

IS A PAIR OF HANDCUFFS SUFFICIENT TO ARREST A SHIP?

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Is a pair of handcuffs sufficient to arrest a ship?

1. Unfortunately, you need much more than a pair of handcuffs; you will need the Court's assistance.
2. In order to procure the Court's assistance, you will have to satisfy the requirements of the High Court (Admiralty Jurisdiction) Act (Cap 123).

Purpose of arresting a ship

1. To obtain security.
2. To establish jurisdiction.
3. To commence proceedings.

Process of a ship arrest

First, you will have to file your arrest papers, including the

- Writ of Summons;
- Request for Warrant of Arrest; and
- Affidavit leading to Arrest.

Second, you will have to do a causebook search and ensure that there have been no caveats lodged against the arrest of the ship.

Third, you will have to persuade the Court to grant you the arrest.

Who may commence Arrest Proceedings?

Broadly, the High Court Admiralty Jurisdiction Act (Cap 123) (“HCAJA”) provides that arrest proceedings are available for three broad categories of claims:

- a. Ownership, possession and mortgage;
- b. Maritime lien; and
- c. Statutory lien.

Section 3(1) of the HCAJA

- a. any claim to the possession or ownership of a ship or to the ownership of any share therein;
- b. any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;
- c. any claim in respect of a mortgage of or charge on a ship or any share therein;
- d. any claim for damage done by a ship;
- e. any claim for damage received by a ship;
- f. any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
- g. any claim for loss of or damage to goods carried in a ship;
- h. any claim arising out of any agreement relating to the carriage of goods in a ship or to use or hire of a ship;
- i. subject to Section 168 of the Merchant Shipping Act (Cap. 179) (which requires salvage disputes to be determined summarily by a District Court in certain cases), any claim in the nature of salvage (including any claim arising under Section 11 of the Air Navigation Act (Cap. 6) relating to salvage to aircraft and their apparel and cargo);
- j. any claim in the nature of towage in respect of a ship or an aircraft;
- k. any claim in the nature of pilotage in respect of a ship or an aircraft;
- l. any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
- m. any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;
- n. any claim by a master or member of the crew of a ship for wages and any claim by or in respect of a master or member of the crew of a ship for any money or property which, under any of the provisions of the Merchant Shipping Act (Cap. 179) is recoverable as wages or in the Court and in the manner in which wages may be recovered;
- o. any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;
- p. any claim arising out of an act which is or is claimed to be a general average act;
- q. any claim arising out of bottomry; and
- r. any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of admiralty.

Section 3(1) of the HCAJA

Commonly invoked provisions of s 3(1)

- Claim to the possession or ownership of a ship
- Question arising between co-owners of a ship as to possession, employment or earnings
- Claim in respect of a mortgage or charge
- Claim for damage done by or received by a ship
- Claim for loss of life or personal injury
- Claim for loss of or damage to goods carried on a ship
- Claim arising out of agreement relating to the carriage of goods in a ship
- Claim by a master or crew for wages

Effect of s 4(2) HCAJA

Claims concerning:-

- S 3(1)(a): the possession or ownership of a ship or to the ownership of any share therein
- S 3(1)(b): any question arising between the co-owners of a ship as to possession, employment or earnings of that ship
- S 3(1)(c): a mortgage of or charge on a ship
- S 3(1)(r): the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of admiralty ...

Follow the ship and are good against change of ownership

Ownership, possession and mortgage

Definition of ownership, possession and mortgage is self-explanatory

- Extends to theft of ships and possession dispute.
- Mortgage includes equitable mortgage [see S 3(4)(c)].

By reason of s 4(2) of HCAJA, a claim for ownership, possession and mortgage follows the ship and is good against change of ownership.

Maritime lien

A maritime lien arises principally where one has a claim concerning

- salvage,
- collision damage, and
- wages.

Characteristics of a maritime lien:

- arise by operation of law;
- attaches to the ship when the claim arises;
- follow the ship until it is scrapped;
- is good against a change of ownership; and
- no action required to further crystallise lien.

