

ARIZON ABOGADOS S.L.P.

CASE COMMENT for SHIPARRESTED.COM

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The Commercial Court of Donostia refuses the claim of wrongful arrest damages.

Following the arrest application for “MV G.U.” in the port of Pasajes (North of Spain), the commercial Court of Donostia issued an arrest order against the ship.

The vessel was detained for a few months while the arrest was contested on several grounds. The main argument of the shipowners was an alleged lack of competence of the Commercial Court to arrest the ship following the reform of the Arbitration Act in Spain. The grounds of the shipowners against the arrest were all refused. In regards the lack of competence, the Court held that maritime matters continue to be a special area of the law which competence is confined by Statute to the Commercial Courts and that this was not changed by the reform of the Arbitration Act.

Owners presented an appeal before the Court of Appeal of Guipuzcoa. The Court of Appeal issued a new judgment upholding the arrest order and the costs against owners.

However, in the action on the merits that was sustained in a LMAA arbitration in London under the terms of the voyage charterparty, the owners persuaded the arbitrators that the ship was under a leasing, and in turn under a bareboat charter, which proved that the owners were at no rate a party to the charterparty, and therefore the claim that grounded the arrest should be addressed to the bareboat charterers only. It is to be noted that while the ship was arrested in Spain, owners never mentioned that they were not a party to the voyage charter. On the contrary, owners agreed that the matter should be dealt with under the clause of the charter party binding them, thus in a LMAA arbitration.

As a result of the LMAA arbitration Award, the Spanish Commercial Court held that while owners were liable for the arrest’s legal costs in Spain, the Award rendered the arresting party liable to the owners for any damages they may have suffered.

Furthermore, it is to be noted that the LMAA Award stated in its terms that the owners were not a party to the CP, and therefore they could not suffer any loss from the arrest as their underlying contract, i.e. leasing, was unaffected.

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Despite the clear terms of the LMAA Award as a matter of procedure, the Spanish Commercial Court had to open special proceedings to determine any damages suffered by the owners. Surprisingly, owners came forward with a claim for damages in the amount of EUR 67.373,36. Owners contended that in order to lift the arrest, they were forced to enter into a loan agreement with the bareboat Charterers, a fact that has not been mentioned in the Spanish proceedings or in the London arbitration that took place during many months. This was contested by the arresting party on many grounds.

In a very clear judgment the Commercial Court has refused owners' claim for damages and held costs against owners for these special proceedings. According to the Commercial Court, the loan agreement has not been proven at all; it appears to be false as the surrounding facts pointed out many inconsistencies, including but not limited to: the payee of the bail before the Court was not the shipowner but the bareboat charterer; the amounts paid and the interests did not match, and neither did the contract and payment dates.

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Arizon Abogados SLP acted for the arresting party.