IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 200

Admiralty in Rem No 143 of 2019
(Registrar's Appeal 106 of 2020)

Between

Owner and/or Demise Charterer of the Vessel "ROYAL ARSENAL"

… Plaintiff

And

Owner and/or Demise Charterer of the Vessel "ECHO STAR" (ex-GAS INFINITY)

… Defendant

GROUNDS OF DECISION

[Admiralty and Shipping] — [Admiralty jurisdiction and arrest] — [Maritime liens] — [Proper defendant to enter appearance]

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S Mohan JC:

Introduction

1 The question of who should enter an appearance as a defendant in an action is one to which a fairly straightforward, and some might say, obvious answer can be given – it would be the defendant as named in the proceedings. In an admiralty action *in rem* against a ship, the answer to this question may also seem simple, but is at times deceptively so. In an admiralty *in rem* writ, the defendant is not named as such but is generically described. For example, Form 159 of the Rules of Court (Cap 322, R5, 2014 Rev Ed) ("ROC") describes the defendant as:

> (The owners of the ship [X] or as may be)

2 By and large, this generic description does not pose much difficulties. The identity of the defendant in the *in rem* action can still be a fairly

straightforward question and which can be answered easily. The defendant would, ordinarily, be the party that is the owner (or the demise charterer as the case may be) of the ship in question *on the day* the action is commenced by the filing of the *in rem* writ in court.

3 However, complications may arise if the ownership of the ship changes between the date the cause of action arises and the date the action *in rem* is commenced. For certain admiralty claims, if an *in rem* writ has not been issued before the ownership change has taken place, those claims may no longer be pursued by way of an action *in rem* against that ship. This is because the prerequisites for the valid invocation of the court's admiralty *in rem* jurisdiction under s 4(4) of the High Court (Admiralty Jurisdiction) Act (Cap 123, 2001 Rev Ed) ("the Act") cannot be met by the prospective claimant (see the Court of Appeal's summary in *The Bunga Melati 5* [2012] 4 SLR 546 at [112]).

4 The limitations described at [3] above do not, however, apply to a claim that gives rise to a maritime lien. It is a long established principle of maritime law that a claim which gives rise to a maritime lien (and by extension, any *in rem* writ issued to enforce such a claim) is *not* defeated by a subsequent change in the ownership of the ship in connection with which the claim arose (*The Halcyon Isle* [1979-1980] SLR (R) 538 ("*The Halcyon Isle*") (the Privy Council on appeal from the Court of Appeal of Singapore) at [21]). It is an equally well-established principle of maritime law that a claim arising from damage caused by a ship (for example, as a result of a collision with another ship) gives rise to a maritime lien (see *The Bold Buccleugh* (1851) 7 Moo PC 267 (*"The Bold Buccleugh"*)). A collision damage claim would fall within s 3(1)(*d*) of the Act, which confers admiralty jurisdiction on the High Court to hear and determine any "claim for damage done by a ship". Section 4(3) of the Act recognises, *inter alia*, that for claims that give rise to a maritime lien on a ship, the High Court's

admiralty jurisdiction may be invoked by an action *in rem* against that ship.

5 That having been said, when the "wrongdoing" ship involved in a collision with another ship undergoes a change in ownership and an *in rem* writ is issued against the first ship *after* the change in ownership has taken place, which party should correctly enter an appearance in the action *as the defendant*? Is it the owner at the time of the collision or the owner at the time when the *in rem* writ was issued? As elaborated below, the answer lies in (a) appreciating that a collision damage maritime lien is ultimately fault-based notwithstanding its maritime lien status and (b) understanding the effect of entry of appearance in an *in rem* action in relation to *in personam* liability.

6 These deceptively simple but important questions were at the heart of the appeal before me in Registrar's Appeal No 106 of 2020 ("RA 106"). I was informed by counsel, during the hearing, that there is a dearth of caselaw on the questions set out at [5] above. As the present case afforded this court an opportunity to provide some clarity on these and other questions that arose for my consideration in the course of the appeal, I now provide the full written grounds for my decision.

