

# New Ruling on Definition of Maritime Debt by the UAE Union Supreme Court

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The case deals with the issue of insolvency of a contractual supplier of bunkers during the performance of a contract, and the legal consequences and prospects of recovery when a ship-owner requested a supply of bunkers from a contractual supplier, who in turn ordered bunkers from a physical supplier. The physical supplier was not paid the value of the supplied bunkers due to the subsequent insolvency of the contractual supplier. Therefore, the question before the UAE Union Supreme Court was whether the physical supplier of bunkers can recover the unpaid bunkers against the ship and the ship's owner.

## Background

The company owning the ship (the 'Ship Owner') requested from a contractual supplier of bunkers (the 'Contractual Supplier') to supply a ship (the 'Ship') with bunkers, marine fuel oil, and marine gas oil (the 'Bunkers'). After this request, the Contractual Supplier sent a purchase order for bunkers to a bunkering company (the 'Physical Supplier') and requested the latter to supply the Ship with the Bunkers. The Physical Supplier then supplied the ship directly with the ordered Bunkers and the ship's Master / Chief Engineer signed and stamped the bunker delivery note confirming receipt of the Bunkers. Subsequently the Contractual Supplier of bunkers became insolvent, and did not pay the price of the provided bunkers to the Physical Supplier.

## The Nature of the Claim

On 19 May 2015, the Physical Supplier bunkering company obtained an arrest order from the Fujairah Court against the Ship's sister ship (the 'Arrested Ship'), which was at Fujairah Port at the time. The Physical Supplier based the arrest order request on the purchase order, the Bunker delivery notes and the commercial invoices for the Bunkers. On 26 May 2015 the Physical Supplier filed a substantive claim before Fujairah Court of First Instance against the Arrested Ship, the Ship Owners, the managers of the Arrested Ship, and the insolvent Contractual Supplier (the 'Defendants'). The claim was for USD 175,196 for the unpaid cost of the supplied Bunkers, and also requested the Court to validate the arrest order against the Arrested Ship.

## Fujairah Court of First Instance

On 25 October 2015, Fujairah Court of First Instance rendered its judgment by holding the Ship Owners, the managers of the Arrest Ship, and the Contractual Supplier jointly liable to pay the Physical Supplier the sum of USD 175,196 plus interest from 26 May 2015 until the full payment is made. The Court also validated the attachment order over the Ship Owner's counter security monies that was deposited in the court by the Ship Owner to release the Arrested Ship.

## Fujairah Court of Appeal

In November 2015, the Ship Owners and the Contractual Supplier (the 'Appellants') challenged the Court of First Instance's judgment by filing appeals before the Fujairah Court of Appeal. The Appellants argued that the Ship Owners did not have the capacity to be sued in this claim as it was evidenced by the case file that there was no contractual relationship between the Ship Owners and the Physical Supplier with respect to the Bunkers. Furthermore, it was argued that the contractual relationship in relation to the Bunkers was between the Contractual Supplier and the Ship Owner. Therefore, the Physical Supplier's claim should be dismissed against the Ship Owners based on Article 252 of the Civil Transactions Law, which states, '[a]

contract may not impose an obligation upon a third party but it may create a right in him.'

### **Fujairah Court of Appeal Decision**

On 9 November 2016, Fujairah Court of Appeal handed down its judgment and decided to revoke the Court of First Instance's judgment and to dismiss the Physical Supplier's claim against the Ship Owners, determining that there was no contractual relationship between the Ship Owners and the Physical Supplier with respect to the Bunkers. The Court of Appeal based its judgment on the abovementioned Article 252 of the Civil Transactions Law. Moreover, the Court held that the insolvent Contractual Supplier should be liable for the cost of the unpaid Bunkers, as the contractual relationship in relation to the Bunkers was established between the Ship Owners and the Contractual Supplier.

