

The "Orinoco Star"
[2014] SGHCR 19

Case Number : Admiralty in Rem No 383 of 2013 (Summons No 922 of 2014)
Decision Date : 06 August 2014
Tribunal/Court : High Court
Coram : Delphine Ho AR
Counsel Name(s) : Jainil Bhandari & Yip Li Ming (Rajah & Tann LLP) for the Plaintiffs; John Sze & Nicola Loh (Joseph Tan Jude Benny LLP) for the Defendants.
Parties : The "Orinoco Star"

Admiralty and Shipping – Maritime Conventions Act 1911 – Extension of Time

6 August 2014

Judgment reserved.

Delphine Ho AR:

1 This is an application by the Plaintiff, the owners of the "MELODY", for an extension of time up to and including 7 December 2013 for the commencement of these proceedings. The application is brought pursuant to Section 8(3)(b) of the Maritime Conventions Act 1911 ("MCA") ("Section 8(3)(b)").

Background

2 The Plaintiffs and owners of the "MELODY", a vessel flagged in the Marshall Islands, are Gentian Shipping Inc. Gentian Shipping Inc is an entity registered in the Marshall Islands, and has its principal place of business in Greece.

3 The Defendants and owners of the "ORINOCO STAR" (the "Vessel") are Rigel Schiffahrts GmbH & Co KH, a company established in Germany. The "ORINOCO STAR" is flagged in the Isle of Man.

4 On 20 June 2011, the "MELODY" and the Vessel were lying alongside one another at Lagos Anchorage, Nigeria. Due to changing weather conditions, the mooring master at Lagos Anchorage first asked both the "MELODY" and the Vessel to proceed out to sea, and thereafter asked both vessels to return to Lagos Anchorage. The two vessels collided as they were turning around to return to Lagos Anchorage.

5 Following the collision, the parties' respective insurers commenced negotiations in an attempt to resolve matters. Unfortunately, they were unable to do so and solicitors were eventually instructed to handle the dispute on or about 10 September 2013.

6 Negotiations between the parties – relating mainly to issues of security and jurisdiction – continued through the parties' solicitors between September and November 2013. Unfortunately, parties were once again unable to arrive at a common ground.

7 The Plaintiffs commenced these proceedings in Singapore on 6 December 2013. A warrant of arrest for the Vessel was issued on the same day and the Vessel was arrested the afternoon of 6 December 2013 while the Vessel was dry-docked. On 9 December 2013, although no security had

been furnished, the parties agreed to the release of the Vessel.

8 On 20 February 2014, the Plaintiff filed the present summons seeking leave to maintain the action notwithstanding that the action was not commenced within 2 years from the date of the collision, and/or for the relevant period under Section 8 of the MCA to be extended to 7 December 2013.

Section 8 of the MCA

9 Section 8 of the MCA relates to limitation of certain maritime action. The section states:

“Limitation of actions

8. – (1) No action shall be maintainable to enforce any claim or lien against a ship or her owners in respect of –

(a) any damage or loss to another ship, her cargo or freight, or any property on board her, or damages for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former ship, whether such ship be wholly or partly in fault; or

(b) any salvage services,

unless proceedings therein are commenced within 2 years from the date when the damage, loss or injury was caused or the salvage services were rendered.

(2) An action shall not be maintainable under this Act to enforce any contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries unless proceedings therein are commenced within one year from the date of payment.

(3) Notwithstanding subsections (1) and (2), any court having jurisdiction to deal with an action to which this action relates –

(a) may, in accordance with the Rules of Court, extend any such period, to such extent and on such conditions as it thinks fit; and

(b) shall, if satisfied that there has not during such period been any reasonable opportunity of arresting the defendant ship within the jurisdiction of the court, or within the territorial waters of the country to which the plaintiff’s ship belongs or in which the plaintiff resides or has his principal place of business, extend any such period to an extent sufficient to give such reasonable opportunity.”

