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

[2026] SGHC 204

Admiralty in Rem No 64 of 2023 (Summons No 1215 of 2026)

Between

PT Industri Nabati Lestari

… *Claimant*

And

Owner and/or Demise
Charterer of the Vessel
"VAYU" f.k.a. "QIAN TAI 1"

… *Defendant*

And

Aquilo Shipping Inc

… *Intervener*

JUDGMENT

[Admiralty and Shipping — Admiralty jurisdiction and arrest — Action in rem]
[Civil Procedure — Judgments and orders — Setting aside]
[Evidence — Admissibility of evidence — Applicability of the Evidence Act 1893 (2020 Rev Ed) to applications in an action involving oral evidence]
[Evidence — Admissibility of evidence — Hearsay — Exceptions]

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The "VAYU" (formerly known as "QIAN TAI 1")

[2026] SGHC 204

General Division of the High Court — Admiralty in Rem No 64 of 2023
(Summons No 1215 of 2026)
S Mohan J
7–8 July, 6 August 2026

30 September 2026 Judgment reserved.

S Mohan J:

Introduction

1 HC/ADM 64/2023 ("ADM 64") is an action *in rem* issued against the vessel "VAYU", formerly known as the "QIAN TAI 1" ("Vessel"). The claimant, PT Industri Nabati Lestari ("Claimant"), filed the originating claim *in rem* in ADM 64 on 27 July 2023 for a claim for alleged misdelivery of a cargo of palm olein without production of the original bills of lading ("Claim").[1] More than two years later on 19 November 2025, the Vessel called into Singapore and was arrested by the Claimant pursuant to a warrant of arrest, HC/WA 20/2025, issued on 18 November 2025 ("WA 20").[2] The defendant in ADM 64 ("Defendant") was described as the "Owner and/or demise charterer of the

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1 Volume 1 of the Agreed Bundle of Documents filed on 3 July 2026 ("1AB") at pp 16 and 166–168: 2nd Affidavit of Darwin Hasibuan filed on 16 January 2026 ("DH-2") at para 36 and pp 163–165.

2 1AB at pp 192–197: DH-2 at pp 189–194.

vessel 'VAYU' f.k.a. 'QIAN TAI 1'".[3] For completeness, at the time of the alleged misdelivery and when ADM 64 was issued, the Vessel was known as the "QIAN TAI 1". By the time she was arrested in November 2025, she had changed ownership and her name was also changed to "VAYU".

2 No notice of intention to contest or not contest was filed by the Defendant before 20 March 2026. Accordingly, the Claimant successfully applied for and obtained judgment in default in HC/JUD 123/2026 ("JUD 123") for the sum of US$2,759,858.30 plus interest. It also obtained an order for the appraisement and sale of the Vessel in HC/ORC 1855/2026 ("ORC 1855").[4]

3 This success was short-lived, however, as the Claimant finds itself in the position of not only potentially losing the fruits of its success, but also having the entire action in ADM 64 set aside. The current owner of the vessel, Aquilo Shipping Inc ("Intervener"), obtained leave to intervene in this action on 11 March 2026.[5] The Intervener was not the owner or demise charterer of the Vessel when the originating claim in ADM 64 was filed.[6]

4 On 17 April 2026, the Intervener filed HC/SUM 1215/2026 ("SUM 1215"), the subject of this judgment. In SUM 1215, the Intervener applied to stay the sale of the Vessel as well as to set aside WA 20 and ADM 64 on the ground that the court's admiralty jurisdiction under s 4(4) of the High Court (Admiralty Jurisdiction) Act 1961 (2020 Rev Ed) ("HCAJA") was

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3 1AB at p 6: DH-2 at para 7.

4 HC/JUD 123/2026; HC/ORC 1855/2026 at prayers 1(1)–1(2).

5 HC/ORC 1661/2026.

6 1AB at p 18: DH-2 at para 43; Volume 3 of the Agreed Bundle of Documents filed on 7 July 2026 ("3AB") at p 1166: 1st Affidavit of Azeemuddin filed on 11 March 2026 ("AZ-1") at para 9.

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improperly invoked.[7] After hearing the parties on 22 April 2026, I granted a conditional stay of the sale of the Vessel pending the hearing and determination of the jurisdiction challenge. I also ordered a trial of the jurisdictional issue in question and for a number of witnesses to be cross-examined.

5 Based on the parties' written and oral closing submissions, it is clear that the jurisdictional challenge in SUM 1215 now turns on two questions. First, can the Intervener seek to set aside ADM 64 and WA 20 notwithstanding that default judgment has already been entered for the Claimant against the Defendant? Second, was the demise charterer of the Vessel at the time of the alleged misdelivery still the demise charterer of the Vessel at the time the Claimant commenced ADM 64 on 27 July 2023?

6 Having carefully considered the evidence and parties' submissions, I answer the former question in the affirmative and the latter in the negative. In my judgment, the court's admiralty jurisdiction was not properly invoked by the Claimant pursuant to s 4(4) of the HCAJA. Accordingly, I set aside the order for sale of the Vessel and the default judgment obtained by the Claimant. I also set aside the originating claim *in rem* in ADM 64 and WA 20. These are the reasons for my decision.

Background facts

The parties

7 The Claimant is a company incorporated in Indonesia engaged in the business of, among other things, commodities trading.[8]

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7 HC/SUM 1215/2026 at prayers 1–3.

8 1AB at p 6: DH-2 at para 6.

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8 The Intervener is a company incorporated in Liberia.[9] It is the current registered owner of the Vessel and has been since January 2025.[10] Both parties accept that when the Claimant commenced ADM 64 on 27 July 2023, the Intervener was not the owner of the Vessel. It is also not disputed that the Intervener is not the person who would be liable to the Claimant *in personam* in ADM 64.[11]

The alleged misdelivery

9 According to the Claimant, on 9 August 2022, the Claimant agreed to sell 10,000 MT of refined, bleached and deodorised ("RBD") palm olein on FOB terms to Arcis Global Merchants Pte Ltd ("Arcis").[12] Accordingly, 9,999.851 MT of RBD palm olein ("Cargo")[13] was shipped on board the Vessel from Kuala Tanjung Port in Indonesia to Haldia in India. A set of 3 original bills of lading made "to order" and dated 21 August 2022 ("BLs") were issued for the Cargo.[14] The BLs were signed by PT Samudera Agencies Indonesia as agents for the Master of the Vessel.[15] Subsequently, on or around 5 September 2022, the Cargo was allegedly delivered to purchasers in India without presentation of the original BLs.[16] For purposes of SUM 1215 and s 4(4) of the

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9 3AB at p 1165: AZ-1 at para 5.

10 1AB at p 213: DH-2 at p 210; Volume 2 of the Agreed Bundle of Documents filed on 3 July 2026 ("2AB") at p 1064: 2nd Affidavit of Vipin Agarwal filed on 3 July 2026 ("VA-2") at para 7; 3AB at pp 1165 and 1192: AZ-1 at paras 5–7 and p 29.

11 1AB at p 18: DH-2 at para 43; 2AB at p 1064: VA-2 at paras 8(a)–9.

12 1AB at pp 9 and 32–35: DH-2 at paras 9–10 and pp 29–32.

13 1AB at pp 11 and 75: DH-2 at para 15 and p 72.

14 1AB at pp 11 and 75–80: DH-2 at para 15 and pp 72–77.

15 1AB at pp 10–11 and 75–80: DH-2 at paras 13 and 16 and pp 72–77.

16 1AB at p 14: DH-2 at para 27.

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HCAJA, the parties accept 5 September 2022 as the date on which the Claimant's cause of action arose.[17]

10 It is now common ground that as at 5 September 2022, the registered owner of the Vessel was Star Dragon Shipping Ltd ("Star Dragon") and the demise charterer of the Vessel was OKA Tankers Pte Ltd ("OKA").[18] The demise (or bareboat) charter of the Vessel was governed by a 30-month bareboat charterparty between Star Dragon and OKA dated 18 May 2021 ("OKA BBC").[19] It is now also no longer in dispute and both the Claimant and Intervener argued SUM 1215 on the basis that OKA, as the demise charterer of the Vessel on 5 September 2022, was the person who would, for purposes of s 4(4) of the HCAJA, be liable to the Claimant *in personam* in ADM 64.[20]

The arrest and initial proceedings

11 As mentioned above at [1], on 27 July 2023, the Claimant commenced ADM 64.[21] The originating claim *in rem* was renewed twice[22] before the Vessel eventually called at Singapore on 19 November 2025.[23] Later that day, the Claimant arrested the Vessel pursuant to WA 20.[24]

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17 Claimant's Written Submissions filed on 30 July 2026 ("CWS") at para 43; Intervener's Written Submissions filed on 30 July 2026 ("IWS") at para 12.

18 1AB at p 283: 3rd Affidavit of Darwin Hasibuan filed on 22 April 2026 at para 75; CWS at para 44; IWS at para 14(a).

19 2AB at p 1068: VA-2 at para 26(a).

20 CWS at para 44; IWS at para 14(a).

21 1AB at pp 16 and 166–168: DH-2 at para 36 and pp 163–165.

22 1AB at pp 16 and 170–175: DH-2 at para 37 and pp 167–172.

23 1AB at pp 17 and 187: DH-2 at para 39 and p 184.

24 1AB at pp 17, 185 and 192–196: DH-2 at paras 39–41 and pp 182 and 189–193.

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12 On 20 November 2025, the Intervener's solicitors, Messrs Oon & Bazul LLP ("O&B"), wrote to the Claimant's solicitors, DennisMathiew ("DM") for copies of the arrest papers, the Claimant's security demand and the Claimant's proposed security wording on an informal basis. On the same day, DM sent O&B the requested documents and information.[25]

13 On 3 December 2025, the Claimant filed and served its statement of claim ("SOC"), claiming the sum of US$2,759,858.30 as a result of the alleged misdelivery of the Cargo.[26] DM sent a copy of the SOC to O&B by email on that date.[27]

The Claimant's application for default judgment and the Intervener's application for permission to intervene

14 On 16 January 2026, the Claimant filed HC/SUM 240/2026 ("SUM 240"). Essentially, in SUM 240, the Claimant sought:

(a) judgment in default of a notice of intention to contest or not contest in the Claimant's favour for the sum of US$2,759,858.30, being the value of the Claimant's loss, or alternatively, damages to be assessed, plus interest; and

(b) the appraisement and sale of the Vessel by the Sheriff by public auction or private treaty, with the proceeds of sale to be paid into Court, accompanied by various standard omnibus prayers regarding the appraisement, sale, preservation and maintenance of the Vessel.

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25 1AB at pp 17–18 and 200–203: DH-2 at para 42 and pp 197–200.

26 SOC at paras 15 and 17(a).

27 1AB at pp 18, 200 and 204–211: DH-2 at para 45 and pp 197 and 201–208.

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15 Subsequently on 9 March 2026, the Intervener sought leave to intervene in and defend the action and to file a notice of intention to contest.[28] Leave was granted on 11 March 2026 and on 20 March 2026, the Intervener filed its notice of intention to contest. It should be noted that the Defendant (*ie*, OKA) did not file any notice of intention to contest or otherwise take any part in ADM 64.

16 The hearing of SUM 240, at which counsel for both the Claimant and Intervener were present, took place before me on 20 March 2026.[29] At that hearing, counsel for the Intervener, Mr Caleb Tan ("Mr Tan"), informed the court that the Intervener took "no position" on SUM 240 but indicated that the Intervener would take steps to challenge jurisdiction if subsequent non-party discovery showed that the court's admiralty jurisdiction had been wrongly invoked.[30]

17 At the end of the hearing, I ordered that default judgment for the sum of US$2,759,858.30 be entered for the Claimant and further ordered that the Vessel be appraised and sold. My orders were recorded in ORC 1855.

The present application

18 As mentioned above (at [15]), the Intervener filed its notice of intention to contest or not contest on 20 March 2026. On 17 April 2026, the Intervener filed SUM 1215 seeking the following orders:[31]

> 1. The Warrant of Arrest HC/WA 20/2025 on the vessel, "VAYU" f.k.a. "QIAN TAI 1" (IMO No. 9531727) in

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28 HC/SUM 738/2026 filed on 9 March 2026 at prayers 1(1)–1(3).

