

SOUTH AFRICA / JUDGMENT

Nadella Corporation v MV "Falcon Traveller" and Another (A74/2015) [2016] ZAKZDHC 59 (1 April 2016) [2016] ZAKZDHC 59

COURT

Kwazulu-Natal High Court, Durban

BEFORE

Poyo Dlwati

CASE / FILE NUMBER

A74/2015

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IN

THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL

LOCAL DIVISION, DURBAN

(Exercising

its Admiralty Jurisdiction)

Case

No: A74/2015

Name

of Ship: MV "FALCON TRAVELLER"

In

the matter between:

NADELLA

CORPORATION APPLICANT

and

MV

"FALCON

TRAVELLER" FIRST

RESPONDENT

NEWBROOK

SHIPPING CORPORATION SECOND

RESPONDENT

In

an application for setting aside of the arrest of the First

Respondent in terms of section 5 (3) of the Admiralty Jurisdiction

Regulations Act No. 105 of 1983 (As amended)

JUDGMENT

POYO DLWATI J:

[1] Two applications were argued before me. The first application was for the setting aside of the arrest of the first respondent, MV

"Falcon Traveller" (Falcon Traveller) by the applicant, Nadella Corporation (Nadella). The arrest was pursuant to an order granted ex parte, in chambers, by Lopes J on 16 September

2015. The arrest was for the purpose of providing security for claims which Nadella intends to advance in arbitration proceedings in Singapore against Falcon Carrier Shipping Limited (Falcon Shipping) for US\$5 247 358.56 plus interest and costs.

[2] The second application was for an order to execute, pending appeal, Lopes J's judgment of 23 December 2015 wherein he ordered as

follows:

'(a) the applicant is directed to provide security for the claims by the second respondent in the sum of US \$827 849;

(b) the registrar of this court is directed to determine the amount of security for legal costs appropriate for the second respondent's defence of the applicant's application under case number A74/2015;

(c) the applicant is directed to provide security to the satisfaction of the registrar of this Court, for the amounts referred to above, within seven days of this order or such determination;

(d) the costs of this application for counter-security are to be paid by the applicant, including the costs of senior counsel.'

[3] I will deal with the application for the setting aside of the arrest first. Nadella sought an order in terms of section 5(3)(a) of the Admiralty Jurisdiction Regulation Act, 1983 (the Act) [1] for the arrest of the Falconer Traveller. It alleged that the Falconer Traveller is an associated ship in respect of the MV "Falcon

Carrier" (the Falcon Carrier). By way of background, Nadella purchased the Falcon Carrier from Falcon Shipping on 1 November 2013. The purchase price payable was the sum of US\$601 114.24. Nadella took delivery of the Falcon Carrier on 11 November

2013. Clause 9 of the sale agreement provided that

'the sellers warrant that the vessel (Falcon Carrier), at the time of delivery, is free from all charters, encumbrances, mortgages and maritime liens, or any other debts whatsoever. The sellers hereby undertake to indemnify the buyer against all consequences of claims made against the vessel which have been incurred prior to the time of delivery'.

[4] Nadella alleged that Falcon Shipping breached the warranty clause in the sale agreement pursuant to which the seller warranted that, at the time of her delivery to Nadella, Falcon Carrier would be free of all liens and encumbrances. This was as a result of Nadella

having received a notice of claims in the sum of US \$420 515 plus interests and costs of £68,500 from the Falcon Carrier's

erstwhile charterer Samchira DMCC (the charterer). Pursuant to this notice Nadella caused Falcon Shipping to issue a certificate on 11 November 2013 which read

'Falcon Carrier Shipping Limited certifies on the 11th November 2013 the vessel Falcon Carrier is free from all encumbrances; maritime liens and any other debts and liabilities of any description whatsoever and indemnifies the Buyers against consequences of any claims which have been incurred prior to the delivery of the vessel'.

The certificate was signed by Nico Poons (Nico) as a director of Falcon Shipping and attached as an addendum to the sale agreement.

