IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHCR 12

Admiralty in Rem No 3 of 2017 (Summons No 2232 of 2018)

Admiralty action in Rem against the vessel "NUR ALLYA" & 26 Ors

Between

Summer Star Maritime SA

… *Plaintiff*

And

Owner and/or Demise Charterer of the vessel "NUR ALLYA" & 26 Ors

… *Defendant*

Admiralty in Rem No 4 of 2017 (Summons No 2234 of 2018)

Admiralty action in Rem against the vessel "NUR ALLYA" & 26 Ors

Between

GSM Puteri Maritime SA

… *Plaintiff*

And

Owner and/or Demise Charterer of the vessel "NUR ALLYA" & 26 Ors

… *Defendant*

JUDGMENT

[Civil Procedure] — [Extension of Validity of Writ] — [Settlement Negotiations]

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The "Nur Allya"

[2018] SGHCR 12

High Court — Admiralty in Rem No 3 of 2017 (Summons No 2232 of 2018)
& Admiralty in Rem No 4 of 2017 (Summons No 2234 of 2018)
Navin Anand AR
12 June 2018

16 August 2018 Judgment reserved.

Navin Anand AR:

Introduction

1 The issue of limitation tends to feature more prominently in admiralty proceedings than in usual commercial claims. Certain admiralty claims have shorter limitation periods than the six year period applicable to general claims in contract and tort. One example, which is well known to the shipping industry, is claims arising out of vessel collisions which are subject to a two year limitation period under Section 8(1) of the Maritime Conventions Act 1911 (Cap IA3, 2004 Rev Ed) (the "MCA"). A consequence of a shorter limitation period is that the renewal of writs assumes critical importance to protect against claims being defeated by a defence of limitation.

2 By way of two applications (one each in HC/ADM 3/2017 ("ADM 3") and HC/ADM 4/2017 ("ADM 4")), the Defendant applied to set aside two *ex parte* orders which extended the validity of the writs in ADM 3 and ADM 4, for

a period of 12 months each (the "Extension Orders"). The Plaintiffs in ADM 3 and ADM 4 had only applied to extend the validity of the writs *after* the writs ceased to be valid *and* the two year time bar under the MCA had set in. A setting aside of the Extension Orders would mean that the Plaintiffs' claims against the Defendant are time-barred under the MCA. The Plaintiffs resisted the setting aside applications, citing, *inter alia*, the Defendant's conduct during settlement negotiations in the intervening period between the issuance of the writs and their expiry.

3 After hearing the parties, I decline to set aside the Extension Orders, but I vary them to the extent that the validity of the writs in ADM 3 and ADM 4 are extended for six months. I set out my full grounds below.

Background Facts

The Collisions

4 The Plaintiff in ADM 3 is the owner of the vessel "GS Spring".[1] The Plaintiff in ADM 4 is the owner of the vessel "Atika".[2] For ease of reference, I refer to the "GS Spring" and the "Atika" collectively as the "Vessels". Both Plaintiffs are represented by Mr K Muralitherapany ("Mr Murali").

5 The Defendant in ADM 3 and ADM 4 is the owner of the vessel "Nur Allya".[3]

6 On 4 January 2015, the "Nur Allya" was involved in a double collision with the "GS Spring" and the "Atika" in the Eastern Outer Port Limit of

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1 1st Affidavit of Ng Lip Kai dated 29 January 2018 filed in ADM 4 ("Ng's 1st Affidavit") at p 33.

2 *Ibid*.

3 *Ibid* at p 35.

Singapore (the "Collisions").[4] The Plaintiffs alleged that the Collisions were caused by the Defendant's negligence.[5] The Plaintiffs have allegedly incurred costs for repair works and surveys done on the Vessels.[6] In addition, the Plaintiff in ADM 4 has allegedly suffered loss of use in respect of the "Atika".[7]

7 The parties do not dispute that claims arising out of the Collisions are subject to the two year limitation period provided for under the MCA. In this regard, s 8(1) of the MCA reads as follows:

> **Limitation of actions**
>
> 8.-(1) No action shall be maintainable to enforce any claim or lien against a ship or her owners in respect of –
>
> (a) any damage or loss to another ship, her cargo or freight, or any property on board her, or damage for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former ship, whether such ship be wholly or partly in fault; or
>
> (b) any salvage services,
>
> unless proceedings therein are commenced within 2 years from the date when the damage, loss or injury was caused or the salvage services were rendered.

8 Accordingly, under s 8(1) of the MCA, the limitation period for claims arising out of the Collisions would have expired on 4 January 2017.

9 The Plaintiffs commenced proceedings within time.[8] On 3 January 2017, the Plaintiffs issued *in rem* writs in ADM 3 and ADM 4 (the "Writs") against the owner and/or demise charterer of the "Nur Allya" and 26 of her sister

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4 *Ibid* at para 4.

5 *Ibid*.

6 *Ibid* at p 33-34.

7 *Ibid*.

8 Affidavit of Andrew David Robert Lee dated 15 May 2018 filed in ADM 4 ("Lee's Affidavit") at paras 10-11.

vessels. The writ in ADM 3 related to loss and damage to the "GS Spring" while the writ in ADM 4 was for loss and damage to the "Atika". The Writs were valid for a period of 12 months, until 2 January 2018.

Correspondence between the parties

10 The correspondence between the parties lie at the heart of the present dispute. At the outset, it should be noted that neither party has taken objection to the other exhibiting correspondence marked "without prejudice". Where necessary, I will refer to the correspondence in my decision.

11 The Plaintiffs first intimated a claim against the Defendant on 28 December 2016 through a letter of demand from the Plaintiffs' solicitors to the Defendant.[9] In the letter, the Plaintiffs contended that the Collisions were solely caused by the Defendant's negligence and demanded the sums of (a) $569,058.59 for losses arising out of the "GS Spring" Collision, and (b) $30,411.00 plus US$12,500.00 for losses arising out of the "Atika" Collision.

12 The Plaintiffs did not hear from the Defendant until 23 February 2017, when Mr Benedict James Chandler ("Mr Chandler") from the Defendant's Protection & Indemnity Club ("P&I Club") emailed Mr Murali, and responded to the letter of demand as follows:[10]

> Dear Sirs
>
> We are the P&I Insurers of the Owners of the MV Nur Allya, and are instructed to correspond with you on our Members' behalf. We refer to the letter dated 28 December 2016 sent to our clients…
>
> On further investigation, *we understand that two writs were issued in the Singapore Court against "NUR ALLYA" on 3*

[9] Ng's 1st Affidavit at p 33-34.

[10] *Ibid* at p 35.

> *January 2017 and they might refer to the collision between M/V Nur Allya with M/T GS Spring and M/V Attika.*
>
> We must reserve our position and rights *but are open to resolve* [sic] *this matter swiftly and amicably…* [emphasis added in italics]

13 Three things ought to be noted from Mr Chandler's email. First, the Defendant knew that the Plaintiffs filed two writs in respect of the Collisions on 3 January 2017. If Mr Chandler had any doubts as to whether the writs were issued in respect of the Collisions or whether proceedings were commenced within time, he would have sought clarification or asked for copies of the writs. He did not. Second, the Defendant was open to resolving the matter swiftly and amicably, presumably by entering into a settlement agreement. Third, the Defendant did not intimate a cross-claim against the Plaintiffs. I will explain why this is relevant later in my decision (see [60] below).