29 NE of HC/SUM 240/2026 at p 1:25–31.

30 NE of HC/SUM 240/2026 at p 2:1–4; 2AB at p 1065: VA-2 at para 14.

31 HC/SUM 1215/2026 filed on 17 April 2026 at prayers 1–7.

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> HC/ORC 1855/2026 issued on 18 November 2025 be set aside.
>
> 2. The Originating Claim in HC/ADM 64/2023, and all subsequent proceedings and orders made therein, be set aside.
>
> 3. Pending the determination of the present application, including any appeals therefrom, the order for the sale of the vessel, "VAYU" f.k.a. "QIAN TAI 1" (IMO No. 9531727) in HC/ORC 1855/2026 be stayed.
>
> 4. That any oral and/or documentary evidence adduced pursuant to Order 15 rule 4(1) be admitted and considered in the present application.
>
> 5. That pursuant to Order 15 rule 7(5), permission be granted for the said oral and/or documentary evidence adduced pursuant to Order 15 rule 4(1) to be admitted and considered in the present application.
>
> 6. That pursuant to Order 15 rule 7(5), cross-examination of witnesses be permitted and the oral evidence adduced therefrom be admitted and considered in the present application.
>
> 7. That the period prescribed in Order 15 rule 4(3) in respect of the oral and/or documentary evidence adduced pursuant to Order 15 rule 4(1) be abridged.
>
> 8. All costs of and incidental to this application be paid by the Claimant to the Intervener[.]
>
> 9. Such further and/or other relief as this Honourable Court may deem fit.

19 SUM 1215 first came before me on 22 April 2026. At that hearing, the main contest was whether the order for the sale of the Vessel should be stayed (as prayed for in prayer 3 of the application). After hearing the parties, I ordered that the sale of the Vessel be stayed for two weeks for the Intervener to pay into court the sum of $700,000 or alternatively provide a solicitor's undertaking to pay the said sum on account of the Sheriff's expenses that would be incurred in the interim pending the determination of the substantive setting aside

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application.[32] In the event the said sum was paid or the undertaking given, the stay was to continue until SUM 1215 was heard and determined by me.[33] In addition, as the question of whether the person who would be liable in an action *in personam* was the owner or demise charterer of the Vessel when (i) the Claimant's cause of action arose and (ii) when ADM 64 was brought, encompassed jurisdictional facts that should be decided on the balance of probabilities, I ordered a trial of those issues and for the following persons to attend court to give evidence and produce documents:

(a) Mr Gowda Vasudev Murthy Santhosh Kumar ("Mr Kumar"), a director of Arcis;[34] and

(b) Mr Parmar Ajay Pal Singh ("Mr Parmar"), a director of OKA.[35]

20 I further ordered the cross-examination of Mr Darwin Hasibuan ("Mr Hasibuan") and Mr Azeemuddin, representing the Claimant and Intervener respectively and who had both deposed to affidavits in these proceedings.[36] Mr Kumar and Mr Azeemuddin subsequently informed the court that they were unable to travel from India to Singapore to give evidence. In place of Mr Azeemuddin, one Mr Vipin Agarwal ("Mr Agarwal"), a director of the Intervener, deposed to an affidavit and was cross-examined.[37] The cross-examination of Mr Parmar, Mr Hasibuan and Mr Agarwal took place on 7 and

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32 NE of HC/SUM 1215/2026 on 22 April 2026 at p 6:19–32.

33 NE of HC/SUM 1215/2026 on 22 April 2026 at p 7:12–16.

34 HC/SBP 17/2026; 2nd Affidavit of Azeemuddin filed on 28 May 2026 ("AZ-2") at pp 36–37.

35 HC/SBP 18/2026; AZ-2 at pp 40–41.

36 NE of HC/SUM 1215/2026 on 22 April 2026 at pp 5:31–6:11.

37 2AB at p 1062: VA-2 at p 1.

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8 July 2026. Following the evidentiary hearing, I heard submissions from the Intervener and Claimant on 6 August 2026 and thereafter reserved judgment.

Section 4(4) of the HCAJA

21 Before turning to the parties' substantive cases, I first set out the overarching legal framework and the approach that underpins challenges to the court's admiralty jurisdiction under s 4(4) of the HCAJA. This shapes the contours of the parties' cases, and in turn, the points in dispute that I must determine.

22 The starting point is s 4(4) of the HCAJA, which states:

> (4) In the case of any such claim as is mentioned in section 3(1)(*d*) to (*q*), where —
>
> (a) the claim arises in connection with a ship; and
>
> (b) the person who would be liable on the claim in an action in personam (referred to in this subsection as the relevant person) was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship,
>
> an action in rem may (whether or not the claim gives rise to a maritime lien on that ship) be brought in the General Division of the High Court against —
>
> (c) that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of that ship under a charter by demise; or
>
> (d) any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.

23 In the seminal case of *The Bunga Melati 5* [2012] 4 SLR 546 ("*The Bunga Melati 5*"), the Court of Appeal made clear (at [112]) that when the invocation of the court's admiralty jurisdiction under s 4(4) of the HCAJA is

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challenged, the burden lies on the claimant (*ie*, the arresting party) to demonstrate the following:

(a) first, to prove on the balance of probabilities that the jurisdictional facts under the limb it is relying on in ss 3(1)(*d*) to 3(1)(*q*) of the HCAJA exist; and show an arguable case that its claim is of the type or nature required by the relevant statutory provision;

(b) second, to prove on the balance of probabilities that the claim arises in connection with a ship;

(c) third, to identify, without having to show in argument, the person who would be liable on the claim in an action *in personam* ("Relevant Person");

(d) fourth, to 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 control of, the ship; and

(e) fifth, to prove on the balance of probabilities that the Relevant Person was, at the time 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.

24 As to the manner in which the Court would go about determining jurisdictional facts on the balance of probabilities, Chan Sek Keong CJ (as he then was) explained the position succinctly in the following terms in *The Bunga Melati 5* (at [129]–[130]):

> 129 … The court must conduct a trial of the issue *at the interlocutory/jurisdictional stage,* if the defendant seeks a

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> conclusive finding of fact from the court. However, if the defendant is only prepared to rely on its affidavits, the court will only be able to determine the disputed issue on a preliminary basis. Consistent with the nature of the hearing, there can be no finding of fact on the balance of probabilities, but only on a *prima facie* basis that, on the facts, the court has jurisdiction. Although there will be no conclusive finding towards the disputed jurisdictional fact(s) *under step 1* at the interlocutory stage, the issue of jurisdiction will merge at the *liability stage* with the issue of whether the plaintiff has proved its claim on the facts on the balance of probabilities, and the court at the liability stage would be entitled to come to a differing opinion from the court at the interlocutory stage based on evidence beyond contested affidavits which might surface at trial. However, at the liability stage, "[t]he court is not deciding if there is good cause for it to assume jurisdiction – it is deciding if there is good cause for it to give judgment for the plaintiff" (*The Jarguh Sarwit (CA)* at [44]). It does not matter how the standard of proof (at the interlocutory/jurisdictional stage) is labelled provided it is understood that a factual dispute cannot be *conclusively* decided on contested affidavit evidence alone.
>
> 130 In my view, in the case of a factual challenge to jurisdiction, whether the question of fact would be determined on *the balance of probabilities* depends on *how a defendant wishes to make good its challenge by way of evidence*. It is not in every case that the court is required to decide the dispute of fact on the balance of probabilities. This is only possible, consistent with the requirements of procedural justice, where all the evidence relating to disputed facts are before the court …
>
> [emphasis in original]

25 It was in accordance with the guidance given above that I ordered a trial to determine the jurisdictional facts that were in dispute, and for various individuals to be subjected to cross-examination (above at [19]–[20]). The parties were also content to proceed in this manner.

26 Against this backdrop, let me set out the parties' cases.

Parties' cases

27 It is not in dispute that the first four requirements at [23(a)] to [23(d)] above are met in this case. Specifically:

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(a) with regard to the Claim, that it falls within ss 3(1)(*g*) and/or 3(1)(*h*) of the HCAJA, namely, a claim for loss of or damage to goods carried in a ship and/or a claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;

(b) with regard to when the Claimant's cause of action arose, that it was 5 September 2022, when the Cargo on board the Vessel was purportedly delivered to third parties without production of the original BLs (see above at [9]);[38] and

(c) in respect of the identity of the Relevant Person, although the Claimant's *original* position at the hearing of SUM 240 was that the person who would be liable on the claim in an action *in personam* was Star Dragon as the owner of the Vessel,[39] it is now common ground that when the Claimant's cause of action arose, OKA was the demise charterer of the Vessel pursuant to the OKA BBC and thus, the person who would be liable to the Claimant in an action *in personam*.[40] In short, OKA was the Relevant Person at the time the cause of action arose for purposes of s 4(4) HCAJA and the demise charterer of the Vessel at that time (see above at [10]).

28 In light of the matters above not being disputed, the scope of disagreement between the parties boils down to only two points – one pertains to procedure and the other pertains to the final step at [23(e)] above, namely,

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38 CWS at para 43; IWS at para 12.

39 1AB at p 18: DH-2 at para 43.

40 CWS at paras 44 and 49; IWS at paras 14(a), 38 and 41.

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whether OKA remained the demise charterer of the Vessel when ADM 64 was brought on 27 July 2023.

29 As regards the procedural point, the Claimant argues that the Intervener's application fails at the outset as it is "procedurally misconceived".[41] Two reasons are advanced:

(a) First, once default judgment had been entered in the Claimant's favour, the Claimant's cause of action "merged" into JUD 123.[42] Consequently, the Intervener ought to have appealed against JUD 123 or applied to set it aside.[43] Having failed to do either, the Intervener cannot seek to re-open the proceedings by setting aside the originating process and warrant of arrest upon which JUD 123 was founded.[44]

(b) Second, even if SUM 1215 were treated as including an application to vary or set aside JUD 123, the court should not exercise its residual discretion to set aside JUD 123.[45] This is because (i) the Intervener had every reasonable opportunity to participate in the proceedings and there was no procedural unfairness in the manner in which JUD 123 was obtained;[46] (ii) JUD 123 is not a purely procedural default judgment and could only have been entered into if the court was satisfied that the

41 CWS at paras 18 and 25.

42 CWS at para 18.

43 CWS at para 19.

44 CWS at paras 19 and 25.

45 CWS at para 26.

46 CWS at paras 29–30.

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claim was well-founded;[47] (iii) the Intervener provided no explanation for its failure to appeal against or apply to set aside JUD 123;[48] (iv) the Intervener provided no explanation for its delay in filing SUM 1215 instead of challenging jurisdiction shortly after arrest;[49] and (v) the Intervener has not satisfactorily explained its failure to challenge jurisdiction before JUD 123 was entered into.[50]

30 In response, the Intervener argues that the default judgment in the Claimant's favour does not preclude the Intervener from raising the jurisdictional challenge in SUM 1215.[51] In this regard, the Intervener relies on O 33 r 21(12) of the Rules of Court 2021 ("ROC 2021"), which provides that the Court may "on such terms as the Court thinks just, set aside" a default judgment obtained in an *in rem* action, as well as the decision of *The Soeraya Emas* [1991] 2 SLR(R) 479 for the proposition that an intervener may raise defences in proceedings notwithstanding a final judgment.[52]

31 As regards the merits of the substantive challenge, the parties diverge on the question of whether OKA remained in possession and control – and therefore whether OKA remained the bareboat (or demise) charterer – of the

47 CWS at para 31.

48 CWS at para 32.

49 CWS at para 33.

50 CWS at para 37.

51 IWS at para 15.

52 IWS at para 15.

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Vessel as at 27 July 2023. The Claimant's position, naturally, is that this is the case.[53] The Intervener disagrees.

