

11 MAY 2021

DISPUTE RESOLUTION ALERT

IN THIS ISSUE

Stemming the riptide

Ricky Gervais quipped that *piracy doesn't kill music, boy bands do*. But the truth is that piracy is depriving the artists who create the music of the fruits of their labour and is damaging the music industry.

Not a pretty sight: Writ of summons and warrants of arrest

The arrest of ships is regulated in terms of the provisions of the Admiralty Jurisdiction Regulation Act 105 of 1983 (AJRA), as read with the Admiralty Rules. The arrests are affected through an action in rem (against the ship or its content) or an action in personam (against the owner of the ship). A claimant has an option to elect to pursue their claim against the guilty ship or an associated ship.



CLIFFE DEKKER HOFMEYR

INCORPORATING
KIETI LAW LLP, KENYA

[CLICK HERE](#)

FOR MORE INSIGHT
INTO OUR EXPERTISE
AND SERVICES

Stemming the riptide

“Stream-ripping” is a form of music piracy where the pirate converts music videos by pasting the URL from, say YouTube or Spotify, into a stream-ripping site which then *“rips”* the video into an audio file.

Ricky Gervais quipped that *piracy doesn't kill music, boy bands do. But the truth is that piracy is depriving the artists who create the music of the fruits of their labour and is damaging the music industry.*

“Stream-ripping” is a form of music piracy (that has been around for some time) where the pirate converts music videos by pasting the URL from, say YouTube or Spotify, into a stream-ripping site which then *“rips”* the video into an audio file. The audio file is then uploaded to a cyberlocker, which is an internet service similar to genuine cloud storage sites (such as Dropbox), but, unlike the usual cloud storage, users are able to upload and download commercial content to and from their servers free-of-charge.

Mr. Justice Miles of the High Court of Justice, Chancery Division in London handed down a landmark judgment in *Capitol Records and others v British Telecommunications plc and others*, as well as the related matter of *Young Turks Recordings Ltd and others v British Telecommunications plc and others*, ordering six of the United Kingdom's primary internet service providers to block any of their internet using clients from accessing specific cyberlockers and stream-ripping websites.

Various recording labels, including the named plaintiffs in these matters as well as Warner Bros. Records, Sony Music Entertainment, and others, recognised

that internet users were copying URLs of a music video of an artist posted on online video platforms, such as YouTube, pasting that URL onto stream-ripping websites, converting the music video into an audio file and then posting that audio file onto a cyberlocker site, enabling millions of users accessing the cyberlocker to download the audio file without paying anything either to the record label or the music artist.

Mr. Justice Miles held that the users of the cyberlocker site had infringed copyright by uploading and downloading content onto the site and that the operators of the cyberlocker had also infringed copyright as the cyberlocker had been deliberately structured to encourage users to upload illegal content. Stream-ripping was also held to be an infringement of copyright both in the operation of the stream-ripping service on the sites, and the enabling of a downloader application for users to access the music.

Because English decisions can potentially be relied on as authority in South Africa, particularly where we do not have developed law on the subject and because stream-ripping and cyberlockers have yet to enjoy the attention of our courts, the judgment of Mr. Justice Miles may still be of benefit to local artists.

Tim Smit

Not a pretty sight: Writ of summons and warrants of arrest

In this article, we discuss the findings of the SCA regarding the validity of the summons and the ensuing arrest and whether the second respondent was an associated ship for purposes of the arrest.

The arrest of ships is regulated in terms of the provisions of the Admiralty Jurisdiction Regulation Act 105 of 1983 (AJRA), as read with the Admiralty Rules. The arrests are affected through an action in rem (against the ship or its content) or an action in personam (against the owner of the ship). A claimant has an option to elect to pursue their claim against the guilty ship or an associated ship.

In *MT Pretty Scene: Galsworthy Ltd v Pretty Scene Shipping S.A and Another* (Case No 684/19) [2021] ZASCA 38, the Supreme Court of Appeal (SCA) had to decide, amongst other issues, whether an arrest could be set aside if the underlying writ of summons was defective. In this article, we discuss the findings of the SCA regarding the validity of the summons and the ensuing arrest and whether the second respondent was an associated ship for purposes of the arrest.

The appellant, Garlsworthy Ltd, had successfully instituted arbitration proceedings against Parakou Shipping PTE Ltd (Parakou) for repudiating a charterparty. Garlsworthy had attempted to enforce the arbitration award through an action *in rem* against eight associated ships including the second respondent, the *MT Pretty Scene* (vessel).

