



A. Introduction

The Singapore's Court of Appeal's recent decision in *Natixis, Singapore Branch v Seshadri Rajagopalan and others and other appeals [2025] SGCA 29* serves as an important decision for the intersection between insolvency and admiralty laws. The decision addresses a dispute concerning admiralty statutory liens, examining whether the judicial managers of an insolvent ship owning company acted wrongfully by procuring the offshore arrest and judicial sale of a vessel, despite the appellants having issued admiralty *in rem* writs against it in Singapore.

The decision demonstrates how a Singapore Court dovetailed the conflicting principles in insolvency law and admiralty law by giving priority to the insolvent company and treating all creditors equally, rather than allowing individual creditors to gain special advantages.. In particular, the judgment explores the security rights granted by statutory admiralty liens and its weightage against a judicial sale and/or the general body of creditors.

In its decision, the Court of Appeal ("**Court**") dismissed the action commenced by the appellants and held that the judicial managers Nan Chiau Maritime (Pte) Ltd ("**Nan Chiau**" and/or the "**Company**") had not contravened any provisions of the Insolvency, Restructuring and Dissolution Act ("**IRDA**") by disposing *Chang Bai San* (the "**Vessel**") through an extra-territorial judicial sale, with the Company keeping the net sale proceeds after payment to a mortgagee.

B. Background

The appellants comprise three banks – Natixis, Singapore branch ("**Natixis**"), Societe Generale, Singapore Branch ("**Societe Generale**") and The Hongkong and Shanghai Banking Corporation Limited ("**HSBC**"), which all financed Hin Leong Trading ("**HLT**") against the security of pledges of bills of lading, issued by Ocean Tankers (Pte) Ltd ("**OTPL**"), which is also part of the HLT Group and the demise

charterers of the Vessel at the time.¹ The appellants, in essence, contended that they exercised a statutory lien over the Vessel as they had obtained *writs in rem* for alleged misdelivery and/or loss of cargo that were subject of the bills of lading pledged to them.² On 10 May 2021, the Vessel, which was initially on charter to OTPL, was redelivered to Nan Chiau.³

On or around 28 August 2021, the Vessel was arrested immediately upon arrival at Gibraltar. The Mortgagee, Standard Chartered Bank (Hong Kong) Ltd (the “**Mortgagee**”), had been preparing for its arrival by commencing proceedings in the court of Gibraltar.⁴ During the Singapore High Court proceedings, specific discovery revealed that, shortly before the Vessel’s arrival in Gibraltar, Nan Chiau had entered into a Memorandum of Agreement with Genial Marine SA (“**Genial Marine**”).⁵ Under this agreement, the parties agreed that the Vessel would be sold to Genial Marine free of any encumbrances through a judicial sale.⁶

On 20 September 2021, the Gibraltar court ordered the judicial sale of the Vessel to Genial Marine, which undisputedly extinguished the statutory liens of the appellants as well as the encumbrances.⁷ On 21 December 2021, the Gibraltar court ordered that the Mortgagee’s claim be paid out of the sale proceeds of the Vessel, and for the net proceeds (if any) to be paid to Nan Chiau.⁸

Prior to the appeal, before the General Division of the High Court,⁹ the appellants claimed that they obtained statutory liens on the Vessel through the issuance of *writs in rem*, which constituted security interests. The appellants sought to have the net proceeds applied in accordance with their security interests in the Vessel, taking priority over other creditors.¹⁰ The crux of their case was that the judicial managers wrongfully disposed of the Vessel as they did not adhere to section 100 (2) of the IRDA, which required them to take the court’s permission for the sale.¹¹ Further, the appellants contended that the judicial managers acted in a way that unfairly prejudiced the appellants’ interests as creditors, in breach of section 115 of the IRDA.¹² Lastly, they claimed that the Company was unjustly enriched from the sale proceeds at their expense by relying on the principle in *Ex parte James*.¹³

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¹ *Natixis, Singapore Branch v Seshadri Rajagopalan and others and other appeals* (“*Natixis CA*”) [2025] SGCA 29 at [7].

² *Natixis CA* at [11].

³ *Natixis CA* at [12].

⁴ *Natixis CA* at [15].

⁵ *Natixis CA* at [17].

⁶ *Natixis CA* at [17].

⁷ *Natixis CA* at [16].

⁸ *Natixis CA* at [18].

