IN THE GENERAL DIVISION OF THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHCR 7

Admiralty in Rem No 14 of 2021 (Summons No 1924 of 2021)

Admiralty action in Rem against the vessel "BIG FISH"

Between

Owner and/or Demise Charterer of the vessel(s) "BARUNA 1", "BPL 1"

… *Plaintiff*

And

Owner of the vessel "BIG FISH"

… *Defendant*

JUDGMENT

[Conflict of Laws] — [Forum election] — [*Lis alibi pendens*]
[Civil Procedure] — [Striking out]
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Navin Anand AR:

Introduction

1 It has been said that every port is an admiralty emporium.[1] Quite often, an action is commenced in a jurisdiction without any real connection to the underlying dispute, for the purpose of arresting the ship and obtaining security for the plaintiff's claim. This happens for a host of reasons, but a recurrent one in the shipping industry where one-ship companies are commonplace is that the defendant's only asset is the ship, and the only realistic recourse for the plaintiff is to arrest the ship in any jurisdiction which she happens to enter.

2 Where ship arrest is effected under such circumstances, two issues may come to the fore. First, there may be a multiplicity of proceedings, arising from simultaneous actions being brought in Singapore and a foreign jurisdiction

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[1] Per Lord Simon in *The Atlantic Star* [1974] AC 436 at 473.

between the same parties. Second, where the underlying dispute is governed by the law of another country, there may be a question of whether the court hearing the application for arrest is adequately sensitised to the existence of a limitation period under that foreign law, if applicable.

3 Both issues were brought into sharp focus in the present dispute. The Plaintiff arrested the Defendant's vessel "BIG FISH" ("Vessel") in Singapore for loss and damage arising out of a vessel collision, after the Defendant had commenced proceedings in Indonesia for the same collision. Following the arrest, the Plaintiff filed a counterclaim against the Defendant in the Indonesian proceedings based on the collision as well.

4 In this application, the Defendant seeks, *inter alia*, to (a) force the Plaintiff to elect between proceedings in Singapore and Indonesia, (b) strike out the Singapore action for being time-barred, and (c) set aside the arrest on the basis that the Plaintiff had failed to bring certain material facts to the court's attention at the time it applied for the warrant of arrest.

5 After hearing the parties, I make no order on the prayers for forum election and dismiss the prayer for striking out. However, I set aside the warrant of arrest for material non-disclosure, with the issue of wrongful arrest (and any damages to be awarded thereon) to be reserved to the trial judge. I set out my full grounds below.

Background facts

The Collision

6 The Plaintiff is the registered owner of the tugboat "BARUNA 1" and the flat top barge "BPL 1".[2] The Defendant is the registered owner of the Vessel.[3]

7 On 22 January 2019, there was a collision between the "BPL 1" (while towed by the "BARUNA 1") and the Vessel in the Java Sea, within Indonesian territorial waters ("Collision").[4] Both parties have alleged that the Collision was caused by the negligence of the other, and each claimed to have suffered loss and damage as a result.

The Indonesian and Singapore Actions

8 On 21 January 2021, the Defendant commenced proceedings in the East Jakarta District Court ("Indonesian Action"), just shy of the two-year anniversary of the Collision.[5] In the Indonesian Action, the Defendant claimed against the Plaintiff for loss and damage arising out of the Collision.

9 On 11 February 2021 (*ie*, *after* the two-year anniversary of the Collision), the Plaintiff issued an *in rem* writ in HC/ADM 14/2021 against the Defendant for loss and damage suffered by reason of the Collision ("Singapore Action"). On the same day, the Plaintiff's solicitors attended before Assistant

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2 1st Affidavit of Lim Min Isabel dated 11 February 2021 ("Arrest Affidavit") at para 5.

3 *Ibid* at p13.

4 1st Affidavit of Anna Kountouriotou dated 26 April 2021 ("Kountouriotou's Affidavit") at paras 4-5.

5 *Ibid* at para 6.

Registrar Miyapan Ramu ("AR Ramu") and obtained a warrant of arrest against the Vessel.

10 The Vessel was arrested in Singapore on 13 February 2021 ("Arrest"). The Vessel was released on 15 February 2021, after the Defendant provided security by way of a letter of undertaking from its P&I Club, Gard (UK) Limited ("LOU").[6] The Defendant furnished the LOU under protest and with full reservation of its rights.[7]

11 On 5 April 2021 (*ie*, nearly two months after the Arrest), the Plaintiff filed a counterclaim against the Defendant in the Indonesian Action ("Indonesian Counterclaim"), seeking the same substantive remedies as in the Singapore Action (*ie*, for loss and damage suffered from the Collision).[8] The Plaintiff also sought a conservatory attachment over the Vessel,[9] which is a remedy available under Indonesian law for a party to obtain pre-judgment security (akin in that sense to a ship arrest).[10]

12 In light of this development, the Defendant's solicitors emailed the Plaintiff's solicitors on 13 April 2021 and sought their confirmation on which of the two court actions (*ie*, the Singapore Action and the Indonesian Counterclaim) the Plaintiff intended to maintain.[11] In the same email, the Defendant's solicitors highlighted the upcoming timelines for the exchange of

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6 *Ibid* at para 10.

7 *Ibid* at para 9.

8 *Ibid* at para 35.

9 *Ibid* at p275.

10 1st Affidavit of Dr Akhmad Budi Cahyono dated 20 May 2021 ("Cahyono's 1st Affidavit") at paras 79-82. 2nd Affidavit of Dr Akhmad Budi Cahyono dated 15 June 2021 ("Cahyono's 2nd Affidavit") at paras 55-56.

11 Kountouriotou's Affidavit at para 38.

electronic track data and the filing of the preliminary acts, and proposed that these timelines be deferred by two weeks pending the Plaintiff's confirmation.

13 The Plaintiff's solicitors responded the next day (*ie*, 14 April 2021), but provided no such confirmation. They instead stated that the Plaintiff was ready with its electronic track data.[12] The Plaintiff also filed its preliminary act under O 70 r 17(2) of the Rules of Court (2014 Rev Ed) ("Rules").

14 I saw the parties at a pre-trial conference on 15 April 2021, and directed the Defendant to file, by 26 April 2021, either its preliminary act or an application to compel the Plaintiff to elect between the Singapore Action and the Indonesian Counterclaim. I indicated to parties that directions for the exchange of electronic track data would be held over to the next pre-trial conference, or given by way of correspondence from the court if no application was taken up by the Defendant.

