

**IN THE COURT OF APPEAL OF MALAYSIA  
(APPELLATE JURISDICTION)  
CIVIL APPEAL NO: W-02(IM)(ADM)-1169-07/2024**

**BETWEEN**

**MECK PETROLEUM DMCC**

**(United Arab Emirates**

**Company Registration No.: 762196)**

**... APPELLANT**

**AND**

**INTERNATIONAL BIRD SHIPPING CO. INC.**

**(Panama Company Registration No.: 6246031) ... RESPONDENT**

[In the matter of High Court of Malaya at Kuala Lumpur  
(Commercial Division)

Admiralty *In Rem* Action No.: WA-27NCC-62-11/2023

Admiralty *In Rem* Action against the ship or vessel “*GLOBAL FALCON*”  
(IMO No.:9399167) from the Port of Cook Islands

Between

Meck Petroleum DMCC

(United Arab Emirates

Company Registration No.: 762196)

... Plaintiff

And

International Bird Shipping Co. Inc.

(Panama Company Registration No.: 6246031)

... Defendant]

**CORAM**  
**SEE MEE CHUN, JCA**  
**WONG KIAN KHEONG, JCA**  
**ISMAIL BIN BRAHIM, JCA**

**JUDGMENT**

**A. Introduction**

1. The above appeal (**This Appeal**) discusses the following two issues:

(1) the jurisdiction of our Admiralty High Court pursuant to s 24(b) of the Courts of Judicature Act 1964 (**CJA**) read with s 20(1)(a), (2)(m) and (n) of United Kingdom's (**UK**) Senior Courts Act 1981 (**SCA**); and

(2) the summary disposal of the above jurisdictional question under O 14A r 1(1) of the Rules of Court 2012 (**RC**).

**B. Background**

2. We shall refer to parties as they were in the High Court.

3. On 13.7.2023, at the Port of Khorfakkan, United Arab Emirates, the plaintiff company (**Plaintiff**) supplied 2,699.74 mt (metric tonnes) "*High Sulphur Fuel Oil*" (**HSFO**) to a ship named "*Global Falcon*" (**Vessel**) which was owned by the defendant company (**Defendant**).

4. The Plaintiff alleged that -

- (1) the Defendant was liable to pay to the Plaintiff a sum of US\$1,295,875.20 for the HSFO on 13.8.2023 (**Due Date**);
- (2) the Defendant failed to pay to the Plaintiff for the HSFO on the Due Date; and
- (3) as at 14.11.2023, the Defendant owed a sum of US\$1,301,345.39 (including interest) to the Plaintiff for the HSFO [**Defendant's Debt (HSFO)**].

5. On 21.12.2023 -

- (1) the Plaintiff filed a Writ *In Rem* in the High Court (**Writ *In Rem***) against the Vessel premised on two claims by the Plaintiff that the Plaintiff had supplied HSFO to the Defendant as bunkers (fuel oil) for -
  - (a) the “*operation or maintenance*” of the Vessel under s 20(1)(a) and (2)(m) SCA read with s 24(b) CJA. In UK, SCA was previously named as the Supreme Court Act 1981; and
  - (b) the “*construction repair or equipment of a ship or in respect of dock charges or dues*” in s 20(1)(a) and 20(2)(n) SCA read with s 24(b) CJA; and
- (2) the Plaintiff obtained a “*Warrant of Arrest*” from the High Court (**Warrant**) and arrested the Vessel pursuant to the Warrant

(**Arrest**) at Southport, Port Klang. After the Arrest, the Vessel was detained by the High Court (**Detention**).

