



# A SECOND BITE AT SECURITY: MALAYSIAN COURT DRAWS THE LINE ON REPEAT SHIP ARRESTS

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## **A SECOND BITE AT SECURITY: MALAYSIAN COURT DRAWS THE LINE ON REPEAT SHIP ARRESTS**

The Malaysian High Court's decision in *Ist Containers (UK) Ltd v The Owners of the Ship or Vessel MV of the Port of Panama* [2025] MLJU 4599 ("**I<sup>st</sup> Containers**") is a significant development in Malaysian admiralty law. The judgment clarifies the limits of ship arrest as a mechanism for securing or advancing claims where the underlying dispute has already been litigated abroad and confirms a firm judicial stance against the use of admiralty proceedings as a tool for re-litigation or enforcement of foreign judgments.

At its core, the decision addresses a recurring strategic question in cross-border shipping disputes: can a party, having already pursued proceedings and obtained judgment in a foreign court, subsequently commence fresh in rem proceedings in Malaysia and arrest a vessel as "security" for the same dispute?

The High Court answered this in the negative.

### **BRIEF BACKGROUND FACTS**

The dispute arose out of a time charterparty dated 13.1.2022 between the Defendant shipowner and the charterer, Allseas Global Project Logistics Ltd ("**Charterer**"), in respect of the vessel "MV Allseas Pioneer" ("**Vessel AP**"). On board Vessel AP was 774 containers belonging to the Plaintiff which was leased to the Charterer under 2 container lease agreements.

Following the Charterer's default in payment of hire, the Defendant terminated the charterparty and exercised a lien over cargo and bailed goods onboard, including the Plaintiff's containers.

Shortly thereafter, the Plaintiff commenced proceedings in the Rotterdam District Court and arrested Vessel AP as security for its claim. The Plaintiff later voluntarily lifted the arrest of the Vessel AP without securing alternate security. The Rotterdam proceedings then proceeded to full trial, culminating in judgment being entered in favour of the Plaintiff in January 2025. An appeal was filed by the Defendant to the Hague Court of Appeal. In the interim, the Plaintiff repeatedly demanded payment of the Rotterdam judgment sum and threatened worldwide enforcement measures, including the arrest of the Defendant's vessels and judicial sale of the subject vessel.

In March 2025, the Plaintiff commenced admiralty proceedings in Malaysia and arrested the sister vessel "MV Hua Xiang 936" ("**Vessel HX**"). The security demanded in the Malaysian proceedings closely mirrored the Rotterdam judgment sum. The Defendant applied to set aside the Writ in rem and

Warrant of Arrest pursuant to Order 12 rule 10 of the Rules of Court 2012 and the inherent jurisdiction of the Court on the grounds that the Court lacked jurisdiction to hear the proceedings.

### **THE HIGH COURT'S FINDINGS**

The High Court allowed the application, setting aside the Writ in rem and Warrant of Arrest. Three key findings underpin the decision.

#### ***A. The Malaysian proceedings were an abuse of the Court's process***

The Court held that the Malaysian proceedings amounted to an abuse of process. It found that the Plaintiff was seeking to re-litigate substantially the same dispute that had already been determined in the Rotterdam proceedings.

The Court emphasised that the Plaintiff's claim in both jurisdictions was founded on the same factual matrix i.e. ownership and entitlement to 774 containers carried on Vessel AP. Importantly, the Plaintiff had already invoked foreign judicial processes, obtained judgment and was given the opportunity to secure interim relief through the arrest of Vessel AP.

The Malaysian action was therefore not a genuine attempt to litigate a distinct maritime claim, but rather a mechanism to obtain fresh security for an already adjudicated dispute. In these circumstances, the Court held that the proceedings offended the principles of res judicata, issue estoppel, and the prohibition against multiplicity of proceedings.

#### ***B. Admiralty Court has no power to enforce foreign judgment***

The Court noted that the true purpose behind the Plaintiff's arrest of Vessel HX was not to obtain security for the satisfaction of any judgment in the Malaysian proceedings, but rather to secure enforcement of the Rotterdam judgment. The Court's findings were premised on, inter alia, the following reasons:

- (a) In the affidavit leading to the warrant of arrest, the Plaintiff deposed the particulars of the Rotterdam judgment stating that it sought "*the aid and process of this Honourable Court to enforce payment of FCL's claim by arresting MV "Hua Xiang 936" (IMO No.: 9159153 of the Port of Panama*". The payment to be enforced was the judgment sum of the Rotterdam proceedings.

- (b) Both before and after the Malaysian arrest, the Plaintiff had repeatedly demanded payment of the Rotterdam judgment sum and threatened worldwide enforcement measures, including the arrest of the Defendant's vessels and judicial sale of the subject vessel.