15 On 19 April 2021, the Plaintiff's solicitors emailed the Defendant's solicitors to ask if the Defendant was prepared to extend the security provided for the Singapore Action to the Indonesian Counterclaim. The relevant parts of the email read as follows:[13]

> …
>
> Our clients have commenced their claims in Singapore on the basis that they can obtain security for their claims, as compared to commencing their claims in Indonesia.
>
> However, if the Defendants are contemplating proceedings in Indonesia to resolve their claims against our clients in Indonesia, please let us know if your clients are prepared to extend the security provided for our clients in Singapore to

12 *Ibid* at p302.

13 *Ibid* at p307.

> the [Indonesian Counterclaim], so that our clients can make their claims in Indonesia instead.
>
> In any event, if your clients are not prepared to do so, we will proceed with our clients' claims in Singapore. Please also let us know if your clients wish to proceed with their claims in Singapore.
>
> …

16 The Defendant filed the present application on 26 April 2021, evidently refusing to extend the LOU to the Indonesian Counterclaim.

17 On 27 April 2021, the parties attended before the East Jakarta District Court. Without any prior notice to the Defendant, the Plaintiff sought leave to revoke the Indonesian Counterclaim.[14] The revocation would have the effect of a withdrawal of the Indonesian Counterclaim.[15] The Plaintiff proceeded in this manner due to the security furnished in the Singapore Action and its belief that the Defendant would be the "net paying party" for the Collision. This is explained by the Plaintiff's Indonesian lawyers, as follows:[16]

> … *we have revoked the Indonesian Counterclaim* on 27 April 2021 … *because the Plaintiff's claim that arising* [sic] *out of the ships collision will be significantly more that* [sic] *the Defendant's claim* because it is the opinion of *the Plaintiff and their maritime experts that the Defendant's vessel, is fully, if not at least 90% to blame for the ships collision. The Defendant will therefore be the net paying party of damages to the Plaintiff and the Plaintiff requires security to ensure that its claim will be paid by the Defendant*, which could be acquired in the Singapore jurisdiction.
>
> [emphasis added]

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14 2nd Affidavit of Sahat A.M. Siahaan dated 15 June 2021 ("Siahaan's Affidavit") at paras 9-12.

15 Defendant's Written Submissions ("DWS") at paras 13-14.

16 1st Affidavit of Andrew Sutedja dated 27 May 2021 ("Sutedja's Affidavit") at para 47.

18 After hearing the parties, the East Jakarta District Court permitted the Plaintiff to revoke the Indonesian Counterclaim and re-file its statement of defence.[17] The East Jakarta District Court also emphasised that the Plaintiff would not be permitted to change its statement of defence and file any counterclaim in the Indonesian Action following the revocation.[18]

The parties' positions

19 The Defendant seeks the following reliefs in this application:

(a) the Plaintiff be made to elect between the Singapore Action and the Indonesian Counterclaim, and should the Plaintiff elect to proceed with the Indonesian Counterclaim, for the Singapore Action to be discontinued;

(b) the Singapore Action be struck out pursuant to O 18 rr 19(1)(*a*) –19(1)(*d*) of the Rules and the inherent jurisdiction of the court;

(c) the warrant of arrest be set aside for material non-disclosure; and

(d) the Plaintiff be ordered to pay damages for wrongful arrest.

20 The Defendant submits that the Plaintiff's claim in the Singapore Action and the Indonesian Counterclaim gives rise to a clear case of *lis alibi pendens*.[19] Even despite the revocation of the Indonesian Counterclaim, the Defendant

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17 Siahaan's Affidavit at para 13.

18 Siahaan's Affidavit at para 15.

19 DWS at paras 7-11.

contends that it is open to the court to find that the Plaintiff had not made an election and be ordered to do so.[20]

21 Independent of its prayer to put the Plaintiff to an election, the Defendant argues that the Singapore Action should be struck out, and the warrant of arrest set aside, on the following grounds:

(a) The Collision occurred in Indonesian territorial waters, and would be governed by Indonesian law.[21] The limitation period for collision claims is two years from the date of the collision pursuant to Article 742 of the Indonesian Commercial Code (also known as *Kitab Undang-Undang Hukum Dagang* or "KUHD").[22] Accordingly, the limitation period for claims arising out of the Collision expired on 22 January 2021. Since the Singapore Action was commenced on 11 February 2021, it was time-barred and should be struck out for being legally and factually unsustainable.[23]

(b) There was material non-disclosure by the Plaintiff in the course of obtaining the warrant of arrest. The Plaintiff failed to disclose six "material facts" to the court,[24] but the chief complaint concerned the failure to disclose and draw AR Ramu's attention to the two-year limitation period under Article 742 of the KUHD, with the Plaintiff's

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20 *Ibid* at paras 14-18.

21 *Ibid* at para 24(a).

22 *Ibid* at paras 26(b), 27.1-27.2.

23 *Ibid* at paras 20-23, 26(d).

24 *Ibid* at paras 79-97.

solicitors representing to him instead that the limitation period under Indonesian law is 30 years.[25]

22 The Defendant also seeks damages for wrongful arrest. It contends that the Plaintiff's material non-disclosure misled the court, and that the Arrest was malicious or at least grossly negligent.[26]

23 On the other hand, the Plaintiff's solicitors accept that there existed a duplicity of actions in Singapore and Indonesia at the time of the application. However, they argue that it is unnecessary for the court to order an election since the Indonesian Counterclaim has been revoked.[27]

24 The Plaintiff also submits that the Singapore Action should not be struck out, as there is a genuine triable issue on the applicable limitation period for vessel collision claims under Indonesian law.[28] Notwithstanding Article 742 of the KUHD which prescribes a two-year time bar for vessel collision claims, the Plaintiff argues that it is entitled to rely on the general limitation period of 30 years for tort claims provided under Article 1967 of the Indonesian Civil Code.[29] Furthermore, the court should not at this stage decide between conflicting expert evidence on Indonesian law.[30] In the event that the limitation period for collision claims is two years, the Plaintiff contends that the limitation period was interrupted by the Plaintiff's letter of demand dated 18 July 2019 ("Letter of

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25 *Ibid* at para 80.

26 *Ibid* at paras 103-107.

27 Plaintiff's Written Submissions ("PWS") at para 7.

28 *Ibid* at para 44.

29 *Ibid* at para 31.

30 *Ibid* at para 17.

Demand") to Star Bulk Shipmanagement Company (Cyprus) Ltd ("Star Bulk"), the ship managers of the Vessel.[31]

25 The Plaintiff's solicitors accept that they did not disclose the existence of the two-year limitation period under Article 742 of the KUHD when they applied for the warrant of arrest.[32] Nevertheless, they submit that this "omission" does not justify the setting aside of the Arrest.[33] As such, the Plaintiff submits that the Defendant's application should be dismissed with costs.