6. The Arrest and Detention constituted an interim remedy available to the Plaintiff under s 11(1)(e) of the Arbitration Act 2005, namely, to secure the Defendant's Debt (HSFO) for the intended arbitral proceedings to be commenced by the Plaintiff against the Defendant.
7. On 6.2.2024, arbitral proceedings had been commenced by the Plaintiff against the Defendant to recover the Defendant's Debt (HSFO).
8. The Defendant applied for leave of the High Court under O 14A r 1(1) RC to dispose of the Writ *In Rem* based on the following question regarding the High Court's jurisdiction to hear the Writ *In Rem* (**Jurisdictional Question**):

***"Whether the Plaintiff can move this Honourable Court for an admiralty jurisdiction as required under Section 24(b) [CJA] read together with Section 20(2)(m) & (n) [SCA] over the [Vessel], in any one or all of the following circumstances:***

- a. ***The carriage of quantity of 2669.740 metric tonnes of [HSFO] by the [Vessel] was for and or on behalf of a Corporation known as ASHRAF AL SHARIF REFINED OIL TRADING LLC (DED Commercial License No:561278)?; and/or***
- b. ***The HSFO was loaded into the [Vessel's] cargo tanks No. 1 Port & Starboard, No.2 Port & Starboard, No.3 Port & Starboard and No.4 Port & Starboard as cargo; and/or***

- c. ***The [Vessel] uses low sulphur fuel oil for its operations, consumption, running and or maintenance, and is not fitted with a scrubber to facilitate the use of the HSFO as required by International Maritime Organisation regulations.***

(emphasis added).

9. The Defendant alleged, among others, as follows:

- (1) the Defendant did not know the Plaintiff. Nor did the Defendant requested for the Plaintiff to supply the HSFO as bunkers for the use and operation of the Vessel; and
- (2) the HSFO was purchased by the charterers of the Vessel, Ashraf Al Sharif Refined Oil Trading LLC (**AAS**), to be sold in turn to Synergy Petroleum FZE (**SP**).

10. The learned High Court Judge (as he then was) answered the Jurisdictional Question in the negative [**High Court's Answer (Jurisdictional Question)**]. Pursuant to the High Court's Answer (Jurisdictional Question), the following order was made by the High Court:

- (1) the Writ *In Rem* was set aside forthwith;
- (2) the Vessel shall be released forthwith from the Detention by the Sheriff of the High Court to the Defendant;
- (3) the Defendant has the liberty to apply to the High Court for an assessment of damages with regard to unlawful Arrest and Detention; and

- (4) the Plaintiff shall pay costs of RM25,000.00 to the Defendant  
(subject to allocatur fee)

**(High Court's Decision).**

11. After the High Court's Decision, upon the release of the Vessel from Detention, the Vessel left the jurisdiction of Malaysian courts.
12. The Plaintiff had lodged This Appeal to the Court of Appeal against the High Court's Decision.

**OUR DECISION**

**C. Relevant provisions of written law**

13. Reproduced below are s 24(b) CJA, s 20(1)(a), (2)(m), (n) SCA and O 14A r 1 RC:

CJA

*s 24. Civil jurisdiction - specific*

*Without prejudice to the generality of section 23 the civil jurisdiction of the High Court shall include -*

...

*(b) the same jurisdiction and authority in relation to matters of admiralty as is had by the High Court of Justice in England under the [SCA]; ...*

SCA

*s 20. Admiralty jurisdiction of High Court.*

*(1) The Admiralty jurisdiction of the High Court shall be as follows, that is to say -*

(a) **jurisdiction to hear and determine any of the questions and claims mentioned in subsection (2);**

...  
(2) **The questions and claims referred to in subsection (1)(a) are -**

...  
(m) **any claim in respect of goods or materials supplied to a ship for her operation or maintenance;**

(n) **any claim in respect of the construction, repair or equipment of a ship or in respect of dock charges or dues;**

...  
RC

O 14A **Determination of questions of law or construction**

r 1(1) **The Court may, upon the application of a party or of its own motion, determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that -**

(a) **such question is suitable for determination without the full trial of the action; and**

(b) **such determination will finally determine the entire cause or matter or any claim or issue therein.”**

(emphasis added).

**D. Could the High Court dispose of the Writ *In Rem* by way of answering the Jurisdictional Question?**

14. The court has a discretion to dispose of a case summarily (without a trial) pursuant to O 14A r 1(1) RC. Such a discretion is clear from

the employment of a directory term “*may*” by the Rules Committee in O 14A r 1(1) RC.