[5] Subsequently, between 16 and 18 November 2013 Nadella received threats of arrest of the Falcon Carrier from the charterer. Falcon

Shipping dismissed these threats as spurious and denied any liability. It advised Nadella that the matter was between the owner

and the charterer and would be resolved by an arbitration tribunal and did not concern the vessel (Falcon Carrier). On the strength of this assurance, Nadella sold the Falcon Carrier to PHP Ship Breaking and Re-Cycling Industries Ltd (PHP) on 17 December 2013. The Falcon Carrier was sailed to Chittagong, Bangladesh where she was to be delivered to PHP on 28 December 2013. On 31 December 2013, the charterer instituted arrest proceedings against the Falcon Carrier in the Supreme Court of Bangladesh, High Court Division. It claimed an amount of US\$368 563.56 against the Falcon Carrier and or Falcon Shipping and their agent Reliance Shipping Company Limited for the recovery of damages and compensation.

[6] Nadella alleged that as a result of those arrest proceedings it sent an email to Clarksons (Falcon Shipping's legal representatives) requesting that it be provided with documentation and information relating to the arbitration in Rotterdam. It further advised that Falcon Shipping was in breach of the sale agreement as a result of the charterer's claims. Clarksons advised Nadella that Falcon Shipping did not accept that it was in breach of any clauses of the sale agreement nor was it liable for any claims. It was,

however, prepared to assist Nadella and furnished copies of the required documents. The Falcon Carrier was however arrested on 3 March 2014 in Bangladesh. Nadella, therefore, could not deliver the Falcon Carrier to PHP on 5 March 2014 as agreed. After various

extensions, Nadella cancelled the agreement with PHP without liability.

- [7] However, on 11 March 2014 PHP launched proceedings in the Bangladesh High Court against the Falcon Carrier and its owners for damages and a declaration of proportional ownership of the Falcon Carrier. PHP also launched an application against Nadella seeking specific performance in terms of their agreement. However, these disputes have since been settled. Attempts to have the Falcon Carrier's arrest set aside in Bangladesh were unsuccessful. As a result Nadella was obliged to tender security for the charterer's claim to procure the release of the Falcon Carrier. The Falcon Carrier was released and was thereafter in the process of being scrapped.
- [8] In this court, Nadella claims that Falcon Shipping breached clause 9 of the sale agreement. In its view the warranty provision extended to any claim that is enforceable against the Falcon Carrier, even if the claim might ultimately be demonstrated to be spurious. It alleges that were it not for the claim by the charterers and the arrest of the Falcon Carrier, Nadella would have delivered the Falcon Carrier to PHP and would have made a profit on the resale. It alleges that it has also suffered loss as a result of costs relating to maintaining the Falcon Carrier and the costs of settling PHP's claim together with legal costs associated therewith. Even though a demand was made to Nico for the sum of US\$3 446, 352.00 no payment was received. The claim as it stands is US\$5 247 358.56 after the capital amount was recalculated. Nadella therefore intends to institute arbitration proceedings against Falcon Shipping for its alleged claim. It is for these reasons that Nadella sought the arrest of the Falcon Traveller as security for costs for such arbitration as it believes it is an associated ship of the Falcon Carrier as contemplated in sections 3(6) and 3(7) of the Act.
- [9] To substantiate this allegation, Nadella avers that at the time that the charterer's claim arose the Falcon Carrier was owned 100% by Falcon Shipping whilst the Falcon Traveller was owned 100% by the second respondent, Newbrook Shipping Corporation (Newbrook). It further alleges that on 5 January 2007, Condor Financial Services Ltd agreed to make a credit facility available to Falcon Shipping,

Newbrook, Falcon Cape Shipping Corporation and Delta Carriers S.A of up to US\$125 million. As a result a second preferred mortgage was registered over the Falcon Carrier, the Falcon Traveller and two other vessels. The junior credit facility agreement attached to the second preferred mortgage showed that it was signed by Nico and Ronald Eli Poons (Ronald) on behalf of the borrowers whilst the Power of Attorney was signed by Nico, Ronald and three other persons as lawful attorneys for Condor.

- [10] Furthermore, Nadella alleges that the Falcon Carrier and the Falcon Traveller were managed by J. Bekkers CO.Bv (Bekkers), a company registered in the Netherlands. The report obtained from Lloyds List Intelligence Vessel reflects that historically the Falcon Carrier was owned by Bekkers whilst the beneficial owner of the Falcon Traveller is Bekkers. A company search revealed that the shares in Bekkers are owned by Stichting Administratiekantoor J.Bekkers Co (Stichting). The director of Bekkers is Hendrik Jan Phillipus Van Blanken (Van Blanken). The director of Stichting is Ronald. The previous shareholders and directors of Bekkers were Ronald and Nico but this has not been the case since 2007. According to market enquiries

conducted it seemed that Ronald and Nico still

retain the ultimate ownership of Bekkers. Nadella therefore, believes that the plausible inference that can be drawn is that Ronald and his son, Nico are beneficiaries of Stichting or at the very least that they control it hence the irresistible inference is that Falcon Shipping, at the time that Nadella's claim arose, was controlled by the same entity that controls Newbrook, the owner of the Falcon Traveller.