⁹ *Natixis, Singapore Branch v Seshadri Rajagopalan and others and other matters* (“*Natixis SGHC*”) [2024] SGHC 113.

¹⁰ *Natixis CA* at [3].

¹¹ *Natixis SGHC* at [3].

¹² *Natixis SGHC* at [3].

¹³ *Natixis SGHC* at [24].

These contentions were dismissed by the High Court, observing that a statutory lien is not synonymous with security interest,¹⁴ and that section 100 (2) of the IRDA did not apply in the present case as there is no extra-territorial admiralty *in rem* jurisdiction.¹⁵ The act of disposal was not executed by the Memorandum of Agreement between the judicial managers and Genial Marine, as it was not the “operative act of disposal”.¹⁶ Rather, it was the Gibraltar courts that executed the disposal.¹⁷ Furthermore, the High Court held that the appellants were not unfairly prejudiced by judicial managers as they were allowed to act strategically against the interests of the appellants and in the interest of Nan Chiau’s creditors.¹⁸ Lastly, the Court held that section 115 of the IRDA does not apply as the present factual matrix as the appellants were the creditors of OTPL, and not of Nan Chiau.¹⁹

Aggrieved with the outcome, the appellants appealed the judgment on all counts of the decision other than that of section 115 of the IRDA being inapplicable, seeking for the net proceeds of the sale to have security applied for the proceeds to be redirected to them.²⁰ Their submissions relied upon a vast body of case law establishing a statutory lien as a security interest, and asserted that the High Court offered an overly parochial definition of “disposal”, as one constituting of only the final act of the transaction, which, in this case, was the judicial sale of the Vessel by the court of Gibraltar.²¹ The appellants argued for a broader construction of the definition of “disposal” to encompass the judicial managers’ intention and extent of involvement in the transaction.²² Additionally, acknowledging that they may not be official holders of the security, the appellants attempted to seek justice through the *Ex partes James* principle to remedy unjust enrichment by Nan Chiau.²³

C. The Court of Appeal’s Decision

The Court dismissed the appeal.

An Independent Counsel was invited to assist the Court in navigating the novel issues raised in the present case. The Independent Counsel submitted that in order for the appellants to succeed, they ought to prove that the Vessel was disposed without authorisation under section 100 (2) of the IRDA, and seek relief under section 115 of the IRDA or the *ex parte James* principle, though in the latter, they ought to prove that it was unfair by the standards of a right-thinking person representing the current view of society.²⁴

Firstly, the Court rejected the appellants’ submissions that the judicial managers were the executors of the sale, and therefore, there was no breach of s 100 (2) of the IRDA. This was because the only way to rid the Vessel of statutory liens was through a judicial sale, which, *ipso facto*, was done by the Gibraltar court and not the judicial managers. If the disposal were to be executed by the judicial

¹⁴ *Natixis SGHC* at [40].

¹⁵ *Natixis SGHC* at [44]-[45].

¹⁶ *Natixis SGHC* at [53].

¹⁷ *Natixis SGHC* at [53].

¹⁸ *Natixis SGHC* at [77].

¹⁹ *Natixis SGHC* at [69], [75]-[78].

²⁰ *Natixis CA* at [25].

²¹ *Natixis CA* at [27].

²² *Natixis CA* at [27].

²³ *Natixis CA* at [28].

²⁴ *Natixis CA* at [32].

managers, it would be a private sale by syndic, which would allow the statutory liens to subsist.²⁵ The Court stressed that only a judicial sale can create a clean slate with no encumbrances over the property.²⁶ Therefore, the Court made it clear that the judicial sale by the Gibraltar court was not a disposal of the Vessel by the judicial managers.²⁷ Furthermore, the Court distinguished the enforcement of security in the Company's property from the judicial managers' disposal of the Company's property.²⁸ In this case, the Mortgagee's arrest and judicial sale of the Vessel in Gibraltar constituted enforcement of its security interest, not a disposal by the judicial managers. The Court explained its finding by clarifying the two separate pathways for obtaining a carve-out from the judicial management moratorium.²⁹ Under section 96(4)(e)(i) of the IRDA, a judicial manager has the authority to consent to the enforcement of security over the Company's property. This authority exists alongside the court's own power to grant similar leave under section 96(4)(e)(ii). Therefore, a secured creditor may seek permission from either the judicial manager or the court to enforce its security.³⁰ The enforcement of such security does not amount to a "disposal" of company property by the judicial manager that would require the court approval under section 100(2) because if it did, then it would render the judicial manager's authority under section 96(4)(e)(i) redundant. This would defeat the purpose of providing two separate pathways for obtaining such a carve-out.³¹