Facts

7 The relevant key facts are largely undisputed and may be stated briefly.

8 On or about 7 April 2019, the vessels, *Royal Arsenal* and *Echo Star* were involved in a collision in the Straits of Hormuz.[1] At the time of the collision, the

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[1] Writ of Summons in HC/ADM 143/2019; first affidavit of William John Sturge ("Sturge's 1st Aff") at paras 6 – 9.

Echo Star was known as the *Gas Infinity* and was owned by Sea Dolphin Co., Ltd ("Sea Dolphin"). I will hereafter refer to the *Echo Star (ex-Gas Infinity)* as "the Ship".

9 On or about 28 July 2019, Sea Dolphin sold the Ship and transferred ownership of it to Cepheus Limited ("Cepheus") pursuant to a Memorandum of Agreement dated 25 June 2019 entered into between Sea Dolphin and Cepheus on the Norwegian Saleform 2012 as duly amended.[2] Cepheus took delivery of the Ship from Sea Dolphin on the same day and the Ship was subsequently renamed the *Echo Star*. It was undisputed that Cepheus was a stranger to the collision.[3]

10 On 6 November 2019, the owners of the *Royal Arsenal* ("the plaintiff") commenced Admiralty action *in rem* No 143 of 2019 ("ADM 143"). The *in rem* writ was issued against "the vessel *Echo Star* (ex-*Gas Infinity*)" and the defendant was named as:

> Owner and/or Demise Charterer of the vessel "ECHO STAR" (ex-GAS INFINITY) (IMO No. 9134294)

11 On 15 November 2019, Cepheus' lawyers, Rajah & Tann Singapore LLP ("Rajah & Tann"), filed a Memorandum of Appearance ("MOA"), entering appearance for Cepheus *as the defendant*.

12 Pursuant to an order of an Assistant Registrar made on 18 December 2019, Cepheus furnished security for the plaintiff's claim, interest and costs by

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2 First affidavit of Dinesh Sabapathy ("Sabapathy's 1st Aff) at para 7 and p 10.

3 Sabapathy's 1st Aff at para 8; Affidavit of Nazih Khalil Ferhali under the cover of Mary-Ann Chua's Affidavit dated 2 June 2020 ("Ferhali's Aff") at para 5.

paying a sum of US$6,796,354.00 into court on 20 December 2019.[4] The Ship was released from arrest on the same day.

13 On 20 January 2020, Rajah & Tann also entered an appearance in the action on behalf of Sea Dolphin (*ie,* the owner of the Ship at the time of the collision) *as defendant*. Sea Dolphin subsequently filed its List of Electronic Track Data on 21 January 2020 pursuant to O 70 r 19(4) of the ROC.

14 On 31 January 2020, Rajah & Tann on behalf of Cepheus, wrote to the plaintiff's lawyers Joseph Tan Jude Benny LLP, requesting the plaintiff's consent for: (a) Cepheus to be granted leave to withdraw its MOA as defendant (which Rajah & Tann contended was mistakenly filed); and (b) Cepheus to instead be given leave to intervene in ADM 143 (pursuant to O 70 r 16 of the ROC) and enter an appearance as an intervener.

15 On 7 February 2020, the plaintiff's lawyers replied stating that the plaintiff was not prepared to give its consent. Accordingly, on 12 March 2020, Cepheus filed Summons No 1187 of 2020 ("SUM 1187") seeking the following orders:

(a) leave to withdraw its MOA dated 15 November 2019 pursuant to O 21 r 1 of the ROC;

(b) leave to intervene in ADM 143 pursuant to O 70 r 16 of the ROC; and

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4 HC/DRI 111/2019 filed on 19 December 2019; Notice of Payment into Court dated 20 December 2019

(c) liberty to enter an appearance in ADM 143 as an intervener within eight days of the order made in SUM 1187.

16 On 12 June 2020, SUM 1187 was heard by the learned Assistant Registrar ("the AR") who allowed the application, granting Cepheus leave to withdraw its appearance as defendant in ADM 143 and to instead participate as an intervener. Dissatisfied, the plaintiff appealed against the AR's decision in RA 106.

Issues to be determined

17 Two issues fell for my determination in the appeal:

(a) First, the threshold issue of who was the proper party to enter appearance as the defendant in the circumstances of this case.

