

The Global 1
[2006] SGHC 30

Case Number : Adm in Rem 290/2003, SIC 5647/2005
Decision Date : 20 February 2006
Tribunal/Court : High Court
Coram : Yeong Zee Kin AR
Counsel Name(s) : Gan Seng Chee (with Benjamin Seow) for the plaintiffs; Vivian Ang (with Yap Yin Soon), instructed by Perry Lim for the defendants
Parties : —

20 February 2006

Judgment reserved.

AR Yeong Zee Kin:

1. This is an application by the Defendants for leave to withdraw their appearance in this present matter. The Defendants' main contention is that this is an *in rem* action and that their clients, who were the owners of the vessel Global 1 at the time the cause of action arose, ceased to be owners of the vessel at the time when the *in rem* writ was issued. That being the case, they argue that they ought not have entered appearance and having done so, now seek leave to withdraw their appearance.

2. After hearing counsel's arguments, I dismissed the application and granted leave for the Plaintiffs to amend their writ from an *in rem* form to an *in personam* form under Order 2, rule 1. I now set out the grounds for my decision.

Summary of facts

3. The salient facts are as follows. The Defendants Global Shipping Co Ltd were, at the time the cause of action arose, the owners of the vessel Global 1. The Plaintiffs Chemical Industries (Far East) Ltd were shipping a cargo of liquid caustic soda onboard the vessel from India to Singapore. The cause of action arose sometime in November or December 2002.

4. On 9 October 2003, before the issue of the present writ, there was a change of ownership of the vessel; the new owners are Shinhan Capital Co Ltd and the vessel was renamed Ace 1. The present writ was issued on 18 November 2003 and the Statement of Claim was filed on 21 April 2005. The Defendants were served the writ on 9 July 2004; they entered appearance on 13 July 2004.

5. Parties did not realise that there was a change of ownership of the vessel until sometime in September 2005. This can be explained by considering that the defence is conducted by the American Steamship Owners Mutual Protection and Indemnity Association Inc, the Protection and Indemnity Club that the Defendants are a member of. On 13 October 2005, the Defendants' solicitors wrote to the Plaintiffs' solicitors on this issue and suggested suspending the proceedings temporarily in order to take legal advice on their respective legal positions. This request was turned down.

The issues

6. During arguments, the Defendants framed the issue thus: As the writ was an *in rem* writ, the

Plaintiffs had to fulfil all the conditions in s 4(4) of the High Court (Admiralty Jurisdiction) Act; and since the Defendants were not the beneficial owners of all the shares in the vessel at the time the writ was issued, they were not the proper party to the present proceedings. This being the case, the Defendants were not a proper party and that their appearance should be withdrawn.

7. The Plaintiffs' approached the matter in the following manner. An *in rem* writ had both an *in rem* and an *in personam* component. Even if the Defendant was not liable *in rem*, the Plaintiffs argue that the Defendants were liable *in personam* and that the action should proceed on the *in personam* component of the *in rem* writ.

8. As I see it, the issues ought to be characterised as follows:

- (a) Does the High Court have admiralty jurisdiction in this matter; and
- (b) If so, whether the admiralty jurisdiction of the High Court was properly invoked.

The law

Admiralty jurisdiction

9. Section 3 of the High Court (Admiralty Jurisdiction) Act sets out the admiralty jurisdiction of the High Court. The relevant subsection for the present case is subsection (g), as the claim is for loss of or damage to goods carried in a ship.

10. Section 4 of the High Court (Admiralty Jurisdiction) Act sets out how admiralty jurisdiction may be invoked. Generally, the admiralty jurisdiction of the High Court may be invoked either *in personam* or *in rem*. Section 4(1) states that 'the admiralty jurisdiction of the High Court may in all cases be invoked by an action *in personam*.'

