



# ONE CLAIM – TWO ARRESTS

## WHAT CONSTITUTES ‘GOOD CAUSE’?

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# Arrest Fundamentals

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Ship arrest is a **one-shot game**

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Once a ship has been arrested, no additional arrests are permissible for the same claim

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Protects ship owner from **harassment**

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Increases need for claimant to **choose place of arrest wisely**

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# Exceptions – 1952 Arrest Convention

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1952 Arrest Convention:

*[...] unless the claimant can satisfy the Court [...] that the bail or other **security had been finally released** before the subsequent arrest or that there is other **good cause** for maintaining that arrest.*

# When Do the Exceptions Apply?

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## Security has been released

- What if the **claimant** has released the security?
- What if it becomes near **impossible** for the claimant to draw on the security (but it remains in place)?

## Good cause

- Must there be **blame** on the ship owner?
- What if there is **blame** on the claimant?



# Exeptions – 1999 Convention

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**‘Released’**-exception is kept and elaborated upon

*But*

**‘Good cause’**-exception removed

1999-Convention only in force in few countries.

# The Ersen Bey and the Ali Bey

Danish Maritime and Commercial High Court, case no BS-40562-2020, judgement of 23 August 2021

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# The Ersen Bey and the Ali Bey

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11 June – Ships purchased for EUR 800,000 per vessel



1 July – Agreement with yard to prepare vessels for towage – subsequent dispute over price of EUR 400,000



14 July – Arrest of Ali Bey for EUR 400,000 (i.e. entire claim)



16 July – Arrest of Ersen Bey for EUR 200,000 (and reduction of claim on Ali Bey)

# The Ersen Bey and the Ali Bey

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## Why was only one ship arrested initially?

- To save costs
- Planned double tow

## Why was the second ship arrested?

- Preparations for towage continued
- Further investigations were made into market prices
- The yard became fearful that security was inadequate



# The Ersen Bey and the Ali Bey

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## **The court found:**

- Assessment of value of security/vessel at the time of arrest;
- The price paid by the owners for the vessels could not be decisive
- The uncertainty about the value was sufficient to constitute 'good cause'
- Second arrest was legal

## **Analysis:**

- Irrelevant whether earlier or later prices were higher
- Irrelevant if blame could be placed on the claimant

# The Expensive English Lawyers

High Court of Western Denmark, case no B-66-22, decision of 7 March 2022

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# The Expensive English Lawyers

31 January 2020  
– Arrest in the  
Netherlands.

- Principal amount: EUR 362,000
- Costs: EUR 102,000

Subsequently –  
arbitration  
commenced in  
London

28 January 2022  
– Arrest in  
Denmark.

- Interest: EUR 50,000
- Additional costs: EUR 586,000



# The Expensive English Lawyers

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## The Claimants explained

- Cost of arbitration was **much higher** than anticipated
- The costs could not have been **foreseen** during the first arrest
- Dutch rules imposed a **cap on security** for costs



# The Expensive English Lawyers

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**The Court agreed with the ship owner but did not explain its conclusion.**

Possible interpretations:

- Legal costs are 'less protected' than direct costs?
- The costs had been foreseeable?
- Not willing to circumvent the Dutch cap on costs?
- Was this even a 'maritime claim'?



# Conclusions

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- Assessment of value of security must be done at the time of the second arrest
- Irrelevant if the claimant may be blamed for having assessed value incorrectly
- Legal costs are likely less 'protected'
- Foreign arrest rules must be respected and should not be circumvented





*Thank you*