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Shipping & International Trade

# Keeping Time in Maritime Claims: Limitation Periods and the Single Liability Principle

## Introduction

In a maritime collision case, liability is generally apportioned according to the degree to which each vessel was at fault. Under the single liability principle, the quantum of the smaller recoverable claim is usually deducted from the quantum of the larger recoverable claim, leaving only one net balance to be paid by the net payor to the net payee.

In *The CARAKA JAYA NIAGA III-11* [2021] SGHC 43 ("**The Caraka**"), the Singapore High Court considered how the single liability principle interacts with limitation periods under shipping law. Specifically, in a case where the claim of the net payor against the net payee is time-barred, the Court found that the net payor cannot avail itself of the single liability principle to reduce its liability to the net payee.

This decision highlights the importance of observing limitation periods and to initiate proceedings to avoid being time-barred in similar cases. It also marks the first time the issue has squarely arisen for determination before the Singapore Courts. While the issue has previously been considered in the English Courts, the Singapore High Court here chose not to follow the English position.

In this Update, we summarise the key points of the Court's decision and consider its impact on the management of maritime claims, including whether it will affect the application of limitation periods in the defence of set-off and in invoking limitation under the Convention on Limitation of Liability for Maritime Claims 1976 ("**1976 Convention**").

## Brief Facts

The plaintiffs were the registered owner and demise charterer of the vessel Grand Ace12. The defendant was the demise charterer of the vessel Caraka Jaya Niaga III-11. A collision occurred between the Grand Ace12 and the Caraka Jaya Niaga III-11.

The plaintiffs and defendant entered into a Consent Judgment which provided that the plaintiffs would bear 40% of the blame for the collision and the defendant 60% of the blame. The Consent Judgment

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was entered into without prejudice to the defendant's reliance on the single liability principle and without prejudice to the plaintiffs' right to challenge the defendant's reliance on the single liability principle.

Under section 8 of the Maritime Conventions Act 1911 ("**MCA**"), there is a two-year limitation period for the commencement of proceedings for, among others, collision claims. This time bar applies equally to counterclaims. In this case, the plaintiffs had filed their Writ against the defendant within the two-year period, but the defendant had failed to file its Writ for its counterclaim within this limitation period. The defendant's counterclaim was therefore time-barred.

As the defendant was the net payor in the circumstances, the Court had to determine whether the defendant could still rely on the single liability principle to reduce its liability to the plaintiffs despite the fact that its counterclaim was time-barred.

## Holding of the High Court

The Court held that the defendant was not entitled to rely on the single liability principle due to the time-bar. In reaching its decision, the Court considered the English case law on the issue and the nature and intention of the single liability principle.

The single liability principle arose from the English decision of *The Khedive* [1882] 7 App Cas 795. It essentially provides that where two vessels are involved in a collision for which both vessels are to blame, there does not exist two cross-liabilities in damages. Instead, there is only a single liability for the difference between the larger claim and the smaller claim.

The issue of limitation periods and their effect on the single liability principle had been considered in the English High Court's decision of *MIOM 1 Ltd v Sea Echo ENE (No 2)* [2012] 1 Lloyd's Law Reports 140 ("**Sea Echo**"). The English Court in *Sea Echo* stated (in *obiter dictum*) that the net payor may not wish to commence proceedings against the net payee, but may wish to rely upon the single liability principle only if sued by the net payee in order to reduce its liability. In that event, the net payor would be merely defending himself, and would not be bringing proceedings as such. Accordingly, following the reasoning in *Sea Echo*, the net payor would be entitled to rely on the single liability principle even if he failed to observe the limitation period for commencement of a claim/counterclaim imposed by the English equivalent of section 8 of the MCA.

The Singapore Court here chose to depart from the English position in the *Sea Echo*. The Court held that the single liability principle is in reality a rule of procedure allowing a Court, following the procedure in the Court of Admiralty, to pronounce a single judgment in favour of the net receiving party. As such, it pre-supposes the existence of valid or maintainable claims and cross-claims or counterclaims.

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The Court thus found that the application of the single liability principle requires that both the claim and the cross-claim (or counterclaim) are maintainable and not time-barred. As a procedural rule, the single liability principle does not apply or operate in a case where section 8 of the MCA prevents the defendant from bringing or maintaining proceedings in the first place. In stark contrast with the *Sea Echo*, the Court here highlighted that a shipowner who expects to be the net payor cannot choose to sit back, do nothing and rely on the single liability principle to defend himself instead of issuing proceedings in time.

### The Defence of Set-Off

The Singapore Court's decision in *The Caraka* raises the question of whether it may affect the operation of the defence of set-off. Set-off may be said to be analogous to the single liability principle – it allows a debtor who has a claim against a creditor to rely on the defence to reduce the amount of the creditor's claim by the amount of his own claim. Adopting the reasoning of the Court in *The Caraka*, would a debtor also be obliged to issue proceedings within the limitation period in order to rely on set-off?