11. Apart from *in personam* jurisdiction, the High Court has *in rem* admiralty jurisdiction. Section 4 proceeds to set out three situations where admiralty jurisdiction may be invoked *in rem*:

- (a) Where the claim relates to possession or ownership of a ship, disputes between co-owners over possession, employment or earnings of a ship, mortgage or charge on a ship, forfeiture or condemnation of a ship or goods carried onboard, restoration after seizure or droits of admiralty: s 4(2);
- (b) Where there is a maritime lien on a ship: s 4(3); or
- (c) Where there is a statutory right of action *in rem* or statutory lien (*per* GP Selvam JC in *The Bolbina* [1994] 1 SLR 554, at 559) under s 4(4). Section 4(4) was amended on 1 April 2004; the version prior to the amendment—and the pertinent version for the present proceedings—reads as follows:

In the case of any such claim as is mentioned in section 3 (1) (d) to (q), being a claim arising in connection with a ship, where the person who would be liable on the claim in an action *in personam* was, when the cause of the action arose, the owner or charterer of, or in possession or in control of, the ship, the admiralty jurisdiction of the High Court may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action *in rem* against —

- (a) that ship, if at the time when the action is brought it is beneficially owned as

respects all the shares therein by that person; or

(b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid.

12. In order to invoke *in rem* jurisdiction under s 4(4), the claimant must satisfy all the conditions set out in that sub-section:

(c) The claim must be one under s 3(1)(d) to (q);

(d) The person liable to the claim *in personam* was the owner or charterer of or in possession or control of the ship when the cause of action arose; and

(e) All the shares in the ship (or sister ship) are beneficially owned by that person at the time the action was brought.

Invocation of admiralty jurisdiction: form and service

Form of an in rem and in personam writ

13. The Rules of Court sets out further details regarding how *in rem* and *in personam* jurisdiction is to be invoked. Order 70, rule 2(1) prescribes the form that an *in rem* writ should take. Order 70, rule 2(2) prescribes that the form of an *in personam* writ should follow the general writ form, except that 'the words "admiralty action *in personam*" must be inserted above the space for the number of the writ.' A perusal of the *in rem* form and the general writ form would show that these forms are largely similar except for the following:

(a) In an *in rem* writ, the words 'Admiralty in Rem' appears in the title of the action' while an *in personam* writ should contain the words 'Admiralty Action in Personam'; and

(b) The parties in an *in rem* writ are described in their capacity as ship owner or cargo owner, etc—in other words, they are described generally and not named; in an *in personam* writ, the parties are specifically named.

Service of an in rem writ and in personam writ

14. An *in personam* writ, as with any writ in general, has to be served personally on the Defendant: O 10, r 1. An *in rem* writ, on the other hand may be served either one of the following manner:

(a) Service may be 'on the property against which the action is brought' (ie the ship) under O 70, r 7(1). In this case, service would be effected by the Sheriff or his officer under O 70, r 7(3). Service of the *in rem* writ on a ship would be effected by affixing it 'for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure' and thereafter, removing the writ and leaving a copy of it affixed 'on a sheltered, conspicuous part of the ship': O 70, r 10(1).

(b) Alternatively, the *in rem* writ may be served on the Defendants' solicitor who endorses on the writ a statement that he accepts service on behalf of the Defendant or the Defendants enters an appearance in the action without being duly served. In both of these cases, 'the writ is deemed to have been duly served on the defendant by virtue of Order 10, Rule 1 (2) or (3)': O

15. One crucial distinction must be noted in the different modes of service of an *in rem* writ described above. Service of the writ 'on the property against which the action is brought' by affixing it on the ship invokes the admiralty jurisdiction of the High Court against the *res*. On the other hand, where the Defendants' solicitors *in rem* writ is served on the Defendants' solicitors, or where the Defendants enter an appearance without being duly served, the writ is deemed to be duly served on the *defendant*. In the latter case, the admiralty jurisdiction of the High Court is invoked on the Defendant, *ie in personam*.

The difference between in rem and in personam admiralty jurisdiction

16. The difference between *in rem* and *in personam* admiralty jurisdiction may be best understood by considering the subject matter that the jurisdiction latches upon. The *in rem* jurisdiction latches onto the *res* and is essentially a claim against property. It follows that if admiralty jurisdiction is invoked only against a ship, the Plaintiffs' claim can only be satisfied to the value of the ship.