[11] On the other hand, Newbrook in its answering affidavit claims that the Falcon Carrier and the Falcon Traveller are neither owned

nor controlled by one entity. It alleges that Nadella has not discharged the onus of proof to justify the arrest. Furthermore Nadella has failed to establish a prima facie case in relation to the merits of its alleged cause of action, namely an enforceable maritime claim. It has failed to show, on a balance of probabilities, that it has a genuine and reasonable need for security and has failed to show the alleged claim of association. According to Newbrook the Falcon Carrier and the Falcon Traveller are entirely subject to different ownership and control even though at some stage they were subject to common management. Furthermore Ronald, through the Atlantic Ocean Trust (Trust), as he is the only beneficiary of the Trust, owns Newbrook which owns the Falcon Traveller. It was further averred that Newbrook and Falcon Shipping are not, and were not, at the time when the maritime claim arose, owned or controlled by the same person or legal entity. Furthermore Bekkers was only the manager of the Falcon Traveller and the Falcon Carrier at some other time. It was averred that even though Ronald and Nico are father and son, they however run their respective companies completely independently of each other.

[12] On the issue of the cross mortgaging, Newbrook admitted that the Falcon Traveller was indeed cross mortgaged with the Falcon Carrier and other two vessels in a second preferred mortgage. It averred that at the time of taking out the cross mortgages on the Falcon Traveller and Falcon Carrier owned indirectly by Ronald and Nico respectively, the two were in a healthy family relationship and

did from time to time engage with each other in respect of their commercial activities and that due to financial benefits they elected to cross mortgage the vessels in their own respective fleets. The cross mortgage was therefore for commercial reasons. However, on or about 2012, the relationship between Ronald and Nico deteriorated but due to technicalities in amending the cross mortgage instruments, the documents remained unchanged.

[13] Ultimately, Newbrook denied that Falcon Shipping was indebted to Nadella or the charterer in any way. It averred that at the date

of delivery of the Falcon Carrier, 11 November 2013, there were no claims or debts against the Falcon Carrier and upon delivery to Nadella ownership of the Falcon Carrier was transferred to it. It was further alleged that any claims relating to the sale of the Falcon Carrier were as a result of the risks undertaken by Nadella as it knew before those further agreements that there were potential claims against the Falcon Carrier by the charterer. It was further contended that

Nadella had an option to cancel the sale with PHP but, on its own, elected to proceed with the sale and it should therefore face the consequences of its decision. This was especially so since Nadella had failed to join Falcon Shipping in all relevant court proceedings relating to the Falcon Carrier in Bangladesh. Furthermore Falcon Shipping had indemnified Nadella against all consequences of claims against the Falcon Carrier which had been incurred prior to the time of delivery, 11 November 2013.

[14] The issue of whether Nadella was justified in seeking the arrest of the Falcon Traveller in terms of the provisions of s 5(3)(a) of the Act was in my view dealt with in the judgment of Lopes J dated 23 December 2015 and I associate myself with the conclusion he reached in paragraph 46 thereto.[2] Furthermore that Nadella has an enforceable maritime claim against Falcon Shipping is borne out by Newbrook's offer to tender security

to Nadella for the charterer's initial claim of US\$368 563.56. This was the reason for Falcon Carrier's arrest in Bangladesh in the first place. I am therefore, satisfied that Nadella has an enforceable claim against the Falcon Traveller as it has a prima facie case against Falcon Shipping and has a genuine and reasonable need for security in respect of the claim.[3]

[15] However, that is not the gist of the matter nor is it the end the enquiry. The next issue I must decide is whether the Falcon Traveller is an associated ship to the Falcon Carrier. It is trite that for this court to find that the Falcon Traveller was an associated ship to the Falcon Carrier, I must be satisfied, on a balance of probabilities that the two vesselss were, at the time that Nadella's claim arose, owned and or controlled by one person or entity. Nadella bears the onus and this was common cause between the parties.[4] Section 3(7)(a) of the Act defines an associated ship as a ship,

'other than the ship in respect of which the maritime claim arose-

(i) owned, at the time when the action is commenced, by the person who was the owner of the ship concerned at the time when the maritime

claim arose; or

(ii) owned, at the time when the action is commenced, by a person who controlled the company which owned the ship concerned when the maritime claim arose; or

(iii) owned, at the time when the action is commenced, by a company which is controlled by a person who owed the ship concerned, or controlled the company which owned the ship concerned, when the maritime claim arose.'

