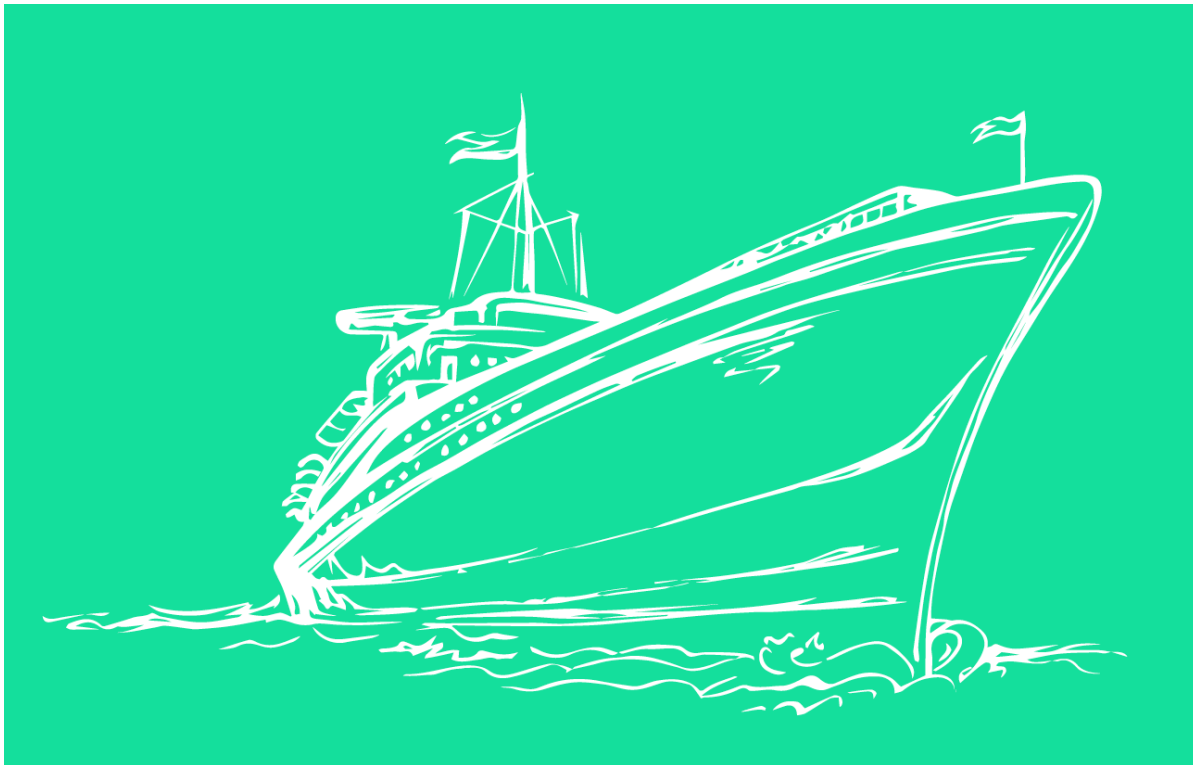


Arresting a Ship in the UAE: When the Ownership of an Arrested Ship is Transferred to New Owners

Omar N. Omar - Partner, Head of Transport & Logistics - UAE - Insurance
o.omar@tamimi.com - Dubai International Financial Centre

Tariq Idais - Senior Associate
t.idais@tamimi.com - Dubai International Financial Centre



This article is an overview of a Sharjah Court of First Instance judgment in relation to ship arrests for unpaid bunker supply charges in circumstances whereby the arresting party was the ships' former owner as well as the physical bunker supplier of the said ships.

The question before the Court was whether the former owner of the ships was entitled to arrest the ships as the bunker supplier, even though the bunkers were supplied to the ships upon the bareboat charterer's request while the former owner owned the ships and ownership of the ships changed after supplying the ships with the bunkers.

In this matter, Al Tamimi and Company represented the ships' former owner/physical supplier.

Background

In 2013, a bunkering company (the 'Former Owner') chartered four of its ships to a shipping company (the 'Charterer') under four bareboat charter-party agreements until 14 June 2014. During the charter-party agreements, the Former Owner had been supplying the four ships with bunkers upon the Charterer's request.

