

# An interesting ship arrest case in Italy

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A photograph of a large, dark wooden sailing ship docked at a pier. The ship's hull is made of dark wood planks. A woman with blonde hair is visible on the deck. The ship is tied to a concrete pier with ropes. The water is a clear blue, and the sky is also blue. The text is overlaid on the image in a bold, white, sans-serif font with a black outline.

**A SHIP IS ALWAYS SAFE AT  
SHORE BUT THAT IS NOT  
WHAT IT'S BUILT FOR.**

**-Albert Einstein**

# The MV SORMOVSKIJ 32





# The MV SORMOVSKIJ 32

IMO: 7329144

Flag: Palau [PW]

Type: General Cargo

Gross Tonnage: 2484

Deadweight: 3134 t

Year Built: 1974

Status: Vessel still Active



# The MV SORMOVSKIJ 32

- CARGO OF LAMINATED STEEL COILS DISCHARGED AT LA SPEZIA (FROM) 16/3/1998
- B/L ISSUED TO A NOMINATED CONSIGNEE IN 3 ORIGINALS AND NOT ENDORSED
- SPETER SPA → B/L HOLDERS AND CONSIGNEES AGENTS
- ALFA TRADING → B/L NOMINATED CONSIGNEES
- 1 ORIGINAL B/L REDELIVERED BY AGENTS (SPETER) TO THE CARRIER TO OBTAIN DELIVERY «ON BEHALF» OF CONSIGNEES (ALFA TRADING)
- DAMAGES TO CARGO ASCERTAINED ON REDELIVERY
- SPETER ARRESTED THE VESSEL IN LA SPEZIA (ITALY) ON 18/3/1998
- **VESSEL RELEASED AFTER LOU WAS GRANTED 119 DAYS FOLLOWING ARREST**



## The MV SORMOVSKIJ 32

- SPETER FILED A LAWSUIT AGAINST CARRIER/SHIP-OWNERS FOR CARGO DAMAGES
- CARRIER/SHIP-OWNER COUNTERCLAIMED:
  - ❖ LACK OF TITLE TO ARREST AND SUE OF SPETER (NOT BEING THE NOMINATED CONSIGNEES IN THE B/L)
  - ❖ DAMAGES FOR WRONGFUL ARREST AS A CONSEQUENCE
- COURT OF LA SPEZIA FOUND IN FAVOUR OF SPETER AND REJECTED CARRIER/OWNERS EXCEPTIONS AND COUNTER CLAIM (26/09/2007)
- CARRIER/OWNERS APPEALED

## The MV SORMOVSKIJ 32

COURT OF APPEAL OF GENOA (25/7/2014) HELD:

- ☐ SPETER WAS NOT THE B/L NOMINATED CONSIGNEE BUT ONLY AN AGENT
- ☐ SPETER HAD TITLE TO CLAIM DELIVERY BUT NOT TO ARREST FOR DAMAGES AS THIS IMPLIES EITHER A NOMINATION IN THE B/L OR AN ENDORSEMENT OF THE B/L OR A SPECIFIC ASSIGNMENT OF RIGHTS
- ☐ SPETER WAS LIABLE FOR WRONGFUL ARREST

## The MV SORMOVSKIJ 32

- ❑ DAMAGES: 119 DAYS OFF-HIRE
- ❑ QUANTIFICATION OF DAMAGES.
  - FACTORS TO BE CONSIDERED:
    - NUMBER OF VOYAGES LOST BY THE VESSEL DURING DETENTION
    - TIME CHARTER HIRE EQUIVALENT DURING DETENTION
    - DEMURRAGE CALCULATION DURING DETENTION
- ❑ US\$ 232.685,00 PLUS INTERESTS FROM DATE OF VESSEL RELEASE PLUS COSTS



## The MV SORMOVSKIJ 32

### LEGAL CONSIDERATIONS

- ACCORDING TO ART. 6 BRUXELLES CONVENTION ITALIAN LAW IS THE APPLICABLE LAW AS LAW OF THE COUNTRY WHERE THE ARREST WAS ENFORCED.
- ACCORDING TO ART. 96 OF OUR CIVIL PROCEDURE CODE THE ARRESTOR MUST HAVE ACTED INTENTIONALLY (WILFUL OR RECKLESS CONDUCT) OR MUST HAVE BEEN GROSSLY NEGLIGENT IN CONDUCTING THE ACTION
- THE COURT OF APPEAL OF GENOA FAILED TO CONSIDER THE EXISTENCE OF A WILFUL MISCONDUCT OR A GROSS NEGLIGENCE OF THE ARRESTORS.
- THE CASE IS PRESENTLY PENDING BEFORE THE SUPREME COURT

# THE COURT PRECEDENTS

- ✓ Court of Genoa 27.12.1989 (Fast Ferries vs. Giuseppe Meocci)

Arrest for alleged salvage (It. Liras 200.000.000) eventually recognized by the court as port towage and quantified in 5% of the claim amount (It. Liras 10.000.000). Arrestor considered «at fault and grossly negligent».

- ✓ Court of Genoa 6.3.1974 (Magnano vs. Storebro Bruks)

«Even in case of inexistence of a right to arrest, the fault of the arrestor must always be prudently considered before concluding for a wrongful arrest liability»

- ✓ Court of Appeal of Lecce 11.3.1997 (Egyptian Navigation vs. Impresa Barretta)

«Arrestor not at fault for refusing a LOU proposed by a small Italian bank considered unreliable by the same arrestor»

## THE COURT PRECEDENTS

✓ Rotterdam District Court 9.7.1993 ( Stichting Rotterdam Trust vs. Compania Corunesa de Navegacion )

« The Owner of a vessel unlawfully arrested has no obligation to post security in order to release the vessel from the unlawful detention»

✓ Tribunal Maritimo de Lisboa 10.5.2000

« It failed to adopt a normal prudence an arrestor that acted against a vessel believed to be owned by a certain debtor only on the basis of a press news and without additional checks about ownership ».



Many thanks for your attention

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