
SHIP ARRESTS IN FRANCE : LATEST DEVELOPMENTS

INTRODUCTION

Our firm is specialized in contentious aspects of international trade and transportation. We deal with matters involving most aspects of shipping litigation and arbitration practice, concentrating on C/P and B/L but also on shipping casualties: grounding, pollution, collision.

Most of our activity deals with proceedings before French Courts/arbitration tribunals.

We are also busy with ship arrests in France, in French overseas territories as well as in French speaking African countries, as it is very similar with French law.

The purpose of today's seminar is to present the latest developments on ship arrest in France.

I will then deal with the following issues:

- French law requirements for arresting a ship
- Arrest of a ship by a bunker supplier after the redelivery by time charterers
- Auction sale

I) Requirements for arresting a ship in France

France ratified the 1952 Convention on ship arrest

Any creditor who pretend to have a maritime claim or a prima facie claim may present an ex parte application to the president of the Commercial Court of the port to obtain the authorization to arrest a ship on a conservatory basis.

If the president accepts this application, he will sign the arrest order.

The arresting party will send the signed order to a bailiff who will notify to the Master that his vessel is under arrest.

The arresting party does not need to put counter security and is not responsible for the port dues and the costs of the ship following the arrest.

A vessel may be arrested in France a few hours after that we receive the instructions and supporting documents

Once the vessel is arrested, the owners of the arrested vessel have several options:

- Issue proceedings on very short notice and sue the arresting party before the Commercial Court to apply for the lifting of the arrest.
- Put a cash deposit in Court and apply for the immediate lifting of the arrest. The risk is that the cash deposit paid by owners may be used to pay sums due by charterers.
- Negotiate the wording of a LOU with arresting party, with a provision that it would be returned if the arrest is lifted by the Commercial Court and/or Court of Appeal

The Court may hear the case very rapidly and generally issue the order the day after the hearing.

Arresting in France is easy and affordable, which the reason why many creditors decide to carry out conservatory arrests in French ports.

II) Arrests by bunkers suppliers after redelivery of the vessel by time charterers

I will now consider the issue of ship arrest by bunker supplier, once the vessel is redelivered by the time charterers.

This issue became important, as due to the financial crisis, many bunkers suppliers were not paid by time charterers.

The issue was then to know whether they were entitled to arrest the ship they supplied, even if the bunker were ordered by the time charterer who redelivered the vessel

This question is still not finally decided by French Court.

Indeed, there are inconsistent precedents:

- In a judgment dated 25th September 2012, the Court of Appeal in Rennes held that the bunker suppliers were entitled to arrest the MV PIONEER ATLANTIC to secure their claim for bunker supplies ordered by the time charterers, even if the vessel had been redelivered at the time of the arrest. The Court indeed held that the claim was a maritime claim in the sense of article 1 of the Brussels Convention dated 10 May 1952 (goods or materials were ever supplied to a ship for her operation or maintenance)

The Court held that article 3.4 of the Convention authorizes a creditor to arrest the chartered vessel even if the vessel has been redelivered. Therefore the Court in Rennes confirmed that the bunker supplier was entitled to arrest the vessel, even if redelivered by time charterers, and held that the cash deposit paid in Court by owners may be paid to bunker supplier upon presentation of a judgment condemning owners or charterers...

- In a similar case, in a judgment issued on 9th August 2012 the Court of Appeal in La Réunion held that the bunker supplier was not entitled to arrest the ship to which he supplied bunkers after redelivery by time charterers. Indeed, the Court held that in accordance with article 9 of the 1952 Convention, only a creditor who has a lien may arrest the ship after the redelivery

The Court in La Réunion held that the bunker supplier have a lien only if the order is passed by the Master. Considering that the order for bunker supply had been placed by the time charterers, and not by the Master, the Court held that the supplier had no lien and therefore was not entitled to arrest the vessel. The Court of Appeal then lifted the arrest

These two decisions, issued by two Courts of Appeal, are then in contradiction!!

Unfortunately the Cour de Cassation is not seized with any appeal against one of these two decisions which means that we have to wait another similar arrest on this issue to obtain the ruling of the Cour de Cassation on this issue.

In the meantime, bunker suppliers are still arresting vessels in France!

I had to deal with a similar case early September of this year, when the vessel of one client of mine had been arrested by a bunker supplier: Fortunately, in this case, the bunkers had been ordered by the time charterers and not by the Master. Furthermore, the bunker supplier had requested a prepayment, as this time charterers owed them a lot of money. I managed to convince the court to lift the arrest, arguing that the bunker supplier, who requested a pre payment, was not entitled to use the funds paid to settle previous unpaid invoices, and thus to arrest our vessel.

The court accepted this first argument, and thus did not rule on the second issue, ie whether the bunkers supplier was entitled to arrest the vessel after redelivery by time charterers!

This issue is then still arguable....Indeed, as you know in France, the precedents are always persuasive, but never binding.

III) Auction sale

In the 90' and up to 2007, when a vessel was under arrest, the owners and the Club used to rush to put up a security and allow the vessel to sail as soon as possible.

Due to financial crisis, there are more and more arrests for unpaid invoices. In such case there is obviously no Club cover and the owners are sometimes unable to obtain security

In such case, the arresting creditors have to apply for the auction sale of the vessel

In some (cleaver) countries, it is possible to sell a ship in auction very rapidly to avoid to incur port's costs and crew claim which will absorb the majority of the sale proceed. I understand that it is possible for instance to sell the vessel in auction in a few weeks in the United States

This is not possible in France: a vessel may be sold in auction sale only if the creditor obtains a final decision against the owners. This may take some months. Once he obtains this final judgment, the creditor must apply to the Court to arrange for the auction sale of the ship. The Court will fix the date of the auction sale and will fix the minimum price of the auction sale

The creditor who will organize the sale will be reimbursed on priority of all the costs he has incurred to arrange for the auction sale (advertisement, bailiff costs for organizing the visit of the ship...)

The amount of these costs to be paid on the top of the auction sale will be announced by the Court at the beginning of the auction sale.

The bid must be placed through a lawyer who must prove to the Court that he received 10% of the auction price.

The Highest Bidder gets the ship, and the full amount of the price must be paid within 3 days from the auction sale

All creditors must register their claim with the Court within three days from the date of the auction and file an opposition.

The Court will then organize a meeting between the creditors to try to reach an amicable apportionment of the fund

If no amicable apportionment is possible, the Court will apportion the proceeds between the creditors, firstly the secured creditors, then the mortgagee and if there is money left, to the non secured creditors.

The secured creditors are the following :

- 1) Disbursement of the lawyer who organize the auction sale
- 2) Port dues and public taxes
- 3) Crew wages
- 4) Remuneration to the salvors and contribution of the ship to general average
- 5) Cargo claim
- 6) Claim arising out of contract passed by the Master for the conservation of the vessel or the continuation of the voyage

Conclusion

France is a good place for arresting vessels on a conservatory basis as it is quick, cheap and the arresting creditor does not have to put up counter security

However France is not the best place for arresting vessel when the owners do not have the money to pay for the claim, ie when the case will end up in an auction sale

Indeed, it will take time to sale the vessel in auction and most of the price will be absorbed by the port and by crew

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