32 The Intervener proffers a different version of events. In this regard, it relies on an affidavit filed on behalf of SRTT Marine Trading & Services Pte Ltd ("SRTT") in HC/OA 1376/2025 ("OA 1376"), which was a separate action that the Intervener was party to ("SRTT Affidavit"). For completeness, the decision of Sushil Nair J (as he then was) in OA 1376 has since been reported in *Aquilo Shipping Inc v SRTT Marine Trading & Services Pte Ltd* [2026] 3 SLR 1559. The SRTT Affidavit stated, among other things, that on 24 March 2023, Star Dragon had entered into another bareboat charter with Arcis ("Arcis BBC").[54]

33 According to the Intervener, the existence of the Arcis BBC dated 24 March 2023 suggests that the OKA BBC had been terminated on or by 24 March 2023, *ie*, *prior* to 27 July 2023.[55] That the Arcis BBC did exist is further corroborated by a Memorandum of Agreement dated 4 October 2024 between Star Dragon as seller, Arcis as buyer and SRTT as Arcis's nominee for the sale of the Vessel from Star Dragon to SRTT ("4 October MOA") which expressly references the Arcis BBC.[56] The Intervener further points out that in an email from Arcis on 21 January 2026, Arcis did not deny the existence of the Arcis BBC but instead stated that they were "unable to provide a copy of the

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53 CWS at para 57.

54 2AB at p 1064: VA-2 at para 8(c); 3AB at p 1198: Affidavit of Ganta Venkata Sudarshana Rao in HC/OA 1376/2025 at para 5(i)(a).

55 IWS at para 54.

56 2AB at pp 1070–1071: VA-2 at paras 27(b) and 27(d).

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said agreement as it ha[d] been lost and [was] no longer in [their] possession, custody, or power".[57]

34 The Intervener's position, therefore, is that the Claimant has not established on a balance of probabilities that OKA was the demise charterer of the Vessel when ADM 64 was commenced on 27 July 2023.[58] Rather, the Intervener submits that the evidence shows otherwise. It relies on the following evidence to show that OKA no longer had possession and control over the Vessel after the OKA BBC was terminated on or around 24 March 2023:[59]

(a) the affidavit evidence of OKA's director, Mr Parmar, that (i) the OKA BBC was terminated on 24 March 2023,[60] (ii) the Vessel was delivered in Kolkata, India to Arcis while it was under repair and (iii) from 24 March 2023, OKA did not pay any charter hire and ceased operating the Vessel as Arcis took over use of the Vessel;[61]

(b) a settlement agreement dated 24 March 2023 between Star Dragon and OKA ("Settlement Agreement") purportedly recording an agreement for OKA to hand over the Vessel directly to Arcis;[62]

(c) Mr Parmar's oral testimony that the Vessel was redelivered to Star Dragon on 24 March 2023 when the Settlement Agreement

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57 2AB at p 1066: VA-2 at para 16(b).

58 IWS at paras 72–75.

59 IWS at para 42.

60 IWS at para 43.

61 IWS at paras 44(a)–44(e).

62 IWS at para 47.

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was concluded and that after 24 March 2023, OKA did not (i) pay hire to Star Dragon, (ii) pay for the Vessel's insurance, (iii) pay the Master and the crew's salary or (iv) give any instructions to the Master or the crew.[63] While Mr Parmar also testified that OKA had assisted Arcis with repairs to the Vessel after 24 March 2023, the Intervener argues that this assistance did not amount to a continuation of the OKA BBC;[64] and

(d) a signed bareboat charterparty between Star Dragon and Arcis dated 24 March 2023 that the Intervener alleges is the Arcis BBC.[65]

35 In response, the Claimant argues that notwithstanding the execution of the Settlement Agreement purportedly terminating the OKA BBC, OKA remained in possession and control of the Vessel as at 27 July 2023.[66] In this regard, the Claimant's arguments are as follows:

(a) Even if the Settlement Agreement shows that the OKA BBC was contractually terminated, that does not mean that the demise of the Vessel had terminated. The contractual termination of a bareboat charter is legally distinct from the termination of the demise.[67]

(b) The Intervener has not proven that the Settlement Agreement and the Arcis BBC were actually performed, *ie*, that possession

63 IWS at paras 46 and 48–53.

64 IWS at paras 63–71.

65 IWS at paras 54–56.

66 CWS at para 57.

67 CWS at para 68.

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and control of the Vessel was transferred from OKA back to Star Dragon and then to Arcis.[68] There is no evidence showing that Star Dragon had waived the redelivery requirement under the OKA BBC and no contemporaneous documentary evidence showing that OKA had redelivered the Vessel to Star Dragon or delivered the Vessel to Arcis.[69]

(c) Instead, the contemporaneous evidence and parties' subsequent conduct positively demonstrate that OKA remained in possession and control of the Vessel on 27 July 2023. OKA continued to discharge the responsibilities ordinarily assumed by a demise charterer until April 2024 by procuring repairs for the Vessel till that time.[70]

(d) The "commercial realities" of the Vessel's sale explain why OKA never relinquished possession and control of the Vessel.[71] In broad strokes, the Claimant's case is that OKA retained a substantial economic interest in the Vessel as it had incurred losses from funding repairs to the Vessel. It therefore had a continuing commercial incentive to preserve the Vessel, complete the repairs and facilitate the Vessel's eventual sale, the proceeds of which would be routed back to OKA to set-off its losses from the repairs. According to the Claimant, Star Dragon had originally sold the Vessel to SRTT – a company allegedly linked to OKA – which then sold the Vessel to AICL Overseas

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68 CWS at para 58.

69 CWS at paras 66–69.

70 CWS at paras 59 and 71–79.

71 CWS at para 60.

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FZE ("AICL") (through its nominee, the Intervener) for a profit of around $2.1m. This profit then purportedly went to OKA through an internal set-off with SRTT.[72]

Issues to be determined

36 As alluded to above (at [28]), there are essentially two issues for my determination:

(a) First, whether SUM 1215 is procedurally barred because default judgment was entered in the Claimant's favour and the Intervener has not applied to set aside the default judgment (the "Procedural Issue").

(b) Second, whether the Claimant has satisfied the final requirement in s 4(4) of the HCAJA by proving, on a balance of probabilities, that OKA (as the Relevant Person at the time the Claimant's cause of action arose and the demise charterer of the Vessel then) remained the demise charterer of the Vessel from 24 March 2023 onwards till 27 July 2023, the latter being the date on which the action in ADM 64 was brought (the "s 4(4) Issue").

37 I consider these issues in turn.

The Procedural Issue – SUM 1215 is not procedurally barred

38 In essence, the Claimant makes two arguments on the Procedural Issue. First, SUM 1215 must fail as it does not include any prayer to vary or set aside JUD 123, and the Intervener has also not appealed against JUD 123. Second,

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[72] CWS at paras 80–87.

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even if SUM 1215 were treated as including an application to set aside JUD 123, the court should not exercise its residual discretion to set aside JUD 123. In my judgment, both arguments are flawed.

Analysis and decision

The absence of an application to set aside JUD 123 is not fatal to SUM 1215

39 As a starting point, and as candidly accepted by counsel for the Intervener, Mr Prakaash Silvam ("Mr Silvam"), SUM 1215 does not contain a standalone prayer to set aside the default judgment in JUD 123. Instead, the Intervener has prayed for the warrant of arrest and the originating claim *in rem*, as well as "all subsequent proceedings and orders made therein", to be set aside.[73] Nevertheless, I am of the view that the absence of an application to set aside the default judgment in JUD 123 is not fatal to the jurisdictional challenge in SUM 1215.

40 In my view, any setting aside of JUD 123 would simply be a necessary *consequence* of my determination of the s 4(4) Issue in the Intervener's favour. If I find that the Claimant is unable to bring itself within s 4(4) of the HCAJA, the court would be lacking in admiralty jurisdiction *in rem* and accordingly, would not have the authority to decide the matter brought before it "in a formal way for its decision" (*The Ocean Jade* [1991] 1 SLR(R) 354 at [19]). Accordingly, the originating claim *in rem* would have to be set aside for want of jurisdiction. Once the very substratum for the default judgment obtained falls away, the default judgment would necessarily also be liable to be set aside.

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[73] HC/SUM 1215/2026 at prayers 1 and 2.

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41 In this regard, I am unable to agree with the submission of counsel for the Claimant, Ms Tan Hui Tsing ("Ms Tan"), that *even if* I find that the court's jurisdiction was improperly invoked, I should nevertheless dismiss SUM 1215 for procedural impropriety and that the proper course is for the Intervener to thereafter file an appeal against the default judgment.

42 If a default judgment is allowed to remain in force even after finding that the court has no jurisdiction to even hear the proceedings giving rise to it, this court would in effect be sanctioning a nullity (see *Koh Zhan Quan Tony v Public Prosecutor* [2006] 2 SLR(R) 830 at [13]). To allow such a state of affairs to subsist would militate against considerations of not only logic but also justice and fairness.

43 I am also unable to accept the Claimant's second argument that the issues "necessarily determined" by JUD 123 are *res judicata* and cannot be re-opened by way of SUM 1215.[74] In order for *res judicata* (or its subset issue estoppel) to apply, the following four requirements must be satisfied (*Lee Tat Development Pte Ltd v Management Corporation of Strata Title Plan No 301* [2005] 3 SLR(R) 157 ("*Lee Tat Development*") at [14]–[15]):

(a) there is a final and conclusive judgment on the merits;

(b) the judgment is by a court of competent jurisdiction;

(c) there is identity of parties; and

(d) there is an identity of subject-matter.

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[74] CWS at paras 3 and 18–25.

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44 My view is that even if it were assumed that there was identity of parties, *res judicata* does not apply as there was no identity of subject-matter or issues in SUM 240 and SUM 1215. The approach in identifying the issues in two proceedings is to ask what had been litigated and what had been decided. In the case of issue estoppel, the decision on the issue must have been a "necessary step" to the decision or a "matter which it was necessary to decide, *and which was actually decided*, as the groundwork of the decision" [emphasis added] (*Lee Tat Development* at [15], citing *Carl Zeiss Stiftung v Rayner & Keeler Ltd (No 2)* [1967] 1 AC 853 at 965 *per* Lord Wilberforce). Where there has been no actual investigation of a point, issue estoppel would only apply to those aspects of the earlier decision that were directly and precisely to be decided by it, with the caveat that where a litigant raises a point but either concedes or fails to argue it, issue estoppel may still arise in respect of the point conceded or not argued (*Goh Nellie v Goh Lian Teck* [2007] 1 SLR(R) 453 ("*Goh Nellie*") at [39]).

45 In this case, there was no actual investigation of the s 4(4) Issue before me at the hearing of SUM 240. While Mr Tan did indicate before me at the hearing of SUM 240 that the Intervener took no position then but may subsequently take steps to challenge jurisdiction, he also indicated that the Intervener needed to obtain non-party discovery to show that admiralty jurisdiction was wrongly invoked.[75] In the circumstances, the Intervener cannot be said to have conceded or failed to argue the jurisdictional point – it simply indicated that it had to take steps to obtain additional evidence before taking up the point. Additionally, the Claimant's position at SUM 240 was that the person who would be liable on the claim *in personam* for the Claimant's claims was Star Dragon.[76] Consequently, no issue of whether OKA was the bareboat

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[75] NE of 20 March 2026 at p 2:1–4.

[76] 1AB at p 18: DH-2 at para 43.

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charterer (and hence the Relevant Person) at the time the ADM 64 was commenced could have even arisen, much less been decided. As I noted above (at [15]), the Defendant did not enter a notice of intention to contest and so in a sense, the hearing of SUM 240 proceeded before me akin to an application without notice and with the benefit of evidence adduced only by the Claimant. It can hardly be said in those circumstances that because the Court granted the Claimant default judgment, it had also necessarily decided the question of its admiralty jurisdiction conclusively on the merits.

