The Alexandrea
[2002] SGHC 82

Case Number : Adm in Rem 600090/2002, RA 600032/2002

Decision Date : 23 April 2002

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean JC

Counsel Name(s) : Sin Lye Kuen and Candice Kwok (Khattar Wong & Partners) for the plaintiffs; LD Dason (Steven Lee, Dason & Partners) for the defendants.

Parties : —

Admiralty and Shipping – Admiralty jurisdiction and arrest – Action in rem – Arrest of vessel – Conditions which claimant has to satisfy before action in rem can be brought against vessel – Whether plaintiffs' claim falls within scope of High Court (Admiralty Jurisdiction) Act (Cap 123, 2001 Ed) – Whether court has admiralty jurisdiction – ss 3(1)(l) & 4(4) High Court (Admiralty Jurisdiction) Act (Cap 123, 2001 Ed)

Words and Phrases – 'In respect of' – 'A ship' – ss 3(1)(l) & 4(4) High Court (Admiralty Jurisdiction) Act (Cap 123, 2001 Ed)

Judgment

GROUNDS OF DECISION

1. This was an appeal by the Defendants against the decision of the Assistant Registrar dismissing the Defendants' application to set aside the arrest of "ALEXANDREA". At the conclusion of the hearing, Defendants' Counsel orally applied to set aside the Writ of Summons as well. I granted leave to the Defendants to amend their application and Notice of Appeal.

2. The Plaintiffs, Sumitomo Corporation (Singapore) Pte Ltd, were a party in the chain of contracts for the supply of marine fuel oil ("MFO"). The Plaintiffs' immediate buyer was Sumitomo Corporation Europe PLC ("SCEP"). Pursuant to a contract made between the Plaintiffs and Meridian Petroleum and Bunkering Pte Ltd ("Meridian"), on 21 September 2001 Meridian purportedly supplied MFO to "FRONT MELODY" at Singapore.

3. The Plaintiffs alleged that the MFO stemmed from the "ALEXANDREA", a bunker tanker owned by J S Pink Pte Ltd, was contaminated in that it contained Di-methyl Ester of Hexabedioic acid, a chemical compound used in paint strippers. The "FRONT MELODY" suffered loss or damage as a result of using the contaminated bunkers which affected the performance of the ship's machinery. Owners of "FRONT MELODY" gave notice of their loss or damage to SCEP who in turn is holding the Plaintiffs answerable.

4. On 22 March 2002, the Plaintiffs commenced an in rem action against the "ALEXANDREA" in negligence, alleging a failure on the part of the Defendants to ensure that MFO stemming from "ALEXANDREA" was free of contaminants. In the event of liability to SCEP, they in addition, sought an order to be indemnified against any adverse financial consequences they might suffer as a result of the "FRONT MELODY" using contaminated marine fuel.

5. The "ALEXANDREA" was arrested on 22 March 2002.

The Relevant Statutory Provisions

6. ***The High Court (Admiralty Jurisdiction) Act*** (Cap 123) ("the Act") provides:

> "3. (1) The admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims:
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> …
>
> (l) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
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> …
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> 4. (4) In the case of any such claim as 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 involved 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
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> (b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid."

The Defendants' application and appeal - basis and opposition

7. The Defendants' application for the warrant of arrest to be set aside and for damages for wrongful arrest was filed on 26 March 2002. Having failed before the Assistant Registrar, the Defendants' filed Notice to Appeal on 1 April 2002.

8. The Defendants challenged the validity of the arrest of "ALXANDREA" on two grounds. The first is that the admiralty jurisdiction under s. 4(4) of Act had been improperly invoked. Secondly, that there was material non-disclosure in the Plaintiffs' affidavit leading the warrant of arrest. There was no mention there that the Plaintiffs' contract to supply MFO to the "FRONT MELODY" was with Meridian and not with the Defendants.

9. Before me, Counsel for the Defendants, Mr. Dason, proceeded on the basis of a concession that the Plaintiffs' claim framed in negligence fell within the scope of s 3(1)(l) of the Act.

