OCBC v. ArgoGlobal Underwriting - High Court of Singapore addresses the relationship between perils of the seas and decrepitude, and breaches of warranties under the Insurance Act 2015

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On 30 April 2025, the Singapore High Court handed down judgment in ***Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd*** [2025] SGHC 82, a marine insurance case which will be of interest to English practitioners for its consideration of several issues of English insurance law, including the application of s11 of the Insurance Act 2015. Guy Blackwood KC acted as an expert on English law for the Claimant.

The Claimant was mortgagee of the rig "TERAS LYZA" (the "Vessel") which was insured under a hull and machinery insurance policy issued by the Defendants. The Vessel capsized whilst being towed, resulting in the Vessel owner tendering notice of abandonment and claiming a constructive total loss.

1. In examining whether the vessel was lost by perils of the sea, the Court affirmed the continuing validity of the decision in ***Canada Rice Mills v Union Marine and General Insurance*** [1941] AC 55 to the effect that where there is an accidental and unexpected ingress of seawater into a vessel causing loss or damage, prima facie there is loss by perils of the seas (paras 87-116). The Defendants' submission that the burden was on the Claimant to prove precisely how the vessel capsized (based on what the Judge held was a misreading of ***The Popi M*** [1985] 1 WLR 948), was rejected. It remained good law that to the extent a ship is shown to be seaworthy and sinks in unexplained circumstances, the rebuttable presumption is that the vessel was lost by perils of the sea.

2. The Court also considered the effect of a breach of warranty by the assured by reference to ss10-11 of the Insurance Act 2015, it having been alleged (unsuccessfully) by the Defendants that the Claimant had breached requirements of the policy to comply with certain statutory and regulatory requirements and operational procedures concerning the tow (paras 276-290). Section 11 of the Act precludes an insurer from relying on non-compliance with warranties to discharge its liability, save where the relevant term is one "defining the risk as a whole". This phrase has yet to be interpreted in English case law. The Judge accepted the Claimant's evidence, that terms defining the risk as a whole were those which were so fundamental and extensive that they delimit the risk that the insurer is underwriting, such as for example geographical usage restrictions in this case. It did not extent to cover everything other than utterly irrelevant terms, as contended for by the Defendants.

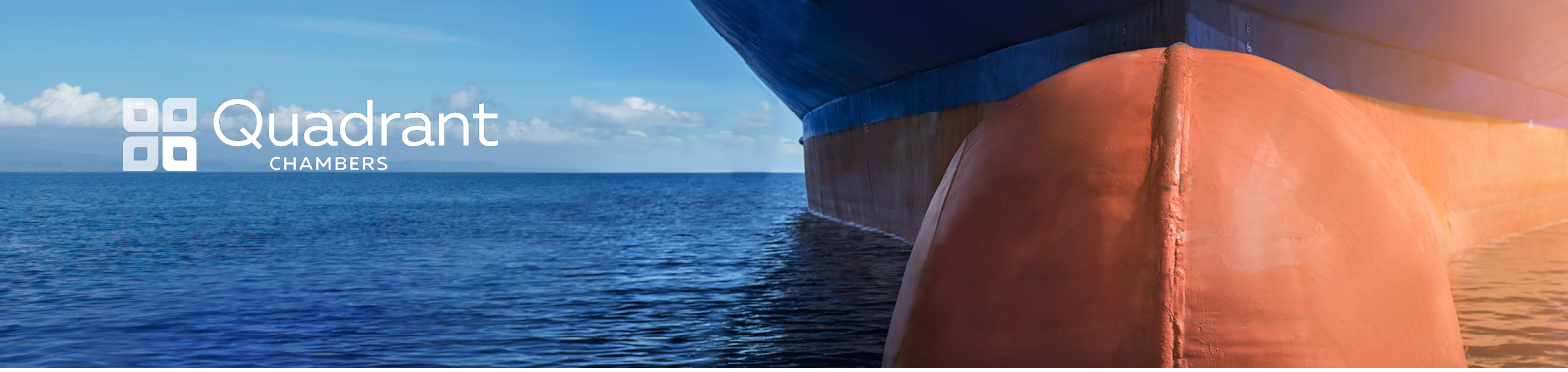
3. On the assumption that express warranties had been breached, the Judge held (paras 291-297) that where a "held covered" clause did not require notice, English law retained a requirement for the Claimant to comply with the duty of utmost good faith as a condition precedent to its exercise.

4. Finally, it was argued by the Defendants that section B of the marine insurance policy, the Increased Value section was void as a gaming or wagering contract under s4 of the Marine Insurance Act 1906. In that part of the policy, the underwriters undertook to insure the vessel for increased value and/or excess liabilities but it was subject to a "policy proof of interest" clause.

It was the joint view of the English law experts that section A of the marine insurance policy, Hull & Machinery was not void as a gaming or wagering contract, presumably on the basis that the Hull & Machinery and Increased Value coverages constitute separate and severable contracts of insurance; ***The Galatea*** [2015] 2 Lloyd's Rep. 289 at [272].

It was also the joint view of the English law experts, which the Judge accepted, that section B of the policy was void on that basis (paras 301-308).

The decision therefore touches on several issues of English law which are of importance in the marine insurance context, and the discussion of the scope of s11 of the Insurance Act 2015 will be of particular interest given the present lack of English authority on this point.



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Rob has developed a busy practice spanning the breadth of Chambers' practice areas including shipping, commercial disputes, international arbitration and aviation. He has appeared as sole counsel in the High Court and County Court and as a junior in several high value matters. Prior to joining Chambers, Rob was a judicial assistant to Lord Justice Longmore in the Court of Appeal and worked on a number of large commercial disputes such as ***Banco Santander Totta SA v Companhia de Carris de Ferro de Lisboa SA*** [2016] EWCA Civ 1267, in which the Court addressed the proper interpretation of Article 3 of the Rome Convention. Rob has also completed a 3-month secondment at the Financial Conduct Authority in the Insurance and Pensions team of its in-house legal department.

>See Robert's full profile here

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