Key Developments in Singapore Ship Arrest Laws: A Practitioner’s Perspective

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ABSTRACT

This article charts Singapore’s development of its own jurisprudence in the important area of ship arrest laws, and explains why, in various respects, Singapore law has departed from English law principles. With the growing importance of Singapore as a choice venue for arrest actions, these developments are certainly of greater relevance to would-be maritime claimants than of mere academic interest. Equally, these legal developments are becoming increasingly important, practically, for shipowners and operators who trade their vessels across the world and typically choose Singapore as the prime bunkering stop in the Southeast Asian region. Likewise, global operators of fleets that have chosen to locate part of their operations in Singapore, including Turkish shipowners, will be keen to follow these changes in the legal landscape of ship arrest in Singapore, as will their interested insurers.

I. INTRODUCTION: SINGAPORE AS A HUB FOR ENFORCEMENT ACTIONS

In the year 2012, approximately 460 admiralty in rem arrest actions were filed in the Singapore High Court. Of these, 133 arrest applications were made; 114 of those maritime claimants decided to arrest the ship in question. Eventually, fourteen of those claimants applied for judicial sale orders of the arrested vessels.

In 2013, an estimated 370 admiralty in rem arrest actions were launched in the Singapore High Court. The claimants in those cases, in 110 instances, sought warrants of arrest to detain ships. Eighty-five of them actually proceeded to arrest. Nine of those arrested vessels were eventually sold judicially by the High Court.

For 2014, reportedly 250 admiralty in rem actions were launched in the Singapore High Court. Sixty of those maritime claimants decided to arrest. Eleven judicial sales of arrested ships were ordered.

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These are numbers that are not insubstantial, considering that all arrest activity takes place within Singapore port limits only, which is little more than a three km wide strip of territorial sea from the mainland.1 Outside of these modest geographical limitations, not infrequently a maritime claimant will proceed in neighbouring Malaysia if the target strays beyond the reach of a Singapore court order.2

These numbers are perhaps a barometer of the general health of the shipping industry. While the numbers have come off during the last three years, practically the growing importance of Singapore as an arrest venue is plain. Both geographical and economic factors contribute to this. From a commercial perspective, Singapore has become an extremely important shipping centre with connections to more than 600 ports in over 120 countries.3 The Singapore Registry of Ships currently rosters over 4,000 registered vessels, totaling 73.6 million gross tonnes, and ranks among the top ten largest registries in the world.4 As of 1 January 2013, Singapore was the country of ownership of a total of 1,888 vessels, with 1,090 under the national flag and 798 under foreign or international flags.5 Although Singapore does not produce any oil, it has become the ‘largest and most important bunkering port in the world’, with a bunker uplift of some 42.69 million tonnes.6 For the same period, Singapore’s seaborne cargo could be measured at 538,012 tonnes, with container throughput at a notable 32.65 million twenty-foot equivalent units, or TEUs.7

Singapore’s status as the world’s busiest bunkering stop will perhaps ensure that trends in Singapore arrest laws will remain of interest to the world’s shipowners and operators. The broader picture is consistent with Singapore gaining popularity as an arrest forum for maritime claimants. With a steadying flow of ship arrests and resulting litigation, in a consolidating trend over the past fifteen years or so, the Singapore arrest jurisdiction is coming of age.

II. DIVERGENCE FROM ENGLISH LAW: A NASCENT TREND
The exercise of admiralty jurisdiction by the Singapore High Court derives from

1 Estimates by Rajah & Tann Singapore LLP, with input from the Office of Public Affairs, Supreme Court of Singapore. Compare the figures for Hong Kong, where 235 admiralty in rem actions were reportedly filed in 2012, 197 in 2013 and 183 in 2014.

2 Malaysia applies arrest principles that are broadly similar to Singapore. So in Tamina Navigation Ltd v The Owner of The Cargo Laden On Board The Ship Or Vessel MT Swallow (Newick Shipping Limited – Interveners) [2003] 8 CLJ 762 at p 793 c-f, the High Court of Sabah & Sarawak set aside a warrant of arrest on the basis that the plaintiff had failed to disclose ongoing foreign arbitration proceedings and the fact that the purpose of the arrest was to obtain security (which were regarded to be material non-disclosures).


