
 Costank (S) Pte Ltd v Hyundai Merchant Marine Co Ltd

**DALIAN MARITIME
COURT OF CHINA
(DECISION ON REVIEW)**

20 January 2015

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COSTANK (S) PTE LTD
v
HYUNDAI MERCHANT MARINE
CO LTD

[2014] DHBZ No.80

Before Chief Judge: Shen YANJUN,
Acting Judge: Wang HONGWEI,
Acting Judge: Zang XIANGZHEN and
Court Clerk: Wang SHURUI

OW Bunker — Bunker oil supplied to respondent (the bareboat charterer) by OW Bunker Middle East — Applicant supplied bunker oil to OW Bunker Far East — Retention of title clause — Applicant applied to arrest respondent’s vessel — Creditor-debtor relationship — Privity of contract — Subrogation rights — Whether respondent committed tort of trespass on applicant’s bunker oil — Whether applicant is entitled to arrest vessel.

During the court trial of ship arrest disputes between the applicant Costank (S) Pte Ltd (hereinafter referred to as “the applicant”) and the respondent Hyundai Merchant Marine Co Ltd (hereinafter referred to “the respondent”), pursuant to the application filed by the applicant for preservation of maritime claims before instituting the action, our Court delivered Civil Ruling [2014] DHBZ No.80, approving the application and ordering the arrest of the Panamanian flagged-vessel *M/T Universal Queen* at Dalian port. The respondent (the bareboat charterer of *Universal Queen*) was dissatisfied with the Civil Ruling and filed an Application for Review to our Court.

The applicant, Costank (S) Pte Ltd, was domiciled at 9 Temasek Boulevard #07-00C Suntec City Tower 2, Singapore 038989. The respondent, Hyundai Merchant Marine Co Ltd, was domiciled at 194, Yugok-ro, Jongno-gu, Seoul, Korea.

Tuesday, 20 January 2015

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JUDGMENT

DALIAN MARITIME COURT OF CHINA:

1. The respondent stated that:

(1) It never entered into any contracts of sale and purchase of marine bunker oil with the applicant. Therefore, it is not obliged to pay the sale price to the applicant.

(2) The disputed bunker oil supplied to *M/T Universal Queen* on 14 October 2014 at Singapore was purchased from OW Bunker Middle East DMCC (hereinafter referred to as “OW Bunker Middle East”) by the respondent, and Tax Invoice No CT10-1218/14 provided by the applicant clearly stated that it should demand payment for the disputed bunker oil from OW Bunker Far East (S) Pte Ltd (hereinafter referred to as “OW Bunker Far East”). The applicant had sold the disputed bunker oil to OW Bunker Far East as seller; however, it was OW Bunker Middle East who concluded the bunker oil sale and purchase contract with the respondent.

(3) OW Bunker Middle East and OW Bunker Far East are independent legal persons. The applicant had misled the court by naming the two companies OW Singapore collectively, so as to create a falsified impression that the respondent had purchased bunker oil from its debtor OW Bunker Far East directly.

(4) The applicant applied to arrest *Universal Queen* on the grounds of subrogation right, which in fact did not exist at all.

(5) Upon receiving the applicant’s email to demand payment, the respondent immediately sent an email to its contracting party, OW Bunker Middle East, to enquire to whom the sales money should be paid, and required OW Bunker Middle East and other OW entities to negotiate with the applicant. However, OW Bunker Middle East did not agree that the respondent should pay the applicant directly.

(6) Hence the applicant had no evidence to prove that the respondent had acted in tort of trespass to illegally possess the bunkers. The respondent also received notice from ING Bank NV on 7 November 2014, in which ING Bank NV notified that OW Bunker Group had assigned all of its credit rights for receivables to it in accordance with their Security Agreement and requested the respondent pay their outstanding sums, including the disputed bunker oil sales money owed by OW Bunker group to ING Bank.

(7) In view of the above, the respondent is not legally obliged to pay the disputed bunker oil sales money to the applicant. In accordance with article 23 of the Special Maritime

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Procedure Law of the PRC, the application to arrest *Universal Queen* has no legal basis. The respondent thereby requests the court to review the Civil Ruling for the vessel arrest and make the decision to return the cash security provided for releasing the vessel.

2. In accordance with the respondent's Application for Review, our Court served a hearing notice to both sides and the hearing for the above dispute was held on 14 January 2015.

3. Upon examination, our Court is of the opinion that:

(1) The bunker oil supply contract and tax invoice provided by the applicant can prove the creditor-debtor relationship between OW Bunker Far East and the applicant.

(2) The applicant neither proves that OW Bunker Middle East and OW Bunker Far East are the same entity, nor proves the existence of a creditor-debtor relationship and the corresponding contents of the creditor-debtor relationship between OW Bunker Middle East and OW Bunker Far East. The applicant's allegation that it had subrogation rights against the respondent is accordingly not upheld by our Court.

(3) Although there is a contract clause in the bunker oil supply contract between the applicant and OW Bunker Far East that "title in the deliveries shall remain with the Seller and shall not pass to the Buyer until the price due for the deliveries has been paid in full. The Buyer shall be the bailee of the deliveries for the

Seller until title has passed to the Buyer", such clause is the agreement between the applicant and OW Bunker Far East and is not binding on the respondent. In this regard, the applicant's allegation that the respondent's possession and usage of the disputed bunker oil has infringed upon its legitimate rights is groundless and is not upheld by our Court.

4. To summarise, although the applicant has provided bunker oil supply documents to prove it had supplied bunker oil to *Universal Queen*, bareboat-chartered by the respondent, it cannot prove the respondent is responsible for its maritime claims. The applicant has no evidence to prove that there is a direct creditor-debtor relationship between the respondent and the applicant, and the respondent's reasons for review are tenable. Pursuant to para 2, article 17 and para 1, article 23 of the Special Maritime Procedure Law of the PRC, our Court hereby decides as below.

5. The property preservation against the respondent Hyundai Merchant Marine Co Ltd shall be lifted.

6. The cash fund security of US\$2,300,000 for releasing *Universal Queen* provided by the respondent Hyundai Merchant Marine Co Ltd shall be returned.

[Editors' note: this case is provided by Mr M Q Zhu, senior partner of Heng Xin Law Office, Dalian, PRC, with due editorial work by the Editors. Mr M Q Zhu is the lawyer representing the respondent in this case.]