And subsection 3(7)(b) states as follows:

'(b) For the purposes of paragraph (a)-

(i) ships shall be deemed to be owned by the same persons if the majority in number of, or of voting rights in respect of, or the greater part, in value, of the shares in the ships are owned by the same person;

(ii) a person shall be deemed to control a company if he has power, directly or indirectly, to control the company;

(iii) a company includes any other juristic person and anybody of persons, irrespective of whether or not any interest therein consists of shares.'

[16] It is evident in the papers before me that there can be no dispute as to who owned the two ships at the time when the maritime claim arose, namely, 11 November 2013. The Info Spectrum report, (annexure 'ARV 22' to Nadella's founding affidavit at page 120 of the indexed papers) which seems not to be disputed by the parties suggests that the Falcon Carrier was owned, at the time that claim

arose, by Falcon Shipping whose sole director is Nico. The Falcon Traveller was owned by Newbrook which was owned by the Trust whose sole beneficiary according to its trust deed is Ronald. This is further confirmed in the certificate of ownership and encumbrance

attached to Nadella's founding affidavit at pages 124A and 1258 respectively. Although Bekkers is shown as the beneficial owner in some of these printouts, I am satisfied that these are not accurate.

[17] I say so because if one has regard to annexure 'ARV 22', at page 122 the report confirms that the two vessels were held under the

management of Bekkers. Furthermore in annexure '24' at page 194 of the indexed papers the beneficial owner is described as

'being deemed to be the ultimate owning entity or representative thereof (either individual, or company, group or organisation). The beneficial owner may be the vessel's management company or the trading name of a group, both of which are generally perceived to represent the ultimate owners of the vessel'.

On perusal of those pages, it is evident that Bekkers is reflected as the beneficial owner and Newbrook Shipping Corporation as the registered owner.

[18] Furthermore an agreement of general agency between Newbrook and Bekkers dated 1 September 2014 attached to Newbrook's affidavit at page 245 is the further evidence that the Falcon Traveller was not owned by Bekkers but by Newbrook. If Bekkers owned it, there would not have been a need for the agreement. That Bekkers were merely managers of the two ships is further confirmed by the affidavits of Roeland Golterman, a legal advisor of Bekkers and Van Blanken, a director of Bekkers. To put this matter to rest, annexure 'PJF 21', (on page 481 of indexed papers) annexed to Nadella's answering affidavit, states the following

'the orders have been credited to Dutch firm J Bekkers but it is understood the firm is acting as technical manager and new building supervisor on the order'.

I, therefore, am satisfied that Bekkers was not the owner of either the Falcon Carrier or the Falcon Traveller at the time that Nadella's claim arose but was its managers.

[19] Perhaps whilst dealing with Bekkers, it is convenient at this stage to deal also with the question of whether Bekkers controlled

the two vessels. Bekkers is fully owned by Stichting. Ronald was the sole registered shareholder of Bekkers until November 2008 when the shareholding was transferred to Stichting. Nico has never been a shareholder of Bekkers but a director and this, accords with the evidence that at times ship owners would be directors of the management companies to look after their interests. The only director of Stichting is Ronald. It is not in dispute that the duties performed by a management company are those of a professional nature to the owners of the vessels. These include, but not limited to ensuring that the ship complies with international rules and regulations; is run in a safe and cost efficient manner and that the environment is taken care of.

[20] They also perform technical, commercial and crew management of the ship. This, however, does not mean that they own or control the direction and fate of the vessel but manage it and act as agents for the owners.[5] To illustrate this point Smalberger JA in *MV Heavy Metal* supra held that

"Power" is not circumscribed in the Act. It can be power to manage the operations of the company and power to determine direction and fate of the company. Where these two functions happen to vest in different hands, it is the latter which the Legislature had in mind when referring to power and hence the control. In South African legal terminology, that means the person who controls the shareholding in the company'.

