

Owners of "Shin Kobe Maru" v Empire Shipping Co Inc (1994) 181 CLR 404

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Facts

- The "*Shin Kobe Maru*" ("*the Vessel*") was a Japanese registered cargo ship which carried ore to international clients.
- The Vessel was built for Seven Seas Transport Incorporated ("*Seven Seas*"), a Liberian company. It was originally registered in Liberia as the "*Seven Seas Conqueror*".
- Seven Seas was a wholly owned subsidiary of United Transport Investment Incorporated ("**UTI**"), also a Liberian company. The shares in UTI were equally owned by Navix Line Ltd. ("**Navix**"), a company incorporated in Japan, and the respondent, Empire Shipping Company Inc ("**Empire**"), a Panamanian company.
- Navix was previously known as Yamashita-Shinnihon Steamship Co Ltd ("**YSL**") and entered into the various transactions under that name.
- On 18 September 1975, Empire and YSL entered into a joint venture agreement ("**JVA**") which recited their agreement "*to enter into and to jointly carry on the business of shipping*". It also recited their shareholding in UTI, UTI's "*establishment*" of Seven Seas (although Seven Seas was actually incorporated before UTI) and Seven Seas' agreement with a ship builder for the "*construction and purchase of one ore carrier of about 116,000 tons*". It also recited their willingness to execute the joint venture agreement "*for the purposes of jointly own [sic] an ore carrier of about 116,000 tons*".
- The "*Seven Seas Conqueror*" was eventually renamed the "*Shin Kobe Maru*".
- The JVA required YSL to first purchase the Vessel in order to register it in Japan and then, in due course, sell it back to Empire.
- Empire argued that the Vessel had not been transferred to Seven Seas or another joint venture company and wanted specific performance under the JVA. The Appellant argued that Empire did not have a proprietary maritime claim under section 4(2) of the *Admiralty Act 1988* (Cth).

Legislation

Section 4(2) of the *Admiralty Act 1988* (Cth) stated that a proprietary maritime claim is a reference to:

(2) A reference in this Act to a proprietary maritime claim is a reference to:

(a) a claim relating to:

(i) possession of a ship;

(ii) title to, or ownership of, a ship or a share in a ship; (iii) a mortgage of a ship or of a share in a ship; or

(iv) a mortgage of a ship's freight;

(b) a claim between co-owners of a ship relating to the possession, ownership, operation or earnings of the ship;

(c) a claim for the satisfaction or enforcement of a judgment given by a court (including a court of a foreign country) against a ship or other property in a proceeding in rem in the nature of a proceeding in Admiralty; or

(d) a claim for interest in respect of a claim referred to in paragraph (a), (b) or (c).

Held

The High Court held that a claim by a plaintiff that, in accordance with the terms of a joint venture agreement with the defendant, ownership of a vessel be transferred to the joint venture company (or another joint venture company in which the plaintiff and defendant had an interest) was a proprietary maritime claim within section 4(2)(a) of the *Admiralty Act 1988* (Cth).

Quotes

"In their natural and ordinary meaning, the words "a claim...relating to...ownership" are wide enough to encompass a claim that a third party is or has been or is entitled to become the owner of the property in question. In this regard, the expression "a claim...relating to...ownership" may be contrasted with "a claim to ownership" or "a claim for ownership", which latter expressions would ordinarily indicate a claim as to one's own ownership, not that of another."

Full Text

The full text is available here: <https://jade.io/j/?a=outline&id=67860>

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