46 It appears to me that the Claimant's submissions are substantially premised on a mis-reading of the proposition in *PNG Sustainable Development Program Ltd v Rex Lam Paki* [2022] SGHC 188 ("*Rex Lam Paki (HC)*") that issue estoppel precludes re-litigation of "issues necessary for the court's adjudication"[77] (at [44]). As explained by Sundaresh Menon JC (as he then was) in *Goh Nellie* (at [35]):

> 35 The second idea which is contained within the requirement of an identity of subject-matter is that the previous determination in question must have been fundamental and not merely collateral to the previous decision so that the decision could not stand without that determination: see *The Doctrine of Res Judicata* at para 201. The author of *The Doctrine of Res Judicata* traces the authorities for this principle back to the decision of Holt CJ in *Blackham's Case* (1709) 1 Salk 290; 91 ER 257, but a more recent statement may be found in *Blair v Curran* (1939) 62 CLR 464, in which Starke J held at 510:
>
> > [A] judgment concludes not merely the point decided but matters which were necessary to decide and which were actually decided as the groundwork of the decision itself though not then directly the point at issue and that a judgment is conclusive evidence not merely of the facts directly decided but of those facts which are necessary steps to the decision – *so cardinal to it that without them it cannot stand …*
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> 36 In the same case, Dixon J said as follows at 532:

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77 CWS at paras 18 and 21.

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> In the phraseology of Lord *Shaw* [in *Hoystead v Commissioner of Taxation* [1926] AC 155], 'a fact fundamental to the decision arrived at' in the former proceedings … must be taken as finally and conclusively established … . [M]atters of law or fact which are subsidiary or collateral are not covered by the estoppel. … *Decisions upon matters of law which amount to no more than steps in a process of reasoning tending to establish or support the proposition upon which the rights depend do not estop the parties if the same matters of law arise in subsequent litigation.*
>
> [emphasis added in original]

47 The requirement of "necessity" is therefore a requirement directed at discerning which issues are capable of founding issue estoppel – only steps which are necessary or fundamental to the ultimate decision give rise to estoppel. This is markedly different from a blanket proposition that the court is precluded from deciding on an issue that was necessary to its previous adjudication even though the court had, for whatever reason, not actually traversed or in fact decided that issue in the prior proceedings.

48 Going beyond the requirement of an identity of subject-matter, the s 4(4) Issue raised by the Intervener in SUM 1215 goes to the very jurisdiction of the court and its proper invocation. If I do find (as I have) that the court's admiralty jurisdiction was not properly invoked, then when the court rendered the default judgment in SUM 240, it could not conceivably have been a "court of *competent* jurisdiction" (see above at [43(b)]) [emphasis added]. Accordingly, the doctrine of *res judicata* or issue estoppel does not apply and does not preclude the Intervener from raising the s 4(4) Issue.

49 For the reasons above, notwithstanding the absence of a standalone prayer to set aside JUD 123, I am prepared to treat the setting aside of JUD 123 as a necessary consequence of and corollary to any finding that admiralty jurisdiction was not properly invoked. Further, the Intervener is not precluded

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from raising the issue of improper invocation of admiralty jurisdiction by reason of the doctrine of *res judicata*.

The court need not resort to its residual discretion to set aside JUD 123

50 With regard to the Claimant's argument that I ought not to exercise my *residual* discretion to set aside JUD 123,[78] this submission is also fundamentally misconceived. Assuming, *ex facie*, that I were to find that admiralty jurisdiction had been improperly invoked in this case, the court's residual discretion need not even be engaged. Let me explain.

51 The Claimant relies on the Appellate Division's decision in *Rex Lam Paki v PNG Sustainable Development Program Ltd* [2023] 2 SLR 170 ("*Rex Lam Paki (AD)*")[79] but that reliance is, in my view, misplaced. In *Rex Lam Paki (AD)*, the court, citing the Court of Appeal's decision in *Harmonious Coretrades Pte Ltd v United Integrated Services Pte Ltd* [2020] 1 SLR 206 ("*Harmonious Coretrades*") at [34]–[40] and [63], reiterated that the court has a residual discretion to set aside its judgments or orders to prevent injustice (at [17]):

> 17 It is clear … that besides being able to set aside judgments or orders when they have been obtained irregularly, by fraud, or in default of appearance, the court retains a residual discretion, flowing from the court's inherent powers, to set aside judgments or orders so as to prevent injustice (*Harmonious Coretrades* at [34]–[40]). This is consistent with O 92 r 4 of the ROC 2014 which recognises that the court has the inherent power to "make any order as may be necessary to prevent injustice": see also *Harmonious Coretrades* at [37]–[38].

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78 CWS at para 26.

79 CWS at paras 26–27.

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52 However, on a proper reading of *Rex Lam Paki (AD)*, the court in *Rex Lam Paki (AD)* only resorted to the court's residual discretion to set aside a judgment in circumstances where the court lacked the *express* power to do so.

53 In *Rex Lam Paki (AD)*, the court noted that the judgment that had been obtained in that case was not one which was obtained irregularly, or by fraud, or in default of appearance (at [18]). The Appellate Division further did not disagree with the judge's decision below that the Rules of Court (2014 Rev Ed) ("ROC 2014") did not expressly provide for the court's power to set aside a judgment on admissions (at [1] and [15]). In *Rex Lam Paki (HC)*, the court found that it had no power under O 32 r 6 – which conferred power on the court to set aside an "order" made *ex parte* – to set aside a final judgment on the merits (at [55]). It was against this backdrop that the court then turned to consider the question of whether it had the inherent power to set aside a judgment on admissions, and if so, whether the exercise of that inherent power was warranted on the facts of the case.

54 Conversely, in this case, the court's power to set aside JUD 123 is *expressly* stipulated in O 33 r 21 of the ROC 2021, which provides for the court's power to set aside judgments obtained by default in actions *in rem*.

55 Order 33 r 21(12) of the ROC 2021 states that "[t]he Court may, on such terms as the Court thinks just, set aside or vary any judgment entered pursuant to [O 33 r 21]". This sub-rule is applicable to judgments entered in default of serving a notice of intention to contest or not contest in an *in rem* action under O 33 r 21(3). It is axiomatic that the court is entitled to set aside irregular default judgments as of right (*Mercurine Pte Ltd v Canberra Development Pte Ltd* [2008] 4 SLR(R) 907 ("*Mercurine*") at [74]). In my view, where an *in rem* default judgment is entered into in an admiralty action *in rem* in which admiralty

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jurisdiction has not been properly invoked, that judgment would be a nullity and must necessarily be irregular. It is therefore entirely unnecessary for the court to examine whether it possesses a residual or inherent power to set aside such a judgment. Order 33 r 21 provides it with an *express power* to do so.

56 I am also unable to agree with the Claimant's argument that the Intervener's application should fail due to the delay in filing it.[80] Such delays are not invariably fatal in applications to set aside default judgments (*Mercurine* at [76]), and in my view, any prejudice occasioned to the Claimant may, if appropriate, be adequately compensated by costs.

57 In any event, *even if* the court's inherent power has to be resorted to in order to set aside JUD 123, I find that the circumstances of the present case warrant the exercise of such a power. As held by the Court of Appeal in *Harmonious Coretrades* (at [40]):

> 40 We therefore agree with the Judge that the court retains the residual discretion to set aside a judgment or court order so as to prevent injustice. However, we emphasise that this is not a licence to litigants to make frivolous applications to set aside judgments or court orders. The court's inherent power to set aside a judgment or court order should never become a back-door appeal or an opportunistic attempt to re-litigate the merits of the case. One such situation where the court's inherent power could be justifiably invoked might be *where the substratum or the very foundation of a court order has been destroyed, such that the continued existence or future performance of the court order would lead to injustice* … [emphasis added]

58 In my view, this is precisely a case where it may be said that the "substratum or the very foundation" of the default judgment has effectively been destroyed given that the valid invocation of the court's admiralty jurisdiction is

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[80] CWS at paras 33–36.

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a threshold requirement for the court to even make a pronouncement on the dispute that is the subject of ADM 64. Given my decision on the s 4(4) Issue as detailed below that the court's admiralty jurisdiction was improperly invoked, allowing the default judgment to remain would cause injustice to the Intervener, which – as the present owner of the Vessel – has a direct interest in the *res* against which the judgment would otherwise be enforceable.

59 Having dealt with the Procedural Issue, I turn now to consider whether admiralty jurisdiction was properly invoked by the Claimant in this case.

The s 4(4) Issue – The Claimant has not satisfied s 4(4) of the HCAJA

The law

60 As set out at [23(e)] above, the legal burden rests on the Claimant to prove, on the balance of probabilities, that the Relevant Person was, at the time this action was brought, the beneficial owner or the demise charterer of the Vessel. As OKA was never the owner of the Vessel, the focus is on whether it was still the demise charterer when ADM 64 was commenced on 27 July 2023.

61 The hallmark of a demise charter, also commonly known as a bareboat charter, is the complete transfer of possession and control of the chartered vessel from the owners to the bareboat charterer. As a bareboat charter and demise charter are synonymous, I use these terms interchangeably. The complete transfer of possession and control of the vessel to the bareboat charterer, in substance, enables the arrangement between the parties to be regarded as a lease of the vessel (*The Chem Orchid* [2015] 2 SLR 1020 ("*The Chem Orchid*") at [66]; *The Victor 1* [2024] 5 SLR 237 ("*The Victor 1*") at [27]). Under a typical bareboat charter, the owner supplies the vessel (*ie*, the "bare boat") while the charterer pays hire for the use of the vessel, employs or supplies its own crew,

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and takes responsibility for all charges and expenses (Sir Bernard Eder et al, *Scrutton on Charterparties and Bills of Lading* (Sweet & Maxwell, 25th Ed, 2024) at para 1-009).

62 A bareboat charter commences only when the twin ingredients of possession and control have been transferred from owner to charterer (*The Chem Orchid* at [70]). It has been said that whether a ship has been demised depends on whether or not the shipowner has "given to the charterer a power and right independent of him and without reference to him to do what he pleases with regard to the captain, the crew, and the management and employment of the ship" (*Pan United Shipping Pte Ltd v Cendrawasih Shipping Pte Ltd* [2004] SGHC 32 at [8], citing Lord Esher MR in *Baumwoll Manufactur von Scheibler v Gilchrest & Co* [1892] 1 QB 253 at 259).

63 Likewise, a bareboat charter subsists until actual possession and control have been transferred back to the owners (*The Chem Orchid* at [70]–[72]) or the charterer has otherwise irretrievably lost possession and control of the vessel (*The Victor 1* at [27]). Thus, the question of when a bareboat charter ends is not merely a matter of formal contractual termination, as the exercise of a contractual right to terminate a bareboat charter does not, without more, terminate the demise. Instead, the additional step of physical (or actual) redelivery, which effects a reversion of the transfer of possession and control, is necessary to terminate a bareboat charter (*The Chem Orchid* at [70]–[72], citing *Patrick Stevedores No 2 Pty Ltd v MV "Turakina"* (1998) 154 ALR 666 at 675 and *The Rangiora, Ranginui and Takitimu* [2000] 1 Lloyd's Rep 36 at 55).

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Analysis and decision

64 Placing my conclusion upfront, I find that the Claimant has not discharged its burden of proof and thus, has not proven, on a balance of probabilities, that OKA remained the bareboat charterer of the Vessel until 27 July 2023. In my view, there is sufficient objective evidence to show that the OKA BBC was formally terminated on or around 24 March 2023, and more pertinently, that the Arcis BBC dated 24 March 2023 existed. It is therefore incumbent on the Claimant to show that notwithstanding this, OKA nevertheless retained possession and control of the Vessel between 24 March 2023 and 27 July 2023. I am not persuaded that the Claimant has done so.

The OKA BBC was terminated on or around 24 March 2023

65 Beginning with the OKA BBC, I find that the OKA BBC was formally terminated at the latest by 24 March 2023.

66 Mr Parmar's affidavit evidence is that the OKA BBC had been terminated following a dispute between OKA and Star Dragon as to hire payment and defects in the Vessel that Star Dragon had allegedly known of.[81] According to Mr Parmar, OKA stopped paying hire for approximately five months as the Vessel was not seaworthy and consistently needed repairs.[82] The parties subsequently executed a settlement agreement dated 24 March 2023 ("Settlement Agreement"), upon which the OKA BBC was terminated by mutual agreement and OKA ceased to be the bareboat charterer of the Vessel.[83]

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81 2AB at pp 843–844: 1st Affidavit of Parmar Ajay Pal Singh filed on 26 June 2026 ("PS-1") at paras 25 and 32.

82 2AB at p 847: PS-1 at para 49.

