

**STAR MARINE LTD v NAMBUK FISHERIES COMPANY LTD and  
MV “CHANCE 309”**

HIGH COURT — ADMIRALTY JURISDICTION

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SCOTT J

30 July 2002

10 [2002] FJHC 16

**Maritime law — admiralty — application to discharge warrants — whether the  
action is in rem and warrants of arrest were wrongly obtained — balance of  
convenience — Supreme Court Act 1981 Pt II ss 20, 20(2)(a), 20(2)(b), 20(2)(m),  
20(2)(s), 21(2).**

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Three vessels were arrested following an ex parte application. The arrest warrants were specified to be limited to 7 days from the date they were issued. Unfortunately, the 7 days limitation was not clearly embodied in the warrant. An application to discharge the warrants was filed on behalf of the detained vessels by their owner and their counsel submitted that the action is not in rem and the warrants were wrongly obtained.

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**Held** — (1) An action in rem may be brought in any case where there is a maritime lien against the vessel. Maritime liens are recognised to arise in the case of damage done by a ship, salvage, wages, master’s disbursements and bottomry. In the present case, it alleges that marine gas oil and other provisions were supplied by the Plaintiff to the vessel. The supply of goods to a vessel does not give rise to a maritime lien.

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(2) The proceedings in rem could not be allowed to continue and accordingly the warrants of arrest had to be discharged.

Application allowed.

**Cases referred to**

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*Westpac Banking Corporation Ltd v Adi Mahesh Prasad* Civil Appeal No ABU 27/1997S, cited.

*R. Lal* for the Plaintiff

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*V. Kapadia* for the 2nd Defendant

**Decision**

**Scott J.** This ruling is in relation to MV “Chance 309” but applies equally to two sister vessels namely MV “Chance 305” and MV “Chance 307” which are the subject of related proceedings HBG 2 and 3 of 2002S.

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All three vessels were arrested following ex parte application made on 19 July 2002. As is now the usual practice in Fiji the arrest warrants were specified to be limited to 7 days from the date they were issued. Unfortunately the 7 days limitation was not clearly embodied in the warrant. As it eventuated that omission was not with consequence in this case however it is important to ensure that the warrant of arrest correctly reflects the order made by the court.

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On 22 July (the Monday following the previous Friday’s arrest) an application to discharge the warrants was filed on behalf of the detained vessels by their owner Ji Sung Shipping Co Ltd. Where an interim injunction or other coercive relief is initially granted ex parte there is no onus upon a defendant subsequently to establish why the relief should be dissolved (see *Westpac Banking Corporation*

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*Ltd v Adi Mahesh Prasad* Civil Appeal No ABU 27/1997S at 7) however Mr Kapadia filed an excellent and most helpful written submission in support of the comprehensive affidavit filed by Ji Sung's fleet manager and accordingly I heard him first.

5 Mr Kapadia submitted:

- (1) that the facts advanced by the Plaintiffs could not found an action in rem and accordingly the warrants of arrest were wrongly obtained;
- (2) that there was no nexus between the parties and Fiji except the present location of the vessels in Suva Harbour;
- 10 (3) that the Plaintiff did not make full and frank disclosure of the relevant circumstances when obtaining the warrants;
- (4) that the balance of convenience rests in favour of the vessels being released.

15 Finding one's way around the law of admiralty is not made easier by the shortage of legal textbooks in the High Court library and the dearth of decided cases. Neither is it made any simpler by having no admiralty law of our own. Recourse has to be had to s 18 of the High Court Act (Cap 13) which provides that:

20 *the High Court shall within Fiji and subject as in the Act mentioned possess and exercise all the jurisdiction, powers and authorities which are for the time being vested in or capable of being exercised by Her Majesty's High Court of Justice in England.*

The phrase "for the time being" has invariably been taken to mean the time at which the High Court of Fiji is actually called upon to exercise its powers.

25 The powers of the High Court of England and Wales in respect of admiralty matters are set out in ss 20–27 of the Supreme Court Act 1981 Pt II. Under s 21(2) an action in rem may be brought against a vessel in any case mentioned in s 20(2)(a), s 20(2)(b) or s 20(2)(s). In addition, an action in rem may be brought in any case where there is a maritime lien against the vessel. Maritime liens are recognised to arise in the case of damage done by a ship, salvage, wages, masters disbursements and bottomry (see "*The Tolten*" [1946] P 135. In the present case para 8 of the supporting affidavit alleges that marine gas oil and other provisions were supplied by the Plaintiff to the vessel amounting in value to US\$30,000 approximately. The supply of goods to a vessel does not give rise to a maritime lien and the supply of goods is included in s 20(2)(m) which is not a subsection mentioned in s 21(2).

30 Ms Lal did not attempt to refute this argument and neither did she join issue with Mr Kapadia's other points each of which I am satisfied was well taken. She conceded that she was having difficulty in obtaining full instructions from the Plaintiffs. In view of the enormous losses which Ji Sung deposed that they would incur if further detention of the vessels was allowed she suggested that the comparatively small amount alleged by the Plaintiffs to be owed to them be paid into court by way of bail. In my view such an argument cannot justify the continuation of an arrest.

45 When the arrest of the vessels was first sought I expressed my concern that the High Court of Fiji was being involved in a dispute which really has no connection with Fiji at all. Having heard Mr Kapadia I was quite satisfied that the proceedings in rem could not be allowed to continue and accordingly the warrants of arrest had to be discharged.

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Whether the action in personam against the first defendant proceeds further is for the parties to decide. I would not, however, be surprised if the Plaintiff saw an advantage in proceeding either where the goods were supplied or in Korea where the vessels are owned.

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*Application allowed.*

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