

## THE “POSIDON” AND THE “PEGASUS”

### SINGAPORE HIGH COURT DENIES LEAPFROGGING OF CLAIMS

In a landmark decision, the Singapore High Court held that it is possible for maritime claimants to alter the usual order of priorities between claimants should exceptional circumstances exist.

Piraeus Bank, one of the largest Greek Banks, commenced mortgagee actions in Singapore and effected a double arrest on the vessels “Posidon” and “Pegasus”, flowing from the ship-owners’ default of a loan agreement. The vessels were subsequently sold pursuant to a judicial sale.

Subsequently, World Fuel Services, who had via various companies supplied bunkers to both vessels on credit, intervened in both actions.

World Fuel Services claimed that the usual order of priorities, in terms of entitlement to the vessels’ sale proceeds, should be altered so as to elevate their claim for unpaid bunkers above the Bank’s claim as mortgagees, which would ordinarily enjoy a higher priority. The exceptional circumstance relied on was that the Bank stood by and allowed the bunkers to be supplied to the vessels to its benefit.

The arrest is interesting for the specific assertions that World Fuel Services made in support of their claim to alter priorities.

These were:

- a. The bank was in *de facto* control and management over the finances for the operational needs of the vessels;
- b. The bank had authorised and approved of the bunker purchases;
- c. In the alternative, that the bank, with knowledge of the shipowners’ insolvency, know of or acquiesced to the bunker purchases;
- d. That the bank knew that the bunker purchases would “benefit” the bank and/or the bank’s security interest as the bunkers provided motive power to the vessels and ensured the physical safety of the vessels; and
- e. The bunkers also allowed the vessels to operate and thereby generate income to the benefit of the bank.

Justice Belinda Ang of the Singapore High Court in a written Judgment [**The “Posidon” (2017) SGHC 138**] firstly held that the Court did have the power to alter priorities between maritime claimants. In the context of mortgagees, the Court adopted the English position in *The Pickaninny*, where exceptional circumstances would exist when a mortgagee, knowing the mortgagor to be insolvent, stands by and allows the supply of necessities that directly accrue to the benefit of the mortgagee or the mortgagee’s security interest in the vessel.

This is the first local decision on the point as prior cases had only ruled that the Court had the power to allow certain claims to be treated as Sheriff’s expenses and thereby enjoy a higher priority.

Applying the above, the Court declined to alter priorities. World Fuel Services were unable to show that the supplies of bunkers had benefitted Piraeus Bank or Piraeus Bank’s security interest as the bunkers were supplied for operational purposes. Further the Court found that Piraeus Bank had no knowledge of the ship-owners’ insolvency and did not have any control or management over the vessels.

The Court went on to state that the extension of credit by World Fuel Services to the ship-owners was a business risk assumed by World Fuel Services in the course of business.

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