

**PRACTICAL CHALLENGES OF DETERMINING THE
DEBTOR IN THE ARREST PROCEEDINGS –
THE MONTENEGRIN PERSPECTIVE**

International Maritime and Transport Law Course
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List of Abbreviations

- ▶ **The 1952 Arrest Convention:** International Convention Relating to the Arrest of Sea-Going Ships (Brussels, May 10, 1952)
- ▶ **The 1999 Arrest Convention:** International Convention on the Arrest of Ships (Geneva, March 12, 1999)
- ▶ **LMIN:** Law on Maritime and Inland Navigation (“Official Gazette of SRY“ no. 12/98, 44/99, 74/99 and 73/2000)
- ▶ **Law on Registration of Ships:** Law on the methods of registering ships, floating structures and hydrocarbon production installations in the registers and real rights on ships and hydrocarbon production installations (“Official Gazette of MNE“ no.34/2019)

As a general principle :

The contract - PACTA SUNT SERVANDA or „Ugovor je strankama zakon“

(Valtazar Bogišić, 1888)

- The agreements are binding upon the parties who entered into the agreements;
- The creditors have various legal possibilities to secure and enforce their claims against the debtors and their property;
- Liability for the acts and omissions of another persons - exceptional (vicarious liability, tort);

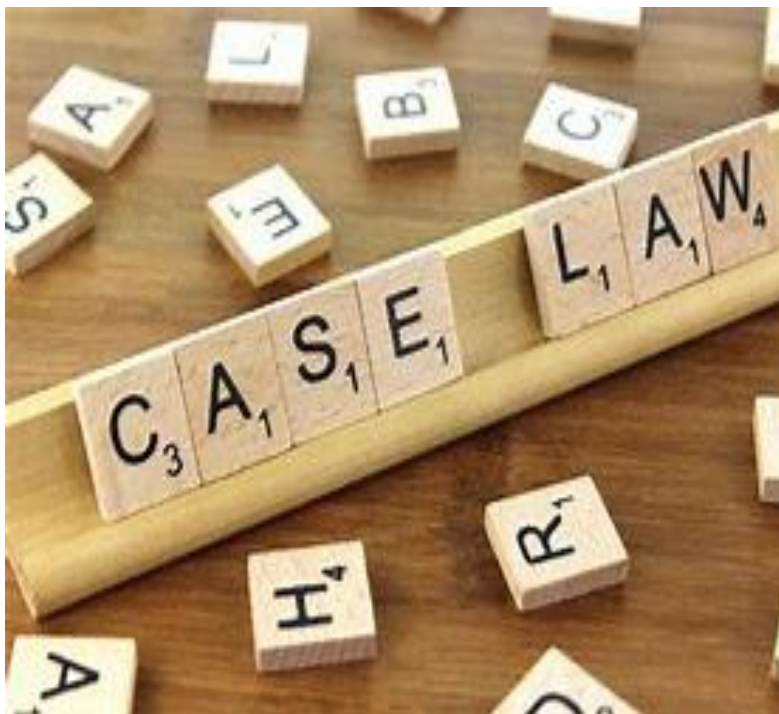


Ship arrest makes difference... But does it sometimes collide with general principles of law?



- Ship arrest: the detention of a ship by judicial process to secure a maritime claim (does not include the seizure of a ship in execution or satisfaction of a judgment);
- The ship can be arrested in respect of a person other than the owner;
- In other words: creditor can arrest the ship for the maritime claim, irrespective of whether the ship is owned by the personal debtor or not;
- The liability *in rem* and liability *in personam*;

Particulars of the case at hand



The Ship:

- Owned by A;
- Bareboat Chartered by B;
- Voyage/Time Chartered by C (the charterparty chain);

The Claimant:

- Concluded time charter with the C (acting as the Owner);
- Canceled the agreement due to the C's failure to deliver the ship in a stipulated time;
- Claim for the loss profit (sub charters);
- Arbitration procedure initiated against C;

The Opponents: B and C (interest in ship's operation)

The Arrest order was issued by the court against B and C.

