

THE ARREST

news

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Arrests in Bulgarian Waters and Mortgagee's Claims

By Nikolay Radev, Kinkin & Partneres Law Firm

Introduction

A case of a great interest is the one described below concerning a ship arrest imposed by a world leading marine fuel firm. The case involves the implementation of a ship arrest procedure over two vessels, moored in two Bulgarian sea ports over which there were claims for ownership by a third party – mortgagee.

Issues to consider

The plaintiff in the case, represented by “Kinkin & Partners”, is a world leading marine fuel firm. An order for bunkering was made on behalf of the owners of the ships. Owners were involved in the case by their manager, the operator of the vessels.

The order for bunkering was expressly confirmed by the plaintiff, and as a result of this confirmation, a contract for bunkering was concluded. Additionally, an

invoice for the delivery of bunker fuel was issued and delivered to the ordering company.

Payment of the bunkers was not made. The plaintiff sought to secure his claims by arresting the ships in Bulgarian ports. In accordance with Article 364a of the Merchant Shipping Code, applicable in Bulgaria, a merchant ship, which is located in a Bulgarian sea port, regardless of the flag under which it sails, can be arrested to secure a maritime claim under Art.1, para.1 of the 1999 Geneva International Convention on arrest of ships, (ratified by Bulgaria since 12 January 2001, in force since 14.09.2011).

The plaintiff instructed “Kinkin & Partners” to obtain security for the claim against the ship owners by arresting the two ships. As a result of the plaintiff's application, a security measure under Art. 364a, para 4 of the Merchant Shipping Code was imposed by the

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Court. The Court did not request the plaintiff to provide any counter security. The claim on the merits was to be dealt with abroad against the vessel owners before the court of the defendant's domicile.

Further issues

Following the arrest of the ships, a foreign bank appeared requesting ownership rights over the vessels, the arrests to be revoked, and the possession over the vessels to be handed over.

Requests made by the parties in the case

Firstly, the ship owners and the bank requested the Court to order the plaintiff to put counter security under the Bulgarian Code of Civil Procedure. Against these requests, the plaintiff alleged that the foreign bank was a third party not entitled to participate in these interim proceedings. The foreign bank had no reasonable legal interest and its demands were inadmissible. Moreover, it was up to the court dealing with the claim on the merits to establish whether counter security by the plaintiff should be provided. The court rejected the request of the owners and the bank.

In addition, the foreign bank requested: (i) the court to revoke the arrest order based on the foreign decision issued regarding the possession of the ships. The plaintiff objected the foreign decision had not been admitted for execution, and/or (ii) the court to revoke the security arrest against issuance of a bank guarantee under Art. 4 of the 1999 International Convention on ship arrest. The plaintiff objected the case was not within the scope of the said article.

Corresponding jurisdiction

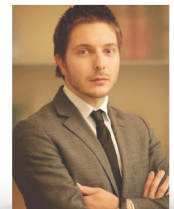
It is interesting to highlight that in the present case the maritime claim, supply of bunkers, falls within the scope of Art. 1, (l) of the 1999 Arrest Convention. However, this scenario falls outside the exception provided in Art. 4 of the 1999 Arrest Convention. The option provided in the second sentence of Art. 4, i.e., *a court ruling by virtue of which the person in whose possession the ship is to continue to use it if a*

sufficient guarantee has been provided, is applicable if this is requested by the party in the arrest proceedings in whose possession the ship is. In this particular case the foreign bank did not have possession of the ships. Therefore, the request made by the foreign bank did not fall within the scope of Art. 4 and the ships could not be released from arrest. As a result the Court upheld the plaintiff's arguments and rejected the application for the release of the ships.

Conclusion

To conclude, the claim on the merits succeeded before the foreign court and a three-party agreement between the foreign bank, the vessel owners and the plaintiff was reached. As a result of this agreement, payment of the claims has been made by the third party – the bank – and accordingly a request for the release of the ships was made by the plaintiff and agreed by the Court.

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Mr. Radev has worked with the Kinkin & Partners team since 2007. He has more than 10 years practice in the area of Shipping & Transport; he also practices in Insurance Law, Tax Law and Litigation. Mr. Radev is resourceful, swift and creative in approaching complicated cases. He is industrial in effectively protecting his clients' interests.