

EFFECT OF AMENDED CLAIM ON A WARRANT OF ARREST IN AN ADMIRALTY ACTION *IN REM*

The Jeil Crystal

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I. INTRODUCTION

Suppose I have filed my statement of claim endorsing the writ *in rem*¹, and the Registrar has issued a warrant of arrest reflecting this claim. I then proceed to execute a warrant of arrest to arrest a vessel. Now, suppose, however, I later discover that the original claim stated in the warrant of arrest does not exist. I then substitute the original claim with a completely different claim altogether. Can the warrant of arrest be upheld based on the amended claim and/or cause of action, even if it was not so pleaded initially when the action *in rem* commenced? This novel issue arose for the first time in *The Jeil Crystal*², where the Singapore Court of Appeal reversed the High Court’s decision³ and answered in the negative. Following that decision, if the warrant of arrest has already been executed, the warrant of arrest must be set aside when the plaintiff seeks to substitute an original claim with an amended claim in the statement of claim.

II. THE FACTS

The plaintiff, Banque Cantonale de Geneve, is a Switzerland-based bank engaged in the business of providing trade finance. The plaintiff commenced an admiralty action *in rem* and obtained a warrant of arrest against *Jeil Crystal*, whose registered owner was the defendant, Jeil International Co Ltd.⁴

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¹ For cases or appeals filed after 1 April 2022, the writ *in rem* is now known as an originating claim in action *in rem* under the new Rules of Court 2021 (Cap 322, No. S 914/2021) [“Rules of Court 2021”]. O 33 r 2(1) of the Rules of Court 2021 provides that the originating claim in action *in rem* must be filed in Form 48 in Appendix A of Supreme Court Practice Directions 2021. Further implications of this change will also be discussed in this case comment.

² [2022] 2 SLR 1385 [“*The Jeil Crystal* (CA)”].

³ *The Jeil Crystal* [2021] SGHC 292 [“*The Jeil Crystal* (HC)”].

⁴ *Ibid* at [5]–[6].

The plaintiff bank's original claim was for the misdelivery of cargo without production of original bills of lading.⁵ This came with the assertion that the plaintiff bank was the lawful holder of the original bills of lading.⁶ It was on this basis that the warrant of arrest was executed to arrest the vessel as security, before alternative security was later furnished by the defendant to procure the vessel's release.⁷

However, it transpired that the plaintiff bank had no custody nor possession of the original bills of lading when the action *in rem* was commenced and a warrant of arrest obtained.⁸ In fact, the plaintiff bank had transferred the full set of original bills of lading to its customer (*qua* buyer in the transaction), which then obtained switched bills of lading from the defendant allegedly without the plaintiff's knowledge nor consent.⁹

With this new discovery, the plaintiff then sought leave to amend its statement of claim to plead a breach of contract and/or negligence in substitution of the original misdelivery claim.

In response, the defendant cross-applied to set aside the writ *in rem* and warrant of arrest and alternatively to strike out the action.¹⁰ The defendant's primary contention was that the writ and warrant of arrest should be set aside because they were based on a non-existent cause of action. Relying on the Hong Kong Court of First Instance's decision in *The Amigo*, the defendant further argued that even if the amended statement of claim could cure the defect in the writ, it could not cure the defect in the warrant of arrest.¹¹

III. THE HIGH COURT'S DECISION

The Singapore High Court held that the warrant of arrest could be upheld based on the plaintiff's amended claim even if it was not originally pleaded when applying for a warrant of arrest.

First, Mohan J rejected the defendant's interpretation of *The Amigo*. In confining *The Amigo* to its facts, Mohan J held that there was no general proposition that a subsequently amended statement of claim can never cure any existing defect in the cause of action originally framed in the writ *in rem* or warrant of arrest.¹²

On Mohan J's close reading of *The Amigo*, Barnett J's primary concern was that the original claim was in substance a claim for the balance of the vessel's purchase price, which fell outside of the court's admiralty subject matter jurisdiction.¹³ The original claim on the unamended statement of claim therefore did not disclose any reasonable cause of action giving rise to an action *in rem*. Accordingly, it was

⁵ *Ibid* at [13].

⁶ *Ibid* at [14].

⁷ *Ibid* at [2].

