

# PUSH AND PULL IN SHIP ARREST

Lawrence Teh senior partner, maritime practice and Wendy Goh, associate at Singapore law firm Rodyk & Davidson, discuss the approach of the Singapore courts to ship arrest

**SINGAPORE IS GENERALLY** regarded as an efficient and transparent jurisdiction to arrest ships. However, claimants must take heed of three recent Singapore Court decisions when considering arresting a ship here.

Prior to the case of *The "Vasilij Golovnin"*, the court would presume the claimant had an arguable case falling under the classes permitted by the relevant legislation (section 3(1) the High Court (Admiralty Jurisdiction) Act). The claim could be brief, without elaborating its strengths and weaknesses. Conversely, to set aside the arrest, the shipowner only needed to show either the statutory requirements were not met or that there was material non-disclosure by the claimant.

In *The "Vasilij Golovnin"*, the apex court described ship arrest as a "very powerful invasive remedy". The Court of Appeal considered the one-sided nature of how the application is made and the arrest is obtained, and required the claimant to:-

- (1) demonstrate to a good and arguable case that the cause of action falls under the s 3(1) categories ; and
- (2) fully disclose all relevant matters, including those disadvantageous to the claim.

If the claimant's failure to disclose is intentional, the court will cancel the arrest and punish the claimant. Where the shipowner can show that application was motivated by malice, bad faith or extreme negligence, this punishment extends to ordering the claimant to compensate the shipowner for loss and damage incurred during the arrest period.

The level of disclosure required in *The "Vasilij Golovnin"* has been widely discussed, with the High Court in the subsequent case of *The "Eagle Prestige"* weighing in with its own view.

The High Court first distinguished between two different challenges to the arrest:-

- (1) a procedural challenge to the court's jurisdiction to grant the arrest; and
- (2) a substantive challenge to strike out the claim.

The claimant does not have to show a "good arguable case" on

the merits of the claim at either stage, nor establish the cause of action might prevail at the trial. The claimant's disclosure of "plausible defences" is further limited to those factual or legal matters which can summarily deliver the "knock out blow" to the claim or which constitute an abuse of the arrest process, and not to defences to the claim that may be raised at trial.

The contribution by *The "Eagle Prestige"* to how *The "Vasilij Golovnin"* can be interpreted would have been confirmed on its appeal. However, it is understood this appeal has been withdrawn we will have to wait for some other occasion for the Court of Appeal to confirm or repeal the High Court's view.

Another case restricts claimants from arresting ships owned by those with whom it entered into related business dealings. The

claimant in *The "Catur Samudra"* purchased a vessel and bareboat chartered her to an Indonesian Special Purpose Vehicle. The Indonesian SPV obtained from its Indonesian parent company a guarantee of performance and charter hire payment. When the Indonesian SPV defaulted, the claimant sought to arrest the ship owned by the parent company.

The claimant argued, because Singapore admiralty law allowed the arrest of ships as security for claims arising out of an agreement relating to the use and hire of a vessel, it was entitled to do this since the claim against the parent company as security for its claim under the guarantee.

The Singapore High Court disagreed. A claim against the parent company guarantor is not a claim relating to the use or hire of a vessel because the

phrase "related to" requires the transaction to have a direct and immediate connection to the use or hire of the vessel.

The High Court also refused the claimant's collateral argument that the Indonesian Special Purpose Vehicle and its Indonesian parent company guarantor was a single economic unit. Absent proof that the companies were a sham or a device for fraud, Singapore law would respect the separation of legal corporate entities.

These three cases show the Singapore Court's ongoing attitude of balancing between the interests of the claimant and the interest of the shipowner. ❁