15. We are of the considered view that the court can only exercise its discretion under O 14A r 1(1) RC to dispose of an action without a trial provided that the following three conditions are fulfilled cumulatively (**3 Cumulative Conditions**):

(1) there is a -

(a) question of law; **and/or**

(b) question of construction of a document

- which arose from the case [**Question (Law/Construction of Document)**];

(2) the Question (Law/Construction of Document) is “*suitable for determination without the full trial of the action*” - please refer to O 14A r 1(1)(a) RC. In the Court of Appeal case of **Petroleum Nasional Bhd v Kerajaan Negeri Terengganu** [2004] 1 MLJ 8, at [35], Mohd. Noor Ahmad JCA (as he then was) had explained that the Question (Law/Construction of Document) should be purely a question of law or purely a question of construction of document. In other words, the resolution of the Question (Law/Construction of Document) under O 14A r 1(1)(a) RC cannot entail a factual dispute which necessitates the conduct of a trial; and

(3) the three main objectives of RC are to ensure a just, expeditious and economical disposal of civil actions [**3 Main**

**Objectives (RC)]** - please refer to the High Court's judgment in **CELCOM (M) Bhd & Anor v Tan Sri Dato' Tajudin Bin Ramli & Ors and another case** [2017] 4 AMR 418, at [20].

The phrase “***such determination will finally determine the entire cause or matter or any claim or issue therein***” (emphasis added) in O 14A r 1(1)(b) RC has expressly provided for the court's discretion to hear a Question (Law/Construction of Document) with regard to a particular claim or issue [**Question (Particular Claim/Issue)**]. Notwithstanding such a phrase, the court should **not** exercise its discretion pursuant to O 14 r 1(1)(b) RC to order a summary disposal of a case by way of a Question (Particular Claim/Issue). This is because if the court hears the Question (Particular Claim/Issue), this means the court will be hearing the case in “*instalments*”. Consequently, this will not promote an expeditious and economical disposal of cases, ie., two of the 3 Main Objectives (RC) may not be attained. In other words, the court should only exercise its discretion to hear a Question (Law/Construction of Document) under O 14A r 1(1)(a) and (b) RC when the Question (Law/Construction of Document) can resolve the **entire** case without a trial.

16. The learned High Court Judge had correctly exercised his discretion pursuant to O 14A r 1(1) RC to dispose of the Writ *In Rem* entirely without a trial (by way of answering the Jurisdictional Question). This was because the Jurisdictional Question had fulfilled the 3 Cumulative Conditions as follows:

- (1) the Jurisdictional Question arose from this case;
- (2) the Jurisdictional Question was a pure question of law which was “*suitable for determination without the full trial of the action*” as understood in O 14A r 1(1)(a) RC; and
- (3) the determination of the Jurisdictional Question will finally determine the Writ *In Rem* in its entirety without a trial within the meaning of O 14A r 1(1)(b) RC.

In any event, we are not satisfied that the High Court’s exercise of discretion pursuant to O 14A r 1(1) RC to decide summarily the Jurisdictional Question in this case, warranted any appellate intervention.

**E. Whether the High Court had answered correctly the Jurisdictional Question?**

17. Firstly, the High Court could not have admiralty jurisdiction over this Writ *In Rem* case under s 24(b) CJA read with s 20(1)(a) and (2)(n) SCA because the Plaintiff was not making “*any claim in respect of the construction, repair or equipment of [the Vessel] or in respect of dock charges or dues*”.
18. Secondly, the learned High Court Judge correctly decided that the High Court had no admiralty jurisdiction to hear this Writ *In Rem* case under s 24(b) CJA read with s 20(1)(a) and (2)(m) SCA due to the following evidence and reasons:
  - (1) the HSFO was loaded into the Vessel’s cargo tanks and not into the fuel tanks or bunker tanks of the Vessel. It was clear

that the HSFO could not be intended for the “*operation or maintenance*” of the Vessel within the meaning of s 20(2)(m) SCA;