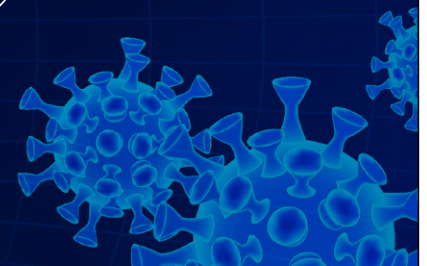
The first respondent, as owner of the vessel, successfully set aside the first and second arrests of the vessel and was further granted an order in their favour for security for costs of the wrongful arrest in the Court *a quo* and the full bench of the KwaZulu-Natal Division of the High Court (courts).

The validity of the summons

The first issue that the SCA had to address was the effect of the issue of a summons that had been held by the courts to be non-compliant with the judgment in the

CDH'S COVID-19 RESOURCE HUB

[Click here for more information](#) 



Not a pretty sight: Writ of summons and warrants of arrest...*continued*

The SCA emphasised that the wording of the provisions of Admiralty Rule 2(1)(b) only require a clear and concise statement on the nature of the claim to be stated in the summons.

case of *The Galaecia: Vidal Armadores SA v Thalass Export Co Ltd (Galaecia) and the Practice Directives of the KwaZulu-Natal Division of the High Court (Directives)*. In *Galaecia*, the court had drawn adverse comments against a writ of summons for lacking particularity and being non-compliant with the provisions of Admiralty Rule 2(1)(b).

The SCA advanced that the first respondent was obliged to prove the invalidity of the order directing the registrar to issue the warrant of arrest. The SCA opined that the defect in the summons had to invalidate both the order to issue the warrant of arrest and the warrant of arrest itself.

The court distinguished the present case and the judgment in the case of *Galaecia* and held that the courts unduly relied on the judgment in *Galaecia*. The SCA opined that a deficiency in a summons did not affect the validity of an arrest.

The SCA held further that the approach followed by the courts in ascertaining the level of detail to be included in the summons demanded more than what was required by the Directives, which had resulted in the summons being approached by the courts on an unnecessarily stringent basis.

Admiralty rule 2(1)(b)

The SCA emphasised that the wording of the provisions of Admiralty Rule 2(1)(b) only require a clear and concise statement on the nature of the claim to be stated in the summons.

After equating the summons to the provisions of the AJRA and the Admiralty Rules, the SCA held that the summons was valid and should not have been set aside.

Association

The SCA advanced that an important aspect of the deemed ownership provisions of section 3(7)(c) of the Admiralty Rules was to place the charterer who is liable for a claim in the same position as the owner.

The second respondent was held to be an associated ship for purposes of a claim arising in respect of the leased ship. The SCA held that the arrest should not have been set aside by the courts.

As noted by the SCA, it is important for a practitioner drafting a writs of summons in a maritime claim to draft it in simple terms so as to avoid "excessive and unnecessary prolixity" which have the potential to prolong the resolution of disputes.

Clive Rumsey and Akhona Mdunge

2021 RESULTS

CHAMBERS GLOBAL 2017 - 2021 ranked our Dispute Resolution practice in Band 1: Dispute Resolution.

CHAMBERS GLOBAL 2018 - 2021 ranked our Dispute Resolution practice in Band 2: Insurance.

CHAMBERS GLOBAL 2017 - 2021 ranked our Dispute Resolution practice in Band 2: Restructuring/Insolvency.

CHAMBERS GLOBAL 2020 - 2021 ranked our Corporate Investigations sector in Band 3: Corporate Investigations.

Chambers Global 2021 ranked our Construction sector in Band 3: Construction.

Chambers Global 2021 ranked our Administrative & Public Law sector in Band 3: Administrative & Public Law.

Pieter Conradie ranked by CHAMBERS GLOBAL 2019 - 2021 as Senior Statespeople: Dispute Resolution.

Clive Rumsey ranked by CHAMBERS GLOBAL 2013-2021 in Band 1: Construction and Band 4: Dispute Resolution.

Jonathan Witts-Hewinson ranked by CHAMBERS GLOBAL 2021 in Band 3: Dispute Resolution.

Tim Fletcher ranked by CHAMBERS GLOBAL 2019 - 2021 in Band 3: Dispute Resolution.

Joe Whittle ranked by CHAMBERS GLOBAL 2020 - 2021 in Band 3: Construction

Tobie Jordaan ranked by CHAMBERS GLOBAL 2020 - 2021 as an up and coming Restructuring/Insolvency lawyer.



Cliffe Dekker Hofmeyr's Dispute Resolution rankings in THE LEGAL 500 EMEA 2020:

CDH's Dispute Resolution practice is ranked as a Top-Tier firm in THE LEGAL 500 EMEA 2020.

Tim Fletcher is ranked as a Leading Individual in Dispute Resolution in THE LEGAL 500 EMEA 2020.

