

# Summary and Default Proceedings in *rem*

Robert Ward

29 September 2020

Admiralty Registrar Davison recently handed down judgment in ***Premier Marinas v The Double Venus and The Santorini***, a case in which the Registrar considers two aspects of Admiralty procedure that may require re-examination by the Civil Procedure Rules committee.

Robert Ward appeared for the Claimant, instructed by Elliot Bishop at Shoosmiths.

## The Facts

---

The Claimant owns and operates marinas in the south of England. An Admiralty *in rem* claim was brought against two vessels in respect of which berthing fees remained unpaid. Those vessels were arrested.

After service of the claim, an application for default judgment was made on the basis that no acknowledgement of service had been filed. The owner of the vessels filed a late acknowledgement of service and the applications for default judgment were dismissed.

After exchange of pleadings, the Claimant sought to strike out the vessel owner's defence and counterclaim at a CMC on the basis that it disclosed no reasonable grounds or was incoherent. The Defendant failed to attend the remote hearing for the CMC and the application was stood over to trial.

## The Judgment

---

At trial judgment was entered for the claimant, the Registrar holding that a debt presently due and owing to the Claimant had been proven.

The judgment is of interest for the Registrar's commentary on the procedure for default judgment and summary proceedings in Admiralty *in rem* claims.

### Default Judgment

CPR rule 61.9(1) contains specific provision for default judgments for *in rem* claims which is substantially similar to CPR rule 12.3(1) for other claims. However, from 6 April 2020 the latter rule was amended to clarify that judgment could only be given if no acknowledgement of service had been filed "*at the date on which judgment is entered*".

No such amendment was made to r61.9(1).

The Registrar took the view that, in any event, r61.9(1) would only permit default judgment for an *in rem* claim in circumstances where there had been no acknowledgement of service at the time judgment was to be entered. In that regard he followed the decision of Andrew Baker J in ***Cunico Resources NV v Daskalakis*** [2018] EWHC 3382 (Comm), a decision in relation to r12.3(1) prior to its amendment.

One other difference between default judgment in Admiralty *in rem* proceedings and proceedings generally is that default judgment can only be obtained on application and after proving the claim. However, the Registrar did not regard this as a reason to take a different approach to late filed acknowledgements of service.

### Summary Judgment/Strike Out

Another peculiarity of the Admiralty *in rem* procedure, which the Registrar stated was "*arguably a defect*" is that CPR rule 24.3(2)(b) prohibits summary judgment.

This had a material impact because in this case the Registrar indicated that he may have granted summary judgment but that he would not have granted strike out. The Registrar noted that the rationale for the rule is obscure and that

it may have been carried over from pre-CPR rules which provided for summary judgment applications to be made in chambers, whereas *in rem* claims require public hearing due to the potential to affect other parties with an interest in the proceedings. However, that rationale for the rule would no longer apply.

Another explanation is that it is unnecessary to have summary judgment for an *in rem* claim because once the action becomes defended then a claimant can proceed *in personam* against a defendant who enters an appearance, thereby making summary judgment available. That was considered to be the position by the Privy Council in ***The August 8*** [1983] 2 AC 450, a pre-CPR decision.

### Comment

The judgment provides a helpful clarification in respect of default judgment applications for *in rem* claims. The approach to late acknowledgements of service filed before judgment is obtained will be the same as for other claims under rule r12.3(1). CPR rule 69.9(1) would benefit from amendment to reflect this.

The judgment also calls for a re-evaluation of the rule prohibiting summary judgment for *in rem* claims. The rationale for the rule is unclear and is arguably unjustified in the modern Civil Procedure Rules.

JOIN OUR MAILING LIST

FOLLOW QUADRANT 

FOLLOW QUADRANT 

## Robert Ward

---



Rob has developed a busy practice spanning the breadth of Chambers' practice areas including shipping, commercial disputes, international arbitration and aviation. He has appeared as sole counsel in the High Court and County Court and as a junior in several high value matters.

Prior to joining Chambers, Rob was a judicial assistant to Lord Justice Longmore in the Court of Appeal and worked on a number of large commercial disputes such as ***Banco Santander Totta SA v Companhia de Carris de Ferro de Lisboa SA*** [2016] EWCA Civ 1267, in which the Court addressed the proper interpretation of Article 3 of the Rome Convention.

[> view Rob's full profile](#)

robert.ward@quadrantchambers.com