

This paragraph appears unchanged in the fifth edition of the same text.

49 With the greatest respect to the learned author of *Admiralty Jurisdiction and Practice*, the quoted parts (at [48] above) do not appear *verbatim* in *Coltman.* The part of *Coltman* that reflects the quote most closely is the headnote to the decision (which I have set out at [43] above). Crucially, the important words "and without which no prudent person would sail" *do not appear* in the headnote. In other words, the passage from *Admiralty Jurisdiction and Practice* does not, in my view, accurately reflect what was in fact decided in *Coltman.* I do not, therefore, consider the proper interpretation of *Coltman* to be aided by that passage (or *Mawashi Al Gasseem (No 2)*, which cites it).

50 Finally, Ms Ang argues that unless *Coltman* is read to have also applied the 'prudence' standard to Adventure Articles, the definition of "ship" would be too wide. In my view, that is an overstatement. First, necessity is *still* the controlling factor, and it can hardly be said that necessity pegs the bar too low. Furthermore, whether an object is necessary for the prosecution of the adventure is an intensely fact-sensitive inquiry. What is necessary for the adventure undertaken by a fishing vessel may not be necessary where research vessels or oil tankers are concerned, for example. I do not, therefore, agree that KfW's reading of *Coltman* will produce unreasonable or illogical outcomes.

51 To conclude, I am persuaded that the correct holding in *Coltman* is that the word "ship" encompasses any object that is either (a) necessary to the navigation of the ship, and without which no prudent person would sail; *or* (b) necessary to the prosecution of the adventure.

The "gaming equipment" was necessary to the prosecution of the Vessel's adventure

52 I turn next to the question of whether the word "Ship" in the WD Mortgage encompasses the "gaming equipment", having regard to the holding of *Coltman*.

53 It is not suggested that the "gaming equipment" can be described as having been "necessary to the navigation of the ship, and without which no prudent person would sail". The nub of the matter is whether the "gaming equipment" was "necessary to the prosecution of the adventure".

54 For KfW, Mr Chin submits that the Vessel was a "cruise vessel … purposed for entertainment and leisure, *with a focus on gambling*". Gaming was a key aspect of the experience that the Vessel's passengers were intended to have, and the "gaming equipment" was obviously essential to delivering that experience. He argues, therefore, that the "gaming equipment" was necessary to the prosecution of the Vessel's adventure.[30]

55 For WDL, Ms Ang submits that the Vessel was consistently described as a "Passenger Vessel" in various documents pertaining to it.[31] She argues that the "primary objective" of the Vessel was therefore to convey passengers from one place to another, and that there was "nothing to suggest that the Vessel would not have been able to fulfil its objective as a passenger cruise vessel

[30] PWS at [65].

[31] DRS at [27].

without the gaming equipment on board".[32] Put another way, there is nothing to suggest that the "gaming equipment" was needed for any particular adventure.[33]

56 Ms Ang further submits that, in any event, the Vessel offered "a multitude of entertainment, recreational and dining facilities" to its passengers and "the casinos and gaming equipment occupied a very small fraction of space on the entire ship".[34] On that footing, she contends that "the Vessel was not a ship purpose built for gaming or even with a focus on gambling".[35]

57 I start with the obvious point that the object of the Vessel's adventure could not have been merely to convey passengers from one point to another (or to allow passengers to idle out at sea before returning to the port of embarkation). In my view, transportation of passengers *per se* was not even the *primary* purpose that the Vessel was intended to serve. Common sense and experience suggest that passengers register for cruises of the sort offered by the Vessel in the expectation of being *entertained* by the myriad amenities and programmes that are available on board. As WDL itself acknowledged, "[t]here was a multitude of entertainment, recreational and dining facilities on board to cater for people of all ages".[36] The Vessel was for all intents and purposes a floating resort, the object of which was to provide its passengers with a *multi-faceted* entertainment and leisure experience during the voyage. That was the object of the Vessel's adventure.

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[32] DRS at [85].

[33] DWS at [45].

[34] DRS at [85].

[35] DRS at [27].

[36] DRS at [85].

58 Viewed through that lens, the question that arises is whether the "gaming equipment" was necessary for the accomplishment of that object. In my view, the answer must be 'yes'.