(b) Second, whether leave ought to be granted to Cepheus to withdraw its appearance as defendant, and to intervene in ADM 143.

18 From the facts that I have recited above and the principles alluded to at [4], it will be quite apparent (and was common ground) that the plaintiff's claim in ADM 143 gives rise to a damage maritime lien. Thus, for the avoidance of doubt, I will use "damage lien" to refer specifically to the damage maritime lien, and "maritime lien" to refer generally to all categories of maritime liens.

19 Further, to ensure clarity, I will refer to the owners of the Ship at the time of the collision as Sea Dolphin and to the owners of the Ship at the time the *in rem* writ was issued as Cepheus.

Issue 1: Is Sea Dolphin or Cepheus the proper defendant?

20 In cases involving maritime liens when there is no change in the ownership of the subject ship, the proper party to enter an appearance as a defendant is straightforward – it would simply be the owner (or demise charterer as the case may be) of the ship in question on the day the *in rem* writ was issued.

21 The present case was, however, unusual (although perhaps not uncommon) in that some time after the collision but *prior* to the issuance of the *in rem* writ in ADM 143, Cepheus became the owner of the Ship. As prefaced at [5] and [6] above, the question of what reference point should be used to identify the relevant owner for purposes of entering an appearance as the proper defendant was at the heart of RA 106.

22 Counsel for the plaintiff, Mr Jude Benny, contended that Cepheus, as the owner of the Ship when the writ was issued on 6 November 2019, had correctly entered appearance as the defendant in ADM 143.[5] In support of the plaintiff's case, Mr Benny made three key arguments:

(a) Cepheus was the relevant owner for the purposes of the action in ADM 143 because it was the one who was "correctly so described at the date when the writ [was] issued" on 6 November 2019, citing *The Helene Roth* [1980] 1 Lloyd's Rep 477 ("*The Helene Roth"*) in support. Three other cases were also cited in support of this proposition, namely, *The Father Thames* [1979] 2 Lloyd's Rep 364 ("*The Father Thames*"),

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5 App WS at para 17.

The Monica S [1967] 2 Lloyd's Rep 113 ("*The Monica S*") and *The Igor* [1956] 2 Lloyd's Rep 271 ("*The Igor*").[6]

(b) This understanding of the relevant owner is also in line with industry practice as reflected in standard ship sale and purchase documents. These invariably require previous owners to indemnify new owners in respect of claims arising from maritime liens that may have accrued under the vessel's previous ownership. Such indemnities are "standard" in the maritime industry, and "implicitly acknowledge that the proper defendants in an admiralty action involving maritime liens will be the Owners as at the time a writ is issued, and not the previous Owners". Given that an indemnity was provided by Sea Dolphin to Cepheus (*ie,* as contained in cl 9 of the Norwegian Saleform 2012 used in the sale of the Ship), the latter had "accepted that [it] will first need to defend against the [plaintiff's] claim and thereafter look to Sea Dolphin for an indemnity."[7] Thus, even if the security provided in the action was insufficient to satisfy the plaintiff's claim, no injustice will be occasioned to the new owner. The new owner can simply call upon the indemnity given by the old owner.[8]

(c) A maritime lien is enforceable even against a *bona fide* purchaser who was not personally liable for the collision giving rise to the lien, and had no notice of it.[9]

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6 App WS at para 21.

7 App WS at paras 22 – 27.

8 App WS at para 31.

9 App WS at para 29.

23 In contrast, counsel for Cepheus, Mr V Bala, submitted that the proper defendant was not Cepheus but Sea Dolphin. Drawing analogy from caselaw involving statutory liens under s 4(4) of the Act, Mr Bala averred that only the person who would be liable on the claim in an action *in personam* could be the proper defendant to the action.[10] Furthermore, the accrual of a damage lien requires the existence of fault or negligence, which plainly did not exist in relation to Cepheus as it was a total stranger to the collision.[11] Finally, given that a party who enters appearance in an action *in rem* renders himself liable *in personam,* forcing Cepheus to remain the defendant would lead to an absurd result: to protect its interests in the Ship, Cepheus would have to potentially render itself personally liable for a claim to which it was a total stranger.[12] This outcome, Mr Bala argued, cannot be the correct position at law.

