IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 292

Admiralty in Rem No 256 of 2020 (Summons Nos 586 and 599 of 2021)

Between

Owners of or other persons interested in the cargo lately laden onboard "Jeil Crystal"

… *Plaintiff*

And

Owner of the vessel "Jeil Crystal"

… *Defendant*

GROUNDS OF DECISION

[Admiralty and Shipping] — [Admiralty jurisdiction and arrest] — [Requirements for arrest]
[Admiralty and Shipping] — [Practice and procedure of action in rem] — [Warrant of arrest]
[Civil Procedure] – [Amendments] – [Effect of amendment of statement of claim on in rem writ and warrant of arrest]

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[2021] SGHC 292

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17 May, 15, 29 June 2021

30 December 2021

S Mohan J:

Introduction

1 HC/ADM 256/2020 ("ADM 256") threw up an interesting issue regarding warrants of arrest in admiralty actions *in rem* and the underlying cause of action in respect of which a warrant is issued and a vessel arrested as security for the claim. It would appear that the issue has arisen for consideration for the first time in our courts.

2 In summary, the plaintiff was at all material times a financial institution and had provided trade financing to its customer in respect of a cargo shipped onboard the defendant's vessel. The plaintiff commenced ADM 256 and obtained in the usual way, on an *ex parte* basis, a warrant of arrest against the defendant's vessel. The claim was advanced on the basis that the plaintiff was, *inter alia*, the lawful holder of the original bills of lading issued in respect of the cargo in question and the defendant had delivered the cargo without

production of the original bills. However, at the time ADM 256 was commenced and the warrant of arrest obtained, the plaintiff in fact no longer had possession of the bills of lading. The bills of lading had been sent by the plaintiff to its customer, and thereafter, switched by the defendant with a fresh set of bills of lading; the switch of the bills of lading was, according to the plaintiff, effected without its knowledge or consent. The writ in ADM 256 was served, the vessel was arrested as security and alternative security was eventually furnished by the defendant to procure the release of the vessel. Sometime thereafter and following the discovery of the true state of affairs, the plaintiff sought leave of court to, *inter alia*, amend its Statement of Claim. In essence, the plaintiff wished to assert, in place of its claim for (mis)delivery of the cargo without production of the original bills of lading, an *amended* claim for, among others, breach of contract and/or negligence on the basis that the defendant had wrongfully switched the bills of lading without the plaintiff's knowledge and consent, in consequence of which the plaintiff was removed as a party to the contract of carriage and its rights and interests in the cargo extinguished. The defendant cross-applied to set aside the writ and the warrant of arrest and, in the alternative, to strike out the action.

3 In the circumstances as summarised above, if the court allows the plaintiff to amend its Statement of Claim, can the warrant of arrest be upheld on the basis of the *amended* claim and/or cause of action even though it was not originally pleaded by the arresting party at the time the action commenced?

4 I answered this question in the affirmative by way of brief oral grounds which I delivered on 15 June 2021. Dissatisfied, the defendant sought leave from the Appellate Division of the High Court ("Appellate Division") to appeal against my decision declining to set aside the warrant of arrest. On 23 September 2021, the Appellate Division granted the defendant leave to appeal

on one issue. The sole issue for consideration was framed by the Appellate Division thus:

> In an application to set aside a warrant of arrest of a ship, can the warrant of arrest be upheld on the basis of an amended claim and/or cause of action which was not originally pleaded by the arresting party at the time of the application for and the issue of the warrant of arrest?

The defendant has since filed its appeal. These are my full grounds of decision. I start by summarising the background facts to the extent that they are material and will also set out the procedural history of this case.

Facts

5 The plaintiff is Banque Cantonale de Geneve, and was at all material times a bank based in Switzerland, engaged in the business of providing trade finance for international trade.[1]

6 The defendant, Jeil International Co Ltd, was at all material times the registered owner of the vessel "JEIL CRYSTAL" (the "Vessel").[2] Its commercial operator in Singapore was Dae Myung International Pte Ltd ("Dae Myung").[3]

7 On 12 May 2020, IRPC Public Company Limited ("IRPC") entered into a contract (the "Contract") to sell 2,000 metric tonnes (+/- 5% at buyer's option) of Lube Base Oil 150BS (the "Cargo") to GP Global APAC Pte Ltd ("GP Global") on FOB terms Rayong Port, Thailand. The Contract provided that the

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1 Statement of Claim (Amendment No. 1) dated 16 June 2021 ("SOC") at para 1.

2 Defendant's written submissions dated 12 May 2021 ("DWS") at para 5; Jung Hui Chul's first affidavit dated 5 February 2021 ("Jung's first affidavit") at para 1.

3 Jung's first affidavit at para 9(d).

delivery period was to be between 1 and 5 June 2020.[4] On 13 May 2020, GP Global on-sold the Cargo to Prime Oil Trading Pte Ltd ("Prime Oil Trading") on DAP basis and specified the delivery to be between 20 and 30 June 2020 at Chattogram, Bangladesh.[5] GP Global's broker and agent was RG Chartering Sdn Bhd ("RG Chartering").[6] GP Global chartered the Vessel from the defendant pursuant to a voyage charter party dated 16 May 2020 for a single voyage from the port of loading at Rayong, Thailand to the port of discharge at Chattogram, Bangladesh.[7]

8 GP Global sought trade financing from the plaintiff for the transaction involving the purchase of the Cargo from IRPC.[8] The plaintiff agreed and issued an irrevocable Documentary Credit No. DC123770/MBX ("LC") dated 28 May 2020 for the sum of US$1,020,000.[9] The LC required, amongst others, a full set of clean on board bills of lading to be presented:[10]

> 2. FULL SET (3/3) OF CLEAN ON BOARD BILLS OF LADING ISSUED TO ORDER OF BANQUE CANTONALE DE GENEVE AND MARKED FREIGHT PAYABLE AS PER CHARTER PARTY AND NOTIFY STANDARD ASIATIC OIL COMPANY LTD GUAPTAKHAL, PATENGA, CHITTAGONG 4205, BANGLADESH (BIN NO. 000225553-0503) AND JAMUNA BANK LTD. AGRABAD BRANCH, FROX TOWER (2ND FLOOR), 92, AGRABAD C/A, CHITTAGONG, BANGLADESH (BIN no. 001901948-0202)

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4 Plaintiff's bundle of documents ("PBOD") at p 192.