- (2) the Vessel only uses about 7 mt per day of low sulphur fuel oil when the Vessel’s engine is running at full sea speed at an output of 90% MCR (maximum continuous rating). It would take more than one year for the Vessel to consume the HSFO (supplied by the Plaintiff to the Vessel) as fuel for the Vessel at normal sea speed!;
- (3) the Plaintiff did not adduce any evidence to show that the HSFO was in fact used by the Vessel at all;
- (4) the Vessel was not equipped with a “*scrubber*” (exhaust gas cleaning system to reduce sulphur emission) for the Vessel to use the HSFO as bunkers in compliance with the requirements of MARPOL (International Convention for the Prevention of Pollution from Ships); and
- (5) on 22.7.2023, the HSFO was discharged by a “*ship-to-ship*” transfer from the Vessel to another vessel, “*Bunker Barge 3*”

**(High Court’s 5 Grounds of Decision).**

19. In support of This Appeal the Plaintiff’s learned counsel contended as follows, among others:

- (1) the documents regarding the Plaintiff’s supply of HSFO to the Vessel, including the “*Sales Confirmation*” and “*Bunker Delivery*

*Receipt* stated that the HSFO was “*RECEIVED FOR USE AS BUNKERS*”;

- (2) the “*Sales Confirmation*”, payment invoice and Statement of Account in this case referred to the HSFO as bunkers for the use of the Vessel;
- (3) the “*Bunker Supply Survey Report*”, the final inspection report regarding the supply of HSFO to the Vessel, stated that the HSFO was supplied as bunkers for the use and operation of the Vessel;
- (4) the WhatsApp communication between the Plaintiff’s manager on the one part and the Defendant’s agents and representatives on the other part, showed negotiations and order by the Defendant for the HSFO to be supplied by the Plaintiff as bunkers to the Vessel;
- (5) a letter from the Defendant’s representative, HAAPCO, which confirmed that HAAPCO was acting on the Defendant’s request, approval and authorization for the Plaintiff to supply the HSFO for the use of the Vessel. HAAPCO also gave a written confirmation that the cost of the HSFO was for the account of the Defendant;
- (6) evidence from the Plaintiff’s manager, Elie Wakim (who had no dealings with the alleged charterers of the HSFO);
- (7) there was an affidavit by AAS that AAS was not the charterer of the Vessel and did not buy the HSFO for subsequent resale to SP;

- (8) there was no evidence of any contract between AAS and SP. Nor was there any evidence of payment of the HSFO by SP; and
- (9) the Vessel had a “*double hull*” which allowed the tanks between the hulls to store the HSFO as bunkers for the use of the Vessel. This fact also explained the large quantity of HSFO supplied by the Plaintiff to the Defendant

**(Plaintiff’s Contentions).**

20. We find no merit in This Appeal. The following reasons and evidence support this decision:

- (1) the High Court’s 5 Grounds of Decision concerned objective facts which led to the High Court’s Answer (Jurisdictional Question); and
- (2) on an interlocutory application by the Defendant to challenge the jurisdiction of the Admiralty High Court, the Plaintiff (not the Defendant) had the burden to show only “*a strong argument*” for the invocation of the court’s admiralty jurisdiction in this case. The Defendant had no onus to prove on a balance of probabilities that the Admiralty High Court did not possess jurisdiction to decide this Writ *In Rem*. In this regard, we rely on the following two Federal Court cases from Australia (the Federal Court is not the highest court in Australia) -
  - (a) in **Empire Shipping Co Inc v Owners of the Ship, “*Shin Kobe Maru*”** (1991) 104 ALR 489, at 490, 492 and 494,

Gummow J (later a judge in the High Court of Australia, its apex court) decided as follows -

*“By notice of motion filed 12 October 1989, the defendant moves the court for orders that the originating process in this proceeding be set aside or, in the alternative, that service thereof on the defendant be set aside. The plaintiff invokes the admiralty jurisdiction of the court. The defendant denies that this jurisdiction has been attracted.*

...

