

A Landmark Federal Supreme Court's Judgment on Ship Arrests Under UAE Law

Tariq Idais - Senior Associate

- Dubai International Financial Centre

Sakher Alaqailah - Senior Counsel - Shipping, Aviation & Logistics

s.alaqailah@tamimi.com - Dubai International Financial Centre

Omar N. Omar - Partner, Head of Transport & Insurance - Insurance / Shipping, Aviation & Logistics

o.omar@tamimi.com - Dubai International Financial Centre

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Nature of the Claim

On 18 June 2015, a ship agency ('Claimant') obtained an arrest order over a ship ('Ship') which was at Khorfakkan Port at the time. The Claimant based the arrest order application on an agency agreement. On 1 July 2015, the Claimant brought a claim before the Khorfakkan Court of First Instance against the Ship ('Defendant') seeking the sum of USD5,323,869 (or its equivalent, being AED19,565,219) and legal interest at the rate of 9% as of the date the claim was made until full payment. Interestingly, the Claimant did not include the Ship's owners in the claim.

The Claimant claimed that in mid-2013, the Ship was in peril (at risk) while it was at sea in the territorial waters of the UAE. The Ship's master requested the Claimant to rescue the Ship and guide it into Khorfakkan Port and allow her to enter Khorfakkan Port. Therefore, the Claimant did whatever it could do to rescue the Ship as per the agreement, as well as tugged her into Khorfakkan. Moreover, the Claimant claimed that on 20 January 2014 a ship agent agreement was signed between the Ship's master and the Claimant, where the Claimant was obliged to provide the Ship with support, food, supplies, medication, bunker, oil, money advances, port dues and any other fees and charges concerning the port authority. Although the Claimant carried out all the required support works for the Ship and her marine crew, and paid all the necessary fees and charges (which amounted to USD5,323,869), the Defendant has still has not paid back the said amount to the Claimant.

The Court of First Instance

The Ship's owners did not appear before the Khorfakkan Court of First Instance. On 31 August 2015, the Court handed down its judgment by holding the Defendant liable to pay the Claimant the sum of USD5,323,869 (or its equivalent, being AED 19,565,219) for the all support work that was carried out for the Ship, as well as AED500,000 as damages for breaching obligations and validating the arrest order over the Ship.

The Court of Appeal

On 29 September 2015, the Ship's owners challenged the judgment of the Court of First Instance before the Khorfakkan Court of Appeal. The Ship's owners argued that since a ship is deemed to be moveable property according to Article 12 of UAE Federal Law No. 26 of 1981 (Maritime Commercial Law) ('Law'), the Ship does not have a legal capacity to be sued and the Claimant should have filed the claim against the Ship's owners rather than the Ship herself. Accordingly, the Claimant's claim should be dismissed.

In addition, the Ship's owners contended that the documents that were filed at Court by the Claimant were either photocopies and or produced by the Claimant, as a result they should not be used as evidence in this claim according to Article 45 of Federal Law No. 11 of 1992 (Civil Procedures Law). Therefore, the Ship's owners argued, the Claim should be rejected for lack of evidence.

Alternatively, the Ship's owners argued, the claimed amount was exaggerated and did not reflect the true value of the support work that was carried out for the Ship. Accordingly, the amount awarded should be reduced.

On 14 March 2016, the Khorfakkan Court of Appeal rendered its judgment and amended the judgment of the Court of First Instance by holding the Defendant liable to pay the Claimant the sum of AED12,223,158 for the support work that was carried out for the Ship. Apart from the amendment of the amount, the judgment of the Court of First Instance was upheld.

The Federal Supreme Court

On 12 May 2016, the Ship's owners filed an appeal before the Federal Supreme Court in Abu Dhabi. The Ship's owners argued that the Claimant's claim should be dismissed on the following grounds:

- The claim was not filed against the Ship's owners but rather filed unlawfully against the Ship herself, notwithstanding that she does not have legal capacity to be sued according to Article (12) of the Law; and
- The Claimant did not file the claim in the required form under Articles 119 and 120 of the Law.

Article 12 of the Law states:

A vessel shall be deemed to be moveable property, to which the provisions pertaining to moveable property shall apply, save insofar as there is any stipulation in this Law making any provisions relating to real property applicable thereto.

Article 119 of the Law states:

1. *Copies of the notice of arrest shall be delivered to the master of the vessel or his deputy thereon, a second copy to the relevant maritime authority in the port in which the arrest is effected to prevent the vessel from sailing, and a third copy to the Registration Bureau in the said port.*
2. *If the vessel is registered in the State, the Registration Bureau of the port in which the arrest is effected, whether within the State or abroad, shall notify the vessels Registration Bureau of the arrest for endorsement thereof on the register.*

Article 120 of the Law states:

1. *The notice of arrest shall contain a summons to attend before the relevant civil court in the area of which the arrest is effected for adjudication on the validity of the debt, of whatever amount.*
2. *A time shall be fixed for the hearing not later than thirty days from the date of the notice of arrest. The court shall speedily enquire into the claim, and the time shall not be further extended.*

Furthermore, the Ship's owners argued that the claimed amount was exaggerated and did not reflect the true value of the support works that were carried out to the Ship. Accordingly, the amount of the award should be reduced.

On 29 June 2016, the Supreme Court in Abu Dhabi issued its judgment and decided to dismiss the Claimant's claim, as it was filed against the Ship (the Defendant) and not the Ship's owners, and it was not filed in the required form under Articles 119 and 120 of the Law.

Comment

It is established that any claim arising out of or in connection with a ship must be filed against the ship's registered owners and not against the ship itself, otherwise the claim will be dismissed, as ships do not have legal capacity to be sued.

Furthermore, the procedures set out in Articles 119 and 120 of the Law have not been followed by the UAE Courts previously. However, this Supreme Court judgment suggests that there has been a change in approach and the procedures set out in Articles 119 and 120 of the Law will start to be applied from now on.