

The "URSUS" and other matters
[2015] SGHCR 7

Case Number : Adm No 240 of 2014 (Summons No 75 of 2015), Adm No 241 of 2014 (Summons No 79 of 2015), Adm No 242 of 2014 (Summons No 77 of 2015), Adm No 243 of 2014 (Summons No 78 of 2015), Adm No 244 of 2014 (Summons No 80 of 2015), Adm No 245 of 2014 (Summons No 83 of 2015)

Decision Date : 06 April 2015

Tribunal/Court : High Court

Coram : Justin Yeo AR

Counsel Name(s) : Ms Mary-Anne Chua (Joseph Tan Jude Benny LLP) for the Plaintiff; Mr Khoo Eu Shen (Rodyk & Davidson LLC) for the Defendants.

Parties : The "URSUS"

Admiralty and Shipping – Admiralty Jurisdiction and Arrest

Civil Procedure – Service

6 April 2015

Justin Yeo AR:

1 These are six applications in six separate admiralty proceedings. The admiralty proceedings are Admiralty In Rem No 240, 241, 242, 243, 244 and 245 of 2014 ("the Suits"), while the relevant summonses, arranged in order of the Suits, are Summonses No 75, 79, 77, 78, 80 and 83 of 2015 ("the Summonses"). Both Ms Mary-Anne Chua ("Ms Chua"), who represented the Harms Bergung, Transport und Heavylift GmbH & Co KG ("the Plaintiff"), and Mr Khoo Eu Shen ("Mr Khoo"), who represented the Defendants in the Suits, agreed that the Summonses were similar in terms of content with only minor factual differences between them. As such, the Summonses were heard together with only a single set of submissions made by Ms Chua and Mr Khoo.

2 The Summonses concerned the respective Defendants applying for the Suits to be dismissed on the basis that no statement of claim had been served on the Defendants within the period fixed by the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("Rules of Court"), or alternatively, for the Suits to be stayed pursuant to s 6 of the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("the IAA").

3 I dismissed prayer 1 of the Summonses (*viz*, for the Suits to be dismissed), and granted prayer 2 (*viz*, for proceedings to be stayed pending arbitration) in part by ordering a stay of the *in personam* aspects of the Suits. I provide here the grounds for my decision.

Background

4 The Plaintiff had, on 20 November 2014, issued *in rem* writs against the Defendants' vessels, respectively, the "URSUS", the "URANUS", the "TAURUS", the "ORCUS", the "MAGNUS" and the "JANUS" (collectively, "the Vessels"). The writs were issued with the intention of preserving the Plaintiff's right to arrest the Vessels for security in an arbitration to be held in Hamburg. [\[note: 1\]](#) The writs were issued as protective measures to preserve the Plaintiff's interests should ownership of the respective Vessels change before and/or during the arbitration proceedings. [\[note: 2\]](#) The writs have

not been served on the Vessels.

5 It is undisputed that the Defendants, through their solicitors, entered appearance *gratis* on 15 December 2014, and that the Plaintiff has not filed any statement of claim in the Suits. The Plaintiff has also placed on record, by way of affidavits of Axel Salander dated 24 February 2015 (filed in each of the Suits), that it was never the Plaintiff's intention to have the substance of the dispute with the Defendants heard in the Singapore courts. [\[note: 3\]](#) Indeed, the Plaintiff had already commenced arbitration proceedings against the "URSUS" in Hamburg, [\[note: 4\]](#) and intended to commence arbitration proceedings against the other Vessels there as well. [\[note: 5\]](#)

Issues

6 Two issues arose for determination, namely:

- (a) First, whether the Suits should be dismissed on the basis that no statement of claim had been served; and
- (b) Second, in the alternative, whether the Suits should be stayed pursuant to s 6 of the IAA.

Parties' Arguments

7 On the first issue, Mr Khoo argued that the Suits should be dismissed pursuant to O 19 r 1 read with O 18 r 1 of the Rules of Court. Under O 18 r 1 of the Rules of Court, a plaintiff must serve a statement of claim before expiration of 14 days after the defendant enters appearance. Under O 19 r 1 of the Rules of Court, where the plaintiff fails to serve a statement of claim within that period, the defendant may apply to court for an order to dismiss the action. The relevant rules provide:

1. Service of statement of claim (O. 18, r. 1)

Unless the Court gives leave to the contrary or a statement of claim is endorsed on the writ, the plaintiff must serve a statement of claim on the defendant or, if there are 2 or more defendants, on each defendant, and must do so either when the writ is served on that defendant or at any time after service of the writ but before the expiration of 14 days after that defendant enters an appearance.

...

1. Default in service of statement of claim (O. 19, r. 1)

Where the plaintiff is required by these Rules to serve a statement of claim on a defendant and he fails to serve it on him, the defendant may, after the expiration of the period fixed under these Rules for service of the statement of claim, apply to the Court for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

8 Ms Chua emphasised that the Plaintiff accepted that it has failed to serve a statement of claim, but argued that this does not lead to the conclusion that all proceedings, both *in personam* and *in rem*, should be dismissed. The Plaintiff was willing to concede that the *in personam* proceedings may be dismissed. [\[note: 6\]](#) However, Ms Chua argued that the *in rem* proceedings should not be dismissed given that there are not yet any live *in rem* proceedings against the Vessels.