59 It is not disputed that insofar as "gaming equipment" was made available to the Vessel's passengers, it could only have been for the purpose of entertaining passengers who wished to gamble during the cruise. The crux of Ms Ang's argument is that the "gaming equipment" was not necessary for the fulfilment of that purpose (*ie*, of entertaining passengers) because gaming was only one aspect – and, in her submission, a *minor* aspect – of the overall entertainment and leisure experience.

60 I disagree with Ms Ang for two reasons. First, the weight of the evidence does not support her submission that gaming was only a minor aspect of the experience offered to the Vessel's passengers.

61 KfW referred me to a letter from Clarksons Norway AS dated 12 January 2022 (the "Clarksons Letter").[37] The purpose of that letter was to "report on the market interest in the auction of the World Dream",[38] and it states that:[39]

> *the World Dream is purpose built for the SE Asian market, with focus on gambling.* From discussions with various potential buyers, we understand that it would probably cost more that [sic] USD 100 mill to re-brand the ship to suit owners operating in the conventional cruise market globally.
>
> [emphasis added]

[37] EAT-4 at 94.

[38] EAT-4 at 94.

[39] EAT-4 at 95.

Having regard to the Clarksons Letter as a whole, I do not accept that the first sentence is a mere casual remark. That observation was made to contextualise the statement that immediately follows on the estimated cost of re-branding the Vessel. It was also relevant to the general purpose of the Clarksons Letter, which was to explain the prevailing market conditions and Clarksons' efforts to secure a buyer for the Vessel via a judicial sale.

62 Apart from the Clarksons Letter, I was referred to a report dated 7 November 2022 (the "ALC Report") by a firm of marine surveyors and appraisers, ALC Consulting Services Pte Ltd ("ALC Consulting").[40] The ALC Report was commissioned by the Sheriff to facilitate the Vessel's judicial sale.

63 In my view, the contents of the ALC Report support KfW's position that gaming was a not insignificant component of the multi-faceted entertainment and leisure experience offered to the Vessel's passengers. The ALC Report shows that there were at least nine distinct spaces on board the Vessel that offered gaming facilities to its guests:

(a) The "Resort World at Sea Casino" located on Deck 7 of the Vessel is described as a "casino" furnished with, among other things, "casino machines and dealer tables", a "slot machine room", and a "cashier station for casino token [*sic*]";[41]

(b) The "Genting Club / Lounge" located on Deck 16 of the Vessel appears to be an exclusive lounge, which is described as fitted with "[c]asino gaming tables and chairs" and "slot machines";[42]

[40] Claimant's Bundle of Documents (Vol. 2) dated 23 November 2023 ("CBOD2") at 13–516.

[41] CBOD2 at 306.

[42] CBOD2 at 84.

(c) The "Private Salon / Private Saloon 888" located on Deck 16/17 of the Vessel is described as comprising "8 private rooms with 2 gaming tables each" and "Saloon 888 with 4 gaming tables". This facility was "[e]xclusively for guests staying on Deck 16 & 17 and invited guests only";[43]

(d) "Tributes Bar", which was a restaurant and bar located on Deck 8 of the Vessel, was furnished with casino machines;[44]

(e) "Bar City", which was a bar located on Deck 8 of the Vessel, was likewise furnished with casino machines;[45]

(f) "Function 8", which is described (perhaps somewhat imperfectly) as a "multi-purpose venue" located on Deck 8, was furnished almost entirely with casino machines and other gaming paraphernalia;[46]

(g) The "Resort World at Sea" located on Deck 6 of the Vessel was yet another casino featuring "[c]asino machines, roulette / dealer tables and seats" and a "Shuffle room / chamber".[47]

(h) The "Premium Room" located on Deck 6 is described as a "casino" furnished with "[c]asino machines and seats" and a "[c]ashier station for casino tokens";[48] and

[43] CBOD2 at 83.

[44] CBOD2 at 275.

[45] CBOD2 at 278.

[46] CBOD2 at 281.

[47] CBOD2 at 337.

[48] CBOD2 at 339.