Issues

26 The Defendant's application can be analysed in three parts. I propose to deal first with the issue of forum election. I will next consider whether it is appropriate to strike out the Singapore Action for being time-barred. Finally, I will consider the allegations of material non-disclosure, and decide whether to set aside the warrant of arrest and award damages for wrongful arrest.

Issue 1 – Forum election

27 The present case involves a common plaintiff *lis alibi pendens*, where the same plaintiff sues the same defendant in Singapore and abroad in respect of the same subject matter: see *Virsagi Management (S) Pte Ltd v Welltech Construction Pte Ltd and another appeal* [2013] 4 SLR 1097 ("*Virsagi*") at [27]. This engages the doctrine of forum election, where the court will compel the plaintiff to elect one jurisdiction to pursue the claim, because the pursuit of concurrent proceedings is *prima facie* vexatious unless there are very unusual

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31 *Ibid* at paras 35-40.

32 *Ibid* at para 15.

33 *Ibid* at para 19.

circumstances to justify it (see *Virsagi* at [31]). Once the defendant establishes a duplicity of actions in different jurisdictions, the burden then shifts to the plaintiff to justify the continuation of concurrent proceedings by showing "very unusual circumstances" (see *Virsagi* at [30]).

28 There is no doubt that the Singapore Action and the Indonesian Counterclaim are duplicitous. Put simply, both involve the same parties, concern the same issues, and arise from the same underlying factual matrix (*ie*, the Collision). This is common ground, and the Plaintiff has not put forward any reason, much less any "unusual circumstances", to justify the concurrent pursuit of its claim in Singapore and in Indonesia. Such conduct would therefore be *prima facie* vexatious.

29 However, the vexatious conduct present at the time of filing ceased to exist by the time the application was heard. By then, the Plaintiff had elected to pursue its claim in the Singapore Action, as evidenced by:

(a) its revocation of the Indonesian Counterclaim on 27 April 2021 (see [17]–[18] above), and its refiling of its statement of defence in the Indonesian Action;[34] and

(b) its position on affidavit that it revoked the Indonesian Counterclaim because it required the LOU furnished in the Singapore Action to obtain satisfaction of its claim (see [17] above).

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[34] Letter from Gurbani & Co LLC dated 5 July 2021.

30 Both matters unequivocally signalled the Plaintiff's intention to pursue its claim in Singapore and bring the Indonesian Counterclaim to an end.

31 Since the Plaintiff has made an affirmative election, it is unnecessary to put the Plaintiff to an election, and I make no order on those prayers: see *Ang Ming Chuang v Singapore Airlines Ltd (Civil Aeronautics Administration, third party)* [2005] 1 SLR(R) 409 at [13]–[14]. Nevertheless, I find that the Defendant should be entitled to costs, as the Plaintiff did not make an election until after this application was filed, despite reasonable requests from the Defendant to do so (see [12]–[13] above).

Issue 2 – Striking out

General principles

32 The parties do not dispute that the Collision occurred in Indonesian territorial waters, and hence any tort committed would be governed by the laws of Indonesia. Accordingly, it is the limitation period under Indonesian law which applies, pursuant to s 3(1) of the Foreign Limitation Periods Act (Cap 111A, 2013 Rev Ed).

33 In this case, the Defendant's application to strike out based on a time bar requires it to establish three cumulative points:

(a) First, the limitation period under Indonesian law for vessel collision claims is two years from the date of the collision pursuant to Article 742 of the KUHD.

(b) Second, the Letter of Demand to Star Bulk did not interrupt this limitation period, and therefore the Singapore Action is time-barred.

(c) Third, a time-barred claim is liable to be struck out.

34 The Plaintiff has no quarrel with the third proposition. This must be correct, because a claim that is time-barred is legally unsustainable, and will be struck out for being "frivolous and vexatious" or an abuse of process under O 18 rr 19(1)(*b*) and 19(1)(*d*) of the Rules: see *Liew Soon Fook Michael and another v Yi Kai Development Pte Ltd* [2017] SGHC 88 at [18]–[19] and [32]–[35].

35 As such, the striking out application turns on two issues of Indonesian law (*viz*, the applicable limitation period for vessel collision claims, and whether this limitation period was interrupted by the Letter of Demand), which are treated under our law as questions of fact: see *Pacific Recreation Pte Ltd v S Y Technology Inc and another appeal* [2008] 2 SLR(R) 491 at [54].

36 Thus, to succeed in its striking out application, the Defendant must show that the Plaintiff's claim is factually unsustainable. Specifically, the Defendant has to prove that the Plaintiff's expert evidence is unsustainable. In approaching this issue, I make two brief points.

(a) The threshold for striking out based on factual unsustainability is a high one. It requires the court to say *with confidence* before trial that the factual basis is entirely without substance: see *The "Bunga Melati 5"* [2012] 4 SLR 546 at [39].

(b) Save for plain and obvious cases, the court should generally refrain from making a determination based on conflicting affidavit evidence. As succinctly explained by George Wei J in *Antariksa Logistics Pte Ltd and others v Nurdian Cuaca and others* [2018] 3 SLR 117 (at [79]):

> … [T]he Court should only exercise its power to strike out in 'plain and obvious' cases. This power is to be exercised with caution, as striking out will have the effect of depriving a litigant of the opportunity to have his claim tried by the court: *Kwa Ban Cheong* [*v Kuah Boon Sek* [2003] 3 SLR(R) 644] at [29], citing *North West Water Ltd v Binnie & Partners* [1990] 3 All ER 547 at 553. I am fully cognisant that the role of the court at this stage is not to carry out a minute and protracted examination of the documents and the facts of the case: see *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 at [18] and *The Osprey* [1999] 3 SLR(R) 1099 at [6]. Otherwise, the court hearing the striking out application would effectively be usurping the proper function of the trial court, and conducting a trial of the case in chambers on affidavits only, without discovery and without evidence tested by cross-examination in the ordinary way: see *Ko Teck Siang v Low Fong Mei* [1992] 1 SLR(R) 22 at [15], citing *Wenlock v Moloney* [1965] 2 All ER 871 at 874. Instead, the correct question for the court to ask is whether the commencement of the present suit constitutes a *plain and obvious case* of an abuse of the process of the court. [emphasis in original]

37 With these principles in mind, I turn to examine the expert evidence.

The competing expert evidence

38 The Plaintiff's expert on Indonesian law is Dr Susanti Adi Nugroho ("Dr Nugroho"), while the Defendant's expert on Indonesian law is Dr Akhmad Budi Cahyono ("Dr Cahyono").