On 16 June 2014, the Former Owner sold the four ships to a shipping company (the 'New Owner').

On 24 June 2014, the New Owner chartered the four ships to the same Charterer under four bareboat charter-party agreements for a period of three years.

After selling the ships, the Former Owner supplied the four ships with bunkers on 16, 17, 19 and 22 June 2014 while the ships were in the New Owner's possession and continued to supply the ships with bunkers upon the Charterer's request.

The value of the bunkers that were supplied by the Former Owner before the ships' sale as well as after the ships' sale was in the region of US\$ 2,583,46 ('Bunker Price'). However, the New Owner and the Charterers did not pay the Bunker Price.

The Nature of the Claim

In July 2015, the Former Owner (the 'Claimant') obtained arrest orders from the Sharjah Summary Judge over the four ships for the unpaid Bunker Price. The arrest orders were executed successfully over three out of the four ships (the fourth ship had left the relevant port before the arrest could be executed).

The Claimant then brought a substantive claim before the Sharjah Court of First Instance against the New Owner (the 'First Defendant') and the Charterer (the 'Second Defendant') seeking the Bunker Price, validation of the arrest order against the ships, and legal interest at the rate of 12 percent as of the date of maturity until the date of full payment.

The First Defendant's Arguments before the Court of First Instance

The First Defendant alleged before the Court that it does not have a legal capacity to be sued in this case on the following grounds:

1. the Claimant supplied the four ships with bunkers upon the Second Defendant's request;
2. there was no contractual relationship between the Claimant and the First Defendant in relation to the supplied bunkers;
3. the Bunker Price was incurred before the ownership of the four ships was transferred to the First Defendant;
4. the Claimant hid material information from the First Defendant, as it did not inform the First Defendant about the quantity of bunkers that was supplied to the ships before the ships' sale. In other words, the Claimant deceived/cheated the First Defendant; and
5. although the Claimant's debt is ranked as a priority right under Maritime Law, it had expired upon the sale of the ships according to Article 92 of the Maritime Commercial Law.

Therefore, the First Defendant petitioned the Court to dismiss the claim for lack of capacity and/or evidence.

Moreover, the First Defendant filed a counterclaim against the Claimant and Second Defendant for the ships' wrongful arrests seeking damages in the sum of US\$ 20,000,000.

The Second Defendant's Arguments before the Court of First Instance

The Second Defendant argued that the claim against it should be dismissed, as the charter-party agreements included an arbitration clause and there is already an arbitration proceeding ongoing between

the First and Second Defendants in relation to the charter-party. Therefore, the Sharjah Court does not have the jurisdiction to decide upon the matter.

Alternatively, the Second Defendant argued that the First Defendant should be liable for the Bunker Price, as the bunkers were supplied to its ships and under Maritime Commercial Law ships amount to collateral for the amount owed.

The Claimant's Responses to the Defendants' Arguments

The Claimant argued that the arguments of the Defendants should be ignored for the following reasons:

1. the arbitration defence must be refused as this dispute relates to the unpaid bunkers supply charges and not the charter-party agreements;
2. the arrest order over the ships complied with Articles 84, 91, 115, 117, and 255 of the Maritime Commercial Law;
3. the ships follow their debts to any hand under Article 90 of the of the Maritime Commercial Law;
4. the New Owner (the First Defendant) did not follow the requisite procedures set out in Article 92 of the Maritime Commercial Law after buying the ships therefore, it could not argue that the priority right of the ship had expired based on Article 92 of the Maritime Commercial Law. This Article requires the new buyer (in this case the First Defendant) to publish a resume of the ships' contracts of sale, which should include the price, the name and residence of the purchaser. This publication must be made twice with an interval of eight days, in a widely circulating local newspaper.
5. the Claimant's debts are deemed as a maritime debt under Article 115 of the Maritime Commercial Law, and therefore the arrest order over the ships are lawful. Article 115/i/k of the Maritime Commercial Law provides: "*1. it shall be permissible to effect a preservatory arrest against a vessel by an order of the civil court having jurisdiction. Such an arrest shall not be made save for the satisfaction of a maritime debt. (i) Supplies of products or equipment necessary for the utilization or maintenance of the vessel, in whichever place the supply is made. (k) Sums expended by the master, shippers, charterers or agents on account of the vessel -or on account of the owner thereof.*";
6. even if the ships were chartered to the Second Defendant under bareboat charter-party agreements and it alone is responsible for the Bunker Price, the ships should guarantee their debt and the Claimant has the right to arrest the ships that used and exploited the supplied bunkers based on Article 117 of the Maritime Commercial Law which provides: "*If the vessel has been chartered to a charterer together with the right of navigational management thereof, and he alone is responsible for a maritime debt connected therewith, the creditor may arrest the said vessel or any other vessel owned by the same charterer, and he may not, in respect of that debt, arrest any other vessel of the disponent owner*";
7. the Second Defendant shall indemnify the First Defendant against any action taken against it by the Claimant attributable to the use of the ships according to Article 255 of the Maritime Commercial Law';
or
8. alternatively, the Claimant supplied the four ships with bunkers on 16, 17, 19 and 22 June 2014 while the ships were in the First Defendant's possession. Moreover, the Claimant supplied the ships with bunkers upon the Charterer's request, after selling the ships. In addition, the First Defendant was fully aware of the bunkers that were supplied to the ships before their sale.