5 PBOD at p 199.

6 Jung's first affidavit at para 9(e).

7 Defendant's bundle of documents ("DBOD") at pp 175–181.

8 PBOD at p 190.

9 SOC at para 2; Defence and Counterclaim dated 30 November 2020 at para 5(a); PBOD at p 205.

10 PBOD at p 206 (para 46A).

9 The defendant issued three originals of Bill of Lading No. EX384/2020 dated 13 June 2020 ("Original BL").[11] In the Original BL, IRPC was named as the shipper, the consignee was "To Order of Banque Cantonale De Geneve" and the notify parties were Standard Asiatic Oil Company Ltd ("Standard Asiatic") and Jamuna Bank Ltd ("Jamuna Bank").[12] On 23 June 2020, the plaintiff wrote to GP Global and confirmed that it had received the documents required by the LC, including the full set of the Original BL.[13] Subsequently, on or after 24 June 2020 and at GP Global's request, the plaintiff delivered the Original BL to GP Global, with a signed endorsement on the reverse of the Original BL from the plaintiff "To the order of [GP Global]". According to the plaintiff, it apparently acted in this manner based on representation from GP Global and in the belief that GP Global needed the Original BL to enable the Cargo to be delivered to Prime Oil Trading on the basis of an invoice issued by GP Global to Prime Oil Trading, and which the plaintiff was subsequently advised to be a fake invoice.[14]

10 It later transpired that the defendant had agreed with GP Global to switch the Original BL at GP Global's request, apparently pursuant to liberties provided for in the voyage charterparty between GP Global and the defendant; the plaintiff contended that this agreement to effect a switch of the Original BL was not known to the plaintiff at the time and they did not consent to it. On 16 June 2020, the defendant *via* Dae Myung received an email from RG Chartering containing GP Global's instructions to issue a new set of bills in exchange for the Original BL. The new set of bills of lading were to name GP Global as the "Shipper" and instead of "To Order of Banque Cantonale De Geneve", the

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11 PBOD at pp 208–210.

12 Jung's first affidavit at para 14.

13 PBOD at p 212.

14 Julien Sebastian's first affidavit dated 4 February 2021 at paras 16 to 20.

Consignee was to be stated as "To The Order Of Jamuna Bank Ltd Agrabad Branch, Frox Tower (2nd Floor, 92 Agrabad C/A, Chittagong, Bangladesh".[15] After GP Global received the full set of the Original BL on 29 June 2020 and surrendered them to Dae Myung, the defendant issued the switch bills of lading according to GP Global's instructions ("Switch BL") and proceeded to cancel the Original BL by writing the words "Null and Void" on the front of each Original BL.[16] For completeness, the Switch BL bore the same number and date of issue as the Original BL. While the Original BL was issued at Rayong, Thailand, the Switch BL was issued at "Singapore As At Rayong, Thailand"; in addition, while the Original BL was signed by the master of the Vessel, the Switch BL was signed by Seanco Pte Ltd as agent for and on behalf of the master. For good order, nothing turns on these two differences between the Original BL and the Switch BL.

11 On 27 June 2020, the defendant received a letter of indemnity issued by GP Global ("LOI"). Pursuant to the LOI, GP Global agreed, *inter alia*, to indemnify the defendant against any consequent liability, loss or damage as a result of the delivery of the Cargo without production of the original bills of lading.[17] On 30 June 2020, the Vessel arrived at Chattogram, Bangladesh and the defendant discharged and delivered the Cargo to Standard Asiatic without production of the Switch BL.[18] Subsequently, on 22 July 2020, Standard Asiatic surrendered the original Switch BL to the defendant's agent's office in

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15 Jung's first affidavit at para 15; DBOD at p 172.

16 Jung's first affidavit at paras 26 to 27.

17 Jung's first affidavit at para 23; DBOD at p 207.

18 Jung's first affidavit at para 29.

Chittagong, following which both the Original BL and the Switch BL were in the defendant's custody and possession.[19]

12 As I stated above (at [10]), the plaintiff asserts that it was unaware of the switching of the Original BL and did not agree or consent to it. On 10 August 2020, the plaintiff wrote to the defendant and the master of the Vessel giving notice to them not to allow the Cargo to be discharged without their written consent (as the consignees of the Cargo under the *Original* BL) even if a letter of indemnity was provided to them.[20] This is disputed by the defendant who claimed that the plaintiff's letter was never received by it.[21]

Procedural history

13 On 10 October 2020, the plaintiff commenced ADM 256 by issuing an admiralty *in rem* Writ of Summons ("Writ") against the Vessel.[22] The Writ contained an Endorsement of Claim which stated as follows:

> The Plaintiff, as the owner or other person interested in the cargo lately laden on board the Vessel "JEIL CRYSTAL" under Bill of Lading No. EX384/2020 dated 13.6.2020, claims damages against the Defendant for conversion of the said cargo, and/or breach or breaches of contract and/or duty and/or negligence, in or about the carriage and/or care and/or custody of the said cargo, in particular, discharging and/or releasing the said cargo without the production of the original Bill of Lading.

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19 Jung's first affidavit at para 30.

20 Julien Sebastian's second affidavit dated 11 May 2021 ("Julien's second affidavit") at para 84; PBOD at pp 180 and 237.

21 DWS at para 49(b); Jung Hui Chui second affidavit dated 30 April 2021 at para 13.

22 Plaintiff's written submissions dated 12 May 2021 ("PWS1") at para 22; Writ of Summons (in rem) for admiralty dated 10 October 2020.

14 The plaintiff contended that at this time (*ie*, on 10 October 2020), it was labouring under an honest belief that it still had custody and possession of, and accordingly, remained the lawful holder of the Original BL. The plaintiff also applied for a warrant of arrest against the Vessel on the same day; in the affidavit leading the application for the arrest warrant and at the hearing before the assistant registrar, the plaintiff maintained its position that it had custody and possession of the Original BL. The assistant registrar granted the application and the warrant of arrest, HC/WA 39/2020 ("WA 39"), was issued. In setting out a description of the nature of the claim in respect of which it was issued, WA 39 replicated the Endorsement of Claim as contained in the Writ.

15 The Vessel was arrested the very next day on 11 October 2020. Following the arrest, the defendant instructed solicitors to seek confirmation from the plaintiff that it held the Original BL. By way of a letter dated 13 October 2020 from the plaintiff's solicitors to the defendant's English solicitors Penningtons Manches Cooper, the plaintiff confirmed that it held the full set of the Original BL.[23] While the defendant claims that it "had no doubt that [it] had physical possession of the [Original BL]", its main priority was to secure the release of the Vessel to minimise disruptions to the Vessel's trading schedule. Thus, it decided to furnish security to secure the release of the Vessel.[24]

16 On 15 October 2020, in HC/SUM 4483/2020, an assistant registrar granted a consent order that the defendant be at liberty to pay into court the sum of S$2,100,000 as reasonable and adequate security for the plaintiff's claim and the consequent release of the Vessel under arrest.[25] Following the defendant's

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23 Jung's first affidavit at paras 34 to 35; DBOD at p 234.