10 Pursuant to Section 8(1) of the MCA, the limitation period for a claim arising out of the collision on 20 June 2011 would have expired on 20 June 2013.

Extension of the limitation period under the MCA

11 It bears noting that parties may agree to extend the limitation period under Section 8 of the MCA. Indeed, in the present case, there were several instances where the parties purportedly agreed to extend the limitation period, although there is some dispute between the parties as to the scope of these agreements. I shall come back to this issue later.

Historical background to Section 8 of the MCA

12 The MCA was enacted by the United Kingdom Parliament in 1911 to give effect to *inter alia* the International Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels 1910 ("1910 Convention"). The MCA was extended to Singapore in or around 1913, when Singapore was a colony of the United Kingdom. Thereafter, when Singapore became independent, the MCA continued to be part of the laws of Singapore. The MCA continues to apply today as there has been no subsequent act which has repealed its applicability in Singapore.

13 Section 8 of the MCA is based on and is intended to give effect to Article 7 of the 1910 Convention. The Article provides:

"Actions for the recovery of damages are barred after an interval of two years from the date of the casualty.

The period within which an action must be instituted for enforcing the right to obtain contribution permitted by paragraph 3 of Article 4, is one year from the date of payment.

The grounds upon which the said periods of limitation may be suspended or interrupted are determined by the law of the court where the case is tried.

The High Contracting Parties reserve to themselves the right to provide, by legislation in their respective countries, that the said periods shall be extended in cases where it has not been possible to arrest the defendant vessel in the territorial waters of the State in which the plaintiff has his domicile or principal place of business."

14 Section 8(3) of the MCA comprises two limbs, a discretionary limb (i.e. limb (a)) and a compulsory limb (i.e. limb (b)). In *The Llandovery Castle* [1920] P 119, a case which concerned a claim for salvage services that was commenced more than two years after the date when the said services were rendered, the Court examined Section 8 of the MCA and observed:

"There remains the question of whether the plaintiff is entitled to an extension, or, if not, whether the Court, in its discretion, ought to grant an extension. **The proviso to s.8 contains 2 branches. The first is discretionary, and the second compulsory.** The second branch of the proviso is inapplicable to the present case. **The power under that – the compulsory branch – can only be exercised in order to give reasonable opportunity of arresting the ship,** and, as a matter of fact, in this case there is no possibility of arresting the ship because she has been lost."

[Emphasis added.]

The parties' positions

15 The Plaintiffs' application for an extension of time is sought under Section 8(3)(b). The Plaintiffs contend that there had been no opportunity during the two-year limitation period to arrest the Vessel in any of the jurisdictions identified in Section 8(3)(b) – namely Singapore (i.e. the jurisdiction of the Court), the Marshall Islands (i.e. the country to which the ship belongs) or Greece (i.e. the country in which the Plaintiffs have their principal place of business). Accordingly, the Court is obliged to grant an extension of time so as to give the Plaintiffs reasonable opportunity to arrest the Vessel. The Plaintiffs' case is that an extension of time to 7 December 2013 would afford a reasonable opportunity for the Plaintiffs to arrest the Vessel.

16 The Defendants do not dispute that the applicable provision in the present case is Section 8(3)(b). The Defendants also do not dispute that during the two-year limitation period, the Vessel did not call at either the ports of Singapore, the Marshall Islands or Greece. However, the Defendants say that the Plaintiffs' application must fail for the following reasons:

(a) First, as the Plaintiffs had failed to commence its action before the time-bar set in, the Plaintiffs cannot be allowed to rely on Section 8(3)(b) to obtain an extension of time *ex post facto*.

(b) Second, even if the Plaintiffs were entitled to an extension of time, that extension can only extend to the earliest reasonable opportunity for the Plaintiffs to arrest the Vessel. The Defendants contend that the earliest reasonable opportunity was between 9 and 10 September 2013, when the Vessel was in Singapore for 16 hours.

Are the Plaintiffs entitled to rely on Section 8(3)(b) to obtain an extension of time?