39 Before considering their views, I should point out that the Plaintiff had exhibited an opinion ("Sutedja's Opinion") by Mr Andrew Sutedja ("Mr Sutedja") of Sutedja and Associates in the affidavit supporting the application for a warrant of arrest ("Arrest Affidavit").[35] Mr Sutedja acted for the Plaintiff in the Indonesian Action,[36] and Sutedja's Opinion was cited in the Arrest Affidavit for the proposition that the limitation period for vessel collision

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35 Arrest Affidavit at para 14 and pp109-116. Sutedja's Affidavit at para 8.

36 Sutedja's Affidavit at paras 46-47.

claims under Indonesian law is 30 years from the occurrence of the collision.[37] Although Mr Sutedja filed an affidavit in this application, essentially to restate his views in Sutedja's Opinion and give evidence on other matters of Indonesian law, it is clear that the Plaintiff does not regard him as its Indonesian law expert. Instead, the Plaintiff relies solely on Dr Nugroho's evidence in its submissions on the applicable limitation period under Indonesian law. This is perhaps unsurprising, given that Mr Sutedja *was* an advocate for the Plaintiff's cause (in the true sense of the word) and his evidence would not be regarded as independent: see *Vita Health Laboratories Pte Ltd and others v Pang Seng Meng* [2004] 4 SLR(R) 162 at [82]–[83]. I will return to Sutedja's Opinion when dealing with material non-disclosure, but it suffices for me to state that I do not place any weight on Mr Sutedja's evidence on Indonesian law.

(1) Experts' views on the limitation period

40 Dr Cahyono's evidence was that all maritime matters, including vessel collisions, are governed by the KUHD.[38] A claim for loss and damage arising from a vessel collision is characterised as a claim in tort under Indonesian law,[39] and the limitation period for such claims is two years from the date of the incident under Article 742 of the KUHD.[40] Article 742 reads as follows:[41]

> **Article 742 [KUHD]**
>
> After the lapse of two years, all legal claims become time-barred:
>
> 1. for compensation for damage caused either by collision or in a manner stated in Art. 544 and 544a, first paragraph;

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37 Arrest Affidavit at para 14.

38 Cahyono 1st Affidavit at paras 14-16.

39 Cahyono 2nd Affidavit at para 8.

40 Cahyono 1st Affidavit at para 17.

41 *Ibid* at p215.

> 2. for (rescue) assistance fee.
>
> These time bars begin as follows:
>
> From the 1st day of the collision or of the damage being inflicted;
>
> From the 2nd day on which the assistance was terminated …

41 The time bar in Article 742 of the KUHD is "extinctive", and results in the loss of a right or the right being forfeited.[42] According to Dr Cahyono, the Indonesian courts have consistently applied Article 742 of the KUHD in vessel collision matters.[43]

42 Dr Cahyono accepted that Article 1967 of the Indonesian Civil Code laid down a general limitation period of 30 years for tort claims.[44] However, where there existed specific provisions stipulating a shorter limitation period for specified cases, this would apply to the exclusion of Article 1967.[45] This was based on the well-established maxim under Indonesian law, "*lex specialis derogate legi generali*", which meant that a law governing a specific subject matter (*lex specialis*) overrides a law governing only general matters (*lex generali*s).[46] This maxim was codified in Article 1 of the KUHD, which states:[47]

> **Article 1 [KUHD]**
>
> Insofar as there are no special deviations in this Code from the [Indonesian Civil Code], the Civil Code shall also be applicable to matters discussed in this Code.

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42 *Ibid* at paras 13 and 19.

43 *Ibid* at para 20.

44 *Ibid* at para 21.

45 *Ibid* at para 22.

46 *Ibid* at para 25.

47 *Ibid* at paras 23-27 and p215.

43 As such, the two-year limitation period in Article 742 of the KUHD for vessel collisions claims is a *lex specialis*, which overrides the general limitation period of 30 years under Article 1967 of the Indonesian Civil Code.[48] Vessel collision claims have a shorter limitation period due to the nature of the maritime industry, in which speed is of the essence. Dr Cahyono, citing an academic treatise by H.M.N. Purwosutijpto, explained:[49]

> The shorter statute of limitations is affected by the nature of marine commerce, in which "speed is of the essence" that constitutes an absolute element in marine commerce. A vessel that has just arrived from a voyage must, not long after its arrival, be readied to sail again. If the right to lodge vessel claims is protracted, it would have a knock-on impact on [a vessel's] ability to continue to earn revenue [for its owners].

44 In contrast, Dr Nugroho's evidence on this issue was markedly less clear. She accepted that the limitation period for vessel collision claims is set out in Article 742 of the KUHD, but contended that the article could not be applied "absolutely and formally". In the words of Dr Nugroho:[50]

> 17. *For issues in relation with legal claims for damages that occur due to the vessel collision based on the provisions of Article 742 of the KUHD, the limitation period within 2 (two) years is justifiable*, if since the time of the vessel collision occurs … until the 2 (two) years passed, the aggrieved Party does not take any legal action whatsoever to resolve the dispute.
>
> 18. *I am of the opinion that the limitation period* for damage claims based on the existence of a vessel collision *has been regulated in Article 742 of the KUHD cannot be applied absolutely and formally…*
>
> [emphasis added]

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48 *Ibid* at para 26.

49 *Ibid* at para 30.

50 1st Affidavit of Dr Susanti Adi Nugroho dated 26 May 2021 ("Nugroho's Affidavit") at paras 17-18.

45 Dr Nugroho did not elaborate on the circumstances under which Article 742 of the KUHD would not apply to a vessel collision claim. However, she asserted that the 30-year limitation period under Article 1967 of the Indonesian Civil Code applied in this case because the Plaintiff's claim was one in tort under Article 1365 of the Indonesian Civil Code.[51]

(2) Experts' views on interrupting the limitation period

46 The Defendant submits that the Plaintiff's claim was time-barred after 22 January 2021.

47 According to Dr Cahyono, the two-year limitation period in Article 742 of the KUHD may be interrupted in one of two ways: (a) filing legal proceedings in court, and (b) pursuant to Article 1979 of the Indonesian Civil Code that reads:[52]

> **Article 1979 [Indonesian Civil Code]**
>
> It shall also be precluded by a reminder, summons and any legal claim, submitted in the required format by an official authorised thereto, on behalf of the rightful party, to the individual who shall be precluded from invoking the time bar.

48 Under Article 1979, the relevant reminder, summons or legal claim had to be in the required format, and signed and delivered by an authorised official.[53] In Dr Cahyono's opinion, the "authorised official" referred to in Article 1979 is the court bailiff.[54] Thus, the Letter of Demand (see [24] above) was incapable of interrupting the limitation period under Article 742 of the KUHD, as it was

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51 Nugroho's Affidavit at paras 20-24.

