

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
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Please note that the media summary is for the benefit of the media and does not form part of the judgment.

***Islamic Republic of Iran Shipping Lines v Terra-Marine SA
(19/10) [2010] ZASCA 118 (23 September 2010)***

Media Statement

Today the Islamic Republic of Iran Shipping Lines (IRISL) succeeded before the Supreme Court of Appeal (SCA) in an appeal against a judgment in favour of Terra-Marine SA by the Durban High Court in the exercise of its admiralty jurisdiction.

During 1995 Eco Shipping Company (ESC), a private joint stock company was registered and incorporated in the Islamic Republic of Iran with a view to providing a vehicle to 10 Asian Islamic countries to enable them to engage in shipping as a joint venture. On the formation of ESC, the IRISL, a ship owner registered according to the laws of the Islamic Republic of Iran, bareboat chartered two vessels the Eco Elham and the Eco Ekram to ESC.

In terms of a written agreement dated 27 January 1997, Terra-Marine SA a company registered and incorporated in accordance with the laws of Switzerland was contracted to manage and administer the vessels on behalf of ESC. That agreement contained an arbitration clause which provided that in the event of disputes arising between Terra-Marine and ESC such disputes should be referred to arbitration in London in terms of the provisions of English law. Disputes did indeed arise and in consequence thereof Terra-Marine commenced arbitration proceedings against ESC in London. A sole arbitrator was appointed during November 2003. During December 2005 and whilst the London arbitration proceedings were still pending Terra-Marine commenced an action *in rem* against some 92 vessels including the *MV Iran Dastghayb* in the Durban High Court. On 6 March 2006 the *Iran Dastghayb* was arrested in terms of a warrant of arrest issued pursuant to that action.

During October 2006 IRISL launched an application for an order that the *in rem* proceedings in the high court be stayed in terms of s 7(1)(b) of the Admiralty Jurisdiction Regulation Act. The high court held that IRISL, not being a party to the arbitration agreement between Terra-Marine and ESC, was

not entitled to invoke the arbitration agreement. It consequently dismissed the application. On appeal the SCA held that the Act clearly differentiated between two situations when a court may grant a stay. The first where the parties concerned had agreed that the matter in dispute be referred to arbitration and the second *if for any other sufficient reason the Court is of the opinion* that the proceedings be stayed. The SCA held that the high court appeared not to appreciate that it was empowered by the legislature to grant a stay in two different circumstances and that in relation to the second circumstance it had a far wider discretion. The SCA then set out various reasons why, in its view, the stay application ought to have succeeded. It accordingly upheld the appeal, granted the stay of proceedings sought by IRISL as well as certain ancillary relief.

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