14 Mr Murali responded the next day (ie, 24 February 2017) to propose a call to discuss settlement and the provision of security for the Plaintiffs' claims.[11] Mr Murali's wrote as follows:

> Dear Ben
>
> … I would be *happy to discuss an amicable solution of this matter with you though we will also have to speak about the provision of security for the claim to obviate the need for an arrest.*
>
> Can we arrange to speak on Tuesday or Wednesday next week? [emphasis added in italics]

15 On 27 February 2017, Mr Chandler replied and agreed to have a telephone discussion with Mr Murali. In his email which was marked "without prejudice", Mr Chandler said:[12]

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11 2nd Affidavit of Ng Lip Kai dated 25 May 2018 filed in ADM 4 ("Ng's 2nd Affidavit) at p 8.

12 *Ibid*.

> WITHOUT PREJUDICE
>
> Dear Murali
>
> … Would it be possible to table a discussion for Wednesday afternoon at 3.30? If you have *"starting positions" for settlement that you'd like to communicate in writing first*, as a basis for discussion, please do confirm these in writing, as this may allow me to obtain instructions from Members on certain matters ready for the call itself. [emphasis added in italics]

16 Mr Murali and Mr Chandler had a telephone discussion on 1 March 2017. The parties provided differing accounts of this call. According to the Plaintiffs, the parties discussed the provision of security and the prospects of settlement.[13] On the other hand, the Defendant says that the call "was an initial discussion about the claim and to discuss potential provisions… [and] no starting position was discussed or given…".[14]

17 On 19 July 2017, Mr Murali wrote to Mr Chandler to provide an itemised breakdown of (a) the Plaintiffs' claims (with supporting documents) and (b) the security demanded by the Plaintiffs.[15] There was some delay from March 2017 to July 2017. The Plaintiffs' explanation for the delay was that they were only able to present concrete figures for their claims which consisted several heads of repairs and expenses on 19 July 2017.[16] In Mr Murali's email which was marked 'without prejudice', he said:

> **WITHOUT PREJUDICE**
>
> Dear Ben,
>
> Further to our telcon on 1/3/17, I set out below the *details of my clients' claim (with supporting documents)* and *security*

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13 *Ibid* at para 6.

14 Affidavit of Benedict James Chandler dated 6 June 2018 filed in ADM 4 ("Chandler's Affidavit") at para 9.

15 Lee's Affidavit at p 34-36.

16 Plaintiffs' Written Submissions ("PWS") at para 12.

> *requirement*. My apologies for the delay.
>
> Please note that all supporting documents for the claim are provided on a WP basis.
>
> **Claim**
>
> [Table setting out the claim for the "GS Spring"]
>
> [Table setting out the claim for the "Atika"]
>
> I am happy to discuss the claim or any queries you may have. *It would be in the interest of both parties to avoid costly litigation*.
>
> **Security**
>
> In order to avoid an arrest, the security amount required for our clients' claims is as follows.
>
> [Security breakdown for the "GS Spring"]
>
> [Security breakdown for the "Atika"]
>
> … Our clients will also require that your principles [*sic*] appoint a solicitor or agent in Singapore to accept service of process.
>
> Please let us hear from you regarding security within 7 days.
>
> [emphasis added in italics]

18 Mr Murali's email of 19 July 2017 precipitated a flurry of emails on 21 July 2017.

(a) In the morning, Mr Chandler wrote to Mr Murali and stated, "*[w]e shall of course consider the claim documents and security request*" [emphasis added in italics].[17]

(b) In the afternoon, Mr Chandler sought Mr Murali's confirmation that the Plaintiffs would refrain from arresting the Defendant's vessels while Mr Chandler took his clients' instructions.[18]

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17 Lee's Affidavit at p 33-34.

18 *Ibid* at p 32.

(c) Mr Murali replied and stated that he was not able to give such a confirmation. However, Mr Murali informed Mr Chandler that he would not arrest the Defendant's vessels without prior notice.[19]

19 Between 16 August 2017 and 9 October 2017, Mr Murali and Mr Chandler negotiated and discussed the wording of the security, which was to take the form of two letters of undertaking from the Defendant's P&I Club.[20] From the correspondence, it appeared that the discussions on security were progressing positively.

20 On 11 October 2017, the Defendant's P&I Club issued two letters of undertaking (the "LOUs") in consideration of the Plaintiffs refraining from arresting any vessel owned by the Defendant.[21] The first LOU issued in respect of the "GS Spring" claim was for the sum of $812,750.00 (inclusive of interest and costs),[22] while the second LOU issued in respect of the "Atika" claim was for the sum of $127,150.00 (inclusive of interest and costs).[23] Both LOUs contained a clause whereby the Defendant's P&I Club undertook to procure the appointment of a Singapore law firm to accept service of originating process on the Defendant's behalf, which was in the following terms:

> Upon written request by you or your solicitors, we further undertake to procure the owners of the ["Nur Allya"] to appoint a Singapore law firm to accept personal service or service (as the case may be) of writs and any other court papers on the owners of the ["Nur Allya"].

21 Having obtained security for the Plaintiffs' claim, Mr Murali turned his

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19 *Ibid* at p 31.

20 *Ibid* at p 19-30.

21 Ng's 1st Affidavit at para 10.

22 1st Affidavit of Ng Lip Kai dated 29 January 2018 filed in ADM 3 at p 36.

23 Ng's 1st Affidavit at p 36.

focus to the settlement of the Plaintiffs' claim. On 12 October 2017, Mr Murali emailed Mr Chandler to say, "I look forward to hearing from you on the substantive claim".[24] Mr Murali did not receive any reply to this email, and sent two other email reminders on 9 November 2017 and 6 December 2017.[25] Each met with silence.

22 On 21 December 2017 (at 6.12 pm), Mr Murali emailed Mr Chandler and threatened to call on the undertaking to appoint a Singapore law firm to accept service of originating process on the Defendant's behalf.[26]

> Dear Ben,
>
> The LOU was provided on 11 October 2017. Since then, I have not heard from you on the substantive claim.
>
> I'm afraid that if we do not hear from you by [close of business] on 5/1/18, we will have to call on your undertaking to appoint a Singapore law firm to accept service of process.

23 Six minutes later (ie, at 6.18 pm) on the same day, Mr Chandler emailed Mr Murali to say:[27]

> Dear Murali,
>
> My understanding is that our appointed expert is in the process of retrieving his file from storage. We will revert as soon as we are able.
>
> Hill Dickinson are already appointed to act for our Members on this case.

24 Mr Murali wanted Mr Chandler to specify a date by which the Defendant would provide its substantive response. In Mr Murali's email at 6.24 pm, he

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24 Lee's Affidavit at p 17.

