



The Admiralty Jurisdiction of the Supreme Court

The Supreme Court of Cyprus has exclusive jurisdiction to act as Admiralty Court. By virtue of Sections 19(a) and 29(2)(a) of the Courts of Justice Law of 1960 (Law 14/60), the Admiralty Court is vested with and exercises the same powers and jurisdiction as those vested in or exercised by the High Court of Justice in England in its Admiralty Jurisdiction on the day immediately preceding the day of Independence. In the exercise of such jurisdiction it applies the Law as applied in England on the day in question subject to the overriding provisions of the Constitution and save in so far as other provision is made by any Law of the Republic.

Consequently, the English Administration of Justice Act of 1956 ('AJA 1956'), Part I, defines the Admiralty jurisdiction of the Court. In particular, Section 1(1) of AJA 1956 sets out the questions or claims which are heard and determined by the Admiralty Court. Further, the Cyprus Admiralty Jurisdiction Order 1893 ('the Rules') regulates the procedure before the Court. The Admiralty jurisdiction of the Supreme Court can be invoked both by an action *in rem* and by an action *in personam*. All admiralty actions are instituted by the issue of a writ of summons and it is always possible to combine an action *in rem* with an action *in personam* in the same writ.

Arrest of vessel and jurisdiction in rem

The arrest of a ship is only possible in the case of an action *in rem*. Therefore, the filing of an action *in rem* is a prerequisite for such an arrest. Once a claim falls within the scope of Section 1(1), Section 3 of AJA 1956 automatically comes into operation to determine whether that claim can be brought by an action *in rem*. An action *in rem* is an action against the vessel (the *res*) and the writ of summons must be served on the vessel herself. As a result, the physical presence of the vessel within the jurisdictional waters of Cyprus is necessary so that the Admiralty Court can assume jurisdiction *in rem*.

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In El Fath Co v. E.D.T. Shipping Ltd (1992) 1 CLR 1255, the Supreme Court held that the issue of a warrant for the arrest of a ship as well as the issue of a writ of summons of an action *in rem* is possible even when the ship is found outside the jurisdiction of the Court. However, they remain inactive until the ship comes within the jurisdiction thereby enabling the service of the writ on her. This is because the jurisdiction *in rem* of the Court is founded upon the service of the writ on the *res* or upon its arrest and not at the time when those are issued by the Court (Altobeiqui v. M/V Nada G. (1985) 1 CLR 543; Cyprus Bureau of Shipping Ltd v. Farner Shipping Co. Ltd (1999) 1 CLR 478).

The Arrest Proceedings

An application for the arrest of a vessel can be filed on or at any time after the filing of an action *in rem*. The proceedings for the arrest are regulated by Rules 50-59. The Court has wide discretion to order the arrest of the vessel if it is satisfied that the Plaintiff is entitled to the arrest. The plaintiff who wishes to arrest the defendant ship must file an ex-parte application which must be supported by an affidavit.

The affidavit must state the nature of the claim, and that the aid of the Court is required since the claim remains unsatisfied. At this stage it is not necessary for the Court to go into the merits of the action and decide whether the Plaintiff's factual or legal contentions are right or wrong. Rule 50 gives an absolute right for the arrest of property once the Court is satisfied that there are issues that have to be tried between the parties; it suffices to show that the plaintiff has a right to have those issues tried. Generally, the Plaintiff must indicate that there is a question to be tried at the hearing – the term includes a requirement to indicate the facts which trigger the *in rem* jurisdiction of the Court – and that on the facts there is a probability that the Plaintiff is entitled to relief (Breidi and Another v. The Ship Gloriana and Others (1982) 1 CLR 1; El Fath Co v. E.D.T. Shipping Ltd (1992) 1 CLR 1255; Rigas v. The Ship Baalbeck (1973) 1 CLR 159; Cypamar Maritime Agencies v. The Ship Tiger (2001) 1 CLR 2159). In an action for wages, in an action for necessaries or for building, equipping or repairing any vessel, as well as in an action for bottomry additional information must also be included in the affidavit as per Rules 52 and 53.

Full and frank disclosure

Since the application is made ex-parte the plaintiff is required to make full and frank disclosure of all the material facts of the case which may influence the judgment of the Court on whether the arrest of the ship is justified under the circumstances. In the case of Caspi Shipping Limited v. The Ship "Sapphire Seas" (No. 2) (1997) 1 CLR 833, the Supreme Court clarified that simple compliance with the Rules does not release the person who applies ex-parte from the obligation to disclose all the relevant information which would assist the Court to reach the right conclusion. However, it seems unnecessary for such disclosure to extend to further facts which are irrelevant to the request for the arrest (Abdul Hamid Borgol and Co. v. The Ship Akak Progress (1985) 1 CLR 672; Cypamar Maritime Agencies v. The Ship Tiger (2001) 1 CLR 2159).