24 Jung's first affidavit at paras 36 to 37.

25 HR/ORC 5738/2020.

payment of the said sum into court on 20 October 2020, the Vessel was released the next day.

17 After the filing of the plaintiff's Statement of Claim on 4 November 2020, the defendant sought inspection of the Original BL that the plaintiff claimed to have in its custody and possession. On 16 November 2020, the plaintiff's counsel responded that it was taking steps to make the Original BL available for inspection. However, despite several reminders from the defendant's counsel, the Original BL was not made available for inspection. The defendant then proceeded to file its Defence and Counterclaim on 30 November 2020.[26] The Defence and Counterclaim referred to the Original BL, that it had been returned and switched with the Switch BL and that the Switch BL contained the "stamped and signed endorsement by Jamuna Bank on its reverse side". The plaintiff contended that this was the first time it realised that it in fact no longer possessed the Original BL. The plaintiff then sought inspection of the Original BL and this took place on 14 December 2020 at the defendant's solicitors' office.[27]

18 On 4 February 2021, after the Statement of Claim and Defence and Counterclaim had been filed, the plaintiff filed HC/SUM 586/2021 ("SUM 586") seeking leave to amend its Statement of Claim. This was to reformulate the claim and centre it around the allegation that there was a wrongful switch by the defendant of the Original BL with the Switch BL without the plaintiff's knowledge or consent. Among others, the plaintiff sought to amend its Statement of Claim to plead a claim in negligence on the part of the defendant in effecting the switch and/or a breach of contract as contained in the Original

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26 Jung's first affidavit at paras 38 to 40.

27 Jung's first affidavit at para 40.

BL. On 15 January 2021, the plaintiff filed its Reply and Defence to Counterclaim and acknowledged that it sent the Original BL to GP Global but without any knowledge that it was for the purpose of effecting a switch of the Original BL. It became apparent that the plaintiff did not in fact have custody or possession of the Original BL at the time it applied for WA 39 on 10 October 2020.[28]

19 On 5 February 2021, the defendant filed HC/SUM 599/2020 ("SUM 599") seeking to set aside the Writ and WA 39 and/or to strike out ADM 256 and consequently, set aside WA 39. The basis of the application was that the evidence demonstrated that the plaintiff was not in fact the holder of the Original BL or Switch BL when ADM 256 was commenced and therefore there was no reasonable or valid cause of action; alternatively, the action was frivolous, vexatious and bound to fail. In the event WA 39 was set aside, the defendant sought an order for the release and consequential return of the security it had paid into court.

My decision on SUM 586 and SUM 599

20 I heard the parties on 17 May and 15 June 2021, after which I allowed the plaintiff's application in SUM 586 and dismissed the defendant's application in SUM 599; as stated at [4] above, I delivered brief oral grounds for my decision.

21 I found that the plaintiff's proposed amendments to plead claims against the defendant in negligence and/or breach of contract and/or bailment were not legally or factually unsustainable or doomed to fail. It was at least arguable or

[28] Jung's first affidavit at paras 41 to 42.

unsettled whether the defendant as a carrier/bailee owed a duty of care to inform the plaintiff before any switch of the Original BL was effected and if there was a breach of any such duty, in the factual matrix of this case, that had caused loss to the plaintiff. Whether the proposed amended bases of claim are weak or strong was irrelevant. I did not consider them to be unarguable or bound to fail. The plaintiff was entitled to pursue and attempt to make good the amended claims at trial. This included factual issues such as whether the plaintiff was aware of the switching arrangement and/or consented to the same, and whether it was induced in any way by the defendant to give up possession of the Original BL. There were also related legal issues that ought legitimately to be tried such as whether the switching of bills of lading (which, among others, operate as contracts of carriage) amounts in law to a variation or novation of the original contract requiring the plaintiff's consent.

22 Importantly, the proposed amendments to the Statement of Claim, if they had been pursued from the inception when ADM 256 was commenced on 10 October 2020, would *also* have fallen within the court's admiralty subject matter jurisdiction under s 3(1) of the High Court (Admiralty Jurisdiction) Act (Cap 123, 2001 Rev Ed) (the "HCAJA"). In particular, I was satisfied that the amended claims would have, at the least, fallen within the ambit of s 3(1)(*h*) of the HCAJA, *ie*, "any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship". I found that any prejudice occasioned by the amendments being allowed could be ameliorated by appropriate cost orders in the defendant's favour. I accordingly exercised my discretion and allowed the plaintiff to amend its Statement of Claim and made the usual consequential orders allowing the parties leave to amend the subsequent pleadings.

23 Turning now to SUM 599, in light of the fact that I had allowed the plaintiff to amend its Statement of Claim, I dismissed the defendant's application to set aside or strike out the Writ. This was primarily on the basis that I was satisfied that the amended claim, if made from the inception when ADM 256 was commenced, would have fallen within the court's admiralty jurisdiction *and* would not have been legally or factually unsustainable. The amendment to the Statement of Claim would, in my view, have cured the defect in the Writ in framing the wrong cause of action, so to speak.

24 I was also unpersuaded that the defendant's application to set aside WA 39 on the separate ground of material non-disclosure should be allowed. I agreed with the defendant that objectively, there was non-disclosure by the plaintiff, when it applied for WA 39, of the fact that the plaintiff was in fact no longer in possession of the Original BL and that it had endorsed the Original BL to GP Global. Indeed, the plaintiff's counsel Mr Liew Teck Huat did not contend otherwise. The plaintiff acknowledged that it was only upon examining the defendant's Defence and Counterclaim that it was alerted to the fact of the Original BL having been switched. This then led it to make internal enquiries which revealed that the Original BL had in fact been delivered by the plaintiff to GP Global to enable them to deliver the Cargo to Prime Oil.[29] It was undisputed that these facts were not disclosed to the court when the plaintiff applied for WA 39.

25 I accepted that the abovementioned facts were material, *ie*, they were relevant facts to be brought to the attention of the assistant registrar hearing the application for the grant of WA 39. Having asserted a claim on the basis that it was the lawful holder of the Original BL and had custody of the Original BL, it

[29] Julien's second affidavit at paras 20–21.

was clearly incumbent on the plaintiff to have checked that this was a factually correct statement to make given that it was fundamental to the title to sue asserted by the plaintiff when it started ADM 256. Further, the fact that it had endorsed the Original BL to GP Global and the reasons for doing so were also material considerations that ought to have been brought to the court's attention. These facts were clearly relevant to the court's consideration in deciding whether to allow WA 39 to be issued. The fact that the plaintiff contended that it honestly believed at the time ADM 256 was commenced that it was the lawful holder of the Original BL did not detract from the fact that objectively, there was, when WA 39 was applied for, material non-disclosure to the court of the true state of affairs as far as the Original BL was concerned.

