

Ship Arrests: The Enforceability of the Procedure in the UAE Maritime Commercial Law

In a recent Dubai Court judgment (case number 1677/2016 (Commercial)), a ship building company (**the “Claimant”**) brought a claim against a ship owning company (**the “Defendant”**). The Dubai Court of First Instance’s judgment was issued in favour of the Defendant and is notable for departing from the former practice regarding ship arrests and the substantive claims which follow them.

Background

In 2007, the Claimant entered in a shipbuilding agreement with the Defendant in which the Claimant undertook to build a ship for the Defendant. In 2010, both the Claimant and Defendant (**the “Parties”**) entered into amended agreements where it was agreed that the remaining cost of building the ship (which was USD 75,000,000) would be deferred, with the addition of an interest of 6.5% per annum that should be paid within 12 months as of the date of the ship’s delivery. In 2011, the ship building works were completed and on 3 November 2011 the ship was delivered to the Defendant. On the same date the ship was delivered, the Defendant granted the Claimant a First Preferred Ship Mortgage over the ship in the sum of USD 75,000,000 (ie. 100% of the deferred amount as well as the agreed interest).

The Nature of the Claim

On 22 December 2015, the Claimant obtained an arrest order over the ship which was at Dubai Drydocks at the time. The Claimant based the arrest order request on the First Preferred Ship Mortgage over the ship. Furthermore, on 28 December 2015, the Claimant brought a substantive claim before the Dubai Court of First Instance against the Defendant seeking the sum of USD 106,237,341 in addition to legal interest at the rate of 12% as of the date the claim was made until the full payment is made. The Claimant claimed that the Defendant has not paid the cost of building the ship price in addition to the agreed interest and provided the Court with the relevant documents including the original and duly attested First Preferred Ship Mortgage. Further, on 28 December 2015, the court bailiff went to Dubai Drydocks and drafted the notice of the ship’s arrest. The court bailiff fixed a hearing for the validity of the debt’s claim on 15 February 2016 and requested the Ship’s master to attend the said hearing.

The Defendant’s Arguments

i. The Claimant’s claim:

The Defendant argued that the claim should be dismissed based on two grounds. First, the Dubai Court of First Instance does not have jurisdiction to hear the claim, as the Parties agreed in the shipbuilding agreement to refer any dispute relating to or arising out of this agreement to arbitration in London. Since this claim arises from the agreement, the Dubai Court of First Instance should not have jurisdiction to hear it. Second and alternatively, the Claimant did not file the claim in the form that is required by law under Articles 119 and 120 of the UAE Maritime Commercial Law.

Article 119 of the UAE Maritime Commercial 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 UAE Maritime Commercial 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.”

ii. The validity of the debt claim:

In the alternative, the Defendant argued that such a claim must be dismissed, as the court bailiff did not fix the hearing of the validity of the debt claim within 30 days as per Article 120 of the UAE Maritime Commercial Law.

Dubai Court of First Instance’s Judgment

The Court found that the Claimant did not file the claim in the form that is prescribed by Articles 119 and 120 of the UAE Maritime Commercial Law; thereby the Court dismissed the Claimant’s claim.

Furthermore, the Court rejected the validity of the debt claim. Since the substantive claim was dismissed for incorrect form, the Claimant did not prove the validity of the debt claim.

Comment:

The practice under UAE Law is that once an arrest order is granted over a ship, the substantive claim should be filed with the Court by the claimant(s) within 8 days of the day the arrest order is served on the vessel as per Article 255 of the Civil Procedures Law, otherwise the arrest order would be deemed void. Moreover, the procedures that are set out in Articles 119 and 120 of the Maritime Commercial Law have not been followed by the UAE Courts.

It had even been previously argued that claims that are filed after arrest orders obtained within 8 days must be dismissed and the arrest order deemed void for not following the procedures that are set out in Articles 119 and 120 of the UAE Maritime Commercial Law; however, the UAE Courts had ignored such arguments or ruled that this would not result in voiding the arrest order.

However, it seems that the Dubai Court has changed its approach and started applying the procedures set out in Articles 119 and 120 of the UAE Maritime Commercial Law. Moreover, if such procedures are not met when a ship is arrested, Dubai Court will dismiss the substantive claim that is filed within 8 days as of the date of the arrest order.

The Dubai Court’s approach may be followed by other UAE Courts in the future. Therefore, it is always advisable to request the UAE Courts to apply the procedures set out in Articles 119 and 120 when a ship arrest application is filed and to double check with the court bailiff that such procedures are met.

It should however be noted that this judgment is not final and the Claimant has filed an appeal with Dubai Court of Appeal challenging such judgment.