Further, the Court also highlighted that if the arrest took place within Singapore's territorial waters, the judicial managers would have been authorised under section 96(4)(e)(i) of the IRDA to consent to it.³² Since the arrest took place outside of Singapore's territorial waters, the judicial sale was not subject to the moratorium under the IRDA, which lacks extraterritorial effect.³³ Accordingly, the Mortgagee's actions did not amount to disposal by the judicial managers. Though the Independent Counsel's submissions aligned (to some extent) with the appellants that the "disposal" of the Vessel should be seen as the permanent loss of custody and not solely as the final "operative act of disposal", the Court held that this was inconsequential as the High Court had not made any error in law as the judge had not ventured into making any statement of general principle of what constituted a "disposal".³⁴

Secondly, the Court while placing reliance on the decision of *The Monica S*³⁵ emphasised that the expression statutory lien created by the issuance of a writ *in rem* against the vessel are not security interests, is a convenient expression and means no more than a statutory right of action in rem which "should not be treated like they bear the characteristics of other liens in the general law of credit and security".³⁶ It was then concluded that statutory lien in admiralty is merely an inchoate and antecedent right to obtain security enforceable by arrest, and only until the moment of arrest.³⁷ Additionally, the

²⁵ *Natixis CA* at [56].

²⁶ *Natixis CA* at [56].

²⁷ *Natixis CA* at [61].

²⁸ *Natixis CA* at [62].

²⁹ *Natixis CA* at [67].

³⁰ *Natixis CA* at [63].

³¹ *Natixis CA* at [64].

³² *Natixis CA* at [68].

³³ *Natixis CA* at [68].

³⁴ *Natixis CA* at [53]-[54].

³⁵ *The Monica S* [1968] P 741.

³⁶ *Natixis CA* at [77].

³⁷ *Natixis CA* at [84].

Court concurred with the High Court that the statutory liens have no extraterritorial effect, and that it cannot be traced or followed into the proceeds of sale from a previous owner.³⁸

Thirdly, the Court disagreed with the appellants' claim that the judicial managers were unfairly prejudiced against them by recognising the priority of the judicial managers to rescue the insolvent, even if it were to the disadvantage of the appellants.³⁹ The Court framed the relationship between the judicial managers and the appellants as adversarial, and emphasised that while Nan Chiau and OTPL are part of the same corporate group, they are both distinct legal entities with separate assets and creditors.⁴⁰ Hence, the appellants' attempt to access Nan Chiau's Vessel to satisfy OTPL's debts would have diminished the pool of assets available to Nan Chiau's actual creditors.⁴¹ This would have been contrary to the judicial managers' statutory duty under s89(2) of the IRDA.⁴² Therefore, no unfairness arose from the judicial managers resisting the appellants' claims as Nan Chiau had no obligation to satisfy OTPL's debts.⁴³

The Court observed that the role of the judicial managers is to ensure the survival of a company, the approval of a scheme of arrangement, and to gain a more advantageous realisation of assets than in the case of a winding up.⁴⁴ As such, so long as the judicial managers apply to the court for disposal, be aligned with the aforementioned judicial management purposes, give seven days' notice to holders, and apply the net proceeds of disposal towards discharging sums secured by security, the disposal is just.⁴⁵ Effective judicial management may also necessitate the removal of security for proper valuation of assets through disposal or sale, as the security impedes the Company's title to the property, reducing the value in the disponent's eyes.⁴⁶ The Court also asserted that the judicial managers were under no obligation to sail the Vessel into the jurisdiction where a writ had been issued against it.⁴⁷ Ultimately, the Court did not want to set precedence deterring judicial managers from doing their duty by exposing them to litigation risk.⁴⁸

Fourthly, the Court held that the *Ex parte James* principle cannot be applied in the present case, as "no right-thinking person with a proper appreciation of the context and the realities of the JMs' position could sensibly come to the view that the JMs acted unfairly by taking the steps they did which were plainly in the interests of Nan Chiau's creditors".⁴⁹ The respondents' counsel argued that the standard for the court's intervention under *Ex parte James* principle should be the same as the test under section 115 of the IRDA.⁵⁰ Following this argument, the threshold for judicial intervention would be met only if there is a conspicuously unfair or differential treatment to the disadvantage of the applicant that cannot be justified by reference to the objective of the judicial management or the interests of the members or

³⁸ *Natixis CA* at [99].