5 Compiled by the UNCTAD secretariat, on the basis of data supplied by Clarkson Research Services.


statutory provisions that are in substance identical to those found in English legislation.

The operative provisions for invoking admiralty jurisdiction to arrest are in Section 4 of the Singapore High Court (Admiralty Jurisdiction) Act (HCAJA). This reads:

(4) In the case of any such claim as is mentioned in section 3(1)(d) to (q), where —
(a) the claim arises in connection with a ship; and
(b) the person who would be liable on the claim in an action in personam (referred to in this subsection as the relevant person) was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, an action in rem may (whether or not the claim gives rise to a maritime lien on that ship) be brought in the High Court against —
(ii) that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of that ship under a charter by demise; or
(ii) any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.

English court decisions have been, and will continue to be, of persuasive value when cited in argument before a Singapore court where substantive issues of maritime law are concerned. It is, however, no longer safe to assume in any given case that the English legal position mirrors Singapore law, particularly where arrest practice and procedure are concerned.

The 'rules of engagement' for arrest in Singapore have changed, in some respects substantially, as compared to English procedure. A line of seminal decisions by our

8 Cap 123, 2001 Rev Ed.

9 Compare section 21 of the UK Senior Courts Act 1981, which reads:
Section 21, Mode of exercise of Admiralty jurisdiction.
(i) Subject to section 22, an action in personam may be brought in the High Court in all cases within the Admiralty jurisdiction of that court.
(ii) In the case of any such claim as is mentioned in section 20(2)(a), (c) or (s) or any such question as is mentioned in section 20(2)(b), an action in rem may be brought in the High Court against the ship or property in connection with which the claim or question arises.
(iii) In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, an action in rem may be brought in the High Court against that ship, aircraft or property.
(iv) In the case of any such claim as is mentioned in section 20(2)(e) to (r), where—
(a) the claim arises in connection with a ship; and
(b) the person who would be liable on the claim in an action in personam ('the relevant person') was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, an action in rem may (whether or not the claim gives rise to a maritime lien on that ship) be brought in the High Court against—
(i) that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; or
(ii) any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.
Supreme Court in Singapore over the past ten years or so underscore these differences, and the perils of not heeding them.\(^\text{10}\)

### III. THE RAINBOW SPRING LITIGATION: 2002 - 2003

In *The Rainbow Spring*, the defendant shipowners named a Liberian company, Oriental Shipway, as the owners under a time charterparty which was entered into with the plaintiffs.\(^\text{11}\) This was confirmed by way of an exchange of correspondence between parties on 8 and 9 January 1998 in which the plaintiffs, who were time charterers, confirmed that the charterparty was 'clean fixed' and noted that the owner for the purposes of the charterparty was the Liberian entity, Oriental Shipway. Subsequently, parties through their agents, P&I Club and foreign lawyers corresponded on various issues which arose in the course of the charterparty. In the correspondence, the plaintiffs’ agents, P&I Club and foreign lawyers took the view that the charterparty was entered into with Oriental Shipway. Conversely, the P&I Club of the defendants was alleged to have acted on the premise that the charterparty was entered into with the defendants, rather than Oriental Shipway.

Two further facts were pertinent. Although the exchange of correspondence between parties confirmed the nomination of Oriental Shipway as the owners for the purposes of the charterparty, the formal charterparty was inadvertently executed by the defendants. Furthermore, the defendants had in fact entered into two back-to-back charterparties, one demise and the other, time, in which Oriental Shipway featured as the time sub-charterer and in that capacity had contracted with the plaintiffs. In other words, the plaintiffs’ charterparty was to be a time sub-sub-charter according to the chartering structure that had been put in place. The plaintiffs, on the other hand, argued that since the charterparty was signed by the defendants, they had direct contractual privity with the defendants and could therefore arrest the defendants’ vessel for a charterparty claim.