25 *Ibid* at p 15-16.

26 *Ibid* at p 14.

27 *Ibid*.

stated:[28]

> Can you give me a time frame for a substantive response to the claim so I can report to my clients?

25 In an email at 6.23 pm on 21 December 2017, Mr Chandler suggested 19 January 2018, which would be two weeks after Mr Chandler returned to office after his vacation.[29] Mr Murali replied later that evening, agreeing to a 19 January deadline.[30]

The Extension Orders

26 The Writs' expiry date of 2 January 2018 came and went without any prior application by the Plaintiffs to extend the validity of the Writs. The Plaintiffs' solicitors did not realise that the Writs ceased to be valid after 2 January 2018. According to them, the expiry date of the Writs was not entered into their email calendar system due to an administrative oversight.[31] Further, work on the file was placed on hold while the Plaintiffs' solicitors awaited the Defendant's substantive response, which was expected on or before 19 January 2018.[32]

27 Mr Murali did not hear from Mr Chandler by the agreed deadline of 19 January 2018, and sent an email reminder setting a new deadline of 24 January 2018.[33] On 25 January 2018, Mr Murali received an email response, this time from Mr Andrew Lee of Hill Dickinson LLP. Mr Lee did not provide the

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28 *Ibid* at p 13.

29 *Ibid.*

30 *Ibid* at p 12.

31 Ng's 1st Affidavit at para 13(a).

32 *Ibid* at para paras 13(d)-14.

33 Lee's Affidavit at p 11.

Defendant's substantive response,[34] and instead stated that he was going through the Plaintiffs' supporting documents. Curiously, although the Defendant clearly knew about the existence of the Writs, and had known for about a year (see [13] above), Mr Lee wanted to know whether any proceedings had been commenced, making oblique reference to the two-year limitation period for collision claims:[35]

> Dear Murali,
>
> We refer to the above matter in respect of which we have been asked by "NUR ALLYA" Interests to assist in resolving the dispute with your clients. We have been given the quantum documents, which we are currently going through.
>
> We understand that the [Defendant's] P&I Club has given your clients LOU(s) as security for their claims but we have not seen this/these or documents in relation to any proceedings. Given that the collisions took place more than two years ago, *please can you let us know whether any proceedings have been commenced / are underway*. If so, please provide copies of the relevant documents. [emphasis added in italics]

28 At around the same time (ie, 25 January 2018), the Plaintiffs' solicitors reviewed the file and realised that the Writs were no longer valid, as they had expired on 2 January 2018.[36]

29 On 29 January 2018, the Plaintiffs filed two *ex parte* applications, one each in ADM 3 and ADM 4, to extend the validity of the Writs. Two different Assistant Registrars heard the applications, and both granted them. As a result of the Extension Orders, the validity of the Writs were retrospectively extended for a period of 12 months from 3 January 2018 until 2 January 2019.

30 On 15 May 2018, the Defendant entered appearance *gratis* and applied

34 Ng's 1st Affidavit at para 17.

35 *Ibid* at p 44.

36 *Ibid* at para 16.

to set aside the Extension Orders.

The Parties' Positions

31 The Plaintiffs submitted that there were good reasons to extend the validity of the Writs under O 6 r 4 of the Rules of Court (Cap 322, R5, 2014 Rev Ed) (the "Rules") for the following reasons:

(a) Prior to the issuance of the LOUs on 11 October 2017, there had been no opportunity to serve the Writs as none of the Defendant's vessels had called at Singapore.[37]

(b) After the issuance of the LOUs, there was an implied agreement between the parties to defer service of the Writs while settlement negotiations were ongoing. This was evidenced, *inter alia*, by the clause in the LOUs whereby the Defendant's P&I Club undertook to procure the appointment of a Singapore law firm to accept service of originating process on the Defendant's behalf.[38]

(c) The Plaintiffs' failure to extend the validity of the Writs before they expired was induced or contributed to by the words or conduct of the Defendant's representative, Mr Chandler.[39] Given Mr Chandler's request that he be given until 19 January 2018 to provide the Defendant's settlement position, it was reasonable for the Plaintiffs to take the view that they did not need to proceed with the action as this could potentially have derailed the settlement negotiations and led to the incurrence of unnecessary legal costs.

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37 PWS at para 31.

38 *Ibid* at paras 33-34.

39 *Ibid* at paras 35-36, 39-46.

32 The Plaintiffs further argued that the balance of hardship lay in their favour, as they would be left with no remedy against the Defendant if the validity of the Writs were not extended.[40]

33 At the hearing before me, the Defendant's counsel accepted that there was no opportunity to serve the Writs prior to the issuance of the LOUs on 11 October 2017 as none of the ships proceeded against had called at Singapore. However, it argued that the Plaintiffs had sufficient time and ample opportunity to serve the Writs on the Defendant in the 3 months prior to the expiry of the Writs as the LOUs gave the Plaintiffs the right to call on the Defendant to appoint a Singapore law firm to accept service of the Writs, but the Plaintiffs failed to do so.[41] Furthermore, the Defendant also submitted that:

(a) The parties were never engaged in settlement negotiations and there was no implied agreement between the parties to defer the service of the Writs;[42]

(b) Administrative oversight on the part of the Plaintiffs' solicitors was not a good justification for the Plaintiffs' failure to apply for an extension before the Writs ceased to be valid;[43] and

(c) It would be prejudiced if the Writs were extended, as it would be denied the chance to rely on the defence of limitation.[44]

The Law

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40 *Ibid* at para 56.

41 Defendant's Written Submissions ("DWS") at paras 71-76.

42 DWS at paras 66-71, and 79-85.

43 *Ibid* at paras 86-91.

44 *Ibid* at para 92.

General Principles

34 Admiralty writs are valid in the first instance for 12 months: see O 70 r 2(4) of the Rules. O 6 r 4(2) and O 6 r 4(2A) are the relevant provisions which govern the renewal of admiralty writs, and they read as follows:

> **Duration and renewal of writ (O. 6, r.4)**
>
> (2) Subject to paragraph (2A), where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for such period, not exceeding 6 months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the Court before that day or such later day (if any), as the Court may allow.
>
> (2A) Where the Court is satisfied on an application under paragraph (2) that despite the making of reasonable efforts, it may not be possible to serve a writ within 6 months, the Court may, if it thinks fit, extend the validity of the writ for such period, not exceeding 12 months at any one time, as the Court may specify.

35 Broadly, applications to extend the validity of a writ can be classified into three categories (see *The "Lircay"* [1997] 1 SLR(R) 699 at [19]). The first is where the application is made at a time when the writ is still valid and the before the relevant period of limitation has expired ("Category (1) cases"). The second is where the application is made at the time when the writ is still valid but the relevant period of limitation has expired ("Category (2) cases"). The third is where the application is made after the writ has ceased to be valid and the relevant period of limitation has expired ("Category (3) cases").