10. For the reasons explained below, Counsel's concession is misplaced. I accordingly rejected it. Selvam J in ***The "Ohm Marina"*** [1992] 2 SLR 623 at 630 stated:

> "The admiralty jurisdiction of the High Court of Singapore is essentially statutory, namely the jurisdiction conferred on the High Court by the High Court (Admiralty Jurisdiction) Act (cap 123) ("the Act"). The Act lays down the conditions, which must be satisfied before a claimant avails himself of the right to institute in rem proceedings against a ship and the powerful right to effect an arrest of the ship. As the in rem jurisdiction is created and limited by statute, the parties cannot confer such jurisdiction by agreement or waiver."

11. That is also the case, when a concession has been wrongly given. The court would clearly be acting without jurisdiction if the Plaintiffs' claim did not satisfy the basic condition for jurisdiction.

12. Plaintiffs' Counsel, Mr. Sin, contended that the Plaintiffs' claim fell squarely within s 3(1)(l) of the Act. It was common ground that the bunkers were supplied to the "FRONT MELODY" for her operation or maintenance. It was also common ground that the beneficial owners of "ALEXANDREA", both when the cause of action arose and at the date of the issue of the Writ of Summons was J S Pink Fuel Pte Ltd.

13. On that basis, he submitted that the Plaintiffs had established jurisdiction in rem and were entitled to arrest the "ALEXANDREA".

14. Mr Sin essentially rested the Plaintiffs' opposition to Defendants' application on the interpretation of s 3(1)(l) and s 4(4) of the Act. He urged the Court to construe widely s 3(1)(l) and s 4(4) of the Act.

15. Mr. Sin argued that there was no material non-disclosure of the matter alleged as it was made known at the outset of the arrest that the claim against the "ALEXANDREA" was framed in negligence.

Jurisdiction and Onus of Proof

16. In the appeal, the question relating to the admiralty jurisdiction in rem, which I was concerned with, was whether there is jurisdiction in rem against the "ALEXANDREA" in respect of the Plaintiffs' claim framed in negligence for damages.

17. Having decided that question in favour of the Defendants, there was no need for me to consider the ancillary question which was whether the Plaintiffs could include in their claim an order to be indemnified against their possible liability to SCEP.

(1) Whether there is jurisdiction in rem against the "ALEXANDREA"

18. When faced with an application of this nature, it is for the arresting party to show on a balance of probabilities that the action is within the in rem jurisdiction of the Court.

19. In order to be entitled to bring an action in rem against the "ALEXANDREA", the Plaintiffs must establish:

> (i) that the claim is within the scope of s 3(1)(l) of the Act;
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> (ii) that the claim arises in connection with a ship;
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> (iii) the 2-stage test in s 4(4) of the Act - that is to say, satisfy the in personam and in rem test.

(See: Selvam J in The ***"Opal 3"*** [1992] 2 SLR 585 at 590)

(i) Section 3 (1) (l) - "any claim in respect of goods or materials supplied to a ship for her operation or maintenance"

20. The Plaintiffs' submission is that Court has jurisdiction to hear and determine this claim under s. 3(1)(l) of the Act.

21. Mr. Sin contended that the words "in respect of" in par. (l) should be substituted for the words "arising out of". In ***The "Indriani"*** [1996] 1 SLR 305, the words "arising out of" were interpreted widely to mean "connected with". On this wide interpretation, par. (l) would cover the Plaintiffs' claim in tort even though there was no contractual relationship between the Plaintiffs and the owners of "ALEXANDREA".

22. Such an approach, he stated, would be in keeping with several decisions of the Court of Appeal (such as ***The "Trade Fair"*** [1994] 3 SLR 827"; ***Alexander G Tsavliris & Sons Maritime Co v Keppel Corp Ltd*** [1995] 2 SLR 113) where some provisions of s. 3(1) of the Act were given a wide and liberal construction. Mr. Sin argued for a wider admiralty jurisdiction.