The High Court held that the admiralty jurisdiction of the High Court cannot be invoked by the arrest of a vessel for the purposes of obtaining security for the enforcement of a foreign court judgment or as security for foreign court proceedings. Its reasoning was that in Malaysia, an admiralty action in rem may be brought for the purpose of securing the claim that is to be heard and determined in the High Court pursuant to Section 20 to 24 of the UK Senior Courts Act 1981 (“SCA 1981”) read together with Section 24(b) of the Courts of Judicature Act 1964 (“CJA 1964”). There is no power or jurisdiction for the High Court to arrest a vessel in an action in rem to obtain security as enforcement of a foreign judgment or foreign court proceedings.

**C. The “no bar” rule in *The Rena K* does not represent Malaysian law**

To justify the Malaysian arrest, the Plaintiff relied heavily on the English decision in *The Rena K* [1978] 1 Lloyd's Law Report 545; [1979] QB 377 (“*The Rena K*”) and the so-called “no bar” rule. The Plaintiff's position was that under the “no bar” rule established in *The Rena K*, a cause of action in rem, being of a different character from a cause of action in personam, does not merge in a judgment in personam but remains available to the person who has it so long as, and to the extent that, such judgment remains unsatisfied. Hence, the existence of the Rotterdam judgment or whether it is pending appeal is irrelevant. They do not oust the admiralty jurisdiction of the High Court to order security or hear the Plaintiff's claim.

In *The Rena K*, cargo owners commenced an admiralty action in rem against a vessel following damage to a cargo of sugar and arrested the vessel as security for their claim. The shipowners applied for a stay on the basis that the dispute was subject to arbitration. Although the English court granted the stay in favour of arbitration, Brandon J held that the vessel need not be released unconditionally and that the court retained discretion to preserve security pending the outcome of the arbitration. Importantly, Brandon J further held that an arbitral award did not merge or extinguish the underlying cause of action in rem. As such, if the shipowners subsequently failed to satisfy the arbitral award, the cargo owners could revive the stayed admiralty proceedings and proceed against the vessel to enforce the claim.

The High Court held that the “no bar” rule in *The Rena K* does not represent Malaysian law as it was premised on the historical distinction between actions in rem and in personam. Relying on *The Indian Grace (No. 2)* [1996] 2 Lloyd's L.R. 12 (“*The Indian Grace (No. 2)*”), the Court noted that modern admiralty law no longer treats an action in rem as wholly separate from an in-personam action against

the shipowner. Rather, an in-rem action is essentially a procedural mechanism to compel the appearance of the shipowner and, once appearance is entered or security furnished, the proceedings are in substance against the owner personally.

The Court further held that once a final judgment is obtained, the doctrine of merger applies such that the original cause of action is extinguished and replaced by the judgment itself. In those circumstances, the original maritime claim can no longer independently sustain a fresh arrest. The Court emphasised that the “no bar” rule should not be extended to permit multiplicity of proceedings or vexatious litigation, particularly in the context of sister ship arrests after a foreign judgment has already been obtained.

Importantly, the Court also observed that *The Rena K* was decided before the coming into force of the UK Senior Courts Act 1981 and the UK Civil Jurisdiction and Judgments Act 1982. The Court noted that subsequent legislative developments in both England and Malaysia now provide express statutory mechanisms dealing with retention of admiralty security.

In particular, the Court referred to section 10(2A) of the Malaysian Arbitration Act 2005, which preserves a claimant’s right to retain security in respect of maritime claims notwithstanding a stay of court proceedings in favour of arbitration. The Court observed that this statutory framework effectively removes the need for the judicial workaround developed in *The Rena K* in the arbitration context. The Court also referred to sections 26 and 34 of the UK Civil Jurisdiction and Judgments Act 1982, which respectively preserve security where proceedings are stayed in favour of another forum, while also barring subsequent in rem proceedings where the same cause of action has already been determined between the same parties elsewhere.

## **CONCLUSION**

The decision in *Ist Containers* is a clear reaffirmation that Malaysian admiralty jurisdiction is not a parallel enforcement system for foreign judgments, nor a mechanism for obtaining repeated security across jurisdictions for the same dispute.

The Court has drawn a firm line against attempts to use ship arrest as a second bite at security after foreign litigation has already run its course.

At the same time, the decision preserves an important distinction in cases involving arbitration. Where a dispute is subject to arbitration, Malaysian courts may in appropriate circumstances maintain an arrest as security in aid of arbitral proceedings under the Arbitration Act 2005, while staying substantive proceedings in favour of arbitration.

However, a distinction may arise where proceedings are subject to arbitration. In such cases, Malaysian courts may in appropriate circumstances maintain an arrest as security in aid of arbitration under the Arbitration Act 2005, while staying the substantive proceedings in favour of the arbitral forum.

*Note: It should be noted that the High Court's decision in 1<sup>st</sup> Containers is presently subject to appeal and the legal position may therefore be revisited by the appellate courts.*