



"To arrest or not to arrest: some practical and theoretical reflections on *The Eurohope* case"

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ARREST and ARBITRATION: CAN SECURITY BE RETAINED? THE OLD *STATUS QUO*

- ***The Cap Bon*** [1967] 1 Lloyd's Rep. 543: There is no Admiralty Court Jurisdiction (as such) to arrest a vessel in support of arbitral proceedings
- ***The Rena K*** [1978] Lloyd's Rep 1 545 -Jurisdiction aspect: In the absence of statutory footing, the court has no jurisdiction to arrest the vessel as security for arbitral proceedings.



SECTION 11, UK ARBITRATION ACT 1996

Section 11 of the English **Arbitration Act** re-enacting Section 26 of the Civil Jurisdiction and Judgments Act of 1982.

It provides expressly for the retention of security (the *res*) in support of arbitral proceedings:

“Where Admiralty proceedings are stayed on the ground that the dispute in question should be submitted to arbitration, the court granting the stay may order that the property arrested be retained as security for the satisfaction of any award given in the arbitration in respect of that dispute.”



ACTIONS *IN REM* and *IN PERSONAM*

Actions *in rem* have a very distinct and different nature compared to actions *in personam* which are unfolded *vis-à-vis* the ship owner or the charter of the vessel.

The distinction between actions *in rem* and *in personam*, and the somehow ‘artificial’ personification of ships has thus far allowed maritime claimants to enforce their claims against the vessel, setting aside what would otherwise be intricate legal issues, such as cause of action estoppel and *res iudicata* matters.



CASE LAW: *THE INDIAN GRACE*(No.2)

The Indian Grace (No.2) [1998] 2 Lloyd's Rep 1

Lord Steyn considered the history of the *in rem* action, noting the 'decline' of the personification theory which regarded the ship as the defendant in *in rem* proceedings.

- His Lordship considered it to be wrong to permit an action *in rem* to proceed despite a foreign judgment *in personam* having been obtained on the same cause of action. This purpose militated in favour of the bar created by it applying to *in rem* proceedings.



CASE LAW *POST THE INDIAN GRACE*(No.2)

The Irina Zharkikh [2001] 2 Lloyd's Rep 319

- Does the rule that an unsatisfied *in personam* judgment will not exclude a subsequent *in rem* claim apply to arbitral proceedings?
- In light of *The Indian Grace (No.2)*, is *The Rena K* still good law? If so, how does it relate to the facts of this case?
- Young J. found that an unsatisfied *in personam* judgment does not preclude a subsequent *in rem* claim, applied equally, by analogy, to an unsatisfied arbitral award.



CASE LAW *POST THE INDIAN GRACE*(No.2)

The Comandante [2008] 1 Lloyd's Rep 119 Allsop J. reaffirmed [at 99] that in Australia, when *in rem* proceedings are commenced, they are so commenced against the relevant *ship* contrary to what might be argued was a contrary position promulgated in ***The Indian Grace (No.2)***.

Transnet Ltd v The Owner of the mv Alina II [2011] ZASCA 129.
Claim initially pursued through an action *in rem* against the vessel, followed by an action *in personam* against the owner of the Alina II
If the ship-owner personally liable on the underlying claim defends the action *in rem*, then *in personam* jurisdiction is thereby also established



DSA CONSULTANCY (FZC) v *THE “EUROHOPE”*

DSA Consultancy (FZC) v The “Eurohope” [2017] SGHC 218

Vessel arrested in Singapore – Exclusive jurisdiction clause in favour of the High Court of London.

Whether it was an abuse of process to commence an action in rem for the sole purpose of arresting a vessel in order to obtain security in aid of legal proceedings in a foreign court.



TO ARREST or NOT TO ARREST? *THE “EUROHOPE”*

The judge noted the absence of any statutory authority in Singapore, comparable to that in the UK Civil Jurisdiction and Judgments Act 1982, section 26, or the Arbitration Act 1996, section 11, to arrest vessels in support of foreign proceedings.

Action *in rem* is a separate action in its essence, and should be considered on **its own merits**.



HOW DO YOU ARREST A VESSEL IN SINGAPORE IF YOU INTEND TO BRING AN ACTION IN ANOTHER JURISDICTION?

The Reecon Wolf [2012] 2 SLR 289

The Reecon Wolf involved a collision between the plaintiff's and the defendant's vessels. The defendant brought an action in Malaysia and arrested the plaintiff's vessel. The plaintiff brought an action in Singapore and arrested the defendant's vessel. The defendant then applied to stay the Singapore proceedings on the basis that Malaysia was the more appropriate forum.