52 Cahyono's 1st Affidavit at para 43 and p214.

53 *Ibid* at paras 44-51.

54 *Ibid* at paras 49-51.

neither in the required format nor signed and delivered by a court bailiff.[55] In any event, the relevant reminder, summons or legal claim must be addressed and issued to the debtor to interrupt the limitation period.[56] In this case, the Letter of Demand was addressed and issued to the ship managers, Star Bulk, instead of the Defendant.[57]

49 On the other hand, Dr Nugroho took the view that Article 1979 of the Indonesian Civil Code did not "absolutely require" the involvement of a court bailiff.[58] A legal notice or demand made by an authorised official in the company (such as a director) to the opposing party, and sent through written correspondence or email, was sufficient to interrupt the limitation period.[59]

50 Hence, the Plaintiff submits that the limitation period in this case was interrupted by the service of the Letter of Demand on Star Bulk. It argues that the Defendant was incorporated in the Marshall Islands without any office or mailing address of its own, and it was "*logical to conclude that all business and operations of the* [*Vessel*] *are carried out by* [*Star Bulk*]*, and service of the*

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55 *Ibid* at para 56.

56 *Ibid* at paras 60-66.

57 *Ibid* at paras 67-68.

58 Nugroho's Affidavit at para 32.

59 *Ibid* at paras 26 and 32.

[*Letter of Demand*] *to* [*Star Bulk*] *would suffice as effective service of the* [*Letter of Demand*] *under Indonesian law*" [emphasis added].[60]

Decision on striking out

51 I return to address the core question that persists: is it possible to decide, at this summary stage, in favour of one expert's opinion over the other? Despite the Defendant's forceful submissions, I answer this question in the negative and decline to strike out the Plaintiff's claim. My reasons are as follows.

52 To begin with, I find it troubling that Dr Nugroho accepted the applicability of Article 742 of the KUHD but nevertheless asserted that the article could not be applied "absolutely and formally", without explaining when a case would fall on either side of the line. At some level, I would have expected greater certainty and clarity on an issue as serious as a time bar that extinguished a party's right to bring a claim. Dr Nugroho also did not address how Article 1 of the KUHD appeared to exclude the operation of the general time bar in Article 1967 of the Indonesian Civil Code.

53 However, I do not consider Dr Nugroho's opinion on the applicable limitation period clearly unsustainable. There does not appear to be any court rulings directly on point where a vessel collision claim was held to be time-barred under Article 742 of the KUHD. While numerous statutes, cases and academic treaties were cited by both parties, it is difficult for me to attribute weight to these sources of foreign law in the face of conflicting affidavit evidence. Cross-examination would thus be necessary to test the experts' views, and allow the court to sift, weigh and evaluate the expert evidence based on matters such as content credibility, coherence, consistency and logic, and

60 PWS at para 40.

against the overall context of established facts: see *Sakthivel Punithavathi v Public Prosecutor* [2007] 2 SLR(R) 983 at [75]–[76].

54 Even assuming for the sake of argument that Article 742 of the KUHD governed the present dispute, there appear to be authorities supporting Dr Nugroho's view that a legal notice or demand signed by an authorised official in the company and sent by written correspondence or email was capable of interrupting the limitation period.[61] Admittedly, there is a further complication in that the Letter of Demand was not issued to the Defendant but sent to Star Bulk as ship managers (with the Defendant listed as a party in copy).[62] According to the Plaintiff, the Letter of Demand was sent by email and courier to Star Bulk's address in Cyprus.[63] While the Defendant claims that it did not receive the Letter of Demand, the Defendant's address on Seaweb and Equasis searches was listed to be care of Star Bulk's address in Cyprus.[64] Accordingly, whether Indonesian law regarded service under these circumstances as sufficient to interrupt the limitation period is a further issue that ought to be decided at trial.

55 To sum up, while I do have some doubts regarding the Plaintiff's position on Indonesian law, it is not *plain* that its case is factually unsustainable or inherently unprovable: see *The "Bunga Melati 5"* at [44]. The evidence before me discloses questions of Indonesian law fit to be decided at trial, and the Defendant has not shown to the high standard required for striking out that the Plaintiff's claim is time-barred.

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61 Nugroho, [30]-[31]

62 1st Affidavit of Eric Alam dated 27 May 2021 ("Alam's Affidavit") at Exhibit EA-2.

63 Alam's Affidavit at para 6 and Exhibit EA-3.

64 Alam's Affidavit at Exhibit EA-1.

Issue 3 – Material non-disclosure

General principles

56 The principles governing the duty of full and frank disclosure for a party applying for a warrant of arrest have been covered extensively in our case law. It suffices for me to highlight a few general points, before considering the principles relating to the disclosure of a potential time bar defence.

57 A plaintiff who applies for an arrest on an *ex parte* basis is under a duty to make full and frank disclosure of all material facts, even if these facts are prejudicial to the plaintiff's claim: see *The "Vasiliy Golovnin"* [2008] 4 SLR(R) 994 at [83] and [85]. A failure to do so is an independent ground to set aside the arrest. As explained by the Court of Appeal in *The "Rainbow Spring"* [2003] 3 SLR(R) 362 at [37]:

> … Arrest is a drastic remedy given on an *ex-parte* basis. The duty to make full and frank disclosure is an important bulwark against the abuse of the process of arrest. There must be the possibility of a sanction for the failure to observe that duty… *The courts must retain the discretion to set aside an arrest for non-disclosure if the facts warrant it notwithstanding that otherwise they would have jurisdiction over the matter and that the procedure in the Rules had been followed.* [emphasis added]

58 The touchstone for determining materiality is the *relevance* of that fact to the court's assessment of whether to grant the warrant of arrest. In the words of the Court of Appeal in *The "Damavand"* [1993] 2 SLR(R) 136 at [30]:

> … the test of materiality is whether *the fact is relevant to the making of the decision whether or not to issue the warrant of arrest, that is, a fact which should properly be taken into consideration when weighing all the circumstances of the case, though it need not have the effect of leading to a different decision being made.* [emphasis added]

59 There is generally no duty to disclose plausible defences that may be raised at trial, unless the defence (whether of a factual or legal nature) is of such weight as to deliver a "knock-out blow" to the claim summarily (see *The "Eagle Prestige"* [2010] 3 SLR 294 at [73] and *The "Xin Chang Shu"* [2016] 1 SLR 1096 at [48]–[50]). This is because the court's concerns at the stage of granting a warrant of arrest are the existence of admiralty jurisdiction and the absence of facts suggesting an abuse of process. As eloquently put by Belinda Ang Saw Ean J (as she then was) in *The "Eagle Prestige"* (at [74]):

