***MECK Petroleum DMCC v The Owners and/or Demise Charterers of the Ship or Vessel 'Global Falcon'* [2024] CLJU 1372 – Fuel Oil: Is it Bunker or Cargo?**

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Introduction

When commencing an admiralty claim in Malaysia, it is critical for plaintiffs to ensure that their claims fall within the restricted categories prescribed by law. Failure to do can result in the plaintiff's claim being set aside, along with exposure to damages for wrongful arrest.

Malaysia's admiralty jurisdiction is based on Sections 20 to 24 of the English Senior Courts Act 1981 ("**SCA**"). The categories of claims under which an admiralty action can be brought are set out in sections 20(2)(a) to (s) of the SCA, which are similar to those in the High Court (Admiralty Jurisdiction) Act 1961 of Singapore.

The Malaysian admiralty court's decision in *MECK Petroleum DMCC v The Owners and/or Demise Charterers of the Ship or Vessel 'Global Falcon'* [2024] CLJU 1372 ("**Global Falcon**") concerned the interpretation of section 20(2) (m) and (n) of the ~~UK Senior Courts Act 1981~~SCA, and sheds light on the factors considered by the Malaysian admiralty court in determining whether a claim falls within those specific categories.

Background Facts

In the Global Falcon, MECK Petroleum DMCC ("**Plaintiff**") commenced an admiralty *in rem* action and obtained a warrant to arrest the vessel "Global Falcon" ("**Vessel**"), owned by International Bird Shipping Co. ("**Owners**"). The Vessel was arrested as security for the Plaintiff's claim, which was subject to arbitration.

The Plaintiff's claim against the Owners was for unpaid "bunkers" of 2,699.740 mt High Sulphur Fuel Oil ("**HSFO**") supplied to the Vessel, in the value of approximately USD 1 million. The claim was brought under section 20(2)(m) of the SCA as a claim for *"goods or materials supplied to a ship for her operation or maintenance"* and section 20(2)(n) of the SCA i.e. "*the construction repair or equipment of a ship or in respect of dock charged or dues*".

After the Vessel was arrested, the Owners sought to set aside the writ and warrant of arrest, contending that the court did not have admiralty jurisdiction over the claim. One of the main grounds relied on by the Owners was that the HSFO was not supplied as bunkers for the operation of the Vessel, but as cargo for on sale. There was also a dispute as to whether the Owners in the present case were in fact the persons who were liable *in personam* for the present claim.

Malaysian Admiralty Court's Decision

The admiralty court found in favour of the Owners and held that the HSFO had not been supplied to the Vessel for her "*operation and maintenance*", and was not to "*equip*" the Vessel. The court set

aside the Plaintiff's writ and warrant of arrest, and held that the Owners were at liberty to file an application to determine if damages for wrongful arrest should be ordered against the Plaintiff.

In reaching its decision, the court found no basis for the claim to fall within section 20(2)(n), as there is a distinction between "*equip*" and "*supply*" (relying on the English decision of *Secony Bunker Oil Co v. Owners of the Steamship D'VORA* (1953) 1 WLR 34). "*Equip*" implies something more permanent and not consumable in nature, and would not cover a claim for fuel oil supplied to a vessel.

In relation to section 20(2)(m), the admiralty court considered the English decision of *"The River Rima"* [1998] 2 Lloyd's Law Rep 193. The House of Lords in *The River Rima* established two issues which must be met in determining if a claim falls within section 20(2)(m) – firstly, whether there was supply *"to a ship"* and secondly, whether it was supplied to her *"for her operation"*.

As there was no dispute that the supply of the HSFO was to the Vessel, the court focused on the question of whether the HSFO was supplied for "*her operation*". The High Court held that the HSFO could not have been supplied for the Vessel's "*operation*" due to the following:

1. The HSFO was loaded into cargo tanks of the Vessel: The HSFO has been loaded into the cargo tanks of the Vessel. The Plaintiff had not been able to explain why the HSFO was loaded into the cargo tanks, rather than the fuel or bunker tanks.

2. The quantity of the HSFO loaded on the Vessel: The quantity of HSFO supplied was more than 10 times the Vessel's normal fuel carrying capacity meant for engine operations (the court considered the fact that it would take more than one year for the Vessel to consume the HSFO at normal sea speed, and not earning any freight during the said period). The Plaintiff had also not been able to explain why such a large quantity was loaded.

3. The sulphur content of the HSFO: The admiralty court accepted the Owners' contentions that the Vessel consumes only very low sulphur fuel oil, and the use of HSFO is not permitted under the International Convention for the Prevention of Pollution from Ships 1973/1978 as amended ("**MARPOL**") unless the Vessel is fitted with a "scrubber", which the Vessel did not have. The HSFO supplied had a 3.03% m/m sulphur content and if the Owners had requested the HSFO as fuel oil or bunkers, with a sulphur content of more than 0.5% m/m, the Owners would have to declare that the HSFO will be used in combination with a scrubber. The Plaintiff has not produced any evidence to that effect.

4. Non-consumption by the Vessel: The admiralty court found that the Plaintiff had not been able to show that the HSFO was in fact consumed or used by the Vessel at all.

5. Discharge of the HSFO: The Owners averred that the HSFO cargo was discharged by ship-to-ship transfer to another vessel on or about a week after loading, and the Plaintiff failed to tender any evidence to rebut that averment.

In reaching its decision, the court also considered the facts of the Singapore case of *The "Golden Petroleum"* [1993] 3 SLR(R) 209, but did recognise that there were dissimilarities between both cases. In that case, the plaintiff arrested a vessel on the basis of the Singapore equivalent of Section 20(2)(m), but the warrant of arrest was later set aside. The various quantities of fuel oil/marine diesel oil which was delivered to that vessel was admitted by the defendant to be intended for sale to other ships and were shipped on board the ship as "*cargo*". The oil was delivered to the vessel's cargo tanks, and the vessel's propulsion unit did not run on the types of oil supplied.

The Singapore court in that case rejected the plaintiff's argument that the word "*operation*" meant anything "*done or procured to facilitate and ensure the profitable exploitation of the defendant's business with the ship as the vehicle*", and referred to the English law position (as expounded in the Court of Appeal's judgment in "*The River Rima*"), that the goods supplied must have "*a sufficient and direct connection with the operation of a ship*".

In addition, while the Malaysian admiralty court acknowledged that there were uncertainties as to the actual party who had contracted with the Plaintiff for the supply of the HSFO, it found that the determination of that issue was secondary – it only arose if the Plaintiff could establish that its claim fell within Sections 20(2)(m) and (n) of the UK SCA 1981. The Plaintiff had failed to do so.

Case Comment

This decision of the Malaysian admiralty court, which was affirmed on appeal, clarifies that for claims brought under section 20(2)(m), the phrase "*for her operation*" will not be construed widely. In line with English and Singapore decisions, the supply of goods must be for the working or running of the vessel, and not the business activities of the shipowner.

The decision also highlights the detailed analysis the court will undertake when determining whether a claim falls within a recognised category. It reinforces the critical need for plaintiffs to understand the exact criteria to be fulfilled to bring a claim within a specific category, and to provide robust evidence to substantiate reliance on such category.

Plaintiffs in Malaysia should also be cautious of the potential for damages for wrongful arrest, which has been granted by the admiralty court where it finds that the plaintiff had acted with *mala fides* and/or *crassa negligentia* (gross negligence) in obtaining the warrant of arrest.