17 The Plaintiffs' submission in this regard is simply this: since the Vessel did not call at either Singapore, the Marshall Islands or Greece between 21 June 2011 and 20 June 2013, the Plaintiffs had no opportunity to arrest the Vessel in any of the jurisdictions set out in Section 8(3)(b). In these circumstances, Section 8(3)(b) is directly applicable and the Plaintiffs are entitled to an extension of time under this section.

18 The Defendants say that the Plaintiffs are not entitled to rely on Section 8(3)(b) at all, let alone obtain an extension of time under that section. A significant portion of the Defendants' written and oral submissions was focussed on this issue and the key arguments put forward by the Defendants may be summarised as follows:

(a) The extension of time envisaged under Section 8 of the MCA is intended for situations where the injured parties are in the dark as to who the offending ships are, where the vessel's location cannot be ascertained, or where there was no opportunity to arrest the vessel within the two-year limitation period.

(b) The Plaintiffs elected not to commence any proceedings against the Vessel in Singapore or elsewhere despite knowing the Vessel was involved in the collision.

(c) With the availability of ship-watching services, the Plaintiffs had ample opportunity to track the Vessel and make an arrest. In particular, the Vessel had called extensively at Nigeria, which was where the collision had occurred. However, the Plaintiffs did not seek to arrest the Vessel in Nigeria, or at any of its other stops during the two-year limitation period.

(d) Instead, the Plaintiffs allowed the time-bar to set in before commencing proceedings in Singapore, a jurisdiction which had no connection to the collision, the Vessel or the parties.

(e) In view of the Plaintiffs' own conduct, the Plaintiffs cannot now be allowed to circumvent the statutory time-bar by relying on Section 8(3)(b). Further, to grant the Plaintiffs an extension of time under these circumstances would lead to an absurd or unreasonable interpretation of the Section 8(3)(b), or an abuse of the statutory right to an extension.

19 In support of these arguments, the Defendants have relied on a number of commentaries and materials relating to the purpose of the 1910 Convention and Section 8 of the MCA, including the *Travaux Préparatoires* of the 1910 Convention and the UK House of Lords Hansard on 31 October

1911 which captured the Lords' debate on the Maritime Conventions Bill. The Defendants, however, have not been able to point to any case law directly in support of their arguments, and rely instead on cases supporting a purposive approach to statutory interpretation.

20 It is trite that when considering and interpreting statutory provisions, a purposive approach which would promote the purpose of object of the underlying written law is preferred: see Section 9A of the Interpretation Act (Cap. 1). However, having considered the materials and authorities placed before me, I am not persuaded by the Defendants' arguments in this regard. While I accept that at the time the 1910 Convention and the Maritime Conventions Bill (which consequently became the MCA) were discussed by the relevant lawmakers, the drafters and the legislators had considered certain specific scenarios (e.g. where the injured party was unable to identify or locate the offending ship; or where the shipowner was deceased or had been wound up) where Section 8(3)(b) could be triggered, none of these specific scenarios had been reflected in Section 8(3)(b).

21 Indeed, in his speech at the House of Lords debate on the Maritime Convention Bill (HL Deb 31 October 1911 vol 10 cc16-38), Lord Gorell recommended certain amendments be made to Section 8(3)(b):

"My next Amendment deals with a matter which requires a moment's consideration. In the [1910 Convention] which I have before me there is this provision, that the grounds upon which the periods of limitation – one being the two years already mentioned and the other one year – may be suspended or interrupted are to be determined by the law of the Court where the case is tried; and, further, that the high contracting parties reserve to themselves the right to provide by legislation in their respective countries that the said period shall be extended in cases where it has not been possible to arrest the defendant vessel in the territorial waters of the State in which the defendant has his domicile or principal place of business. The clause as at present drawn only gives a power to extend in the one case where the Court is satisfied that there has not been during such period any reasonable opportunity of arresting the defendant vessel within the territorial waters of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his principal place of business. My next two Amendments have for their object the giving to the Court of a wider discretion. It is not desirable that the only case in which the two years may be extended is where there has been no opportunity of arrest. There might be cases of the death of owners and difficulties of that character, and the time might elapse before matters were put straight. It seems to me desirable that the Court should have a more general extending power than is at present conferred by the clause. **The other alteration is not that the Court "may" extend if there has been no opportunity, but that it "shall" extend. It seems to me that the Court not to be left to exercise its discretion if there has been no opportunity at all within the two years of arresting the vessel. There ought to be a right to an extension, such as the Judge thinks fit, which will give a reasonable opportunity of arresting the vessel.**"