*There has been division of opinion in England as to the correct approach to be taken in admiralty where an application is brought to set aside the writ and other subsequent proceedings on the ground that the court has no jurisdiction in the matter.*

...

*Counsel for Empire indicated a readiness to shoulder a burden expressed in terms drawn from the speech of Lord Radcliffe, that is to say a burden of showing that on consideration of the material before the court on the motion, there was a strong argument for the opinion that the court had jurisdiction. Counsel for YSL submitted, in effect, that on this motion it was for Empire to satisfy the court that, on the same balance of probabilities which would apply at a trial, the issues which now arose should be decided in favour of Empire. This submission reflects what was said by Slynn J in *The “Aventicum”*, supra. Nevertheless, in the light of what has been said in the High Court as to the appropriate method of dealing with motions challenging jurisdiction, both as regards the existence of federal jurisdiction (of which this case, after all, is one) and as to the existence of “long arm” or*

*“exorbitant” jurisdiction, I should accept the submission for Empire.”*

(emphasis added); and

- (b) the above judgment in ***Shin Kobe Maru*** had been followed by Foster J in **Port of Geelong Authority v The Ship “*Bass Reefer*”** (1993) 109 ALR 505, at 507. According to ***Bass Reefer***, at p. 511 -

*“The defendant, the ship Bass Reefer, was arrested in Townsville on 9 July 1992 pursuant to a writ in rem taken out in this court by the plaintiff on 3 July 1992. By this notice of motion, it is sought that the writ in rem be set aside except to the extent that it contains a claim for stevedoring services. It is also sought that the arrest of the defendant vessel be set aside or alternatively that the vessel be released from arrest. ...*

*... It seems clear that, a challenge having been made by the defendant to jurisdiction, it devolves upon the plaintiff at this stage to establish to the court's satisfaction that on consideration of the material placed before it on the motion there is a strong argument for the opinion that the court has jurisdiction: Empire Shipping Co Inc v Owners of the Ship “Shin Kobe Maru” (“Shin Kobe Maru”) (1991) 104 ALR 489. It is not necessary that the court be now satisfied as to jurisdiction on the balance of probabilities.”*

(emphasis added).

We are not satisfied that in view of the High Court's 5 Grounds of Decision, the Plaintiff had succeeded to show "a *strong argument*" for the High Court to exercise its admiralty jurisdiction in the present case. Nor are we satisfied that the Plaintiff's Contentions, taken at their highest, can show "a *strong argument*" for the invocation of the High Court's admiralty jurisdiction in this case. Lastly, we have no hesitation to decide that the High Court's Answer (Jurisdictional Question) is correct and there is therefore no ground for this court to set aside the High Court's Decision.

**F. Outcome of This Appeal**

21. Premised on the above grounds -

- (1) This Appeal is dismissed;
- (2) the High Court's Decision is affirmed; and
- (3) costs of This Appeal in a sum of RM25,000.00 shall be paid by the Plaintiff to the Defendant (subject to allocatur fee).

22. At the time of the preparation of this judgment, my learned sister, See Mee Chun JCA, had retired. This draft judgment was sent by me to my learned brother, Ismail bin Brahim JCA, who had agreed with this draft.

23. We end with our gratitude to all learned counsel for their able assistance, without which this judgment would not have been possible.

DATE: 22 JUNE 2026

- *sgd* -

WONG KIAN KHEONG

Judge

Court of Appeal

For the Appellant: Mr. Jeremy Mark a/l Joseph Jayaraj,  
Ms. Vinodhini Benjamin Samuel,  
Mr. Matthew Jerome van Huizen &  
Mr. Muhamad Irfan bin Jafri  
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For the Respondent: Mr. Ravin Woodhull, Mr. Yong Chee Kong,  
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Mr. Marcus Yong Chun Yao  
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