26 It was not in dispute that notwithstanding a failure by the plaintiff to make full and frank disclosure of material facts, the court retained an overriding discretion, in appropriate circumstances, to nevertheless not set aside the arrest and allow WA 39 to stand. Based on the affidavit evidence before me and the submissions advanced, I decided to exercise my discretion to allow WA 39 to be maintained for the following reasons. First, the non-disclosure by the plaintiff and the circumstances in which it occurred, whilst sailing close to the wind, did not appear to be deliberate or intended to mislead the court. At the same time, it was difficult on the affidavit evidence for me to conclude that it was innocent; as Mr Liew for the plaintiff fairly conceded, it was a major mistake on the plaintiff's part. It appeared to me more likely that it was the result of negligence internally within the plaintiff's organisation. For the avoidance of doubt, I made no specific findings in this regard given the defendant's pending counterclaim seeking, *inter alia*, damages for wrongful arrest. Second, as mentioned above at [23], I had allowed the amendments to the Statement of Claim; the effect of the amendment would be to cure any defect in the cause of action pleaded in the

Writ, and as I also said above, importantly, the amended claim would have fallen within the court's admiralty subject matter jurisdiction as well. Balancing the relative prejudice to the parties and considering proportionality of outcome, I exercised my discretion in the plaintiff's favour and declined to set aside WA 39.

27 The defendant did not take any steps to appeal against (a) my decision to grant the plaintiff leave to amend its Statement of Claim, or (b) my decision dismissing SUM 599 insofar as it sought to strike out the Writ and the action under O 18 r 19 of the Rules of Court (2014 Rev Ed) ("Rules of Court") and/or the court's inherent jurisdiction.

Further arguments

28 On 18 June 2021, pursuant to s 29B of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed), the defendant wrote to the court requesting to make further arguments on my decision to uphold WA 39.[30] In essence, the defendant argued that the Writ and WA 39 should be set aside because it was based on a non-existent cause of action, and that even if the amended Statement of Claim could cure the defect in the Writ, it could not cure the defect in WA 39; for the latter proposition, the defendant relied on the Hong Kong Court of First Instance decision of Justice Barnett in *Victory Star Shipping Company S.A. v The Owners and All Those Interested In The Ship "Amigo" and World Happy Shipping Limited* [1991] HKCFI 64 ("*The Amigo*").[31] The plaintiff replied by way of a letter dated 21 June 2021 contending that the defendant's further arguments were substantially rehashing the same points already canvassed at

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30 Defendant's letter requesting further arguments dated 18 June 2021 ("DFA1") at paras 2–3.

31 DFA1 at para 3.

the hearing before me and, in any case, had no substantive merits; the plaintiff also set out its responses to the defendant's further arguments.[32] The defendant replied to the plaintiff's further arguments in a letter dated 29 June 2021.[33]

29 After considering the parties' further arguments, I exercised my discretion to hear parties' further arguments. I was of the view that no oral hearing on the further arguments was needed as the arguments were already encapsulated in the parties' letters. I dismissed the defendant's further arguments, giving brief reasons by way of a letter from the court dated 12 July 2021, and affirmed my earlier decision made on 15 June 2021.

Appeal

30 On 27 July 2021, the defendant filed AD/OS 34/2021 seeking an extension of time from the Appellate Division to seek leave to appeal against my decision given on 15 June 2021 dismissing that part of SUM 599 seeking to set aside WA 39.[34] The extension sought was not objected to by the plaintiff and was accordingly allowed by the Appellate Division on 12 August 2021.[35]

31 On 17 August 2021, the defendant filed AD/OS 39/2021 seeking leave from the Appellate Division to appeal against my decision dismissing SUM 599 in respect of the defendant's application to set aside WA 39.[36] As stated above at [4], the Appellate Division granted the defendant leave to appeal on the following issue:

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32 Plaintiff's reply to further arguments dated 21 June 2021 ("PFA") at paras 4–5.

33 Defendant's reply in further arguments dated 29 June 2021 ("DFA2").

34 Originating summons for AD/OS 34/2021.

35 AD/ORC 20/2021.

36 Originating summons for AD/OS 39/2021.

> In an application to set aside a warrant of arrest of a ship, can the warrant of arrest be upheld on the basis of an amended claim and/or cause of action which was not originally pleaded by the arresting party at the time of the application for and the issue of the warrant of arrest?

32 The Appellate Division noted that the defendant made two arguments in support of its application for leave to appeal:

(a) First, that WA 39 ought to have been set aside for material non-disclosure as it was not possible that the respondent honestly believed that it had the Original BL when it commenced ADM 256 and applied for WA 39.

(b) Second, WA 39 ought to have been set aside as the plaintiff's original claim was premised on a cause of action that did not exist at the date of the Writ. There was therefore allegedly no valid Writ at the time of the arrest. WA 39 also cannot be upheld based on the plaintiff's amended claim because the amendments did not remedy the fact that WA 39 should not have been issued at the time of the arrest application.

33 The Appellate Division rejected the defendant's first argument. It saw no basis to interfere with my exercise of discretion declining to set aside WA 39 despite the material non-disclosure.

34 As regards the defendant's second argument, it was not persuaded that the threshold of showing a *prima facie* error of law was met. It also expressed doubt as to whether the defendant was correct in framing the argument on the premise that there was a non-existent cause of action at the time of arrest. It noted that the plaintiff's amended claim was based on facts that were in existence and its error was in failing to plead the correct cause of action in the first instance.

35 Nevertheless, the Appellate Division was of the view that the question as framed at [31] above arose for consideration in this case given that this was an issue which touched upon the law governing the powerful and invasive remedy of maritime arrests and that there were various considerations at play (including the need to prevent an abuse of process). The Appellate Division felt that a question of importance arose upon which further argument and a decision of a higher tribunal would be to the public advantage. It also considered it a question of general principle to be decided for the first time.

The issue

36 I turn now to the sole issue in respect of which the defendant's appeal is brought – in an application to set aside a warrant of arrest of a ship, can the warrant of arrest be upheld on the basis of an amended claim and/or cause of action which was not originally pleaded by the arresting party at the time of the application for and the issue of the warrant of arrest?

Parties' cases

37 Mr Mark Tan Chai Ming, counsel for the defendant, submitted that WA 39 should not be upheld on the basis of the plaintiff's amended claim for four reasons:[37]

> (a) First, WA 39 was wrongly issued based on a non-existent cause of action. At the time of the application for WA 39, the plaintiff's claim was premised on the defendant "discharging and/or releasing the [Cargo] without the production of the [Original BL]". This was a cause

[37] DFA1 at para 3.

of action *in rem* that did not exist at that time and has now been expressly abandoned by the plaintiff.

