

**Strange
Arrests**

Oslo
September
2023



SHIP
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ARIZON ABOGADOS SLP



For the presentation of this case, we have decided to change the name of the ship to MY PHANTOM

However, we can say that this arrest relates to a very particular yacht with a value well in excess of USD 180M and that it comes within a very particular context.



This yacht was not used for commercial purposes but for family pleasure. However, the family broke up, a divorce scenario came along, and before the divorce materialized the *ultimate* owner, Mr X, died of Covid 19.

We face some difficulties:

- (i) The Owner of the yacht was never a physical person but a Company as it is always the case with this type of highly expensive assets.
- (ii) Few years prior to the death of Mr X, the Company ownership of the yacht changed. The initial Company that owned the yacht belonged to Mr X and his daughter. However, with the divorce scenario, Mr X changed this and then a new Company belonging to Mr X and to a third party became the owner of the Yacht. Mr X's daughter did not receive any moneys out of this change.



The third party kept possession of the yacht contending to have Ownership both via the operated changed of ownership, and a holographic will of the deceased.

The yacht was expected to arrive in Spain, and we are asked to arrest her on behalf of the daughter.

A further difficulty is that the merits of the dispute are litigated in many jurisdictions where Mr X had assets. However, the main jurisdiction where the merits are litigated is a jurisdiction specialized in *off shore* Corporations.

In this jurisdiction the team of lawyers of the client say:

This case is not a case where ownership is disputed, as the same Company has owned the yacht during the past two years. However, we can sustain that the client has a claim against the Company that currently owns the yacht on the basis of fraud.



Spain is a party to the **1999 Arrest Convention**.

Our list of claims under the Convention is very wide. Moreover, if the ship to be arrested is not a party to the 1999 Convention, therefore under Spanish law we can arrest her in Spain for:

- (i) any type of maritime, or
- (ii) non-maritime claim.

Spain is ship arrest paradise as far as types of claims are concerned. On the other hand, you have to put security to arrest a ship, for a minimum of 15% of the claim amount. In the instance case, the ship is worth in excess of USD 180M.

Another important aspect of the case is that Spain has wrongful arrests, if you arrest and the arrest is rightly contested or where the merits are lost, you must indemnify the arrested party with damages. Wrongful arrest scenarios normally are not that grave as the Owners tend to lift the arrest to mitigate their losses.



The lawyers of the merits jurisdiction state that they have a **fraud case to build against the current corporation that owns the yacht** and that this is the way they want us to build the arrest application. This is not out suggested approach.

We find it rather complicated. However, we follow instructions, we have no option but to build our application by presenting two affidavits giving detail of the claim and expect the judge to rely on the content of the affidavits:

- (i) from London solicitors,
- (ii) from the merits' jurisdiction, explaining the whole situation in great detail, and concluding that our client has a claim out of a fraudulent scheme against the Yacht.

We present the application before the Spanish Commercial Court.



The Court issues an order refusing the arrest, **holding:**

Obviously, what the claimant may claim is not the ship, but it may claim liability from the trust management, from the Directors of the current Corporation owning the ship. Indeed, the actions in the jurisdiction on the merits are directed to declare a **mismanagement and fraud**.

Relying on the affidavit from the lawyers, the Court states that according to the lead lawyer on the action on the merits, this claim does not relate to the ownership, neither with the possession of the ship.

Moreover, the criteria of Article 3 of the 1999 Arrest Convention is not met as the physical person who intends to arrest the ship is not the party that should arrest but the Corporation that was the prior owner of the ship.

As a whole there is no maritime claim that justifies the arrest and therefore the facilities granted by the 1999 Arrest Convention cannot apply. This claim is a non-marine claim, and the Court is not satisfied with it.





1999 Arrest Convention

Art. 1. “Maritime Claim” means a claim arising out of one or more of the following:

- s) any dispute as to ownership or possession of the ship;
- t) any dispute between co-owners of the ship as to the employment or earnings of the ship;
- v) any dispute arising out of a contract for the sale of the ship.

1952 Arrest Convention

Art 1. Maritime Claim” means a claim arising out of one or more of the following:

- o) disputes as to the title to or ownership of any ship;
- (p) disputes between co-owners of any ship as to the ownership, possession, employment, or earnings of that ship;



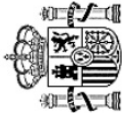
We are not happy with the Court order refusing to arrest the ship on the basis we do not have a claim under the Arrest Convention. We see that the judge was not happy or comfortable with this litigation for reasons we cannot disclose here.

We ask the client to give us free hands to present a new application in a more straight forward way, on the basis that there is a dispute out of the sales contract, our client was 49% owner of the shares of the yacht, ownership changed and our client did not receive any part of the purchase price. We should present the sales contract used for the change of ownership.

The value of the yacht is above USD 180M and the purchase price on the MOA agreement that changed ownership was below USD 4M. There was also a leasing arrangement, but the arresting party did not receive any part of the purchase price.

This is not an approach the lawyers on the merits are happy with but the client fear the ship may go to unreliable jurisdictions.

To get a lower demand of security by the Court, we ask for the arrest of EUR 10M, rather than the full claim, expecting a 1,5M request of security.

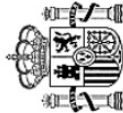


This time the Court agrees and issues the arrest order:

It issues an arrest order arresting the yacht for EUR 10M requesting security for 2,5M EUR and grants 90 days to commence the merits abroad.

We are very happy with the outcome, but we need to put security to enforce the arrest. This is 11:00 am two days before Christmas, and we have 3 hours to get the security in the Court's account before the Court closes.

The Court let us 1 additional hour to get the security arrive but at 15:15 the security has not arrived, and the Court closes until the following day, when we expect to have the security and enforce the arrest of the ship.



La difusión del texto de esta resolución a partes no interesadas en el proceso en el que ha sido dictada sólo podrá llevarse a cabo previa disociación de los datos de carácter personal que los mismos contuvieran y con pleno respeto al derecho a la intimidad, a los derechos de las personas que requieren un especial deber de tutela o a la garantía del anonimato de las víctimas o perjudicados, cuando proceda. Los datos personales incluidos en esta resolución no podrán ser cedidos, ni comunicados con fines contrarios a las leyes.



As I get out of the Court at 15:27 I look for a taxi, and then to my dismay I see three masts in the horizon moving away from the port.

The Phantom leaves the port heading to the Caribbean, where the matter will continue.

