

**IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE**

**ADMIRALTY ACTION NO. 20 OF 2002**

Admiralty action in rem against  
the vessel "WALRUS" (Panama Flag)

BETWEEN

THE OWNERS OF THE VESSEL  
"TONG YUN 87"

Plaintiffs

and

THE OWNERS AND/OR DEMISE  
CHARTERERS OF THE SHIP OR VESSEL  
"WALRUS"

Defendants

Coram: Mr. Registrar C. Chan in Chambers

Date of Hearing: 5 February 2004

Date of Judgment: 5 February 2004

Reasons for Decision

This is an application by Mr. Lamplough on behalf of the Defendants pursuant to Order 75 rule 41(7) to strike out the claim of the Plaintiffs on the ground that the Defendants had failed to comply with the Rule 41. At the time of hearing I gave the reasons for decision orally. I

now reduce them in writing for the purpose of seeking direction from the judge in charge of Admiralty List.

2. The main complaint by Mr. Lamplough is that the Plaintiff made appointment for hearing for assessment of damages without filing any affidavit or other documentary evidence pursuant to paragraph (6) of the Rule. There is nothing in support of the Plaintiff's claim.

3. I agree with Mr. Lamplough that Rule 41 has clearly set out the procedure:

(i) The claimant must within 2 months after the order is made file its claim (subrule (1) of the Rule). In the present case, the Plaintiff has complied with this.

(ii) At any time thereafter but not later than 28 days before the day appointed for hearing, any party may apply to the Registrar for directions which includes filing of defence etc. (subrule (2)). Very often litigants in Hong Kong ignore this as in this case. No summons was taken out.

(iii) Instead, the Plaintiff in this case applied to fix a date for hearing (subrule (3)). It was fixed for today with 15 minutes reserved. The Plaintiff also entered a praecipe requesting the entry of the reference in the list for hearing pursuant to subrule (5).

4. I was told that meanwhile solicitors for the Defendants wrote to the Plaintiff's solicitors requesting for particulars as well as evidence to

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substantiate the Plaintiff's claim. Ms. Man for the Plaintiff told me that she had not replied to the letter because appropriate directions would be sought and likely be given at the first hearing.

5. I must confess that rightly or wrongly I have inherited the practice of treating the first hearing as a call-over when parties will seek directions though usually no formal application for such is made in writing. More often than not parties can agree upon the terms and directions are made accordingly. I always wonder why parties cannot agree among themselves without a court order.

6. In the present case, Mr. Lamplough considered that the Plaintiff had not complied with subrule (6) of the Rule in that it failed to file evidence. As there was no evidence to support the claim at the hearing he sought to strike out the Plaintiff's claim.

7. Ms. Man was taken by surprise as she had not been told at any time before the hearing that such point would be raised. I accept that the present practice is not a desirable one. Rule 41 has clearly set out the procedure which one can easily follow. I do not know why and how a call-over practice has been developed and put in place. But, Ms. Man is totally unprepared for argument on this application by the Defendant. It is unfair to her.

8. Definitely, I will seek a direction from Mr. Justice Waung, the Judge in charge of the Admiralty List, whether the present practice of call-over should continue. In any event, I feel not right to strike out the Plaintiff's claim because of the non-compliance of the Rule due to the established existing practice.

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9. I grant the directions as suggested by Ms. Man in the draft submitted by her to me before the hearing.

(Christopher C. Chan)  
Registrar, High Court

Ms. W. K. Man of Crump & Co. for Plaintiffs

Mr. Lamplough of Messrs. Holman, Fenwick & Willan for Defendants