36 The general principles governing the renewal of writs under O 6 r 4 may be briefly stated as follows:

(a) The general rule is that an admiralty writ, if it is to be effective against a defendant, must be issued before the relevant period of

limitation has expired and must be served within 12 months of its issue (see *The "Lircay"* at [19]). Thus, it is incumbent on a plaintiff to serve the writ promptly (see *The "Antares V"* [2002] 2 SLR(R) 616 at [20]).

(b) The decision to extend the validity of the writ involves an exercise of discretion by the court (see *The "Lircay"* at [18]), which is to be approached in two stages. At the first stage, the court considers whether the plaintiff has shown the existence of matters which constitute good reason for an extension to be granted. It is not possible to circumscribe the scope of the expression 'good reason' (see *The "Lircay"* at [18]), although it has been observed that hardship to the plaintiff does not, without more, constitute good reason for an extension to be granted (see *The "Ching Ho"* [2001] 3 SLR(R) 84 at [21]). More often than not, the issue of good reason for extension is inextricably bound with whether the plaintiff had good reason(s) for failing to serve the writ during the original period of validity (see *Waddon v Whitecroft-Scovill Ltd* [1988] 1 All ER 996 at 1001a). If the plaintiff succeeds in showing that there is a good reason for an extension, the court then goes on to consider all the circumstances of the case, including the hardship or prejudice to either party, to arrive at a value judgment on whether the extension should be granted or refused (see *The "Ching Ho"* at [20]-[21] and Toh Kian Sing SC, *Admiralty Law and Practice* (LexisNexis, 3rd Ed, 2017) ("*Admiralty Law and Practice*") at pp 459-460).

(c) The Defendant's right to limitation has a strong bearing on how the court's discretion is to be exercised (see *Admiralty Law and Practice* at p 460). The defendant in Category (3) cases has an accrued right of limitation whereas defendants in Category (1) and (2) cases do not. Thus, the plaintiff in Category (3) cases must also give a satisfactory

explanation for its failure to apply for extension before the writ expired (see *Admiralty Law and Practice* at p 461). This is because the grant of an extension in a Category (3) case would deprive the defendant of an accrued defence of limitation, and courts are understandably more reluctant to assist a tardy plaintiff who has allowed both the limitation period and the validity of the writ to expire (see *Admiralty Law and Practice* at p 461). However, that is not to say that the issue of limitation only features as a factor in Category (3) cases. Even in Category (1) and Category (2) cases where there is no issue of an accrued right of limitation, the effect of the extension *may* be such as to enable a plaintiff to serve the writ after the relevant period of limitation has expired, and the court must bear this in mind when considering whether to grant an extension (see *The "Lircay"* at [19]).

Settlement Negotiations

37 Specifically in relation to settlement negotiations, the existence of ongoing settlement negotiations does not, without more, constitute good reason for extension (see *The "Ching Ho"* at [33]). However, settlement negotiations can amount to good reason for extension if a fair interpretation of the negotiations show either (a) an agreement to defer service of the writ or (b) conduct by the defendant or its representative of such character as to lead a reasonable plaintiff to think that it is unnecessary to serve the writ and to do so would increase the costs in a manner which is unwarranted in the circumstances (*see Admiralty Law and Practice* at p 463).

38 Before considering the relevant cases, it would be helpful to unpack the concepts involved. The first concept, an agreement to defer service of the writ, is clear on its face. Case law has found that such agreements can either be

express (see *The "Lircay"* at [3], [9] and [28]) or implied (see *The "Owenbawn"* [1973] 1 Lloyd's Rep 56 at 60).

39 The second concept requires further elaboration. In my view, there are two aspects to this. First, there must exist negotiations that were making progress. Sporadic or one sided pursuits of settlement would not lead a reasonable plaintiff to think that service of the writ would increase costs in a manner which is unwarranted. In the words of Rix J in *The "Finnrose"* [1994] 1 Lloyd's Rep 559 at 564 (articulated albeit in a different context involving an application to strike out for want of prosecution):

> … Sporadic attempts at a settlement are no excuse for letting a matter go to sleep. Litigants who mislead themselves into thinking that fruitless negotiations are going somewhere have only themselves to blame if they allow time to pass them by…

40 Second, there must also be conduct by a defendant or its representatives which induced or contributed to the plaintiff's belief that service was unnecessary due to the presence of ongoing settlement negotiations. In circumstances where a defendant's conduct had a causal link with the plaintiff's withholding of service, it would arguably be unjust for a defendant to be allowed the benefit of a statutory limitation (see the decision of the Singapore Court of Appeal in *Kun Kay Hong v Tan Teo Huat* [1983-1984] SLR(R) 762 ("*Kun Kay Hong*") at [13]).

41 I now consider the authorities which lend support to the proposition stated at [37] above.

42 The first authority is Brandon J's decision in *The "Owenbawn"*. The decision concerned a Category (3) case which arose out of a collision between the vessels the "Dionisis L" and the "Owenbawn". The parties commenced

proceedings within time, and security was furnished by both sides for the other's claim. The plaintiff issued its writ on 2 July 1971 and the defendant knew about this. Both parties did not serve their writs because they were engaged in settlement negotiations. In the course of the settlement negotiations (in January 1972), the plaintiff threatened to end the negotiations due to delay on the part of the defendant's solicitor in obtaining instructions. The defendant's solicitor responded in February 1972 to state that he had instructions to resume without prejudice discussions. The parties' solicitors thereafter met on 16 February 1972 wherein a settlement proposal was put forward by the defendant. There was delay by the plaintiff, and on 10 July 1972, the defendant's solicitor wrote to the plaintiff's solicitor to ask whether he had instructions on the defendant's settlement proposal. By that time, the plaintiff's writ had expired, but the plaintiff's solicitor was not aware of this because he mistakenly believed that the writ had been issued in August 1971. In the beginning of August 1972, the plaintiff's solicitor realized that the writ had expired and applied for a renewal of the writ. The Admiralty Registrar acceded to the application, and the renewed writ was served on the defendant on 22 August 1972. The defendant applied to set aside the order renewing the plaintiff's writ.

43 Brandon J first observed that there were three situations where it would be just to renew a writ, namely (a) an express agreement to defer service, (b) an implied agreement to defer service, and (c) conduct by the defendant "*leading the plaintiff to suppose it would be all right to defer service of the writ, with the result that the defendant can be said to have been party to the delay in serving the writ*" [emphasis added in italics] (see *The "Owenbawn"* at 60).

44 Brandon J next considered the communications between the parties, and found that negotiations had continued until August 1972 (at 60–61). On a fair interpretation of the negotiations, Brandon J held that there was an

agreement that service of the plaintiff's writ would be deferred so long as negotiations were continuing (at 61). Even if there was no such agreement, there was at least conduct by the defendant of such character as to lead a reasonable solicitor acting for the plaintiff to believe that service of the writ could be deferred due to the negotiations (at 61–62). On those grounds, Brandon J upheld the Admiralty Registrar's renewal of the plaintiff's writ.