(b) Second, the amendments to the Statement of Claim do not remedy the fact that WA 39 should not have been issued at the time of arrest. In this regard, the defendant relied on *The Amigo* which it contended was "on all fours" with the facts of the case before me.

(c) Third, the plaintiff's reliance on the rule that amendment of pleadings operates retrospectively to the original date that the pleading was filed (the "Relation Back Rule") was inapplicable. The rationale of the Relation Back Rule is to allow a plaintiff to amend a complaint which would otherwise be barred by the statute of limitations or to bar a plaintiff from introducing a new cause of action that did not exist at the time of the writ. This rule does not exist to provide a curative effect for a defective arrest application by allowing the *ex-post facto* introduction of new *in rem* causes of action. Even if the Relation Back Rule applied, the amendment sought under SUM 586 was only in respect of the Statement of Claim dated 4 November 2020 and not the Writ dated 10 October 2020.[38] Thus, the amendment would only go back to 4 November 2020 which post-dated WA 39.

(d) Fourth, upholding WA 39 would set a potentially dangerous and unwelcome precedent and be undesirable as a matter of public policy. This would allow any party to apply for a warrant of arrest indiscriminately so long as it has an "honest" belief. Applicants may be encouraged to make imprudent and/or trivial applications for an arrest

[38] DFA2 at para 4.

of a vessel even without any valid or proper cause of action at the time of arrest.[39]

38 On the other hand, Mr Liew for the plaintiff submitted that WA 39 should be upheld on the basis of its amended claim for three reasons:

(a) First, the amended claim still fell within the court's admiralty jurisdiction of the court. The court therefore has the power to order that WA 39 is maintained and the monies paid into court as security remain so.[40]

(b) Second, upholding WA 39 was consistent with the Relation Back Rule.[41] The amendments to the statement of claim relate back to the date when the original statement of claim was filed.[42] It is trite that any defect in an endorsement of claim in a writ can be cured by the service of a statement of claim.[43] This was not contradicted by *The Amigo* which did not lay down any immutable rule that that an amended statement of claim cannot cure any defect that may have existed when the warrant of arrest was issued.[44]

(c) Third, there was no basis to suggest that the court's decision would encourage applicants to apply indiscriminately for a warrant of arrest or lower the standards for the invocation of the *in rem* jurisdiction

39 DFA1 at paras 18–19.

40 PWS1 at para 134; PFA at para 16.

41 PFA at paras 13 to 17, 34.

42 PFA at para 33(a).

43 PFA at paras 13–15, 33(b).

44 PFA at paras 20–28.

> of the courts. The *ex parte* application is the first "gatekeeper" against a completely unmeritorious claim where an application supported by obviously insufficient or contradictory evidence is rejected. The *inter partes* stage upon an application to set aside the warrant of arrest is the second "gatekeeper" where the court retains the power and discretion to set aside the warrant of arrest and award damages for wrongful arrest after taking into account all the circumstances of a particular case.[45]

My decision

39 After considering the parties' further arguments, I maintained my earlier decision that WA 39 may be upheld on the basis of the plaintiff's amended claim even though it was not originally pleaded by the plaintiff at the time of the application for the warrant of arrest. I arrived at this conclusion for the following reasons.

40 First, I disagreed with the defendant's reliance on *The Amigo* for the proposition that an amended statement of claim cannot cure any defect that may have existed in the cause of action originally framed, whether in the Writ or WA 39, when WA 39 was issued.[46] The defendant's argument was that WA 39 cannot be upheld because it was wrongly issued based on a non-existent cause of action, and that *The Amigo* supported this argument. However, a close reading of *The Amigo* showed that it does not stand for any general principle that an amended statement of claim can never be a basis to uphold a "defective" writ or warrant of arrest. The decision in *The Amigo* needs to be understood within the proper context of the peculiar facts in play in that case, and I take

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45 PFA at paras 35–37.

46 DFA1 at para 3.

some time in the paragraphs below to analyse the facts and the decision in some detail.[47]

41 In *The Amigo*, the plaintiff agreed to sell the vessel "*AMIGO*" to the defendant (which acted as an agent for a nominee) and the parties entered into a memorandum of agreement. Following the conclusion of the agreement, a bill of sale was subsequently executed by the plaintiff transferring 100% of the shares in the vessel to the defendant. On the same day, a provisional certificate of registry was also issued by the new port of registry of the vessel showing the defendant's nominee as the purchaser and owner of the vessel. A few weeks later on 12 March 1991, a director of the defendant ("Director") gave the plaintiff a post-dated cheque for the balance of the purchase price amounting to HK$630,000; the plaintiff in turn provided the defendant with copies of the bill of sale and other requisite documents and also notified the Hong Kong Marine Department of the transfer of ownership of the vessel to the defendant's nominee.

42 The cheque for the balance of the purchase price was dishonoured on 21 March 1991, for reasons which the court did not need to go into. As a result, the plaintiff commenced two *in personam* actions against the defendant and the Director respectively (the latter having issued the dishonoured cheque), for the balance of the purchase price. Barnett J noted (at [2]–[4]) that the inference to be drawn from the two *in personam* actions being commenced was that "the plaintiff had approved the contract for the sale of the vessel, had parted with the property and sought to recover the balance of the purchase price".

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47 PFA at para 22.

43 Subsequently, the plaintiff commenced an action *in rem* in Hong Kong against the vessel. In its original pleading, the plaintiff pleaded that it had transferred 100% of the shares in the vessel in favour of the defendant's nominee. It also pleaded that it had been fraudulently induced by the Director to accept the post-dated cheque and that, in pursuance of the contract and receipt of the cheque, the plaintiff delivered the vessel to the defendant as agent for the defendant's nominee. In the relief section of its Statement of Claim, the plaintiff claimed the balance of the purchase price and possession of the ship. On the basis of this pleading, the plaintiff also obtained a warrant of arrest against the vessel (at [5]–[6]).

44 Following the arrest of the vessel, the defendant's solicitors wrote to the plaintiff's solicitors and informed them that the statement of claim did not disclose a reasonable cause of action. The defendant took the position that the claims for possession and for the balance of the purchase price were mutually exclusive and the plaintiff's pleading itself claimed that ownership had been transferred to the defendant and a cheque for the balance of the purchase price was accepted. In response, the plaintiff amended its statement of claim, which it appears to have been entitled to do so without leave under the Hong Kong court rules. Its amended pleading was that it "was and is the sole owner of the vessel". It only allowed the defendant to carry out decoration work on the vessel. The plaintiff accepted the cheque on condition that the vessel would not be delivered, and the ownership of the vessel would be retained by the plaintiff until the cheque was honoured, and sought, *inter alia*, declarations that it is the lawful owner of the ship (at [7]). The defendant then applied for the amendments to the statement of claim to be disallowed and the claim for possession to be struck out. It also applied for the warrant of arrest to be set aside on the grounds

that (a) the statement of claim before amendment did not disclose any reasonable cause of action and (b) there was material non-disclosure (at [8]).