Eugene Bester is recommended in Dispute Resolution in THE LEGAL 500 EMEA 2020.

Jonathan Witts-Hewinson is recommended in Dispute Resolution in THE LEGAL 500 EMEA 2020.

Pieter Conradie is recommended in Dispute Resolution in THE LEGAL 500 EMEA 2020.

Rishaban Moodley is recommended in Dispute Resolution in THE LEGAL 500 EMEA 2020.

Kgosi Nkaiseng is ranked as a Next Generation Partner in THE LEGAL 500 EMEA 2020.

Tim Smit is ranked as a Next Generation Partner in THE LEGAL 500 EMEA 2020.

Gareth Howard is ranked as a Rising Star in THE LEGAL 500 EMEA 2020.

CDH's Construction practice is ranked in Tier 2 in THE LEGAL 500 EMEA 2020.

Clive Rumsey is ranked as a Leading Individual in Construction in THE LEGAL 500 EMEA 2020.

Joe Whittle is recommended in Construction in THE LEGAL 500 EMEA 2020.

Timothy Baker is recommended in Construction in THE LEGAL 500 EMEA 2020.

Siviwe Mcetywa is ranked as a Rising Star in Construction in THE LEGAL 500 EMEA 2020.



CDH IS THE EXCLUSIVE MEMBER FIRM IN AFRICA FOR THE:

Insuralex Global Insurance Lawyers Group
(the world's leading insurance and reinsurance law firm network).

[CLICK HERE TO READ MORE](#)



OUR TEAM

For more information about our Dispute Resolution practice and services in South Africa and Kenya, please contact:



Tim Fletcher
National Practice Head
Director
T +27 (0)11 562 1061
E tim.fletcher@cdhlegal.com



Thabile Fuhrmann
Chairperson
Director
T +27 (0)11 562 1331
E thabile.fuhrmann@cdhlegal.com

Timothy Baker
Director
T +27 (0)21 481 6308
E timothy.baker@cdhlegal.com

Eugene Bester
Director
T +27 (0)11 562 1173
E eugene.bester@cdhlegal.com

Jackwell Feris
Director
T +27 (0)11 562 1825
E jackwell.feris@cdhlegal.com

Anja Hofmeyr
Director
T +27 (0)11 562 1129
E anja.hofmeyr@cdhlegal.com

Tobie Jordaan
Director
T +27 (0)11 562 1356
E tobie.jordaan@cdhlegal.com

Corné Lewis
Director
T +27 (0)11 562 1042
E corne.lewis@cdhlegal.com

Richard Marcus
Director
T +27 (0)21 481 6396
E richard.marcus@cdhlegal.com

Burton Meyer
Director
T +27 (0)11 562 1056
E burton.meyer@cdhlegal.com

Rishaban Moodley
Director
T +27 (0)11 562 1666
E rishaban.moodley@cdhlegal.com

Mongezi Mpahlwa
Director
T +27 (0)11 562 1476
E mongezi.mpahlwa@cdhlegal.com

Kgosi Nkaiseng
Director
T +27 (0)11 562 1864
E kgosi.nkaiseng@cdhlegal.com

Byron O'Connor
Director
T +27 (0)11 562 1140
E byron.oconnor@cdhlegal.com

Desmond Odhiambo
Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E desmond.odhiambo@cdhlegal.com

Lucinde Rhoodie
Director
T +27 (0)21 405 6080
E lucinde.rhodie@cdhlegal.com

Clive Rumsey
Director
T +27 (0)11 562 1924
E clive.rumsey@cdhlegal.com

Belinda Scriba
Director
T +27 (0)21 405 6139
E belinda.scriba@cdhlegal.com

Tim Smit
Director
T +27 (0)11 562 1085
E tim.smit@cdhlegal.com

Joe Whittle
Director
T +27 (0)11 562 1138
E joe.whittle@cdhlegal.com

Roy Barendse
Executive Consultant
T +27 (0)21 405 6177
E roy.barendse@cdhlegal.com

Pieter Conradie
Executive Consultant
T +27 (0)11 562 1071
E pieter.conradie@cdhlegal.com

Nick Muller
Executive Consultant
T +27 (0)21 481 6385
E nick.muller@cdhlegal.com

Jonathan Witts-Hewinson
Executive Consultant
T +27 (0)11 562 1146
E witts@cdhlegal.com

BBBEE STATUS: LEVEL TWO CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

CVS Plaza, Lenana Road, Nairobi, Kenya. PO Box 22602-00505, Nairobi, Kenya.
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114 E cdhkenya@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdh Stellenbosch@cdhlegal.com

©2021 10002/MAY



INCORPORATING
KIETI LAW LLP, KENYA



DISPUTE RESOLUTION | cliffedekkerhofmeyr.com