The question is further complicated by the very nature of set-off – as a defence to a claim. Because it is used in response to a claim, it has been characterised as a shield rather than a sword. As such, if, following the reasoning in *The Caraka*, a debtor is required to initiate proceedings so as to avoid being time-barred, there is the risk that the defence of set-off may be converted into a tool of offence instead.

However, it should be noted that the Court in *The Caraka* sought to distinguish between set-off and the single liability principle. While the application of the single liability principle might in most cases have the same practical effect as applying set-off, the Court highlighted that the single liability principle is a procedural mechanism based on "a rule of some antiquity originating in the English Court of Admiralty", and thus does not pertain to set-off or constitute a form of set-off. The Court's position therefore suggests that its holding on the single liability principle would not affect reliance on the defence of set-off (if applicable).

### Limitation under 1976 Convention

The decision of *The Caraka* may also potentially impact reliance on limitation under the 1976 Convention, which is given force of law in Singapore via the Merchant Shipping Act. The 1976 Convention sets uniform rules relating to the limitation of liability for maritime claims. Article 5 of the 1976 Convention provides that, where a respondent entitled to limitation of liability has a claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of the 1976 Convention shall only apply to the balance.

The Court's reasoning in *The Caraka* thus raises the question of whether a respondent must issue proceedings before any time bar in order to rely on Article 5 of the 1976 Convention. Article 5 seems to

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operate in a manner similar to the single liability principle, and may also potentially be viewed as a procedural mechanism.

### Concluding Words

The Singapore Court's decision in *The Caraka* highlights the importance of being aware of and complying with limitation periods in maritime claims. As demonstrated here, in a maritime collision case, even when defending a claim, parties with existing counterclaims may be well-served by issuing a Writ on the counterclaim within the limitation period as a form of protective measure so as to ensure that they are not time-barred from relying on defensive options such as the single liability principle.

As discussed above, the decision may also potentially affect the defence of set-off and limitation under the 1976 Convention.

There may also be an appeal and this may not be the final word. We will keep you updated on any further decision(s) clarifying the position in Singapore law.

For further queries, please feel free to contact our team below.

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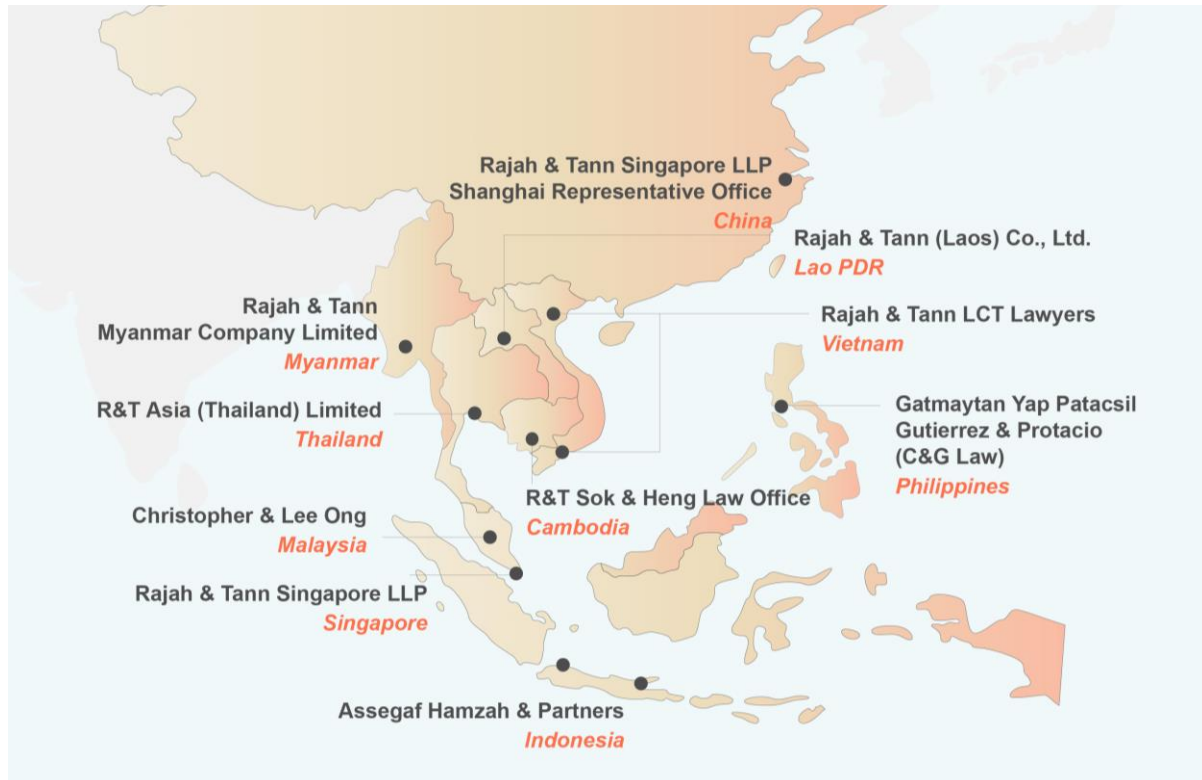
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