> *The concerns of the court at the application stage are firstly, with considerations of jurisdiction* in rem *(and generally not the merits of the claim) and secondly, disclosure of material facts which are germane to considerations of jurisdiction* in rem *and overlaying that is the absence of facts and circumstances suggesting an abuse of the arrest process.* [emphasis in original]

60 Whether a potential time bar defence should be disclosed will depend very much on the circumstances; a key determinant is the existence of facts suggesting an abuse of the arrest process. For example, where the arresting party is put on notice, is aware, or ought to be aware of an applicable limitation period and commences an action after the said period (the necessary implication being that the claim might be time-barred), the arresting party should disclose the potential time bar defence and explain why the time bar is not actually applicable on the facts of the case: see Toh Kian Sing SC, *Admiralty Law and Practice* (LexisNexis, 3rd Ed, 2017) ("*Admiralty Law and Practice*") at p 194 and footnote 165. Conversely, where the arresting party is unaware of the existence of an alleged time bar, or would not have known had he made proper inquiries at the time of the arrest, a time bar defence (even if raised subsequently) would not be a material fact. In the final analysis, it boils down to what is reasonable in the given circumstances at the time of the arrest, and this ultimately is a matter of common sense: *The "Vasiliy Golovnin"* at [90].

61 An illustration of the above principles can be seen in *The "Vinalines Pioneer"* [2015] SGHCR 1. The case arose from the loss of containers on board the defendant's vessel after she capsized and sank. The defendant submitted that the plaintiff's claim was time-barred as the writ was filed more than two years after the vessel sank. Both sides adduced expert evidence on Vietnamese law, but the experts differed on the fundamental nature of the plaintiff's claim, the applicable limitation period, and when time started to run (at [80]–[83]). Assistant Registrar Jay Lee Yuxian ("AR Lee") dismissed the defendant's application to strike out the action, and held that it was not possible to choose between the conflicting expert evidence (at [83]–[85]). He also rejected the defendant's arguments on material non-disclosure, finding that there were no circumstances which demonstrated an abuse of the arrest process (at [125]):

> 125 Ultimately, *the Defendant did not point to any circumstances which demonstrated that the non-disclosure of the potential time bar defence amounted to an abuse of process. There was, for example, no allegation or evidence to show that the Defendant had communicated to the Plaintiff that they relied on the time bar defence.* I have earlier concluded that there is a legitimate dispute of fact whether or not the Plaintiff's claim is time-barred under Vietnamese law. *At this juncture, the most that can be said for the Defendant is that this remains a point of controversy.* Accordingly, the time bar defence is not a "plausible defence" which if not disclosed would amount to an abuse of process and justify setting aside the arrest. [emphasis added]

62 AR Lee's decision on the striking out and material non-disclosure was affirmed on appeal. Ang J agreed with AR Lee that it was not possible to decide in favour of one expert's interpretation and opinion over the other: see *The "Vinalines Pioneer"* [2016] 1 SLR 448 at [82]. In particular, Ang J noted that the defendant continued to pay hire for the containers even after they were lost, and the nature and effect of such payments would be relevant in determining the applicable limitation period (if any) for the plaintiff's claim (at [80] and [82]). Under these circumstances, Ang J concluded that the defence of time bar could

not be viewed as a "knockout blow" on the merits in the context of an abuse of the arrest process, and rejected the complaint of material non-disclosure (at [85]).

63 Viewing both decisions in the round, it is clear that AR Lee and Ang J were of the view that there were no facts suggesting an abuse of the arrest process. Given that the experts could not even agree on the nature of the plaintiff's claim, it was an open question whether there existed an applicable limitation period. Further, at the time of the arrest, there was no evidence showing that the plaintiff was put on notice or aware of any applicable limitation period. It was thus unsurprising that the AR Lee and Ang J rejected the defendant's attempt to portray the alleged time bar defence as a material fact which ought to have been disclosed.[65]

Alleged material facts

64 With the above principles in mind, I now consider whether the alleged non-disclosures by the Plaintiff relate to material facts. Broadly, there are three groups of "material facts" which the Defendant contended were not disclosed when the Plaintiff's solicitors attended before AR Ramu to obtain the warrant of arrest.

(a) First, the existence of the time bar defence under Article 742 of the KUHD.[66]

(b) Second, the Plaintiff's "true intention" to use the Arrest to obtain security answerable to the Indonesian Counterclaim.[67]

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65 *Admiralty Law and Practice* at p194 footnote 164.

66 DWS at paras 79-87 and 91-92.

67 DWS at paras 93-97.

(c) Third, the fact that Sutedja's Opinion was authored by the Plaintiff's Indonesian lawyers and not an independent expert on Indonesian law (see [39] above).

Facts that are not material

65 I will address the second and third arguments first, as these may be swiftly dealt with.

(1) Plaintiff's "true intention"

66 The argument on the Plaintiff's "true intention" is premised on a finding that the Plaintiff intended to proceed substantively in Indonesia. Given my decision that the Plaintiff had elected to pursue its claim in the Singapore Action (see [29] above), this argument is without any merit.

(2) Author of Sutedja's Opinion

67 It is clear from the Arrest Affidavit and the notes of evidence recorded by AR Ramu that he was informed that Sutedja's Opinion was issued by the Plaintiff's Indonesian lawyers.[68] Quite apart from the fact that disclosure had been made, it is untenable to suggest that this matter should be considered a material fact. It is not the role of the court to determine the sustainability of the Plaintiff's action at the warrant of arrest stage: see *The "Bunga Melati 5"* at [117]. It thus follows that a party's relationship with its expert is irrelevant at this stage, as this goes towards the weight to be attributed to an expert's views.

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[68] Arrest Affidavit at para 14. Kountouriotou's Affidavit at p125.

68 Before concluding this issue, I think it is good practice for arresting parties in cases that turn on a point of foreign law to engage their foreign law experts early, *ie*, by the arrest stage. Nevertheless, I recognise that ship arrests can take place under urgent circumstances where it is simply not possible to engage an expert in time, and the opinion of an instructing solicitor is the best available evidence on a point of foreign law.

Non-disclosure of potential time bar defence

69 I now turn to address the arguments on the non-disclosure of the potential time bar defence under Article 742 of the KUHD. After careful consideration of the competing arguments, I find that there was indeed material non-disclosure that justifies the setting aside of the warrant of the arrest. I set out my detailed reasons in the paragraphs that follow.

