

Shipping & Transport - Cyprus

Appellate court confirms lack of jurisdiction in ship arrest case

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Comment

In *Nationwide Shipping Inc v The Athena (ex Amaze)*⁽¹⁾ the Supreme Court of Cyprus, in its role as Admiralty Court, recently upheld a first instance decision to dismiss a case due to lack of jurisdiction.

Facts

The appellant filed an action *in rem* against the respondent ship on September 28 2009, claiming more than €377,000 for expenses, advances and management fees, plus interest. It filed an *ex parte* application for the arrest of the ship on the same day and an interim arrest warrant was issued.

The appellant stated - in both the main action and the *ex parte* application - that the dispute between the parties had been referred to arbitration in London, in accordance with the arbitration clause contained in the agreement between them, and that the arbitration proceedings were still at a preliminary stage. In the *ex parte* application, it further submitted that the issuance of the arrest warrant was justified on the basis that it was necessary in order to provide for execution of the award that it was expecting to be issued against the shipowner in the arbitration proceedings in London.

The shipowner deposited a bank guarantee for its release, objecting (at first instance) that:

- the interim arrest warrant dated September 28 2009 was wrongly issued and its issuance was an abuse of the process; and
- the claimant had failed to disclose material facts to the court.

First instance decision

The Admiralty Court at first instance (a single judge of the Supreme Court) accepted the first of the shipowner's objections and cancelled the interim order, on the grounds that the appellant's intention was not to proceed with the trial of the action by the Admiralty Court in Cyprus (since the dispute had already been referred to arbitration in London), but rather to secure the arrest warrant in aid of the arbitration proceedings for securing an award that would be issued in the arbitration (for further details please see "[Supreme Court rules on issue of international arbitration and ship arrests](#)").

The court justified its decision based on the English decision of *The Vasso (formerly Andria)*.⁽²⁾ In that case the Court of Appeal had ruled (at 242) as follows:

"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."

On these grounds, the court at first instance ruled that it did not have jurisdiction to hear the case and the case was dismissed.

Second instance decision

On appeal, the appellant argued that the court at first instance had not taken into consideration the evolution of case law on the matter and the fact that the *Vasso* decision had subsequently been overruled.

The Admiralty Court at second instance (the full bench of the Supreme Court of Cyprus) confirmed the initial decision and dismissed the appeal. It noted that in the *Vasso* case above there was no issue as to the court's jurisdiction to hear the case. Furthermore, in England, the matter was later expressly addressed under Part IV, Section 26 of the Civil Jurisdiction and Judgments Act 1982, which at the time provided as follows:

"Where in England or Wales or Northern Ireland a court stays or dismisses Admiralty proceedings on the ground that the dispute in question should be submitted to arbitration or to the determination of the courts of another part of the United Kingdom or of an overseas country, the court may, if in those proceedings property has been arrested or bail or other security has been given to prevent or obtain release from arrest:

- (a) order that the property arrested be retained as security for the satisfaction of any award or judgment which -
 - (i) is given in respect of the dispute in the arbitration or legal proceedings in favour of which those proceedings are stayed or dismissed; and
 - (ii) is enforceable in England and Wales or, as the case may be, in Northern Ireland; or
- (b) order that the stay or dismissal of those proceedings be conditional on the provision of equivalent security for the satisfaction of any such award or judgment."⁽³⁾

The court noted that there is no equivalent legal provision that governs the issuance of an interim arrest warrant for a ship where arbitration or a parallel court dispute is pending abroad. Section 9 of the International Commercial Arbitration Law 1987 provides that "[t]he court has the power, upon application made by one of the parties, to order taking interim measures, at any time prior to institution or during the arbitration proceedings". It also defines 'court' as "the competent District Court or a Judge of such court".

Based on the above, the Admiralty Court could not invoke its jurisdiction, since it was not included in the definition. The court also considered Section 19(a) of the Courts of Justice Law 1960, which states that the Admiralty Court shall exercise its jurisdiction in the same manner as the Supreme Court of England within the context of its jurisdiction on admiralty matters, as at the date of independence. It is therefore not bound by any subsequent legislation or English court decisions based on such provisions that apply in England, such as the Civil Jurisdiction and Judgments Act 1982.

The court further distinguished the case of *The Rena K*,⁽⁴⁾ since in that case the purpose of the arrest of the ship was to secure a guarantee in the *in rem* action itself and not in aid of other proceedings, such as arbitration.

For the above reasons, the appeal was dismissed.

Comment

This is the first time that this issue has been considered by the Cyprus courts. It appears from this decision that the Supreme Court of Cyprus, in its admiralty jurisdiction, will not proceed with interim orders against a vessel under its jurisdiction where such orders are not directly applicable to, or otherwise linked with, an underlying action *in rem* against the vessel itself. Any security granted must have a direct link with the named asset.

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Endnotes

- (1) Action 24/2010, dated October 22 2012.
- (2) [1984] 1 Lloyd's Law Reports 235.
- (3) It was later amended to delete references to arbitration following the passing of the Arbitration Act 1996.
- (4) [1979] 1 All ER 397.

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