



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



Decisive *in rem* Ruling as to *in personam* Defendant

Judicial Commissioner S Mohan of the High Court of the Republic of Singapore (pictured) has made a decisive ruling in a dispute over which party should be the *in personam* defendant in an admiralty action *in rem* against a ship under new ownership.

The case arose from a collision between the vessels Royal Arsenal and Gas Infinity in the Straits of Hormuz in April 2019.

In November of that year, the owners of the Royal Arsenal commenced admiralty action *in rem* against the Gas Infinity (ADM 143), which had subsequently been sold by Sea Dolphin to Cepheus and renamed Echo Star.



Consistent with the long-established maritime law principle that a claim giving rise to a maritime lien is not defeated by a subsequent change in the connected vessel's ownership, lawyers for the new owners filed a Memorandum of Appearance naming Cepheus as defendant. Cepheus also furnished almost US\$7 million to secure their vessel's release from arrest.

Cepheus' lawyers then entered an appearance in the action on behalf of Sea Dolphin and wrote to the plaintiff's lawyers requesting consent to orders that Cepheus be granted leave thereafter to withdraw as defendant and instead appear as intervener.

With this consent denied by the plaintiff, Cepheus moved to file a summons seeking the two described orders, which were both subsequently granted. The plaintiff then appealed the decision.

In his subsequent judgment, Judicial Commissioner Mohan stated that two issues fell for his determination in that appeal:

- (a) first, the threshold issue of who was the proper party to enter appearance as the defendant in the circumstances of this case
- (b) second, whether leave ought to be granted to Cepheus to withdraw its appearance as defendant and to intervene in ADM 143

Having considered the arguments put forward by both parties, the Judicial Commissioner deemed "it was apparent that none of the cases cited by them was directly relevant or applicable to the issue at hand".

"Given the dearth of authority, I found it necessary to fall back on first principles to decide this threshold issue. This in turn necessitated an examination of the core features of a maritime lien."

In this examination, the Judicial Commissioner assigned explanation into what he described as the maritime lien "Procedural Aspect" and "Crystallisation Aspect", and damage lien "Fault Aspect".

When all three aspects were considered together, he stated it was "logical" that in the context of an *in rem* writ issued in respect of a claim for collision damage, "the action is in fact addressed to the owner (or the demise charterer as the case may be) of the ship at the time of the collision". Thus, Sea Dolphin and not Cepheus was deemed the proper party to enter an appearance as defendant.

The Judicial Commissioner continued that it was “intuitively wrong” that the damage lien could have the effect of making a subsequent *bona fide* purchaser of the wrongdoing ship “a defendant in the true sense of the word”.

“If the plaintiff’s argument was upheld, it could theoretically render a subsequent owner personally liable *in personam* for a collision that was neither its fault, nor that of its servants.”

He observed that Cepheus’ position had been “consistent with the well-established legal consequences of an entry of appearance”.

“It is hornbook admiralty law that an action *in rem* commenced against a ship is an action against the ship itself. If the defendant does not enter an appearance and judgment is obtained, the judgment is enforceable only against the ship, to the extent of its realisable value via a judicial sale.

“In contrast, if the defendant enters an appearance, he submits himself personally to the jurisdiction of the court, and renders himself liable *in personam* such that if judgment is obtained by the plaintiff, it may be enforced *in rem* against the ship and *in personam* against the defendant.

“I thus agreed with Cepheus’ submission that it would be ‘absurd’ to insist that in order to protect its rights in respect of the ship (and to secure its release from arrest), Cepheus had to enter appearance as ‘defendant’ in ADM 143 and potentially render itself personally liable for a fault-based claim, in circumstances where it was a total stranger to the events giving rise to the collision.”

On the second issue before him, the Judicial Commissioner stated he ultimately also agreed with the original decision of the Assistant Registrar to “grant Cepheus leave to intervene in ADM 143”.

“... as the current owners of the ship and the party who had furnished security in respect of the plaintiff’s claim in order to secure the release of the ship from arrest, Cepheus was plainly a party with an interest in the ship ... ”

The full judgment can be found [here](#).

March 2021