(i) The "International Room" located on Deck 6 is described as a "casino" furnished with "[c]asino machines, roulette / dealer tables and seats", a "[c]ashier station for casino token [*sic*]", and a "Shuffle room / chamber".[49]

Having regard to the accompanying photographs in the ALC Report, I am satisfied that these descriptions are reasonably fair and accurate.

64 The ALC Report also sets out a brief description of the Vessel, in which it is stated that "[t]here are over 60 different common spaces and passenger facilities to cater for onboard entertainment, gaming, dining, sports, wellness and other services".[50] It seems, therefore, that at least nine out of the 60 or so spaces and facilities on board the Vessel were catered to gaming. To be clear, I am not attempting to characterise the significance of the gaming facilities with any mathematical precision. However, the information supplied by the ALC Report makes it impossible to say that gaming was only a *minor* aspect of the overall entertainment and leisure experience that the Vessel was intended to provide, contrary to Ms Ang's submissions.

65 I turn to my second point, which is that even if gaming was not a focus of the overall experience, it *does not* follow that the "gaming equipment" was unnecessary to the accomplishment of the Vessel's adventure.

66 Ms Ang's basic argument is that because the Vessel's adventure was to provide passengers with a *multi-faceted* entertainment and leisure experience, the failure of *one* facet of that experience would not entail the failure of the *entire* experience. This is especially because some passengers may have no

[49] CBOD2 at 341.

[50] CBOD2 at 14.

interest in gaming whatsoever. Therefore, so the argument goes, the "gaming equipment" was not necessary in relation to the adventure *as a whole* (even if it may have been necessary for some part thereof).

67 This argument appears attractive at first blush, but is ultimately erroneous because it treats the multi-faceted entertainment and leisure experience as if it were a *unitary* object. Describing the object of the adventure as the provision of a multi-faceted entertainment and leisure experience is merely a convenient way of saying that the object was to provide quality dining options to passengers who would value them; spa and wellness services to passengers who would wish to indulge in them; swimming pools and water slides to passengers who might enjoy getting a tan or an adrenaline rush; gaming facilities for passengers who might take pleasure in gambling; so on and so forth. In other words, there were *several* objects – and not only a singular object – that went to the provision of 'entertainment and leisure'.

68 With this context in mind, the relevant question, in my view, is not whether a given article on the Vessel was necessary for the experience *as a whole*. That question, so framed, ignores the very purpose of describing the adventure as 'multi-faceted' (which expression conveys that there was more than one object at play). In my judgment, the proper question to ask is whether the article was necessary for some *discrete* form of entertainment and leisure that the Vessel was intended to provide, *the sum* of which is the multi-faceted experience the Vessel's passengers were intended to have.

69 For reasons set out at [61]–[64] above, I accept that the Vessel *was* intended to provide entertainment in the form of gaming to passengers who might have a taste for it. The "gaming equipment" was quite clearly essential for the provision of entertainment *in that form*.

70 In the premises, I am persuaded that the "gaming equipment" *was* necessary for the prosecution and accomplishment of the Vessel's adventure. In my judgment, the "gaming equipment" was therefore a part of the "ship" subject to the mortgage.

The "gaming equipment" came within the reference to the Vessel's "appurtenances"

71 I turn now to explain why, in my judgment, the "gaming equipment" also came within the meaning of the word "appurtenances" as used in both the WD Mortgage and WD Deed (see [27] and [29] above).

72 In *The "Eurosun" and "Eurostar"* [1993] 1 Lloyd's Rep 106 ("*The Eurostar*"), Sheen J noted (at 111) that "the ordinary meaning of the word 'appurtenances', is a mechanical accessory or some apparatus or gear which appertains or belongs to the ship." On that footing, it was held that fuel oil could not be regarded as an "appurtenance" of a ship.

73 In *The "Dundee"* (1823) 166 ER 39 ("*The Dundee*"), the eponymous vessel was responsible for a collision on the River Thames. The shipowner's liability was statutorily limited to the value of the ship, tackle, apparel, furniture, and appurtenances. The question arose as to whether fishing stores (which included harpoons, spears, and fishing lines) on board the ship came within the meaning of "appurtenances".