The law on maritime liens and damage liens

24 Having regard to the authorities cited by the parties, it was apparent that none of the cases cited by them was directly relevant or applicable to the issue at hand. Focusing on the plaintiff's first argument (at [22(a)] above) and the case authorities mentioned there, the proposition that the relevant owner (*ie,* the defendant) is the owner at the time of the issuance of the writ was laid down in the context of claims that gave rise to a *statutory lien* under s 4(4) of the Act or its English law equivalent. *The Igor* and *The Monica S* involved claims for damage to cargo carried on board the respective ships, whilst in *The Helene Roth*, the claim was by a firm of ship chandlers for outstanding disbursements incurred on account of another ship, *Royal Clipper*. The claims in these cases,

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10 Res WS at paras 24, 27 – 28.

11 Res WS at para 31.

12 Res WS at paras 32 – 33.

if brought in Singapore by way of an *in rem* action, would have to satisfy s 4(4) of the Act. None of those three cases cited by the plaintiff involved claims which gave rise to a maritime lien.

25 Section 4(4) of the Act provides that:

> **Mode of exercise of admiralty jurisdiction**
>
> **4.**—(4) In the case of any such claim as is mentioned in section 3(1)(*d*) to (*q*), where —
>
> (a) the claim arises in connection with a ship; and
>
> (b) the person who would be liable on the claim in an action in personam (referred to in this subsection as the relevant person) was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship,
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> an action in rem may (whether or not the claim gives rise to a maritime lien on that ship) be brought in the High Court against —
>
> (i) that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of that ship under a charter by demise; or
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> (ii) any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.

26 The very wording of s 4(4) of the Act makes it clear that the statutory lien only accrues and crystallises at the time the *in rem* action is commenced, *ie,* upon the issuance of the writ (see *The Bolbina* [1993] 3 SLR(R) 894 at [14] and [18]). However, as I elaborate below at [28(b)], this is not the case for a maritime lien. I therefore did not derive much assistance from the statutory lien cases in deciding the threshold issue.

27 Whilst the plaintiff also cited *The Father Thames* ([22(a)] *supra*) in support of its argument, which was a case involving a damage lien, the *ratio*

decidendi of *The Father Thames* concerned the distinct question of whether a demise charterer could be deemed an "owner" for purposes of an *in rem* action. As I elaborate below at [37], the *obiter dictum* of Sheen J in *The Father Thames* that the plaintiff relied upon in fact supported Cepheus' position rather than the plaintiff's. Given the dearth of authority, I found it necessary to fall back on first principles to decide this threshold issue. This in turn necessitated an examination of the core features of a maritime lien.

28 A maritime lien is an encumbrance on a ship or other *res* which accrues simultaneously with the cause of action. It is not a claim *per se* but exists as a form of security for an underlying claim. The maritime lien is enforceable through an action *in rem,* and entitles the claimant to be paid out of the sale proceeds of the *res* in priority to other classes of creditors (*Precious Shipping Public Co Ltd and others v OW Bunker Far East (Singapore) Pte Ltd and others and other matters* [2015] 4 SLR 1229 at [51] citing *The Halcyon Isle* ([4] *supra*) at [10] and [21]). A maritime lien has, at its core, the following salient features:

(a) First, a maritime lien travels secretively and unconditionally with the *res*. It survives changes of ownership (otherwise than via a judicial sale), even if the *res* is transferred to a *bona fide* purchaser without notice (*The Halcyon Isle* at [9] citing *The Bold Buccleugh* ([4] *supra*)). Further, the offending ship may be validly arrested by an injured claimant to obtain security to enforce its claim despite the change in ownership, *and* to compel appearance by the wrongdoers (*The Father Thames* at 368 *per* Sheen J). The new owner would not be able to set aside the *in rem* writ or the arrest simply on account of the change of ownership. I shall refer to this as the "Procedural Aspect" of the maritime lien.

