



The Kombos: the interplay between vessel arrest and enforcement of arbitration awards

(September 2014)

Background

In the recent case nicknamed the “KOMBOS” [2014] HKCU 1698, the Admiralty Court upheld the arrest of a vessel even though the Plaintiff had already obtained an arbitration award. The effect of this judgment is significant as it means that vessels can still be arrested under the in rem jurisdiction of the Court so long as the judgment or arbitration award in personam remains outstanding.

Facts

The dispute arose out of a charterparty for five years made under a Shelltime 4 form in relation to the KOMBOS. The charterparty contained an LMAA arbitration clause and the Plaintiff brought a claim for damages in relation to breach of the charterparty and unpaid hire against the Defendant. In March 2013, The Plaintiff was eventually given a Final Award of around US\$9million.

In April 2014, the Plaintiff applied to the HK Admiralty Court for the arrest of the DEWI UMayI, a vessel owned by the Defendant. It was made clear in the application that the arrest was not being applied for as a means of enforcing the arbitration award but was for security in respect of the anticipated in rem judgment. The claim was pleaded under section 12A(2)(h) of the High Court Ordinance in relation to a claim arising out of an agreement relating to the use or hire of a ship.

The Defendant argued that the arrest was essentially being made for the purposes of enforcing the arbitration award and was an abuse of process on the basis that there is no head of Admiralty jurisdiction in HK for the enforcement of arbitration awards. The Defendant further contended that the arrest procedure could not be made available once a judgment or final award had been made.

Judgment

Whilst Ng J agreed that there is no head of Admiralty jurisdiction in HK for the enforcement of arbitration awards, he went on to say that it was clear from the English court judgments in *The Rena K* [1979] QB 377 and *Bumbesti* [2000] QB 559, and the Hong Kong Court's decision in *The Britannia* [1998] 1 HKCC 21 that the Court retains in rem jurisdiction if the claim is founded on the original cause of action under the charterparty.

Ng J went on to explain that the cause of action in rem is distinct from a cause of action in personam. The in rem procedure therefore remains open to a Plaintiff so long as the in personam judgment or award has not been satisfied.

Notes

It should be noted that this judgment from Ng J has not materially changed Hong Kong admiralty law. However, it is significant as it essentially confirms the position that, so long as the cause of action in rem is appropriately pleaded under Section 12A of the High Court Ordinance, it is possible to arrest a vessel despite the existence of a judgment or arbitration award in personam. A Plaintiff might see the possibility of arrest as an efficacious method of obtaining security or to gain leverage over a Defendant.

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