

Ship arrest in Cyprus by George Zambartas

1. Please give an overview of ship arrest practice in your country.

The Cypriot Legal system was developed on the basis of English Law from 1878 until its independence on 1960. Thereafter, even though new Cypriot Laws and regulations were enacted and Cypriot case law was applied, the Cypriot Legal System was to a large extent modelled on its English counterpart. Furthermore, although the divisions of the English courts are not binding to the Cypriot Courts, they are very persuasive. In order for a claimant to apply for a warrant to arrest the ship, he must bring an action in rem against the vessel or property in question or an action in personam (as the case may be).

The Cyprus Admiralty jurisdiction is exercised by the Supreme Court of the Republic of Cyprus which by virtue of rule 50 of the Cypriot Admiralty Jurisdiction Order gives an absolute right for arrest of the vessel or property once the Admiralty Court. However, by virtue of an amendment to the Courts of Justice Law (Law 136 of 1991), any admiralty case, irrespective of the amount of the claim, will be tried by the District Courts of Cyprus (together with the Supreme Court mentioned above referred to as the "Admiralty Court"), if the subject matter of the action relates "to loss of life or personal damage caused as a result of a defect in the vessel or its equipment..." In addition, where the claim is for less than EUR 17,086.01, the District Courts of Cyprus will also adjudicate claims:

- a) in respect of goods supplied to the vessel for its maintenance;
- b) for loss or damage to goods carried on board the vessel;
- c) in respect of construction, repair or supply of the vessel;
- d) for crew wages; and
- e) in respect of expenses incurred on behalf of the vessel by her captain or any other supplier.

It is necessary for the Admiralty Court to be satisfied that there is a serious matter of trial and that on the facts presented there is a probability that the claimant is entitled to relief. In the event that the application for the arrest of a vessel is successful, the Admiralty Court will require the following from the claimant:

- a) Lodgement of a deposit for the expenses which may be incurred by the Admiralty Marshal in connection with the custody and supervision of the vessel whilst under arrest;
- b) Lodgement of any other amount of money required by the Registrar for the expenses of the arrest; and
- c) Posting a security bond by way of a Cyprus bank guarantee.

Failure to comply with the above requirements will automatically result in the release of the vessel.

2. Which International Convention applies to arrest of ships in your country?

Cyprus is not a party to the 1952 Arrest Convention nor to the Brussels Liens and Mortgage Conventions. As the United Kingdom signed the said Arrest Convention in 1952 and the Administration of Justice Act Part 1 was subsequently passed in order to enable the United

Kingdom to ratify the Arrest Convention. The above Administration of Justice Act is applicable in the Republic of Cyprus by virtue of its Constitution and section 29 of Law the Courts of Justice Act (14/60).

3. Is there any other way to arrest a ship in your jurisdiction?

No, there is no other way to arrest the vessel with regard to the purpose of security of the claim. However, in cases where the claimant cannot proceed with the arrest of a vessel, for example due to the fact that Admiralty Court does not have jurisdiction, he may seek a "freezing" Mareva injunction which is normally granted when the defendants have no further assets in the Republic of Cyprus and there is risk of alienation, dissipation of the assets. The application for a Mareva injunction is made *ex parte*.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

As stated above a "freezing injunction" is an option.

5. For which types of claims can you arrest a ship?

The Admiralty Court has jurisdiction to hear any of the following claims or questions:

- a) any claim to the possession or ownership of a vessel or to the ownership of any share therein;
- b) any question arising between the co-owners of a vessel as to the possession, employment, or earnings of that vessel;
- c) any claim in respect of a mortgage of or charge on a vessel or any share thereof;
- d) any claim for damage done by a vessel;
- e) any claim for damage received by a vessel;
- f) any claim for loss of life or personal injury sustained in consequence of any defect in a vessel or in her apparel or equipment, or of a wrongful act, neglect, or default of the owners, charterers, or persons in possession or control of a vessel or of the master or crew thereof or of any other person for whose wrongful acts, neglects, or defaults the owners, charterers, or persons in possession or control of a vessel are responsible, being an act, neglect or default in the navigation or management of the vessel, in the loading, carriage, or discharge of goods on, in, or from the vessel or in the embarkation, carriage, or disembarkation of persons on, in or from the vessel;
- g) any claim for loss or damage to goods carried in a vessel;
- h) any claim arising out of any agreement relating to the carriage of goods in a vessel or to the use or charter of a vessel;
- i) any claim in the nature of salvage;
- j) any claim in the nature of towage in respect of a vessel;
- k) any claim in the nature of pilotage in respect of a vessel;
- l) in respect of goods or materials supplied to a vessel for her operation or maintenance;
- m) any claim in respect of the construction, repair, or equipment of a vessel or dock charges or dues;
- n) any claim by a master or member of the crew of the vessel for wages and any claim by or in respect of a master or member of the crew of a vessel for any money or property which, under any of the provisions of the Merchant Shipping Acts 1894-1954, is recoverable as wages in the court or in the manner in which wages may be recovered;
- o) any claim by a master, shipper, charterer, or agent in respect of disbursements made

on the account of a vessel;

p) any claim arising out of an act which is or is claimed to be general average act;

r) any claim arising out of bottomry; and

s) any claim for the forfeiture or condemnation of a vessel or of goods which are being or have been carried, or have been attempted to be carried, in a vessel, or for the restoration of a vessel or any such goods after seizure, or for droits of admiralty.

