

Legal Update

The VAYU: Jurisdictional Foundations of an Action in Rem

Introduction

The recent decision of the Singapore High Court in the “VAYU” (formerly known as “QIAN TAI 1”) [2026] SGHC 204 provides a useful reminder of the importance of establishing the jurisdictional requirements for an admiralty action in rem at the time proceedings are commenced.

The decision is particularly noteworthy because the jurisdictional challenge succeeded after the vessel had been arrested, default judgment obtained and an order for appraisalment and sale made.

The judgment also considers two related issues of practical interest: when a demise charter comes to an end for the purposes of s 4(4) of the *High Court (Admiralty Jurisdiction) Act 1961* (“HCAJA”), and the application of the *Evidence Act* where an application proceeds to an evidentiary hearing involving cross-examination.

Background

PT Industri Nabati Lestari alleged that approximately 10,000 MT of palm olein carried on board the QIAN TAI 1 had been misdelivered in India in September 2022 without production of the original bills of lading.

At the time the cause of action arose, the vessel was owned by Star Dragon Shipping Ltd and demise chartered to OKA Tankers Pte Ltd (“OKA”). For the purposes of the jurisdictional challenge, it was common ground that OKA was the relevant person who would be liable on the claim in an action in personam.

The claimant commenced its action in rem on 27 July 2023.

The vessel subsequently changed ownership and was renamed the VAYU. When she called at Singapore in November 2025, the claimant arrested her. No notice of intention to contest or not contest the action was filed by OKA, and the claimant subsequently obtained default judgment for approximately US\$2.76 million, together with an order for the appraisalment and

sale of the vessel.

The vessel's current owner, Aquilo Shipping Inc, intervened and challenged the court's admiralty jurisdiction.

The jurisdictional issue ultimately turned on whether OKA remained the demise charterer when the action was commenced on 27 July 2023. The High Court held that the claimant had failed to establish that it did.

The two relevant dates under s 4(4)

Section 4(4) HCAJA requires attention to two distinct points in time.

The person who would be liable on the claim in an action in personam must, when the cause of action arose, have been the owner or charterer of, or in possession or control of, the ship.

When the action in rem is brought, that same person must be either the beneficial owner of the ship as respects all the shares in it or the demise charterer.

It was therefore not sufficient that OKA was the demise charterer when the alleged misdelivery occurred in September 2022. The claimant also had to establish that OKA remained the demise charterer when the action was commenced in July 2023.

The legal burden of establishing the facts necessary to found jurisdiction rested on the claimant.

When does a demise charter end?

An interesting aspect of the judgment is the distinction between contractual termination of a bareboat charter and termination of the demise itself.

The defining feature of a demise charter is the transfer of possession and control of the vessel from owner to charterer. The exercise of a contractual right to terminate the charter does not therefore, without more, necessarily bring the demise immediately to an end. The relevant question remains whether possession and control have in fact reverted to the owner or have otherwise been irretrievably lost by the charterer.

This distinction can be important where an arrest is contemplated following changes in a vessel's chartering arrangements.

In *The VAYU*, there was evidence that the OKA bareboat charter had been terminated on or around 24 March 2023. There was also evidence of a further bareboat charter between Star Dragon and Arcis Global Merchants Pte Ltd ("**Arcis**") from that date.

Against that background, the claimant had to establish that OKA nevertheless remained in possession and control of the vessel when proceedings were commenced approximately four months later. It failed to do so.

The decision illustrates why the contractual documents may not always provide a complete answer. Depending on the circumstances, evidence concerning actual possession and operational control of the vessel may assume considerable importance.

The effect of the default judgment

By the time the jurisdictional challenge was determined, the claimant had already arrested the vessel, obtained default judgment and secured an order for her appraisal and sale.

The High Court held that this did not prevent the jurisdictional issue from being examined.

The court rejected the contention that *res judicata* or issue estoppel prevented the current owner from raising the issue. The jurisdictional question had not previously been determined on its merits.

More fundamentally, where an *in rem* default judgment has been entered in an admiralty action in which admiralty jurisdiction was not properly invoked, the judgment is a nullity and necessarily irregular. The Rules of Court 2021 expressly empower the court to set aside or vary a default judgment entered in an action *in rem*.

The result was that the default judgment, originating claim *in rem*, warrant of arrest and order for appraisal and sale were all set aside, and the vessel was released from arrest.

The case is therefore a useful reminder that obtaining an arrest, or even judgment following that arrest, does not cure a defect in the jurisdictional basis upon which the action *in rem* was commenced.

The evidentiary hearing and the Evidence Act

There is a further aspect of the judgment which may have application beyond admiralty proceedings.

The court directed that the jurisdictional issue proceed to an evidentiary hearing. Three witnesses were ultimately cross-examined over two days. The evidence included the circumstances surrounding the termination of the OKA bareboat charter, the subsequent Arcis charter, and whether OKA continued to exercise possession and control of the vessel after March 2023.

The court also considered evidence relied upon by the claimant as indicating OKA's continuing involvement with the vessel, including its alleged involvement in procuring and funding repairs after the apparent termination of its charter. That evidence had to be considered against the subsequent chartering arrangements and the evidence given by the witnesses under cross-examination.

This gave rise to a question as to the applicable evidential regime.

The High Court held that where cross-examination is ordered in an originating application, or an application made within an originating claim, the Evidence Act applies to those proceedings.

The court considered it artificial for the Evidence Act to govern the oral testimony and cross-examination while a different evidential regime applied to the affidavits forming the basis of that evidence. The Evidence Act, including its provisions concerning hearsay, therefore applied to the affidavits filed for the evidentiary hearing.

This aspect of the decision may be relevant beyond admiralty cases where an application ordinarily determined on affidavit evidence develops into a contested evidentiary hearing.

Some practical observations

The VAYU does not change the established requirements of section 4(4) HCAJA. It does, however, demonstrate their practical importance.

For parties contemplating an arrest, particular care should be taken where there has been a change in ownership or demise chartering arrangements between the accrual of the claim and the commencement of proceedings.

It may not be sufficient simply to identify the person liable when the cause of action arose. The jurisdictional chain should be followed through to the date on which the action in rem is commenced.

Where the relevant person's status as demise charterer is in question, contractual termination is also not necessarily conclusive. The underlying position concerning possession and control may have to be examined.

Finally, The VAYU demonstrates that a jurisdictional defect is not cured by what happens subsequently in the proceedings. In this case, the claimant had obtained an arrest, default judgment and an order for judicial sale. Once the jurisdictional foundation failed, those orders could not stand.

Conclusion

The practical message from The VAYU is a relatively simple one.

Before invoking the Singapore court's jurisdiction in rem, an arresting party should be satisfied that it can establish the complete jurisdictional chain required by section 4(4) HCAJA — not only when the cause of action arose, but also when the action is commenced.

The judgment is also of wider procedural interest for its treatment of the Evidence Act where an application proceeds to an evidentiary hearing involving cross-examination.

For admiralty practitioners, however, the principal lesson remains one that is best addressed before the warrant of arrest is sought: establish the jurisdictional foundation first.

Further information

Should you have any questions on admiralty actions in rem and ship arrests in Singapore, please reach out to the team at PDLegal.

Peter Doraisamy

Managing Partner PDLegal

pdoraisamy@pdlegal.com.sg

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