17. *In personam* admiralty jurisdiction on the other hand latches onto the Defendant personally. Once properly invoked, the Defendant is liable for the full extent of the Plaintiffs' claim.

18. Where the form of the writ is an *in personam* writ, there is little room for confusion that the admiralty jurisdiction is invoked against the Defendants personally. An *in rem* writ has both an *in personam* and an *in rem* component: 'the English admiralty action in rem is not a pure action in rem for it contains latent elements of actions in personam' *per* GP Selvam JC in *The Bolbina* [1994] 1 SLR 554, at 557.

19. Where the writ is an *in rem* writ, a careful consideration of service is necessary in order to understand how and against what or whom the High Court's admiralty jurisdiction is invoked. There are three possible scenarios:

- (a) The *in rem* writ is served on the ship and the ship owners do not enter an appearance;
- (b) The *in rem* writ is served on the ship and the ship owners proceed to enter an appearance; and
- (c) The *in rem* writ is not served on the ship but the ship owners' solicitors accepts service or they enter an appearance thereby waiving service.

20. The effect of the first two scenarios are amply summarised by LP Thean JA in *The Fierbinti* [1994] 3 SLR 864, at 870:

It seems to us that the distinction between service of the writ on the *res* and deemed service of the writ on the defendant is inevitable in an admiralty action in rem. An action in rem once commenced against the ship is an action against the ship itself and continues as such even though it may also be an action in personam against the owner thereof. If the owner does not enter an appearance and the judgment is obtained, the judgment is enforceable only against the ship and to the extent of the value of the ship. If, however, the owner enters an appearance the action will continue as an action in rem against the ship and an action in personam against the owner, and if judgment is obtained it is enforceable against the ship and also against the owner to the full extent of the judgment: see *The Gemma*, at pp 291–292; *The August 8*, at p 456, and

The Kusu Island, at pp 260–261. It has been held in *The Kusu Island* that although an action in rem is one against the res, the defendant to the action is the owner of the res and not the res itself: see pp 261–262.

21. Hence, where the *in rem* writ is served on the ship and the ship owners do not enter an appearance, the claimant can only look to the ship for satisfaction of his claim. Whereas in the situation where the *in rem* writ is served on the ship and the ship owners proceed to enter an appearance, both *in rem* and *in personam* components of the writ are invoked and the claimant can look to both ship and ship owners for satisfaction of his claim.

22. In *The Fierbinti*, the plaintiffs took out an *in rem* writ against the defendants and named 19 ships on the writ. Eventually, the defendants' solicitors accepted service and entered appearance for *The Fierbinti* one of 19 ships named in the writ. However, the plaintiffs proceeded to arrest *The Mehedinti*, another of the 19 ships named. To further complicate the matter, there had been a change of ownership in *The Mehedinti* since the issue of the writ. One of the issues the Court of Appeal considered was whether *in rem* admiralty jurisdiction had been invoked by service on the defendants and their entry of appearance. LP Thean JA opined, at p 872:

Reverting to the facts in this case, we do not think that the appearance so entered by the defendants' solicitors has any effect or significance at all on the issue whether or not the *in rem* jurisdiction has been invoked against the *Fierbinti*. The effect of the entry of appearance was that thenceforth the action, which started as an *in rem* action, would proceed and continue as an action in *personam* against the owners of the *Fierbinti*, but as the writ has not been served on the ship the *in rem* character of that action remained. In this connection, we find of assistance the case of *The Lloydiana*. There, the plaintiffs took out a writ in rem against the defendants in respect of the wet damage and short delivery of their cargo of sugar laden on board the *Fair Liza*. The bills of lading for the carriage of the cargo were issued by the defendants and they were described as carriers. But the *Fair Liza* was chartered to another company, Nigerian National Shipping Line. The defendants' vessel *Lloydiana* was expected to arrive in London and the plaintiffs' solicitors threatened to arrest her. To avoid the arrest, the defendants through P and I Club provided a guarantee. But *Fair Liza* was not a sister ship of *Lloydiana* and the plaintiffs could not have an action in rem against the latter. The writ was served on the solicitors for the defendants. Subsequently, the defendants applied to court for an order that the writ be struck out and the service of the writ be set aside. The application was dismissed as the court held that it had jurisdiction to hear and determine any claim for loss or damage to goods in a ship. This was grounded on the fact that the solicitors for the defendants had accepted service and it was therefore unnecessary to proceed in rem, and the action thenceforth proceeded as one in *personam*, although it was commenced as an action in rem. Sheen J said, at p 318:

