



Soundings

Can a ship be arrested in Singapore for security in foreign court proceedings?

The Singapore High Court recently clarified whether a ship may be arrested as security for a claim subject to a foreign court action. In the EUROHOPE the court characterised such an arrest as an abuse of process and over-turned the arrest which, in the future, may give rise to a claim for damages for wrongful arrest: DSA Constultancy (FZC) v The “EUROHOPE” [2017] SGHC 218.

The facts

In many jurisdictions, such as South Africa, the UK and Australia there are statutory provisions which allow the arrest of ships purely for the purpose of obtaining security for foreign court proceedings. In Singapore, however, there are no such provisions and the question has been left to the courts to determine. Prior to the EUROHOPE, the issue had not arisen for decision, but judges had indicated, in non-binding statements, that the court should not exercise its discretion in favour of the arresting parties in such cases.

In the EUROHOPE the claimant chartered the ship from her owner, the defendant. The charterparty was governed by English law and provided for the English courts to have exclusive jurisdiction. The owner purported to terminate the charterparty and the charterer commenced High Court proceedings in London for alleged wrongful termination.

In order to obtain security in support of their English proceedings, the charterer arrested the EUROHOPE in Singapore. The charterer intended to apply for a stay of the Singapore proceedings. The owner applied to have the arrest set aside and sought damages for wrongful arrest.

The court's judgment

The court held in favour of the owner, in so far as the writ was struck out and the warrant of arrest was set aside. However, the court declined to award damages for wrongful arrest.

It was found that the relevant legislation (section 3(1) of the High Court (Admiralty Jurisdiction) Act), limited the powers of the High Court in relation to in rem actions to the types of maritime claims set out in the Act. Foreign court actions fell outside the list of maritime claims for which arrests were permitted.



Under Singapore law, to succeed in a claim for wrongful arrest the defendant must show the claimant acted in bad faith, or with malicious negligence when bringing the action or by refusing to accept security offered for the release of the ship.

Furthermore, the court noted that legislation existed to enable Singapore courts to arrest a ship for security in foreign arbitration proceedings, but that no such legislation had been enacted in respect of foreign court proceedings.

Under Singapore law, to succeed in a claim for wrongful arrest the defendant must show the claimant acted in bad faith, or with malicious negligence when bringing the action or by refusing to accept security offered for the release of the ship. The court felt that as the law regarding arrest for security for foreign court proceedings was not settled it could not be said that the claimant had acted in bad faith. Accordingly, the court declined to award damages for wrongful arrest. However, there is a risk that future claimants seeking to arrest a ship as security for foreign court proceedings in Singapore may expose themselves to claims for damages resulting from wrongful arrest.

Conclusion

The Singapore High Court has clarified the position for arrests aimed at seeking to secure foreign court proceedings. It is important to note that the EUROHOPE does not affect parties seeking to arrest a ship in Singapore as security for foreign arbitration proceedings. Such actions remain permissible under Singapore law. Additionally, where there are questions of forum non conveniens, in relation to the jurisdiction of the Singapore courts, the court retains its discretion to grant an arrest order if it is appropriate to do so.

If Members have any queries relating to this judgment please contact your usual contact at the Managers' offices.

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