**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[1999] SGHC 64**

Adm in Rem 506/1998 [RA 424/1998, RA 425/1998], Adm in Rem 507/1998

Between

Boxmart Resource Management (S) Pte Ltd

… *Plaintiff*

And

The Owners of the Ship or Vessel "Rumba"
The Owners of the Ship or Vessel "Marine Lodge"

… *Defendant*

---

# GROUNDS OF DECISION

---

Version No 1: 20 Nov 2026 (00:35 hrs)

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

# Boxmart Resource Management (S) Pte Ltd v The Owners of the Ship or Vessel "Rumba" and Another

**[1999] SGHC 64**

Adm in Rem 506/1998 [RA 424/1998, RA 425/1998], Adm in Rem 507/1998
Lai Kew Chai J
18 March 1999

**Judgment :**

**GROUNDS OF JUDGMENT**

These two appeals by two separate but intimately connected defendants in the two admiralty suits were heard by me together on 4 December 1998 and they concerned their tug and a tow, known as mv "Rumba" ("the tug") and mv "Marine Lodge" ("the tow") which the plaintiffs arrested in Singapore on 6 August 1998. I moderated the bail amounts but otherwise affirmed the orders made by the assistant registrar. The disputes arose out of two charterparties of the tug and tow which were used by the charterers for the high profile job of salvage of a 15th century Chinese junk shipwreck off the coast of Brunei. As those disputes were subject to arbitration, the plaintiffs had effected the arrest solely to obtain security for their claims.

2 On the same day, I also heard the plaintiffs' application to sell the two vessels pendente lite without prejudice to the subsisting possessory lien of a shipyard.

An order was made. The two vessels were sold in early February 1999: the tug was sold for $110,000 and the tow for $300,000.

Background

3 The plaintiffs were engaged by Elf Petroleum BV to undertake diving operations off the coasts of Brunei for the salvage of a 15th century Chinese Junk shipwreck. Elf Petroleum BV had discovered the wreck. The French government decided to salvage the unique and historical find and donate the salvage as a gift to the Kingdom of Brunei Darussalam. They needed the services of the tug and tow to house the teams of divers and archaeologists, amongst others, who numbered about 50-60, I was told, and some US$15 million worth of expensive and sophisticated equipment. They needed the tug and tow for accommodation and other on-site purposes. The charterparties took effect from 17 May 1998 and the service was to have lasted for 80 days to 4 August 1998. The daily hire for the tug was US$1,060.61 and for the tow was US$4,150. The daily total for both vessels was US$5,210.61. The total contract value of the two charterparties was therefore in the region of US$415,848.48.

4 The plaintiffs claimed that Mr Rachagan, who was managing the two vessels and negotiating on behalf of the defendants, had misrepresented that the tug was capable of 4 to 6 knots while towing the accommodation barge "Marine Lodge". It was further alleged that when under tow from Singapore to Brunei and on their way back, they merely averaged a speed of 2.1 knots. In consequence the plaintiffs had to charter another tug mv "Sealink Maju" to assist the tug and tow. They arrived at the site from Singapore, barely making the final deadline imposed by Elf Petroleum BV. The tug also could not perform the anchor-handling operation. It took 24 hours for an operation that normally required 3-

Version No 1: 20 Nov 2026 (00:35 hrs)

4 hours. On the return journey from the site to Singapore, the tug and tow slowed down to 0.7 knots as against 15 knot winds. Mr Oliver Benoist in his letter of 15 September 1998 and in his affidavit alleged that any more wind and/or adverse current would have caused the vessels to sail backwards in the midst of oil field installations. In view of the hazards posed to life, limb and property, the plaintiffs yet again had to engage another tug mv "Marina Bay". The journey back took 2 days longer because of the mis-performance of the tug.

5 There were a series of difficulties before the start of the charter, when the tow was fitted with the costs to be paid out of the charterhire. In the rush to commence the charter and the pressing work on site, the vessels sailed without the final charterparties being signed. There were disputes over the terms agreed; for e.g. whether the hire was payable in advance or in arrears. As the vessels approached the site off Brunei, the defendants gave notice of withdrawals of the vessels. This gesture, justified or not, naturally caused consternation. But gunboats were despatched to escort the vessels to Brunei.

