

BULLETIN

BUNKER AND OTHER MARITIME CLAIM COLLECTION

OVER 15,000 SEA-GOING SHIPS A YEAR CALL AT BELGIUM'S MAIN PORT, ANTWERP, THE TOP TWO HARBOUR IN EUROPE, AND AT OTHER SEA PORTS, SUCH AS ZEEBRUGES (ZEEBRUGGE) AND GHENT (GENT). THIS FACT, ALONG WITH LEGAL PROVISIONS AND COURTS ENABLING A FAST WAY TO ARREST SHIPS TO SECURE OR CASH CLAIMS, INCLUDING HOPELESS CLAIMS AGAINST TIME CHARTERERS MAKE THAT BELGIUM IS THE PLACE TO COLLECT, OR AT LEAST SECURE, MARITIME CLAIMS. BELGIAN COURTS REPEATEDLY HELD THAT A SHIP CAN BE ARRESTED EVEN THOUGH THE REGISTERED OWNER IS NOT THE DEBTOR BUT A CHARTERER IS, EVEN A PREVIOUS ONE.

ANTWERP, FEBRUARY 2018

While this Bulletin deals with ship arrest within the Belgian jurisdictions, we will often be able, on the basis of particular facts, to give some directions to an appropriate other jurisdiction within the trade of the ship subject to arrest.

1952 ARREST CONVENTION

Belgium ratified the 1952 Arrest Convention¹ and incorporated these provisions in the Belgian Judicial Code².

DOES IT MATTER WHICH FLAG THE SHIP FLIES? NO.

As a result of the incorporation in domestic law, the rules as set out in the 1952 Arrest Convention apply, whether or not the ship to arrest is flying the flag of a state party to the 1952 Arrest Convention.

CAN YOU HAVE A SHIP ARRESTED TO SECURE CHARTERER'S DEBT, ALTHOUGH THE SHIPOWNER IS NOT THE DEBTOR? YES.

It is not required that the registered owner is the debtor of the claim to secure. It is only required that the claim relates to the ship to arrest.³ So a cargo claim or a bunker claim can cause the arrest of the ship on which the cargo was carried or to which the bunkers were supplied, whether or not, on the merits, the registered shipowner is liable for these claims. In the matter of the arrest of the "Heinrich J"⁴ the bunker order was rubberstamped with the express mention

that the bunker order was placed by the time charter not binding the registered owner. Belgium's highest Court decided that such circumstance did not affect the right to arrest the "Heinrich J", ultimately causing the registered owner to pay for the charterer's debt.

DO YOU NEED TO PRESENT OR SEEK A JUDGEMENT ON THE MERITS? NO.

No judgement on the merits is required, nor is it required to seek such a judgement to proceed and maintain the arrest. The arrest judge will grant the order to arrest a ship upon the reasonable allegation of a claim, properly supported by documents. Typically, the supporting documents for supplies are contracts, orders, invoices. For loss or damages to cargo or to ship (collision), survey reports or protests. Needless to say that we verify with scrutiny the case presented, to ascertain the facts, prior to submitting the request to the arrest judge.

CAN YOU HAVE A SISTER SHIP ARRESTED?

You can also have a sister ships arrested, however, only if your claim is one against the registered owner.⁵ To put it otherwise, you cannot have a sister ship arrested for a charterer's debt. If your claim is against the charterer and not the registered owner, you can only have the ship arrested to which the claim is related (as an example: the ship to which the bunkers

or other goods were supplied, to which repairs were done, etc.).

ARREST AFTER TRANSFER OF OWNERSHIP?

If the ship was sold after your claim arose then, you can still have the ship arrested, provided your claim, then, arrest will still be possible if the claim to secure is a lien⁶ as is most often the case. At many occasions, we are able, to quickly advise you over the phone whether or not your specific claim so qualifies or not.

CASH OR SECURITY?

The result of the arrest is that the ship remains detained until the claim is settled or secured. When the debtor has no good defence on the merits, the shipowner will pay often cash because for an undisputable claim that is by far the best option for the shipowner (even if the charterer and not the shipowner is the debtor).

The other option is the security: the ship should be released against posting security. Such security shall be so worded to secure the claim even if the shipowner is not the debtor. One way to realise the

security is to obtain a judgement on the merits. For undisputed claims it is rare that the shipowner will resist as far.

SHIP WATCH

There are several websites tracking all ships. At the option of client, we trace ships or client does.

COSTS

We would be happy to advise you on the fees and costs involved for the arrest of a ship resulting in the securing or settlement of a claim.

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This Bulletin is not a legal opinion. It cannot take into account all specific cases. It should not cause, influence or induce a business decision. This bulletin does not discuss all issues which may arise in a particular case. You should not hesitate to contact us. We will usually be able to quickly assess over the phone or otherwise the possibilities on the basis of specific facts. We do not charge fees until we advise so and you consent thereto.

¹ International Convention for the Unification of Certain Rules relating to the Arrest of Sea-Going Ships, done at Brussels, on 10 May 1952, hereinafter "1952 Arrest Convention". According to article 1.1° of the Arrest Convention and art. 1468 Belgian Judicial Code a ship can be arrested to secure claims arising out of: a. collision, b. loss of life or personal injury, c. salvage, d. "agreement relating to the use or hire of any ship whether by charter party or otherwise", e. carriage of goods, f. loss or damage to goods, g. general average, h. bottomry, i. towage, j. pilotage, k. goods or materials supplied to a ship for her operation or maintenance, l. construction, repair or equipment of any ship or deck or dock charges and dues, m. wages of Masters, Officers, or crew; n. Master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner; o. disputes as to title to or ownership; p. disputes between co-owners of any ship as to the ownership, possession employment or earnings of that ship q. the mortgage or hypothecation of that ship.

² Artt. 1467 – 1469.

³ Cour de Cassation, 10 May 1976, "Omala", *Arr. Cass.*, 1976, 1008, *Pas.*, 1976, I, 969, *J.P.A.*, 1979-1980, 3, *E.T.L.*, 1983, 769, *R.W.*, 1976,-77, 1709 ; Cour de Cassation, 1 October 1993, « Heinrich J », *J.P.A.*, 1994, 132, Cour de Cassation, 1 October 1993, *R.W.*, 1983, 1994, 357 ; Cour de Cassation, 23 May 2003, « Atlantic Island », www.juridat.be; Court of Appeals, Ghent, 12 January 1988, « Mare Garant », *J.P.A.*, 1989 – 1990, 254, *E.T.L.*, 1988, 63, Court of Appeals, Antwerp, 16 January 1991, "Danbox", *R.W.*, 1991-92, 1087, Judge of Seizures, Antwerp, 28 March 1980, "Bentainer", *J.P.A.*, 1981-82, 187; Judge of Seizures, Antwerp, 10 May 1984, "Cypriot Mariner", *E.T.L.*, 1985, 254; Judge of Seizures, Antwerp, 6 June 1985, « Chandan Star », *J.P.A.* 1993, 66, Juge des Saisies, Antwerp, 24 March 1988, « Epos », *E.T.L.* 1988, 4156 ; Judge of Seizures, Antwerp, 29 March 1988, « Seahorse », *J.P.A.*, 1988, 119.

⁴ Cour de Cassation, 1 October 1993, « Heinrich J », *J.P.A.*, 1994, 132, Cour de Cassation, 1 October 1993, *R.W.*, 1983, 1994, 357.

⁵ Art. 3,1 1952 Arrest Convention, art. 1469 § 1, Belgian Judicial Code.

⁶ Cour de Cassation, 27 March 2003, "Sokna", www.juridat.be .