

[2000] SGHC 274

Case Number : Adm in Rem 773/1998

Decision Date : 14 December 2000

Tribunal/Court : High Court

Coram : G P Selvam J

Counsel Name(s) : Khoo Kah Ho and Lim Tanguy Yuteck (Fabian & Khoo) for the second interveners (Applicants in NM 287/99); Vivian Ang and Mark Ortega (Allen & Gledhill) for the defendants (Respondents in NM 287/99); Leong Kah Wah (Joseph Tan Jude Benny) for creditor who had obtained a stop order in Adm in Rem 774/98

Parties : Plaintiff — Defendant — Third Party

JUDGMENT: Grounds of Decision The claim 1. Admiralty in Rem No 774 of 1998 and In Rem Suit no 773 of 1998 were isochronous actions. This judgment arises from the former. 2. This action was brought against the ship or vessel "VIRGO I" ex "KAPITAN VOLOSHIN" of the Port of Belize. 3. Belize is the main port in the small Central American state called Belize. Formerly it was British Honduras. It remains within the Commonwealth. Its laws are based on the British System. It has an open ship registry. In general vessels owned by foreigners may be registered at its port and fly its flag. 4. The action was brought by its crew to recover wages and other benefits. The crew were all Lithuanians. 5. The action was filed on 18 November 1998. The vessel was arrested the same day. 6. Singapore Technologies Marine Ltd ("ST Marine") had a claim against the vessel. ST Marine had claims against the vessel for repairs, goods supplied and services rendered at their shipyard at Tuas. They asserted that they did so at the request of "the defendants, their servants or agents". In order to protect their interest ST Marine obtained leave and entered appearance as interveners. At the time of arrest the vessel was moored at the shipyard of ST Marine. 7. No appearance was entered by the owners of the vessels. So on 15 December 1998 the crew filed a notice of motion for judgment in default of appearance. The ship-master of the vessel made and filed an affidavit in support of the application for default judgment. The master exhibited a copy of his contract followed by copies of the relevant signed pages of the other plaintiffs' contracts with the defendants. The contracting party on the shipowners' side in each cases was TRANSFLOT KLAIPEDA. The master exhibited several salary sheets bearing this stamp : M.V. "VIRGO I", BELIZE CITY, REGISTRATION NO. 019831150. The master's signature appeared on the salary sheets. 8. On 13 January 1999, the master filed a supplementary affidavit. In this he stated that Falkland Investments SA were the owners of the "VIRGO I". He exhibited a letter of authorisation addressed to Klaipeda Transflot Fleet. It made reference to M/V KAPITAN VOLOSHIN later to be renamed "VIRGO I". He further confirmed that Tranflot Kkaipeda represented the plaintiffs (the crew) and recruited them for Falkland. 9. In April 1999 Bankassure Insurance Services Ltd and Aon Group Limited ("the insurers") filed an action in personam (Suit No 609 of 1999) against Falkland Investments Ltd. The statement of claim asserted that Falkland "were the mortgagees in possession and/or the registered owners of the VIRGO I and KAY" and that the insurers placed or effected insurances for crew liability and port risk for Fakland's VIRGO I and KAY. They obtained default judgment against Falkland for about US\$134,000 ON 25 May 1999. In an affidavit the insurers exhibited many debit notes from 30 December 1997 to 15 December 1998 having Falkland Investments Ltd as the assured. The debit notes were in respect of the VIRGO I and the KAY. The insurers obtained a stop order against the proceeds of the sale of the VIRGO I to protect the judgment they had obtained. 10. On 15 January 1999, Mr Lee Sieu Kin JC granted judgment for the plaintiffs. In the meantime on 29 December 1998 the vessels were ordered to be appraised and sold. 11. In the event, the "VIRGO I" was sold for S\$3,910,000. The price was below the appraised value of the vessel. 12. In the meantime on 12 February 1998 ST Marine too had obtained judgment in default of appearance in Admiralty in Rem No 854 of 1998. ST Marine filed an affidavit exhibiting an invoice which stated owner's name as Falkland Investments Ltd. Owners enter the stage 13. On 19 June 1999 Falkland Investments Ltd applied by summons in chambers to enter an appearance as defendants. Leave was necessary because judgment had already been entered. In support of the application legal counsel for Falkland Investments Ltd filed an affidavit. It exhibited the provisional registration certificate issued at the Belize ship registry "evidencing the fact that Falkland Investments Ltd were owners of the vessel". It was issued on 28 July 1998. He further exhibited an agreement dated 16 January 1998 evidencing the "transfer of ownership of the KAPITAN VOLOSHIN from Vladivostock Base of Trawling and Refrigeratory Fleet to Falkland Investments Ltd upon the signing of the agreement". 14. Lawyers, who acting on behalf of the crew filed affidavits by the