9 On the second issue, Mr Khoo argued that the Suits should be stayed pursuant to s 6 of the IAA. Section 6(1) of the IAA provides:

Notwithstanding Article 8 of the Model Law, where any party to an arbitration agreement to which this Act applies institutes any proceedings in any court against any other party to the agreement in respect of any matter which is the subject of the agreement, any party to the agreement may, at any time after appearance and before delivering any pleading or taking any other step in the proceedings, apply to that court to stay the proceedings so far as the proceedings relate to that matter.

10 Section 6(1) of the IAA sets out the “threshold requirements” that need to be met before a court is bound to stay legal proceedings in favour of international arbitration (*The “Engedi”* [2010] 3 SLR 409 (“*The Engedi*”) at [14]). In order for a stay to be granted, the following must be demonstrated: (a) the existence of an international arbitration agreement; (b) a party to that agreement must institute court proceedings against another party to the same agreement; (c) the proceedings must be in respect of a matter which is the subject of the agreement; (d) the party seeking a stay must have entered appearance in the court proceedings; and (e) the party seeking a stay must do so before delivering any pleading or taking any other step in the proceedings (*ibid*).

11 Ms Chua emphasised that the Plaintiff accepted that based on the above principles, the *in personam* proceedings should be stayed. [\[note: 7\]](#) However, she argued that the *in rem* proceedings should not be stayed as the court’s *in rem* jurisdiction has not yet been invoked.

Decision

12 I begin by addressing the first issue, *viz*, whether the Suits should be dismissed on the basis that no statement of claim had been served. Given Ms Chua’s indication that the Plaintiff accepts that there may be dismissal or stay of the *in personam* proceedings (see [8] and [11] above), I focus my analysis on whether there may also be such a dismissal or stay of *in rem* proceedings. To address this issue, it is necessary to first consider whether the *in rem* jurisdiction of the court has been invoked.

13 A writ *in rem* must be served on the *res* against which the action is brought except where the property is freight or the property has been sold by the Sheriff (O 70 r 7(1) of the Rules of Court). Service of an *in rem* writ may be effected by service on the ship, or by arresting the ship (*The “Fierbinti”* [1994] 3 SLR(R) 574 (“*The Fierbinti*”) at [34] and [36]). In the present case, it is undisputed that the writ *in rem* has *not* been served on the *res*, and that the *in rem* jurisdiction of the court has not been invoked. [\[note: 8\]](#)

14 While there has been deemed service on the Defendants by virtue of the Defendants having entered appearance *gratis* (pursuant to O 70 r 7(2) read with O 10 r 1(3) of the Rules of Court), deemed service on a defendant *does not* equate to deemed service on the *res* (see *Singapore Civil Procedure 2015* vol 1 (G P Selvam gen ed) (Sweet & Maxwell Asia, 2014) at para 70/7/1). The *in rem* jurisdiction of the court is *not* invoked even where there is deemed service of the *in rem* writ on a defendant (*The Fierbinti* at [19]). As such, the effect of the entry of appearance by the Defendants invokes only the *in personam* jurisdiction of the court (*ibid* at [18]).

15 In *The “Bolbina”* [1993] 3 SLR(R) 894 (“*The Bolbina*”), the High Court had occasion to consider three possible scenarios which may arise in an admiralty action *in rem*:

(a) First, where the writ *in rem* is served on the owner of the vessel and the owner provides

security and enters an appearance (*The Bolbina* at [13(a)]). In this scenario, the proceedings at all times remain *in personam*, while the *in rem* contents of the action remain dormant, the “ship being kept out of the scene” (*ibid*). The action, although originally commenced as an *in rem* action, becomes a *personam* action against the defendant owners upon their appearance (*ibid*).

(b) Second, where the writ *in rem* is served on the vessel and the warrant of arrest is executed and there is no appearance (*ibid* at [13(b)]). In this scenario, the plaintiff is left to proceed in default and have the vessel sold to satisfy the claims against it (*ibid*). This is “the true admiralty action *in rem*” (*ibid*).

(c) Third, where the writ *in rem* is served on the vessel, the vessel is arrested, and the owners enter an appearance but do not provide bail or other *personam* security (*ibid* at [13(c)]). Here, the action is both “*in rem* and *in personam*” because the ship is taken as security, and a judgment binds both the *res* as well as the defendants (*ibid*).

16 The present case does not fall neatly into any of the three scenarios envisaged in *The Bolbina*. Here, the writ *in rem* has not been served on the Vessels. While the owners have entered an appearance *gratis*, they have not provided any security. However, reasoning by analogy from the first scenario in *The Bolbina* (which is the only scenario of the three in which the writ *in rem* is *not* served on the Vessel), and taking into account the principles in *The Fierbinti* (see [13]–[14] above), the Defendants’ appearance *gratis* has invoked only the *in personam* jurisdiction of the court, while the *in rem* contents of the action remain dormant. As such, I agreed with Ms Chua that it would not be possible to dismiss or stay the *in rem* proceedings in view that the *in rem* jurisdiction of the court has not yet been invoked.

