

Sale of Ships: The Enforceability of Article 121 of the UAE Maritime Commercial Law

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Background

On 24 June 2016, a ship owners and its subsidiary (the “Defendants”) sent a purchase order to a bunkering company (the “Claimant”) for the purchase of bunkers. The Defendants requested that the Claimant supply the ship with 150 cubic metres of marine gas oil (“MGO”). On the same day, the bunkering company supplied the ship with the required MGO and the bunker delivery notes were signed by the ship’s captain and stamped with the ship’s stamp confirming receipt of the MGO. On 4 July 2016, a commercial invoice for the MGO was sent by the bunkering company to the ship owners. However, the ship owners did not settle the price of the supplied MGO.

The Nature of the Claim

On 25 September 2016, the Claimant obtained an arrest order from Dubai Courts against the ship, which was at Rashid Port at the time. The Claimant based the arrest order request on the purchase order and the bunker delivery notes. On 11 October 2016, the Claimant then brought a substantive claim before the Court against the ship owners and its subsidiary seeking USD 65,750, being the value of the supplied MGO, validation of the arrest order against the ship, and legal interest at the rate of 12% from 4 July 2016 until the date of full payment.

The Court’s Judgment

Although the Defendants had been served with the arrest order and the substantive claim legally via the ship’s captain, they did not appear before Dubai Court of First Instance. On 14 November 2016, the Court handed down its judgment as follows:

- In relation to the substantive claim, the Court held that the Defendants were jointly liable to pay the Claimant the sum of USD 65,750, plus legal interest at the rate of 9% accruing from 4 July 2016 until the date of full payment, plus all legal expenses.
- In relation to validation of the arrest order, the Court decided to appoint a maritime expert to determine the specifications of the ship (i.e. the ship’s exact location, the registration bureau, flag, capacity, identity of the captain, identify of the owners and their domicile, ownership certificate, nationality, arrestors and their domicile, if there were other arrest orders against the ship from other creditors and their respective values) and determine the starting price of the ship in order to sell the ship via a judicial auction.

Comment

This is because the Execution Court should not need to issue an order to sell the ships and/or appoint an expert to evaluate the ship’s price in order to auction the ships during the enforcement proceedings, as the judgment itself will include the order of sale, the starting price of the ship, and the conditions of the

sale.

It should be noted that Article 121 of the Maritime Law specifies a deadline for appealing judgments, including validation of arrest orders over ships, of 15 days from the date the judgment is pronounced. However, the practice of the UAE Courts is to permit appeals filed within 30 days under Article 159 of the Civil Procedures Law. Accordingly, it could be argued that since the Dubai Courts have started applying Article 121, the deadline for appealing the above-mentioned judgments should be 15 days and not 30 days. The deadline set out in Article 121 is yet untested by the Dubai Courts, though we consider that the point is likely to be determined by the Dubai Courts in the near future.