70 It bears emphasis that whether there was material non-disclosure in this case must be assessed through the lens of what the Plaintiff knew or ought to have known at the time of the Arrest. In this regard, when the Plaintiff obtained the warrant of arrest before AR Ramu, it knew that the Defendant had commenced the Indonesian Action against the Plaintiff within two years from the date of the Collision, and that the Defendant was relying on the time bar in Article 742 of the KUHD. This is evident from the Plaintiff's Arrest Affidavit.

(a) Paragraph 11 of the Arrest Affidavit reads as follows:[69]

> The Defendant has filed a claim against the Plaintiff in the East Jakarta District Court on 22 January 2021, claiming damages suffered to the Vessel. Copies of the papers filed to the East Jakarta District Court and the accompanying English translation are exhibited at ….

[69] Arrest Affidavit at para 11.

(b) While there was no mention of Article 742 of the KUHD in the text of the Arrest Affidavit, the affidavit exhibited a translated copy of the claim papers filed by the Defendant in the Indonesian Action. The opening three paragraphs of the claim papers pleaded prominently that the Defendant had commenced the Indonesian Action within the time required by Article 742 of the KUHD:[70]

> A. **The deadline for filing the lawsuit**
>
> 1. Whereas this Lawsuit against the unlawful act was filed in connection with the losses suffered by the [Defendant] as a result of the collision between the [Defendant's] MV Big Fish ship and BPL 1 Barge which was towed by the [Plaintiff's] TB Baruna 1 Tug Boat on 22 January 2019.
>
> 2. *Whereas in accordance with the provisions of [Article 742 of the KUHD], the period of time for a lawsuit to ask for compensation due to ship collisions is two (2) years from the date of the collision.* For the avoidance of doubt, we quote the following:
>
> [Provisions of Article 742 of the KUHD]
>
> 3. *That the* [*Defendant*] *has filed quo lawsuit at the East Jakarta Registrar's Office on January 21, 2021. Therefore, the quo lawsuit has been filed within the time frame required by Article 742 of the KUHD.*
>
> [emphasis added]

71 Since the Plaintiff commenced the Singapore Action after the two-year anniversary of the Collision, it knew or must have known from the claim papers filed in the Indonesian Action that Article 742 of the KUHD would be highly relevant to the viability of its claim. At this point, it would have been incumbent on the Plaintiff to make proper inquiries on the applicable limitation period under Indonesian law if it had any doubts on the issue. Even taking the Plaintiff's case at its highest, such proper inquiries would have showed:

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70 *Ibid* at pp70-71.

(a) *in general*, the limitation period for vessel collision claims is two years from the date of the collision under Article 742 of the KUHD;

(b) *under certain (unspecified) circumstances*, the limitation period for vessel collision claims can be 30 years from the date of the collision under Article 1967 of the Indonesian Civil Code; and

(c) *even if the limitation period in this case was 2 years*, the limitation period could be interrupted by the service of the Letter of Demand on Star Bulk**.**

(see [44]–[45] and [49]–[50] above)

72 Thus, the Plaintiff ought to have disclosed and brought AR Ramu's attention to two material facts:

(a) First, the existence of Article 742 of the KUHD, because the limitation period therein applied generally to vessel collision claims and was of such weight to deliver a "knock-out blow" to the Plaintiff's claim summarily (if found to be applicable).

(b) Second, the Defendant had pleaded this time bar in the Indonesian Action commenced earlier in respect of the same Collision.

73 Both facts were undoubtedly relevant to the court's decision on whether to grant the warrant of arrest, as they were circumstances suggesting an abuse of the arrest process. If both facts had been disclosed, AR Ramu in all likelihood would have required further clarification on why the limitation period in Article 742 of the KUHD was not actually applicable on the facts before deciding to issue the warrant of arrest: see *The "AA V"* [1999] 3 SLR(R) 664 at [47].

74 The Plaintiff's solicitors accept that the existence of Article 742 of the KUHD was not disclosed to AR Ramu (see [25] above). In fact, when one considers the Arrest Affidavit and examines AR Ramu's notes of evidence, it is clear that AR Ramu was led into thinking that the applicable limitation period was 30 years *simpliciter*.

(a) The Arrest Affidavit which was deposed by the Plaintiff's solicitors stated that they were advised by the Plaintiff's Indonesian lawyers that the applicable limitation period is 30 years:[71]

> As the collision occurred within the territorial waters of Indonesia, Indonesian law would govern the rights, liabilities and obligations of the parties in tort. *I have been advised by the Plaintiff's Indonesian lawyers that the limitation period under Indonesian law is 30 years from the occurrence of the tortious act.* A copy of [Sutedja's Opinion] is exhibited at …
>
> [emphasis added]

(b) Sutedja's Opinion, which was exhibited in the Arrest Affidavit, emphatically declared four times that the limitation period for vessel collision claims is 30 years. The relevant portions of Sutedja's Opinion read as follows:[72]

> 1. … any claim arising out of a ship collision must be based on the causes of action of either on default or tort. These causes of action would be governed under the Indonesian Civil Code … Under Article 1967 of the Indonesian Civil Code, *the limitation period for such actions regardless of whether they arise from ship collisions or not, would be 30 years from the day of default or commission of the tort.*
>
> …
>
> 4. However, although [Article 742 of the KUHD] refers to a two-year time limit for ship collisions, *it does not bar a claimant from bringing a claim for default or tort under the Indonesian Civil Code where the applicable time limit is 30*

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71 *Ibid* at para 14.

72 *Ibid* at pp109-112.

> *years, regardless of whether the claim relates to a collision or not…*
>
> 5. *We reiterate that Indonesian law does not recognise any specific cause of action arising out of collision which would be the subject of* [*Article 742 of the KUHD*]. Rather, the cause of action must be based on either default or tort and which is governed by the Indonesian Civil Code.
>
> 6. As such, *the legal action which will be commenced in Indonesia for tort arising from a ship collision will rely on the 30-year limitation period…*
>
> …
>
> 8. *In sum, Indonesian law does not recognise any specific cause of action on the sole basis of ship collision. Rather, all causes of action relating to ship collisions must be based either on default or tort, which is governed by the 30-year limitation period under Article 1967 of the Indonesian Civil Code.*
>
> [emphasis added]

(c) Not only did Sutedja's Opinion allege the limitation period to be an unqualified 30 years, it asserted, quite remarkably, that Indonesian law did not recognise *any* cause of action that would be governed by Article 742 of the KUHD. Given that both experts agree on the general applicability of Article 742 of the KUHD to vessel collision claims, this statement was patently false.