23. The Court of Appeal in ***The "Trade Fair"*** construed the word 'for' in s. 3(1)(f) of the Act as bearing the wider meaning of 'arising out of'. Mr. Sin referred to the speech of Lord Brandon in ***The "Antonis P Lemos"*** [1985] 1 Lloyd's Rep 283 which was relied on by Karthigesu JA in ***The "Trade Fair".*** Karthigesu JA at p 832 of the report observed:

> "Lord Brandon in delivering the main speech in the House of Lords remarked (see p 289) in relation to s 20(2) of the 1981 Act that he 'never understood' why the expression 'arising out of' appearing in the convention was not used for all claims listed under s 20(2) but only to three of them (as is the case under s 3(1) of the Act).....In any case, Lord Brandon said that in compliance with the convention the words 'arising out of' should apply to all the maritime claims and that these words should be construed as having the meaning 'connected with'. Although the issue in The Antonis P Lemos was concerned with s 20(2)(h) of the 1981 Act, it is plain to us that Lord Brandon's remarks were directed to all the maritime claims listed under s 20(2). "

24. As far as par. (l) is concerned, there is no need to construe the words "in respect of" as "arising out of". The words "in respect of" in themselves import a broad rather than a restrictive meaning to the activities described in that provision.

25. Tamberlin J in ***The "Sydney Sunset"*** [2001] FCA 210 in considering s4(3)(m) of the Admiralty Act 1988, which is for "a claim in respect of goods, materials or services (including stevedoring and lighterage services) supplied or to be supplied to a ship for its operation or maintenance", as well as other provisions stated:

> "12. At the outset it should be noted that the words "in respect of " [in par. (m)] and "in relation to"[in par.(n) and par. (s)] ...are words of extension concerning the expression "a claim" and therefore it is not appropriate that the definitions be read in any unduly narrow or restricted sense. They should be given their ordinary and plain meaning without any reservations as to the limitation of their interpretation."

26. I agree with the observations of Tamberlin J. The words "in respect of" are wide words and I agree that they should not be unduly restricted: ***The "Kommunar"*** *(No 1)* [1997] 1 Lloyd's Rep 1 at p 5; ***The "Edinburgh Castle"*** [1999] 2 Lloyd's Rep. 363 at p 362. Claims to be indemnified for monies advanced to enable goods or materials to be supplied to a ship, or monies paid to third parties for the supply of goods to a ship were held by the English Courts to come within the English equivalent of this

statutory provision. Again, in ***The "Nore Challenger" and "Nore Commander"*** [2001] 2 Lloyd's Rep. 103, the word "goods" was construed to include the supply or provision of crew.

27. That said, par. (l) plainly contemplates a defined link between the claim and the goods or material supplied to a ship ("the primary ship"); a defined link between goods or materials supplied with the operation or maintenance of the primary ship.

28. Not only must the supply be to a "ship" as defined in s 2(1) of the Act (and not, for instance, a seaplane), the supply must under par. (l) be made to an identified ship.

29. The House of Lords in ***The "River Rima"*** [1988] 2 Lloyd's Rep 193 held that the provision [par. (l)] applied only where the goods or materials are "supplied" to a ship which is identified either in the supply contract or prior to its performance. The word "supplied" includes supply by way of hire as well as sale.

30. ***The "River Rima"*** underlines the mixed fact and law preconditions that must exist between the claim under par. (l) and the primary ship.

31. In ***The "Lloyd Pacifico"*** [1995] 1 Lloyd's Rep. 54, Clarke J (as he then was) applying the reasoning in ***The "River Rima"*** to a claim under par. (h), held that to bring an action in rem, the contract of carriage must relate to an identifiable ship. In that case, the contract of carriage was of containers containing coffee or other cargo to be agreed by the parties on the shipping services operated by them.

32. It is settled law that "any claims arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship" in s 3(1)(h) would include claims whether founded in contract or tort.

33. In the context of an identifiable ship as explained by Clarke J, the tortious act or omission would relate to either the primary ship in which the goods are carried or intended to be carried, or the ship alleged to have been used or hired.

34. Similarly, on the ordinary and natural meaning of the words used in s 3(1)(l) and by parity of reasoning, in my view, par. (l) would be wide enough to cover claims framed in tort but only where the wrongdoing relate to or is referable to the primary ship supplied with goods or material for her operation or maintenance.