(b) Second, the maritime lien accrues *simultaneously* with the cause of action but lies inchoate until it is carried into effect by an action *in rem*. When the *in rem* action is commenced, the maritime lien crystallises and *relates back to the period when it first arose* (see *The Halcyon Isle* at [9] citing *The Bold Buccleugh*). As was neatly summarised by Lord Diplock in *The Halcyon Isle* at [24]:

> If and when a maritime lien is carried into effect by legal process, however, the charge dates back to the time that the claim on which it is founded arose. It is only in this retrospective consequence of his having been able to enforce the legal process in a court of law that enables a claimant, whose entitlement to a maritime lien is still inchoate and has not yet come into effect, to pursue his claim to lien, as it were proleptically, in a proceeding in rem against the ship at a time when it no longer belongs to the shipowner who was personally liable to satisfy the claim in respect of which the lien arose.

I refer to this as the "Crystallisation Aspect" of the maritime lien.

29 Focusing on the **damage lien**, it is well-established that the lien is based on, or arises as a result of the fault or negligence on the part of the servants of the offending ship, as attributable to its owner. In this regard, the description "owner" is wide enough to include a demise charterer, if any, at the time of the incident giving rise to the damage lien (*The Father Thames* at 368 col 2). In other words, the *personal liability* of the shipowner is a necessary requirement for the accrual of the damage lien. As succinctly described by Sir Francis Jeune, delivering the judgment of the Privy Council (on appeal from the Vice-Admiralty Court of Gibraltar) in *The Utopia* [1893] AC 492 ("*The Utopia*") at 499:

> … the *foundation of the lien is the negligence of the owners* or their servants *at the time of the collision*, and if that be not proved no lien comes into existence, and the ship is no more liable than any other property which the owners at the time of the collision may have possessed. …

[emphasis added]

I refer to this as the "Fault Aspect" of the damage lien.

My decision on the proper defendant

30 When all three aspects as defined above (*ie,* Procedural, Crystallisation and Fault) are considered together, it was, in my view, logical that in the context of an *in rem* writ issued in respect of a claim for collision damage, the action is in fact addressed to the owner (or the demise charterer as the case may be) of the ship *at the time of the collision*; this is the case even where the ownership of the offending ship has changed between the date of the collision and the issuance of the writ. Therefore, in this case, the proper party to enter an appearance in ADM 143 as *the defendant* was *Sea Dolphin* and not Cepheus. I elaborate further.

31 In relation to the Fault Aspect, it was in my view, intuitively wrong that the damage lien could have the effect of making a subsequent *bona fide* purchaser of the wrongdoing ship, a defendant in the true sense of the word. If the plaintiff's argument was upheld, it could theoretically render a subsequent owner personally liable *in personam* for a collision that was neither its fault, nor that of its servants. That did not seem logical, and as I explain below at [34], in fact exposed the key weakness in the plaintiff's argument.

32 Cepheus' position, on the other hand, was consistent with the well-established legal consequences of an entry of appearance. It is hornbook admiralty law that an action in *rem* commenced against a ship is an action against the ship itself. If the defendant does not enter an appearance and judgment is obtained, the judgment is enforceable only against the ship, to the extent of its realisable value via a judicial sale. In contrast, if the defendant

enters an appearance, he submits himself personally to the jurisdiction of the court, and renders himself liable *in personam* such that if judgment is obtained by the plaintiff, it may be enforced *in rem* against the ship and *in personam* against the defendant (*The Soeraya Emas* [1991] 2 SLR(R) 479 at [28]-[30]*; The Fierbinti* [1994] 3 SLR(R) 574 at [12]). This principle also applies to a claim subject to a damage lien *mutatis mutandis*. I thus agreed with Cepheus' submission that it would be "absurd" to insist that in order to protect its rights in respect of the Ship (and to secure its release from arrest), Cepheus had to enter appearance as "defendant" in ADM 143 and potentially render itself personally liable for a fault-based claim, in circumstances where it was a total stranger to the events giving rise to the collision.[13]

33 On the facts before me, Sea Dolphin (and not Cepheus) would be the party against whom "fault", if any, would have to be established by the plaintiff in relation to the collision; it was Sea Dolphin's servants or agents who were navigating the Ship at the material time. Sea Dolphin would thus be the proper *in personam* defendant to the action.