74 Lord Stowell answered that question in the affirmative, holding (at [46]) that:

> The word 'appurtenances' must not be construed with a mere reference to the abstract naked idea of a ship; for that which would be an encumbrance to a ship one way employed, would

> be an indispensable equipment in another. … You must look to the relation they bear to the actual service of the vessel.

Lord Stowell also observed (at [44]) that "the very nature of an appurtenance is, that it is one thing which belongs to another thing", so that "[a] cargo cannot be considered as appurtenances of the ship, being that which is intended to be disposed of at the foreign port for money … Its connection with the ship is merely transitory".

75 *Gale* (which I referred to at [45] above) continues from the Court of Admiralty's decision in *The Dundee*. Against that decision, the defendant applied to the Court of Queen's Bench for a writ of prohibition. Abbott CJ upheld Lord Stowell's conclusion that the fishing stores constituted "a part of the ship and her appurtenances" because:

> whatever is on board a ship *for the object of the voyage and adventure on which she is engaged*, belonging to the owners, constitutes a part of the ship and her appurtenances within the meaning of the [English Act to Limit the Responsibility of Ship Owners in Certain Cases], whether the object be warfare, the conveyance of passengers, or goods, or the fishery …
>
> [emphasis added]

76 It is apparent from the foregoing summary of the authorities that they do not lay down a precise test for determining if an object qualifies as an "appurtenance" of a vessel. For the purposes of deciding SUM 2787, it is not necessary for me to attempt to do so. However, what the authorities *do* indicate is that an object may be properly regarded as an "appurtenance" of a ship if (a) it "appertains" or "belongs" to the ship, and (b) it is carried "for the object of the voyage and adventure on which she is engaged".

77 Before I consider whether the "gaming equipment" on board the Vessel satisfies the rubric I have just set out, I should first briefly address Ms Ang's

reliance on the case of *St John v Bullivant* (1881) 45 UCQB 614 ("*St John*"). Ms Ang submits that *St John* stands for the proposition that "mere furnishings", especially those of an ornamental nature, will not ordinarily be viewed as falling within the scope of a ship's "appurtenances".[51]

78 *St John* was a decision by the Upper Canada Court of Queen's Bench in respect of a mortgage over a vessel used for the carriage of freight and passengers. The question was whether certain disputed articles came within the scope of the mortgage.

79 The claim was dismissed because those articles "were no longer there [*ie*, on board the vessel], before [the plaintiff] obtained the boat from the assignee" (at [1]). The court went on to make the following remarks (at [8] and [12]):

> *The case may be safely rested on the basis of these arrangements, which we consider finally bound all the parties.* If it were necessary to go further, we would hesitate before holding that *such an article as a piano, merely used for casual amusement on a vessel*, must be considered as passing to a mortgagee under general words, such as are here used.
>
> …
>
> To hold that a mortgagor of a ship cannot in good faith substitute one article for another, such as was done here, seems to us an unnecessarily harsh and narrow construction of the law. *But we rest our decision on the first grounds.*
>
> [emphasis added]

80 In my view, WDL's reliance on *St John* is misplaced for at least two reasons:

[51] DWS at [58].

(a) First, it is not even clear on the face of the decision that the court was purporting to interpret the word "appurtenances" specifically. There was no sustained analysis of the words used in the mortgage.

(b) Second, the first and last sentences of the quoted passage make it clear that the claim was dismissed on grounds that the disputed articles were not even on the vessel when title passed. The court's other observations were, therefore, strictly *obiter*.

81 For reasons set out at [59]–[70] above, I have found that the "gaming equipment" was necessary for the accomplishment of the Vessel's adventure.

82 I am also satisfied that the "gaming equipment" appertained or belonged to the Vessel. Details of the gaming facilities on board the Vessel were set out at [63] above. It is obvious from the ALC Report that disparate pieces of "gaming equipment" were systematically organised and operated in tandem to effectively create multiple "floating casinos" of varying sizes. Some of those items (*eg*, gaming machines and tables) are hardly portable in nature. There is no evidence to show that the "gaming equipment" on board the Vessel had ever been shifted across or deployed between different vessels, or was ever intended to be. In the premises, I have no difficulty in concluding that the "gaming equipment" also appertained or belonged to the Vessel, and thus qualified as "appurtenances" of the Vessel subject to KfW's mortgage.