(d) Based on AR Ramu's notes of evidence, he did not appear to be concerned about a potential time bar under Indonesian law. Following the Plaintiff's submission that the applicable limitation period is 30 years, AR Ramu's focus was instead on whether the Collision occurred in Indonesian waters:[73]

> [Plaintiff's Solicitors]: … Because the collision was in Indonesian waters, the rights and obligations arise in tort in Indonesian law, as obtained from our Indonesian lawyers. *Therefore, as it concerns Indonesian law, the limitation period*

[73] Kountouriotou's Affidavit at p125.

> *is 30 years*. This is all exhibited in pages 106 to 113. Although we are time barred in Singapore, we are not as far as Indonesian law is concerned. We have to read it together with Section 3 of the Foreign Limitation Periods Act. Therefore, the laws in Indonesia will apply in respect of the Limitation Act and not Singapore law.
>
> [AR Ramu]: *No issues arising on where the collision occurred?*
>
> [Plaintiff's Solicitors]: *No. It was clearly in Indonesian waters.*
>
> [emphasis added]

75 As for the Defendant's reliance on Article 742 of the KUHD in the Indonesian Action, this was not mentioned in the text of the Arrest Affidavit. Even if this fact could be gleaned from the exhibits of the Arrest Affidavit, the Plaintiff did not meet the required threshold for disclosure because it did not draw this fact to AR Ramu's attention: see *The "Vasiliy Golovnin"* at [106].

76 To sum up, the picture that emerges from the above analysis is that of an arrest obtained based on an erroneous portrayal of Indonesian law. Even on the Plaintiff's best case, the Arrest Affidavit contained material inaccuracies on the applicable limitation period for vessel collision claims. The buried reference in the Arrest Affidavit to the Indonesian Action was insufficient to alert AR Ramu to the fact that the Defendant had pleaded the time bar in Article 742 of the KUHD in an earlier action commenced in respect of the same Collision. By reason of the foregoing, it is plain that there was material non-disclosure by the Plaintiff when obtaining the warrant of arrest.

77 Notwithstanding a finding of material non-disclosure, the court retains an overriding discretion not to set aside the warrant of arrest: *The "Fierbinti"* [1994] 3 SLR(R) 574 at [41]. The court will apply the principle of proportionality in assessing the sin of omission against the impact of such default: see *The "Vasiliy Golovnin"* at [84]. However, if the non-disclosure is deliberate, the discretion would only be exercised in a special case. In *Treasure*

Valley Group Ltd v Saputra Teddy and another (Ultramarine Holdings Ltd, intervener) [2006] 1 SLR(R) 358, Ang J explained at [23]:

> … When a court condemns material non-disclosure by setting aside the *ex parte* order, it does so in the public interest to discourage abuse of its procedure in an *ex parte* application. The condemnation is a reminder of the importance of dealing in good faith with the court when *ex parte* applications are made. The court retains the discretion not to set aside the arrest even though the non-disclosure is deliberate, but this discretion will only be exercised in a special case….

78 At this juncture, while I do think that the Plaintiff has sailed very close to the wind, I am unable to conclude whether the non-disclosures were deliberate or due to some form of negligence. More evidence of the Plaintiff's state of mind at the time of the Arrest would be required. However, I do not think that the Plaintiff can be excused for the instances of material non-disclosure here, which strike at the heart of the Plaintiff's claim. A cursory review of the claim papers filed in the Indonesian Action would have alerted any reasonable solicitor to the time bar point taken by the Defendant. Even if the Plaintiff's Indonesian lawyers did not know the true position, there was ample time from the commencement of the Indonesian Action to the Arrest for the Plaintiff to ascertain this. While I have found triable issues of Indonesian law, the case before AR Ramu was completely different from case argued before me, and there is no evidence to suggest that this was due to mere oversight. I thus see no reason or basis to exercise my discretion in favour of the Plaintiff, and I order that the warrant of arrest be set aside.

79 The net result of my decision to refuse the striking out but allow the setting aside of the warrant of arrest is that the *in rem* writ remains alive, and the Plaintiff is at liberty to proceed with the Singapore Action *without security*: *The "Xin Chang Shu"* at [24].

Wrongful Arrest

80 Finally, I consider whether damages should be ordered against the Plaintiff for wrongful arrest.

81 The test for wrongful arrest is "whether the action and the arrest were so unwarrantably brought, or brought with so little colour, or so little foundation, as to imply malice or gross negligence on the plaintiff's part": see *The "Vasiliy Golovnin"* at [137]. The test is ultimately premised on a finding of malice, which may be found on the basis of direct evidence of the arresting party's state of mind at the time of the arrest, or can be inferred if the claim is so unmeritorious that the arresting party could not have honestly believed that he had an entitlement to arrest the vessel: *The "Xin Chang Shu"* at [30].

82 The threshold for finding wrongful arrest is a high one, and a decision to award damages for wrongful arrest should never be lightly made: see *The "Vasiliy Golovnin"* at [138]. In this case, I do not think that line has been crossed yet, given my decision not to strike out the Plaintiff's claim as well as my inconclusive finding on whether the non-disclosures by the Plaintiff were deliberate.

83 That being said, I cannot foreclose the possibility that more evidence may emerge during the course of the Singapore Action which show the Plaintiff's claim to be so unmeritorious that the Plaintiff could not have honestly believed that it had an entitlement to arrest the Vessel. Further, with the benefit of the discovery, interrogatory and cross-examination processes, direct evidence of the Plaintiff's state of mind may be obtained which prove that the non-disclosures were deliberate, calculated to mislead, or caused by gross negligence or recklessness: *The "Xin Chang Shu"* at [43].

84 In these circumstances, I find it appropriate to reserve the question of wrongful arrest to the trial judge to be considered after the relevant findings have been made: see *The "STX Mumbai" and another matter* [2015] 5 SLR 1 at [95].

Conclusion

85 For the foregoing reasons, my decision is as follows:

(a) there be no order on the prayers for the Plaintiff to elect between the Singapore Action and the Indonesian Counterclaim;

(b) the prayer to strike out the Singapore Action is dismissed;

(c) the warrant of arrest is set aside for material non-disclosure, and the Plaintiff shall return the LOU to the Defendant's solicitors forthwith; and

(d) the issue of wrongful arrest (and any damages to be awarded thereon) is reserved to the trial judge.

86 Within seven days from the date of this judgment, the parties are to file written submissions not exceeding five pages on the issue of costs.

87 In closing, it remains for me to thank counsel for their helpful submissions.

Navin Anand
Assistant Registrar

Govintharasah s/o Ramanathan and Lim Enyang Timothy (Gurbani & Co LLC) for the Plaintiff;
Tan Chuan Bing Kendall, Lim Zhi Ming Max and Fabian Chiang Mun Chun (Rajah & Tann Singapore LLP) for the Defendant.
