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Guidance from the Singaporean Courts on what is a ship: “I cannot say why it was a ship. But I knew what it was when I saw it.”

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What does, or does not, make a floating craft a ship has long been a question which has plagued the minds of maritime related industries. The implications of the classification of a floating craft as a ship can be significant. If a floating craft is classified as a ship or vessel, then it will also be subject to maritime laws and regulations, which cover matters such as ship registration, mortgages, limitation of liability, ship arrest and collision liability. This question is important also for the offshore oil and gas industry when considering commercial craft, such as jack up rigs and floating storage regasification units: if they are identified purely as an offshore installation, then different regulations apply.¹ That question may be closer to being resolved following a decision issued in the High Court of Singapore on 18 December 2023. This judgment considers whether a vessel, owned by Aquaculture Centre of Excellence Pte Ltd (the “**Owner**”), is a ship, for purposes of determining the validity of invoking the Singaporean court’s admiralty jurisdiction.² Whilst not a decision that is binding on an English court, this judgment provides a useful evaluation of the current case law on the definition of a “ship” under both English and Singaporean law.

Factual Background:

In early 2021, the Owner purchased a barge, which was at that time named “WINDBUILD 73” (the “**Vessel**”), and situated in a shipyard in Batam, Indonesia (the “**Shipyard**”). The Owner entered into a contract with Vallianz Shipbuilding & Engineering Pte Ltd (the “**Builder**”) dated 21 January 2021, whereby the Builder agreed to convert the Vessel into a “Special Service Floating Fish Farm” and changed its name to the “ECO SPARK”. The Vessel was physically delivered, after some delays, by being towed by an ocean tug from the Shipyard to the farm site in Singapore on 27 February 2022.

The Dispute:

After the delivery of the Vessel, a payment dispute arose and the Builder initiated legal proceedings and simultaneously obtained warrant to arrest the Vessel on 14 March 2023.

The judge determined that there were two issues to consider in this case. The first, and the subject of this article, was to determine whether the ECO SPARK fell within the definition of “ship” under section 2 of the High Court (Admiralty Jurisdiction) Act 1961 (2020 Rev Ed) (“**the Act**”). The second was to decide whether the Vessel should be released from arrest.

The Owner argued that the ECO SPARK was not a ship, but a floating fish farm and therefore lacked the characteristics of a ship, such as engines or self-propulsion, navigation equipment, transportation of people, cargo, or objects, registration with any flag state, and immobility, among others. The Builder argued that the ECO SPARK

¹ Even if offshore floating craft such as jack up rigs and floating storage regasification units are considered to be a “ship” for the purposes of maritime legislation, they can be considered to be an “offshore installation” as well and subject to the laws and regulations which apply to offshore installations, especially when they are stationary on location for the purposes of carrying out exploration for or exploitation of hydrocarbons.

² *Vallianz Shipbuilding & Engineering Pte Ltd v Owner of the vessel “ECO SPARK”* [2023] SGHC 353.

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was a barge before the conversion and retained that nature and functionality despite the conversion. It did not need to be self-propelled, and this did not affect its classification as a ship.

Statutory Definition:

A “ship” is defined in section 2 of the Act, as “*including any vessel used in navigation*”. However, the term “vessel” is not defined in the Act. The Singaporean Interpretation Act 1965 provides little assistance, indicating that the term “vessel” “*includes floating craft of every description*”. It was common ground between the parties that the Vessel is a floating craft and thus a “vessel” within the meaning of section 2 of the Act. Therefore, the core facet of the definitional inquiry turned on the definition of the phrase “used in navigation” and whether the court should have regard to the design and capability of the Vessel, as opposed to the actual use and frequency of use of the Vessel in navigation.

Case Law Guidance:

The Singapore jurisprudence on the definition of “ship” is sparse so the Honourable Justice S Mohan cast the net wider and considered case law from other common law jurisdictions, including a number of English decisions.³ S Mohan J observed that the English case law on the subject “do not all speak with one voice”. The earlier cases suggest that the assessment of whether a vessel is “used in navigation” looks to its actual use, while cases decided more recently suggest that the answer depends on whether it is designed and capable of being used for navigation, irrespective of the actual current use.