The "gaming equipment" came within the reference to the Vessel's "belongings"

83 Alternatively, I am also persuaded that the "gaming equipment" came within the meaning of the word "belongings" in cl 1.1 of the WD Deed.

84 The only authority that I was referred to on this point was *William John Armstrong and Company v D. M'Gregor and Company* (1875) 2 R (4th series) 339 ("*Armstrong*"). Ms Ang submits that *Armstrong* is authority for the proposition that for an object to fall within the category of a vessel's "belongings", it must be "necessary for the [Vessel's] voyage".[52]

85 *Armstrong* was a case concerned with a contract for the sale of a ship "with all belonging to her on board and on shore". At the time the contract was concluded, a chronometer previously on board the vessel was being serviced on land by the defendant opticians. The chronometer was subsequently restored to the vessel, and again removed for maintenance. When the opticians refused to restore it to the vessel, the plaintiff purchasers sued for delivery up of the chronometer. The issue was whether the chronometer came within the scope of the words "all belonging to [the vessel] on board and on shore".

86 First, I accept that as a matter of plain English, "objects belonging to the ship" and "the ship's belongings" refer, in substance, to the same thing. Although *The Dundee* was a case concerned with the word "appurtenances", the court in *Armstrong* quite clearly relied on *The Dundee* in interpreting the words "belonging to" as used in the contract of sale. This indicates that the court in *Armstrong* was interpreting the words "belonging to" not in their general sense, but in the context of words used to transfer proprietary rights in ships and their articles. I am therefore of the view that *Armstrong* is instructive as to the meaning of the word "belongings" as they appear in ship mortgages.

87 In deciding that the chronometer "belonged to" the ship, the Lord President placed weight on at least two factors. First, the chronometer was

[52] DWS at [51]–[52].

necessary for the navigation of the vessel (*ie*, it was a Navigation Article). Although it was not necessary to ask if the chronometer was necessary for the accomplishment of the vessel's adventure (*ie,* whether it was also an Adventure Article), the Lord President's reliance on *The Dundee* suggests, in my view, that the outcome of the case would have been no different even if the chronometer was not a Navigation Article but an Adventure Article.

88 Second, the Lord President was satisfied that there was a sufficient connection between the chronometer and the ship to justify describing the former as "belonging to" the latter. There was no precise guidance on what amounted to a sufficient connection for that purpose. However, the Lord President specifically rejected the argument that "nothing can be said to belong to a ship unless it is specifically appropriated or devoted to that ship" (at 341). It is also clear that, in the court's view, the connection was sufficient notwithstanding that the chronometer had been intermittently removed from the vessel – especially since the chronometer was only removed so that it could be made ready for subsequent voyages (at 342).

89 I refer again to [70] above, where I concluded that the "gaming equipment" was necessary for accomplishing the object of the Vessel's adventure.

90 I have also referred to those parts of the ALC Report documenting the nature of the "gaming equipment" and the manner in which it was deployed on board the Vessel (see [63] and [82] above). In my view, if a chronometer that was regularly removed from a vessel for servicing could nevertheless be regarded as sufficiently connected to the vessel in *Armstrong*, it seems to me impossible to say that the "gaming equipment" depicted in the ALC Report bears any less of a connection to the Vessel. Such a conclusion is also consistent

with my earlier conclusion that the "gaming equipment" "appertained" or "belonged" to the Vessel (see [82] above).

91 In the premises, if it were necessary for my decision, I would also hold that the "gaming equipment" came within the reference to "belongings" in cl 1.1 of the WD Deed.

Whether the "gaming equipment" came within the reference to the Vessel's "equipment" or the Sweep Up Phrase

92 Mr Chin and Ms Ang take opposing positions on whether the "gaming equipment" fell within the ambit of the word "equipment" in cl 1.1 of the WD Deed. In light of the conclusions I have arrived at, I do not consider it necessary for me to express a view on this point.

93 Counsel also disagree on the relevance of the following words in cl 1.1 of the WD Deed (which I will refer to as the "Sweep Up Phrase"):

> … whether on board or ashore and whether now owned or later acquired by the Owner and also any and all additions, improvements and replacements made in or to such vessel or any part of it or in or to its equipment and appurtenances.