6. Can you arrest a ship irrespectively of her flag?

You can arrest a ship in the Republic of Cyprus irrespectively of her flag.

7. Can you arrest a ship irrespectively of the debtor?

You can arrest a ship in the Republic of Cyprus irrespectively of the debtor unless the debtor is in a position to claim sovereign immunity.

8. What is the position as regards sister ships and ships in associated ownership?

As mentioned in item 2 above, the Administration of Justice Act 1956 is applicable in the Republic of Cyprus. However, it should be noted that although section 3(3) of the Administration of Justice Act 1956 enables a claimant to arrest a vessel to which a maritime lien attaches, no provisions are contained therein in respect of the arrest of a "sister vessel". However, this situation is compensated by section 3(4) of the 1956 Act which provides that the admiralty jurisdiction of the High Court may be invoked (whether the claim gives rise to a maritime lien over the vessel or not) by an action in rem against "..... (b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid". However, it should be distinguished that in such cases a person who possesses a maritime lien in respect of that "other ship" has no higher right or priority than that enjoyed, under the circumstances by a statutory lienee.

9. What is the position as regards Bareboat and Time-Chartered vessels?

Bareboat Owners and Time Charterers are viewed as 'disponent owners' of vessels. Therefore, in the case of any of the claims mentioned in (d) to (r) above, being a claim arising in connection with the vessel, where the person who would be liable on the claim in an action in personam was, when the cause arose, the owner or charterer of, in possession or in control of, the vessel, the Admiralty jurisdiction of the Supreme Court may be invoked by an action in rem against:

a) the vessel, if at the time when the action is brought it is beneficially owned in respect of all the shares therein by than person; or

b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid.

10. Do your Courts require counter-security in order to arrest a ship?

The claimant is required to post a security bond by way of a Cyprus Bank Guarantee in respect of damages that the defendant vessel might suffer if the arrest proves to be wrongful. The amount of the security to be provided is at the discretion of the court which will take into account all of the circumstances of the case in assessing this amount. Usually, about 10% to 15% of the claimed amount will need to be put up.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

There is no difference in the procedure between a maritime lien and a maritime claim, however it should be noted that under Cyprus Law maritime liens enjoy certain advantages over all other permitted actions in rem.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Under the English Administration of Justice Act 1956, the following maritime liens are recognised under Cyprus Law:

- a) Bottomry;
- b) Salvage;
- c) Wages;
- d) Master's Wages;
- e) Disbursements and liabilities; and
- f) Damage done by a ship.

13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

It will normally take between 2 - 4 business days to arrest the vessel from the moment we receive the file of papers and the required instructions.

14. Do you need to provide a POA, or any other documents of the claim to the Court?

No POA is required to bring the claim and present the Arrest Application to the relevant court.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

All admiralty actions whether in rem or in personam are instituted with the issue of a writ of summons.

The name, the place of residence, occupation of every claimant and defendant and a concise statement of the claim made or the relief or remedy sought, should be included in the structure of the writ.

The issue of the writ gives the claimant a right against the vessel which originates from the cause of action in rem and crystallises upon the arrest of the vessel.

The claimant should file with the court an affidavit appertaining to the nature of the claim and stating that the aid of the court is required. The deponent to this Affidavit could be us in our capacity as the instructed law firm.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

The substantive claim must be issued in the Cyprus Admiralty Court by writ of summons for the arrest to be granted. Obviously, in an action against the vessel, the physical presence of

the vessel within the jurisdictional waters of Cyprus is essential for the foundations of the court's jurisdiction in rem.

17. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Under Cyprus law, in an action in rem, the writ of summons must be served at least 21 days, and in an action in personam, at least 10 days, before the date named in the writ of summons for the appearance of the parties before the Admiralty Court.

18. Do the Courts of your country acknowledge wrongful arrest?

Cyprus courts do acknowledge the concept of wrongful arrest, hence the requirement for the claimant to post security.

19. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Cyprus courts will only pierce and lift the corporate veil in very exceptional circumstance (basically fraud).

20. Is it possible to have a ship sold pendente lite; if so how long does it take?

It is possible to have a ship sold pendent elite; the court will order the sale of a vessel which remains under arrest and against which expenses are accumulating, and which is deteriorating, if in the interest of all parties and a speedy sale would appear to be desirable. Typical grounds for an application are that a vessel is costing a disproportionate amount in daily expenses or is deteriorating owing to being under arrest for a long time or that a cargo is perishable. Therefore, the continuing and mounting expenses of arrest and the fact that goods are deteriorating are good reasons which a court may consider in ordering the property to be sold pendente lite.

It is very difficult to advise on the precise timescale involved as this will largely be determined on a case by case basis and any objection by the Respondent to the Application will greatly prolong the process. Generally, depending on the directions and order of the court, the vessel is sold by public auction after an appropriate advertisement has been published in a local or foreign newspaper.