83 2AB at pp 845 and 847–848: PS-1 at paras 35 and 51–52.

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After the OKA BBC was terminated, OKA also did not pay for the hire of the Vessel.[84]

67 On the stand, Mr Parmar testified that OKA had stopped paying hire from around August or September 2022 until the OKA BBC was terminated.[85] While he was initially unable to recall the exact date of termination, he later stated that the OKA BBC was terminated on 17 January 2023,[86] as reflected in Recital (C) of the Settlement Agreement.[87] Recital (C) states that on 17 January 2023, "[Star Dragon] issued a notice to [OKA] terminating the Charter for non-payment of hire", which OKA disputed on the ground that "the Vessel had potential/latent defects of which [Star Dragon] had knowledge".[88]

68 Relatedly, Mr Parmar also testified that OKA's non-payment of hire had resulted in Star Dragon instituting a formal claim in arbitration for about US$3 million in unpaid hire.[89] This dispute between OKA and Star Dragon that led to the termination of the OKA BBC is corroborated not only by the Settlement Agreement but also by OKA's financial statements. Recital (B) of the Settlement Agreement states that Star Dragon had initiated arbitration proceedings against OKA before the Singapore Chamber of Maritime Arbitration ("SCMA").[90] Likewise, the notes to OKA's financial statements for the 2021 and 2022 financial years state that on 12 October 2021, a "third party"

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84 2AB at p 847: PS-1 at para 50.

85 Transcript of 7 July 2026 at pp 17:23–18:1.

86 Transcript of 7 July 2026 at pp 20:4–5 and 23–24.

87 2AB at p 851: PS-1 at p 15.

88 2AB at p 851: PS-1 at p 15.

89 Transcript of 7 July 2026 at p 113:3–4.

90 2AB at p 851: PS-1 at p 15.

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had commenced arbitration at the SCMA in respect of a ship "in relation to [a] bareboat charterparty dated 18 May 2021". On 24 March 2023, OKA and the third party then entered into a settlement agreement "whereby both parties agreed to release and forever discharge each other from all claims related to the bareboat charterparty".[91]

69 Comparing Mr Parmar's written and oral evidence, Mr Parmar vacillated between two different dates of termination, *viz*, 17 January 2023 when Star Dragon gave notice of termination and 24 March 2023 when the Settlement Agreement was concluded.[92] Nevertheless, the dates mentioned by Mr Parmar whilst on the stand – that OKA stopped hire payment in about August or September 2022 and that the OKA BBC was terminated in January 2023 – do broadly align with his affidavit evidence that OKA did not pay hire for the last five months of the OKA BBC.

70 On the whole, although Mr Parmar's evidence on the date of the OKA BBC's termination was not entirely consistent, I accept that the OKA BBC must have been formally terminated by 24 March 2023 at the latest when OKA and Star Dragon executed the Settlement Agreement.

71 This is, however, not the end of the analysis; as explained at [63] above, the *contractual termination* of a bareboat charter does not necessarily end the *demise* of the vessel. I therefore turn to consider whether between 24 March 2023 and 27 July 2023, the person in possession and control of the Vessel was OKA and not Arcis, as contended by the Claimant.

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91 2AB at pp 994 and 1056: 2nd Affidavit of Parmar Ajay Pal Singh filed on 26 June 2026 ("PS-2") at pp 158 and 220.

92 2AB at pp 845 and 847–848: PS-1 at paras 35 and 51–52; Transcript of 7 July 2026 at pp 20:4–5 and 23–24, 59:8–17 and 65:8–9.

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The Claimant has not proven that OKA remained the bareboat charterer of the Vessel between 24 March 2023 and 27 July 2023

72 To reiterate, the Claimant's case rests on three main planks (see above at [35]): (i) that the Intervener has not provided any contemporaneous documentary evidence of OKA redelivering the Vessel to Star Dragon following the termination of the OKA BBC;[93] (ii) that OKA remained in possession and control of the Vessel by procuring repairs for the Vessel;[94] and (iii) that OKA was motivated by its continuing economic interest in the Vessel to continue managing, preserving and repairing the Vessel prior to the sale of the Vessel.[95]

(1) The evidential burden of proof rests on the Claimant

73 It is not disputed that the legal burden of proving that OKA was the bareboat charterer as at 27 July 2023 falls on the Claimant. Contrary to the Claimant's submission,[96] accompanying that legal burden, the evidentiary burden *also* falls on the Claimant to show that OKA remained in possession and control of the Vessel at that time.

74 To be clear, I am cognisant that there is a dearth of contemporaneous documentary evidence showing that Arcis, and not OKA, had possession and control of the Vessel after 24 March 2023. Mr Parmar testified that the Vessel was re-delivered once the OKA BBC was terminated[97] and that after 24 March

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93 CWS at paras 66–70.

94 CWS at paras 71–79.

95 CWS at paras 80–87.

96 CWS at para 66.

97 2AB at pp 838 and 845: PS-2 at paras 4 and 36.

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2023, (i) OKA did not pay for hire of the Vessel and instead Arcis paid hire;[98] (ii) OKA no longer gave any instructions to the master or the crew as the Vessel was under Arcis's control;[99] (iii) OKA did not pay for any hull and machinery or protection and indemnity insurance for the vessel;[100] and (iv) OKA did not pay for the master and the crew's salary.[101] However, as the Claimant points out,[102] there is no documentary evidence supporting Mr Parmar's claims of re-delivery and the transfer of possession and control back to Star Dragon and on to Arcis. Such documentary evidence as may have been ordinarily available could have included, for instance, a certificate of redelivery or correspondence regarding the handover of the Vessel and its operations. Mr Parmar's explanation as to why OKA did not possess such documentary evidence was, essentially, that as the Vessel was operated out of India, the operators would store documents on their own laptops and those operators have all since left OKA's employ.[103] Regardless of whether such an explanation stands up to scrutiny, the fact remains that there are no documents before me evidencing the *actual* transfer of possession and control from OKA to Star Dragon, or from OKA directly to Arcis. Mr Parmar's evidence in this respect therefore consists of bare assertions that I place little weight on.

75 Notwithstanding the somewhat unsatisfactory state of the evidence before me, the Intervener has nonetheless adduced *sufficient* evidence to show that the Arcis BBC existed from 24 March 2023 to 27 July 2023. In my view,

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98 3AB at p 1132: 3rd Affidavit of Parmar Ajay Pal Singh filed on 6 July 2026 ("PS-3") at para 4; Transcript of 7 July 2026 at p 39:13–18.

99 Transcript of 7 July 2026 at p 40:13–22.

100 Transcript of 7 July 2026 at p 39:19–24.

101 Transcript of 7 July 2026 at pp 39:25–40:6.

102 CWS at paras 66 and 86.

103 2AB at p 845: PS-2 at para 37.

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and consistent with how the parties' legal and evidential burdens interact and operate (*Tan Hai Peng Micheal v Tan Cheong Joo* [2025] SGHC 217 at [45]), that moves the needle sufficiently such that the evidential burden falls back on the Claimant to demonstrate that – even though the Arcis BBC *existed* as at 27 July 2023 (and from 24 March 2023) – possession and control of the Vessel nevertheless remained with OKA. Let me elaborate.

76 First, the Settlement Agreement between Star Dragon and OKA states that the Settlement Agreement is pre-conditioned on the conclusion of the Arcis BBC:

(a) Clause 7 of the Settlement Agreement states that within three working days of the execution of the Settlement Agreement, "[OKA] shall handover the vessel to [Star Dragon]'s nominated company (Arcis Global Merchants Pte. Ltd ('ARCIS')) directly at any port on East Coast of India …".[104]

(b) Clause 17 of the Settlement Agreement states that "[t]he effectiveness of the bareboat charter party with purchase option in relation to the Vessel entered into between ARCIS and [Star Dragon] on or about 24th March 2023 (the "Bareboat Charterparty") is a prerequisite for the effectiveness of [the Settlement Agreement]".[105]

77 The evidential value of the Settlement Agreement is bolstered by the fact that it was a negotiated agreement drafted by solicitors.[106] In this regard,

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104 2AB at p 852: PS-1 at p 16.

105 2AB at p 853: PS-1 at p 17.

106 Transcript of 7 July 2026 at p 34:1–11; Transcript of 8 July 2026 at pp 16:23–17:4.

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Mr Parmar's evidence that OKA was at the time legally represented by Watson Farley & Williams LLP is consistent with a line item in OKA's financial statements listing a payment made to the said law firm.[107] In addition, the Claimant does not challenge the authenticity of the Settlement Agreement, or seriously dispute the fact that it was entered into.

78 Second, the 4 October MOA between Star Dragon, Arcis and SRTT also references the Arcis BBC:

(a) The 4 October MOA defines a "bareboat charter Hire with Purchase option of the Vessel dated 24 March 2023" between the "Sellers" and "Charterers" as "BBHP".[108] While the term "Charterers" is undefined, Clause 19 of the same agreement states that the "Buyers" (defined as Arcis) "shall remain responsible for the performance of the obligations as *buyer and charterer under the MOA and the BBHP respectively"* [emphasis in italics added].[109]

(b) Clause 4 states that the Vessel "is presently bareboat chartered by the Sellers [*ie*, Star Dragon] to the Buyers [*ie*, Arcis] pursuant to the BBHP".[110]

(c) Clauses 13 and 14 provide that situations of default are provided for in the BBHP.[111] Clause 18 further provides that the 4 October MOA

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107 Transcript of 7 July 2026 at p 72:3–9; Transcript of 8 July 2026 at pp 16:10–17:4; 2AB at p 879: PS-2 at p 43.

108 2AB at p 763: 4th Affidavit of Darwin Hasibuan filed on 22 May 2026 ("DH-4") at p 55.

109 2AB at p 775: DH-4 at p 67.

110 2AB at p 766: DH-4 at p 58.

111 2AB at p 773: DH-4 at p 65.

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is "supplemental to" the BBHP and that the BBHP and the 4 October MOA together comprise the agreement between Star Dragon and SRTT in relation to the sale and purchase of the Vessel.[112]

79 Based on the date of and parties to the "BBHP", it is reasonable to infer that references to the "BBHP" are references to the Arcis BBC. Thus, the 4 October MOA, signed by parties that Mr Parmar says were legally represented in the sale,[113] not only references the Arcis BBC but also stipulates that the sale of the Vessel from Star Dragon to SRTT was governed in part by the Arcis BBC.

80 Third, the subsequent Memorandum of Agreement dated 10 October 2024 between SRTT and AICL ("10 October MOA") also stipulates that a requirement for completion of the sale of the Vessel was a "letter issued by [SRTT] stating that, to the best of their knowledge and that as from [24 March 2023] (*being the date of commencement of the bareboat charter of the Vessel between [Star Dragon] as owners and ARCIS Global Merchants Pte. Ltd. as bareboat charterers*) up to the date of delivery, there is no crew-related claim which has been brought against the Vessel" [emphasis in italics added].[114]

81 Fourth, Mr Parmar's evidence on affidavit is that Star Dragon and Arcis entered into the Arcis BBC on or around 24 March 2023.[115] As of 27 July 2023, OKA was no longer the bareboat charterer of the Vessel as the Vessel was

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112 2AB at pp 774–775: DH-4 at pp 66–67.

113 2AB at p 846: PS-2 at para 45.

114 1AB at p 474: AZ-1 at p 20.

115 2AB at p 848: PS-1 at para 53.

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subject to the Arcis BBC.[116] This is internally consistent with his oral testimony that Arcis had been the bareboat charterer of the Vessel on or from 24 March 2023[117] and during the sale of the Vessel in October 2024.[118] It is also consistent with Mr Agarwal's testimony on behalf of the Intervener that he was aware of the Arcis BBC when he signed the 10 October MOA for the sale and purchase of the Vessel.[119] Given that Mr Parmar's and Mr Agarwal's testimonies are corroborated by the documentary evidence at hand, there is no reason to doubt the credibility of their evidence that the Arcis BBC *did exist*.