At first instance, the defendants succeeded in setting aside the arrest on the grounds of material non-disclosure. It should be noted that when the warrant of arrest was applied for, neither the affidavit supporting the warrant of arrest nor the plaintiffs’ counsel who appeared to obtain the warrant of arrest drew the court’s attention to a number of documents and correspondence. Such correspondence included the correspondence exchanged on 8 and 9 January 1998, which would have made it clear that the defendants were not in fact the owners for the purposes of the charterparty and therefore, could not be the party who would be liable in personam under s. 4(4) of the HCAJA. The decision did not, however, turn upon the absence of in personam liability.

On appeal, Belinda Ang JC (as she then was) upheld the first instance decision, but on the grounds of lack of in personam liability rather than material non-disclosure. Her Honour reasoned that the charterparty was clean fixed and therefore concluded by an

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10 Rajah & Tann have acted as counsel for the parties in each of the cases cited in this article with the exception of *The Eagle Prestige*.

11 [2003] 2 SLR 117. This was the High Court decision. The Court of Appeal decision is reported as [2003] 3 SLR 362.
exchange of correspondence on 8 and 9 January 1998, and whatever negotiations which preceded and correspondence which followed that exchange of correspondence could not change the fact that the charterparty had already been entered into with Oriental Shipway named as the owners. Her Honour concluded that the plaintiffs' case was plainly unarguable and upheld the first instance decision to set aside the warrant of arrest.

However, her Honour held that there was sufficient disclosure by the plaintiffs when they applied for the warrant of arrest even though they did not include the correspondence, including that exchanged on 8 and 9 January 1998, which would have pointed to Oriental Shipway as being the contracting party. Her Honour appeared to reason that because the correspondence subsequent to the entry of the charterparty did not uniformly point to Oriental Shipway as being the contracting owners under the charterparty, the plaintiffs were entitled to take the view that they contracted with the defendants rather than with Oriental Shipway pursuant to the executed charterparty. The court also held that in these circumstances there was no wrongful arrest.

It is significant to note that Belinda Ang JC affirmed once and for all that there is a duty to disclose all material facts on the part of the arresting party and in the process, put to rest an issue as to whether such a duty exists under the laws of Singapore. Belinda Ang JC concluded that the English law position does not apply in Singapore because the relevant provisions of the Singapore Rules of Court are differently worded. The High Court's approach was later affirmed by the Court of Appeal.

The Rainbow Spring decisions were regarded to be ground-breaking at the time. What was clearly emphasised was that the English arrest procedure, which regards the issue of a warrant of arrest as of right, on a claimant's application, did not apply in Singapore. Both Singaporean courts affirmed that an application for a warrant of arrest in the High Court is always to be determined by the Court in a considered exercise of its discretion. By contrast, the English position, as exemplified by the decision in The Varna in the Court of Appeal of England and Wales, is that under the English Civil Procedure Rules the claimant-applicant in an action has the right to have a warrant of arrest issued upon the claimant’s compliance with fairly standard pro forma criteria comprised of:

1. Giving an undertaking to pay all fees and expenses incurred by the English Admiralty Marshall for the arrest;
2. Filing a standard form declaration stating particulars on the nature of the claim; that the claim has not been satisfied; if the claim arises in connection with a ship, her name, the nature of the property to be arrested; the person liable and his beneficial ownership or demise charter of the ship to be arrested; and the amount of security sought.

On meeting these criteria, an English claimant is entitled to have the arrest warrant issued. The English courts have no discretion to decline. Crucially, the claimant is under

12 Cap 322, R 5, 1997 Rev Ed.
14 Now Rule 61.5 of the Civil Procedure Rules.
no legal obligation to give full and frank disclosure of material facts surrounding his claim and the arrest sought.

