

Title: The "Long Bright": Can an arresting party freely release an arrested vessel?

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Full article:

Summary

The Singapore High Court held in *The "Long Bright"* [2018] SGHC 216 that where the court has ordered the sale of an arrested vessel, the arresting party is not entitled to release and stop the judicial sale of the vessel, as a matter of right. It must apply to the court for a discharge of the sale order before releasing the vessel.

This case provides helpful guidance on the Singapore approach in determining whether or not to discharge a sale order for an arrested vessel. In a simple case where there is only one claimant against the vessel, an application for the discharge of the sale order may likely to be straightforward. However, such an application may be more challenging where interests of multiple claimants against the vessel have to be considered. If all the claimants (other than the arresting party) unanimously oppose the application and they can show that their interests would be significantly prejudiced by the discharge of the sale order, these factors may well weigh heavily with the court against discharging the sale order, even if the arresting party's claim has been paid.

The facts

The plaintiff shipyard arrested the vessel "Long Bright" in Singapore for its claim against her owners, and obtained an order for the vessel to be sold *pendente lite*. There were other claimants with claims against the vessel. After the vessel had been advertised for sale, the shipyard filed an application to discharge the sale order and to release the vessel. In this regard, the shipyard made, *inter alia*, the following submissions:

- (a) The shipyard's claim had been settled by the mortgagee of the vessel and therefore, the shipyard no longer had any claim against the vessel or her owners. Further, the mortgagee planned to commence a separate *in rem* action to arrest the vessel for its own claim.
- (b) Where a plaintiff or arresting party seeks the release of an arrested vessel following the settlement of its claim, the release is as of right, and is not conditional upon the discharge of the sale order.
- (c) Since the shipyard was entitled to discontinue the action without leave (given that no defence had been filed), the sale process could not continue once it filed a notice of discontinuance. Therefore, the release of the vessel could not be conditional on the sale order being discharged.

The findings

The Singapore High Court rejected the shipyard's afore-said submissions and held:

The limits to an arresting party's freedom to release an arrested vessel

An order for the sale of an arrested vessel would have to be first discharged before the arrested vessel may be released, even if the party seeking the release is the arresting party. It is not entitled to unilaterally stop the sale *without* going back to the court to seek a discharge of the sale order.

A judicial sale is not halted simply by the arresting party filing a notice of discontinuance. In any event, the court may, if necessary, set aside the notice of discontinuance filed.

Considerations relevant to the discharge of the sale order

In deciding whether to discharge an order for sale, the court takes into account the interests of all persons with *in rem* claims against the vessel, including the following matters:

- (a) Whether the other claimants against the vessel oppose the discharge of the sale order;
- (b) The delay and costs involved in discharging the sale order and restarting the sale process (i.e. for the vessel to be released and re-arrested by another claimant in Singapore); and
- (c) Whether any advantages would be gained by discharging the sale order and restarting the sale process.

Having considered the facts of the case, the Court in *The "Long Bright"* exercised its discretion to discharge the sale order. In doing so, the court considered the fact that if vessel were released and re-arrested by the mortgagee, there would likely be a delay of three months or more in payment out of proceeds of sale to the claimants. However, the vessel was only six years old and there was no evidence that the anticipated delay would result in a significant erosion of the vessel's value. Moreover, if the sale process was restarted, the priorities and recovery prospects of the other claimants would not be impacted and the vessel might possibly obtain a higher price.

Conclusion

In *The "Long Bright"*, the court made clear that there are limits to an arresting party's freedom to release an arrested vessel where a judicial sale order of the vessel has been made. It does not follow as a matter of course that the arrested vessel will be released simply because the arresting party's claim has been settled and it is the party seeking the release of the vessel. It would be prudent for the arresting party to apply to the Court to discharge the sale order before seeking to release the vessel.

In *The "Long Bright"*, the court also clarified that it may allow (i) the sale process to proceed; and (ii) applications to be made for payment out of the vessel's proceeds of sale, in the arresting party's *in rem* action even if the arresting party no longer has a claim against the vessel. In that event, it would be prudent for the arresting party to apply to the court for directions to be given to safeguard its interests, such as to make provisions for the costs and expense of keeping the vessel under arrest until the completion of the sale.