Maritime liens

Section 4(3) of the HCAJA:

In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, the admiralty jurisdiction of the High Court may be invoked by an action *in rem* against that ship, aircraft or property.

Statutory Lien

A statutory lien forms/crystalises when an *in rem* writ is issued under section 3(1) of the HCAJA.

Characteristics of a statutory lien:

- Gives the Plaintiff position of a secured *in rem* creditor
- Protects claim from timebar
- Protects claim from change of ownership

Section 4(4) HCAJA

In the case of any such claim as is mentioned in section 3(1)(d) to (q), where –

- a. the claim arises in connection with a ship; and
- b. the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship,

an action in rem may (whether or not the claim gives rise to a maritime lien on that ship) be brought in the High Court against –

- i. that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of that ship under a charter by demise; or
- ii. any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.

Effects of Section 4(4)

May arrest any other ship that is also beneficially owned by the person who would be liable personally at the time the action is brought

- such as a sister ship.

But only if all requirements under section 4(4) are fulfilled.

Effects of Section 4(4)

What constitutes “beneficial ownership as respects all the shares therein”?

- *The Makassar C/JN III 39 [2010] SGHC 306*

Refers to such ownership of a ship as was vested in a person who had the right to sell, dispose of or alienate all the shares in that ship

Does not include a demise charterer, who has beneficial use but not ownership

Common ownership / related companies (unless sham)

- Cannot arrest a ship owned by a related company

Unless – one-ship company created after the cause of action has been accrued, in which case the transfer may be challenged as a sham

➤ *THE SKAW PRINCE* [1994] 3 SLR 379

Corporate veil should only be lifted if the ship or ships the subject of the claim had since been transferred to new ownership and with a view of ascertaining whether the beneficial owners remained the same

Or where a façade or situation was shown where deliberate fraud had been perpetrated through fictitious transactions

Or through the vehicle of non-existent companies

Possessory liens

A possessory lien is held by one who is in physical possession of a ship for a debt and ceases to exist when the ship is released from one's possession.

E.g. a shipyard has a possessory lien over a ship in its possession for repair works that have yet to be paid.

Self-help remedy and no need for an arrest.

One ship arrest rule

- Plaintiff can arrest one ship only in respect to each cause of action (*THE BANCO*)

Duty of full and frank disclosures of all material facts

- *The Vasiliy Golovnin* [2008] 4 SLR (R) 994

Applicant has to disclose to the court all matters within his knowledge which may be material even if they are prejudicial to the applicant's claim.

Mere non-disclosure of material facts may result in the arrest being set aside and damages for wrongful arrest being awarded.

Location of ship to be arrested.

- Only within the port limits of Singapore
- *The Trade Resolve* [1999] 4 SLR 424
Arrest made outside port limits but within Singapore's jurisdiction was set aside. Wrongful Arrest.

Third party rights in a ship arrest as compared to a mareva injunction

- Ship arrest – subject matter of claim must fall within Section 3(1) of HCAJA
- Mareva injunction – risk of dissipation of assets; not a means to obtain security but a means to ensure the fruits of litigation is not rendered nugatory

Security

Plaintiff entitled to security of such amount based on their reasonably best arguable case.

Acceptable forms of security

- Bank guarantee from 1st Class Singapore Bank
- LOU from reputable P&I club or H&M underwriter
 - International Group? See: *The Arcadia Spirit*
 - Consider individual standing of P&I Club: *The Arktis Fighter*
- Bail bond (rare)
- Payment into Court (seldom used)

Sale of vessel – After Judgment or pendente lite

Sale Pendente Lite

- Objective: to convert a wasting asset into cash before conclusion of litigation.
- *The Myrto* [1977] 2 Lloyd's Rep 243
 - A court will only order sale *pendente lite* where there is a good reason for it.

Judicial Sale

- Gives you title free from all liens, prior claims, or prior encumbrances
- Must meet reserve price set by Sheriff

Order of Priorities

1. Port dues
2. Sheriff's expenses
3. Arresting costs
4. Salvage
5. Damage claim
6. Wages / disbursement of crew
7. Possessory lien
8. Mortgages
9. Statutory liens

However, the order is not immutable.

THANK YOU
