

The Temporal Trap:
How Charter Termination can sever Admiralty in rem
Jurisdiction under sec. 21(4) SCA 1981

[Dr. Arun Kasi](#)

For claimants pursuing a debt against a demise charterer, the timing of an *in rem* action is everything. The High Court has reaffirmed the strict jurisdictional gateway of section 21(4) of the Senior Courts Act 1981, holding that an owner's right to terminate a charter for repudiatory breach can extinguish a claimant's security in the vessel. This article examines the case of *The Columbus* and *The Vasco Da Gama* and its critical lessons on why estoppel cannot create jurisdiction and how a valid claim can vanish before it is even brought.

In order to arrest a ship upon a statutory *in rem* claim – as distinct from a claim secured by a maritime lien, namely for collision, salvage, or crew wages – a claimant must satisfy the twofold jurisdictional test in s 21(4) of the Senior Courts Act 1981 (the “Act”).

This test requires that the person who would be liable *in personam* (“the relevant person”) was, when the cause of action arose, the owner, [charterer](#), or in possession or control of [the ship in connection with which the claim arises](#). Once this threshold is met, section 21(4) further dictates which vessel may be targeted for arrest.

The action may be brought against either: (i) the ship in connection with which the claim arose, provided that when the action is brought the relevant person is the beneficial owner or the demise charterer

of that ship; or (ii) any other ship beneficially owned by the relevant person when the action is brought (a “[sister ship](#)”).

Where the targeted ship is judicially sold before a claim *in rem* is issued against her, the claim may instead be issued against the proceeds of the sale: *The Sanko Mineral* [2014] EWHC 3927 (Admlty); *The Stella Nova* [1981] Lexis Citation 615 (EWHC); and *The Montrosa* [1917] P 1 (EWHC).

A critical issue arises when a claimant’s right of arrest is contingent on a demise charter being in place. If the owner terminates that charter before the claimant brings their action, the second limb of the section 21(4) test may no longer be satisfied. This raises complex questions: can a claim still be brought *in rem*? And can the owner be estopped from relying on the termination if they had previously represented that the charter would remain in force? These precise issues were examined by Admiralty Registrar Davison in the recent case of *The Columbus* and *The Vasco Da Gama* [2021] EWHC 310 (Admlty).

The case concerned two cruise ships, the *Columbus* and the *Vasco Da Gama*, which were demise-chartered by their owners, Carnival plc (“Carnival”), to two separate charterers. The claimant, Aspida Travel (“Aspida”), provided crew repatriation services to the vessels between January and July 2020 for which it was not paid by the charterers. Amid the pandemic, the charterers became insolvent, ceased paying hire to Carnival from June 2020, and effectively abandoned the vessels. Consequently, Carnival retook possession in August 2020 by appointing protective managers.

Following their arrest in August 2020, the court ordered the sale of the ships *pendente lite* in September 2020. At that hearing, and in a subsequent email from its solicitors, Carnival represented that the

demise charters would remain in force, to allow potential claimants time to bring their claims. However, on 7 and 9 October 2020, Carnival terminated the charters with immediate effect, citing both contractual rights and the common law. The judicial sales of the vessels took place shortly thereafter, between 16 and 22 October 2020.

Aspida brought its *in rem* claims against the proceeds of sale in November 2020. Carnival objected, arguing that since the demise charters had been terminated in October, a core requirement of section 21(4) was not met at the time the action was brought. In response, Aspida first submitted that Carnival was estopped from relying on the terminations due to its prior representations. The Registrar dismissed this argument on a fundamental basis: estoppel cannot create jurisdiction where none exists by statute. He held that regardless of how the situation arose, a claimant "either satisfies section 21(4) or they do not." Even a subsequent, inaccurate statement from Carnival's solicitors suggesting the charters remained in force could not change the factual and legal reality that they had been terminated.

Second, Aspida contended that the terminations were invalid because Carnival had failed to provide a contractually required notice period. The Registrar also rejected this. He found that Carnival had validly terminated under its common law right to accept the charterers' repudiatory breach – namely, their abandonment of the vessels. Relying on the House of Lords' decision in *Gilbert-Ash*, he affirmed the principle that common law remedies for breach are preserved unless rebutted by "clear express words" in the contract, which were absent here.

The Registrar observed that the "common sense and commercial reality" was that the charters were already effectively over once the

charterers had abandoned the ships and the owners had resumed possession. He also addressed the court's order setting a deadline for claims against the sale proceeds. While doubting that such a direction could override the statutory rights under section 21(4), he concluded the point was academic. It was not the judicial sale that extinguished Aspida's right to claim *in rem*; it was the "earlier termination of the demise charters."

Third, Aspida argued that the charterers' option to purchase the vessels gave them an equitable interest, making them "beneficial owners" for the purpose of the Act. The Registrar dismissed this submission swiftly, noting it was difficult to see how an unexercised option could confer a beneficial interest in the proceeds of a judicial sale. In any event, any such option could not have survived the termination of the charters themselves.

Finally, Aspida sought to advance a direct claim against Carnival, alleging agency or a restitutionary right based on Carnival's duty to repatriate the crew. The Registrar concluded that these were contentious claims requiring evidence and proper argument, and were unsuitable for a default judgment hearing. That part of the application was therefore adjourned.

© Dr. Arun Kasi, 2025

To instruct Dr. Arun Kasi on shipping matters, please contact his clerk at Stephen Somerville on ssomerville@4-5.co.uk or +44 (0)20 7404 5252

This article has also been published on [The Maritime Brief, accessible here](#). Readers may also **subscribe** to his articles via the same link.

Disclaimer: This material is provided free of charge on a full disclaimer of any liability. The contents are the opinion of the author, the correctness of which is not assured. The opinion of others may differ. Readers should not rely on the contents provided in this material but should seek legal advice specific to their context. If they rely on the contents provided in this material, they do so solely at their risk.