Conversely this is what the two courts had to say in The Rainbow Spring litigation about the remedy of ship arrest under Singapore law:

In the High Court:

In Singapore, the issue of a warrant of arrest is a discretionary remedy and, as on any ex-parte application for a discretionary remedy, full disclosure of material facts is required. The requirement that there be full and frank disclosure of material facts on an application for arrest is clearly established. Although I have ruled in favour of the defendant on the jurisdictional issue, for the reasons below, I am of the view that there is no material non-disclosure. The materiality of the non-disclosure complained about is neither premised nor dependent on the success of the defendant’s contention that the charter was concluded by exchanges of correspondence.\(^{15}\)

On appeal before the Court of Appeal:

We agree that The “Varna” [1993] 2 Lloyd’s Rep 253 is not applicable to our O 70 r 4. Apart from the differences between our Rules and the English Rules pointed out by the judge, O 75 r 5(6) of the amended English rules states that, in certain circumstances a warrant of arrest ‘may not be issued as of right’. This sub-rule was used by Scott LJ in The “Varna” to support his conclusion that the general rule in England is that a warrant of arrest is issued as of right. That sub-rule was not adopted when our Rules were amended. The position in Singapore that a warrant of arrest is issued by the court at its discretion was not changed by the 1997 amendments. Accordingly, Admiral had a duty to disclose all material facts when it applied for the warrant. In this connection it is helpful to reiterate the test of whether a fact is material as set out by this court in The “Damavand” [1993] 2 SLR(R) 136 at [30] which is: ‘Whether the fact is relevant to the making of the decision whether or not to issue the warrant of arrest, that is, a fact which should properly be taken into consideration when weighing all the circumstances of the case, though it need not have the effect of leading to a different decision being made...’\(^{16}\)

The practical ramifications of the restated duty of disclosure in The Rainbow Spring were immediately felt in the aftermath of the decisions. An arrest affidavit was in practice a fairly concise document until 2002. It consisted of not much more than the equivalent of two or three pages. The norm nowadays however is twelve to fifteen pages of text for a simple arrest. More complicated matters, requiring more involved disclosure, will easily run into several hundred pages. In The Vasily Golovnin litigation (discussed further below), the plaintiffs’ affidavit leading the arrest was over 400 pages long – and it was roundly condemned as inadequate disclosure.

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\(^{15}\) The Rainbow Spring [2003] 2 SLR(R) 117, paras 31-32.

\(^{16}\) The Rainbow Spring [2003] 2 SLR(R) 362, paras 32-33.
IV. THE VASILIY GOLOVNIN LITIGATION: 2008

It is said that The Rainbow Spring heralds the beginning of a ‘pro-shipowner’ trend in the formulation of arrest laws by the Singapore courts. The upshot there was the arrest was set aside, both for the claimant’s inability to demonstrate that the shipowner was the one liable on the claim, and for the claimant’s failure to give full and frank disclosure of the material facts that underpinned the basis of its claim. The claimants in The Vasiliiy Golovnin litigation came off far worse.

The litigation before the Singaporean courts was the ‘Singapore chapter’ of a fight between the Russian shipowners, FESCO, and the plaintiffs, two Swiss cargo financing banks. Before the arrest in Singapore, the plaintiffs had already struck by arresting another ship owned by FESCO at Lomé, in Togo. They had attempted to litigate the claim there, exhausted their rights of appeal in the Lomé courts, and were – to a large extent – unsuccessful.

The decision by the Singapore Court of Appeal in The Vasiliiy Golovnin is regarded to be the most important admiralty arrest pronouncement during the past decade. The following has been cited as indicative of the judicial policy behind the decision:

The arrest of a vessel is never a trifling matter. Arrest is a very powerful invasive remedy. An arrest of a ship can lead to tremendous inconvenience, financial distress and severe commercial embarrassment. Even the briefest of delays can sometimes cause significant losses. It can also in certain instances prejudice the livelihood of the ship’s crew and the commercial fortunes of the shipowner. Maritime arrests can, when improperly executed, sometimes be as destructive as Anton Piller orders and even as potentially ruinous as Mareva injunctions, the two nuclear weapons of civil litigation. As such, a plaintiff must always remain cautious and rigorously ascertain the material facts before applying for a warrant of arrest. While there is no need to establish a conclusive case at the outset, there is certainly a need to establish a good arguable case, before an arrest warrant can be issued. This determination plainly requires a preliminary assessment of the merits of the claim.18

