

The Jeil Crystal [2022] SGCA 66

Changing the grounds of arrest

When seeking a ship arrest, time is at a premium. The claimant must determine the facts that give rise to the claim, draft the declaration¹ (or affidavit) supporting the arrest, and serve the claim form² (or writ) and arrest warrant³ on the vessel, all within the time window when the vessel is arrestable. Fail to complete any one of these steps in time and it is likely that a claimant's claim will be unsecured. But what happens when the claim formulated is not borne out by the facts? Can the original claim then be substituted by a different claim while the arrest is maintained? The recent decision of the Singapore Court of Appeal in *The Jeil Crystal* answers both questions.

Facts

In May 2020 the claimant Banque Cantonale de Geneve (BCG) financed a transaction for the purchase of 2,000mt of oil by its customer GP Global APAC Pte Ltd (GP Global). The cargo was carried on board the vessel *Jeil Crystal* owned by Jeil International Co Ltd (JIL). A set of original bills of lading was issued in respect of the cargo named the consignee as "To Order of Banque Cantonale de Geneva."

BCG received the original bills of lading but released and endorsed them to GP Global at the latter's request in June 2020. This was done so that GP Global could deliver the cargo to its buyer, Prime Oil Trading Pte Ltd.

However, in July 2020, BCG learnt that the cargo was discharged without the production of the original bills of lading. In October 2020 BCG commenced admiralty proceedings with its writ stating that BCG was claiming damages against JIL for (among others) breach of contract in releasing the cargo without the production of the original bills of lading. At the ex parte (without notice) arrest hearing, BCG alleged that BCG itself was the holder of bill of lading.⁴

The vessel was arrested in October 2020 and JIL subsequently furnished security by way of payment into court to secure the release of the vessel. BCG's allegation at the arrest hearing, however, turned out to be erroneous. In fact, JIL was the holder of the original bills of lading at the point when the arrest warrant was issued. This was because when BCG released and endorsed the bills of lading to GP Global, GP Global had in turn surrendered the documents to JIL in June 2020. Following that surrender, a set of switched bills of lading was issued in place of the original bills of lading, pursuant to liberties provided for in the voyage charterparty between GP Global and JIL.

Having realised it was not in possession of the original bills of lading, BCG applied to amend its statement of claim. The amendment abandoned BCG's original misdelivery claim. Instead, the amended claim was based on an alleged wrongful switch of the original bills of lading without BCG's consent. BCG pleaded that the wrongful switch was, among others, a breach of the carriage contract evidenced by the original bills of lading. BCG did not attempt to amend the claim as stated in the writ or the arrest warrant. In the face of the amendment application, JIL applied to set aside the arrest of the vessel.

Judgments

The High Court judge dismissed JIL's application to set aside the arrest but allowed BCG's application to amend its statement of claim.⁵ The judge found that BCG's failure to disclose the fact that it was not in possession of the original bills of lading when the writ was filed constituted a material non-disclosure, because full and frank disclosure at the arrest hearing is a requirement under Singapore law.⁶ However, he found it appropriate to exercise his discretion not to set aside the arrest warrant as he was satisfied that the non-disclosure was not deliberate and was instead the result of negligence.

The judge also reasoned that: (i) provided that the court's admiralty jurisdiction had been validly invoked in the original claim; and (ii) the amended claim also fell within the court's admiralty jurisdiction, any amendment to the statement of claim would result in both the writ and arrest warrant being "consequentially amended". Lastly, the judge found that any prejudice occasioned by the amendments being allowed could be ameliorated by appropriate costs orders in JIL's favour.

JIL then appealed to the Court of Appeal. The Court of Appeal defined the issue as:

"In an application to set aside a warrant of arrest of a ship, can the warrant of arrest be upheld on the basis of an amended claim and/or cause of action which was not originally pleaded by the arresting party at the time of the application for and the issue of the warrant of arrest?"

In reversing the High Court's decision, the Court of Appeal answered the question in the negative.

Nature of arrest warrants

The Court of Appeal commenced its discussion by making two points on the nature of arrest warrants. First, that the applicant of an arrest warrant effectively seeks relief from the court in the form of pre-judgment security. Secondly, the arrest warrant is an order of court. This is so because an applicant is required to place the requisite information before the court so as to ensure that the court may determine if its powers should be exercised and whether the warrant should be issued. Flowing from the fact that the arrest warrant is a court order, an arrest warrant can only be amended in two circumstances: (i) where there are clerical mistakes; or (b) where there are errors arising from accidental slip or omission.

The Court of Appeal then noted that an amendment to the statement of claim will generally have a consequential amendment to the writ. This is because the statement of claim is a particularisation of the claim as set out in the endorsement. Put another way, the endorsement on a writ serves as a notice of the nature of the plaintiff's claim in that the endorsement marks out the perimeter within which the plaintiff may express his claim.