master asserting that Falkland Investments Ltd were the owners of the "VIRGO I", now opposed the application of Falkland Investments Ltd to enter an appearance. They now appeared on behalf of Vladivostock Base of Trawling and Refrigeratory Fleet ("VBTRF"). In the event of Falkland Investments Ltd obtained an order to enter an appearance. This was made by Mr Tay Yong Kwang JC on 21 July 1999. He made a qualified order, but eminently sensible order. It read as follows : "1. [Falkland] be at liberty to enter an appearance as defendants in this action. 2. This order does not determine the issue as to who is the true owner of the vessel and therefore the proceeds of sale. 3. [VBTRF] is to take out an application to enter an appearance or to intervene in this action within 3 weeks from the date hereof together with supporting affidavits. 4. No application for payment out of the balance of the proceeds of sale be taken out by [Falkland] until after 3 weeks from the date hereof or until further order. 5. Costs of the appeal be reserved." 15. Armed with the order Falkland Investments Ltd on 28 July 1999 entered an appearance as owners. On 17 August 1999 filed a Notice of Motion No 251 of 1999 for payment to them or their solicitors the balance of the proceeds of the sale of the "VIRGO I". 16. In the meantime VBTRF intervened in the proceedings. 17. The next significant development was the filing of Notice of Motion No 288 of 1999. It was filed on 27 September 1999 by VBTRF. By that application VBTRF sought the following orders : "(1) the determination of the issue of the validity and enforceability of the purported Agreement dated 16 January 1998 allegedly made between [Falkland] and [VBTRF] be reserved and remitted to the Primorskiy Krai Arbitration Court; and that until such final determination thereof all further proceedings herein are to be stayed; (2) alternatively, that the purported Agreement dated 16 January 1998 allegedly made between [Falkland] and [VBTRF] be declared null and void and to have been of no effect whatsoever; and that [VBTRF] be substituted as the owners of the ship or vessel 'Virgo I' (previously known as the 'Kapitan Voloshin') [as] the defendants herein in place of '[Falkland]'; and (3) the costs of these proceedings and this application be taxed and paid by [Falkland] to [VBTRF]." 18. This was two months after Mr Tay Yong Kwang JC made the order granting leave to Falkland Investments Ltd to enter an appearance as owners. At this time VBTRF was in the hands of liquidators in Russia. 19. Originally Notice of Motion 288 of 1999 came up for hearing on 15 October 1999. On that day VBTRF had not filed any affidavit in support of their application. They were still casting about. So it was adjourned. 20. Notice of Motion 288 of 1999 came up for hearing on 23 February 2000. There was no hearing, however. This was because VBTRF had failed to comply with an order for security against them. The hearing was adjourned to 27 April 2000. Once again there was no hearing. The hearing was adjourned to 26 May 2000. 21. On 26 May 2000 the Notice of Motion 288 of 1999 came up for hearing before me. Once again there was no hearing on the issues. It was adjourned to 20 May 2000. 22. Finally, I heard the Notice of Motion 288 of 1999 on 30 June and 3 July 2000. By then more than one year had expired since VBTRF came on the scene in June 1999 opposing Falkland's application to enter appearance as owners. 23. After hearing arguments I denied the motion. I shall now give my reasons. 24. The admiralty jurisdiction of the High Court is based on an International Convention – that is the Brussels Convention. Under the High Court (Admiralty Jurisdiction) Act, the High Court has in rem jurisdiction over foreign vessels in respect of a wide range of maritime matters. Such jurisdiction is based on reciprocity among maritime nations to assist each other in respect of maritime matters. 25. It is in keeping with that spirit and letter that the Singapore High Court allowed and caused the arrest of the "VIRGO I". The arrest was done on the basis of the vessel belonged to the Port of Belize. The master and crew invoked the jurisdiction on the basis that the vessel belonged to the Port of Belize and her owners were Falkland Investments Ltd. The ship entered Singapore showing the flag of Belize. 26. ST Marine supplied goods and rendered services and later instituted admiralty in rem action on the assertion that Falkland Investments Ltd were the owners of the "VIRGO I". Singapore exercised in rem jurisdiction over the ship on the basis that Falkland Investments Ltd were the owners. It would be wholly incongruous, if at all possible, now to relinquish the jurisdiction after the sale. The sale proceeds are in Singapore subject to the adjudicating power of the Court that arrested and sold the ship. I did not think that I had power to transfer the proceedings or stay the proceedings after the Singapore High Court has given two judgments (one for the crew and the other for ST Marine) and made payments out of the proceeds in respect of liabilities incurred by Falkland Investments Ltd. If Falkland Investments Ltd says that the moneys in the High Court belong to them it is the responsibility of this court to adjudicate on it and not leave the matter to be decided by another Court in another land. If I were to relinquish the case at this last stage it would shatter the confidence which the nations of the world have in our administration of justice. 27. The dismissal of the second prayer follows from the dismissal of the first prayer. Mr Tay Yong Kwang JC had already given leave to Falkland Investments Ltd to enter an appearance as owner. There was no appeal against that order. It must stand. Pursuant to direction given by Mr Tay Yong Kwang JC, VBTRF intervened in the action and entered an appearance as interveners. The nett effect and result of that

was to afford every reasonable opportunity to be heard. Falkland Investments Ltd had to establish their entitlement to the balance of the proceeds of the sale of the ship. VBTRF had the right to contest the claim of Falkland Investments Ltd. VBTRF would have the opportunity to be heard in the application for payment out by Falkland Investments Ltd. VBTRF's application was unnecessary in the circumstances. It was a side wind. VBTRF should take the bull by the horn and not pull it by the tail. Accordingly I denied it. G P Selvam Judge

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