[Emphasis added.]

22 Of particular note is Lord Gorell's recommendation that the word "may", in the context of what would become Section 8(3)(b), be changed to "must" so as to give claimants a right to an extension of time if there had been no opportunity to arrest an offending vessel within the limitation period. This is consistent with the straightforward interpretation and application of Section 8(3)(b) that the Plaintiffs have put forward.

23 Finally, the Defendants' interpretation of Section 8(3)(b) seems to unduly fetter the right of litigants to determine which jurisdiction they wish to pursue their claims in. Litigants are entitled to

elect to sue in one jurisdiction instead of another, whether it is to take advantage of the juridical system in that jurisdiction, or to avoid the disadvantages of another jurisdiction.

24 In the premises, I find that the Plaintiffs are entitled to rely on Section 8(3)(b) to seek an extension of time. I am also satisfied that the Plaintiffs are entitled to an extension of time as there had been no opportunity at all during the limitation period for the Plaintiffs to arrest the Vessel in either Singapore, the Marshall Islands or Greece.

What is the length of extension to be granted to the Plaintiffs?

25 The purpose of any extension under Section 8(3)(b) is to give the Plaintiffs a "reasonable opportunity of arresting the vessel": see *The Llandoverly Castle* [1920] P 119 at 125. This general principle is not disputed by the parties.

26 The Plaintiffs also accept that even where the Court is obliged to extend the limitation period under Section 8(3)(b), the Court retains a discretion as to how much of an extension is necessary in order to give the Plaintiffs a reasonable opportunity of arresting the Vessel.

27 What, then, constitutes "reasonable opportunity"? The learned author of *Admiralty Law & Practice* (Second Edition) observed that:

"In deciding if there was reasonable opportunity to arrest the vessel, a court would consider the number of times the vessel was within jurisdiction, the length of her stay on each occasion, whether the plaintiff had the reliable sources of information as to the presence or existence of the vessel and her presence within jurisdiction and whether, in the circumstances, it was practical to effect an arrest. The question of whether there was reasonable opportunity to arrest the vessel during the limitation period is to be approached objectively."

28 I am of the view that the above commentary is equally appropriate when considering what constitutes a "reasonable opportunity" of arresting a vessel after the expiry of the limitation period.

29 It is helpful, at this juncture, to refer to some of the relevant case law on the factors to be considered when assessing whether there has been a "reasonable opportunity". In this connection, both parties brought my attention to the High Court decision of *The Atlantic Faith* [1977-1978] SLR(R) 505, a case which concerned a claim by the dependents of seamen killed in a 1973 collision between the "Atlantic Faith" and the "Anson".

30 In *The Atlantic Faith*, the plaintiffs commenced the action *in rem* in 1977, more than 4 years after the collision had occurred. The defendants contended that the claim was time-barred under section 8 of the MCA. The plaintiffs did not deny that their claim was time-barred, and applied under Section 8(3)(b) for leave to validate the commencement of proceedings outside of the limitation period.

31 The Court allowed the plaintiffs' application for an extension of the limitation period. In coming to his decision, Justice T Kulasekaram examined the various occasions which the "Atlantic Faith" had called in Singapore. The Honourable Judge accepted that during the applicable limitation period, the ship was in Singapore on two occasions in 1973. However, during this time, the plaintiffs did not have a reasonable opportunity to arrest the ship in view of (i) the uncertainty as to whether the "Atlantic Faith" could be faulted for the collision, and (ii) the plaintiffs' belief (based on information from the Greek newspapers and the Greek Ministry of Mercantile Marine) that the "Atlantic Faith" had sunk or been scrapped after the collision.