The facts were in extremis. In summary, the plaintiff banks (the Plaintiffs) were bill of lading holders who claimed against the defendant Owners (the Owners) primarily for deviation from the terms of their contract after the carrying vessel discharged cargo at a port other than that specified by the Plaintiffs. That port was Lomé in Togo. The Plaintiffs arrested the carrying vessel at Lomé. Security was provided for the part of the claim which concerned cargo damage. On the Owners’ application, the arrest of the carrying vessel was discharged on the basis that the Owners were entitled to proceed to Lomé to discharge the cargo under the bills of lading. The Plaintiffs did not appeal the decision to the court of last resort in Lomé, which meant that they were bound by the outcome. Approximately one month later, the Plaintiffs decided that they would

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17 The High Court decision was reported as [2007] 4 SLR (R) 277. The Court of Appeal decision was reported in [2008] 4 SLR 994.

18 The Vasiliiy Golovnin [2008] 4 SLR(R) 994, para. 51.
have ‘another roll at the dice’, i.e. arrest a sister ship of the carrying vessel at Singapore. This was the Vasily Golovnin. This decision set off a chain of events that culminated in what can only be termed a disastrous outing for the Plaintiffs in and about the arrest in Singapore.

In short, the Plaintiffs’ claim was struck out. The Singapore Court of Appeal concluded that the underlying claim was devoid of merits and was not even arguable. The arrest was set aside so that the Plaintiffs obtained no security. Moreover, the arrest was found to be wrongful, with the Court concluding that the Plaintiffs acted maliciously so that they were liable to pay damages to the Owners for detaining the vessel.

In concluding that the arrest was wrongful, the Court opined:

In our view, both the Judge and AR Ang erred in concluding that wrongful damages could only be recovered if the non-disclosure was either deliberate or calculated to mislead. This is not quite correct. In our view, if material facts are not disclosed because of gross negligence or recklessness, damages for wrongful arrest may also be recovered. Further, it appears that the lower courts had entirely failed to factor in the considerations that the claim for the alleged failure to comply with the Banks’ instructions was an abuse of process because there was no cause of action and, in any event, issue estoppel prevented this matter from being relitigated.19

Three notable features on current arrest principles in Singapore emerge from the Court of Appeal’s decision:

1. In what appears to be an extension of the established principles, the Court observed that the duty of disclosure covers defences that are plausible and not merely conceivable or theoretical. On the threshold of disclosure, ‘unless the document is presented to the eyes and/or ears of the judge, it is not disclosed’.20

2. The decision lays new emphasis on the standard of proof of merits of the claim, even at the arrest stage. Here, the Owners had brought an application to strike out the underlying claim, in addition to applying to set aside the arrest, both of which the Court allowed, as it found that the Plaintiffs could not show a good arguable case on the merits.

3. The Court affirmed the stringent test for determining claims for wrongful arrest of a ship, in holding that the shipowner will need to show malice or gross negligence amounting to malice, applying the old English law position. Even so, the Singapore Court of Appeal signaled a willingness to consider lowering the standard, and some commentators say the Court in effect applied a lower standard on the facts in holding the Plaintiffs liable to the Owners for wrongful arrest damages. The focus would henceforth be on the court making an objective inquiry into the circumstances prevailing as at the time of the arrest to assess ‘if the action and the arrest were unwarrantably brought, or brought with so little colour, or so little foundation, as to

19 Ibid., para. 140.
20 Ibid., para. 92.
imply that they were brought with malice or gross negligence.\textsuperscript{21}

It is perhaps unsurprising that, following the pro-shipowner sentiments that some discern among the judicial pronouncements in \textit{The Vasily Golovnin}, attempts were made by shipowners who had had their vessels arrested in Singapore to capitalise on alleged short or non-disclosures by plaintiff arresting parties, and to mount a challenge. \textit{The Eagle Prestige} was one such example.\textsuperscript{22}