35. As to the types of cases in tort that could be covered under par. (l), undoubtedly each case would be required to be decided on its own facts. Suffice it to say that what comes immediately to mind are claims in tort against the ship-owning interest of the primary ship as bailee of goods or material supplied. Another possibility could be claims for malicious or injurious falsehood to protect the claimant's interest in his property or trade or economic interest generally.

36. For completeness, I would mention that Sheen J in ***The "River Rima"*** [1987] 2 Lloyd's Rep. 107 had to decide whether par. (m) of the ***Administration of Justice Act 1956*** [which is pari materia to s 3(1)(l) of the Act] covered a claim for damages for conversion in respect of containers that were leased to the owners of the "River Rima" and damages for breach of clause 8 of the lease agreement.

37. The arguments proceeded each step of the way right up to the House of Lords on the assumption that the claim framed in tort was within the ambit of par. (m).

38. There is no room for the unduly wide construction argued for by Counsel for the Plaintiffs. S 3(1)(l) is thus an obstacle in the way of the Plaintiffs, which arises from the construction of the words in par. (l) and application to the facts of this case.

39. My conclusion on par. (l) is sufficient to dispose of this appeal. Nevertheless, I shall express my views upon the question relating to s 4(4) of the Act in case this matter should be considered by a higher Court.

(ii) Does the claim arise in connection with a ship? - Section 4(4) of the Act

40. As stated, the existence of admiralty jurisdiction depends on s 3(1) of the Act; but the availability of an action in rem depends upon s 4.

41. S 4(1) makes it clear that admiralty jurisdiction may exist and be exercisable by an action in personam without an action in rem being available. The action in rem may be invoked only in the cases mentioned in sub-ss (2) to (4) of s 4 of the Act.

42. Another point referred to earlier as essential to establishing a right of arrest, which I have to decide in this appeal, is whether the Plaintiffs' claim arose in connection with the "ALEXANDREA".

43. Mr. Dason submitted that, even if, the Plaintiffs' claim fell within par. (l), the Plaintiffs are unable to bring an action in rem because they cannot bring themselves within sub-s (4) of s.4 of the Act.

44. He stated that "ALEXANDREA" was the "carrying vessel engaged by the physical supplier [Meridian] to deliver bunkers to "FRONT MELODY". The words "in connection with a ship" in s 4(4) must refer to the same ship as is mentioned in s 3(1)(l) and that ship was "FRONT MELODY". The arrest of the "ALEXANDREA" was improper in that she was not the ship with which the claim under s 3(1)(l) arose.

45. Mr. Dason referred me to ***The "Eschersheim"*** [1976] 2 Lloyd's Rep 1. The leading opinion of the House was given by Lord Diplock with whom the other Law Lords agreed. Lord Diplock at p 7 after setting out the relevant arrest provision said:

> "It is clear that to be liable to arrest a ship must not only be the property of the defendant to the action but must also be identifiable as the ship in connection with which the claim made in the action arose (or a sister ship of that ship). The nature of the "connection" between the ship and the claim must have been intended to be the same as is expressed in the corresponding phrase in the convention "the particular ship in respect of which the maritime claim arose. One must therefore look at the description of each of the maritime claims included in the list in order to identify the particular ship in respect of which a claim of that description could arise."

46. Mr. Dason also relied on ***The "Lloyd Pacifico"*** [1995] 1 Lloyd's Rep 54. Clarke J (as he then was) at p 57 said:

> "
>
> ..The claim must arise out of an agreement relating to the use or hire of a ship or to the carriage of goods in a ship and the claim must arise in connection with a ship. The ship in the two sections [ss 20(2)(h) and 21(4) of Supreme Court Act

1981] is the same ship."

47. Whilst agreeing that there is no material difference between the provisions of the ***Administration of Justice Act***, 1956 and those of the ***Supreme Court Act*** 1981 so far as relevant to matters under consideration in this appeal, Mr. Sin said that Lord Diplock's comments on the class of ships liable for arrest were not part of the ratio decidendi, and that the construction of s. 3(4) [our s4 (4)] was obiter dicta. The Court of Appeal in ***The "Permina 108"*** [1975-1977] SLR 221 did not follow ***The Eschersheim.***

48. Mr. Sin submitted that both par. (l) and s 4(4) should be construed widely. He put forward the contention that it would be absurd to give a wide and liberal interpretation to the provisions of section 3(1) and not do the same for s 4(4).

