

SHIP ARREST CYPRUS – DEMISE CHARTERERS

Case commentary

Can a vessel be arrested for a claim against demise charterers?

In the case of *Lemissoler Shipmanagement Ltd v. The Ship DRAGON PORT (IMO 9481908) of the Barbados flag, No.: 41/2014, 16/10/2014*, the Court posed the question as to whether an action *in rem* was possible, given that the plaintiffs' claim was based on a contract for services concluded with D P Shipping Ltd who were the demise charterers and not the owners of the vessel.

According to the *Administration of Justice Act 1956* (“**the Law**”) which applies in Cyprus by virtue of article 29(2)(a) of *Law No. 14/1960* an action *in rem* can be taken when the claim falls within article 1(1) (a) to (c) and (s) of the Law, or under article 3(4) of the same where the claim falls within article 1(1) (d) until (r) provided at all times that the party which would be responsible for such claim in an action *in personam* was at the material time that the cause of action arose, “*the owner, or charterer of or in possession or control of, the ship...*” and beneficially owns the vessel “*with respect all the shares therein*”.

Although in England the *Supreme Court Act 1981* which has replaced the Law now permits *in rem* claims where the claim *in personam* at the time the cause of action arose would be against the demise charterer this amendment did not affect the approach of the Supreme Court of Cyprus which is bound to implement the Law as it applied in 1956.

Nevertheless, the plaintiffs argued that the Court should give broad meaning to the term ‘beneficially owned’ to include demise charterers so as to give effect to the purpose of the article which it was argued was to give effect to the 1952 Arrest Convention.

The Court referred to a number of other cases when it held that “*beneficially owned as respects all the shares therein*” could not be interpreted as argued by the plaintiffs with some of the key points in the judgment being:

1. The natural and ordinary meaning of the words means ‘equitable ownership’
2. Article 21 (4) of the Supreme Court Act 1981 clarifies the distinction between “beneficial owner” and “demise charterer” in relation to the right of arrest

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3. Although the above Act permits *in rem* claims where they arise against the demise charterer this is not extended to the arrest of sister ships where the *in personam* claim must arise against the ship owner as the “beneficial owner” and not merely the demise charterer.

With this judgment the Court has further solidified its position in relation to rights of arrest and the strict interpretation of ‘beneficial ownership’ which makes any future attempt to secure a claim against a demise charterer with the arrest of a vessel unlikely to succeed.

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