

INTERNATIONAL MARITIME LAW SEMINAR 2018

Recent Development in Maritime Law around the World – POLAND

Fresh Releases on Arrest of Ships

by

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LAW

- International Convention Relating to the Arrest of Sea-Going Ships (Brussels, May 10, 1952) [**Convention**]
- Polish Civil Procedure Code

AUTHORITIES

- the Regional Court in Gdansk (Poland) [**Regional Court**]
- the court bailiff in Gdynia (Poland) [**Bailiff**]
- the District Court in Gdynia [**District Court**]
- the Appeal Court in Gdansk [**Appeal Court**]

PROPERTY

- tug
- Liberian and Russian flag (first and second register) [**Arrested Vessel**]

UNDERLYING RELATION. CLAIM

- charter party [**C/P**] in respect of a vessel (other than the Arrested Vessel) [**Chartered Vessel**]
- outstanding hire and damages for early termination of the C/P [**Claim**]

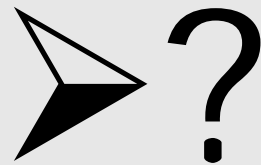
PARTIES INVOLVED

- applicant/claimant – owners of the Chartered Vessel, owners under the C/P [**Applicant**]
- respondent/defendant – former owners of the Arrested Vessel, charterers under the C/P [**Respondent**]

DECISIONS. ACTIONS TAKEN

- the Regional Court, upon the Applicant's motion, orders to arrest the Arrested Vessel [**Arrest Decision**]
- the Bailiff, enforcing the Arrest Decision upon the Applicant's motion, arrests the Arrested Vessel [**Arrest**]
- the District Court dismisses the Respondent's complaint against the Bailiff for the Arrest
- the Respondent appeals against the Arrest Decision to the Appeal Court [**Appeal**]

ISSUES IN QUESTION



➤ whether the Arrested Vessel could have been arrested, AT ALL, in these circumstances?

DISCUSSION (1/3)

➤ Art. 2 of the Convention:

"A ship flying the flag of one of the Contracting States may be arrested in the jurisdiction of any of the Contracting States in respect of any Maritime claim, but in respect of no other claim"

➤ Art. 1 (1) (d) of the Convention:

"Maritime Claim" means a claim arising out of [...] agreement relating to the use or hire of any ship whether by charterparty or otherwise"

➤ *prima facie* - yes

DISCUSSION (2/3)

➤ Art. 3 (1) of the Convention:

"[...] a claimant may arrest either the particular ship in respect of which the maritime claim arose, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship [...]"

➤ either **particular ship** in respect of which maritime claim arose, or **other ship** which is owned by person who was, when maritime claim arose, owner of the particular ship

➤ therefore – NO

DISCUSSION (3/3)

➤ Art. 3 (4) of the Convention:

"When in the case of a charter by demise of a ship the charterer and not the registered owner is liable in respect of a maritime claim relating to that ship, the claimant may arrest such ship or any other ship in the ownership of the charterer by demise [...]. The provisions of this paragraph shall apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship"

➤ therefore – NO again

WHY ARREST DECISION

- the Regional Court was told by the Applicant that the Respondent was owners of the Arrested Vessel (misled by the Applicant)
- the Regional Court referred only to Art. 2 of the Convention
- when informed by the Respondent that it was not the owners of the Arrested Vessel and that Art. 3 (1) of the Convention was not applied – the Regional Court limited to say that it was not proved that the Arrested Vessel was not owned by the Respondent when the Claim arose

APPEAL COURT ON ARREST DECISION. THE ARRESTED VESSEL

- still no decision of the Appeal Court on the Arrest Decision
- the Arrested Vessel released

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Thank you for your kind attention

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