82 All things considered, I am of the view that a strong inference arises that the Arcis BBC did exist between 24 March 2023 till at least 4 October 2024, when the Vessel was sold by Star Dragon to Arcis's nominee, SRTT. In light of this finding, I agree with the Intervener[120] that the evidential burden falls on or swings back to the Claimant to prove that the reality – as formalised in the Settlement Agreement, the 4 October MOA and the Arcis BBC – diverged from the parties' contractual arrangements such that OKA continued to retain possession and control over the Vessel *even with* the Arcis BBC in existence.

83 At this juncture, I would also add that there exists, on the record, a document that purports to be the signed Arcis BBC.[121] I say it purports to be such because the Claimant challenges the admissibility and authenticity of this document. However, even without relying on this document, I am prepared to

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116 2AB at pp 842 and 848: PS-1 at paras 22 and 56.

117 Transcript of 7 July 2026 at p 40:6.

118 Transcript of 7 July 2026 at p 37:20–23.

119 Transcript of 8 July 2026 at pp 26:21–24 and 40:25–41:17.

120 IWS at para 72.

121 3AB at pp 1277–1302: 3rd Affidavit of Vipin Agarwal filed on 7 July 2026 ("VA-3") at pp 130–155.

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infer that the Arcis BBC existed and was in force between 24 March 2023 and 27 July 2023 for the reasons enumerated at [76] to [82] above. Nevertheless, I address the Claimant's challenge for completeness.

84 On 6 May 2026, the Intervener applied for and obtained an order mandating Mr Kumar, a director of Arcis, to attend court and produce, among other things, the Arcis BBC.[122] Mr Kumar did not produce the Arcis BBC and further informed the Intervener that, having surrendered his passport to the Indian authorities, he was unable to travel to Singapore.[123] On 19 May 2026, O&B wrote to the court informing that OKA had disclosed, among other things, a copy of the Arcis BBC and enclosed the same in their letter.[124]

85 The Intervener submits that the copy of the (purported) Arcis BBC is admissible under s 32(1)(*j*)(iii) of the Evidence Act 1893 (2020 Rev Ed) ("EA"), which provides for an exception to the hearsay rule.[125] While the Claimant did not object to the authenticity or admissibility of the Arcis BBC at the trial of the s 4(4) Issue or in its written submissions, Ms Tan raised objections to both at the hearing of parties' oral submissions following the trial.

86 Dealing first with the objection to authenticity, seeing as the Claimant did not object to the admission and marking of the Agreed Bundle of Documents filed on 3 July 2026 ("Agreed Bundle") at trial,[126] the Claimant is now precluded from objecting to the *authenticity* of the Arcis BBC included within the Agreed

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122 2AB at pp 634–635: HC/SBP 17/2026.

123 3AB at pp 1150 and 1276: VA-3 at para 10 and p 129.

124 2AB at pp 642 and 648–673.

125 IWS at paras 61–62.

126 Transcript of 7 July 2026 at pp 1:22–2:3.

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Bundle.[127] This point was made clear by the Court of Appeal in *Jet Holding Ltd v Cooper Cameron (Singapore) Pte Ltd* [2006] 3 SLR(R) 769 at [51]:

> 51 We are therefore of the view that whilst, as an important point of departure, a party seeking to introduce documents into evidence ought to comply with the provisions in the Evidence Act, if these documents are in fact marked and admitted into evidence without that party in fact satisfying the requirements in the Evidence Act *and* where there has been *no objection taken by the other party at that particular point in time*, then that other party *cannot* object to the admission of the said documents later. This last-mentioned proposition applies, of course, in an *a fortiori* manner when the party who had not objected to the introduction of the documents subsequently *cross-examines* the relevant witnesses on these documents in an attempt to discredit the truth of the contents stated therein … [emphasis in original]

87 I therefore turn to the remaining objection on admissibility. What I surmise to be the Claimant's argument is that the Arcis BBC is hearsay because its makers – Star Dragon and Arcis – were not present before this court to attest to the truth of the contents of the Arcis BBC. In my view, this objection on admissibility cannot succeed.

88 Before delving into the parties' arguments, I should mention at the outset that although the Arcis BBC was originally adduced via a letter sent from O&B to court,[128] it has since formed part of the record – not as part of Mr Parmar's affidavit – but as an exhibit in (i) the affidavit of Mr Hasibuan filed on 22 May 2026 in support of the Claimant's application for an order compelling OKA and/or Mr Parmar to produce further and better documents[129] and (ii) the affidavit of Mr Agarwal filed on 7 July 2026 to explain the steps the Intervener

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127 2AB at pp 648–673; 2AB at pp 736–761: DH-4 at pp 28–53.

128 2AB at p 642.

129 2AB at pp 715 and 736–761: DH-4 at paras 18–19 and pp 28–53.

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took to procure evidence from Mr Kumar.[130] The relevance of this will become evident in my analysis that follows.

89 At the hearing, I queried both counsel on the applicability of the EA to this application. Ms Tan submitted that the EA is only inapplicable in interlocutory applications conducted via affidavits alone and therefore should apply to trials conducted within interlocutory proceedings. Alternatively, even if the EA were inapplicable, the affidavits would still be subject to the common law rules of evidence preserved by s 2(2) of the EA, as held in *DSV v DSU* [2026] SGHC 128 ("*DSV*") at [61]. Ms Tan also argued that under the ROC 2014, O 41 r 5(2) explicitly provided that affidavits for the purpose of interlocutory applications may contain hearsay evidence but submitted that this specific sub-rule is no longer present in the ROC 2021. On the Intervener's end, Mr Silvam submitted that the EA does not apply to interlocutory applications, relying on the decisions of *HT SRL v Wee Shuo Woon* [2016] 2 SLR 442 ("*HT SRL*") and *HSBC Trustee (Singapore) Ltd v Lucky Realty Co Pte Ltd* [2015] 3 SLR 885 ("*HSBC Trustee*").

90 Contrary to Ms Tan's submission, the ROC 2021 *does* expressly state that it is permissible to include hearsay evidence in applications to court in an action. Order 3 r 5(7) of the ROC 2021 states:

> (7) An affidavit must contain all necessary evidence in support of or in opposition (as the case may be) to the application, *and may contain statements of information or belief with their sources and grounds clearly stated*. [emphasis added]

91 Order 3 r 5 is titled "Applications to Court in an action" and based on its plain language, it is reasonable to infer that O 3 r 5(7) applies to all affidavits

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130 3AB at pp 1277–1302: VA-3 at pp 130–155.

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used in applications filed in an action. The phrase "may contain statements of information or belief with their sources and grounds clearly stated" indicates that hearsay evidence is permissible in such applications so long as the deponent states clearly his or her sources and grounds in the affidavit (*Asian Eco Technology Pte Ltd v Deng Yiming* [2023] SGHC 260 ("*Asian Eco Technology*") at [31], citing *HSBC Trustee* at [93]).

92 This sub-rule, however, is not satisfied in the present case. Order 3 r 5(7) of the ROC 2021 requires the deponent to state the sources and grounds of the statements of information or belief contained in the affidavit. The phrase "sources and grounds" refers to "sources for the information [deposed to]" and "[the deponent's] grounds for the beliefs [deposed to]" (*Asian Eco Technology* at [32]). In *Asian Eco Technology*, Hri Kumar Nair J (as he then was) found that an email adduced in summary judgment proceedings was inadmissible hearsay evidence because the deponent had only stated that his source was an "anonymous sender" and provided no further grounds to support his belief in the contents of the email (at [32]). In this case, Mr Agarwal's affidavit fails to even mention the source of the Arcis BBC; all it states is that "Aquilo's solicitors further wrote to Mr Kumar enclosing a copy of the Arcis BB[C]".[131] As for Mr Hasibuan's affidavit, while it states that the source of the Arcis BBC was OKA as the party that disclosed the Arcis BBC,[132] since Mr Hasibuan was not actually relying on the *truth of the contents* of the Arcis BBC, his affidavit – quite understandably – is entirely silent as to the "grounds" for any belief that the contents of the Arcis BBC are true.

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131 3AB at pp 1150–1151: VA-3 at para 11.

132 2AB at p 715: DH-4 at para 18.

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93 On further scrutiny, it becomes apparent that *none* of the witnesses have – throughout these proceedings – relied on the truth of the contents of the copy of the Arcis BBC as exhibited in their various affidavits. Despite OKA having produced the Arcis BBC, Mr Parmar somewhat curiously stated on affidavit that he "[did] not have a copy of the Arcis BBC",[133] although he later clarified that his response was directed to the fact that he did not have the original covering correspondence by which the Arcis BBC was transmitted.[134] As for Mr Hasibuan and Mr Agarwal, as I have explained above at [92], neither relied on the contents of the Arcis BBC in their respective affidavits. In such a case, my view is that the exception to hearsay evidence in O 3 r 5(7) cannot apply because none of the deponents have – *in their affidavits* – stated the source of any belief that the information contained in the Arcis BBC (*ie*, its content) is true.

94 I therefore turn to consider the applicability of the EA. Section 2(1) of the EA provides that Parts 1, 2 and 3 of the EA "apply to all judicial proceedings in or before any court, but not to affidavits presented to any court or officer …". In *HSBC Trustee*, the court found that the EA did not apply as the proceedings had been commenced by originating summons. It explained (at [53]):

> 53 … When the parties' rights and liabilities are finally determined at trial, the underlying findings of fact are made on *viva voce* evidence received in accordance with the Evidence Act. What is before me are judicial proceedings commenced by originating summons. In proceedings of this type, designed for litigation in which it is unlikely that there will be any substantial dispute of fact, the court ordinarily determines the parties' rights and liabilities summarily, upon affidavit evidence alone (see O 38 r 2(2) of the Rules of Court). The effect of s 2(1) of the Evidence Act is therefore to disapply the entirety of Part II of the Evidence Act to all of the evidence before me.

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133 2AB at pp 839 and 846: PS-2 at paras 4(iv) and 40–41.

134 3AB at p 1145: PS-3 at para 5(xviii).

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95 The other cases that parties referred me to – *DSV* and *HT SRL* – were also matters concerning evidence contained in affidavits, being a setting aside and striking out application respectively. In *DSV* and *HSBC Trustee*, therefore, the court did not apply the EA but instead applied the common law rules of evidence which were consistent with the rules of evidence set out in the EA (*DSV* at [61]–[62]; *HSBC Trustee* at [55]–[58]). In *HT SRL*, the court also held that the common law rules on legal professional privilege apply in relation to affidavits filed in interlocutory proceedings preceding a trial (at [17]).

96 Unlike the aforementioned cases, this case is somewhat unique in that although the setting aside application was commenced via summons in ADM 64, it is not being determined *solely* on affidavit evidence. There was an evidentiary hearing on the jurisdictional point with cross-examination of witnesses. In my view, where cross-examination has been ordered in an originating application or an application made in an originating claim, the EA *would* be applicable to such proceedings.

97 To explain, the EA contains a multitude of rules applicable to cross-examination and oral evidence (see ss 62 and 137 to 168 of the EA). To wholly disapply the rules of the EA governing the conduct of cross-examination of a deponent on his/her affidavit would, to my mind, risk unnecessary confusion and dispute over which evidential rules on cross-examination within the common law are consistent with the EA such that they apply under s 2(2) of the EA, and which ought to be avoided.

98 Should it then be the case that the EA only applies to govern the conduct of cross-examination and the giving of oral evidence by the deponent, with the common law applying to all other aspects of the evidence given by the deponent in the proceeding? In my view, that would be equally undesirable. Neatly

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splitting the deponent's evidence into two buckets (*ie*, evidence governed by the EA rules and common law rules respectively) may not be a feasible or simple task – ultimately, cross-examination of a deponent involves the giving of oral evidence *based on* evidence contained within the deponent's affidavit(s).