45 The second authority is *Kun Kay Hong*, a Category (3) case. The case concerned a personal injuries claim arising out of a motor accident. Shortly after the writ was issued and during the course of the settlement negotiations, the defendant's solicitor wrote to the plaintiff's solicitor to request that the plaintiff defer service pending the completion of their investigations (at [5]–[8]). The writ expired, and there was a five and half month delay before the plaintiff's solicitor filed the application to extend the validity of the writ. According to the plaintiff's solicitor, there was a delay because he was relatively junior at the bar and partly due to indications that the matter would be amicably settled (at [9]). The Court of Appeal upheld the renewal of the writ, holding that there was a good reason for an extension because the defendant's solicitor had expressly requested (during settlement negotiations) that the plaintiff's solicitor withhold service pending the completion of investigations (at [13]-[14]):

> 13 The question is whether in the circumstances of this case there was a sufficient or good reason such that the discretion of the learned assistant registrar to extend the validity of the writ was properly exercised. In considering this question, *we have to point out that there is a distinction between mere negotiations on the one hand and the situation in which a defendant or his representative has stated that there is no need to serve the writ pending negotiations for a settlement.* The mere fact that negotiations for a settlement were in progress has been held as not amounting to a good reason to extend the validity of a writ: see *Easy v Universal Anchorage Co Ltd* [1974] 1 WLR 889. On the other hand, it has been held that it was a sufficient reason that the defendant's insurers have stated that there was no need to

> serve the writ pending negotiations for a settlement…
>
> 14 After hearing the arguments, we were satisfied that there was a sufficient or good reason. It was a sufficient reason that the solicitors for the underwriters of the defendant had requested the plaintiff's solicitors to stay their hands and withhold service of the writ. The request remained operative for ten of the 12-month period of the validity of the writ. *Even as late as mid-October 1982, the defendant was still asking for the [settlement] amount acceptable to the plaintiff. The defendant's solicitors had requested withholding of service "pending completion" of their investigations. At no time did they tell the plaintiff that they had completed their investigations.*
>
> [emphasis added in italics]

46 The third authority is MPH Rubin J's decision in *The "Antares V"*, a Category (2) case. The case arose from a cargo damage claim subject to a one year limitation period under the Hague Rules. It is clear from Rubin J's reasoning that his Honour found good reason for extension because the defendant P&I Club's conduct led the plaintiff to think that it was unnecessary to serve the writ and to do so would have scuttled the prospects of settlement. The relevant extract of the decision reads as follows (at [24]–[26]):

> 24 In the case at hand, first of all when the plaintiffs suggested the idea of arbitration, the defendants were not inimical to the proposal. Second, when the plaintiffs suggested negotiated settlement or court process in lieu of arbitration, the defendants again did not raise any objection… From all the correspondence exchanged between the parties, *one feature was very clear, that was, that parties were earnestly engaged in negotiations, albeit sporadically*, during the material time…. Another *inescapable aspect of the case was that the defendants' P&I Club could not have been blind-sided to the fact that the writ must have been renewed beyond the extension period granted to them. Had it not been for such an assumption and had it not been for the P&I Club's desire to reach a negotiated settlement, the club would not have provided the letter of undertaking…*
>
> 25 … Although it has been said that negotiations between parties alone do not amount to good reason to extend the period of validity of the writ and that the plaintiffs should protect their position by issuing as well as serving the writ

> on the defendants, *I do not think that this is meant to be applied in a rigid and inflexible manner. The fact is that an attempt on the plaintiffs' part to serve the writ would in all likelihood have ruined the prospects of settlement, or at least would have been a set-back to the negotiation process… The authorities also indicate that the defendant's conduct in causing or contributing to the delay may be taken into account by the court in exercising its discretion in such cases…*
>
> 26 … I concluded that the plaintiffs have amply *satisfied the court with sufficiently good reason for not serving the writ during its initial validity. In my view, the fact of the negotiations between the parties and the way the P&I Club conducted their correspondence most certainly swung the balance of justice in the plaintiffs' favour…*
>
> [emphasis added in italics]

47 The final authority is the decision of Judith Prakash J (as her Honour then was) in *The "Ching Ho"*, a Category (2) case. The decision also concerned a cargo damage claim. Prakash J set aside the order extending the validity of the writ as the plaintiff failed to show good reason for extension, but there are significant differences which sets this decision apart from the preceding cases.

(a) At all material times during the parties' negotiations, the defendant was not aware of the existence of the writ (at [32]). As it turned out, the undertaking provided by the defendant's P&I Club only covered some but not all of the plaintiffs named in the writ (at [13]).

(b) The writ expired on 24 April 2001. However, by 7 February 2001, it was already clear that the defendant was not disposed to settling the plaintiffs' claim and that further attempts at negotiations would serve no purpose (at [12] and [33]). Once it became obvious that settlement could not be achieved, the plaintiffs should have served the writ while it was still valid when the defendant's vessels called at Singapore on two occasions in March and April 2001 (at [18] and [33]).

(c) Prakash J had considerable doubt on the plaintiffs' explanation for non-service, namely, that their representative had misinterpreted the identities of the plaintiffs in favour of whom the letter of undertaking was issued (at [29]–[31], and [35]). Her Honour found that the plaintiffs' representative was a professional claims adjuster and handler, and should have had no difficulty in properly interpreting the letter of undertaking (at [35]). Further, the defendant could not blamed for refusing to allow its solicitors to accept service of process for the plaintiffs not named in the letter of undertaking (at [34])

48 In sum, Prakash J found that the delay in serving the writ was not induced or contributed to by the defendant or its representatives (see [34]). The misinterpretation of the letter of undertaking (if it even existed at all) was the plaintiffs' own doing, and the plaintiffs ought to have served the writ once it became clear on 7 February 2001 that the defendant was not minded to settle the claim.

49 When the decisions of *The "Owenbawn"*, *Kun Kay Hong*, *The "Antares V"* and *The "Ching Ho*" are seen in the round, the common thread between them is the culpability of the defendant in the plaintiff's failure to serve the writ during the period of validity. In cases where the defendant's conduct during negotiations may be fairly said to be culpable, the courts have had less hesitation in finding for the plaintiff and extending the writ. On the contrary, in cases where the plaintiff is solely to blame for the failure to effect service, the courts have had much less sympathy for the plaintiff *(*eg, *The "Ching Ho"*).

Issues

50 Broadly, two main issues arise for consideration. I propose to deal first with the issue of whether there is good reason for extension, before considering

the balance of hardship between the parties.

Is there "Good Reason" for Extension?

51 The issue of whether there is good reason for extension should be approached from two time periods - (i) from the issuance of the Writs on 3 January 2017 until the Defendant's provision of the LOUs on 11 October 2017, and (ii) from 12 October 2017 to the Plaintiffs' applications to extend the Writs on 29 January 2018. The difference in approach arises from the mode of service available to the Plaintiffs in each time period.

(a) Prior to the provision of the LOUs, the Plaintiffs needed to serve the Writs on the Defendant's vessels, and the Plaintiffs need to explain why they did not.