Security by the plaintiff

Once the Court is satisfied that the necessary requirements for the arrest of the ship are met, it will then require the Plaintiff to:

- Furnish a security bond in respect of damages that the defendant vessel may suffer should the arrest be proved to be wrongful (Rule 205). Such security is usually provided by way of a Cyprus bank guarantee. By virtue of Rule 211, the Court can afterwards vary or rescind the terms regarding the security, as the circumstances may require (Grade One Shipping Ltd, owners of the Cyprus ship "Crios II" (No 1) v. The cargo on board the ship "Crios II" (1976) 1 CLR 323).
- Lodge a deposit for the expenses which may be incurred by the marshal in connection with the custody and supervision of the vessel while under arrest, as well as any other amount of money required by the Registrar for the expenses of the arrest.

Failure to comply with the above requirements will automatically result in the release of the vessel. Once the warrant of arrest is issued it shall be served by the marshal or his officer in the manner prescribed by the Rules for the service of a writ of summons in an action *in rem*, and thereupon the property shall be deemed to be arrested. The order for the arrest must also state the exact amount of security that the defendant may provide for the release of the vessel.

In aid of foreign proceedings

In Nationwide Shipping Inc. v. The Ship "Athena" (2012) 1 CLR 2343, the Supreme Court held that the Admiralty Court does not have jurisdiction, under the International Commercial Arbitration Law (Law 101/87), to issue a warrant of arrest of a ship in aid or in support of an international arbitration. In that case the warrant of arrest was requested in support of arbitration proceedings in London. The Court indicated that such order could not remain in force, because the purpose of the arrest is to provide security in respect of the action *in rem*. Nevertheless, it seems that an arbitration clause does not by itself preclude a Plaintiff from arresting the ship. In National Line of Cyprus S.A. v. The Ship "Sunset" (1986) 1 CLR 393, it was held that an arbitration clause in a contract does not oust the jurisdiction of the Court but it merely gives the right to any other party to such proceedings to apply for a stay of proceedings and reference of such dispute to arbitration.

In Achelec Electronics Ltd v. Deutsche Seereederei (1992) 1 CLR 442, it was stated that although a foreign jurisdiction clause does not deprive the Cypriot Courts of their jurisdiction, strong reasons must be presented as to why such clause should be disregarded. The existence of an arbitration or a foreign jurisdiction clause must in any case be expressly disclosed when applying *ex-parte* for the arrest; such information is considered as relevant for establishing the *in rem* jurisdiction of the Admiralty Court, hence necessary for the Court to reach the right conclusion regarding the arrest. Non-disclosure of such a clause will result in the discharge of the order and the release of the vessel (Pan Ocean Shipping Co Ltd v. The

Ship "Blue Sky" (2000) 1 CLR 139; Vector Onega AG v. The Ship M/V Girvas (1998) 1 CLR 354; Caspi Shipping Limited v. The Ship "Sapphire Seas" (No. 2) (1997) 1 CLR 833).

In aid of execution

It has been held that it is possible to arrest a ship, which is already under arrest in other proceedings, for the purpose of aiding the execution of a judgement (Perrin v. The Ship "R.F. Potamac" (1993) 1 CLR 145). The same is possible in the case of a *Mareva* injunction. In Linmare Shipping Co. Ltd v. Boustani (1981) 1 CLR 386, the Admiralty Court issued a *Mareva* injunction for the freezing of assets within the jurisdiction. After the issuance of the judgement in favour of the Plaintiffs, the Court ordered that the *Mareva* injunction should remain in force in aid of execution.

Caveat

Any person desiring to prevent the arrest of any property or the release of any property under arrest or the payment of any moneys out of Court may cause a caveat to this end (Rules 65-73).

Release of the Vessel under Arrest

The release proceedings are regulated by Rules 60-64. 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 upon such terms as to security or as to payment of any costs of appraisal or removal or inspection or otherwise as the Court shall see fit.

Requirements for the release

An order of release may be issued on an application, without notice to any other party if there is no caveat entered against the release of the property, and:

- Upon proof of payment into Court of the amount claimed, or of the appraised value of the property arrested, or, where cargo is arrested for freight only, of the amount of the freight verified by affidavit;
- On the application of the party at whose instance the property has been arrested;
- On a consent in writing being filed signed by the party at whose instance the property has been arrested;
- On discontinuance or dismissal of the action in which the property has been arrested.

