Ship arrests in Norway: Challenges and possibilities

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Is Norway a good jurisdiction to arrest a ship?

Arguably yes….

….but there are some hoops you have to jump through.

Agenda

1. Key characteristics of the Norwegian rules on ship arrests
2. Main requirements for arrest
3. Practical aspects
4. Examples / case law

Key characteristics

- The rules on ship arrests consists of two main components:
  - The Arrest Convention 1952 – Implemented in the Norwegian Maritime Code (NMC)
  - Civil procedural rules – Implemented in the Dispute Act (DA)
- The requirements in both set of rules must be satisfied for an arrest
- Discretionary basis
- Actions "in rem" not recognised – The shipowner must be the debtor
- Sistership arrests – Allowed
- Associated ownership arrests – Not allowed

Main requirements

1. Need for security

- "Need for security" - The debtor's actions must give reason to fear that enforcement will be prevented/made more difficult or must occur outside Norway, cf. DA Section 33-2
- Must be proven on a balance of probabilities
- Enforcement will be prevented / must occur outside Norway
- Raises the bar for arrests
- However
  - Relatively clear case law on what is required, e.g. non-payment
  - Exception: Maritime lien

Main requirements

2. Proof of underlying claim

- The creditor's claim must be proven on a balance of probabilities, cf. DA Section 33-3
- That the claim will prevail is the more likely outcome

3. Maritime claim

- Arrests can only be taken to secure maritime claims, cf. NMV Section 92
- Claims list: As per the Arrest convention + claims for compensation after wreck removal

4. Connection to ship / debtor

- The claim must relate to:
  - The ship being arrested, or
  - Other ships owned by the debtor when the claim arose, or at the time of the arrest

Practical aspects

- Ex parte arrest
  - Possible if there is a risk of loss
  - Subsequent oral hearing
- Security
  - To cover the full claim and incurred costs
  - Cash deposit or BG
  - Club LOUs not accepted
- Liability for wrongful arrest
  - Strict liability if the claim did not exist
  - Negligence based liability if wrongful or misleading information has been provided
- Enforcement/Force sale
  - Requires a separate legal basis, e.g. a final judgement/award
- Right to obtain jurisdiction in underlying claim
- Yes, unless the parties have entered into a binding agreement on jurisdiction/arbitration

Examples / case law

Grumant (LH-2021-38884)

- Russian cargo ship arrested on Svalbard to secure claim for payment for safety equipment
- Clear and undisputed debt
- "Need for security" disputed because:
  - The russian owner was under bankruptcy proceedings in Russia
  - The Vessel was arguably overencumbered

- The court of appeal held that
  - The russian bankruptcy proceedings did not affect assets in Norway
  - Irrelevant whether the Vessel was overencumbered

Examples / case law

Viking I (LB-2022-60621)

- Non-marine – concerned arrest in shares as part of an enforcement action
- Background: Shareholder dispute before the Singapore courts
- Highly complex facts, but the claim was determined by a clear and unappealable decision
- Arrest disputed primarily because claimants arguably were unable to prove the underlying claim
- Norwegian Court of appeal held:
  - Decision appeared to be based on thorough process and the relevant evidence
  - It was then not neccessary to evaluate the underlying claim in more detail
  - The claimants had satisfied the requirement for proof of the underlying claim

Thank you for your time!

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