(b) After the LOUs had been issued, the complexion of the case changed. The LOUs allowed the Plaintiffs to call on the Defendant's P&I Club to procure the appointment of a Singapore law firm to accept service of the Writs. Accordingly, the Plaintiffs need to explain why they did not call on the undertaking to facilitate service of process.

Pre-LOUs (3 January 2017 – 11 October 2017)

52 Good reason for extension will be shown if there was no reasonable opportunity to serve the Writs. This will be the case if none of the ships proceeded against called at Singapore (see *The "Lircay"* at [23]).

53 In this case, the Defendant accepted that there was no opportunity to serve the Writs prior to the issuance of the LOUs as none of the ships proceeded against called at Singapore. Thus, I find that the Plaintiffs have established good reason for the period from 3 January 2017 to 11 October 2017.

Post-LOUs (12 October 2017 – 29 January 2018)

54 The Plaintiffs' explanation as to why they did not call on the Defendant P&I Club's undertaking to facilitate service of process is premised on the existence of settlement negotiations and Mr Chandler's conduct during these negotiations. I will first consider whether there were in fact settlement negotiations between the parties, and if so, the duration of these negotiations.

(1) Were there Settlement Negotiations?

55 The parties have put forward competing narratives of the correspondence between Mr Murali and Mr Chandler. On the one hand, the Plaintiffs contended that the correspondence evidenced that there were ongoing settlement negotiations. On the other hand, the Defendant denied the existence of such negotiations and submitted that there were merely discussions on the provision of security. To this end, the Defendant referred repeatedly to the absence of any settlement offer (for liability or quantum) in the correspondence.

56 In my view, the correspondence must be analysed objectively as a whole and in context to determine whether there were ongoing settlement negotiations. In my judgment, it is clear that the parties were engaged in ongoing negotiations on (a) the provision of security to avoid arrest, and (b) the settlement of the Plaintiffs' claims. These negotiations started from around 23 February 2017 and carried on until 25 January 2018, when Mr Andrew Lee raised the issue of time bar and asked Mr Murali for copies of the Writs. My reasoning is as follows.

57 The correspondence between Mr Murali and Mr Chandler started from an invitation to negotiate made by Mr Chandler. In Mr Chandler's first email of 23 February 2017, he informed Mr Murali that the Defendant was "open" to resolving the Plaintiffs' claims "swiftly and amicably" (see [12] above).

58 The email exchanges thereafter showed that the parties were agreed on the subject matter of the negotiations, *ie*, the provision of security to avoid arrest *and* the settlement of the Plaintiffs' claims. When Mr Murali replied on 24 February 2017, he stated that the negotiations had to cover both (a) the provision of security *and* (b) the settlement of the Plaintiffs' claims (see [14] above). Mr Chandler explicitly agreed to negotiate on this basis, for on 27 February 2017, he proposed a telephone discussion and sought "*starting positions*" for "*settlement and security*" [emphasis added in italics] (see [15] above).

59 Mr Murali and Mr Chandler had a telephone discussion on 1 March 2017. Based on the preceding exchange of emails, I am more inclined to believe Mr Murali's account that the parties discussed the provision of security and the prospects of settlement during this telephone discussion. Mr Chandler claimed that the co-operative or conciliatory language used in phone calls or e-mails with the opposing party's solicitor's was "solely to keep the Member's strategic options open" and did not mean that he entered into settlement negotiations.[45] Respectfully, this statement is not borne out by the language of Mr Chandler's emails on 23 and 27 February 2017.

60 Mr Murali emailed Mr Chandler on 19 July 2017 to provide (a) an itemised breakdown of the Plaintiffs' claims, (b) the supporting documents to the Plaintiffs' claims, and (c) a breakdown of Plaintiffs' security demand (see [17] above). To my mind, this email sets out the Plaintiffs' "starting positions" for settlement and security, which Mr Chandler had requested for on 27 February 2017. From the outset, the Plaintiffs took the position that the Collisions were solely caused by the Defendant's negligence (see [11] above). The Defendant never intimated a cross-claim, and it is little surprise that the Plaintiffs opened with their highest settlement figure (on a 100% liability basis).

[45] Chandler's Affidavit at para 6.

61 The provision of supporting documents in Mr Murali's email of 19 July 2017 also supports the conclusion that settlement negotiations were underway, because there was no obligation on the Plaintiffs' part to disclose the supporting documents for their claim to the Defendant at that stage. Further, after setting out the itemised breakdown to the Plaintiffs' claim, Mr Murali stated in his email that he would be "happy to discuss the claim" as it "would be in the interest of both parties to avoid costly litigation" (see [17] above). Why else would Mr Murali say all this if parties were not engaged in settlement negotiations? I would add, parenthetically, that the correspondence between Mr Murali and Mr Chandler up to this point was interspersed with emails marked "without prejudice" (see [15] and [17] above). Mr Murali (as a lawyer) and Mr Chandler (as an experienced claims handler[46]) would have appreciated the legal significance of marking correspondence "without prejudice", which suggests that the parties were in fact in the midst of settlement negotiations.

62 After Mr Murali provided the Plaintiffs' "starting positions" for settlement and security in his email of 19 July 2017, the negotiations from 21 July 2017 to 10 October 2017 focused on the provision of security to avoid arrest of the Defendant's vessels. The reason why parties focused on the issue of security as a matter of first priority was because Mr Murali could not give a confirmation that he would not arrest the Defendant's vessels while Mr Chandler took his clients' instructions (see [18] above). In the words of Mr Murali in two separate emails on 21 July 2017,

(a) The first read as follows:[47]

> Dear Ben,

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46 Mr Chandler had five years of experience as a claims handler. See Chandler's Affidavit at para 11.

47 Lee's Affidavit at p 33.

> … Once security is in place, I have no problem giving you more [time], if needed, to review the substantive claim and the supporting documents.

(b) The second read as follows:[48]

> Dear Ben,
>
> … Although we are discussing security, if the vessel comes in and security is not in place, I will have to take steps. This is especially as the Owners are not based in Singapore…

63 The settlement negotiations progressed positively, and on 11 October 2017, the Plaintiffs obtained security in the form of the LOUs (see [20] above). The negotiations now turned to the second item on the agenda – the settlement of the Plaintiffs' claims. Hence, Mr Murali sent email reminders on 12 October 2017, 9 November 2017, and 6 December 2017 to Mr Chandler seeking the Defendant's settlement position (see [21] above). There was no response.

64 In the face of Mr Chandler's silence, Mr Murali threatened to end the negotiations on 21 December 2017 by calling on the Defendant's P&I Club undertaking to appoint a Singapore law firm to accept service of process (see [22] above). Mr Chandler responded minutes later to essentially ask for time until 19 January 2018 to provide a substantive response on the settlement of the Plaintiffs' claims, because (a) the Defendant's appointed expert was "in the process of retrieving his file from storage", and (b) Mr Chandler was going on vacation (see [23] to [25] above). Mr Murali agreed to this (see [25] above). The settlement negotiations continued until 19 January 2018, for Mr Chandler would not have asked for more time, and Mr Murali would not have agreed to the same, had it been otherwise.

