

THE RELATIONSHIP OF SECURITIES OVER SUBROGATION, AND ADMIRALTY PROCEEDINGS: *DA HUI SHIPPING (PTE) LTD V AN RONG SHIPPING PTE LTD* [2025] SGCA 30

Thea Gendner* and Kanaga Dharmananda SC**

Facts of the case

A decision from Singapore has reminded readers of the nature of admiralty proceedings.

The dispute at the heart of this case arises from a loan facility granted in 2018 by the Bank of America (BOA) to two affiliated entities: Da Hui and An Rong. The facility, amounting to US\$37.2 million, was intended to refinance vessels owned by the borrowers, who were jointly and severally liable under the agreement. Da Hui was the registered owner of the *Sea Equatorial*, while An Rong owned the *Ocean Goby* and the *Ocean Jack*. There was a cross-collateralisation clause such that the vessels stood as security for the whole loan, even though the vessels were owned by different entities. BOA registered as the mortgagee of the three vessels.¹ The loan was divided into three tranches, each earmarked for a specific vessel: Tranche A (US\$12m) went towards the *Sea Equatorial*; Tranche B (US\$12.6 m) and Tranche C (US\$12.6m) went towards the An Rong vessels.² In total, US\$28,962,500 was drawn down by the borrowers.³

Financial difficulties followed. Inevitably, the borrowers defaulted. In a bid to mitigate the situation, Da Hui and An Rong agreed to sell the *Sea Equatorial*. The sale, completed in October 2020, generated US\$21,477,121.86. The proceeds were used to repay not only Da Hui's portion of the loan (Tranche A) but partially covered An Rong's debt obligations and BOA's related costs and expenses.⁴ BOA subsequently commenced admiralty *in rem* proceedings to recover the outstanding debt. As part of these proceedings, the *Ocean Jack* and the *Ocean Goby* were arrested and sold for US\$9,220,430⁵ and US\$8,878,390⁶, respectively. BOA's claims were satisfied through these proceeds.

The case took a further turn when the remaining sale proceeds were distributed among other *in rem* creditors, namely Societe Generale and PetroChina, who had initiated separate admiralty proceedings and had already obtained priority orders in court.⁷ Da Hui, having effectively contributed to the repayment of An Rong's debt through the sale of the *Sea Equatorial*, challenged this distribution.⁸

Da Hui sought a declaratory order asserting the right to be subrogated to any BOA securities satisfied as a result of repayment. Da Hui argued that he had acquired a proprietary interest in the proceeds of the *Ocean Jack* and *Ocean Goby*, given that the sale of the *Sea Equatorial* helped reduce the debt secured by those ships. Da Hui further claimed that liability under the loan agreement should be apportioned according to the designated tranches, and not presumed to be equal. On that basis, Da Hui requested contribution from An Rong and contended that BOA's costs and expenses ought to be shared proportionally between the borrowers, in accordance with the funds drawn under each tranche.⁹

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¹ *Da Hui Shipping (Pte) Ltd v An Rong Shipping Pte Ltd (Societe Generale, Singapore Branch and another, non-parties)* [2025] SGCA 30, [2].

² *Ibid* [14].

³ *Ibid* [18].

⁴ *Ibid* [19].

⁵ *Ibid* [30].

⁶ *Ibid* [37].

⁷ *Ibid* [12].

⁸ *Ibid* [42].

⁹ *Ibid* [44].

The High Court's Decision

The Singapore High Court allowed Da Hui to pursue its claims for subrogation against An Rong through *in personam* proceedings before the civil jurisdiction of the High Court, despite the company's liquidation. But, the Court ultimately dismissed the substantive claim, stating that Da Hui was not entitled to be subrogated to any extinguished securities held by BOA.

First, the Court relied on procedural grounds. The High Court granted Da Hui leave to pursue the proceeding entitled HC/OA 418/2023 ("OA 418") on the basis that the subrogation claim could not be determined by An Rong's liquidators and required judicial resolution to regularise the substantive issues raised in the application.¹⁰ Da Hui commenced OA 418 to seek declaratory relief that, having discharged BOA's secured debt, it was subrogated to BOA's former mortgage interests over An Rong's vessels and therefore entitled to assert a corresponding priority over the proceeds of their judicial sale.

Then, concerning the substantive claim, the High Court accepted that the specific structure of the loan allowed for an apportionment of liability. Da Hui was entitled in principle to seek a contribution from An Rong for the excess payment.¹¹

But, the Primary Judge held that Da Hui could not be subrogated to BOA's securities because BOA had already enforced them. The Court distinguished between securities extinguished through repayment and those extinguished through enforcement, finding that in the latter case, subrogation was not available. The Court further reasoned that since the vessels were sold and no residual interest remained for An Rong, the purpose of the subrogation was not fulfilled.¹² Thus, granting subrogation would unfairly elevate Da Hui's position above that of other *in rem* creditors by effectively reviving a mortgage in its favour.¹³

The Court of Appeal's Decision

The Singapore Court of Appeal dismissed Da Hui's appeal on procedural grounds, holding that its subrogation claim had to be pursued through an admiralty *in rem* action.

Rejection of the *in personam* action to challenge priority orders

The Court of Appeal held that OA 418 was not an appropriate procedural response to challenge the priority orders made in the proceedings entitled HC/ADM 92/2021 ("ADM 92") and HC/ADM 94/2021 ("ADM 94").

