

## Litigation - Cyprus

### Admiralty jurisdiction: ship arrest, cargo arrest and sale *pendente lite*

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In a recent case<sup>(1)</sup> the claimant filed an action against the ship and its owner to recover unpaid charges for bunkering and maintenance services provided to the ship. The claimant also applied to the court for the ship to be arrested. The court arrested the ship on the basis of the claimant's application.

Following the arrest, three further creditors appeared in the admiralty proceedings and filed a caveat against the release of the ship. As the shipowner appeared either unable or unprepared to file a guarantee with the court in order to obtain the ship's release, an application was filed through which the court ordered an appraisal of the ship be carried out in order to determine its market value.

The procedural rules give the Admiralty Court a number of discretionary powers, including:

- arrest of a ship:

*"In an action in rem, any party may at the time of, or at any time after, the issue of the writ of summons apply to the court or a judge for the issue of a warrant for the arrest of property.";*

- release of an arrested ship:

*"Any party may apply to the court for the release of any property arrested and the court or judge may by order direct the release of such property on such terms as to security or payment of any costs of appraisal, removal, inspection or otherwise as the court or judge shall see fit.";* and

- sale of an arrested ship:

*"it shall be lawful for the court or judge, either before or after final judgment, on the application of any party and either with or without notice to any other party, by its order to appoint the marshal of the court or any other person or persons to appraise any property under the arrest of the court, to sell any such property either with or without appraisal, to remove or inspect and report on any such property or to discharge any cargo under arrest on board ship."*

In consequence of the shipowner's continued failure to provide a financial guarantee pending determination of the action in order to release the ship from the arrest, the Admiralty Court approved the sale of the ship *pendente lite* (ie, pending litigation) on an application by the claimant, primarily taking into consideration the following factors:

- the appraised value of the ship;
- the unpaid wages of the crew, which would continue to increase as long as the situation remained unresolved;
- the fact that the shipowner appeared uninterested in the ship and its crew members and in providing the necessary daily supplies;
- the fact that the ship was not operational, which would cause its maintenance requirements to increase and its value to decrease; and
- the significant risk that the proceeds of sale would be insufficient to cover the amounts owed and that the deficiency would continue to increase the longer the ship remained unsold.

In delivering his judgment the judge stated:

*"The sale of a ship pending trial is an extraordinary measure... The sale of the ship is not a natural outcome of its sale or its potential arrest for any period of time. It nonetheless constitutes an acceptable measure if sufficient reasons are disclosed that require the sale in order to secure the value of the ship.*

*The omission of the shipowner to release the ship as well as his disregard as to its fate while under arrest constitute factors which support the sale pending the determination of the action. The maintenance costs during the same period in comparison with its value constitute another factor which tends to support the sale especially in instances where dealing with the maintenance costs will lower the net value of the ship. This is always connected with the value of the demand of the claimants which in this instance exceeds one million United States dollars."*

In an earlier case<sup>(2)</sup> the Admiralty Court ordered the arrest and thereafter the sale of a cargo of rice *pendente lite* taking into consideration, among other factors, the perishable nature of the cargo. The case concerned a dispute arising from a breach of contract for the carriage of goods by sea, which was caused by the admitted inability and tardiness of the cargo owner to nominate a safe port due to the unrest in Libya. As a result, the cargo owner instructed the shipowner to change the destination of the ship in breach of the agreed contract of carriage and simultaneously undertook to compensate him for all losses.

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#### Endnotes

<sup>(1)</sup> *SKP Enterprises Limited v The Ship AVANTIS II (IMO 7432305) under Greek flag now lying in the port of Limassol.*

<sup>(2)</sup> *Admiralty Action Oscar Shipping Pte Ltd v the Cargo onboard the Ship ASPHODEL*, October 2011.

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