94 Mr Chin submits that the Sweep Up Phrase further extended the definition of "Ship" under cl 1.1 of the WD Deed to cover "all of [WDL's] property on board or brought on to the Vessel."[53]

95 This contention is vigorously resisted by Ms Ang, who argues that the Sweep Up Phrase must be read conjunctively with the words preceding it. Put another way, the Sweep Up Phrase is relevant only insofar as the article in question first came within the ambit of the words "engines, machinery, boats,

[53] PWS at [42(a)(ii)].

tackle, outfit, equipment, spare gear, fuel, consumable or other stores, belongings and appurtenances".[54]

96 Again, this point is academic in light of my prior conclusions and so I express no view on it.

WDL's reliance on general principles of contractual interpretation

97 Finally, parties addressed me at length on the general principles of contractual interpretation to be applied in this case. In this connection, Ms Ang relies on [131] of *Zurich Insurance (Singapore) Pte Ltd v B Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 ("*Zurich Insurance*"), which in turn cites Gerard McMeel, *The Construction of Contracts: Interpretation, Implication, and Rectification* (Oxford University Press, 2007), for the following canons of contractual interpretation:

(a) The aim of contractual interpretation is "to ascertain the meaning which [the terms] would convey to a reasonable business person";

(b) Contractual terms must be interpreted having regard to both the contract as a whole and the circumstances in which it was entered into; and

(c) The court should eschew an interpretation that would lead to an unreasonable result, "unless it is required by clear words and there is no other tenable construction".

98 Ms Ang argues that in keeping with the abovementioned principles – and the disinclination for unreasonable outcomes in particular – the WD

[54] DRS at [42]–[62].

Documentation should have explicitly referred to the "gaming equipment" if the mortgage was to cover it. To shore up this argument, Ms Ang cites the following extracts from David Osborne, Graeme Bowtle and Charles Buss, *The Law of Ship Mortgages* (Routledge, 2nd Ed, 2016) ("*The Law of Ship Mortgages"*) (at paras 5.9.3 and 5.9.6):

> Equipment, such as electronic navigation equipment, that is owned by the mortgagor can be easily moved from ship to ship, and, where this is so, *the equipment should be specifically described in order to ensure that the mortgage extends to it.* … If it is intended to obtain security against [mere furnishings, particularly those of an ornamental nature], *the deed of covenant should specifically mortgage these items.*
>
> …
>
> In the case of passenger ships and large yachts there may be a greater problem in deciding the extent to which items such as furniture, gymnasium equipment, televisions and other moveable equipment owned by the owner and not merely leased to it are included in the mortgage. *In practice, the position with respect to such items is normally made clear by the deed of covenant*, which will also extend the charge to all other property brought on to the ship by the owner, whether in substitution or in addition to property on board at the time the mortgage was granted.
>
> [emphasis added]

In reliance on this passage, Ms Ang submits that the language of the WD Documentation was simply insufficient to produce the result KfW urges upon me.

99 The general principles cited by Ms Ang at [97] above are well established and uncontroversial. In this case, however, I have considered the case law and come to the conclusion that the language of the WD Documentation *was* sufficient to bring the "gaming equipment" within the scope of the ship mortgage. The real question, therefore, is whether my reliance on judicial interpretations of the words "ship", "belongings", and

"appurtenances" is consistent with the modern interpretive principles Ms Ang invokes. In my view, the answer is 'yes'.

100 I begin with the following observation by the learned authors of *Chitty on Contracts* (Hugh G. Beale gen ed) (Sweet & Maxwell, 34th Ed, 2022) (at para 15-065):

> Where the same words of contractual provisions have for many years received a judicial construction, the court will suppose that the parties have contracted upon the belief that their words will be understood in the accepted legal sense.

101 This proposition is amply borne out by the authorities. For example, in *Marc Rich & Co. Ltd. v Tourloti Compania Naviera S.A. (The "Kalliopi A")* [1988] 2 Lloyd's Rep. 101, Staughton LJ observed (at 105) that:

> It must, I suppose, be accepted that the interpretation of a charter-party cannot be conducted solely on the basis of the ordinary English meaning of the words which the parties have used in their contract. Regard must be had to what the same or similar words or phrases have been held to mean in the past. As I ventured to say in *The Radauti* (at p. 278):
>
> > Once a particular clause, phrase or word has received an authoritative interpretation from the Courts, it is thought right to follow that interpretation in other cases in the belief that the parties to subsequent contracts will have had it in mind when concluding their bargains or at least their legal advisers will have considered it when deciding whether to pursue a dispute subsequently.