45 Barnett J found no difficulty in setting aside the warrant on both grounds. The learned Judge noted that it was not in dispute that the issue of a warrant of arrest was discretionary and that there was a duty on the part of a plaintiff to make and full frank disclosure. In rejecting the plaintiff's argument that the *amended* statement of claim was sufficient to justify the warrant being issued, the learned Judge stated (at [13]–[14]):

> 13. For the [plaintiff] Miss Wee conceded that the Statement of Claim was perhaps unskillfully drawn. She boldly argued, however, that the assertions therein were merely assertions of fact and were not intended to amount to any admission that the plaintiff had divested itself of ownership and possession in favour of the defendant. She said that the true intention of the plaintiff is now made plain in the affirmation of Mr. Ling, the technical manager of the plaintiff's agent, who set out the background to the transaction between the parties. *That intention is now fully reflected in the amended Statement of Claim, which effectively cures any defect that may have existed when the warrant was issued.* She said that, *although the Statement of Claim may not have disclosed a cause of action giving rise to an action in rem* (she did not however concede that this is so) the ***amended Statement of Claim makes it clear that there was in existence a proper cause of action*** and that is sufficient to justify the warrant being issued.
>
> 14. I am bound to say that I have difficulty in accepting that argument. It is clear to me that [the defendant's counsel] is correct and that on the material available to the Registrar when application for the warrant was made that the plaintiff had apparently divested itself of ownership and possession, ***so that there could be no question of a claim giving rise to an action in rem. It is no answer to say that the position has now been remedied.*** The warrant clearly was wrongly issued.
>
> [emphasis added in italics and underlined bold italics]

46 As can be seen, the court's primary concern on the facts of *The Amigo* was that the claim as originally framed by the plaintiff, on the face of the unamended statement of claim, did not disclose any cause of action *giving rise*

to an action in rem. The original claim was *in essence and substance* (albeit a fleeting reference in the relief section to a claim for possession) a claim for the balance of the purchase price of the vessel. As noted by Barnett J, that claim was *not* a claim that fell within the court's admiralty jurisdiction. Barnett J had, earlier in the judgment (at [9]), observed that in an application for a warrant of arrest against a vessel, the Court's "first concern" was to see if the claim is one which *prima facie* brings the plaintiff within the admiralty jurisdiction. He then noted the "apparent" claim by the plaintiff to possession or ownership of the vessel that founded admiralty jurisdiction and gave rise to action *in rem*. However, that was merely the "apparent" claim, and probably by virtue of the fleeting reference in the relief section to a claim for possession. Counsel for the defendant had submitted (at [11]) that the claim for possession of the vessel simply could not stand on its own pleading because the only proper construction that could be put on the original pleading was that the plaintiff had parted with both ownership and possession of the vessel. It was further submitted that it was "unarguable" that the original pleading disclosed no reasonable cause of action "***giving rise to action in rem*** *under which a warrant of arrest might be issued*" [emphasis added in italics and bold italics].

47 Barnett J agreed with the defendant's counsel's submission that on the material available to the Registrar when the application for a warrant was issued, the plaintiff had divested itself of ownership and possession, and thus there could be "no question *of a claim* ***giving rise to an action in rem***" [emphasis added in italics and bold italics] (at [14]).

48 It was in that context that Barnett J noted that the warrant of arrest was wrongly issued, *ie*, because the original claim advanced by the plaintiff *did not* fall within the court's admiralty subject matter jurisdiction. It is axiomatic that the court's admiralty jurisdiction is essentially statutory and that threshold

jurisdiction cannot be waived or conferred by agreement. A court would be clearly acting without jurisdiction if a plaintiff's claim did not satisfy the basic condition for jurisdiction, *ie*, that the claim to be heard and determined by the court falls within its admiralty subject matter jurisdiction (see *The "Ohm Mariana" ex "Peony"* [1992] 1 SLR(R) 556 at [15]–[16] and *The "Alexandrea"* [2002] 1 SLR(R) 812 at [10]–[11]).

49 Thus, it was in those circumstances that Barnett J noted that even allowing the amendments to the statement of claim could not cure the defect in the warrant of arrest – as I have explained at [46], this was because the initial claim pleaded in the action *in rem* (on which the warrant was granted) did not *prima facie* fall within the court's admiralty subject matter jurisdiction. After remarking that the position was thoroughly unsatisfactory as a result of the plaintiff's contradictory behaviour in commencing the three actions, Barnett J stated (at [16]) that he could, in the circumstances, "see no justification for making an order that the warrant should continue". This statement makes clear that Barnett J did not consider, nor did he hold, that a warrant of arrest can *never* be upheld on the basis of an amended claim. It is clear that the learned Judge considered it a factually sensitive inquiry and chose not to exercise his discretion in favour of upholding the warrant of arrest on the specific facts of the case. It would not, in my view, be untenable to suggest that the court in *The Amigo* may well have come to a different conclusion had the original claim been one that did give rise to an action *in rem* but which had been incorrectly pleaded factually.

50 In the present case, it is undisputed that *prima facie*, the *original* claim made by the plaintiff on the basis that it had custody and possession of the Original BL fell squarely within the admiralty jurisdiction of the General Division of the High Court notwithstanding that it was made on an erroneous

factual basis (at [13] above). As I prefaced at [22] above, under s 3(1)(*h*) of the HCAJA, the General Division of the High Court has admiralty jurisdiction to hear and determine "any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship". It is well established that the words "any claim arising out of" are to be read widely as any claim which is "connected with the agreement" (*The "Indriani"* [1995] 2 SLR(R) 458 ("*The Indriani*") at [20] and [23]).

51 It is also well-established that s 3(1)(*h*) HCAJA is wide enough to encompass claims in tort and that the "agreement" need not be between the plaintiff and the defendant shipowner (*The Antonis P Lemos; Samick Lines Co Ltd v Owners of the Antonis P Lemos* [1985] AC 711 at 719; *The Indriani* at [18]). What is relevant is whether the claim is sufficiently connected with the agreement as an essential part of the plaintiff's case (*The Indriani* at [23]).

52 Reverting to the case at hand, the amended claim would, in my view, also fall within the court's admiralty jurisdiction. For example, the claim against the defendant in the tort of negligence for breaching its duty of care to the plaintiff in effecting the switch of the bills of lading would be a claim "connected with" (and therefore, "arising out of") either the Original BL or the Switch BL. It is indisputable that either bill of lading would constitute "an agreement relating to the carriage of goods in a ship", and it is immaterial that, for example, the plaintiff was never a party to the Switch BL. These, in my judgment, are material distinguishing features between this case and *The Amigo*.