S Mohan J found the 2002 case of *Perks v Clark*, particularly persuasive. An income tax case concerning three taxpayers who were employed on mobile offshore oil-drilling rigs, the issue being whether their earnings were “*emoluments from employment as a seafarer*” under paragraph 3(2A) of Schedule 12 of the Income and Corporation Taxes Act 1988 (UK).⁴ The same paragraph defined “*employment as a seafarer*” to mean: “... *employment consisting of the performance of duties on a ship (or of such duties and of others incidental to them)*”. As the word “*ship*” was not defined in the aforementioned Act, reliance was placed on the definition of “ship” under section 742 of the Merchant Shipping Act 1894 (UK) as “*includes every description of vessel used in navigation not propelled by oars*”.⁵

The English Court of Appeal found that the rigs were “ships” as they were “*capable of, and used for, navigation*” (at paragraph 43), stating that (at paragraph 42): “... *so long as “navigation” is a significant part of the function of the structure in question, the mere fact that it is incidental to some more specialised function, such as dredging or the provision of accommodation, does not take it outside the definition.*”

S Mohan J determined a multi-factorial enquiry was necessary in defining a “ship”. There was an extensive list of features which might indicate a ship – for example, self-propelling, having a keel, rudder, navigation lights, being manned by a crew, conveying persons or cargo from one point to another, to name a few. As stated in *Guardian Offshore* (an Australian case), the more of these characteristics that a vessel has, the more likely the vessel is to

³ Unless stated otherwise, all cases referred to in the judgment are decisions of the English Court.

⁴ *Perks v Clark (Inspector of Taxes) and other suits* [2001] 2 Lloyd’s Rep 431

⁵ Section 742 of the Merchant Shipping Act 1894 was repealed by Merchant Shipping Act 1995. The new definition of “*ship*” is, at section 313, “*includes every description of vessel used in navigation*”. However, the 1894 Act definition was relevant in *Perks v Clark* (see paragraph 2).

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be a “ship”. However, simultaneously, the failure to tick some of these boxes does not necessarily mean that the vessel cannot constitute a “ship”.⁶

Leaving aside the specific characteristics, the judge determined that at an “irreducible minimum” inquiry should be directed towards the capability of the vessel to be used in navigation as a matter of its physical design and construction, i.e. whether it is navigable and built to withstand the perils of the sea, irrespective of its actual current use. The judge agreed with the crucial distinction drawn by Mr Justice Lightman in *The Winnie Rigg*⁷ between “used in navigation” and “used for navigation”. The latter requires actual current use of the vessel for navigation purposes, while the former connotes that the vessel is capable of being used for navigation.

The Decision:

Returning to the facts of the case in question, it was obvious that in her past life as “WINDBUILD 73”, the Vessel undoubtedly fell within the definition of “ship”. S Mohan J determined that the installation of the fish farm atop the barge did not result in such a significant change to the physical structure of the Vessel such as to render it no longer “*navigable*”. Indeed, after the conversion work had begun and the Vessel was launched at the Shipyard and subsequently towed from the Shipyard to the farm site, a voyage undertaken in open waters of the Singapore Strait. Significantly, the Owner also did not seriously contest the fact that the Vessel was also a “ship” during the towage from the Shipyard to Singapore. The central plank of the Owner’s case was that after the Vessel arrived at Singapore and the spuds were lowered and embedded at depths of four to six metres into the seabed, the Vessel became an “immovable” structure that was no longer “capable of traversing significant water surfaces”.

The judge accepted that the Owner’s argument might have had some force if the appropriate test for “used in navigation” under section 2 of the Act is that of actual current use. However, as discussed above, one needs to assess if a vessel is capable of being used in navigation. The fact that a floating object is spudded down does not necessarily mean that it is no longer navigable. The question is whether a vessel is capable of being used in navigation. This test looks to the degree to which the vessel is moored (or, in this case, spudded down) and the extent of work that would need to be performed to remove it from its moorage for navigation to be possible, and in this case, crucially the spuds were removable and retractable.

Conclusion:

As famously commented by Lord Justice Scrutton in *Merchants Marine*,⁸ attempting to define a ship is a similarly impossible task to defining an elephant, and that “*he could not define an elephant, but he knew what it was when he saw one*”. Whilst this judgment is not binding on English Courts, an English judge may consider Justice S Mohan to have set a threshold that the definition of ship is in fact wide, and does not require any specific characteristic to be present, much like attempting to exhaustively define an elephant, but instead should focus on whether or not a vessel is capable of being used in navigation. This judgment may also be helpful when considering whether offshore floating craft such as jack up rigs and floating storage regasification units are also considered to be a “ship”.

⁶ *Guardian Offshore AU Pty Ltd v SAAB Seaeeye Leopard 1702 Remotely Operated Vehicle Lately on Board the Ship ‘Offshore Guardian’ and another* [2021] 1 Lloyd’s Rep 201 (“Guardian Offshore”), paragraph 80.

⁷ *R v Carrick District Council, ex parte Prankerd* [1999] QB 1119

⁸ *Merchants Marine Insurance Co Ltd v North of England Protection & Indemnity Association (1926)* 26 LI L Rep 201