49. The question must ultimately turn on the true construction of s 4(4) of the Act.

50. As I understand it, Mr. Sin wanted the Court to read sub-section 4(a) in this way:

> "In any case of any such claim as mentioned in paragraph (d) to (q) of subsection (4) of s 4 of this Act [- **and this is a claim under s 3(1)(l) -**] being a claim in connection with a ship [- **this is a claim arising in connection with "ALEXANDREA" -**] where the person who would be liable on the claim in an action in personam [- **JS Pink would be so liable** -] was, when the cause of action arose, the owner or charterer of or in possession or in control of the ship [- **JS Pink was the owner of ALEXANDREA" -**], 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 [- **ALEXANDREA -**] if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person [- **which is the case -**]."

51. This suggested reading is difficult to accept. I can find nothing in the Act to lend support to Mr. Sin's contention. It involves a strained construction of the sub-section.

52. Sub-section 4 provides that an action in rem can be invoked only if the claim is "*a claim arising in connection with a ship*". It is referring, in my view, to a ship in respect of which a maritime claim as specified in s 3(1)(d) to (q) arises. This is undoubtedly so as s 3(1)(d) to (q) of the Act operates together with s 4(4) to the extent that it gives effect to that arrest provision.

53. It is clear that "a ship" in the phrase "*being a claim arising in connection with a ship*" in sub-section 4, is the same ship to which goods or material were supplied in s 3 (1)(l). The term "a ship" as used in s 3(1)(l) is given the like meaning as that term when used within s 4(4)(a), namely "a ship", "the ship", "that ship". I am supported in my reading of the sub-section by both Donaldson LJ in ***The "Span Terza"*** [1982] 2 Lloyd's Rep 225 at p 229 and Clarke J in ***The "Lloyd Pacifico".***

54. Giving the words used in sub-s 4(a) their ordinary and natural meaning, on the facts of this case, I hold that the ship in connection with which the Plaintiffs' claim arose is the "FRONT MELODY". The Plaintiffs have been paid by SCEP for the bunkers. Mr. Sin conceded that the indemnity sought is essentially to cover any eventual liability to SCEP.

55. *The* ***"Permina 108"*** also reinforces my reading of sub-s 4. With ***The "Permina 108"***, the fundamental rule for the arrest of a ship under the Act in respect of certain classes of maritime claims, namely pars. (d) to (q) of s 3 (1) was not confined to just sister ships in common beneficial ownership with the primary ship in respect of which the claim arose but was available against any ship

owned by a charterer liable in respect of a maritime claim.

56. In that case, the "IBNU" was time chartered to the defendants and the claimants as owners of "IBNU" arrested the "*PERMINA 108*" which was in the ownership of the defendants in a claim for non-payment of charter hire. The Court of Appeal clearly regarded the "IBNU" as the ship in connection with which the claim under s 3(1)(h) arose. See also ***The "Tychy"*** [1999] 2 Lloyd's Rep 11 at p 17 for the same approach.

57. On the facts of this case, "ALEXANDREA" was not the ship in connection with which the claim arose. That conclusion is sufficient to dispose of the appeal without considering the further ground of appeal which is the question relating to alleged material non-disclosure.

Wrongful Arrest

58. As for the Defendants' application for damages for wrongful arrest to be assessed, there was, in my view, no evidence to show that the arrest was malicious as put forward by the Defendants.

Result

59. The Plaintiffs having failed to establish jurisdiction in rem against "ALEXANDREA" in respect of their claim, I accordingly allowed the appeal and set aside the Writ of Summons and warrant of arrest. The Plaintiffs are to pay the Defendants costs of the appeal and below fixed at $4,500.

Sgd:

BELINDA ANG SAW EAN
JUDICIAL COMMISSIONER