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HIGH COURT RULES ON ARREST OF VESSELS AS SECURITY IN FOREIGN PROCEEDINGS

In a recent unreported decision in *The United Endurance* (1) the Singapore High Court allowed the claimant to arrest a ship in Singapore in order to obtain security for a judgment in a foreign jurisdiction. This decision is somewhat unusual, given that the High Court had previously decided in *The ICL Raja Mahendra*(2) that the court's jurisdiction to arrest a ship in an action *in rem* should not be exercised in order to provide security for an award or judgment in another jurisdiction (except in the case of a foreign arbitration). Unlike in the United Kingdom, where Section 26 of the Civil Jurisdiction and Judgments Act 1982 expressly allows the courts to order security obtained through an arrest to be retained as security for the satisfaction of a foreign judgment, there is no such express legislation in Singapore.

The ICL Raja Mahendra

The ICL Raja Mahendra involved a dispute over the proper wording of a letter of undertaking required to secure the release of an owner's vessel from arrest. The cargo owners wanted an undertaking which covered damages, interest and costs "in a court or tribunal of competent jurisdiction", whereas the shipowners had provided only for an undertaking that covered "*in rem* action in Singapore or arbitration in London in accordance with the arbitration clause incorporated in the bill of lading". The question which arose in the course of oral arguments was whether the court's jurisdiction to arrest a ship could be exercised to provide security for an award or judgment in another jurisdiction.

The court held that it would not exercise its jurisdiction to allow an arrest of a ship where security was sought in aid of an award or a judgment in a foreign jurisdiction - except in cases where a foreign international arbitration was involved. In such cases involving foreign arbitrations, under Section 7 of the International Arbitration Act, the court could allow any security obtained through an arrest in Singapore to stand in aid of the foreign arbitration. The court's view was that using an arrest to obtain security for a foreign judgment would amount to an abuse of process.

The United Endurance

The recent decision in *The United Endurance* appears to be at odds with that in *The ICL Raja Mahendra*. The case originated from a claim brought by a bunkers supplier against the owners of the MV United Endurance. Both the supplier and the owners were domiciled in Greece. The supplier had issued court proceedings in Greece against the owners and had also applied in Greece for the owners to furnish security for the claim. The Greek courts declined the supplier's application for security on the grounds that the supplier had failed to demonstrate that there existed a risk that the owners would dissipate their assets.

The supplier then commenced

in rem proceedings in Singapore and managed to arrest the United Endurance while it was in Singapore. In order to secure the release of the vessel, the owners furnished a bank guarantee. Once security was provided, the supplier applied for a stay of the Singapore proceedings in favour of the proceedings in Greece, where the matter was being heard on its merits. The fact that the Greek courts were the more appropriate forum was not in dispute.

At first instance, the assistant registrar allowed the Singapore proceedings to be stayed and, relying on the decision in *The ICL Raja Mahendra*, also ordered that the bank guarantee be released. The supplier appealed this decision to the High Court. On appeal, the High Court declined to follow the decision in *The ICL Raja Mahendra* and instead allowed the bank guarantee to remain in place as security.

Comment

The basis for the High Court's decision in *The United Endurance* is unclear, given that the court provided no written grounds for its decision. However, the court may have envisaged a situation where a plaintiff initiates an *in rem* action in Singapore to obtain security and then stays that action once security is furnished in order to continue with foreign court proceedings. In the event of non-satisfaction of the foreign judgment, the stay of the Singapore action *in rem* could be lifted and a judgment obtained in Singapore. The security retained could then be used to satisfy the Singapore judgment .

While such a decision would to be inconsistent with that in *The ICL Raja Mahendra*, a possible explanation for this decision could perhaps be found in the UK court's decision in *The Rena K*.(3) In *The Rena K*, the issue that came up for consideration was whether a vessel should be unconditionally released from arrest where proceedings had been stayed in favour of arbitration. The court held that if the stay was likely to be final, the security should be lifted unconditionally. However, if there was a possibility of the stay being lifted at some future date and proceedings being revived, the court should exercise its discretion either by refusing to release the security or by releasing it only subject to the defendants agreeing to provide alternative security to satisfy the arbitration award.

In arriving at its decision, the court in *The Rena K* seems to have placed the element of practical justice above any concerns of abuse of process highlighted by the Singapore courts in *The ICL Raja Mahendra*. It is possible that the Singapore Court had sought in *The United Endurance* to exercise a similar discretion to place practical justice above any perceived impropriety in abusing the court process, for in both *The Rena K* and *The United Endurance* the facts suggest that the shipowners would in fact have had difficulties satisfying any award/judgment.

As matters stand, the position under Singapore law as to whether a vessel can be arrested to secure the judgment of a foreign court is unclear. However, given that no written decision has been given in *The United Endurance* (and no appeal was brought against the decision), it is likely that the courts will continue to apply the law as stated in *The ICL Raja Mahendra*. is hoped that an opportunity will arise in the near future for the Court of Appeal to resolve the existing

uncertainty on the issue once and for all.

Endnotes

(1) *Avin International Bunkers Supply SA v The Owners of the Vessel 'United Endurance'.*

(2) [1999] 1 SLR 329.

(3) [1979] 1 QB 377.

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