

Case study of ship arrest in Spain.

Owner's conduct in the arrest of MV GU in Spain.

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Arrest in Spain – Possible fraud regarding the owner's true identity.

- The present case regards an arrest to secure a claim for our client, the charterer, for damages caused by a non-performance of a Voyage charter.
- The CP that gave rise to this claim was a GENCON 1994 standard form, providing for any dispute resolution to take place at arbitration in London.

-Box 3 of the CP identified as “co-owners” of the vessel the Registered Owner, an individual entrepreneur, and a company described as the vessel’s commercial operator.

-After the non-fulfilment of the CP, and its resulting damages were confirmed, an arrest order has been requested in Spain to secure the claim for the future arbitration procedure in London, to be brought against the owner and its managing company.

ARIZON ABOGADOS SLP

It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter Party which shall include Part I as well as Part II. In the event of a conflict of conditions, the provisions of Part I shall prevail over those of Part II to the extent of such conflict.

1 Shipbroker [Redacted] Latvia	RECOMMENDED THE BALTIC AND INTERNATIONAL MARITIME COUNCIL UNIFORM GENERAL CHARTER (AS REVISED 1923, 1974 and 1994) (To be used for freight for which no specially approved form is in force) (VIDE NAME: "GENCON")
3. Owner/Place of business (Cl. 1) Registered owner - Full Style: Individual entrepreneur INN [Redacted] 137-1 Krasnoyarskiy rabochiy Avenue, Krasnoyarsk Technical and commercial operator - Closed JS [Redacted]	2 Place and date 7 th September 2014 4 Charterers/Place of business (Cl. 1) [Redacted] GLASGOW, SCOTLAND, G1 4TP, UNITED KINGDOM
5. Vessel's name (Cl. 1) M/V [Redacted]	6 GTNT (Cl. 1) 1204/2900
7. DWT all told on summer load line in metric tons (abt.) (Cl. 1) 7616	8 Present position (Cl. 1) Trading
9. Expected ready to load (abt.) (Cl. 1) 15th October 2014	
10. Loading port or place (Cl. 1) Dudinka, Russia, 1 gsb aa	11. Discharging port or place (Cl. 1) Wismar or Stettin, 1 gsb or; E. Spain, 1 gsb or; Barcelona, 1 gsb; disposal to be declared upon signing bill
12. Cargo (also state quantity and margin in Owners' option if agreed, if not and complete cargo not agreed state "part cargo") (Cl. 1) up to F+C in chopt of steel scrap (SF - art 53 +/- 5%) in bulk (non oily, harmless, non lmo/non radioactive scrap, no turnings/engines/motorblows)	
13. Freight rate (also state whether freight prepaid or payable on delivery) (Cl. 4) 14700000,- RUB lumpsum fiost for Wismar and Stettin 15700000,- RUB lumpsum fiost for E. Spain 17000000,- RUB lumpsum fiost for Barcelona	14. Freight payment (state currency and method of payment, also beneficiary and bank account) (Cl. 4) Charterers w/T 7 bdays upon B-H Bs/I marked "Freight payable as per cp dd 11/09/2014" and on receipt of Owners' freight invoice directly into Owners nominated bank account but

-The arrest application had been granted based on the 1999 Arrest Convention and the Spanish Shipping Act 2014 by the Commercial Court of Donostia (Spain). -

-In response, the registered owner appeared in person before the court in Spain, submitting that this court did not have jurisdiction to enforce a claim arising from the CP, **because of the arbitration agreement, that he admitted to be binding upon himself and the shipping management company**, and that the security for the arrest was not sufficient.

The Reg. owner precise words in contesting the arrest were: *“As the plaintiff itself acknowledges on his arrest application, **the disputes arising in relation with the charter party entered into by the parties shall be subject to arbitration in London**”.*

-The Reg. Owner had then appealed to the regional Court of Appeal of Guipuzcoa, solely on the grounds of lack of jurisdiction, where he again relies on the CP' s provisions of the arbitration agreement, *ipsis litteris*:

“This proceeding arises from the arrest of the MV “Georgiy Ushakov” requested by the plaintiff before the Commercial Court of San Sebastian in support of the corresponding arbitration proceeding to be pursued in London as a consequence of the disputes that have arisen between the plaintiff and my client in relation to the charter party dated September 17th, 2014 agreed by the parties.”

- The arguments of the owner were rejected and the arrest was maintained. In deciding the merits of the arrest, The court of appeal has expressed that the arrest procedure was merely a precautionary action in order to secure payment for the claim to be decided by arbitration in London, as per the CP agreement.
- The CA has expressly acknowledged that **neither of the contenders have challenged the validity of the arbitration agreement.** As such, the evidence is uncontroversial that **both parties had entered into the CP agreement and rely on the arbitration clause.**

-Upon this decision from the courts, the Reg. Owner opted to lift the arrest by depositing a security, as permitted by the 1999 Arrest Convention. The deposit receipt made reference to a bank account owned by the managing company.

-A few months later, the parties did not reach an agreement and two arbitrations were started against the two owners of the vessel, as disclosed on the CP. Until this moment, the reg. owner had indicated he was the true owner of the vessel, which was managed by the second owner/company cited in the CP.

