

Is a vessel purchase price classified as a maritime debt under Article 115 of the UAE Maritime Commercial Law?

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This article is a review of a judgment by Khor Fakkaan's Court of Appeal (Appeal Number 30/2020 Commercial) regarding ship arrest and maritime debts under the UAE Maritime Commercial Law.

The question before Khor Fakkaan's Court of Appeal was whether, under Article 115 of the UAE Maritime Commercial Law, a vessel purchase price is classified as a maritime debt or not.

Al Tamimi & Company represented the Claimant in this matter.

Nature of the claim

On 10 June 2019, a shipping company ('Claimant') agreed to sell one of its vessels ('Vessel') to another company ('Defendant') based on a vessel purchase Agreement ('MoA'). The purchase price of the vessel was in the amount of US\$11,700,000 ('Purchase Price') to be paid via an escrow account. Furthermore, it was agreed that the Defendant would pay 20 per cent of the Purchase Price, in advance, to the Claimant prior to the delivery of the Vessel and the balance of the Purchase Price to be paid within three days of delivering the Vessel to the Defendant.

On 09 October 2019, the Claimant received the 20 per cent of the Purchase Price amounting to US\$ 2,340,000. Therefore, the Claimant arranged for the ownership of the Vessel to be transferred to the Defendant and according to the MoA, the Vessel was delivered to the Defendant at Khor Fakkan Port on 23 October 2019. However, the Claimant still did not receive the balance of the Purchase Price within the time as specified in the MoA.

Therefore, on 25 January 2020, the Claimant filed arbitration proceedings against the Defendant in London claiming either: the return of the Vessel; or alternatively, the remainder of the Purchase Price (amounting to US\$9,983,921.91) owed to them.

Moreover, on 28 January 2020, the Claimant obtained an arrest order over the Vessel which was based at Khor Fakkan based on Article 115/M/N. The Claimant founded the ship arrest application on the MoA.

Furthermore, on 10 February 2020, the Claimant obtained an injunction order from the Eastern Caribbean Supermen Court in the High Court of Justice Commonwealth of Dominica restraining the Defendant from transferring, altering or interfering with the provisional registration of the Vessel in the Maritime Registry of Commonwealth of Dominica Maritime and the Vessel was to be persevered and not to be sold or transferred.

The Court of First Instance “the grievance stage”

On 30 January 2020 the Defendant filed a grievance with the Khor Fakkan Court of First Instance challenging the arrest order over the Vessel.

The Defendant argued the following in the grievance:

1. the Court of Khor Fakkan does not have the jurisdiction to grant the arrest order claim, as it was agreed to refer any dispute arising out of the MoA to the arbitration in London;
2. the Claimant’s debt is not classified as a maritime debt, so the arrest order was not issued in accordance with Maritime Law; and
3. the Defendant does not have the capacity to be sued in this claim as it transferred the 80 per cent of the Purchase Price to the escrow account and it submitted to the Court a remittance advice showing that it had transferred that amount to the escrow account.

Therefore, the Defendant requested the Court cancel the arrest order and release the Vessel.

The Claimant’s defence in response to the grievance

The Claimant responded to the Defendant’s grievance as follows:

1. the arbitration clause in the MoA does not give the arbitral tribunal the jurisdiction to issue arrest orders over the Vessel. Moreover, the Court of Khor Fakkan should have the jurisdiction to issue the arrest order over the Vessel, as the Vessel was within the UAE’s territorial waters when the arrest order was issued;
2. the Claimant’s debt is classified as a maritime debt under Article 115/M/N, as it relates to the dispute over the ownership of the Vessel and/or in connection with the co-ownership of the Vessel based on the following facts:

I. the Claimant is seeking the return of the Vessel’s ownership in the arbitration proceedings in London;

II. the Claimant has obtained an injunction order from the High Court of Justice Commonwealth of Dominica restraining the Defendant from selling, transferring, altering or interfering with the provisional registration of the Vessel in the Maritime Registry of Commonwealth of Dominica Maritime until a final award is issued in the arbitration proceedings; and

III. the Claimant still owns 80 per cent of the Vessel and therefore, it is a co-owner of the Vessel by law.

Therefore, it is evidenced that the Claimant’s debt is deemed to be a maritime debt based on Article 115 M/N. Alternatively, the Claimant’s debt is considered a maritime debt, as the MoA relates to the use or and/or exploitation of the Vessel which is also considered a maritime debt.