34 Second, as explained at [28(a)] above, the essence of the Procedural Aspect allows the offending ship to be arrested by the injured party to obtain security for the damage suffered, *and* to compel the *wrongdoer* to appear to answer the claim, notwithstanding the subsequent change in ownership. In this context, the *wrongdoer* can only be the owner (or demise charterer) of the offending ship at the time of the collision. This demonstrates the neat confluence of the Procedural Aspect and the Fault Aspect. However, the plaintiff's contentions seek to upset this neat confluence. If I were to find that the new

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13 Res WS at paras 32 and 33.

owner, Cepheus, was the proper *in personam* defendant for the purposes of the action, then upon the arrest of the Ship, Cepheus would be compelled to enter appearance as defendant and potentially assume *in personam* liability that originally accrued through no fault on its part. Such a result cannot be right. It is, with respect, not logical and goes against the very core of both the Procedural Aspect and the Fault Aspect.

35 As for the plaintiff's submission that the new owner may seek an indemnity under the ship sale and purchase agreement from the original owners in respect of any losses or costs incurred in defending the action, I was of the view that this was an entirely separate matter which was dependent primarily on the specific terms of the agreement between the old and new owners of the ship. It did not provide an answer to the threshold issue I had to decide.

36 The Crystallisation Aspect further supported my conclusion that the proper *in personam* defendant is the owner of the ship at the time of the collision. As mentioned at [28(b)] above, the damage lien *arises* as soon as the incident by which the ship causes damage occurs. The damage lien *crystallises* upon the commencement of the *in rem* proceedings and when it does, *relates back* to the moment in time when it was first created (*ie*, when the incident causing damage occurred). As the damage lien is also premised on fault, the only party that can bear personal liability in respect of the collision damage claim is the owner *at the time of the collision, to which point in time the damage lien relates back when the in rem writ is issued*.

37 Thus, when all three aspects of the damage lien are drawn together, it becomes clear that the relevant point in time for the identification of the proper *in personam* defendant is when the collision occurred; this is the case even when the offending ship changes ownership prior to the issuance of the *in rem* writ

against it. In this regard, I found the following passage from the judgment of Sheen J in *The Father Thames* ([22(a)] *supra*) (at 368) instructive:

> If a ship has been sold between the day of the collision and the time when the writ is issued, the writ will not be set aside on the grounds that the defendants, namely the owners of the ship, are not liable for the negligent navigation of the ship. There is plenty of authority for the proposition that a maritime lien remains attached to the ship and the Court will arrest and hold that ship until bail has been given. If necessary the ship will be sold and the proceeds used to meet any judgment. In such a case the former owners are likely to have every incentive to assist the new owners in defending the action because they have given the new owners an indemnity in the contract of sale. The new owners may put up bail to secure the release of the ship. *It would, however, be more realistic, and many difficulties would be removed if the defendants were described in the writ as "The Owners on the (date of collision) of the ship 'Y'."*
>
> [emphasis added]

38 The italicised sentence in the passage above is pragmatic and sensible and reflects, in my view, the proper application of all three aspects of the damage lien as summarised at [28]-[29] above.

39 In cases involving a collision damage lien where the ship's name has also changed following the collision, when describing the defendant in the admiralty *in rem* writ, "X" (see Form 159 of the ROC at [1] above) should reflect the name of the ship *on the date of the collision*. However, the *in rem* writ should describe the action as being an action *in rem* against the ship under its *current name* on the date the writ is filed (see *The Mawan* [1988] 2 Lloyd's Rep. 459 at 460 col.1).

40 Reverting to the plaintiff's arguments summarised at [22], no authority was cited to me in which the new owners of a ship that had been involved in a collision under her previous ownership had entered appearance *as defendants* in an action *in rem*, and were also subsequently found liable *in personam* for the

collision. Given the core features of the damage lien (see [28] – [29] above), the entry of appearance cannot create *in personam* liability on the new owner of the offending vessel in the absence of fault on the part of that new owner for the damage lien arising in the first place. I would be surprised if any such authority existed as it would be a decision contrary to the core of the Fault Aspect. Indeed, the Fault Aspect of the damage lien demonstrated, in my view, the fundamental fallacy in the plaintiff's position. If the plaintiff's argument (*ie,* that the new owner who is a stranger to the collision is the proper *in personam* defendant) is taken to its logical conclusion, the new owners in this case (*ie,* Cepheus) could then potentially defend the action and have the plaintiff's claim *dismissed* on the basis that there was *no* negligence or fault on Cepheus' part or on the part of their servants or agents. Such a result would thereby render the damage lien which had accrued in the plaintiff's favour impotent. The plaintiff's contention thus turned the essence of a damage lien on its head and fortified my view that it was wrong in law.