99 Additionally, there does not appear to me to be a principled rationale behind splitting the applicable rules of evidence. I am aware that when the court orders makers of affidavits to be cross-examined under O 15 r 7(6)(*b*) of the ROC 2021, the scope of cross-examination may not stretch across the entire morass of evidence adduced within that application. Indeed, a pertinent concern when ordering cross-examination in such an application is that it might result in unending questions that canvass the whole gamut of evidence (*Comet Products UK Ltd v Hawkex Plastics Ltd* [1970] 2 QB 67 at 75 *per* Lord Denning MR). It may therefore be the case that cross-examination is ordered for the determination of an isolated dispute of fact whilst the remaining issues can be summarily dealt with on affidavit evidence. However, in such a scenario, disapplying the EA to those issues dealt with by affidavit evidence would not necessarily result in a quicker or less complex resolution of disputes. Even where the EA does not apply, the court would still have to apply common law rules of evidence that are not inconsistent with the EA (*DSV* at [61]; *HSBC Trustee* at [55]). These rules may, ironically, be *more* restrictive than the rules within the EA. For instance, it has been observed that the business statement exception codified in s 32(1)(*b*) of the EA is wider than that in the common law (Singapore Academy of Law, Report of the Law Reform Committee on Reform of Admissibility of Hearsay Evidence in Civil Proceedings (May 2007) (Chairperson: Philip Jeyaretnam SC) at para 14). This led to Goh Yihan JC (as he then was) expanding the common law business statement exception to match

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the scope of s 32(1)(*b*)(iv) of the EA (*Re X Diamond Capital Pte Ltd* [2024] 3 SLR 1228 at [31]).

100 In the circumstances, therefore, I find that the EA (including its provisions on hearsay evidence) does apply to the affidavits filed in and for the evidentiary hearing that took place within SUM 1215, and therefore the hearsay exceptions in the EA would also apply provided the necessary requirements for invoking them are met.

101 Having established the appropriate rules governing the admissibility of the Arcis BBC, I turn to the questions of whether the hearsay rule in the EA is engaged in so far as the Arcis BBC is concerned and if so, whether any of the hearsay exceptions can be invoked in this case to justify its admissibility.

102 Hearsay evidence refers to assertions made out of court whether orally or in documentary form or in the form of conduct tendered to prove the facts which they refer to, *ie*, facts in issue and relevant facts (*Soon Peck Wah v Woon Che Chye* [1997] 3 SLR(R) 430 at [26]). If an out-of-court statement is admitted merely to prove that it was made, such a statement is not hearsay (*CBB v Wong Tien Leong William* [2026] 3 SLR 1481 at [69]; *Auto Lease (Pte) Ltd v San Hup Bee Motor LLP* [2024] 5 SLR 1318 at [111]).

103 Presently, the Intervener relies on the Arcis BBC to establish that: (a) the Arcis BBC was entered into in Singapore on 24 March 2023; (b) Star Dragon was identified as the "Owner" and Arcis as the "Charterer"; (c) the stipulated time for delivery was 24 March 2023; (d) hire would be counted from 24 March 2023, when the charterparty was mutually accepted; and (e) the charter period was ten months from 24 March 2023, unless brought to an earlier

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end through payment under the purchase option.[135] In so far as the Intervener seeks to rely on the copy of the Arcis BBC merely to prove that the Arcis BBC *existed*, *ie*, that Star Dragon and Arcis had entered into a bareboat charterparty dated 24 March 2023 in respect of the Vessel,[136] my view is that no hearsay objection can arise. By accepting that the form of the Arcis BBC was authentic (*ie*, that the Arcis BBC was properly executed) (see above at [86]), the Claimant would necessarily have accepted as true that the Arcis BBC was entered into between Star Dragon and Arcis on 24 March 2023 (see *Orion-One Development Pte Ltd (in liquidation) v Management Corporation Strata Title Plan No 3556* [2019] 2 SLR 793 at [13]).

104 As to the remaining points on which the Intervener seeks to rely on the Arcis BBC, those pertain to the truth of the contents of the Arcis BBC, and accordingly, would constitute hearsay. In my view, for those matters, the hearsay exception in s 32(1)(*j*)(iii) of the EA does apply. The person seeking to rely on this provision must satisfy two cumulative requirements: (a) that the witness is outside Singapore; and (b) that it is not practicable to secure his attendance (*Gimpex Ltd v Unity Holdings Business Ltd* [2015] 2 SLR 686 ("*Gimpex*") at [97]–[98]). Reasonable practicability implies assessing the likely effectiveness of taking normal steps to secure the attendance of the witness, and considering in relation to such a judgment the importance of the evidence, the degree of prejudice to the defence if it is admitted, and the expense and inconvenience involved in securing attendance (*Gimpex* at [99], citing Colin Tapper, *Cross and Tapper on Evidence* (LexisNexis, 12th Ed, 2010) at 607).

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135 IWS at para 56.

136 IWS at paras 56(a)–(b).

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105 I find that the Intervener has satisfied both requirements. First, O&B's correspondence with Mr Kumar shows that Mr Kumar was "unable to travel to Singapore" as he had surrendered his passport to the Indian authorities on 2 May 2026,[137] and there is a court order dated 30 April 2026 stating that Mr Kumar "shall not leave India without the prior permission of the Court".[138] To my mind, this suffices to show that Mr Kumar is outside Singapore. Second, O&B has produced evidence to show their efforts at contacting Mr Kumar, namely, by sending emails to Mr Kumar's Arcis email address on 26 May 2026, 9 June 2026, 27 June 2026 and 2 July 2026 to which they received no response.[139] Given that Mr Kumar had previously responded to O&B through the same email address on 13 May 2026,[140] it is reasonable to infer that this was a case of a third-party witness who was no longer contactable and whose attendance at trial could not be practicably secured. Ms Tan had also made a point in her oral submissions that no one could be certain that the person with whom O&B had been communicating was indeed Mr Kumar or that it was in fact Mr Kumar who was using that email account. Even if that were the case, it would in my view simply be an additional factor pointing to the inability to locate Mr Kumar (or verify his identity and location) and secure his attendance at the hearing. I therefore find that the hearsay exception applies and the Arcis BBC is admissible into evidence.

106 This is, however, still not the end of the matter. There still remains the question of the weight to be accorded to the Arcis BBC. Ultimately, I do not

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137 3AB at pp 1150 and 1262–1263: VA-3 at para 10 and pp 115–116.

138 3AB at p 1270: VA-3 at p 123.

139 3AB at pp 1150–1151, 1273–1276 and 1304: VA-3 at paras 11–12 and pp 126–129 and 157.

140 3AB at p 1262: VA-3 at p 115.

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place much weight on the Arcis BBC because Mr Parmar was unable to provide a satisfactory answer on the source of the Arcis BBC. On the stand, he could only state that he *might* have obtained the Arcis BBC during the sale of the Vessel[141] and that he *thought* that he received the Arcis BBC from his lawyers during the conclusion of the Settlement Agreement.[142] Similarly, Mr Agarwal also did not give any useful evidence in relation to the source of the Arcis BBC.

107 Nevertheless, and bearing in mind the question I am focused on (see above at [82]), I still maintain that the documentary evidence on record together with Mr Parmar's affidavit and oral evidence are sufficient to show that, more likely than not, the Arcis BBC *existed* and was *in force* from 24 March 2023 to at least 4 October 2024. *Prima facie*, therefore, the inference arises that it was Arcis who was also in possession and control of the Vessel during that period. Consequently, the evidential burden of proving that OKA nevertheless maintained possession and control over the Vessel even as at 27 July 2023, notwithstanding the contractual arrangements indicating otherwise, lies with or reverts to the Claimant. The critical question that remains is whether the Claimant has discharged that burden.

(2) The Claimant has not satisfied its evidential burden

108 Bearing in mind the Claimant's evidential burden of proving that OKA remained in possession and control of the Vessel till 27 July 2023, I move on to the Claimant's positive case.

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141 Transcript of 7 July 2026 at p 33:16–17, 35:17 and 36:3–5.

142 Transcript of 7 July 2026 at p 33:6–25 and 35:24–36:3.

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109 The Claimant contends that (i) OKA had continued to procure repairs for the Vessel even after 24 March 2023;[143] (ii) Mr Parmar's evidence that Arcis requested OKA to facilitate repairs is unsupported and inherently improbable;[144] (iii) it is commercially implausible that Arcis requested OKA to fund the repairs;[145] (iv) OKA must have been the party liable for the repairs in light of a judgment of the Calcutta High Court in *Marinecraft Engineers Private Limited v The Owners and Parties Interested in Vessel M.T. Qian Tai 1 and another* AS-COM/5/2024 ("Calcutta Judgment") permitting the Vessel's arrest in respect of a repairer's dispute with OKA over repair works to the Vessel;[146] (v) Arcis was only prepared to accept delivery of the Vessel after repairs had been completed,[147] (vi) there is no evidence that Arcis paid hire to Star Dragon;[148] (vii) Mr Parmar's testimony regarding the Vessel's movements after it departed Haldia in April 2024 undermines the Intervener's case because there was no reason for OKA to remain privy to the Vessel's movements once it departed in April 2024;[149] and (viii) OKA's continuing commercial interest explains its continued possession and control of the Vessel.[150] I address each of these arguments in turn.

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143 CWS at paras 71–72.

144 CWS at para 73.

145 CWS at para 74.

146 CWS at para 75.

147 CWS at para 76.

148 CWS at para 77.

149 CWS at para 78.

150 CWS at paras 80–87.

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110 First, I disagree that mere assistance with the Vessel's repairs post-24 March 2023, without more, shows that OKA retained possession and control of the Vessel.

111 I accept that – based on Mr Parmar's testimony and a Sea-web search of the Vessel's movements – the Vessel broke down on or about 19 September 2022, thereafter sailed to Diamond Harbour in Kolkata, India, and underwent repairs there till April 2024.[151] I also accept Mr Parmar's explanation that after sailing out of Kolkata, the Vessel experienced further issues and sailed to Port Klang, Malaysia for further repairs until August 2024.[152] This evidence is consistent with a Sea-web search showing that the Vessel was present in Port Klang as of May 2024.[153] Finally, I accept Mr Parmar's undisputed[154] evidence that from 19 September 2022 to August 2024, the Vessel underwent repairs and that OKA assisted in coordinating arrangements for the said repairs.[155]

112 The Claimant has not shown that OKA had *maintained* possession and control over the Vessel's operations whilst rendering assistance to Arcis with her repairs. Not only did Mr Parmar deny this on the stand,[156] but his evidence is also that OKA's role was limited to "coordinating and facilitating arrangements between Arcis and the relevant ship repairers" and that OKA did

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151 Transcript of 7 July 2026 at pp 132:2–11, 142:4–6; 1AB at p 627.

152 Transcript of 7 July 2026 at pp 130:15–131:5, 139:15–19, 140:14–21 and 142:7–14.

153 1AB at p 215: DH-2 at p 212.

154 CWS at paras 62–63 and 71–72; IWS at para 63.

155 3AB at pp 1132, 1134–1135 and 1139: PS-3 at paras 4, 5(v)(a), 5(v)(c)–5(v)(d) and 5(x); Transcript of 7 July 2026 at p 132:4–18.

156 Transcript of 8 July 2026 at p 6:3–6.

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not undertake or perform repair works and was not engaged as the repair contractor.[157] The Claimant has not proven otherwise.

113 Second, I disagree with the Claimant's submission that it was "inherently improbable" for Arcis to have requested OKA to facilitate repairs. According to Mr Parmar, Arcis requested OKA to coordinate arrangements to repair the Vessel[158] and OKA had agreed to this request because OKA had been involved in the repairs before the Arcis BBC was entered into and knew the history of the repairs.[159] Keeping in mind that the Vessel broke down in September 2022, I find no reason to doubt Mr Parmar's evidence that OKA had engaged repairers before the termination of the OKA BBC.[160] Given OKA's pre-existing relationship with the repairers, I also do not find it improbable that Arcis would have requested OKA to continue coordinating the repairs even after OKA was no longer the bareboat charterer of the Vessel.

114 Third, I disagree with the Claimant's submission that it was "commercially implausible" for Arcis to have funded the repairs. According to Mr Parmar, after 24 March 2023, OKA continued to pay for some repairs at Arcis's request.[161] Arcis had agreed that once the Vessel started trading (presumably after completion of repairs), it would start to reimburse OKA from the Vessel's trading activities[162] – Mr Parmar's evidence referred to Arcis

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157 3AB at p 1135: PS-3 at para 5(v)(b); Transcript of 7 July 2026 at p 93:17–19.

