

# Enforcing awards against associated ships: court clarifies position on charterparty claims

19 May 2021 | Contributed by [Bowmans](#)

## Introduction

### Associated ship arrest

### Facts

### Decision

### Comment

## Introduction

South African admiralty law and practice has a remarkably straightforward approach to the enforcement of maritime arbitration awards. The same may also be said for the enforcement of maritime judgments obtained anywhere in the world.

Any judgment or arbitration award relating to a maritime claim (regardless of whether it is given or made in South Africa) is recognised as a maritime claim in its own right. This means that claimants can arrest ships in South Africa on the strength of the award or judgment alone, without the need for any prior local recognition. The arrest is obtained by means of a warrant of arrest issued by the registrar of the High Court, along with a writ of summons which sets out brief details of the claim and an attached copy of the judgment or award.

However, procedure aside, the practicalities of locating a viable target vessel to arrest can be more challenging. This is particularly relevant when the ship which is the subject of the underlying claim has been sold or no longer exists. Arbitration awards against charterers can add a further layer of difficulty.

## Associated ship arrest

It is against this background that the South African associated ship arrest can be used to good effect by widening the scope of potential targets. Ships are regarded as being 'associated' when the 'ship concerned' (ie, the ship in respect of which the underlying claim arose) and the 'target ship' (ie, the ship to be arrested) are owned or controlled – either directly or indirectly – by the same party.

The structure of an associated ship arrest for the purposes of enforcing a foreign judgment or arbitration award may be explained as follows:

- The underlying judgment or arbitration award on which the arrest is premised must, itself, relate to a maritime claim that is recognised by the Admiralty Jurisdiction Regulation Act (Admiralty Act).
- The associated ship must be owned, at the time of the arrest, by the alleged common owner or controller.
- The ship concerned must have been owned or controlled by the alleged common owner or controller when the maritime claim arose.
- For the purposes of claims against charterers, the relevant charterer or sub-charterer is deemed to be the owner of the ship concerned in respect of any relevant maritime claim for which the charterer or sub-charterer is alleged to be liable.

A longstanding point of contention among legal practitioners for some time is whether the reference to "when the maritime claim arose" applies to the time when:

- the judgment or arbitration award was handed down; or
- the underlying claim under the charterparty arose.

It stands to reason that if the Admiralty Act intends to refer to the time when the judgment or arbitration award is handed down, it is highly unlikely that the ship concerned would still be on charter to the defendant charterer and there would be no reasonable prospect of an associated ship arrest.

AUTHOR

[Jeremy Prain](#)



Helpfully, the Supreme Court of Appeal has now considered the issue decisively in the recent judgment handed down in *mt Pretty Scene*.<sup>(1)</sup>

## Facts

In June 2016 the *mt Pretty Scene* was arrested in South Africa as an associated ship of the *mv Jin Kang*, which was on charter to Parakou Shipping from Galsworthy Limited at the time when the claim under the charterparty arose. Parakou Shipping had, in turn, concluded a back-to-back five-year sub-charterparty for the *Jin Kang* with Ocean Glory. However, the collapse of the charter market during the 2008 financial crisis drove Ocean Glory into liquidation and, as a consequence, Parakou Shipping refused to take delivery of the vessel under the charterparty when tendered.

Galsworthy was successful in a London arbitration against Parakou Shipping and was awarded damages of approximately \$38.5 million. In an attempt to enforce its award, Galsworthy turned its sights on the ships in Parakou Shipping's fleet. In doing so, it arrested the *mt Pretty Scene* on the strength of Parakou Shipping's deemed ownership of the *Jin Kang* as the charterer of the vessel.

## Decision

One of the issues to arise in the course of the legal proceedings in South Africa was whether it was competent for Galsworthy to have carried out an associated ship in South Africa for the enforcement of an arbitration award in circumstances where the *Jin Kang* was no longer on charter to Parakou Shipping at the time when the arbitration award was handed down. As the court succinctly put it, the question was "[w]hen does the claim on an arbitration award arise?"

In answer to the question, the court held as follows:

- Although the Admiralty Act contemplates an arbitration award as a "self-standing" claim not dependent on the merits of the underlying claim, that does not mean that the claim on the arbitration award can be detached from the underlying claim.
- An arbitration award alone is not a maritime claim; only an award which has the quality of "relating to a maritime claim" is a maritime claim. The two are inextricably tied together and it is necessary to plead and prove that it was an award in relation to a maritime claim.
- It follows that a claim based on an arbitration award is an entirely derivative cause of action. In other words, there must be an underlying claim that is essential to the existence of an award. The award itself is simply the determination of the existence and extent of the pre-existing liability in respect of that maritime claim.
- The claim on which the award is based must necessarily have arisen before the award was made. Therefore, the award refers to the original claim.
- In the case of charterparty claims, the charterer is deemed to be the owner of the ship concerned "in respect of any relevant maritime claim for which the charterer and not the owner is alleged to be liable". Here, the ship concerned was the *Jin Kang*. The relevant maritime claim is, in the first instance, the underlying claim which gives rise to the award. It follows that the deeming must be a deeming of ownership when the claim arose.
- When a claim lies against the owner of the vessel, the fact that its ownership is subsequently terminated, or even that the vessel no longer exists, is irrelevant. All that matters is that it was the owner at the time that the claim arose. Thus, the deeming provision serves to place the charterer, which is liable for the claim, in the same position as the owner. Therefore, the *Jin Kang* was under charter and Parakou Shipping, not the owner, was liable for certain claims which arose in relation to the vessel.

## Comment

Where a successful party seeks to enforce an arbitration award in relation to a claim under a charterparty, the date on which the award was handed down is not a relevant factor to consider. All that must be established is that the defendant was the charterer of the ship concerned when the claim arose under the charterparty.

The judgment in *mt Pretty Scene* not only clarifies an area of the law which has been uncertain for some time, but also demonstrates good common sense and should be welcomed by practitioners and arresting creditors alike.

For further information on this topic please contact [Jeremy Prain](mailto:jeremy.prain@bowmanslaw.com) at Bowmans by telephone (+27 21 480 7800) or email ([jeremy.prain@bowmanslaw.com](mailto:jeremy.prain@bowmanslaw.com)). The Bowmans website can be accessed at [www.bowmanslaw.com](http://www.bowmanslaw.com).

## Endnotes

(1) *Galsworthy Limited v Pretty Scene Shipping SA.*

---

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).