41 In conclusion, on the threshold issue, I found that the proper *in personam* defendant in the present case was Sea Dolphin, as the owner of the Ship at the time of the collision.

Issue 2: Whether leave should be granted to Cepheus

42 It follows from my conclusion at [41] that the appearance entered by Cepheus as defendant was incorrect. The next question was whether leave ought to be granted to Cepheus to (a) withdraw its appearance as defendant, and (b) intervene in ADM 143.

43 The Plaintiff submitted that leave should not be granted for four key reasons:[14]

(a) Cepheus had entered appearance after being properly advised by its lawyers such that it should be seen as a deliberate move rather than an inadvertent mistake.[15]

(b) Cepheus had taken steps in the proceedings by filing a summons seeking, *inter alia*, leave to pay the security amount into court and by putting up security.[16]

(c) There was undue delay as four months had elapsed between Cepheus' entry of appearance and its subsequent filing of SUM 1187.[17]

(d) Prejudice would be occasioned to the plaintiff if leave was granted for Cepheus to withdraw its appearance and for Sea Dolphin to take its place as defendant. Sea Dolphin would potentially have a counterclaim against the plaintiff while Cepheus, a stranger to the collision, does not. Sea Dolphin had separately commenced proceedings against the plaintiff in another jurisdiction and the plaintiff was concerned that it would be exposed to the operation of the "single liability principle" as espoused in *The Khedive* (1882) 7 App Cas 795.[18]

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14 App WS at para 13.

15 App WS at para 14

16 App WS at para 15.

17 NOA at p 2 lines 16 - 17.

18 App WS at paras 36 – 37.

44 The plaintiff further argued that if leave was not granted to Cepheus to withdraw its appearance, then no leave should be granted for it to intervene in ADM 143 as a party cannot simultaneously be both the proper defendant and an intervener.[19]

45 The relevant rules in the ROC state as follows:

> **Withdrawal of Appearance (O. 21 r. 1)**
>
> **1.** A party who has entered an appearance in an action may withdraw the appearance at any time with the leave of the Court.
>
> **Interveners (O. 70, r. 16)**
>
> 16.—(1) Where property against which an action in rem is brought is under arrest or money representing the proceeds of sale of that property is in Court, a person who has an interest in that property or money but who is not a defendant to the action may, with the leave of the Court, intervene in the action.
>
> …
>
> (3) A person to whom leave is granted to intervene in an action must enter an appearance therein in the Registry within the period specified in the order granting leave; and Order 12, Rules 1 to 4 shall apply, with the necessary modifications, in relation to the entry of appearance by an intervener as if he were a defendant named in the writ.
>
> …

46 I agreed with Cepheus that the court has complete discretion to grant a party leave to withdraw an appearance. Whilst the discretion is unfettered, it must be exercised judicially. Under O 21 r 1 of the ROC, the discretion is certainly not limited to a case where the defendant acted under a mistake. On the plain wording of the rule, no such limitation is imposed on the court's

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[19] App WS at paras 39 – 40.

discretion to grant leave. In exercising its discretion, the court will have regard to all the circumstances of each case (see *Singapore Civil Procedure 2020* vol I (Chua Lee Ming gen ed) (Sweet & Maxwell, 2020) at para 21/1/1.[20]

47 After considering all the circumstances of this case, I disagreed with the plaintiff that the court should refuse Cepheus leave to withdraw its appearance.

48 First, while leave may not be granted if there was "no question of a mistake" (see *Somportex Ltd. v Philadelphia Chewing Gum Corp.* [1968] 3 All ER 26, followed in *Woh Hup (Pte.) Ltd. v Property Development Ltd* [1991] 1 SLR(R) 473 at [20]), the plaintiff did not point me to any evidence to show that Cepheus' entry of appearance as defendant was a "deliberate move" rather than an "inadvertent mistake".[21] Further, this case appeared to fall within the latter category given that: (a) Cepheus had maintained that it was "misconceived" in filing its MOA as a defendant;[22] and (b) remaining as the defendant would be inimical to Cepheus' interests (see [31] above).

