



## Shipowners' nightmare – repayment of hire due to the insolvency of the charterer

Dr. Marcus Webersberger

## Facts of the case

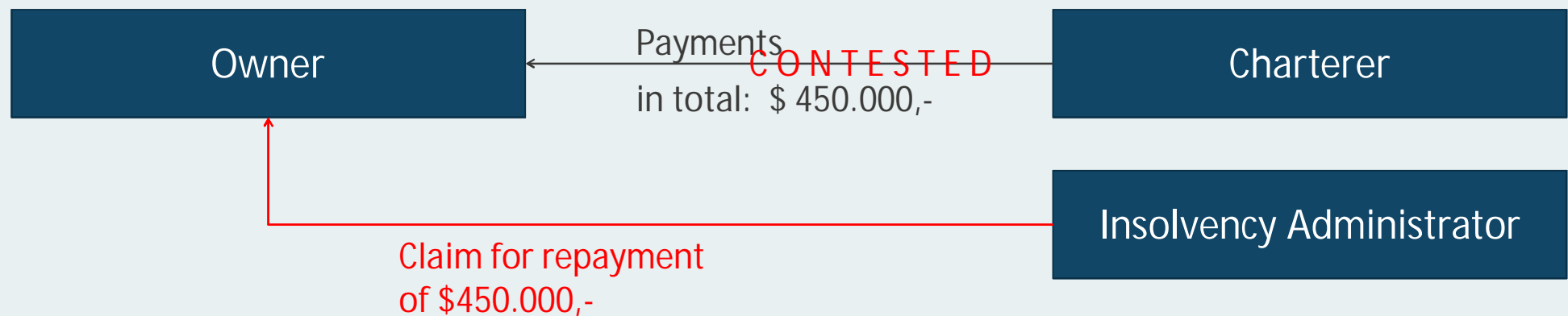
### Timeline:

- 15 February 2013: Fixture Recap
- 19 February 2013: Delivery of vessel to Charterers on
- Payment of agreed hire up to 11 March 2013 pursuant to an invoice dated 20 February 2013
- No payments of hire for March and April 2013
- 23 April 2013: High Court of Justice issues a „Worldwide Freezing Injunction Order“ against Charterers
- 2 May 2013: Settlement in the form of a Tomlin order of the High Court:
  - payment of USD 1.200.000,00 in installments by Charterers
  - In case of default of payment à maturity of total settlement amount
- Payment of USD 450.000,00 until June 2013; default with regard to remaining USD 750.000,00
- 11 June 2013: Request to open insolvency proceedings
- 12 June 2013: Redelivery of the vessel to Owners
- 28 June 2013: Payment order of the High Court of Justice in the amount of USD 750.000,00
- 2 September 2013: Opening of insolvency proceedings

## Contest of Charterer's Transactions



## Contest of Charterer's Transactions



# Judgement of the Regional Court of Hamburg

## Jurisdiction of the German courts

Pursuant to Art. 3 Reg. (EC) 2015/848, the courts of the Member State within the territory of which the centre of a debtor's main interests is situated shall also have jurisdiction for actions with regard to a contestation of a payment. An agreement on the exclusive place of jurisdiction made by the insolvency debtor (prior to insolvency) does not affect the question which court is considered competent for a claim for repayment due to a contestation of the payment.

## Claim for repayment

A payment may be contested (i.a.),

- (1) if it was made during the last three months prior to the request to open insolvency proceedings, if the debtor was illiquid on the date of the payment, and if the creditor was aware of his insolvency on this date
- (2) if it was made during the last month prior to the request to open insolvency proceedings and the creditor was not entitled to receive such payment
- (3) if it was made during the last ten years prior to the request to open insolvency proceedings with the intention to disadvantage his creditors and the creditor was aware of the debtor's intention on the date of such payment

## Conclusion

- Insolvency Administrator is generally entitled to claim back payments if he is able to contest such payment in accordance with German insolvency law
- The agreements between Owners and Charterers with regard to applicable law and jurisdiction are not relevant for German Courts if the insolvency proceedings over the assets of the Charterer are subject to German Insolvency Law
- Possible to minimize the risk of a contestation by agreeing to a „Bargeschäft“
- Shipowners need to be especially careful if they know or suspect that the charterer may be or may become insolvent

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