

Ship arrest in France: shipyard claims

Focus on case law: decision rendered by the Cour de Cassation on 8 March 2017, n°15-21571, “ENIGMA XK”

The decision rendered on 8 March 2017 by the French Cour de Cassation illustrates the possibility for shipyards to arrest of ships.

The facts were as follows: MW Afritec, the owner of the vessel “ENIGMA XK”, requested the shipyard Atlantic Refit Center (ARC) to transform her into an exploration vessel. ARC sub-contracted the repairs of two camshafts to the shipyard Eiffel Industrie Marine (EIM). Once this work was completed, sea trials revealed malfunctions due to the engine oil used. During the survey operations, EIM stripped down the camshafts and put them together again. EIM stated they did not receive payment of the invoices they issued for their work and consequently arrested the vessel “ENIGMA XK” in the port of La Rochelle, for an amount of €433,394.50.

The arrest was grounded on the 1952 Brussels ship arrest convention. The shipowner challenged the arrest before the Président du Tribunal de Commerce de la Rochelle and then the Cour d’Appel de Poitiers and finally the Cour de Cassation, but in vain.

The Cour de Cassation upheld the decision of the Cour d’Appel de Poitiers which authorized the arrest and set out the required conditions for an arrest:

- *“the mere allegation by the claimant of the existence of one of the maritime claims listed at Article 1, 1 of the 1952 Convention...*
- *...is sufficient to ground their right to arrest the vessel to which the claim relates”*

According to Article 1.1 k) and l) of the 1952 convention, a maritime claim is “*a claim arising out of one or more of the following: (k) goods or materials wherever supplied to a ship for her operation or maintenance; (l) construction, repair or equipment of any ship or dock charges and dues*”. Further, the French version of the 1952 convention provides the maritime claim has merely to be “*alleged*”.

EIM, which effected repairs and work on the vessel “ENIGMA XK”, obviously had an allegation of a maritime claim which related to the arrested ship, the “ENIGMA XK”. The conditions required by the convention were consequently fulfilled and the arrest indisputably well founded.

The Cour de Cassation thus confirmed the notion of “*allegation of a maritime claim*” has to be interpreted widely.

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