Arrests of vessels in Brunei

6 On 11 July 1998 and after almost 2 months of charter service, both the defendants, who were managed by Mr Rachagan, caused the arrests of the vessels on location by the High Court of Negara Brunei Darussalam. They wanted possession of the vessels. The arrests took the plaintiffs by surprise and they caused a major disruption with the on-going work. The defendants claimed that charterhire was not paid and that the plaintiffs had no intention to pay. The defendants initially demanded the payment of US$700,000 which was later reduced to US$474,000. The defendants further alleged that the plaintiffs had failed to provide the bankers' guarantee, as required under the charterparties. In

Version No 1: 20 Nov 2026 (00:35 hrs)

rebuttal, the plaintiffs countered that it was the defendants' failure to name the right beneficiaries of the guarantee and their demand for unreasonable terms and duration of the guarantee that were responsible for causing the problems over the issue of the guarantee.

7 After 5 days of the arrests, the parties entered into a "settlement agreement". Under it, the plaintiffs agreed to authorise Elf Petroleum BV to pay to the defendants directly sums owing to the former, subject to a minimum of US$474,000. The payments would be made by Elf Petroleum BV to a joint account from which sums would be paid out to the defendants' solicitors in Brunei. On 21 July 1998 Elf Petroleum paid US$208,500 to the joint account which was duly paid out to the defendants' solicitors in Brunei. The vessels continued to work until their return to Singapore.

Second action in Brunei

8 On 27 August 1998 Elf Petroleum BV paid US$265,500 to the joint account. However, the plaintiffs refused to allow payment out to the defendants on the grounds, inter alia, that the vessels had mis-performed as to speed and anchor-handling. On 10 October 1998 the defendants instituted a second action in Brunei against the plaintiffs for payment of moneys due under the charterparties. On 18 November 1998 they applied for summary judgment. In an affidavit filed by the plaintiffs' solicitors on their behalf, a counterclaim was asserted against the defendants for the alleged bad performance of the tug and the detention of the 2 vessels by reason of the defendants' arrests to obtain possession of the vessels in Brunei. The Brunei Court entered judgment for part of the claim. The counterclaim for the alleged bad performance of the tug was

Version No 1: 20 Nov 2026 (00:35 hrs)

alleged to have been rejected by the court. As there was no appeal, the defendants contended that this decision was final.

9 As recited earlier, the vessels were arrested in Singapore by the plaintiffs on 6 August 1998. The claims asserted against the owners of the tug were (a) 2 days' delay in the sum of US$52,000; (b) 5 days' delay in the sum of US$200,000; (c) costs of chartering "Sealink Maju" at S$50,300; and (d) cost of the charter of "Marina Bay" at S$25,750. The claims asserted against the owners of the tow were (a) 2 days' delay in the sum of US$52,000; (b) 5 days' delay in the sum of US$200,000; (c) cost of the charter of "Sea Link Maju" at S$50,300; and (d) cost of chartering "Ever Forceful" at S$12,000; and (d) cost of hiring equipment at US$4,122.57.

10 Following the arrests in Singapore the defendants made two applications in the two actions to the Registrar for a number of orders. They applied for the following orders: (1) that the two actions be dismissed as the plaintiffs failed to serve their statements of claims; (2) alternatively, that the arrests be set aside, that the vessels be released from arrests and that the plaintiffs pay the defendants damages for wrongful arrests; (3) further and alternatively, that bail for both vessels be fixed or moderated; (4) that the two actions be stayed pending arbitration pursuant to section 6 of the International Arbitration Act (Cap 143A); and (5) that the plaintiffs pay the defendants costs.

11 At the conclusion of the hearing of the applications the assistant registrar ordered that the two vessels be released on the provision of security. In respect of the tug, it was ordered that the security be in the sums of US$252,000 and S$76,000 with interest on both sums at 6% for 3 years and costs at S$50,000. As regards the tow, it was ordered that security be in the sum of US$252,000

Version No 1: 20 Nov 2026 (00:35 hrs)

and S$22,000 with interest on both sums at 6% for 3 years and costs at S$50,000. The actions were ordered to be stayed pending arbitration. The sums of money, if provided as security, were to be retained to abide by the outcome of the arbitration. The defendants were ordered to pay costs of the applications fixed at $2,000.