17 It should be added that, in any case, with regard to a stay of the *in rem* proceedings in favour of arbitration, there can be no “international arbitration agreement” concerning the *in rem* proceedings because the Vessels cannot be parties to the arbitration agreement between the Plaintiff and the Defendants (see *The Engedi* at [19]). As such, the court is not obliged to grant a stay of the *in rem* proceedings pursuant to s 6 of the IAA (*ibid*).

18 It should further be noted that, from a practical perspective, it would appear neither satisfactory nor fair to dismiss or stay the *in rem* proceedings. If such a dismissal or stay is granted, the Plaintiff will be left in an unenviable situation. The Plaintiff will first have to apply to set-aside the dismissal or to lift the stay (as the case may be), before it may apply for a warrant of arrest to arrest any of the Vessels. The Defendants would thus have been put on notice and there is a real possibility that the Vessels would leave Singapore port limits before the warrant of arrest is issued. Therefore, granting a dismissal or stay of the *in rem* proceedings may render illusory the Plaintiff’s right to arrest the Vessels as security for foreign arbitration proceedings, which the Plaintiff would otherwise ordinarily have been entitled to do (see, eg, *The “ICL Raja Mahendra”* [1998] 2 SLR(R) 922 at [22]). The Plaintiff should not be put to such a disadvantage simply because the Defendants chose to enter appearance *gratis*.

19 I turn now to consider whether a dismissal or stay of the *in personam* proceedings should be granted. As alluded to above, Ms Chua rightly conceded that it might be possible to dismiss or stay the *in personam* proceedings while allowing the *in rem* proceedings to lie dormant.

20 In my view, the *in personam* proceedings should be stayed rather than dismissed. Here, both parties agreed that there was an international arbitration agreement and that proceedings should be stayed for arbitration. In the circumstances, it seemed neither satisfactory nor fair to dismiss the *in personam* proceedings out of hand simply because the Defendants opted to enter appearance *gratis*.

and insist on the Plaintiff's filing of a statement of claim, when – at the very latest, after receiving the affidavit of Axel Salander dated 24 March 2015 – the Defendants were or would have been aware that the dispute was to be dealt with at arbitration proceedings and that the writs had been filed for protective reasons. In the circumstances, I did not see why the Plaintiff should be forced to take a further step in the proceedings, or suffer a dismissal of its claims for failing to do so. In this regard, I note the Defendants' concerns that "it cannot be the case that the Plaintiff is allowed to take no steps whatsoever to either advance its claim *in personam* or to stay proceedings in Singapore", and that to allow the Plaintiff to sit on the writ "would be tantamount to the Plaintiff being allowed to commence litigation with no intention to bring it to a conclusion". [\[note: 9\]](#) However, these concerns would, in my view, be adequately dealt with by the stay of the *in personam* proceedings that I have ordered.

21 From a practical perspective, it also appears more ideal to stay rather than dismiss the *in personam* proceedings. Should the *in personam* proceedings be dismissed, in the event that the Plaintiff successfully arrests any of the Vessels, the Defendants would not be able to contest the *in personam* proceedings at all, resulting in a situation where the Plaintiff may "proceed in default and have the ship sold" (see [15(b)] above). In contrast, where the *in personam* proceedings are merely stayed, in the event that an arrest is made, it would still be open to the Defendants to apply for a lifting of the stay for the purposes of determining the merits of the arrest.

Conclusion

22 In view of the above, I dismissed prayer 1 of the Summonses, and granted prayer 2 in part by ordering a stay of the *in personam* aspects of the Suits. I will hear parties on costs.

[\[note: 1\]](#) Para 9 of the affidavits of Axel Salander (filed in the Suits) dated 24 February 2015

[\[note: 2\]](#) Para 9 of the affidavits of Axel Salander (filed in the Suits) dated 24 February 2015

[\[note: 3\]](#) Para 10 of the affidavits of Axel Salander (filed in the Suits) dated 24 February 2015

[\[note: 4\]](#) Para 9 of the affidavit of Axel Salander (filed in ADM 240 of 2014) dated 24 February 2015

[\[note: 5\]](#) Para 9 of the affidavits of Axel Salander (filed in ADM 241, 242, 243, 244 and 245 of 2014) dated 24 February 2015

[\[note: 6\]](#) Paras 31 and 32 of the Plaintiff's Written Submissions dated 13 March 2015; and see para 17 of the affidavits of Axel Salander (filed in the Suits) dated 24 February 2015

[\[note: 7\]](#) Para 38 of the Plaintiff's Written Submissions dated 13 March 2015; and see para 17 of the affidavits of Mr Axel Salander (filed in the Suits) dated 24 February 2015

[\[note: 8\]](#) Para 12 of the affidavits of Klaus Dimigen (filed in the Suits) dated 10 March 2015

[\[note: 9\]](#) Para 12 of the affidavits of Klaus Dimigen (filed in the Suits) dated 10 March 2015