No evidence has been adduced, on a balance of probabilities, that Bekkers had power to control the fate of the two vessels and therefore Nadella has failed to discharge this onus.

[21] During argument, Mr Mullins SC on behalf of Nadella argued that if there had been a fall out between Ronald and Nico, Nico would

not have left the management of his ship in his father's company. He argued that if anything it seemed that the fallout did not affect the business relations of the two. However, as I alluded to above, Bekkers is merely a management company and does not control the fate of either the Falcon Traveller or the Falcon Carrier. Its director is Van Blanken and I would imagine that he directs the day to day operations of the company. There is no suggestion that Ronald attends to them. I therefore do not see anything sinister in leaving the Falcon Carrier to be managed by Bekkers especially if he knew that he was going to sell it or that he was not going to meet Ronald all the time that he deals with Bekkers. I remain unpersuaded by this argument.

[22] I now come to the issue as to whether the two vessels were associated by virtue of the cross mortgaging. As alluded to in para 9

supra, Nadella's assertion is that by a second preferred mortgage dated 5 January 2007, Falcon Shipping mortgaged the Falcon Carrier as security for a loan or facility in the sum of US\$125 million provided by Condor Financial Services Ltd (Condor) of Tortola, British Virgin Islands. On the same date, also, by a second preferred mortgage Newbrook cross mortgaged the Falcon Traveller as security for the same loan or facility in the sum of US\$125 million provided by Condor. According to the Info Spectrum report provided by Nadella five (5) ships were part of this mortgage. Nico is the person that signed the junior credit facility agreement forming part of the said second preferred mortgage, whilst five persons including Nico and Ronald signed the Power of Attorney issued by Condor annexed to the bond.

- [23] However, according to Newbrook the cross mortgaging was done for commercial reasons. Furthermore, at the time of taking out the cross mortgages Ronald and Nico were in a healthy family relationship and did, from time to time, engage with each other in respect of their commercial activities and that due to financial benefits they decided to cross mortgage the vessels in their respective fleets. However, the relationship between Ronald and Nico deteriorated during 2012 due to family problems and they are no longer collaborating in their businesses. It was explained by Newbrook that due to the technicalities involved with the cross mortgage instruments, the mortgages were never changed after the breakdown in their relationship.
- [24] This breakdown was evidenced by a letter addressed to Nico by Ronald's Belgian lawyer where he accused Nico of various improprieties. Contrary to what Nadella averred and what was argued on their behalf, the letter seems to bear out the fact that Ronald still wants to be very much involved in the control of his assets. This letter was written on or about 4 November 2013 before the Falcon Carrier was delivered to Nadella and that was before the claim arose and before the Falcon Traveller was arrested. Importantly though, there is no allegation in that letter that Nico had taken control or had the power over the Falcon Traveller at any stage.
- [25] Whilst I agree that cross mortgaging of the various vessels might be a strong indication of association, that can be so if the cross mortgaging has not been explained. In this instance, I am satisfied with the explanation tendered by Newbrook that the cross mortgaging was for commercial reasons and that the mortgage documents could not be easily amended after the fallout in the relationship. This is also borne out by the fact that even the Trust Deed that appoints Nico as the successor to Ronald has not been amended after the breakdown in their relationship. We also do not know much about the other two vessels that were mortgaged with the Falcon Carrier and the Falcon Traveller. However, it seems to me that the fact that each of the owners of the five vessels signed the power of attorney to the mortgage documents shows that each of them controlled and were responsible for their own vessels.
- [26] Furthermore the cross mortgaging was executed in 2007 before the maritime claim arose and before the fall out in the relationship

between Ronald and Nico. Even if Nico would have been in control of all the vessels which were part of the cross mortgagees, which I do not accept as there is no evidence to substantiate this, this would have changed after 2012 when his relationship with Ronald

deteriorated. It could be so that perhaps the plan was for Nico to take control of the family empire as argued by Mr Mullins SC but there is no doubt that this changed after Ronald's new wife came into the picture. If anybody would have had control of these entities it would have been Ronald but there is not an inch of evidence that suggests that he controlled Falcon Shipping at any stage. In my view, therefore, whilst suspicion has been generated that the cross mortgaging might be an indication of some control, this is not sufficient to discharge the onus on a balance of probabilities.