12 On 29 October 1998 I heard both appeals. Mr C Arul, who was then appearing on behalf of the defendants, informed me that he was not pursuing the setting aside of the arrests but was only asking that the bail be moderated for both tug and tow. After hearing the arguments, I indicated that I could not allow the duplication of the claims for the alleged losses of 2 days and 5 days on each of the two vessels. I therefore reduced those claims on the two vessels by half, i.e. the bail amounts for those claims were reduced to US$126,000 to be provided by each vessel. I took the view that both vessels were supposed to render inseparable services under the two charterparties and in apportioning the bail amount to be provided by each vessel I decided to treat them equally: equality in this case was fair if not equitable. I also reduced the security for costs to S$25,000.00 for each vessel. In view of the limited scope of the appeal before me, which was indicated by counsel for the defendants, I directed that all other orders of the assistant registrar remained unaltered.

13 I took the view that the claim of US$252,000 was a reasonable estimate, having regard to the plaintiffs' entitlement to security for their reasonably arguable best case: *The Moscanthy* [1971] 1 Lloyd's Rep 37. The reasons were these. It was a high profile inter-governmental matter. Diving and detection equipment worth US15 million was placed on board the tow. Those equipment included 3 submarines for underwater work. The work of the divers and archaeologists were interrupted for 5 days. The plaintiffs were liable for the

Version No 1: 20 Nov 2026 (00:35 hrs)

charterhire of both vessels which was at US$5,210.61 per day. Mr Benoist estimated the plaintiffs' total losses per day to be in the region of US$30,000 to US$40,000. Admittedly, the details were not presented but the estimate was broadly in line with the losses of the plaintiffs and I could not say that they were unreasonable or excessive. The claims for the 2 days' delay at US$26,000 per day were lower but different from those losses suffered during the 5 days of arrests when salvage work was thick and fast. The 2-day delay was in the voyage from Singapore to Brunei. It was obvious that the 5-day delay cost the plaintiffs much more.

14 On 14 November 1998 the defendants, through their newly appointed solicitors, applied for further arguments on basically two grounds, namely (a) that there was no claim against the tow for the 7 days of delay; and (b) that those "special losses" based on the contract between the plaintiffs and their employers, Elf Petroleum BV, were not within the reasonable contemplation of the parties under the rule in *Hadley v Baxendale* (1849) 9 Exch. 341.

15 I heard further arguments on 1 and 4 December 1998. The defendants' counsel added the further submission that in view of the intervening outcome of the proceedings in Brunei the plaintiffs were precluded by the doctrine of res judicata and issue estoppel from pursuing their claims for the losses of 7 days. In the result, I was not persuaded by the three additional grounds. I remained of the view that the owners of the tow, who were represented by Mr Rachagan, could arguably be liable as joint tortfeasors with the owners of the tug, who were also represented by Mr Rachagan. It was the plaintiffs' case that during the negotiations for the hire of the tug and tow, Mr Rachagan had misrepresented to Mr Olivier Benoist in the presence of witnesses that the tug was capable of 4 to 6 knots (7.5 to 11.1 kmph) while towing the barge when in fact the tug was

Version No 1: 20 Nov 2026 (00:35 hrs)

never capable of more than 3.1 knots. This misrepresentation accounted for the claim of 2 days' delay.

16 Both the defendants were also alleged to have wrongfully arrested the tug and tow in Brunei. Their wrongful arrests to reclaim possession of the two vessels caused a loss of 5 days and interfered with their service under the charterparties. Secondly, on the rule in *Hadley v Baxendale*, there was ample evidence that Mr Rachagan knew that the plaintiffs were in fact engaged by Elf Petroleum BV to undertake diving operations off the coasts of Brunei for salvage of a 15th century Chinese junk shipwreck. The salvage operations resulted in the plaintiffs' charter of the tow which provided a base of operations for teams of divers and archaeologists, amongst others.