In this case, the defendants instructed solicitors to accept service of the writ. It was unnecessary to serve the ship and arrest her. Put in another way, it was unnecessary to proceed in rem. The action has proceeded as an action in *personam* against *Lloyd Triestino*, whose solicitors agreed to accept service. They have done so and they have acknowledged service.

For the reasons we have given, we cannot subscribe to the view that, where an action in rem is commenced, the *in rem* jurisdiction is invoked when there is a "deemed" service of the writ on the defendants. In our judgment, in this case, the *in rem* jurisdiction has not been invoked against the *Fierbinti*.

23. The Court of Appeal's answer deals with our third scenario. In essence, where the *in rem* writ

is served on the Defendants, the *in rem* admiralty jurisdiction is not invoked but the *in personam* jurisdiction is. Hence, the action, although commenced as an *in rem* action, proceeds as an *in personam* action against the Defendants.

The present case

Does the High Court have admiralty jurisdiction in this matter

24. The present action is brought by the cargo owners against the owners of the ship for contamination of their cargo of liquid caustic soda. This is a claim for damage to goods carried in a ship under s 3(1)(g). It is not disputed that the High Court has admiralty jurisdiction in this matter. Neither is it disputed that the Defendants are the proper party in an *in personam* by the Plaintiffs.

Whether the admiralty jurisdiction of the High Court was properly invoked

Whether in rem or in personam jurisdiction invoked

25. In the present case, the writ was an *in rem* writ taken out on the basis of a statutory lien or statutory right of action *in rem*. That being the case, the Plaintiffs had to fulfil the statutory requirements of s 4(4) of the High Court (Admiralty Jurisdiction) Act. The Defendants were the owners of the ship at the time the cause of action arose, but by the time the writ was issued, the ship had changed ownership. This being the case, the Plaintiffs could not properly invoke admiralty jurisdiction *in rem*.

26. The question that follows then is did they attempt to do so? They took out an *in rem* writ. However, it was not served on the ship nor was the ship arrested. Service of the writ was on the Defendants' solicitors and an appearance was duly entered. Putting aside the question of whether the writ should have been in the *in rem* or *in personam* form, the acceptance of service by its solicitors on its behalf and the entry of an appearance by the Defendants resulted in the invocation of the *in personam* admiralty jurisdiction of the High Court. Further, by not serving the writ on the ship or arresting the ship, the Plaintiffs elected not to invoke the *in rem* admiralty jurisdiction of the High Court.

27. To my mind, the present action is in substance an *in personam* action. *In rem* jurisdiction was never invoked, notwithstanding the form of the writ. Had the Plaintiffs attempted to invoke *in rem* jurisdiction, they would have failed for failure to fulfil the requirements of a statutory lien; but they are always entitled to invoke *in personam* admiralty jurisdiction. In other words, although commenced as an *in rem* action, *in rem* admiralty jurisdiction was never invoked and this action proceeded *in personam*.

Effect of using the wrong form

28. I turn now to the question of the form of the writ. By taking out an *in rem* writ, the Plaintiffs attempted to institute an *in rem* action; but an *in rem* action has both an *in rem* and an *in personam* component. While they may have started out intending to invoke the *in rem* admiralty jurisdiction of the High Court by taking out an *in rem* writ, the fact of the matter is that they elected to invoke only the *in personam* admiralty jurisdiction. The *in rem* component of the writ was never invoked. The present action was in substance conducted as an *in personam* action from the moment the writ was served on the Defendants' solicitors who accepted service of the writ on their behalf and entered appearance.

