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14TH ANNUAL MEMBERS' MEETING

Foreign Vessel Owners' Bankruptcy Proceedings vs. Creditors' Local Arrest (in rem) Proceedings – Conflict of Laws and Israeli Legal Approach



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Historical background

- ❑ **The Admiralty Court has the same jurisdiction as exercised in admiralty matters by the High Court of Justice in England in 1890**, subject to any enactments by the local legislative authority and could exercise such jurisdiction in the same manner and to the full extent as the High Court in England.
- ❑ Thus, basically, the Admiralty law and practice in the State of Israel is still based on the provisions of the **British Admiralty Court Acts of 1840 and 1861 and the rules of procedure as set out in the Vice Admiralty Rules of 1883.**

Applicability of Israeli Shipping (Vessels) Law of 1960

- ❑ The applicability of the Shipping Law to foreign vessels was brought (on appeal) before the Israeli Supreme Court in 1990 in A.C. 352/87 Griffin Corporation v. Koor Trade Ltd. et al (the 'NADIA S') within the framework of a claim for the enforcement of a mortgage over a foreign vessel and various other claims of creditors of the vessel which were allegedly secured by a maritime lien.



- ❑ The Israel Supreme Court ruled (by majority) that the validity and existence of a maritime lien will be determined by the '*lex causae*' governing the merits of the claim.
- ❑ The rank, priority and preference of the liens, being classified as being of procedural nature, will be determined by the law of the forum (in accordance with the principles of the rules of choice of private international law).

- ❑ It follows from this ruling that **Chapter 4 of the Shipping Law, which determines the liens and their rank of priority, will apply (for the purpose of determining the rank of priority) also to a foreign vessel** and to a claim for the enforcement of a lien on a foreign vessel.
- ❑ **The Shipping Law determines, *inter alia*, the rank of priority of eight causes of action secured by a maritime lien.**

The Admiralty Court's jurisdiction to issue an arrest warrant against a foreign vessel

Article 5 of The Admiralty Court Act of 1861:

"The High Court of Admiralty shall have jurisdiction over any claim for necessaries supplied to any ship elsewhere than in the port to which the ship belongs....."



Chapter 4 (Liens) Section 40 of the Shipping (Vessels) Law, 5720-1960:

"To secure the debts specified in section 41 due in respect of any vessel, there shall be charged with a first lien the vessel, the freight payable in respect of the voyage.... and this lien shall rank prior to any other charge or security to which the vessel....is subject"



Section 41(8):

“The following are, in order of rank, the debts to be secured as aforesaid:

...(8) payments claimed for or in connection with supplies or services or provided to the vessel under agreements or transactions entered into by the master of the vessel within the scope of the authority conferred to him by law....”

Conflict between foreign bankruptcy proceedings and domestic *in rem* proceedings:



**The Israeli Supreme Court ruling:
"The Ellen Hudig" (The trustees of ABC Containerline N.V. vs Bridge
Oil et al.)**

Merits:

- ☐ The Haifa Admiralty court issued arrest orders against the Vessel granting the application of vessel's various creditors (crew and suppliers).
- ☐ On the same day a bankruptcy order was issued against the owners by the Belgian court.

- ❑ Subsequently, the Belgian court issued an order calling upon the Israeli court to recognize the powers of the Belgian trustees to take possession of the Vessel and to auction it, within the Belgian bankruptcy proceedings.
- ❑ Trustees approached the Admiralty court requesting a stay of the Israeli proceedings, based on the argument of *forum non conveniens* and unlawful parallel bankruptcy proceedings.

Ruling of the Supreme Court:

- ❑ Following the issuing of an arrest warrant based on a recognized cause of action, the Admiralty Court retains the jurisdiction to deal with the *in rem* claim.
- ❑ Granting of an application for stay of proceedings – also due to a - *lis alibis pendens* argument - is subject to the court's discretion. It was upon the Trustees to persuade the court that claimants' rights according to Belgian law would not be prejudiced compared to their rights before the Admiralty courts – the burden of proof has not been lifted.

- ❑ The existence of bankruptcy proceedings in a foreign jurisdiction does not necessarily require the concentration of all claims against the vessel's owners and their assets before the bankruptcy court.
- ❑ The reasoning for this outcome is based on the uniqueness of the maritime lien, which is a strong possessory right on the *res* itself, contrary to an *in personam* right against the vessel's owners.

- ❑ Following "The NADIA S" ruling: The enforcement of a maritime lien is subjected to the rank of priorities determined by the *lex fori* (law of the forum) also with respect to foreign vessel arrested by the Admiralty Court.
- ❑ Indeed, bankruptcy proceedings have their influence on the method of submitting claims against the owners; however *in rem* proceedings are not submitted against the owners but rather against the vessel itself.

- ❑ The outcome is therefore that claimants enjoying a maritime lien, are immune from the consequences of owners' bankruptcy proceedings in a foreign jurisdiction, and will enjoy the seniority of the rank of priorities determined by the law.

Questions?