⁸ *Ibid* at [18].

⁹ *Ibid* at [10].

¹⁰ *Ibid* at [18].

¹¹ *Ibid* at [28], citing *Victory Star Shipping Company S.A. v The Owners and All Those Interested In The Ship "Amigo" and World Happy Shipping Limited* [1991] HKCFI 64 ["*The Amigo*"].

¹² *The Jeil Crystal* (HC), *supra* note 3 at [40], [54].

¹³ *Ibid* at [46].

only in this fact-specific context that Barnett J concluded that the warrant of arrest was wrongly issued, such that even allowing amendments to the statement of claim failed to cure the defect in the warrant of arrest.¹⁴ Mohan J further added that a different conclusion may well have been reached if the original claim gave rise to an action *in rem* but had been incorrectly pleaded factually.¹⁵

Mohan J then distinguished the instant case from *The Amigo*, primarily on the basis that both the original and amended claims *prima facie* fell within s 3(1)(h) of the High Court (Admiralty Jurisdiction) Act 1961.¹⁶

Second, Mohan J reasoned that the writ *in rem*, statement of claim and warrant of arrest were intractably linked. A warrant of arrest can therefore exist as long there is a validly issued writ *in rem*.¹⁷ Accordingly, insofar as a defective endorsement of the claim in the writ can be cured by an amended statement of claim,¹⁸ the warrant of arrest can be treated as being consequentially amended as well. Mohan J further added that this power of amendment can arise under civil procedure provisions found under O 2 r 1 of the Rules of Court 2014¹⁹ or O 20 r 8 of the Rules of Court 2014.²⁰

Third, flowing from Mohan J's foregoing reasoning, Mohan J further held that the warrant of arrest should be upheld because of the relation back rule in Singapore civil procedure.²¹ In summary, the relation back rule provides that any amendment takes effect retroactively on the original date of document or issuance of the writ, and not from the date when the amendment is made.²² Accordingly, the amendments

¹⁴ *Ibid* at [49]; *cf The Jeil Crystal* (CA), *supra* note 2 at [54]. Note that on appeal, the Singapore Court of Appeal noted that the decision in *The Amigo* had no bearing on its decision, since the determination of whether an amendment to the statement of claim could have a corresponding effect on a previously issued warrant of arrest would essentially dispose the appeal. Nonetheless, in *obiter*, the Court of Appeal disagreed with the High Court's narrow construction of *The Amigo*, and held that the invalid invocation of the Court's admiralty jurisdiction when the warrant of arrest was obtained is not the only ground on which the warrant of arrest can be set aside.

¹⁵ *The Jeil Crystal* (HC), *supra* note 3.

¹⁶ *Ibid* at [50]. For ease of reference, s 3(1)(h) of the High Court (Admiralty Jurisdiction) Act 1961 is *in pari materia* with s 20(2)(h) of the Senior Courts Act 1981 (c 54) (UK).

¹⁷ *The Jeil Crystal* (HC), *supra* note 3 at [58].

¹⁸ *Ibid* at [57], citing *Pan-United Shipyard Pte Ltd v The Chase Manhattan Bank (National Association)* [1999] 1 SLR(R) 703.

¹⁹ Rules of Court (Cap 322, R 5, 2014 Rev Ed) ["Rules of Court 2014"]. See O 2 r 1 of the Rules of Court 2014: "Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein."

²⁰ See O 20 r 8(1) of the Rules of Court 2014: "For the purpose of determining the real question in controversy between the parties to any proceedings, or of correcting any defect or error in any proceedings, the Court may at any stage of the proceedings and either of its own motion or on the application of any party to the proceedings order any document in the proceedings to be amended on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct." However, note that this provision does not apply to a judgment or an order as per O 20 r 8(2) of the Rules of Court 2014.

²¹ Note that unless an issue is decided by the Limitation Act 1980 (c 58) (UK), the relation back rule also exists in English law, albeit to be applied at the court's discretion in the interests of achieving a just result and proportionate costs.