32 Following the expiry of the limitation period, the ship was next in Singapore in March 1977, and also in May 1977, before it was eventually arrested in June 1977. On the affidavit evidence, the Honourable Judge was satisfied that the plaintiffs did not have a reasonable opportunity of arresting the ship in Singapore before June 1977. Finally, while the ship had called at Piraeus, Greece – a jurisdiction in which the plaintiffs reside – in February 1976, the Court accepted that any arrest then would have been futile as under Greek law, the action would have been time-barred two years from the time of the collision and the Greek courts did not have any power to extend time.

33 Guidance on what factors to consider in determining a “reasonable opportunity” to arrest a vessel may also be found in cases relating to the renewal of a writ as “very similar considerations apply” whether the “Court is asked to renew a writ ... or whether it is asked to extend the time under Section 8 [of the MCA]”: see *The Owenbawn* [1973] 1 Lloyd’s Rep 56 at 59.

34 In *The Owenbawn*, the plaintiffs had applied to renew an expired writ on the ground that negotiations were ongoing and “the parties were acting through their solicitors on the basis of an implied agreement that litigation beyond the mere issue of writ should be deferred until after it had become clear that no mutually acceptable compromise on both claims could be reached”: see *The Owenbawn* at 60. The renewal was granted by the Admiralty Registrar and the defendants subsequently sought to set aside the renewal of the writ and service.

35 The defendants’ application was dismissed as the Court was of the view that on a “fair construction” of the correspondence between the parties, “there was an agreement that service of the plaintiffs’ writ should be deferred so long as negotiations were ongoing”: see *The Owenbaun*, at 60. Even if there was no such agreement, “the conduct of the defendants in response to the conduct of the plaintiffs [was] of such a character as to lead a reasonable solicitor acting for the plaintiffs to believe that service of the writ could be deferred”: see *The Owenbaun*, at 61.

36 It bears noting that while negotiations *per se* between the parties generally do not amount to good reason to extend time, this is not an inflexible rule. In this connection, Justice MPH Rubin observed in *The Antares V* [2001] 2 SLR(R) 616 at [25]:

“Although it has been said that negotiations between the parties alone do not amount to good reason to extend the period of validity of the writ and that the plaintiffs should protect their position by issuing as well as serving the writ on the defendants, I do not think that this is meant to be applied in a rigid and inflexible manner. The fact is that an attempt on the plaintiffs’ part to serve the writ would in all likelihood have ruined the prospects of settlement, or at least would have been a setback to the negotiation process. The court should therefore take into account all the circumstances which may alter the complexion of each case.”

37 The burden ultimately falls on the Plaintiffs to show the Court that there is good reason for the extension of time to be granted. In *The Lircay* [1997] 1 SLR(R) 699, a case which concerned the extension of the validity of an admiralty writ, the Court held that at [18] that:

“One of the principles was that the power of extension should only be exercised for good reason. Lord Brandon in *Kleinworth Benson [Ltd v Barbrak Ltd (No 3)]* [1987] 2 All ER 289] had observed that it is not possible to either define or circumscribe the scope of the expression good reason and much depended on all the circumstances of the case and hence the application of the phrase must be left to the judge dealing with the matter. There would be good reason for instance where there was an agreement between the parties, express or implied to defer service of the writ or where the delay concerning the application to extend the validity of the writ was induced or contributed by the defendant or his representative. Another salient consideration would be the

difficulty in effective service more particularly if a defendant was evading service. In the end, it was the exercise of discretion by the court which determined whether the writ was to be extended. In the exercise of that discretion – discretion that was undefined – the judge was entitled to have regard to the balance of hardship between the parties as a relevant matter to be taken into account in extending the writ’s validity on an *ex parte* application and further that in doing so, the court may well need to consider whether allowing an extension will cause prejudice to the defendants in all the circumstances of the case.”