53 Upon hearing the parties *inter partes* when deciding whether to set aside WA 39, I applied my mind to what this court would have done had the true facts and the amended claim been presented to it at the *ex parte* application for the warrant of arrest on 10 October 2020. I was satisfied that all the requirements

for the valid invocation of the court's admiralty jurisdiction, as summarised in *The "Bunga Melati 5"* [2012] 4 SLR 546 (at [112]), would have been met, and accordingly, I would have allowed the warrant of arrest to be issued.

54 *The Amigo* is also distinguishable by the fact that the plaintiff did not disclose, in its *ex parte* application for the arrest warrant against the vessel, that it had commenced the two other non *in rem* actions (see [42] above). Barnett J considered that those actions made the basis for the *in rem* action "highly questionable" and those separate actions should have been brought to the Registrar's attention as "they were material *to the question of jurisdiction*" [emphasis added]. This non-disclosure clearly weighed heavily in the court's decision to set aside the arrest (at [15]). As the plaintiff pointed out,[48] in *The Amigo*, there was ultimately *no* amendment to the statement of claim as the court granted the defendant's application to disallow the amendments made by the plaintiff. In contrast, in the case before me, I allowed the plaintiff to amend its Statement of Claim (at [26] above). When read closely and in its proper context, *The Amigo* does not stand for any proposition that *despite* allowing an admiralty *in rem* claimant to amend its statement of claim to advance a different pleaded claim to that pleaded when the *in rem* writ and warrant of arrest were issued, any defect in either the *in rem* writ or the warrant of arrest cannot be cured by a subsequent amendment to the statement of claim.

55 For the reasons above, I disagreed with the defendant that *The Amigo* was on "all fours" with the present case. Nor did it lay down any rule that a warrant of arrest could not be cured by a later amendment to a statement of claim, even where the amended pleading has the effect of curing a pleading defect in the *in rem* writ.

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[48] PFA at para 27.

56 Second, the defendant's technical objection that the Writ and WA 39 were not amended because the plaintiff's first prayer in SUM 586 only sought leave to amend the Statement of Claim dated 4 November 2020 was without merit. In my view, the court's order allowing the plaintiff to amend the Statement of Claim and to uphold WA 39 should be taken as consequentially allowing an amendment of the writ and the warrant of arrest as well. I say so for two main reasons.

57 First, the *in rem* writ, statement of claim and warrant of arrest are intractably interlinked. Indeed, the writ and the statement of claim read together forms the substance of the claim itself. The Court of Appeal, in *Pan-United Shipyard Pte Ltd v The Chase Manhattan Bank (National Association)* [1999] 1 SLR(R) 703 (at [27]), noted "it is trite law that any defect in the indorsement of claim can be cured by the delivery of a proper statement of claim". This supports the view that where leave is granted for the plaintiff to amend its statement of claim, a defective endorsement of the claim in the writ must, if necessary, be taken as consequently amended as well. The contrary position would make no logical sense since the court's order granting leave to amend the statement of claim would be rendered nugatory should the writ still be considered invalid or defective simply because leave was not sought to amend the writ separately. In addition, it must also mean that the consequential amendment to the writ should relate back to when the writ was filed, *so long as* the facts/cause of action pleaded in the amended statement of claim were in existence at the time the writ was originally filed. This must follow as the Relation Back Rule cannot apply if the amendment seeks to plead facts or a cause of action that only came into existence after the writ was issued (see below at [65]).

58 In my judgment, this reasoning ought to apply similarly to the warrant of arrest. The form of the warrant (Form 160 in Appendix A of the Rules of Court) requires the plaintiff to set out a description of the claim. Often, the plaintiff will, as suggested by the form, simply replicate the endorsement of claim in the writ, as was the case here.[49] In *The "Xin Chang Shu"* [2016] 1 SLR 1096 ("*Xin Chang Shu*"), Steven Chong J (as he then was) considered the close relationship between a writ *in rem* and a warrant of arrest. Chong J stated that the only prerequisite to the court's jurisdiction to issue a warrant of arrest is that a writ must have been filed in an action *in rem*. From this, he considered it clear that a warrant of arrest cannot exist without an issuance of a valid *in rem* writ (at [25]).

59 In the case before me, the effect of the amendments I allowed to the Statement of Claim and its curative effect on the Writ means that there *was and remains* a valid action *in rem*. The arrest of a vessel is for the purpose of obtaining security for the underlying claim in the *in rem* writ. If so, and if a pleading defect in the Writ is cured by a subsequent amendment to the Statement of Claim, I did not see why in this case, WA 39 cannot be similarly treated as being consequentially amended. None of these defects, in my view, has the effect of rendering the Writ or WA 39 nullities; nor do they call into question the *existence* of the court's admiralty jurisdiction, unlike in *The Amigo*. In my judgment, there were at best defects or irregularities in the Writ and WA 39 which may, in *appropriate* circumstances, be cured by the court under O 2 r 1 of the Rules of Court, which applies to admiralty actions *in rem* under O 70.

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[49] DBOD Tab 1 (Writ) and Tab 2 (WA 39).

60 In any case, O 20 r 8 of the Rules of Court explicitly grants the court power to amend *any* document in the proceedings on its own motion or on the application of any party:

> **Amendment of certain other documents (0.20, r. 8)**
>
> **8.** —(1) For the purpose of determining the real question in controversy between the parties to any proceedings, or of correcting any defect or error in any proceedings, the Court may at *any stage of the proceedings* and either *of its own motion* or on the application of any party to the proceedings order any document in the proceedings to be amended on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.
>
> (2) This Rule shall not have effect in relation to a judgment or an order.
>
> [emphasis added]

61 As noted in *Singapore Civil Procedure Vol I* (Cavinder Bull SC gen ed) (Sweet & Maxwell, 2021) ("*Singapore Civil Procedure*") at para 20/8/2, the "generality of r.8 applies it as well to writs and pleadings as it does to other documents".

62 In my view, the claim described in the unamended Writ and WA 39 would constitute a "defect or error" in the proceedings, especially in circumstances where the Statement of Claim was duly amended pursuant to the leave I granted, but the Writ and WA 39 remained unamended, and only because the plaintiff did not seek leave to also specifically amend those documents. The question that arises is – was this defect fatal to WA 39? In my view, the answer is No. If there had been a formal application to amend the Writ and WA 39, I would have been prepared to exercise the power conferred by O 20 r 8 of the Rules of Court. Alternatively, I could have done so on my own motion. Thus, the fact that there was no such formal application by the plaintiff does not in any way alter the position as that was *the effect* of my decision to (a) not set

aside or strike out the Writ; (b) allow the Statement of Claim to be amended; and (c) uphold WA 39.

