

News

Shipping



When a ship is involved in a dispute, the first question is “who is its owner?”

Before taking action in a case involving a ship, it is crucial to identify the owner correctly. Suing the wrong party can result in delays, inconvenience and costs or – more seriously – a mistake can extinguish any prospect of success because the claim against the correct party is time-barred or no longer viable.

REGISTRATION

The first question to be asked is whether the question of ownership is conclusively determined by the entry of ownership in the relevant registry.

To answer this, the logical starting point is section 12B(4) of the Hong Kong High Court Ordinance. The section provides:

“(4) In the case of any...claim ... where –

the claim arises in connection with a ship; and

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

an action in rem may ... be brought ... against –

that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; or

any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.”

Tian Sheng No 8 [2000] 3 HKLRD 49, conducted by the writer, is the only admiralty case to have reached the Hong Kong Court of Final Appeal on this important point. In *Tian Sheng No 8*, the court adopted the UK approach in *The Evpo Agnic* [1988] 1WLR 1090 and held that “owner” in section 12B(4)(b) means the registered owner.

This approach makes sense for two reasons. Firstly, the use and meaning of the word “owner” in section 12B(4)(b) must be contrasted with the use of the words “beneficial owner” in section 12B(4)(b)(i) and (ii). In *The Evpo Agnic*, the Master of the Rolls, Lord Donaldson, said that, where a statute uses different terminology, the basic rule of construction is to presume that a different meaning is intended, particularly where different terminology appears in the same section. So, when construing section 12B(4)(b), it must be assumed that the drafters meant “owner” to mean something other than “beneficial owner” and that “owner” must refer to the registered owner.

Secondly, this way of approaching the question gives certainty to plaintiffs, who can be confident that they have identified the correct party to proceed against.

The Court of Final Appeal in *Tian Sheng No 8* also said that registered ownership is conclusive of beneficial ownership, and it would only be otherwise in a “wholly exceptional case”. In *Tian Xiang 2 Hao*, Ince & Co filed an acknowledgement of service of a writ on behalf of a vessel’s “owners”, arguing that, even though their clients were not registered as owners, they were its beneficial

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owners and entitled to enter an acknowledgement of service as “owners”. But the Court of First Instance and the Court of Appeal disagreed: they said that a beneficial owner could not answer to the description of “owner” and struck out the acknowledgment of service.

OTHER JURISDICTIONS

A similar approach is taken in other jurisdictions. The Malaysian High Court accepts that registration, for all intents and purposes, decides the question of beneficial ownership, with the burden of proof falling on any registered owner arguing that it is not the beneficial owner of a vessel. Singapore, however, has taken a different view and gives the plaintiff the burden of showing that the registered owner is also the beneficial owner. In Australia and New Zealand, the courts say that proprietary rights, rather than registration, determine the question of who owns a vessel – but that a party who is the registered owner of a vessel will have the burden of proving that it is not the beneficial owner.



COMPETING REGISTRATIONS

But how should ownership be determined where the ship is entered in different registries with different owners at the same time? This situation may arise where a ship has been sold and the vendor has failed to ensure that it has been deleted from the original registry.

The only decided case in Hong Kong on this point is *Blue Bridge, formerly known as Great Power* [2002] HKCFI 1232. Mr Justice Waung distinguished *Blue Bridge* from *Tian Sheng No 8*, where there was no competing registration and the Court of Final Appeal relied on the provisional registration of ownership to determine beneficial ownership.

All things being equal, a permanent registration is to be preferred to a provisional registration because a permanent registration is likely to be better supported by documentation – which is the most relevant question when determining which of two competing registries should be preferred. In *Blue Bridge*, there were registrations in Cyprus and Belize. The Cypriot registration was supported by the bill of sale – referred to by the judge as “powerful” – while the Belize registration was not.

Blue Bridge does not provide any hard and fast rules about resolving competing registrations: it simply indicates factors that are favoured by the Hong Kong court. The circumstances of each case will need to be considered, therefore.

FURTHER INFORMATION

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