Article 115 of the UAE Maritime Commercial law provides:

“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.

2. *The expression “maritime debt” shall mean a claim in respect of a right arising out of any of the following*

causes:

(a)....

(d) *Contracts relating to the use or exploitation of the vessel under a charterparty or otherwise....*

(m) *A dispute as to the ownership of the vessel.*

(n) *A dispute in connection with the co-ownership of the vessel, or with the possession or use thereof, or with the right to the profits arising out of the use thereof."*

3. the Court does not have the jurisdiction to decide on the Defendant's arguments in which it alleged that it paid the 80 per cent of the Purchase Price, as such a defence should be determined by the arbitration proceedings in London. However, the Claimant submitted evidence to the Court that shows that it has not received the 80 per cent of the Purchase Price.

Hence, the Claimant requested the Court to dismiss the grievance and uphold the arrest order over the Vessel.

The Court of First Instance's judgment

On 24 February 2020, Khor Fakkan's Court of First Instance issued its judgment and decided to dismiss the grievance. The Court based its judgment on the following grounds:

1. the Court has the jurisdiction to issue the arrest order as the Vessel was within the UAE's territorial waters when the arrest order was issue;
2. it is evidenced that the Defendant had not paid the Claimant the outstanding 80 per cent of the Purchase Price of the Vessel;
3. the Claimant's debt relates to the dispute over the ownership of the Vessel and this is evidenced by the injunction order which restrains the Defendant from selling the Vessel until a final award is issued in the arbitration proceedings; and
4. it is evidenced that the arbitration proceedings relate to the dispute over the ownership of the Vessel.

Therefore, the Court decided to dismiss the grievance and uphold the arrest order over the Vessel based on Articles 115 and 116 of the UAE Maritime Commercial Law.

The Court of Appeal

The Defendant filed an appeal before the Khor Fakkan Court of Appeal, challenging the Court of First Instance's judgment. The Defendant repeated all the arguments it had raised before the Court of First Instance previously and did not raise any new arguments and consequently, requested the Court to cancel the arrest order and release the Vessel.

The Claimant also reiterated all its arguments which were raised before the Court of First Instance and confirmed that the appealed judgment was issued in accordance with the law. Therefore, the Claimant requested the Court to dismiss the appeal and uphold the judgment of the Court of First Instance.

The judgment of the Court of Appeal

On 04 May 2020, the Court of Appeal dismissed the Defendant's appeal and upheld the judgment of the Court of First Instance. The Court of Appeal ruled that the judgment of the Court of First Instance was issued in accordance with the law. Therefore, the Court of Appeal adopted the findings of the Court of First Instance and referred to it as a part of its judgment. Moreover, the Court of Appeal added the following reasons to its judgment:

1. the Court has the jurisdiction to issue the arrest order, as the arbitration clause in the MoA does not give the arbitral tribunal the jurisdiction to issue arrest orders over the Vessel; and
2. since the rights that arise under a charterparty are classified as a maritime debt under Article 115/D, rights that arise out of the Vessel purchase price should have been considered as a maritime debt.

Conclusion

Article 115 of the UAE Maritime Commercial Law does not expressly classify a vessel purchase price as a maritime debt. Therefore, it could be argued that, if a creditor arrests a vessel due to the fact that its debtor did not pay the vessel purchase price and then files a substantive claim seeking the purchase price of the vessel, such debt should not be qualified a maritime debt. As in this case, the dispute will be over the vessel purchase price under the vessel purchase agreement (commercial debt). However, if the creditor claims the return of the vessel's ownership in the substantive claim, such a debt should be considered as a maritime debt based on Article 115/M/N, as the dispute will concern the ownership of the vessel.

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