

VESSEL ARREST

Introduction

Ships are highly valuable and mobile assets, often operating substantial distances from the offices of the vessel owners. Accordingly separate legal procedures for dealing with the unique issues raised by vessel operations have been developed over many centuries by maritime nations. The legal remedies have proved so useful that many are still in use today. The rules and procedures adopted by the British in developing their maritime empire are still used in the New Zealand Courts today when exercising their Admiralty jurisdiction. Use of the Admiralty provisions can be extremely effective and/or devastating (depending on which side of the litigation you happen to be) and accordingly those operating in the maritime industry should have a basic idea of how they operate.

The basis of the jurisdiction is found in the Admiralty Act 1973 and in Part XIV of the High Court Rules. The most important facet of Admiralty law is that if a party has a certain type of claim relating to a vessel, then that party can issue proceedings directly against the vessel. The vessel is named in the Court papers as the defendant. This is known as an *in rem* proceeding.

Not only can you sue the vessel but you can also have it arrested and held under arrest until your claim is settled. If the claim cannot be settled by agreement, then you can direct the Court to sell the vessel, with the proceeds being used to settle claims lodged against it.

The ability to claim against the vessel rather than the owner provides many significant advantages to a claimant, particularly if the owner of the vessel is a foreign based person or corporation and if the vessel is the only asset belonging to the owner. Even if the owner is locally based, the cost and inconvenience of having a major income earning asset arrested is such that disputes are usually resolved very quickly. However, as discussed below, this is not always the case.

Right to Arrest

The types of claims which can lead to an *in rem* claim against the vessel are covered in the Admiralty Act 1973 and in common law. At common law claims which can support what is known as a Maritime lien automatically give a right to claim against the vessel. Common law maritime liens are generally restricted to claims for salvage, costs of damage done by a vessel, seamen's wages and Master's wages and disbursements. In addition, section 4 of the Admiralty Act sets out 19 categories of claims that can support an *in rem* claim. The categories cover, amongst other things, disputes relating to ownership, damage to goods carried on a vessel, the costs of goods or materials supplied to a vessel, construction or repair of a vessel, and claims arising out of charter agreements.

A claim based on a maritime lien can generally be brought regardless of who owns the vessel, but the other statutory claims referred to in section 4 can only be brought if the person or company who owes the debt in person also owns the ship at the time the claim is brought against it. In other words these statutory claims can be defeated by changes in ownership of the vessel.

Any vessel capable of being used in navigation can be arrested. Therefore pleasure vessels can be arrested (although jet-skis are more problematic).

Incidentally, ship repairers have a right which can be exercised outside of the arrest procedure to keep possession of a ship until they are paid for the costs of repairs. This right is known as a possessory lien.

Arrest Procedure

The procedure for arresting vessels in New Zealand waters is relatively straightforward. The Plaintiff issues proceedings against the vessel in the High Court and applies for a Warrant of Arrest. Once the Warrant is issued the arrest is effected by the Court Registrar affixing the Warrant to the Bridge or some other conspicuous part of the vessel and leaving a copy with the person who appears to be in charge of the vessel. Formerly Warrants of Arrest were pinned to the mast. Once the Warrant has been served the vessel is then in the custody of the Registrar of the High Court and no-one may have any dealings with the vessel except with the express authority of the Registrar.

Often the most painful part of arresting a vessel for the claimant is paying the filing fee (\$920) and providing an indemnity to the Registrar for the costs of maintaining the vessel while it is under arrest.

In some circumstances the claimant can arrest a "sister-ship" of the vessel that led to the claim if the two vessels are owned by the same party at the time the sister-ship is arrested.

Usually a flurry of legal activity begins immediately after the Warrant is affixed to the vessel. Often this will involve rapid payment of the debt so that the vessel can be released for more productive activities.

If the claim is disputed there are provisions for payment of funds into Court by the owner in return for the release of the vessel, pending determination of the dispute.

However, if the entity liable for the claim doesn't have the funds to meet the claim or to make the payment into Court, then matters can become far more protracted. Large numbers of parties can become involved in the litigation. These can include owners, charterers, mortgagees, cargo owners, fuel suppliers and ships providers.

Normally cargo is not arrested with the vessel, but it is possible in some circumstances to arrest the cargo (even if the vessel is not arrested).

Sale and Payment Out

The ultimate remedy is to have the vessel sold and the funds used to settle the various claims. The priority of claimants can raise highly technical issues, but generally the funds are paid out in the following order:

- ❖ Court Registrar's expenses;
- ❖ Expenses of the person incurred in providing the fund, ie in arresting the vessel and directing its sale;
- ❖ Holders of maritime liens;
- ❖ Ship repairers if entitled to a possessory lien;
- ❖ Secured creditors such as mortgagees;
- ❖ Claimants covered by section 4 statutory claims;
- ❖ Other unsecured creditors of the vessel owner;
- ❖ Vessel owner.

The party who arrests the vessel does not get to "jump the queue" on priority, but their costs of arrest are provided second highest priority (this includes legal costs).

Caveat Against Arrest

If you are a vessel operator and are concerned that someone may attempt to interrupt your operations by arresting a vessel owned or used by you, then the main remedy is to lodge a caveat against arrest with the High Court in Wellington. This in effect prevents the vessel being arrested, but means that once you receive notification of a claim you have 3 days to provide security for that claim, normally by payment of an amount into Court. If you fail to provide security then the claimant can apply to have the caveat against arrest removed.

"Escapee" Vessels

If the vessel manages to leave New Zealand before you can arrest it then all is not lost, as most maritime countries now operate an Admiralty jurisdiction which has arrest features basically similar to New Zealand. Accordingly, if you can locate the vessel overseas it can often be arrested. Having said this there can be practical problems in actually getting the Court to arrest the vessel in some of the less developed jurisdictions.

I hope the above general summary is of some assistance in outlining arrest jurisdictions. Admiralty law is a highly complex and somewhat archaic area of the law and if you have any particular questions you should consult a solicitor who has particular expertise in the area.