

Litigation - Cyprus

Supreme Court rules on issue of international arbitration and ship arrests

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In January 2010, in *Nationwide Shipping Inc v The Athena* (Case 33/2009) the Admiralty Division of the Supreme Court held that a vessel cannot be arrested as security for a potential future award in London arbitration proceedings.

The Cyprus court was referred to the English Court of Appeal decision in *The Vasso* ((1984) 1 *Lloyd's Law Reports*, 235), where the owner of cargo carried onboard the defendant's ship wished to pursue a claim against the defendant for damage to that cargo. After the plaintiff had commenced an action *in rem* in the Admiralty Court, the parties entered into an *ad hoc* agreement to arbitrate and the plaintiff actively pursued its claim in the arbitration (there being no arbitration clause in the bill of lading). Having sold the vessel in the meantime, the defendant refused to provide security and the plaintiff applied to the Admiralty Court for an order to arrest the ship, which was granted. The defendant applied to the admiralty court for (i) a declaration that it did not have jurisdiction to arrest the vessel as security for arbitration proceedings, and (ii) an order discharging the undertaking by the defendant's protection and indemnity club which was filed for the purpose of releasing the vessel. The court granted both orders requested by the defendant.

In reaching his decision, the judge quoted the following extract from *The Vasso* at p 242:

"However, on the law as it stands at present, the Court's jurisdiction to arrest a ship in an action in rem should not be exercised for the purpose of providing security for an award which may be made in arbitration proceedings. That is simply because the purpose of the exercise of the jurisdiction is to provide security in respect of the action in rem, and not to provide security in some other proceedings, for example, arbitration proceedings. The time may well come when the law on this point may be changed: see s. 26 of the Civil Jurisdiction and Judgments Act, 1982, which has however not yet been brought into force. But that is not yet the law. It follows that if a plaintiff invokes the jurisdiction of the Court to obtain the arrest of a ship as security for an award in arbitration proceedings, the Court should not issue a warrant of arrest."

The Vasso was the sole decision to which the Cyprus court referred. The judge noted that even though the extract quoted above was said in passing, it constituted a sufficient basis to conclude that the Cyprus Admiralty Division did not have jurisdiction "in the circumstances of the present case that were explained, since the request of the plaintiff is for security in connection to the result of an arbitration procedure".

Therefore, the decision in *Nationwide Shipping Inc* should be interpreted as being confined to the ability to arrest a vessel. The Supreme Court has recently confirmed the power of Cyprus courts to issue interim orders in aid of international commercial arbitration proceedings, having adopted, among other things, the following principles from English cases:

- "The jurisdiction of national courts is primarily territorial, being ordinarily dependent on the presence of persons or assets within their jurisdiction. Commercial necessity resulting from the increasing globalisation of trade has encouraged the adoption of measures to enable national courts to provide assistance to one another, thereby overcoming difficulties occasioned by the territorial limits of their respective jurisdictions."
- "Once the court is satisfied that there are such assets in the possession or control of the co-defendant, the jurisdiction exists to make a freezing order as ancillary and incidental to the claim against the principal defendant, although there is no direct cause of action against the co-defendant."
- "Equally, there may be instances where a party seeks an order that will have an effect on a third party, which only the court could grant."

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- "I can see no reason why 'assets' should be limited to the defendant's assets."

Further to the general power of Cyprus courts to issue Mareva injunctions under the Administration of Justice Law, the Supreme Court has specific power under the Merchant Shipping Laws to issue orders prohibiting any dealing with respect to ships registered in the Cyprus Ship Registry.

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