²² *The Jeil Crystal* (HC), *supra* note 3 at [63], citing Cavinder Bull SC, *Singapore Civil Procedure 2021* vol 1 (Sweet & Maxwell, 2021) at para 20/8/3 ["Bull"]. The rationale of the relation back rule is to

to the statement of claim took effect from the date when the admiralty action *in rem* was commenced and the warrant of arrest was issued.²³ There was no bar to applying the relation back rule since the facts constituting the amended claim were already in existence when the admiralty action *in rem* was commenced and the warrant of arrest was issued.²⁴

IV. THE COURT OF APPEAL'S DECISION

A. Rejection of the concept of corresponding amendment to a warrant of arrest

On appeal, the Singapore Court of Appeal unanimously overturned the Singapore High Court decision. Once a warrant of arrest had already been executed, it must be set aside when the plaintiff seeks to substitute an original claim with an amended claim in the statement of claim.

From the outset, the Court of Appeal held that the High Court erred in assuming that an amendment to the statement of claim would have a corresponding effect on both the writ *in rem* and the warrant of arrest.²⁵ The Court of Appeal then clarified that while it was true that an amendment of the statement of claim generally had a corresponding effect on the endorsement in the writ,²⁶ the same did not apply to a warrant of arrest. This difference was elucidated on three grounds.

First, a writ *in rem* and warrant of arrest have distinct normative bases. A writ *in rem* provides the foundation for the entire action, while a warrant of arrest serves the limited purpose of obtaining pre-judgment security for the claim set out in the warrant of arrest.²⁷ Since the warrant of arrest entitles the plaintiff to a relief, albeit interlocutory in nature (*viz.*, the remedy of the arrest procedure), the warrant of arrest is an order of court.²⁸

allow a plaintiff to amend a complaint which would otherwise be barred by the statute of limitations, or to bar a plaintiff from introducing a new cause of action that did not exist at the time of the writ. Note that, on appeal in *The Jeil Crystal (CA)*, *supra* note 2 at [37], the relation back rule remains good law insofar as a consequential amendment to the endorsement in the writ by virtue of an amendment to the statement of claim would relate back to the date when the writ was filed, so long as the cause of action and the underlying facts pleaded in the amended statement of claim were in existence at the time the writ was originally filed.

²³ *The Jeil Crystal (HC)*, *supra* note 3 at [64].

²⁴ *Ibid* at [65]–[66]. See also *The Jarguh Sawit* [1997] 3 SLR(R) 829 at [58]; *Saga Foodstuffs Manufacturing (Pte) Ltd v Best Food Pte Ltd* [1994] 1 SLR(R) 505 at [9(b)].

²⁵ *The Jeil Crystal (CA)*, *supra* note 2 at [25].

²⁶ *Ibid* at [32]–[37]; *Veale v Automatic Boiler Feeder Co Ltd* (1887) 18 QBD 631 at 634. See also Bull, *supra* note 22 at para 18/15/3. A statement of claim is a particularisation of the claim as set out in the endorsement in the writ *in rem*. Accordingly, two consequences follow: (1) Where a statement of claim has been delivered, it supersedes the endorsement in the writ, thus any defect in the endorsement of the claim can be cured by the delivery of a proper statement of claim; and (2) the statement of claim does not have a life on its own, and still falls to be construed with reference to the endorsement in the writ for the purposes of determining the cause of action/relief which the plaintiff is entitled to pursue in the proceedings.

²⁷ *The Jeil Crystal (CA)*, *supra* note 2 at [25].

²⁸ *Ibid* at [29].

Second, the procedure by which a warrant of arrest is obtained²⁹ further reinforced the view that it is an order of court.³⁰

Third, on a construction of the Rules of Court, even the applicable provisions in the Rules of Court for writs and warrants of arrest are different.³¹ While there are express Rules of Court provisions for the amendment of writs, there is no equivalent for the amendment of warrants of arrest.³² The drafters therefore did not contemplate that warrants of arrest fell within the class of documents which are capable of amendment in the course of admiralty proceedings.