V. RESTATEMENT OF PRINCIPLES IN SUBSEQUENT CASES

\textit{The Eagle Prestige} decision demonstrates that the Court’s emphasis is on consequential matters where the duty to disclose material facts is concerned. Attempts to unjustly invoke the argument of non-disclosure will be given short shrift. Here the underlying claim was for a breach of a sub-time charter claim, arising from a grounding incident. The disponent owners claimed an indemnity from the defendant, a sub-time charterer, on a back-to-back basis because the head owners were claiming an indemnity against the disponent owners under the head time charter. The disponent owners arrested Eagle Prestige to secure the sub-time charter claim. Between the time the claim arose and the arrest the defendant sold Eagle Prestige to an associated company for a consideration of USD 1. By the time of the arrest, the defendant had placed itself into voluntary liquidation. Prior to doing so, through its insurers the defendant had suggested that it would offer security for the claim, but this did not materialise. Fortunately for the disponent owners, their in rem writ of summons against Eagle Prestige was issued before the change of ownership.

The application to set aside the arrest was mounted entirely on material non-disclosure grounds. The defendant did not apply to strike out the writ which would have meant concurrently advancing the argument that the claim failed on the merits.

The defendant raised five alleged instances of ‘material non-disclosure’, all of which were rejected by the Court as unmeritorious, misconceived and/or disingenuous. The decision underscores that the duty to disclose material facts extends only to plausible, and not all conceivable or theoretical defences. ‘Plausible’ has to be understood in its proper context, i.e. does the defence render the claim obviously frivolous or vexatious? A plausible defence usually refers to an objection (factual or legal) to the claim being brought in the first place.

The High Court reaffirmed that a plaintiff, when applying for an arrest, need only demonstrate that the underlying claim is not frivolous or vexatious, as opposed to the higher threshold of showing a good arguable case on the merits of the claim. The higher standard of a good arguable case would however feature if the defendant shipowner brings an application to strike out the writ of summons concurrently with challenging the warrant of arrest.

The Singapore Court of Appeal took the opportunity in the \textit{Bunga Melati}\textsuperscript{23} to

\begin{footnotesize}
\begin{enumerate}
\item \textit{Ibid.}, para. 137.
\item \textit{[2010]} 3 SLR 294.
\item \textit{[2012]} 4 SLR 546.
\end{enumerate}
\end{footnotesize}
restate the law espoused in *The Vasiliy Golovnin*. This decision was in the context of an in rem action that a bunker supplier had filed in Singapore against a Malaysia International Shipping Corporation (MISC) ship. The subject matter and context of the dispute are hence somewhat of topical interest to the bunkering industry generally. The plaintiff, to be clear, did not attempt to arrest any MISC ship. It had earlier, before issuing the in rem action and serving this on a MISC ship in Singapore, resorted to a Rule B attachment in the US without success. The steps it took in Singapore nevertheless drew a fierce challenge from MISC, which applied to strike out the Singapore in rem action, which was then litigated at three levels and all the way up to the Singapore Court of Appeal.

The final appellate decision was rendered in the context of MISC’s attempt, ultimately unsuccessful, to strike out the supplier’s claims on bunkering contracts that it maintained were concluded via bunker brokers authorised to contract for MISC. At first instance, and thereafter on appeal to the Admiralty Judge, MISC succeeded in striking out the claims, on the alleged basis that the claims were plainly or obviously unsustainable, so as to be unarguable. The plaintiff supplier appealed to the final court and reversed this outcome.