Analysis

38 In the present case, it is not disputed that the Vessel called at Singapore (within port limits) on four occasions before its eventual arrest on 6 December 2013. The four occasions were:

- (a) Between 9 September 2013 (18:59 hours) and 10 September 2013 (11:00 hours);
- (b) Between 14 October 2013 (03:56 hours) and 18 October 2013 (16:25 hours);
- (c) Between 7 November 2013 (03:43 hours) and 9 November 2013 (11:55) hours; and
- (d) Between 1 December 2013 (15:55 hours) and 12 December 2013 (17:57) hours.

The first occasion: 9 to 10 September 2013

39 On the first occasion, the Vessel was in Singapore waters for approximately 16 hours. It is not disputed that at this time, although the limitation period under Section 8 of the MCA had expired, the Defendants had in fact procured an extension of time for their claim until 20 September 2013. No such or similar extension had been sought by or granted to the Plaintiffs.

40 The question then, in relation to this first occasion, is whether 16 hours is a sufficient duration to afford the Plaintiffs a reasonable opportunity to arrest the Vessel.

41 In *The Berny* [1977] 2 Lloyd’s Rep 533, five vessels – namely, the “Valny”, “Dalny”, “Dagny”, “Adeny” and “Ylva” – were named on the writ. These vessels were present in English and Welsh territorial waters for between 2 to 5 days each. The court found that for the “Valny” and the “Dalny”, the claimant could have only learned of the vessels’ calls into port after the vessels had left. For the “Dagny” and the “Adeny”, the court found that the claimant could have only learnt of the vessels’ call into port one day before the vessels were scheduled to leave. In the circumstances, the court found that there had not been a reasonable opportunity to arrest these four vessels.

42 However, in respect of the “Ylva”, the court found that the claimant would have learned of the vessel’s calls into port between two to six days before the vessel was scheduled to leave. Accordingly there would have been reasonable opportunity to arrest the “Ylva”.

43 There is no evidence before me as to when the Plaintiffs learned of the Vessel’s arrival in Singapore waters on 9 September 2013. It was also not clear to me, based on the evidence before me, the purpose for which the Vessel had called at Singapore on this occasion.

44 Nonetheless, having regard to the short duration of this call to port, and the fact that the Vessel had only arrived at 18:59 hours (i.e. after office hours) on a Monday evening, and left Singapore waters by 11:00 hours the next morning, I am prepared to accept that on this occasion, there was no reasonable opportunity for the Plaintiffs to have arrested the Vessel.

The second and third occasions: 14 to 18 October 2013, and 7 to 9 November 2013

45 On the second occasion, the Vessel was in Singapore territorial waters for two days, while on the third occasion, the Vessel was in Singapore for almost four days.

46 The Plaintiffs do not appear to dispute that on both these occasions, there was sufficient time for the Plaintiffs to have arrested the Vessel in Singapore. However, the Plaintiffs contend that parties had agreed *inter alia* to an extension of the limitation period. The Defendants disagree.

Extensions of the limitation period agreed between the parties

47 As highlighted earlier, parties had, on several occasions, discussed and agreed to extend the limitation period.

48 First, on or about 13 March 2013, the Defendants requested an extension of time for their claim up to and including 20 September 2013. The Plaintiffs agreed to this extension. At this time, no corresponding extension had been sought by or given to the Plaintiffs.

49 On or about 19 September 2013, parties agreed – through their solicitors – to a “mutual extension of time”. The relevant series of correspondence on this agreed extension begins on 11 September 2013. On that day, at 14:25 hours, the Plaintiffs’ English solicitors (represented by one Mr S) asked the Defendants’ English solicitors (represented by one Mr J) via e-mail whether they could agree that pending a discussion between solicitors on “security/jurisdiction”, parties could agree that “neither side will arrest” the other’s vessels.