65 The Defendant has challenged this reading of the emails on 21

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[48] Lee's Affidavit at p 31.

December 2017. According to the Defendant, when Mr Chandler informed Mr Murali that "Hill Dickinson are already appointed to act for our Members on this case" (see [23] above), it would have been "apparent and a matter of common sense" that the Plaintiffs call on Hill Dickinson LLP to appoint Singapore solicitors to accept service of the Writs.[49]

66 Respectfully, I disagree, for two reasons:

(a) First, when Mr Chandler informed Mr Murali that Hill Dickinson LLP was appointed to act on this case, he said in the preceding two sentences that "*our appointed expert is in the process of retrieving his file from storage. We will revert as soon as we are able*" [emphasis added in italics]. These words suggested that a response would be forthcoming from Mr Chandler.

(b) Second, the undertaking in the LOUs obliged the Defendant's P&I Club to appoint a Singapore law firm to accept service of process. It is common ground that Hill Dickinson LLP is not a Singapore law firm that could accept service of the Writs on the Defendant's behalf. That being the case, I cannot see why it would be "apparent" or "a matter of common sense" that Mr Chandler's message was a direction to the Plaintiffs to call on Hill Dickinson LLP to appoint a Singapore law firm to accept service of the Writs. If that was truly Mr Chandler's intention, he would have said so explicitly.

67 I find that the settlement negotiations in all likelihood came to an end on 25 January 2018. Prior to 25 January 2018, Mr Murali was awaiting the Defendant's settlement position. Mr Murali sent an email reminder setting a

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[49] Lee's Affidavit at paras 16-17, and 19.

new deadline of 24 January 2018 when Mr Chandler failed to respond by the agreed deadline of 19 January 2018 (see [27] above). However, when Mr Andrew Lee wrote to Mr Murali on 25 January 2018 to raise the issue of limitation and to ask for copies of the Writs (see [27] above), the Plaintiffs probably knew then that the settlement negotiations had come to an end. I suspect that the Plaintiffs also probably found out after Mr Lee's email that the Writs ceased to be valid on 2 January 2018, and filed applications shortly thereafter (on 29 January 2018) to retrospectively extend the validity of the Writs. There is no evidence of settlement negotiations beyond 25 January 2018.

(2) Settlement Negotiations - Good Reason for Extension?

68 Having found that there were in fact settlement negotiations between the parties, I next consider whether these negotiations amounted to good reason for an extension to be granted.

69 At the outset, I do not accept the Plaintiffs' submission that the LOUs and the surrounding correspondence evidenced an implied agreement to defer service of the Writs while settlement discussions were ongoing.[50] I agree with the Defendant that the clause in the LOU providing for the appointment of a Singapore law firm to accept service merely substituted the usual way of service through arrest with service under the LOU.[51] It did not constitute an implied agreement to defer service. I also agree with the Defendant that there is nothing in the surrounding correspondence which show an implied agreement to defer service.[52] Looking at the whole course of negotiations objectively, it is clear to

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50 Plaintiffs' Solicitor's Letter to Registry dated 14 June 2018 at paras 2 to 3.

51 Defendant's Solicitor's Letter to Registry dated 19 June 2018 at paras 7 to 8.

52 Defendant's Solicitor's Letter to Registry dated 19 June 2018 at para 12.

me that the parties were never *ad idem* on the issue of deferring service of the Writs (during the pendency of settlement negotiations or otherwise).

70 That being said, I do think that Mr Chandler's conduct led the Plaintiffs to think that it was unnecessary to serve the Writs and that to do so would increase the costs in a manner which was unwarranted in the circumstances. Mr Chandler knew of the issuance of the Writs on 3 January 2017. At the material time, the parties were earnestly engaged in settlement negotiations. The negotiations progressed positively and culminated in the issuance of the LOUs, which obviated the need to arrest the Defendant's vessels. When the negotiations moved to the substantive subject of the settlement of the Plaintiffs' claims after 11 October 2017, Mr Chandler did not provide any indication that the Defendant was not interested in such negotiations. While Mr Chandler did not respond to Mr Murali's email reminders on 12 October 2017, 9 November 2017, and 6 December 2017, there was no suggestion that this was an indication of the Defendant's abandonment of the settlement negotiations. Indeed, when Mr Chandler finally responded on 21 December 2017 (very swiftly, I might add) in the face of Mr Murali's threat to end the negotiations, he asked for time until 19 January 2018 to provide the Defendant's settlement position. Mr Chandler's reasons for needing more time: (a) that the Defendant's appointed expert was retrieving his file from storage and (b) he was going on vacation were innocuous, and it appears that the Plaintiffs did not think twice about providing the requested extension. Under these circumstances, the Defendant's conduct during negotiations may be fairly said to be culpable in the Plaintiffs' failure to serve the Writs during their validity. Further, bearing in mind the history of the negotiations between the parties, I find that it was reasonable for the Plaintiffs to have taken the view that service of the Writs could be deferred while they awaited the Defendant's settlement position and that service of the Writs was not only unnecessary but that it could potentially derail the settlement

negotiations.

71 When the Plaintiffs finally realised on 25 January 2018 that settlement negotiations were off and that their Writs had expired, they took immediate steps to extend the validity of the Writs. In light of the foregoing, I find that the Plaintiffs have established good reason for extension for the period after the LOUs were issued.

72 Before leaving this issue, I will briefly address the Plaintiffs' suggestion that the Defendant's act of asking for time until 19 January 2018, before then raising the issue of limitation when the Plaintiffs were expecting the Defendant's settlement position, was redolent of sharp practice.[53] I find that there is insufficient material before me to make such a determination, and I need not make any definitive ruling on this point, given my finding that the Defendant had – by its conduct – led the Plaintiffs to think that it was unnecessary to serve the Writs.

(3) Satisfactory Explanation

73 Since this is a Category (3) case, the Plaintiffs must, in addition to showing good reason, also provide a satisfactory explanation for their failure to apply for an extension before the Writs expired. In other words, the Plaintiffs must give a satisfactory explanation to account for the delay between the expiry of the Writs and the filing of their applications to renew the Writs.

74 In this case, the Plaintiffs applied to extend the validity of the Writs on 29 January 2018 ie, 27 days after the Writs' expiry on 2 January 2018. The reason why the Plaintiffs only applied to renew the Writs on 29 January 2018 was because their solicitors only realised that the Writs had expired on 25

[53] PWS at para 47.

January 2018. While the Plaintiffs candidly admitted that this was attributable, in part, to an administrative oversight on the part of their solicitors, one has to go further to consider why the oversight was not discovered earlier. The question to be asked is this: why did it take the Plaintiffs this long to consider the issue of the validity of the writs, thereby allowing them to lapse?

75 In my view, the answer is that the Plaintiffs' solicitors did not give the matter the close attention they might otherwise have given it because of (a) the history of (at least partially successful) negotiations between the parties and (b) Mr Chandler's specific act of asking for time until 19 January 2018 to provide the Defendant's settlement position. This led the Plaintiffs' solicitors to believe that service could be deferred and caused them to put work on the file on hold while they awaited the Defendant's settlement position. As a result, the Plaintiffs' solicitors did not discover the oversight until 25 January 2018.