[27] Mr Mullins SC further argued that because of Ronald's age he probably is not able to control his maritime fleet. However there is

no evidence to substantiate this claim. Contrary it seems that assets in the Poon's family are being pulled from all directions, namely, by Ronald's new wife and Nico on the other side. There is no evidence of a joint family empire controlled by Nico. Mr Mullins SC also made much about what Mr Golterman said in his letter, namely that 'Ronald has no control over these things happening'. My understanding is that this means that he cannot control a bad or poor relationship between his new wife and Nico. Mr Mullins SC also took issue about the absence of Ronald's confirmatory affidavit in these proceedings. This was only raised in his heads of argument and during argument. I will address this issue only for the sake of completeness as it was not raised in any affidavits filed before me and therefore Newbrook did not have an opportunity to respond appropriately to it. Mr Golterman as the legal advisor to Ronald has filed an affidavit on his behalf. Also both parties have relied heavily on hearsay evidence as allowed in s 6(3) of the Act, there is no reason why this should not be allowed and accepted in respect of Newbrook. I therefore accept that Golterman is duly authorised to act on behalf of Newbrook especially in the absence of any evidence to the contrary and there is therefore

no need for Ronald's affidavit.

[28] Finally Mr Mullins SC argued that in the event that I am not satisfied that association has been proved on the papers I must refer

the matter for oral evidence. However, I agree with Mr Harpur SC that this will be another fishing expedition by Nadella. There are no serious disputes of facts and in any event as this is an application I have borne in mind that whether there is a dispute of facts the test as laid down in *Plascon-Evans Paints Ltd v Van Riebeeck Paints Pty Ltd* [1984] ZASCA 51; 1984 (3) SA 623 (A) is still applicable. In my view the probabilities favour Newbrook and I am not persuaded that the balance of probabilities would be materially disturbed by oral evidence. This will further cause an inordinate delay in finalising this matter and Newbrook will be continually mulcted with the costs of maintaining an arrested ship. I therefore decline to refer the matter to oral evidence.

[29] I have been advised that I no longer have to decide the second application as the application for leave to appeal has since been

dismissed by the Supreme Court of Appeal. I therefore make the following order:

Order

- (a) The arrest of the MV "Falcon Traveller" is hereby set aside;
- (b) The applicant is ordered to pay the costs of the respondents including the costs of the application to arrest which costs include those consequent upon the employment of Senior Counsel.

Poyo Dlwati J

APPEARANCES

Case Number: A74/2015

Applicant: Nadella Corporation

Represented by: Mr Mullins SC

Applicant's Attorneys: Clyde & Co - 021 286 0353 (Cape Town)

C/o Cox Yeast - 031 536 8520 (Durban)

First Respondent: MV "Falcon Traveller"

Second Respondent: Newbrook Shipping Corporation

Represented by: GD Harpur SC

Respondent's Attorney: Norton Rosefulbright South Africa Inc

031 582 5600

Date of Hearing: 04 February 2016

Date of Judgment: 01 April 2016

- [1] A court may in the exercise of its admiralty jurisdiction order the arrest of any property for the purpose of providing security for a claim which is or may be the subject of an arbitration or any proceedings contemplated, pending or proceeding, either in the Republic or elsewhere, and whether or not it is subject to the law of the Republic, if the person seeking the arrest has a claim enforceable by an action in personam against the owner of the property concerned or an action in rem against such property or which would be so enforceable but for any such arbitration or proceedings.

- [2] 'I am no means persuaded that Newbrook has established, even at a prima facie level, that the mv 'Falcon Traveller' was arrested

without reasonable and probable cause. The long standing dispute between the parties regarding the agreement of the sale of the mv 'Falcon Traveller' evidences that Nadella has a subjectively honest belief that it was entitled to arrest the ship as security for its claim.

- [3] See, Cargo Laden and Lately Laden on Board the MV Thalassini Avgi v MV Dimitris 1989 (3) SA 820 (A) at 831 and confirmed in Bocimar MV v Ko/or Overseas Shipping Ltd 1994 (2) SA 563 (A).
- [4] See, Cargo Laden supra at 834D-F and Bocimar at 5818-E and confirmed in MV Silver Star; Owners of/he MV Silver Star v Hilane Ltd 2015 (2) SA 331 (SCA) para 39.
- [5] See MV Heavy Metal; Belfry Marine Ltd v Palm Base Maritime SON BHD 1999 (3) SA 1083 (SCA) at para 8 of Smalberger JA's judgment.

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