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IN THE JUDICIAL COURT OF THE PRIVY COUNCIL
ON APPEAL FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

THE OWNERS OF THE SHIP "AUGUST 8TH"

APPELLANTS

(Defendants
named in Admiralty
action in rem
No. 37 of 1978)

-and-

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COSTAS BACHAS

RESPONDENT

(Plaintiff in
Admiralty action
in rem No. 37 of
1978)

CASE FOR THE APPELLANTS

1. This is an Appeal from an Order of the Court of Appeal of the Republic of Singapore (Chief Justice Wee Chong Jin, Mr. Justice Kulasekaram and Mr. Justice A.P. Rajah) dated the 3rd November 1980 dismissing an appeal from the judgment of Mr. Justice Choor Singh dated the 11th February 1980. Leave to appeal to the Board was granted by the Court of Appeal in Singapore on the 12th January 1981.

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2. The issues raised for determination on this Appeal are the following:

(a) Is a Plaintiff in an Admiralty action in rem

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entitled to obtain summary judgment against a Defendant who appears before the Court by virtue of the provisions of Order 14 of the Rules of the Supreme Court?

(b) If so, ought the Appellants (the Defendants) to have been given unconditional leave to defend this action?

10 On the Appellants' motion to set aside a summary judgment obtained by the Respondent on the 31st July 1978, Mr. Justice Choor Singh refused to set aside the said judgment. He held that the Respondent was entitled to involve the provisions of the said Order 14 in an Admiralty action in rem. The Court of Appeal unanimously took the same view. It was not contended before either Court that the Appellants (Defendants) ought to have been given unconditional leave to defend the action.

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3. The Appellants contend (as they contended below) that the judgment ought to have been set aside because there was no power in the Court to give judgment summarily in an Admiralty action in rem and accordingly that the Court had no power to give conditional leave to defend or subsequently to give judgment against the Appellants upon the Plaintiff's application.

The history of the litigation:

4. In the following time-table, the Appellants will summarise the proceedings between the Respondent (as Plaintiff) and the Appellants (as Defendants) in Admiralty action in rem No. 37 of 1978:

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January	13th	Writ of Summons issued endorsed with Statement of Claim
	28th	Service of Writ of Summons on the res Appearance entered by the Appellants
March	15th	Summons issued to sign final judgment
	16th	Statement of Claim amended
May	10th	Mr. Registrar Michael Khoo Kah Lip ordered that the Defendants be given leave to defend the action on condition that the Appellants (as Defendants) provide security for the sum of
		S\$95,909.18 within 14 days in default of which the Respondents (as Plaintiff) may enter final judgment for the said sum

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July	31st	Mr. Assistant Registrar Tan Seek Sam entered judgment against the Appellants because they had failed to provide security as aforesaid
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August	8th	The Appellants (as Defendants) served notice of motion to set aside the judgment.
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5. The substance of the action is a claim by the Plaintiff for S\$95,909.18 in respect of wages and emoluments earned as Master on board the Defendants vessel AUGUST 8th and in respect of disbursements paid by him in his capacity of Master on behalf of the Defendants. It is common ground that such a claim is within the Admiralty action of the High Court of the Republic of Singapore by virtue of Section 3 (1) (N) and (O) of the High Court (Admiralty Jurisdiction) Act (Cap. 6) and that the said jurisdiction may be, and in this case was properly invoked, by an action in rem against the ship AUGUST 8th. The Defendants entered an appearance in personam as persons interested in the res. By affidavits filed on the Defendants' behalf in opposition to the Plaintiff's Summons to sign judgment, serious issues were raised for trial. Among other matters, the Defendants disputed that the Plaintiff was employed by the Defendants or was authorised to act on their behalf. they contended that he was employed by another company or companies who were not at any time Owners of AUGUST 8th, and that he was not in command of AUGUST 8th during the period in which he alleged that wages had been earned and sums disbursed.

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6. The Appellants seek leave to submit to the Board that in any event the Registrar ought not to have given conditional leave to defend this action because:

- (i) the affidavit evidence disclosed serious issues of fact that ought to have been tried;

(ii) the Respondent in any event secured in the event of his claim succeeding because the res. the subject-matter of the action, namely the ship AUGUST 8th, was and is under arrest of the Court pending the outcome of the action.

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The Appellants failed either to appeal the order of the Registrar dated the 10th May 1978 or to provide security for the sum through inadvertence on the part of their legal advisers. It was never intended that the matter should go by default or that the claims should be unsecured or that the claim of the Plaintiff should be admitted. Failure to take the measures necessary to preserve the Appellant's position after the Registrar's order of the 10th May 1978 was the result of inexperience and inattention on the part of junior staff who were handling the matter during the relevant period in the offices of the Appellants' advocates and solicitors.

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Application of Order 14

7. The Appellants submit that Order 14 of the Rules of the Supreme Court of the Republic of Singapore has no application to an Admiralty action in rem for the following reasons:

A(i) Order 70 rule 20 provides a complete code setting out the various circumstances in which summary judgment is available in Admiralty proceedings

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(ii) By virtue of Order 70 rule 1 (1), the

application of the other provisions of the R.S.C. to Admiralty proceedings is subject to the provisions of Order 70.

(iii) Accordingly, Order 14 can have no application to Admiralty proceedings.

Alternatively,

10 B If the provisions of Order 14 are capable of being applied to Admiralty proceedings in rem. nevertheless as a matter of policy they ought not to be, because:

20 (i) The Singapore Order 14 rule 1(1) and (2) is in the same terms as the equivalent English provisions (before their amendment in 1975 to take account of the transfer of Admiralty matters to the Queen's Bench Division) Except that sub-rule (2) of the Singapore Order 14 rule 1 does not contain the phrase "in the Queen's Bench Division and Chancery Division" between the words "this rule applies to every action.... begun by writ". This omission was due to the fact that the Singapore High Court is not established in divisions. and the missing phrase was therefore thought to be irrelevant. However, in omitting this phrase it was almost undoubtedly overlooked that its effect in England was to exclude Admiralty proceedings from the operation of Order 14

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and that the result of its omission in the Singapore rules would be to make Order 14 applicable to Admiralty proceedings in Singapore.

(ii) The exclusion of Order 14 from proceedings in rem in England is a matter of policy, the reason being that it has always been considered right that the Plaintiff should be made to prove his case in open court before judgment is given. The consequence of a judgment in rem is for the appraisal and sale of the vessel and the subsequent distribution of the proceeds between all judgment creditors with claims in rem in accordance with the rules governing priority. A judgment may therefore inadvertently affect third parties who have an interest in the res (other than the Defendants who have appeared) and other judgment creditors with equal or lesser priority.

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(iii) Such policy considerations are as relevant in Singapore as in England. Accordingly, the Court should not be deterred from adopting such policy merely by the fact that, when incorporating the English provisions into the Singapore Rules, a phrase appearing to have no relevance to Singaporean conditions was omitted, with the unforeseen results referred to above.



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