

Affidavit leading to warrant of arrest

October 06 2015 | Contributed by [Andreas Neocleous & Co LLC](#)

Introduction

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Introduction

The Admiralty Jurisdiction Order 1893 – which governs the operation of the Admiralty Court – provides that in order to obtain a warrant to arrest property, an affidavit must first be filed in the prescribed form and in accordance with Rules 50 to 54 of the order. While Rule 51 requires that the affidavit state the nature of the claim and that the aid of the court is required, Rule 54 gives the court discretion to overlook formal defects by expressly providing that "the Court or Judge may direct the issue of a warrant although the affidavit does not contain all the prescribed particulars".

Ex parte application

An applicant in an *ex parte* application (as is commonly the case) for arrest of a ship is obliged to assist the court in reaching an informed and just decision, particularly as the other party is not represented. The applicant must satisfy the court that the conditions set out in the order have been satisfied and provide the details and material facts of the case that the court requires to reach an informed and just decision. On this basis, an affidavit in support of the application for an arrest order must provide at least the minimum background regarding the existence of a matter to be tried. Therefore, it must include the information required to satisfy the necessary preconditions for invoking the *in rem* jurisdiction of the court. However, this obligation must not be confused or compared with the obligation to make full and frank disclosure of all material facts, as in the case of applications for interlocutory orders, such as freezing injunctions. This was recently reconfirmed in *Heracles Kyriakou v The Ship 'St Raphael I'*.⁽¹⁾

Arrest warrant

The issue of an arrest warrant takes place together with *in rem* proceedings as a means of obtaining security for that claim and is not subject to the balance of convenience test, which is a usual precondition in other types of interim application. Rule 54 provides the hearing judge with discretion to issue an arrest warrant, notwithstanding any deficiencies or failure to supply the requisite information. In *Demetris Panagiotou (Tzimmis) v The Ship 'Tamara I'*,⁽²⁾ the court exercised its discretion under Rule 54 and allowed the application – despite the applicant's failure to satisfy in full the requirements of Rules 51 and 52(b) – having been satisfied that the omission had no material effect on the application's subject matter.

When deciding whether to issue an arrest warrant, the court need not consider:

- the facts or evidence;
- the essence of the claim; or
- the claim's legal status.

If there appears to be a matter for trial and the claim is not frivolous or vexatious, the court will proceed and issue the warrant without the need to prove the underlying cause of action (*The Ship 'Gloriana' v Bzeidi*).⁽³⁾

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However, this does not give the applicant licence to omit material issues of which the court should be apprised. In *Caspi Shipping Ltd v The Ship 'Sapphire Seas' (2)*, the court rejected the application because the applicant had failed to inform the court of an arbitration clause contained in the charterparty under consideration.⁽⁴⁾ Similarly, in *El Fath Co for International Trade SAE v EDT Shipping*, the application for arrest was rejected because the affidavit in support of it had failed to address correctly how the preconditions for granting the order had been met.⁽⁵⁾ Where the court finds a serious irregularity, or where crucial information already known to the parties that is essential to allow the court to exercise its discretion properly is not revealed, the judge may deny the issue of an arrest warrant even if, on a strict reading, the rules appeared to have been observed.

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Endnotes

(1) Judgment dated April 8 2014, Action 28/2013.

(2) (1992) 1A CLR 21.

(3) (1982) 1 CLR 409.

(4) (1997) 1B CLR 833.

(5) (1992) 1B CLR 1255.

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