Given the characterisation of a warrant of arrest as an order of court, a warrant of arrest can only be amended in limited circumstances when there are clerical mistakes, or errors arising from accidental slips or omissions in the court's judgment or order.³³ Moreover, in issuing a warrant of arrest, the Court's manifest intention is to grant the arrest remedy entirely on the basis of the original claim as verified in the supporting affidavit of the plaintiff's arrest application.³⁴

Accordingly, there is simply no legal basis for an amendment to the statement of claim to have any corresponding effect on a previously issued warrant of arrest.³⁵

B. *Status of a warrant of arrest after an amendment to a statement of claim*

In view of the Singapore Court of Appeal's reasoning, what then is the precise status of a warrant of arrest after the amendment to the statement of claim (and consequential amendment to the writ *in rem*)?

Where the original claim on which the warrant of arrest is issued is abandoned altogether, the plaintiff no longer has any basis to arrest the vessel to obtain security

²⁹ *Ibid* at [30]. Antecedent to the issue of the warrant of arrest by the Registrar, the plaintiff must (a) file a Request for Warrant of Arrest in Form 51 in Appendix A of Supreme Court Practice Directions 2021 (previously Form 160 of Appendix A of Supreme Court Practice Directions 2014), (b) procure a caveat search to ascertain whether there is a caveat against arrest in force against the *res* to be arrested, and (c) file a supporting affidavit with required particulars under O 33 rr 4(6)–4(7) of the Rules of Court 2021 (previously O 70 rr 4(6)–4(7) of the Rules of Court 2014). For further details of this procedure, see, in this regard, O 33 r 4 of the Rules of Court 2021 or O 70 r 4 of the Rules of Court 2014.

³⁰ *The Jeil Crystal* (CA), *supra* note 2. Given that the procedure entails persuading the court that it is entitled to the *in rem* remedy of arrest, the issuance of a warrant of arrest therefore represents a determination by the court as to whether the plaintiff is entitled to arrest the *res*.

³¹ *Ibid* at [25]. See O 6 r 2 of the Rules of Court 2021 (previously O 6 of the Rules of Court 2014) for writ *in rem*/originating claim in action *in rem*, and O 33 r 4 of the Rules of Court 2021 (previously O 70 r 4 of the Rules of Court 2014) for warrants of arrest respectively.

³² *The Jeil Crystal* (CA), *supra* note 2. For provisions on the amendment of writ *in rem*, see O 20 r 1 of the Rules of Court 2021 for amendment of writ without leave and O 20 r 5 of the Rules of Court 2014 for amendment of writ with leave of Court. *Cf* in the new Rules of Court 2021, O 9 of the Rules of Court 2021 sets out some specific types of amendments which must be sought with leave of Court.

³³ *The Jeil Crystal* (CA), *supra* note 2 at [38]–[40]. The characterisation of the warrant of arrest as a court order means that O 20 r 8(2) of the Rules of Court 2014 disapplies the application of O 20 r 8 of the Rules of Court 2014. See *supra* note 20 in this regard. Instead, the amendment of an order of court is governed by a different provision under O 20 r 11 of the Rules of Court 2014: "Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court by summons without an appeal."

³⁴ *The Jeil Crystal* (CA), *supra* note 2 at [41].

³⁵ *Ibid* at [42].

on the strength of the original claim. In such instances, the court must set aside the warrant of arrest, as well as order the return of the alternative security provided (if any) or order the release of the vessel to the defendant.³⁶

Most importantly, the upshot of the decision is not that a plaintiff can never pursue an arrest of a vessel based on an amended claim. To this end, the Court of Appeal made a distinction between three chronologically different situations:³⁷

1. Where an amendment to the statement of claim is made *before* the issuance of a warrant of arrest, there is no legal impediment in ensuring that the claim in the warrant of arrest reflects the amended claim.
2. Where the amendment to the statement of claim is made *after* the issuance of a warrant of arrest but *before* the execution of the warrant of arrest, it is open to the plaintiff to file fresh court papers to obtain a fresh warrant of arrest. This includes a new affidavit verifying the amended claim together with an explanation of the circumstances which led to the amendment.
3. Where an amendment to the statement of claim (which completely substituted the original claim) is made *after* the execution of the warrant of arrest, the warrant of arrest simply cannot stand on the basis of the original claim which had been completely substituted. Accordingly, the warrant of arrest must be set aside.

V. COMMENTS

It bears noting that the appeal was decided under the old Rules of Court 2014. The new Rules of Court 2021 will apply for all civil proceedings, including appeals, filed after 1 April 2022. Nonetheless, the new Rules of Court 2021 appear unlikely to affect the application of *The Jeil Crystal* (CA) to future *in rem* actions in Singapore.