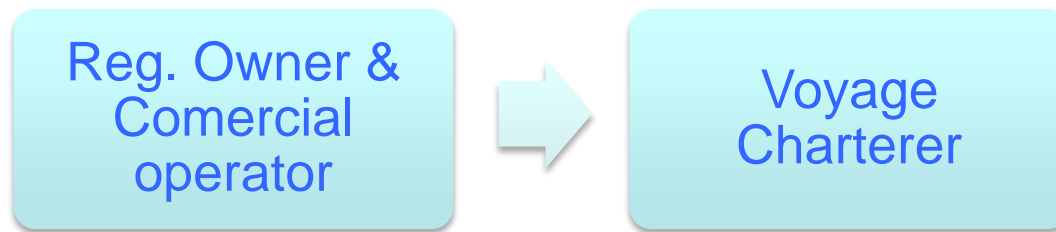
–The arbitrators accepted the submissions of the Reg. Owner that he was not part of the CP. He now declares that his vessel had been leased to a third company, which in turn was demise chartered to the current commercial operating company of the vessel sated on the CP.

-The arbitrators glossed the evidence that during negotiations of the CP, the broker had been informed that the Reg. Owner was the actual owner of the vessel by the very own managing company, that now claims to be a demise charterer in a suspicious chain of sub-contracts. Also during the arrest procedure, the Reg. owner declared to and acted as having a direct relation with the demise charterer and the vessel (claimed to be suffering losses).

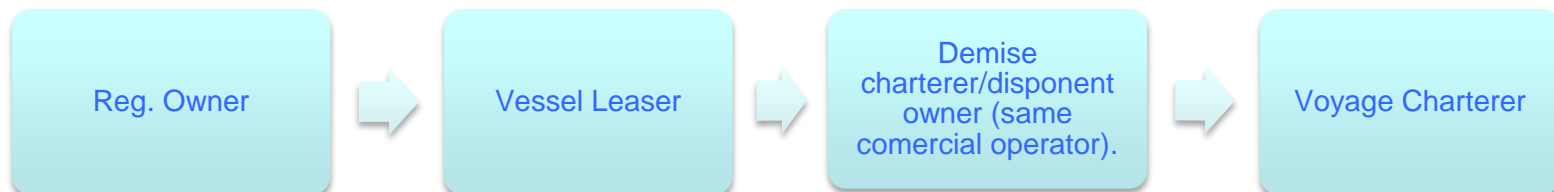
- As a consequence of the arbitration decision in his favour, the Reg. Owner will attempt to lift his security deposited and claim damages caused by the “arrest.”
- However, the present situation is filled with contradictions on part of the owners, e.g.:
 - His incompatible and misleading conduct in the arrest and arbitration procedures regarding the vessel ownership.
 - The nature of a Demise charter party where the owner should not be concerned with the claims against the vessel, so long as he is receiving his full payments of hire, in contrast to his allegations of suffering damages.
 - The security deposit payment's receipt in the name of the managing company/demise charterer.

- Is it lawful for the reg. owner to claim not to be a charter party to the CP in the arbitration or is he estopped from claiming so after not disclosing it immediately when the arrest in Spain was issued?
- **We believe not:** had he disclosed the situation from the beginning, with adequate evidence, the arbitration procedure against the registered owner would not have existed. Instead he abused of a overly-complex and unusual chain of contracts to protect himself and misled the final charterer in a apparent fraudulent way.

Contractual relationship according to the CP negotiations:



Contractual relationship according to the Arbitration submissions:



Claiming damages from the owner in Spain for his tortuous action:

-In respect of this apparent delict committed by the Reg. owner, causing considerable losses in legal costs, our client will now claim the expenses caused by this misconduct through an action in Tort in Spain. All expenses involved in the arrest and the arbitration procedure could have been avoided had the owner acted fairly.

-Spanish procedure law give jurisdiction to its courts where the tortuous acts took place in their territory. The action will also seek to impede the owner from lifting the security deposited, which could render the arbitration against the managing company fruitless.

--The principle of “good-faith” is part of the Spanish law regulating the judicial civil procedure, on Art. 247. His wrongful reliance on the charter party has caused avoidable losses and qualify as a “fraud” or “abuse” under the Law.

The view from the Court of Appeal (England and Wales) on a similar case, “The Elikon”:

-This case had a similar controversy as to which owner, or both of them, was truly a party to a Voyage charter, and consequently, to the arbitration agreement. The charter party box contained the name of two owners but only one of them had signed the CP without any qualification.

- The arbitration was commenced by one of the parties insurers and lawyers, innominately in the name of the “owners”. After commencement, the arbitrators were unsure which of the owners, or both of them, could rely on this specific arbitration agreement and claim under the CP, therefore, this discussion was sent to the courts.

-The decision from the Court of appeal agreed with the commercial court and held that only the owner who had signed the CP was bound to this CP, and could, therefore, be a part of the arbitration procedure against the charterers. All acts on the arbitration that referred to the other owner were void and the arbitration would have to be recommenced.

- As a result, The charterers would suffer significant losses due to the costs of the “wasted” acts on the arbitration procedure. In this aspect, Lord Justice Rix has expressed that the liability for costs should be revaluated before the arbitrators and the courts, as expressed (p. 89):

I fear nevertheless that the costs of these essentially preliminary and procedural disputes have been considerable. **There may be argument both before this court and before the arbitrators as to how those costs should be dealt with.**

- He has expressed that it was possible to argue that such losses may have been caused by the owner's lawyers or even the arbitrators themselves. Either way, it would not be fair for the charterer to bear this costs on its own.
- **In comparison to our case:** it was clear that the unnecessary arbitration costs were caused by the reg. Owner malicious conduct, where he attempted to rely on a arbitration agreement before the Spanish courts and later claimed he was not a party to the CP. This should be accounted by the courts in both jurisdictions, in reviewing the allocation of the arbitration's and the arrest's legal costs.

The end

Thank you for watching!