Therefore, the arrest orders over the ships were lawful. The ships must guarantee their debts regardless of who requested the bunkers, hence the Defendants' arguments must be ignored and the counterclaim must be dismissed.

The Court of First Instance's Judgment

1. In relation to the Claimant's Claim:

The Court found that the arrest orders over the ships complied with Articles 84, 115, 117, 254 of the Maritime Commercial Law and were therefore lawful. In addition, the Court held that since the bunkers were supplied to the ships upon the Second Defendant's request and there was no contractual relationship between the Claimant and the First Defendant in relation to the supplied bunkers, the First Defendant should not be liable for the Bunker Price. Accordingly, the Court decided the following:

- to dismiss the claim against the First Defendant, due to the lack of any contractual relationship between the Claimant and the party named the 'First Defendant';
- to hold the Second Defendant liable to pay to the Claimant the sum of US\$ 2,583,464, plus legal interest at the rate of five percent as of the date of the claim, until the full payment is made, as well as the legal costs; and
- to validate the arrest orders over the ships.

II. In relation to the Counter Claim

The Court decided to dismiss the counterclaim against the Claimant because the arrest orders of the ships complied with the Maritime Commercial Law. Furthermore, the Court found that since the counterclaim against the Second Defendant related to another arbitration proceeding between the First and the Second Defendants in relation to the charterparty agreements, the counterclaim should be dismissed against the Second Defendant.

The Court of Appeal and the Supreme Court Judgments

The First Defendant filed appeals before the Court of Appeal and the Supreme Court challenging the Court of First Instance's judgment. All the parties stressed their previous arguments before both higher Courts. Both the Court of Appeal and the Supreme Court upheld the Court of First Instance's judgment, which was issued in relation to the Claimant's claim. However, the Court of Appeal revoked the Court of First Instance's judgment in relation to the counterclaim and held the Second Defendant liable to pay the First Defendant the sum of AED 3,000,000 in damages since the ships were lawfully arrested by the Claimant, and consequently the Second Defendant was liable to pay the Bunker Price.

Comment

This judgment emphasises the fact that ships could always be liable for bunker supply charges regardless of who requested the bunkers for the ships, be it the shipowner/ manager/operator/charterer/ship agent.

What was interesting in this judgment is that the Former Owner was successful in arresting the ships for certain debts, which arose while it was the owner of the ships, and the ships were under bareboat charterparty agreements at the time of the bunkers supply. Furthermore, the Court refused the counterclaim for wrongful arrest against the Former Owner.

Moreover, this judgment confirms the fact that if the ship is arrested for charterers' debts, the ship owners will be entitled to file a claim against the charterers for all losses and damages that they suffered during the ship arrest.

Al Tamimi & Company's [Transport & Insurance team](#) regularly advises on ship arrest claims. For further information please contact [Omar Omar](mailto:o.omar@tamimi.com) (o.omar@tamimi.com) or [Tariq Idais](mailto:t.idais@tamimi.com) (t.idais@tamimi.com).