Although there seems to be no general rule for the calculation of the amount of security, it is sufficient that this amount directly relates with the possible amount which may be awarded in favour of the Plaintiff in case of success of the action *in rem* (The Ship M/V "Bay Star" v. Mario Cirino Pomicino Spa (1998) 1 CLR

471). The order of release shall be served on the marshal by the party at whose instance it has been obtained. On service of the order of release and on payment to the marshal of all fees due to and charges incurred by him in respect of the arrest and custody of the property, the property shall be at once released from arrest.

The proceedings

The proper procedural measure for the release of a vessel is, according to Rule 60, the filing of a separate application ("motion"). However, in The Ship "Gloriana" v. Breidi and another (1982) 1 CLR 409, the Supreme Court held that a notice of opposition accompanied with a sworn affidavit can be considered as "motion" within the concept of the relevant Rule. Therefore, the filing of a notice of opposition instead of the filing of a separate application, is to be treated merely as an irregularity and not as a nullity (see also Mario Cirino Pomicino Spa v. The Ship "Bay Star" (1997) 1 CLR 1454).

The provision of adequate bail or security operates so as to substitute the arrested vessel. As a result, the Plaintiff is not entitled to arrest the vessel for a second time in relation to the same cause of action (Hadjievangelou (No. 2) v. Dorami Marine Ltd and Others (1978) 1 CLR 555). It has been decided that the discretion of the Court under Rule 60 must be exercised judicially by reference to the principle of law underlying the power to direct arrest, on the one hand, and the realities of the case on the other (Singh v. F/B Alisur Blanco (1984) 1 CLR 532). A party claiming the release of the vessel or the discharge of the security provided for the release of the vessel can only succeed if he can prove that the plaintiff's claim is frivolous or vexatious (Breidi and Another v. The Ship Gloriana and Others (1982) 1 CLR 1).

Judicial Sale of Vessel

Under Rule 74 the court has *inter alia* the power, either before (*pendente lite*) or after final judgement, by its order to appoint the marshal of the court or any other person to appraise the ship under arrest and to sell the ship with or without appraisal. An order for the auction of a vessel subject to appraisal imports a limitation to the power of the marshal to sell below the appraised value. The Court however has discretion to authorize the sale below the appraised value and in exercising such discretion the Court should consider the likelihood of the ship being sold at a price equivalent or higher than the appraised value (Greyhound Shipping Corporation v. The Ship "Platon Ch." (1986) 1 CLR 541).

Typical grounds for a sale *pendente lite* are that the ship is costing disproportionate amount in daily expenses, or that she is deteriorating owing to being under arrest for a long period, or that a cargo is perishable (Williams & Glyn's Bank Ltd v. The Ship "Maria" (1983) 1 CLR 773; Vector Omega AG v. The Ship M/V "Girvas" (1998) 1 CLR 1411). Depending on the order of the Court a vessel will be sold by public auction. Once the sale is completed the *res* is converted into the proceeds of its sale which are deposited with the Court to satisfy the various claims.

It is important to note that the sale of the ship does not deprive the Court of its jurisdiction. Once the Court has been seized with jurisdiction in the matter and such jurisdiction has never been contested until the commencement of the hearing, the Court cannot be deprived of its jurisdiction. Even after the sale of the ship any subsequent proceedings may be commenced *in rem* against such proceeds as if they were the property in question (Williams & Glyn's Bank Ltd v. The Ship "Maria" (1985) 1 CLR 495).

Other Injunctions Available to the Plaintiff

The Admiralty Court has the power to issue interim injunctions, for example *Mareva* injunctions, by virtue of Section 32 of Law 14/60. Since the judgement of the Supreme Court in the case of Seamark Consultancy Services Ltd v. Joseph P. Lasala and Others (2007) 1 CLR 162, the jurisdiction of the Court in issuing freezing orders has been extended to cover assets outside the jurisdiction. A *Mareva* injunction, however, like any other injunction operates *in personam* against the defendant. It does not of itself found jurisdiction as in the case of an admiralty action *in rem*.

Moreover, Section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law (Law 45/63), provides that the Supreme Court may, on the application of any interested person and if the Court thinks fit, make an order prohibiting for a time specified any dealing with the ship or any shares therein.

The content of this article intends to provide a general guide to the subject matter. Special advice should be sought on your specific circumstances. For further information, please contact Andreas Lytras.