In a much welcomed restatement of the law which must now be regarded as authoritative, the Court of Appeal outlined the steps and applicable standards of proof for a plaintiff to invoke admiralty jurisdiction in Singapore, in the following terms:

(1) Prove, on the balance of probabilities, that the jurisdictional facts it is relying on under the relevant limbs s 3(i)(d) to 3(i)(q) HCAJA exist; and show an arguable case that its claim is of the type or nature required by the relevant statutory provision (Step 1);

(2) Prove, on the balance of probabilities, that the claim arises in connection with a ship (Step 2);

(3) Identify, without having to show in argument, the person who would be liable on the claim in an action in personam (Step 3);

(4) Prove on the balance of probabilities, that the relevant person was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship (Step 4); and

(5) Prove on the balance of probabilities, that the relevant person was, at the time when the action was brought: (i) the beneficial owner of the offending ship as

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24 Particularly now in the aftermath of the collapse of the OW Bunker group of bunkering companies, with repercussions that have reverberated worldwide.

25 Rule B(1) of the Supplemental Rules for Certain Admiralty and Maritime Claims (US Federal Rules of Civil Procedure) essentially allows for attachment or garnishment of goods, credits, and effects of a defendant, provided: 1) there is a maritime cause of action for which an action in personam is available; 2) the defendant cannot be found within the district of the court wherein the cause is commenced.
respects all the shares in it or the charterer of that ship under a demise charter; or (ii) the beneficial owner of the sister ship as respects all the shares in it (Step 5).  

The Court of Appeal reaffirmed the duty of full and frank disclosure in any ship arrest application with the following admonishment:

While it is now clear that a plaintiff need not show a good arguable case on the merits of its claim (i.e. under step 3) to establish admiralty jurisdiction, we would pause to remind prospective plaintiffs that their obligation to make full and frank disclosure when they apply ex parte for a warrant of arrest remains (see *The Rainbow Spring* ([99] supra) at [33]; *The “Vasiliy Golovnin”* (CA) ([83] supra) at [83]). Even at that early stage, a plaintiff who fails to disclose all material facts supporting its claim will run the risk of not being granted a warrant of arrest; or if granted initially, could subsequently have its arrest set aside.

**VI. CONCLUDING OBSERVATIONS:**

**PRO-SHIPOWNER POLICY?**

In August 2015 came another much-anticipated pronouncement by the Singapore Court of Appeal regarding the grounds for decisions in arrest cases. This was the final appellate ruling involving the arrest in *The STX Mumbai*. It was also a case of a bunker supplier that arrested in Singapore, only to be faced with a strong challenge to the arrest from the shipowner. Here, the Court of Appeal allowed the plaintiff bunker supplier’s appeal. It reversed the Singapore High Court’s decision to award wrongful arrest damages to the shipowner, setting aside the arrest and striking out the entire claim. On reinstating the writ action, which the Court held was arguable, the Court was then invited to conclude whether the arrest was wrongful. The Court disagreed with the appellant, holding that whether or not the arrest was wrongful was a matter to be reserved to the trial judge; one could not simply reason that because the in rem claim was not struck out the arrest was necessarily not wrongful.

Had the Singapore Court of Appeal decided to uphold the High Court’s decision in *The STX Mumbai*, this conceivably would have given even greater impetus to the view held in some quarters that Singapore has become a ‘pro-owner’ jurisdiction. With or without the ruling in *The STX Mumbai*, such a view would, in our assessment, be overstating the position.

The High Court and the Court of Appeal (the upper and lower divisions respectively of the Supreme Court of Singapore), have shown over the past decade in particular that Singapore is both prolific in its admiralty arrest decisions, and is discernibly assertive in development of case law principles of its own.

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27 [2014] 3 SLR 1116.
28 The decision also ruled on a novel point on contract law, on insolvency amounting to an anticipatory breach of contract (which is beyond the scope of this article).
A new balance between providing the remedy of arrest to deserving maritime claimants versus the desire to protect shipowners from harassment from oppressive claims is being recalibrated. This seeks to weigh up the competing concerns and interests of arresting parties and shipowners by imposing on the former a strict (and a seemingly increasingly stricter) duty of disclosure on pain that the arrest may be set aside if such a duty is not complied with, but not penalising the arresting party with damages for wrongful arrest unless a very clear case of malice or crassa negligentia is demonstrated.