49 Second, Cepheus furnished security by way of a payment into court in order to secure the release of the Ship. In order to do so, Cepheus was required to take out a formal application in the form of a summons as a matter of ordinary procedure.

50 Third, there was, in my view, no "undue delay" of four months. Cepheus filed its MOA on 15 November 2019. The evidence shows that on 31 January 2020, Cepheus had written to the plaintiff to request its consent to allow

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20 Res WS at para 37.

21 App WS at para 14.

22 Sabapathy's 1st Aff at para 13.

Cepheus to withdraw its MOA and intervene in ADM 143.[23] The plaintiff replied on 7 February 2020 denying Cepheus' request. The parties then attended a pre-trial conference on 13 February 2020 where Cepheus informed the court that it intended to file SUM 1187 but would also commence without prejudice negotiations with the plaintiff in the hopes of resolving the overall dispute amicably.[24] From 13 February 2020 to 12 March 2020, parties were in negotiations. On 12 March 2020, Cepheus filed SUM 1187.

51 Based on the above timeline of events (which was not disputed by the plaintiff), there was no undue delay of four months. If there was any delay, it was, at best, slightly more than a month. Cepheus was only made aware of the mistake in the entry of appearance *after* the Vessel was released from arrest on 20 December 2019 and began taking concrete steps to rectify the error from 31 January 2020 onwards. The plaintiff's assertion of undue delay on Cepheus' part was, in my view, overstated.

52 Fourth, in respect of the claimed prejudice to the plaintiff in terms of a potential counterclaim from Sea Dolphin, that argument necessarily presupposed that Cepheus was the correct defendant in the first place. However, as I have concluded above, Cepheus was not the proper *in personam* defendant for the purposes of ADM 143. The claimed prejudice was therefore a non-starter as it was grounded on a premise that was wrong in law. It appeared to me that the plaintiff was essentially contending that it ought to be allowed to take advantage of Cepheus' incorrect entry of appearance as defendant, and be

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23 Res WS at paras 43 - 44.

24 Minute Sheet dated 13 February 2020.

allowed to prosecute its claim with no counterclaim. That did not seem right to me. In any case, as explained above, there was in fact no prejudice to begin with.

53 An additional point to note was that Sea Dolphin had entered appearance as defendant and had taken steps in ADM 143 by, for example, filing its List of Electronic Track Data (see [13] above). If the plaintiff succeeded in proving its claim at trial, any judgment obtained by it could be enforced against *the security* furnished by Cepheus as the intervener and *personally* against Sea Dolphin as the defendant should the security furnished prove insufficient.

54 Lastly, the presence of proceedings commenced by Sea Dolphin against the plaintiff in another jurisdiction was, in my view, irrelevant to the present application which was primarily concerned with whether Cepheus ought to be granted leave to withdraw its MOA.

55 Having considered the parties' arguments, the circumstances of the case, and bearing in mind my conclusion on the threshold issue, this was, in my judgment, an appropriate case for the court's discretion to be exercised in favour of allowing the appearance by Cepheus to be withdrawn. In this regard, the AR did not err in allowing Cepheus' application for leave to withdraw its appearance as defendant.

56 Finally, as the current owners of the Ship and the party who had furnished security in respect of the plaintiff's claim in order to secure the release of the Ship from arrest, Cepheus was plainly a party with an interest in the Ship as contemplated by O 70 r 16(1) of the ROC. I thus also agreed with the AR's decision to grant Cepheus leave to intervene in ADM 143.

57 For the foregoing reasons, I dismissed RA 106. I also fixed costs of the appeal at $4,000 (including disbursements) to be paid by the plaintiff to Cepheus.

S Mohan
Judicial Commissioner

Jude Philomen Benny, Mary-Anne Shu-Hui Chua (Joseph Tan Jude Benny LLP) for the plaintiff;
Vellayappan Balasubramaniyam, Dedi Affandi bin Ahmad, Dinesh Sabapathy (Rajah & Tann Singapore LLP) for the defendant and intervener.