

# Danish courts cannot issue injunctions to arrest vessels outside Denmark for unpaid bunkers

12 September 2018 | Contributed by [WSCO Advokatpartnerselskab](#)

## Facts

## