

WRONGFUL ARREST

The test for wrongful arrest of a vessel dates back 150 years to the Privy Council decision of *The Evangelismos* (1858) 12 Moo PC 352. To succeed in a claim for wrongful arrest, the owners must demonstrate that there is either *mala fides* (bad faith) or *crassa negligentia* (gross negligence) which implies malice. Subsequent to *The Evangelismos*, several UK decisions have applied the test 'without reasonable or probable cause' so as to infer malice interchangeably with the test of gross negligence. In Singapore, the phrase 'without reasonable or probable cause' has also found favour in two local decisions: *The Evmar* [1989] 2 MLJ 460; [1989] SLR 474 and *The Ohm Mariana* [1992] 2 SLR 623. In 1999, the Court of Appeal in Singapore in *The Kiku Pacific* [1999] 2 SLR 595 settled the test once and for all. The Court of Appeal held that while the use of the term 'reasonable or probable cause' is well established in actions for malicious prosecution (not involving vessels), they would be uncomfortable with the import of such a term into admiralty law as part of the test for wrongful arrest of a vessel. The Court of Appeal ruled that the test for wrongful arrest of a vessel should be the test laid down in *The Evangelismos*, ie *mala fides* or *crassa negligentia* implying malice.

The cases involving wrongful arrest are rather rare. However, in 1999 there were two attempts to obtain damages for wrongful arrest. It succeeded in *The Trade Resolve* [1999] 4 SLR 424. It is interesting to note that in *The Trade Resolve*, the judge relied on the test of no reasonable or probable cause and found that the arrest was wrongful. However, in my view, even if the judge had applied the test of gross negligence, he would nevertheless have reached some conclusion on the facts in *The Trade Resolve*. In that case, the Sheriff authorised the plaintiffs' solicitors to serve the writ and arrest the vessel within port limits. The vessel was outside port limits but the plaintiffs maintained that she was nevertheless within territorial waters. Despite being

aware that the vessel was in fact outside port limits, the plaintiffs proceeded to arrest the vessel which the court found to be '... a contemptuous act in deliberate and flagrant disregard of the limited authority granted to them'. The decision of *The Trade Resolve* is also significant in one other respect, ie vessels can only be arrested if they are within port limits. It is irrelevant whether the vessel is within territorial waters as long as she is outside port limits.

In *Armada Lines Ltd. v. Chaleur Fertilizers Ltd.*, (June 26, 1997) No. 24351 (S.C.C.) This important case concerns when an arresting party is liable for wrongful arrest. In a ground breaking decision reported at [1995] 1 F.C. 3, the Federal Court of Appeal (Canada) held that an arresting party could be liable for wrongful arrest merely upon a finding that the arrest was "illegal" or "without legal justification". The Supreme Court of Canada, however, reversed this ruling and re-established the rule from *The "Evangelismos"*(1858) 14 E.R. 945, that damages for wrongful arrest may only be awarded where the arresting party acts with either bad faith or gross negligence. The Supreme Court noted that a change in such a long standing rule should only be made by the legislature.