102 Of course, this is not to say that established judicial interpretations are immutable, or that they must be woodenly applied despite clear evidence of contrary intentions. The point, however, remains that commercial parties are assumed to have ordered their commercial dealings around long-standing interpretations – especially if the relevant words are used in the same context or formulation with which the established authorities were concerned. Put another way, a reasonable businessperson would start from the position that the

contracting parties intended for those words to have the meaning given to them in the decided cases. If this presumptive meaning is to be displaced, there must be clear and admissible evidence (whether in or extrinsic to the contract) to show that the parties intended for a different interpretation to prevail.

103 In this case, the relevant terms of the WD Mortgage and WD Deed were framed in a manner that is standard to ship mortgages. Both sides dealt with each other at arm's length – or at least, there is no suggestion to the contrary. There is nothing in the WD Documentation to reveal any contradiction between the judicial interpretations I have applied and the parties' *objective* intentions as expressed in the WD Documentation. Insofar as reference was made to extrinsic documents – namely, the CE Agreement – I have found them to be irrelevant for the reasons set out at [35] above.

104 If there is nothing to displace the presumptive interpretation to be applied, it would then generally be no answer to challenge that interpretation on grounds that an unreasonable result will follow. This is because *ex hypothesi* the parties themselves objectively intended for that result. In this regard, I gratefully adopt Peter Gibson LJ's observations in *Kazakstan Wool Processors (Europe) Ltd v Nederlandsche Credietverzekering Maatschappij NV* [2000] Lloyd's Rep IR 371 (at [49]):

> The court is entitled to look at those consequences because the more extreme they are, the less likely it is that commercial men will have intended an agreement with that result. But the court is not entitled to rewrite the bargain which they have made merely to accord with what the court thinks to be a more reasonable result, and the best guide to the parties' intentions remains the words which they have chosen to use in the contract.

105 In any event, I am not persuaded that the decision I have reached would produce an outcome that can be fairly described as unreasonable. The

interpretation that I have arrived at may be more onerous than the one advanced by WDL, but it has never been the law that the least onerous of competing interpretations should be preferred.

106 Finally, I reject WDL's submission that the relevant terms of the WD Documentation should be read *contra proferentem*. It was held in *Mohammed Shahid Late Mahabubur Rahman v Lim Keenly Builders Pte Ltd* [2010] 3 SLR 1021 (at [68]) that the *contra proferentem* rule "does not permit the artificial creation of an ambiguity in order to reach a particular result". The relevant terms which I have construed in this case *have* a clear presumptive meaning that was not expressly modified or departed from. I do not find those terms ambiguous and there is, accordingly, simply no room to read them *contra proferentem*.

Conclusion

107 This application would have been obviated had the parties used words in the WD Documentation to expressly and specifically indicate that the mortgage should extend to the "gaming equipment" on board the Vessel. To that extent, I accept that the extract from *The Law of Ship Mortgages* cited by Ms Ang offers useful, practical advice to mortgagors and mortgagees of ships (see [98] above).

108 Nonetheless, in the circumstances of this case, the fact that the WD Documentation is silent on the matter is not fatal to KfW's case. For the reasons I have given, the words that were used are, in my judgment, sufficient to reveal the parties' objective intention that the mortgage of the Vessel should include the "gaming equipment". I therefore dismiss SUM 2787.

109 I shall hear the parties separately on the issue of costs and any further orders to be made in respect of the remaining proceeds of sale that are subject to the Ringfencing Order.

S Mohan
Judge of the High Court

Edgar Chin Ren Howe, Ch'ng Cheng Yi Samantha and Teo Jim Yang (Ascendant Legal LLC) for the claimant;
Ang Hui Ming Vivian, Douglas Lok Bao Guang, Ho Pey Yann and Whang Yixuan Rennie (Allen & Gledhill LLP) for the defendant.