63 Third, I agreed with the plaintiff that the Relation Back Rule supported the upholding of WA 39. The Relation Back Rule is well-known and is explained in *Singapore Civil Procedure* at para 20/8/3 as follows:

> An amendment duly made, with or without leave, takes effect, not from the date when the amendment is made, but the date of the original date of the original document which it amends; and this rule applies to every successive amendment of whatever nature and at whatever stage the amendment is made.
>
> Thus, when an amendment is made to the writ, the amendment dates back to the date of the original issue of the writ and the action continues as though the amendment had been inserted from the beginning: "the writ as amended becomes the origin of the action, and the claim thereon indorsed is substituted for the claim originally indorsed".....

64 Given my analysis at [59] above, the defendant's contention that WA 39 cannot be upheld since the retrospective effect only went back to the date the Statement of Claim was filed (*ie*, 4 November 2020) falls away and, in my judgment, interprets the Relation Back Rule incorrectly. Since the amendment to the Statement of Claim cures the pleading defect in the Endorsement of Claim in the Writ, the application of the Relation Back Rule *in that context* is such that the Endorsement of Claim in the Writ is also to be treated as having been amended (or cured) retrospectively to *10 October 2020* (*ie*, the date ADM 256 was commenced and WA 39 was issued).

65 Fourth, this was not a case where the plaintiff sought, through an amendment, to introduce a new cause of action or facts that did not exist at the date of the Writ. In *Saga Foodstuffs Manufacturing (Pte) Ltd v Best Food Pte Ltd* [1994] 1 SLR(R) 505 ("*Saga Foodstuffs*"), Lai Siu Chiu JC (as she then

was) dealt with an application by the plaintiff to amend its statement of claim (at [3]). Lai JC explained that the Relation Back Rule encapsulated the principle that "an amendment is retrospective to the original date that the pleading was filed". She considered that the amendment would have been retrospective "to the original date that the pleading was filed, in this case to the date the plaintiffs filed their writ" (at [9(b)]). On that date, the cause of action of the amended claim *had not arisen*. Thus, she disallowed the amendment application on the basis that a new cause of action that arose after the date of the writ could not introduced by way of an amendment. This holding in *Saga Foodstuffs* was endorsed by the Court of Appeal in *The "Jarguh Sawit"* [1997] 3 SLR(R) 829 (at [58]).

66 The facts pleaded by the plaintiff and constituting the amended claim were already in existence when ADM 256 was commenced and when WA 39 was applied for. I did not allow the plaintiff to plead new facts that were not in existence at that time. At the material time, the switch of the Original BL had occurred and the cargo had been delivered to third parties, and as the plaintiff asserted, without its knowledge or consent. The cause of action under the amended claim thus existed at the material time.

67 Finally, I saw no merit in the defendant's argument that upholding WA 39 in this case sets an unwelcome precedent which encourages imprudent or trivial applications for an arrest warrant. The concern raised was, in my view, overstated and ignored the peculiar factual context within which I made the orders I did in this case.

68 It is accepted that ship arrest is a powerful weapon in an admiralty claimant's armoury, and if abused, can be financially ruinous to a shipowner (*The "Vasiliy Golovnin"* [2008] 4 SLR(R) 994 ("*The Vasiliy Golovnin*") at

[51]). It is also accepted that, as a bulwark against such abuse of the arrest process, the law on wrongful arrest was developed so as to protect shipowners against malicious arrests or arrests brought with "so little colour" or "so little foundation" that it implied malice on the part of the arresting party (*Xin Chang Shu* at [1]).

69 This is also why it is settled law that in an *ex parte* application for the grant of a warrant of arrest against a ship, the applicant must disclose to the court all matters within his knowledge which might be material even if they are prejudicial to the applicant's claim (*The Vasiliy Golovnin* at [83]). As the arrest of a vessel is a draconian discretionary remedy given on an *ex parte* basis, this duty to make full and frank disclosure is an important bulwark against the abuse of the arrest process (*The "Rainbow Spring"* [2003] 3 SLR(R) 362 at [37]). Thus, material non-disclosure is an independent ground for setting aside an arrest (*The "AA V"* [1999] 3 SLR(R) 664 at [47]). Where a court condemns material non-disclosure by setting aside the warrant of arrest obtained *ex parte*, it does so in the public interest to discourage abuse of its *ex parte* procedure. Such condemnation by the court serves as a reminder of the importance of dealing in good faith with the court when such *ex parte* applications are made (*Treasure Valley Group Ltd v Saputra Teddy and another (Ultramarine Holdings Ltd, intervener* [2006] 1 SLR(R) 358 at [23]).

70 However, this does not mean that the warrant of arrest *must always* be set aside in cases of material non-disclosure. The court always retains an overriding discretion whether or not to set aside a warrant of arrest (*The "Fierbinti"* [1994] 3 SLR(R) 574 at [41]). In exercising this discretion, the court often applies the principle of proportionality in assessing the sin of omission against the impact of such default. This invariably requires a measured

assessment of the material facts as well as the circumstances in which the application was made (*The Vasiliy Golovnin* at [84]).

71 All that I have said above at ([68]–[70]) is uncontroversial and summarises well-entrenched principles in our admiralty jurisprudence.

72 Bearing these principles in mind, in no way can my decision in this case be said to offer *incentive* for parties to make unmeritorious, imprudent or trivial applications for a warrant of arrest. In the final analysis, the case law referred to above shows that it is ultimately the court's role to ensure that abuse of its process is not condoned and ultimately, that power is exercised within the ambit of the factual matrix of the case before it. Simply because the very exercise of the court's discretion is unfavourable to one of the parties in a particular case does not, in my view, *ipso facto* undermine the policy of preventing abuse of the draconian nature of a vessel arrest, nor would it result in the alleged "lowering of standards in the invocation of the *in rem* jurisdiction of the Courts" as contended by the defendant.[50]

Conclusion

73 As I had allowed the plaintiff's application in SUM 586 to amend the Statement of Claim and I was satisfied that *both* the original *and* amended pleaded causes of actions fell within the admiralty jurisdiction of the court, I saw no bar to maintaining WA 39 on the basis of the amended claim. For all of the above reasons, I exercised my discretion to uphold WA 39 and dismissed that part of SUM 599 seeking an order to set aside the warrant of arrest.

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[50] DFA1 at para 19.

S Mohan
Judge of the High Court

Liew Teck Huat and Ow Jiang Benjamin (Niru & Co LLC) for the plaintiff;
Tan Chai Ming Mark and Ahn Mi Mi (Focus Law Asia LLC) for the defendant.