158 3AB at pp 1132, 1134–1135 and 1139: PS-3 at paras 4, 5(v)(a), 5(v)(c)–5(v)(d) and 5(x); Transcript of 8 July 2026 at p 20:14–17.

159 Transcript of 7 July 2026 at pp 122:21–123:6.

160 Transcript of 7 July 2026 at pp 133:19–134:14.

161 Transcript of 7 July 2026 at pp 93:21–94:1, 95:1–7 and 13–14 and 115:20–23; Transcript of 8 July 2026 at p 20:10–13 and 18–20.

162 Transcript of 7 July 2026 at p 123:20–21.

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repaying OKA for the repairs from "the vessel or the voyage".[163] That arrangement may eventually have morphed into one where Arcis would reimburse OKA for the repairs from the proceeds of sale of the Vessel – this would have entailed the sale from Star Dragon to Arcis (via SRTT as Arcis' nominee) per the 4 October MOA and the on-sale from SRTT to AICL under the 10 October MOA.[164] Mr Parmar's evidence was essentially that via the conclusion of the sale of the Vessel from Star Dragon to SRTT (as Arcis' nominee) and then on to AICL, Arcis eventually paid for the repairs through SRTT, and because OKA owed moneys to SRTT, Arcis had "paid" for the repairs through a reduction of OKA's debt owing to SRTT.[165] I do not find Mr Parmar's evidence to be unbelievable or implausible.

115 Since OKA had been the bareboat charterer of the Vessel prior to 24 March 2023, I accept Mr Parmar's evidence that OKA would have been able to, and did, enter into agreements for and raise purchase orders for repairs to the Vessel as principal.[166] It is not unreasonable to infer that OKA would accordingly be responsible, *vis-à-vis* the *repairers*, for payment under these contracts or purchase orders. Further, Mr Parmar's evidence that OKA owed moneys to SRTT[167] is corroborated by OKA's financial statements which list payables of US$2,640,042 owing to SRTT in 2024 and US$2,503,059 in 2023.[168] Against this backdrop, I do not find it commercially implausible or

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163 Transcript of 8 July 2026 at p 4:8–15.

164 Transcript of 8 July 2026 at pp 6:3–10:1.

165 Transcript of 7 July 2026 at pp 96:10–20 and 115:15–18; Transcript of 8 July 2026 at p 20:21–24.

166 Transcript of 7 July 2026 at pp 134:12–14 and 135:16–23; Transcript of 8 July 2026 at pp 14:20–15:5.

167 Transcript of 7 July 2026 at pp 73:6–74:9.

168 2AB at p 880: PS-2 at p 44.

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unbelievable for the parties (*ie*, OKA, Arcis and SRTT) to have made arrangements between themselves for OKA to first pay for the repairs and for Arcis to thereafter reimburse OKA, be it by an offset of OKA's debt owing to SRTT or otherwise.

116 Fourth, the Calcutta Judgment does not assist the Claimant. The judgment itself only states that the plaintiff there claimed to have done "extensive repair works" in respect of the Vessel and that:[169]

> [f]rom the documents annexed to the affidavit of arrest and the plaint, the plaintiff … made out a strong prima facie case to go for trial inasmuch as the person who *owned the vessel* at the time when the maritime claim arose is, on the face of the documents, liable for the claim raised in the suit and is also the *owner* of the vessel at the present moment [emphasis added].

117 The Calcutta Judgment specifically uses the term "owner" as opposed to, for instance, "disponent owner", "bareboat charterer" or "demise charterer". It therefore cannot be said that the Calcutta High Court had been referring to *OKA* – which was at no point the owner of the Vessel – when determining the question of its jurisdiction to arrest the Vessel. The finding in the judgment further coheres with Mr Parmar's evidence that the action had been directed at *both* OKA and the shipowners, but with OKA finally having to settle the dispute as the shipowners failed to respond to the claim.[170]

118 Fifth, I do not find Mr Parmar's singular statement during cross-examination to be so damning to the Intervener's case that it suffices to show that Arcis had not taken possession and control of the Vessel as at 27 July 2023.

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169 Exhibit C2 at pp 1–2.

170 Transcript of 7 July 2026 at p 135:1–10.

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For context, the Claimant relies on the following exchange between Ms Tan and Mr Parmar:[171]

> Q: I see. And why didn't Arcis pay for the repairs, because the vessel was for their benefit?
>
> A: That's – that's – they decided, they said we will get it in ready condition. And the moment we get ready condition, "We will start paying it back."
>
> Q: Okay. So they were telling OKA, telling you that you help them, OKA helps them to pay, to supervise, to get the vessel in a ready condition, *then after the vessel is in a ready condition, they will take over the vessel?*
>
> A: *Yes. And they will start trading the vessel and then they will start paying as well.*
>
> [emphasis in italics added]

119 While Mr Parmar's testimony above and the italicised portion in particular, looked at in isolation, might suggest that Arcis did not have possession and control of the Vessel whilst repairs were ongoing, this is merely one answer that has to be evaluated against the overall morass of evidence that was adduced. Further, Ms Tan's use of the phrase "take over the vessel" in her question was also not clear and was not necessarily synonymous with "take over possession and control of the vessel". In my view, undue weight should not be placed on Mr Parmar's isolated statement, which he in any event corrected later in his cross-examination in maintaining that OKA had not been in possession and control of the Vessel after the termination of the OKA BBC and disagreeing that the Vessel had only been delivered to Arcis after the repairs were completed.[172]

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171 Transcript of 7 July 2026 at p 123:10–21; CWS at para 76.

172 Transcript of 8 July 2026 at p 11:2–21.

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120 Sixth, while there is no objective evidence before the court on whether or not Arcis paid hire to Star Dragon under the Arcis BBC, the absence of such evidence does not mean the Claimant has thereby *positively* proved that Arcis did not have possession and control of the Vessel during the relevant period of time (*ie*, from 24 March 2023 to 27 July 2023). It should be noted that neither Star Dragon nor Arcis were before the court and none of their representatives gave evidence. It would also not be expected that either OKA or the Intervener, as strangers to the Arcis BBC, would be in possession of any evidence demonstrating payment of hire by Arcis to Star Dragon under the Arcis BBC. Thus, the absence of evidence of payment of hire by Arcis to Star Dragon is, at best, a neutral point that does not move the evidential needle.

121 Seventh, I am not convinced that Mr Parmar's knowledge of the Vessel's further repairs at Port Klang after it departed Haldia in April 2024[173] undermines the Intervener's case. In my view, the Claimant's submission overstates the relevance of Mr Parmar's evidence on this point. Contrary to the Claimant's assertion, OKA's familiarity with the Vessel's repair history would *itself* afford a legitimate or logical reason for OKA to remain privy to or being informed of the occurrence of a subsequent breakdown once the Vessel began sailing again. In addition, that OKA ultimately expected to be reimbursed by Arcis for the repair costs it paid on Arcis' behalf is a further reason why OKA would still be interested in the Vessel's movements or any further breakdown and repairs undertaken to the Vessel subsequent to her departure from India in April 2024. I therefore do not agree with the Claimant's submission that Mr Parmar's knowledge of the further repairs undertaken to the Vessel in Port

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173 Transcript of 7 July 2026 at pp 139:15–22, 140:8–24 and 142:8–23.

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Klang in April 2024 somehow demonstrates that OKA must have remained in possession and control of the Vessel even as at April 2024.

122 Eighth, while the Claimant has sought to draw certain links between OKA, SRTT and Arcis, this submission not only misses the point but is also speculative. For context, the Claimant highlights three points in its submissions:

(a) First, there was a difference of approximately US$2m between OKA's claim against Star Dragon for loss of sub-hire and repair costs (at around US$3m) and Star Dragon's claim against OKA for unpaid hire (at around US$1m), both of which were settled under the Settlement Agreement.[174]

(b) Second, SRTT's on-sale of the Vessel to AICL (through its nominee, the Intervener) was at a price US$2.1m higher than the price at which SRTT originally acquired the Vessel from Star Dragon.[175]

(c) Third, Mr Parmar's evidence was that (i) he was a director and shareholder of OKA and previously a director of SRTT; (ii) OKA and SRTT operated from the same office premises; (iii) OKA and SRTT retained the same solicitors; and (iv) he contributed to the SRTT Affidavit in OA 1376 (see [32] above).[176]

123 While the Claimant purportedly "does not suggest that the US$2.1m difference represented compensation for OKA's losses", it argues that it is

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174 CWS at paras 81 and 83.

175 CWS at para 82.

176 CWS at para 83–84.

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"noteworthy" that the US$2.1m profit earned by SRTT from on-selling the Vessel broadly corresponds with the US$2m difference between OKA's and Star Dragon's claims against each other (that were abandoned under the Settlement Agreement).[177] Against this backdrop, the Claimant's submission is essentially that OKA was incentivised to preserve the Vessel, complete repairs, and facilitate the eventual sale of the Vessel because OKA would "ultimately [realise] the commercial benefit of the Vessel's sale through SRTT".[178]

124 I am unpersuaded by this submission. For one, even if OKA wished to preserve the Vessel's condition in order to fetch a decent sale price, OKA did not need to retain possession and control of the Vessel to achieve that end. It could equally have – and on Mr Parmar's evidence, had indeed – handed operations and control over to Arcis whilst repairs to the Vessel continued. It is also relevant to note that Arcis was not someone unknown to OKA but an entity that had a prior business relationship with OKA. Mr Parmar gave unchallenged evidence that OKA had "done contracts with them [Arcis] on the voyage many times before" and had "plenty of business dealings with them". It was against that backdrop that Arcis had, after the Arcis BBC came into force, asked OKA to assist.[179] For another, I find the Claimant's assertion that OKA "ultimately realised the commercial benefit of the Vessel's sale through SRTT"[180] to be pure conjecture. To be clear, I accept that OKA and SRTT shared a relationship – the ACRA People Search of Mr Parmar shows that he had been a director of both

177 CWS at para 83.

178 CWS at paras 80 and 85–87.

179 Transcript of 7 July 2026 at p 122:21–123:9.

180 CWS at para 86.

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OKA and SRTT from February 2020 to November 2023[181] and Mr Parmar accepted that OKA and SRTT had retained the same solicitors and previously shared the same office space.[182] But this does not, without more, show that SRTT transferred the sale proceeds for the Vessel to *OKA*. The Claimant has pointed to no documentary evidence, for instance in OKA's financial statements, showing that OKA ultimately benefited from the sale of the Vessel.

125 Accordingly, in my judgment, the Claimant (on whom the burden rests) has failed to establish, on a balance of probabilities, that OKA (as the Relevant Person) remained in possession and control of the Vessel as at 27 July 2023 in spite of the Arcis BBC in force then. Accordingly, the Claimant has failed to establish the final step of the test laid out in *The Bunga Melati 5* (see above at [23(e)]). I find that OKA was not, when ADM 64 was brought on 27 July 2023, the owner of the Vessel or the charterer by demise. Accordingly, the court's admiralty jurisdiction under s 4(4) of the HCAJA was improperly invoked by the Claimant.

Conclusion

126 For the reasons above, the Intervener succeeds on both the Procedural Issue and the s 4(4) Issue. I therefore set aside the default judgment in JUD 123. I also set aside the originating claim *in rem* in ADM 64, WA 20 and my order for the appraisal and sale of the Vessel made in ORC 1855. For the avoidance

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181 2AB at p 819: 1st Affidavit of Chen Anni Honey filed on 4 June 2026 ("CAH-1") at p 29.

182 Transcript of 7 July 2026 at pp 74:25–75:8, 78:16–18 and 82:2–20; 2AB at p 801: CAH-1 at p 11.

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of doubt, following from my orders above, the Vessel is to be released from arrest.

127 I shall hear the parties separately on costs.

S Mohan J
Judge of the High Court

Tan Hui Tsing, Mathiew Christophe Rajoo, Ng Jun Jie Justin and Ng Jin Wei (DennisMathiew) for the claimant;
Prakaash s/o Paniar Silvam and Caleb Tan Jia Chween (Oon & Bazul LLC) for the intervener;
Chitra Balakrishnan (Legal Matrix LLC) for the non-party (OKA Tankers Pte Ltd) (watching brief);
defendant absent and unrepresented.

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