³⁹ *Natixis CA* at [42].

⁴⁰ *Natixis CA* at [164].

⁴¹ *Natixis CA* at [165].

⁴² *Natixis CA* at [163].

⁴³ *Natixis CA* at [165].

⁴⁴ *Natixis CA* at [40].

⁴⁵ *Natixis CA* at [43].

⁴⁶ *Natixis CA* at [67].

⁴⁷ *Natixis CA* at [124].

⁴⁸ *Natixis CA* at [122].

⁴⁹ *Natixis CA* at [166].

⁵⁰ *Natixis CA* at [136].

creditors as a whole.⁵¹ It may also be met where there is a perverse lack of legal or commercial justification for a decision harmful to the members or creditors as a whole, such as when the judicial manager sells the Company's assets at an undervalue, or takes a course of action that is based on a misapplication of the law.⁵²

However, the Court was hesitant to accept this argument because, while the two concepts may overlap in practice, they have different legal foundations and underlying rationales.⁵³ Since there was no compelling justification made, the Court preferred to treat them as distinct and separate legal constraints.⁵⁴ The Court stated that an objective standard should be applied to determine whether an officer of the court acted unfairly enough to warrant the application of the *Ex parte James* principle.⁵⁵ Namely, whether the conduct would be considered unfair by the standards of the right-thinking person representing the current view of society.⁵⁶

Finally, the Court held that the appellants were the ones who had failed to take steps to protect their own positions by crystallising their security. The Court found that the Vessel had entered Singapore's territorial waters on several occasions.⁵⁷ However, the appellants did not take the opportunity to arrest the Vessel during those times.⁵⁸

Furthermore, the appellants' claim that the judicial managers did not obtain their consent was also held to be spurious. The Court found that, based on the correspondence between the appellants and the judicial managers, it was evident that the latter clarified that "it is the Mortgagees' discretion as to where they wish to arrest the vessel".⁵⁹ Lastly, the Court held that there was no element of bad faith on the part of the judicial managers, as they were merely negotiating with the Mortgagee for the funding necessary to cover the operating expenses of the Vessel.⁶⁰ The judicial sale was prudent to fetch a higher price by obtaining a clean title for the Vessel, which the Court deemed as imperative for buyers considering the Vessel's associations with the insolvent.⁶¹

D. Conclusion

The decision in *Natixis v Seshadri Rajagopalan* affirms the Singapore Court of Appeal's commitment to preserving the integrity of judicial management by prioritising the collective interest of creditors over fragmented, jurisdiction-bound claims of financial institutions who hold writs *in rem*. It clarifies that the issuance of a writ *in rem* does not, in itself, confer a proprietary or tracing right in the vessel or its proceeds, especially across jurisdictions. In doing so, the Court decisively distinguishes admiralty statutory liens from security interests within the meaning of the IRDA and reinforces the territorial limitations of such liens.

⁵¹ *Natixis CA* at [136].

⁵² *Natixis CA* at [136].

⁵³ *Natixis CA* at [137].

⁵⁴ *Natixis CA* at [137].

⁵⁵ *Natixis CA* at [139].

⁵⁶ *Natixis CA* at [166].

⁵⁷ *Natixis CA* at [146]-[147].

⁵⁸ *Natixis CA* at [146]-[147].

⁵⁹ *Natixis CA* at [150].

⁶⁰ *Natixis CA* at [156].

⁶¹ *Natixis CA* at [158]-[159].

Further, by declining to impose liability on judicial managers for cooperating with mortgagees and facilitating offshore judicial sales, the Court shields insolvency professionals from litigation risks that could otherwise hinder asset realisation and restructuring. At the same time, it places the onus on claimants to act promptly and strategically to secure their interests across borders, rather than relying on procedural footholds in a single jurisdiction.

The judgment thus strikes a balance between legal clarity and commercial practicality, ensuring that judicial managers can carry out their duties without undue hesitation, while also signalling to maritime creditors their entitlements under admiralty law is not greater than that of a general body of creditors.

That said, care should be exercised in enforcing a statutory right of action *in rem* such as a statutory lien, especially in the context of an insolvent company under judicial management, and legal advice should be sought where appropriate.

Further Information

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