This is because the Singapore Court of Appeal's holding is consistent with the broad ideals and specific provisions of the Rules of Court 2021. At a broader level, the decision in *The Jeil Crystal* (CA) will encourage *in rem* plaintiffs to amend their statement of claim as soon as practicable before the execution of a warrant of arrest. In restricting the scope by which a ship arrest can be maintained on subsequently amended pleadings, it also addresses a defendant's concerns, however unfounded, that parties may be encouraged to apply for a warrant of arrest indiscriminately without any valid or proper cause of action.³⁸ Therefore, the Court of

³⁶ *Ibid* at [56]. The Court of Appeal made it clear that this was a matter of jurisdiction, and not discretion.

³⁷ *Ibid* at [59].

³⁸ Concerns over this "shotgun approach" were raised by the defendant's counsel in *The Jeil Crystal* (HC), *supra* note 3 at [37]. However, Mohan J rejected this argument in *The Jeil Crystal* (HC), *supra* note 3 at [72]. In particular, Mohan J noted that his decision could not be said to offer an incentive for parties to make unmeritorious, imprudent or trivial applications for a warrant of arrest, since the court would ensure that there is no abuse of process. Mohan J further added that "[s]imply because the very exercise of the court's discretion is unfavourable to one of the parties in a particular case does not, in my view, *ipso facto* undermine the policy of preventing abuse of the draconian nature of vessel arrest, nor would it result in the alleged lowering of standards in the invocation of the *in rem* jurisdiction of the Courts as contended by the defendant."

Appeal's decision is in accordance with the broad ideals of the Rules of Court 2021, which are concerned with, *inter alia*, expeditious proceedings, efficient use of court resources and fair results suited to parties' needs.³⁹

On a close reading of the Rules of Court 2021, there appears to be no equivalent provision to O 20 r 8 of the Rules of Court 2014⁴⁰ nor O 20 r 11 of the Rules of Court 2014 (for the limited amendment of clerical errors in the order of court without appeal).⁴¹ Nonetheless, it is clear that the new O 9 r 14 of the Rules of Court 2021 only applies to the amendment of pleadings, such as a statement of claim. There is nowhere else in the Rules of Court 2021 that provides for any power of amendment of an order of court. In fact, para 3(l) of the Fifth Schedule to the Supreme Court of Judicature Act 1969⁴² suggests that an order for the issue of a warrant of arrest can only be challenged by the limited avenue of appeal, for which permission of appellate court is required. Accordingly, the shift to the Rules of Court 2021 is unlikely to alter the position in *The Jeil Crystal* (CA).

Turning to the substance of the decision, the Singapore Court of Appeal's holding is consistent with the reasoning in previously decided cases. Quite interestingly, the Singapore High Court in *The Dilmun Fulmar* appeared to implicitly accept that an amendment cannot cure an executed warrant of arrest when an original cause of action was superseded by a fresh cause of action.⁴³

Crucially, while the Singapore Court of Appeal specifically held that an executed warrant of arrest must invariably be set aside when the original claim is completely substituted,⁴⁴ it is somewhat unclear whether an executed warrant of arrest would be upheld where the amendment pertains to a part, and not the entirety, of an original claim. On the one hand, the Singapore Court of Appeal reasoned that a warrant of arrest can only be amended in extremely limited circumstances, such as where there are clerical mistakes.⁴⁵ On the other hand, the procedural facts in *The Vinalines Pioneer* may appear to suggest otherwise.⁴⁶ It is respectfully submitted that the former interpretation would most likely prevail, because it would ultimately be in the interests of justice to ensure the finality of orders of court.

On a final note, it is unclear whether the decision in *The Jeil Crystal* would be followed in countries where the remedy of ship arrest is generally as of right, such

³⁹ See O 3 r 1(2) of the Rules of Court 2021, which explicitly states that the Rules of Court 2021 will be governed by five key ideals: (i) fair access to justice; (ii) expeditious proceedings; (iii) cost-effective work proportionate to the matter or quantum of claim; (iv) efficient use of court resources; and (v) fair and practical results suited to the needs of the parties. See also Chen Siyuan, "The Impact of the Rules of Court 2021 on the Law of Evidence" (2022) 34 SAclJ 328 at 329.