First, Appeal Justice Ang highlighted that Da Hui's claim was not susceptible to the jurisdiction of the admiralty court, as if there was no invocation of it in OA 418. But, without a judgment *in rem*, it is not possible to obtain the priority of payment of the sale proceeds of a ship. To sustain its position, the Court of Appeal quoted Order 33, rule 22 of the Rules of Court 2021, which states: 'Therefore, without an *in rem* judgment or suing *in rem* in any claims and by merely intervening to state its interest in the sale proceeds, Da Hui was not entitled to obtain priority over these payments.'¹⁴

Second, Justice Ang cautioned Da Hui as to its misapprehension of the appropriate procedural route to assert its claim. As stated by its counsel, Da Hui did not commence proceedings *in rem* because it had concerns that the admiralty jurisdiction was not competent to hear its claim for a right of subrogation against An Rong, as they considered that the remedy of subrogation could not be treated as a mortgage or charge on a ship according to s 3(1)(c) of the High Court (Admiralty Jurisdiction) Act 1961 (2020 Rev Ed) ("HCAJA").¹⁵ That section provides¹⁶:

'The admiralty jurisdiction of the General Division of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims:...(c) any claim in respect of a mortgage of or charge on a ship or any share therein.'

¹⁰ *Da Hui Shipping Pte Ltd v An Rong Shipping Pte Ltd (Societe Generale, Singapore Branch and another, non-parties)* [2024] SGHC 166, [69]-[70].

¹¹ *Ibid* [38].

¹² *Ibid* [57]-[63].

¹³ *Ibid* [64]-[66].

¹⁴ *Da Hui v An Rong* n(1) [68].

¹⁵ *Ibid* [72].

¹⁶ *High Court (Admiralty Jurisdiction) Act 1961* (SG) s 3(1)(c).

Therefore, counsel intended first to obtain a declaration of subrogation and use the result of this is *in personam* proceeding to order a variation of priorities in ADM 92 and ADM 94.¹⁷ But, only with an *in rem* judgment could Da Hui have sought a re-ordering of priorities.

Third, Justice Ang recalled that a court is generally competent to reopen orders made in respect of the priority ranking of claims. But, to exercise its power, the court must be persuaded by the applicant that there is a justification for a re-ordering of priorities. Further, when a ship is ordered to be sold, the court may direct that the ranking of claims is not to be determined until the expiration of a certain period. This time allows any person with a claim against the ship or the proceeds of the sale of the ship to proceed to judgment or, if necessary, to seek an extension of this period. Da Hui failed to pursue this course of action. This was a necessary step to secure a declaration of its entitlement to subrogation within the framework of admiralty jurisdiction. So, the Court of Appeal concluded Da Hui's conduct had properly been taken into consideration by the judge in determining whether to re-order the priorities.¹⁸

The characteristics of an admiralty action in rem

The Court of Appeal found that any proprietary interests relating to a mortgage or charge over a vessel fell within the scope of the court's admiralty jurisdiction under the HCAJA.¹⁹

Justice Ang recalled the characteristics of an *in rem* admiralty action. According to the court, an admiralty action *in rem* is a procedural mechanism that enables a claimant to proceed against the vessel itself, rather than just its owner. When such an action is commenced, it creates a statutory lien *in rem*, a right that attaches to the ship and remains enforceable even if there is any change in the ownership of the ship. This type of lien differs from a maritime lien, as it only arises upon the commencement of proceedings. If the shipowner (or any person interested in the ship) appears in court to defend the claim or challenge a judicial sale, the proceedings continue as proceedings *in personam*.²⁰

But, if there is no appearance by the shipowner or any interested person and they allow the ship to be sold, the action remains solely *in rem*. Once the ship is sold, any existing or potential *in rem* claims are transferred to the proceeds of the sale held by the court. Creditors who issued writs *in rem* before the distribution of the sale proceeds may intervene to assert their rights and, subject to the applicable ranking rules, will share in the proceeds. Statutory liens *in rem* rank *pari passu*; they are treated equally regardless of the nature of the claim or the order in which they arose.²¹ Maritime claimants who are neither lienholders nor mortgagees will not be treated as secured creditors unless they initiate an *in rem* action before the commencement of the shipowner's insolvency proceedings.²²

Justice Ang held that these steps had all been properly followed by the BOA, PetroChina, and Societe Generale. The relevant admiralty actions against the vessels *Ocean Goby* and *Ocean Jack* were initiated well before An Rong's liquidation in July 2022. An Rong did not contest these proceedings, allowing BOA to obtain a default judgment in 2021. The proceeds were paid into court after the sale of the vessels, and subsequently, judgments were entered in favour of the other claimants.

The court determined the order of priority for distribution, first in ADM 94 concerning the *Ocean Jack* and later in ADM 92 for the *Ocean Goby*. According to the court, these steps reflect a proper application of admiralty procedures.²³ In this context, PetroChina and Societe Generale were next in line to receive the remaining funds after BOA's claims were satisfied. The judge highlighted that Da Hui only intervened after these steps were taken and sought to access the proceeds despite not having pursued an *in rem* action at the proper time, thereby positioning its claim outside the established admiralty framework.²⁴

The case is a salutary reminder that proper procedural steps are essential to preserve rights in admiralty actions.

¹⁷ *Da Hui v An Rong* n(1) [76].

¹⁸ *Ibid* [81].

¹⁹ *Ibid* [62].

²⁰ *The August 8* [1983] 2 AC 450.

²¹ *Da Hui v An Rong* n(1) [63].

²² *Re Aro Co Ltd* [1980] 1 Ch 196.

²³ *Da Hui v An Rong* n(1) [64].

²⁴ *Ibid* [65].