Two consequences flowed from this observation. First, where a statement of claim has been delivered, it supersedes the endorsement in the writ. Secondly, although the plaintiff is permitted to alter the original endorsed claim, he can only do so without amending the writ if he does not change the cause of action endorsed on the writ. A change of the cause of action will require an amendment to the writ.

In rem writs, arrest warrants and statements of claim

In explaining the relationship between the three documents, the Court of Appeal noted that the in rem writ and arrest warrant are distinct in nature. This is because the writ - and by extension the statement of claim - provide the foundation for the entire action whereas the warrant serves the limited purpose of obtaining pre-judgment security.

The arrest remedy, therefore, is granted based on the claim verified in the arrest affidavit (and not for the claim specified in the in rem writ). Therefore, an amendment to the in rem writ and a statement of claim may constitute a change in the plaintiff's claim. But such an amendment can have no bearing on the averments in the arrest affidavit, the grounds for arrest, or the contents of the arrest warrant.

Fate of the arrest warrant following an amended claim

The Court of Appeal held that following an amendment to the statement of claim, the in rem plaintiff is effectively seeking to pursue a different claim, namely an amended claim. Where the original claim is abandoned altogether, there would no longer be any basis for the plaintiff on which to arrest the vessel for the original claim. In such a situation, the court must set aside the arrest warrant. The grounds for doing so will be that the plaintiff did not have any reasonable cause of action and its original claim was frivolous and vexatious. In the present dispute, BCG's claim to be "holder" of the original bills of lading was fundamental to the original claim and went to the root of the cause of action. There was no need to confine the grounds for setting aside an arrest warrant to only when the claim did not fall within the court's admiralty jurisdiction.

In the upshot, where the amendment to the statement of claim is made before the issuance of an arrest warrant, the averments in the arrest affidavit and the warrant should reflect the amended claim. If the amendment is made after the issuance of the arrest warrant, the plaintiff should file fresh court papers (including a new affidavit) that explains the change of circumstances in order to obtain a fresh arrest warrant. Issues such as the intervening time bar and the nature of the amendments would be relevant.

Comment

The arrest warrant in the present case was set aside on the ground that, based on its original claim, the arresting party did not have a reasonable cause of action or that its claim was otherwise frivolous or vexatious.

This ground would be available to parties in jurisdictions where there is a requirement for full and frank disclosure in arrest applications⁷ and where parties are entitled to arrest a vessel as of right.⁸ This ground will also be available regardless of whether the arrest warrant is regarded as an order of court (as was held here) or where the process of arrest does not result from "the making of an order by the court, but from the party concerned himself causing the warrant of arrest to be issued."⁹

But perhaps the lesson to be learnt from this dispute can be found in the words of Hobhouse J in *The Nordglint*:

"It is of the greatest importance to the administration of justice that courts should be able to rely upon the truthfulness and accuracy of affidavits sworn by solicitors or their employees. It is accordingly essential that such affidavits should be prepared with proper care... It is also essential that lawyers acting for parties and in particular the deponents of such affidavits, should attach the greatest importance to their oath and that when they find that they have made a false statement on oath they should be at pains to correct it."¹⁰

Although said in the context of affidavits, those involved in disputes before the Admiralty Courts - whether client or solicitor - would do well to adhere to this guidance when filing any sort of court papers for arrest proceedings.

Clive Navin Selvapandian, Advocate & Solicitor (High Court of Malaya), Messrs Christopher & Lee Ong

1 Form ADM5, Civil Procedure Rules 1998.

2 Form ADM1, Civil Procedure Rules 1998.

3 Form ADM9, Civil Procedure Rules 1998.

4 Pursuant to Singapore's Bill of Lading Act 1992, which is similarly worded to the United Kingdom's Carriage of Goods by Sea Act 1992.

5 [2021] SGHC 292.

6 Contrast from the position under English law in *Natwest Markets plc (formerly known as The Royal Bank of Scotland plc) v Stallion Eight Shipping Co SA (The MV Alkyon)* [2019] 1 Lloyd's Rep 406, para 16.

7 See the Singapore Court of Appeal in *The Rainbow Spring* [2003] 3 SLR(R) 362, para 33 and the Hong Kong Court of Appeal in *Sin Hua Enterprise Co Ltd v Owners of the Motor Ship "Harima" (The Harima)* [1987] HKLR 770 at pages 772D to 773B.

8 See the Malaysian High Court in *Premium Vegetable Oils Sdn Bhd v The Owners and/or the Demise Charterers of the Ship or Vessel "Ever Concord"* [2021] 9 MLJ 936, paras 31 to 41, *The MV Alkyon*, para 16 and the Federal Court of Australia in *Atlasnavios Navegação Lda v The Ship "Xin Tai Hai" (No 2)* (2012) 215 FCR 265, para 74.

9 *The Rena K* [1978] 1 Lloyd's Rep 545; [1979] QB 377, page 408.

10 [1987] 2 Lloyd's Rep 470, page 474 col 1.