29. In *The Ohm Mariana* [1993] 2 SLR 698, the claim was by the ship managers against the ship owners for disbursements. One of the issue was whether the respondents who were the owners of the ship at the time the action commenced were also the owners of the ship at the time the cause of action arose. The Court of Appeal held that the respondents, although not the registered owners of the ship, were the beneficial owners of the ship at the time the cause of action arose. Since they were the beneficial owners in respect of all the shares of the ship when the action was brought, the statutory right of action *in rem* was properly invoked. LP Thean J (as he then was) proceeded to consider the legal position where *in rem* action was instituted in error. At p 712, he opined:

Further, even if the action in rem was instituted in error on the ground that, when the cause of action arose, the respondents were not the owners of Ohm Mariana, that error was not fatal to the appellants' claim at the trial. As we have held, the claim of the plaintiffs came within para (o) of s 3(1) of the Act, and the court has jurisdiction to hear and determine the claim. The defendants had not, at the initial or any subsequent stage of the proceedings, applied to set aside the writ and the warrant of arrest. They entered an appearance unconditionally and in so doing submitted to the jurisdiction of the court and from then onwards the action continued as an action in rem as well as an action in personam: see *The Gemma* and *The August 8*. ...

Accordingly, at the time the action came before the learned judicial commissioner, it was an action in personam as well as an action in rem. Assuming that the action in rem was wrongly instituted, the action in personam was clearly maintainable on the point of jurisdiction. There was no impediment to the plaintiffs bringing an action in personam against the defendants making the same claim as was made in this action. Equally, we can see no impediment to the action continuing as an action in personam. The subject matter of the claim was before the court and the court had jurisdiction to hear and determine it.

30. Similarly in our case, the Plaintiffs may have begun by attempting to institute an *in rem* action by taking out an *in rem* writ. However, the *in rem* jurisdiction was never invoked. The action was conducted as an *in personam* action. It cannot be disputed that the High Court has *in personam* admiralty jurisdiction. Hence, the Plaintiffs' action is clearly maintainable.

31. In the circumstances, the only question left to be addressed is what of the *in rem* writ? Having arrived at the conclusion that the Plaintiffs are not entitled to invoke *in rem* admiralty jurisdiction and that the action was in substance an *in personam* action, it would be remiss to allow the writ to continue in the form it is presently in. In *The Bradmayne* [1916] P 64 (CA), cited in Nigel Meeson, *Admiralty Jurisdiction and Practice* (3rd Ed, 2003) at [3.22], Bankes LJ said:

In my opinion an action which has been commenced as an action *in rem* continues until its termination as an action *in rem* unless it undergoes some alteration in its character *by amendment*, by order of the Court, or under the rules of Court. [Emphasis mine.]

32. Under O 2, r 1(1), failure to comply with the requirements of the Rules in respect of form is an irregularity which shall not nullify the proceedings. The Court is empowered under O 2, r 1(2) to exercise its powers to allow such amendments to be made and to make such order dealing with the proceedings generally as it thinks fit. In exercise of these powers, I granted leave to the Plaintiffs to amend the form of their writ to an *in personam* form in order that the form of the writ coincides with the substance of the action. Given that the only difference between the *in rem* and *in personam* forms are in the description of the parties and nature of the action in the title of the action, I directed that the writ be amended to specifically name Chemical Industries (Far East) Ltd as the Plaintiffs, to specifically name Global Shipping Co Ltd as the Defendant, and to replace the words '*in rem*' with '*in personam*' in the title of the action.

33. Although the present application was one for leave to allow the Defendants to withdraw their appearance, it was necessitated by the Plaintiffs' error in instituting an *in rem* action. An *in rem* action is not maintainable although an *in personam* one is. An amendment for the purpose of altering the action from an *in rem* action to an *in personam* action would have been necessary. That being the case, consequential directions for amendments were made and costs of \$8,000 was awarded to the Defendants.

Defendants' application is dismissed.

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