17 I turn to the plea of res judicata and issue estoppel. It was submitted that the claim for bad performance was raised in the Brunei proceedings but was rejected. There was no appeal by the plaintiffs who were therefore bound. On the claim for loss of revenue, it was claimed on behalf of the defendants that the plaintiffs were holding sums of money in Brunei. Further, the defendants appeared initially to be relying on Lis Alibi Pendens; but this was not pursued in view of the fact that in essence the plaintiffs' arrests of the two vessels in Singapore was for the purpose of obtaining security for their claims which would be disposed of by arbitration. The doctrine of res judicata and issue estoppel requires that three essential conditions must be present. There must be a final judgment or decision in the previous case; secondly, there must be an identity of subject matter or issue in the former and in the present litigation; and thirdly, there must be identity of parties in both cases: see *Carl-Zeiss-Stiftung v Rayner and Keeler, Ltd and Ors* [1996] 2 All ER 536 and *Reebok International Ltd v Royal Corp* [1988] SLR 921.

Version No 1: 20 Nov 2026 (00:35 hrs)

18 Moreover, an examination of the proceedings in Brunei revealed that the defendants' claims were for payment and ancillary reliefs under the settlement agreement. At the summary proceedings for judgment, the plaintiffs, who were defendants in that action, counterclaimed for (a) losses of charterhire and other losses arising out of the interruption of 5 days caused by the arrests in Brunei by the defendants; and (b) damages for misrepresentation of the speed performance of the tug. It was deposed in an affidavit of the defendants' solicitor that the defendants were informed "that the Brunei Court decided that there was a triable issue on (counterclaim) (a) and gave leave to defend". The deponent continued: "However, as for point (b), [referring to the counterclaim for damages in respect of the misrepresentation], the Brunei Court rejected the argument. The Brunei Court therefore entered judgment for the claim less the amount to be defended." It was clear that there was no decision in relation to the claim for the losses arising out of the 5-day arrests in Brunei. As for the counterclaim based on the misrepresentation, the basis of its rejection was not at all clear. Was it due to the fact that this counterclaim was a sham, which necessarily meant that there was no misrepresentation, or was it based on the finding that it did not constitute a set-off under the settlement agreement? If the decision was that it was a sham, such a final judgment should at least be stated. On the affidavit evidence presented to the Brunei Court, I thought it highly unlikely that such a conclusion was reached by the Brunei Court. I turn to the point revolving around set-off as the basis of rejection of the claim for damages for misrepresentation. Again, we had no written record of the decision and its grounds. The settlement agreement, on which the second suit was based, was altogether a different transaction from those under the charterparties. Therefore, there could not, arguably, be any set-off because the cross claim did not arise out of the same transactions. One was left wondering what was the basis of the rejection of counterclaim (b). In this connection, it was noted that a court had to

Version No 1: 20 Nov 2026 (00:35 hrs)

be cautious in dealing with issue estoppel based on a foreign judgment: see the three reasons which Lord Reid gave in *Carl-Zeiss-Stiftung v Rayner* at p 555D as to why a court has to be cautious when dealing with the defence of issue estoppel based on a foreign judgment. Finally, it was noted that the plaintiffs in the Brunei action was Mer Afloat Pte Ltd, who were agents of the defendants, and not the defendants themselves. That confusion was compounded by the fact that Mer Afloat Pte Ltd averred in paragraph 1 of the Statement of Claim that they were the owners of the two vessels which, in fact, were owned by two other companies who were the defendants before me. The confusion was perhaps due to the fact that Mr Rachagan was wearing many hats and he was not clear which hat he was wearing when instructing solicitors in Brunei.

19 In the circumstances, I came to the conclusion that the proceedings in Brunei were not clear as to the identity of issues and it was also not clear if the issue of bad performance was finally adjudicated upon. In the result, my earlier orders remained unaltered.

Lai Kew Chai

Lai Kew Chai J

Philip Tay and Charmaine Chan [Rajah & Tann] for the appellants/defendants
Oon Thian Seng and Juliana Yap [Joseph Tan Jude Benny] for the respondents/plaintiffs

Version No 1: 20 Nov 2026 (00:35 hrs)