### **The Union Supreme Court**

On 24 November 2016, the Physical Supplier challenged the Court of Appeal's judgment by filing an appeal before the UAE Union Supreme Court. The Physical Supplier argued that the Bunker delivery note was signed by the Ship's Master / Chief Engineer and stamped by the Ship's stamp confirming receipt of the Bunkers. Since the Master of the Ship represents the owner of the Ship, the Physical Supplier argued it is evidenced that there was a direct contractual relationship between the Ship Owner (via the Master of the Ship) and the Physical Supplier. Therefore, the Physical Supplier argued that the Court of Appeal's judgment should be overturned. The Physical Supplier relied on Article 137 of the Commercial Maritime Law, which provides:

'The owner of the vessel shall be responsible at civil law for errors of the master, crew, pilot and any other person in the service of the vessel committed by them during the performance of or by reason of their duties. The owner shall have a right of recourse against the person at fault. . . .

Likewise the owner shall be responsible for the obligations of the master arising out of dealings affected by him and contracts entered into by him within the limits of his lawful powers.'

### **The Union Supreme Court Decision**

On 18 April 2017 the Union Supreme Court rendered its judgment and decided to uphold the Court of Appeal's judgment. The Union Supreme Court based its judgment on the following:

1. It is evidenced from the case file that the contractual relationship with respect to the Bunkers was between the Contractual Supplier and the Ship Owner and this contractual relationship was based on the purchase order;
2. It is evidenced from the case file that there was no contractual relationship with respect to the Bunkers between the Ship Owners and the Physical Supplier;
3. Article 151 of the Civil Transactions Law which provides 'a person makes a contract on his own and for his own account then he shall be bound by the provisions of it to the exclusion of other persons.';
4. Article 252 of the Civil Transactions Law, which states '[a] contract may not impose an obligation upon a third party but it may create a right in him'; and
5. The subject matter between the Physical Supplier and the Contractual Supplier, which is the price of the supplied Bunkers, is not deemed as 'a maritime debt' and, therefore, the UAE Maritime Commercial Law does not apply to this matter.

### **Comment**

By virtue of Article 115 of the UAE Maritime Commercial Law (Law No. 26 of 1981) a ship cannot be arrested, unless her debt is deemed 'a maritime debt'. Article 115 of the UAE Maritime Commercial Law defines what shall be considered a 'maritime debt', including:

*'1. It shall be permissible to effect a preservative 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) Damage caused by the vessel by reason of a collision or otherwise.*
- (b) Loss of life or personal injuries occasioned by the vessel and arising out of the use thereof.*
- (c) Assistance and salvage.*
- (d) Contracts relating to the use or exploitation of the vessel under a charterparty or otherwise.*
- (e) Contracts relating to the carriage of goods under a charterparty, bill of lading, or other documents.*
- (f) Loss of or damage to goods or chattels being carried on board the vessel*
- (g) General average.*
- (h) Towage or pilotage of the vessel.*
- (i) Supplies of products or equipment necessary for the utilization or maintenance of the vessel, in whichever place the supply is made.*
- (j) Construction, repair or fitting out of the vessel, and costs of it being in dock.*
- (k) Sums expended by the master, shippers, charterers or agents on account of the vessel -or on account of the owner thereof.*
- (l) Wages of the master, officers and crew, and other persons working on board the vessel under a contract of maritime employment.*
- (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.*
- (o) A maritime mortgage.'*

Accordingly, the ruling of the UAE Union Supreme Court in this case is consistent with recent UAE Court judgments in relation to bunkering matters. However, the new approach in this judgment is that the Supreme Court found that the relationship between the Physical Supplier and the Contractual Supplier in relation to the bunkering supply contacts is not deemed to be a 'maritime debt' and therefore does not fall within the framework of the UAE Maritime Commercial Law. Hence, this judgment suggests that physical suppliers would not be able to seek action against the ship or ship owners for the unpaid bunkers that are supplied to their ships based on the contractual suppliers' orders or requests. Furthermore, the physical suppliers' claims would be strictly limited to recovery against the contractual suppliers.