

Expert Analysis

A Ship Arrest Is No Pleasure Cruise

After a TKO in the early rounds of the pandemic, many luxury cruise lines are making a comeback. Except one. Crystal Cruises may be down for the count, but was it the pandemic that dealt the final blow?

No doubt that the cruise shipping sector suffered greatly in the wake of the COVID-19 pandemic and its devastating impact on passenger operations. But when operations re-commenced, Crystal Cruises was dealt a fatal blow when two of their ships had run up millions of dollars in unpaid fuel bills. Such debt under maritime law triggers a maritime lien which triggers an arrest of the ship, often spelling the end for that ship.

Under maritime law, torts and breaches of maritime contracts involving the operation of a vessel gives rise to a maritime lien. A maritime lien may be enforced

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by an action in rem against the vessel. It may seem unusual to all but maritime lawyers and federal judges, but an in rem action can result in a warrant for the United States Marshall to arrest a vessel. Once under arrest, the ship will be “handcuffed”, so to speak, and unable to make any further voyage without the arrest being lifted.

By statute, a person providing necessities to a vessel on the order of the owner or a person authorized by the owner (i.e., Captain) has a maritime lien on the vessel and may bring a civil action in rem to enforce the lien. 46 U.S.C.A. §31342. The provision of fuel to a vessel is a “necessary” that affords a maritime lien for non-payment. Crystal Cruises and the passengers aboard the Crystal

SYMPHONY recently found this out the hard way.

A supplier provided marine fuel to the Crystal SYMPHONY in the port of Miami pursuant to contract. The bills piled up and remained unpaid. A complaint in rem was filed in the Southern District of Florida in late January 2022 against the ship and the otherwise highly regarded cruise line seeking over \$4 million in unpaid fuel bills supplied to the MV SYMPHONY and the MV SERENITY. *Peninsula Petroleum Far East PTE, Ltd. v. MV CRYSTAL SYMPHONY, in rem, et al.* (U.S.D. Ct., S.D. Fla.) 1:22 cv 20230 (1/19/2022). The MV SYMPHONY was to be arrested by U.S. Marshals on arrival in the port of Miami. In a vessel arrest, a U.S. Marshal boards the vessel and takes charge of it pending further orders of the federal court.

The ship caught wind of its fate. In a bold maneuver and to avoid facing the music, SYMPHONY pivoted like an Olympic ice dancer, and skated for the hills of Bimini in the Bahamas. Over 300 passengers were surprised to learn they

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were right when they thought they were going the wrong way! The passengers were then to be taken by ferry back to South Florida. Thus, the long arm of the law in a cruise ship arrest can reach well beyond the ship itself as not only onboard passengers are impacted but also passengers that have bookings in the near future aboard such vessel.

Crystal Cruises has since suspended operations as arrest warrants were also issued in the Bahamas. Crystal Cruises' parent company thereafter reportedly filed for liquidation in Bermuda. This is similar to a U.S. law Chapter 11 bankruptcy filing.

An in rem action against a vessel is "distinctively an admiralty proceeding" in which federal courts have exclusive jurisdiction. *In re Millennium Seacarriers*, 419 F.3d 83 (2d Cir. 2005) (Sotomayor, J). In such proceeding, governed by the Federal Rules of Civil Procedure, Supplemental Admiralty Rule C (In Rem Actions), the vessel itself is treated as the defendant and subject to the court's "coercive power". *The Moses Taylor*, 71 U.S. 411, 427 (1866). Indeed, the vessel must be arrested in the district before the action may proceed. *Leopard Marine & Trading, Ltd. v. Easy Street Ltd.*, 896 F.3d 174, 182 (2d Cir. 2018). Supplemental Admiralty Rule C provides an action in rem may be

brought "to enforce any maritime lien." While somewhat of a drastic remedy, a ship arrest is often threatened or achieved for two primary reasons: (1) in order to secure federal jurisdiction over the vessel owner (who may otherwise be outside the grips of the court); and (2) to obtain financial security for the claims.

Of course, cruise ships are only one type of vessel that can be subject to arrest by virtue of a maritime lien, breach of a maritime contract, or a maritime tort such as personal injury and a seaman's claim for unpaid wages. This includes cargo ships, barges, tugboats and even pleasure yachts. A ship arrest, while arguably too easy to achieve under the Federal Rules, on the other hand, can not only be costly but risky, as damages for a wrongful arrest can be significant. A ship needs to move and trade to earn income. Thus, a commercial ship under arrest can spiral into further debt. As a result, most often, a vessel's marine insurer or Protection & Indemnity Club will post security to the claimant for its alleged claims in order to secure the release of the ship from arrest. Such security is known as a "Letter of Undertaking" (LOU) in which the insurer undertakes to pay the proven claims in consideration of claimant releasing the arrest. In an LOU, the shipowner

will typically consent to the jurisdiction of the federal court while at the same time, preserving any and all defenses it may have against the claims asserted. Similarly, Admiralty Rule E contains the procedure for "Release from Arrest or Attachment." Rule E(4)(f). This includes an entitlement to a prompt hearing and release upon the posting of security approved by the court or by stipulation of the parties. Rule E(5).

It is sad to see a reputable cruise line under water. But with a foreign flagged ship and a foreign owner, for example, the admiralty arrest procedure provides a substantial hammer for a supplier of necessities that remain unpaid. Without such remedy, the skate would be on the other foot and the supplier would come crashing down.