50 There was no direct response to this 11 September 2013 e-mail. However, it appears from the subsequent e-mail correspondence that the English solicitors had either met or telephoned each other to discuss their respective clients’ positions.

51 An agreement was eventually reached between the parties on an extension of time to 20 December 2013. This agreement was recorded in two emails, the first being an email from Mr S to Mr J dated 19 September 2013, 10:13 hours, which stated:

“Dear [Mr J],

I confirm that our Clients have agreed to a 3 month mutual extension for the claims, provided the claim is not already time barred. I look forward to hearing from you as to when we can meet to discuss the case generally.”

52 The second being an email from Mr J to Mr S dated 19 September 2013, 10:49 hours, stating:

“Many thanks [Mr S]

Confirm therefore that we have agreed to a mutual extension of time for commencement of Proceedings up to 20 December 2013, subject always to and without prejudice to arguments that claims may already be time-barred.

We also need to tie up Jurisdiction. As to a meeting, week commencing 30 September?”

Was there an agreement between the parties for an extension of the limitation period?

53 Having regard to the e-mail correspondence referred to above, I am of the view that parties had indeed agreed to an extension of the limitation period to 20 December 2013 so as to facilitate parties' further negotiations.

54 The Defendants argued that as the Plaintiffs did not obtain an extension of the limitation period from 21 June 2013 to 19 September 2013, the Plaintiffs' claim was already time-barred; the "mutual extension of time" agreed to on 19 September 2013 could not therefore revive the Plaintiffs' time-barred claim. The Defendants say that this was clearly the intention and meaning behind the words "without prejudice to arguments that claims may already be time-barred" in Mr J's email of 19 September 2013.

55 I found the Defendants' explanation difficult to accept. If the Defendants truly believed that the Plaintiffs' claim was already time-barred, what was the purpose of agreeing to a "mutual extension of time"? This is particularly as, at this time, the Defendants' own claim was still protected from time-bar issues by virtue of the earlier extension of time granted by the Plaintiffs.

56 In the premises, I am of the view that there was an express agreement between the parties for an extension of time to 20 December 2013. Even if there was no express agreement, the Defendants' response to the Plaintiffs on 19 September 2013 (through Mr J), would have led the Plaintiffs to believe that neither party would arrest the other's vessel between 19 September 2013 to 20 December 2013.

57 In light of the above, I do not think that the Plaintiffs' failure to arrest the Vessel in Singapore on the second or third occasions (i.e. in October and November 2013) should be held against the Plaintiffs.

The fourth occasion: 1 to 12 December 2013

58 On this fourth occasion, the Vessel arrived in Singapore on 1 December 2013 and was arrested on 6 December 2013.

59 The Defendants argued that the Plaintiffs should have arrested the Vessel at the "earliest" reasonable opportunity, being shortly after the Vessel arrived in Singapore, instead of waiting almost one week before doing so. The Defendants relied on *The Atlantic Faith* to support this proposition. While I agree that delay or dilatory conduct on the part of a claimant in effecting an arrest would be subject to scrutiny, I do not think that *The Atlantic Faith* stands for the proposition that an arrest after the expiry of the limitation period must be effected shortly after the vessel's arrival in Singapore.

60 Given that the Vessel was being dry-docked in Singapore for a fairly lengthy period, and the mutual extension of time to 20 December 2013, I do not think that the Plaintiffs, by arresting the Vessel only on 6 December 2013 during the fourth port call, were acting in dilatory manner that would dissuade me from exercise my discretion to extend time to 7 December 2013 as prayed for.

Conclusion

61 Accordingly, for the reasons set out above, I am satisfied that the requirements of Section 8(3) (b) have been met and the Plaintiffs are entitled to an extension of time under that section. I am also satisfied that, having regard to the circumstances leading to the arrest of the Vessel on 6 December 2013, the Plaintiffs should be granted an extension of the limitation period to 7 December 2013.

62 I will now hear parties on costs.

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