76 Under these circumstances, I find that the Plaintiffs have provided a satisfactory explanation to account for the delay. While the Plaintiffs are not entirely blameless, it can be said that the Defendant played a causative role in the Plaintiffs' tardiness.

77 Further, the length of delay in this case is also minimal or short relative to the delay in *Kun Kay Hong*, where an extension was granted. There, the Court of Appeal did not find the delay of five and a half months fatal, as the delay had been induced or contributed to by the defendant's conduct. At [15], the Court of Appeal held as follows:

> In the course of arguments, we were somewhat anxious over the delay in the filing of the application which was made some five months and 16 days after the expiry of the validity of the writ. In most cases, this delay would have been fatal. We cannot over-emphasize that it is the duty of a plaintiff who issues a writ to serve it promptly. We examined the

> reasons given by [the plaintiff's solicitor] for the delay. *On the particular facts before us, we came to the conclusion that the delay was not fatal. We were satisfied in all the circumstances that the delay has been induced, or contributed to, by the words and conduct of the solicitors for the defendant.* [emphasis added in italics]

78 Before leaving this section, I hasten to add that I am in no way excusing the Plaintiffs' solicitors for their oversight. In finding that the Plaintiffs have given a satisfactory explanation, I am merely recognising that the conduct of the Defendant's representatives played a causative role in the Plaintiffs' failure to apply for renewal before the Writs expired.

Balance of Hardship

79 Having found that the Plaintiffs have shown good reason for an extension to be granted and that they have provided a satisfactory explanation for their failure to apply for an extension before the Writs expired, I now consider the balance of hardship. I recognise that the Defendant would be deprived of the substantive defence of limitation if the Writs are renewed.[54] However, after considering all the circumstances of the case, I still consider it appropriate for the Writs to be renewed for the following reasons.

80 First, the Plaintiffs will be left with no remedy against the Defendant if the Writs are not renewed.[55] While the Plaintiffs must take some blame for the state of affairs, I do not consider the degree of fault substantial enough to deprive them of their cause of action against the Defendant. Having found that the Defendant's conduct played a part in the Plaintiffs' failure to serve during the Writs' validity, it would be unjust and unfair if the Defendant could rely on a limitation defence.

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54 Lee's Affidavit at para 22.

55 Ng's 1st Affidavit at para 18.

81 Second, the Plaintiffs pursued their claims with reasonable diligence. The Plaintiffs commenced proceedings within time, and this is their first application for an extension of the validity of the Writs. During the original validity of the Writs, the Plaintiffs obtained security for their claims, and repeatedly chased the Defendant for their settlement position. To grant an extension in this case does not offend against the policy underlying statutes of limitation, which is to ensure that claims are pursued with reasonable diligence (see *The "Pearl of Jebel Ali*" [2009] 2 Lloyd's Rep 484 at [50]).

82 Finally, the Plaintiffs took out the applications to renew the Writs promptly. Once the Plaintiffs became alive to the issue of time bar on 25 January 2018, they applied for an extension to the validity of the Writs four days later.

Length of Extension

83 The Plaintiffs prayed for and obtained a twelve-month extension to the validity of the Writs under the Extension Orders. I now consider whether this length of extension is appropriate.

84 To begin with, the fact that admiralty writs are valid for 12 months in the first instance does not *ipso facto* mean that the writ ought to be renewed for a further 12 months. It is clear from the regime established under O 6 r 4(2) and O 6 r 4(2A) that a twelve-month extension is the exception rather than the norm. The applicant who seeks to rely on O 6 r 4(2A) must show that his case is out of the ordinary; and that even if reasonable steps to serve the writ are taken, it may not be possible to serve the writ within a six-month period (see *Singapore Court Practice 2017* (Jeffrey Pinsler gen ed) (LexisNexis, 2017) at para 6/4/4). In the admiralty context, absent any agreement between the parties on service, it may not be possible to serve the writ within a six-month period if none of the ships proceeded against called at Singapore in the preceding 12 months during

the writ's validity. Another conceivable situation is where the parties agree to defer service indefinitely subject to written notice for settlement negotiations, and the negotiations are expected to be long drawn. Ultimately, it is not possible to be prescriptive on when a twelve-month extension under O 6 r 4(2A) should be ordered; and much will depend on the circumstances of each case.

85 On the facts of this case, I do not think that the twelve-month extension was warranted. The settlement negotiations came to an end on 25 January 2018, and it would have been incumbent on the Plaintiffs to immediately take steps thereafter to serve the Writs. The undertaking in the LOUs allowed the Plaintiffs to call on the Defendant's P&I Club to appoint a Singapore law firm to accept service of process, and the Plaintiffs would not need a further 12 months to serve the Writs. Thus, I find that the validity of the Writs ought to have been extended for six months under O 6 r 4(2) of the Rules.

86 Therefore, pursuant to the court's power to vary *ex parte* orders after the *inter partes* hearing under O 32 r 6 of the Rules (see *WEA Records Ltd v Visions Channel 4 Ltd* [1983] 1 WLR 721 at 727B-E), I will vary the Extension Orders to provide that the validity of the Writs be extended for a period of six months from 3 January 2018 up to and including 2 July 2018. Further, although the costs of the extension applications was ordered to be in the cause, I think the appropriate order to be made here is for there to be no order as to costs, given my finding that the Plaintiffs are not blameless. Accordingly, I so order.

87 Before concluding, I should highlight that the Writs have been deemed served within the six-month extension ordered. On 15 May 2018, the Defendant entered appearance *gratis* (pursuant to O 70 r 7(2) read with O 10 r 1(3) of the Rules) and applied to set aside the Extension Orders. Since the Defendant has failed to set aside the Extension Orders, the Writs were valid when they were

deemed to have been duly served on the Defendant on 15 May 2018 pursuant to O 10 r 1(3) of the Rules (see also *The "Ursus"* [2015] SGHCR 7 at [14]).

Conclusion

88 Matters of limitation are never a trifling matter, and this case underscores the importance of closely monitoring the expiry dates of writs even where good faith negotiations are afoot. While I have found it appropriate to extend the validity of the Writs, a writ should not be renewed as a matter of course. Parties are well advised to take all reasonable steps to effect service at all times, lest they be overtaken by a period of limitation.

89 For the foregoing reasons, the Defendant's applications to set aside the Extension Orders are dismissed. The Extension Orders are varied in the terms outlined at [86] above. The Registry is to fix a pre-trial conference for directions on the filing of the preliminary acts.

90 I will hear parties on costs.

Navin Anand
Assistant Registrar

K Muralitherapany and Ng Lip Kai (Joseph Tan Jude Benny LLP) for the Plaintiffs;
Ramachandran Doraisamy Raghunath and Rafizah Gaffoor (Peter Doraisamy LLC) for the Defendant.