The 1952 Arrest Convention

ARTICLE 1

- ▶ (...)
- ▶ (1) "Maritime Claim" means a claim arising out of one or more of the following:
- ▶ (...) (d) agreement relating to the use or hire of any ship whether by charterparty or otherwise;

ARTICLE 3

- ▶ (1) Subject to the provisions of para. (4) of this article and of article 10, 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, even though the ship arrested be ready to sail; but no ship, other than the particular ship in respect of which the claim arose, may be arrested in respect of any of the maritime claims enumerated in article 1, (o), (p) or (q).
- ▶ (...)
- ▶ (4) 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, subject to the provisions of this Convention, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claim. **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.**

The 1999 Arrest Convention

ARTICLE 1

(...)

▶ (1) "Maritime Claim" means a claim arising out of one or more of the following:

(...) (f) any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise;

ARTICLE 3

▶ (Exercise of right of arrest)

▶ 1. Arrest is permissible of any ship in respect of which a maritime claim is asserted if:

▶ (a) the person who owned the ship at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest is effected; or

▶ (b) the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the ship when the arrest is effected; or

▶ (e) the claim is against the owner, demise charterer, manager or operator of the ship and is secured by a maritime lien which is granted or arises under the law of the State where the arrest is applied for.

▶ 2. Arrest is also permissible of any other ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime claim and who was, when the claim arose:

▶ (a) owner of the ship in respect of which the maritime claim arose; or

▶ (b) demise charterer, time charterer or voyage charterer of that ship.

(...) 3. Notwithstanding the provisions of paragraphs 1 and 2 of this article, the arrest of a ship which is not owned by the person liable for the claim shall be permissible only if, under the law of the State where the arrest is applied for, a judgment in respect of that claim can be enforced against that ship by judicial or forced sale of that ship.

Ship arrest under Montenegrin national law

The 1952 Arrest Convention
LMIN

Article 1021 of the LMIN

- ▶ The arrest is permissible of any ship that is owned by the same personal debtors, i.e. on which these debtors have the right of ownership or that is encumbered with a statutory or contractual lien or other foreign law lien for the claim for which the arrest is requested, as well as for other claims listed in Article 916, para. 3 of this law (*inter alia: claims arising from charterparty agreements*), which refer to this ship.
- ▶ If the opponent of the arrest is a bareboat charterer or time charterer - who, according to the law applicable to the contract between him and the shipowner or time charterer, is himself liable to third parties, **the arrest is permissible of that ship** or any other ship on which the bareboat charterer or time charterer has the right of ownership, i.e. which is owned by the bareboat charterer or time charterer.
- ▶ **The provision of paragraph 2 of this Article also applies to all other cases when the bareboat charterer or the time charterer who is a personal debtor and is not the owner of the ship, is himself liable for the claims for which the arrest of the ship is requested.**

(...)

Maritime liens under Montenegrin national law

Law on registration of ships

Article 166

Each of the following claims against the owner, demise charterer, manager or operator of the ship shall be secured by a maritime lien on the ship in respect of which the claim arose:

- ▶ 1) claims for wages and other sums due to the master, officers and other members of the ship's crew in respect of their employment on the ship, including costs of repatriation;
- ▶ 2) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
- ▶ 3) claims for reward for the salvage of the ship;
- ▶ 4) claims for port, canal, and other waterway dues and pilotage dues;
- ▶ 5) claims based on tort arising out of physical loss or damage caused by the operation of the ship other than loss of or damage to cargo, containers and passengers' effects carried on the ship.



Possible issues...

- Purpose of the ship arrest as a provisional measure - to secure the claim which is or will be subject to the litigation / arbitration dispute between the parties;
- Could the enforceable title against the Shipowner be reached under the Montenegrin Law (enforcement of the judicial judgement)?
- Could the claim be recovered within the procedure of judicial sale of ship? (Article 3(3) of the 1999 Arrest Convention) - unclear.
- Determining the legal/factual link between the debtor with personal liability and the ship in the moment when the arrest application was submitted to the court;

Thank you for your attention!

Maja Radunović, LL.M.
Montenegro
Attorney at Law in cooperation with Abaco Ltd
m.radunovic@abaco.co.me
majamradunovic@gmail.com
+38267555307