⁴⁰ See *supra* note 20.

⁴¹ Jeffrey Pinsler SC, *Singapore Civil Practice* vol 2 (LexisNexis, 2022) at para 35-28; see *supra* note 33.

⁴² Supreme Court of Judicature Act 1969 ["SCJA"]. For the definition of "order" and "interlocutory application", see *Telecom Credit Inc v Midas United Group Ltd* [2019] 1 SLR 131 at [13], [26]. See further *The Nasco Gem* [2014] 2 SLR 63 at [25], in the context of an admiralty action.

⁴³ *The Dilmun Fulmar* [2004] 1 SLR(R) 140 at [16].

⁴⁴ *The Jeil Crystal* (CA), *supra* note 2 at [59].

⁴⁵ *Ibid* at [38]-[40].

⁴⁶ *The Vinalines Pioneer* [2015] SGHCR 1 at [9]. On the facts of that case, the plaintiff filed and served an amended statement of claim after the vessel was arrested, but such a practice appeared to be accepted without dispute.

as England,⁴⁷ Malaysia⁴⁸ and Australia.⁴⁹ Unlike the Singapore courts, the English courts, for instance, have no discretion to refuse the issuance of the warrant of arrest unless the specific exceptions under Rule 61.5 of the Civil Procedure Rules (UK) are engaged. By the same token, the English courts might well be less inclined to exercise the discretion to set aside a warrant of arrest on the basis of an amended claim. Accordingly, it is conceivable that the English courts might take a different course altogether and find that an issued warrant of arrest is consequentially amended in tandem with the statement of claim.

VI. CONCLUSION

The Singapore Court of Appeal's decision in *The Jeil Crystal* marks yet another important and principled development in admiralty law. Other common law jurisdictions with similar ship arrest principles, such as Hong Kong,⁵⁰ may find this decision highly instructive in determining whether to uphold or set aside a warrant of arrest when a statement of claim had been amended.

As for the plaintiff and the defendant, however, several other legal questions remain unanswered until a future trial of the substantive action.

⁴⁷ *The Varna* [1993] 2 Lloyd's Rep 253 at 257.

⁴⁸ In Malaysia, after their new Rules of Court came into effect in 2012, the issue of a warrant of arrest is as of right and no longer a discretionary remedy for the plaintiff. Presently, there is no requirement of full and frank disclosure, and the arresting party only needs to demonstrate that he has complied with O 70 r 4 of the Rules of Court 2012 (M'sia): *Premium Vegetable Oils Sdn Bhd v The Owners and/or Demise Charterers of The Ship or Vessel "Ever Concord" of The Port of Zanzibar, Tanzania* [2021] 9 MLJ 936 at [32]–[34]. It remains to be seen if Malaysia will revert to its old position (where a warrant of arrest is a discretionary remedy) legislatively as set out in *Shivnath Rai Harnarain (India) Ltd v The Owners of The Ship or Vessel MV "Win Moony" (LR 8204846) of The Port of Valletta, Malta* [2005] 1 MLJ 141 at [86].

⁴⁹ In Australia, the issue of a warrant of arrest is as of right. The Registrar ordinarily does not exercise its discretion once the plaintiff has made full and frank disclosure of material facts to the limited extent that they are specified in Rule 39(3), Form 13 and Rule 40(3) (if so engaged) of the Admiralty Rules 1988 (Aust). See *Atlasnavios Navegacao LDA v The Ship "Xin Tai Hai" (No 2)* (2012) 301 ALR 357 at [81]–[92]; *Kim v Daebo International Shipping Co Ltd* [2015] FCA 684 at [9]; *Delaware North Marine Experience Pty Ltd v The Ship "Eye-Spy"* [2017] FCA 708 at [230]–[231].

⁵⁰ In Hong Kong, the power to issue a warrant of arrest is discretionary. Therefore, the arresting party is required to make full and frank disclosure of all material facts in its supporting affidavit: *Sin Hua Enterprise Co Ltd v Owners of Motor Ship Harima* [1987] HKLR 770 at 772D–773B.