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To: Transport Industry Operators

Arrest of barge

Can barges be arrested? Judge William Waung of the Hong Kong High Court said yes in his Judgment dated 24/9/2004.

It was a case about cargo damage on board a barge. The cargo interests alleged that the negligent and improper control of the cargo movement resulted in the damage. The cargo interests issued a writ against the barge owners and/or demise charterers and attempted to seek the issue of a warrant of arrest.

The question in hand was really whether the barge came within the meaning of the word ship in section 12E(1) of the High Court Ordinance. "Ship" is defined there as including "any description of vessel used in navigation and includes... a hovercraft". So, two concepts are set out in that definition: (1) vessel, and (2) used in navigation.

Vessel was described in the judgment of Sheen J in *Steedman v. Schofield* [1992] 2 Lloyds Rep. 163 at page 166S:

"A vessel is usually a hollow receptacle for carrying goods or people. In common parlance 'vessel' is a word used to refer to craft larger than rowing boats and it includes every description of watercraft used or capable of being used as a means of transportation on water."

The barge in question was described by the surveyor appointed by the cargo interests as being having a mast, lights, sound, crew, crew quarters, registered, licensed as "Class II" and its main use being regularly to move in the waters of Hong Kong for carrying cargo from one place to another. The nature of this particular barge, which was of a type commonly seen in Hong Kong, was such that, in the Judge's view, it was undoubtedly a vessel because it was certainly a receptacle for carrying goods, was larger than rowing boat, and was used as a means of transportation on water. The Judge had little doubt, therefore, that the first requirement of the Ordinance namely, the "vessel" was satisfied.

Regarding the second requirement of "used in navigation", many of the indicia of this barge being used for navigation could be found in this case. Firstly, this barge was not a stationary craft. It was a craft or vessel with movement. The second characteristic was that it had on board all the various objects which were normally associated with navigation e.g. the mast on board the vessel, the various lights that were required for navigation and for navigation safety, the ability to project sound for safe navigation for example when there was fog or mist. The barge carried crew and crew accommodation and it was licensed as Class II by the

Marine Department. Class II is a class for vessels with regular movement as opposed to Class III which is a vessel meant to be stationary. The barge was registered and, more importantly, it was a vessel equipped for, intended for and actually used regularly for, carriage of cargo on water from one place to another place.

In the judgment of Steedman, in considering whether a jet-ski was a ship the Admiralty Judge, Sheen J said in relation to the words “used in navigation” at page 166:

“Navigation is the nautical art or science of conducting a ship from one place to another. The navigator must be able (1) to determine the ship’s position and (2) to determine the future course or course to be steered to reach the intended destination. The word ‘navigation’ is also used to describe the action of navigating or ordered movement of ships on water. Hence ‘navigable waters’ means waters on which ships can be navigated. To my mind the phrase ‘used in navigation’ conveys the concept of transporting persons or property by water to an intended destination. A fishing vessel may go to sea and return to the harbour from which she sailed, but that vessel will nevertheless be navigated to her fishing grounds and back again. ‘Navigation’ is not synonymous with movement on water. Navigation is planned or ordered movement from one place to another [place].”

The expression or the phrase “planned or ordered movement from one place to another” summarises, quite neatly and accurately, what is meant by “used in navigation”.

The third characteristic was that this barge’s function was to carry goods regularly between various places – from one place to another place, under a planned movement. So, it came entirely within the meaning of the word in the Ordinance “used in navigation”.

The Judge had no doubt that this barge, the subject matter of the proposed warrant of arrest, was a ship within the meaning of the Ordinance. He, therefore, concluded that a warrant of arrest could and should be issued and he so ordered.

Please feel free to contact us if you have any questions or you want to have a copy of the Judgment.

Simon Chan
Director
E-mail: simonchan@sun-mobility.com

Richard Chan
Director
E-mail: richardchan@sun-mobility.com

10/F., United Centre, Admiralty, Hong Kong. Tel: 2299 5566 Fax: :2866 7096
E-mail: gm@sun-mobility.com Website: www.sun-mobility.com
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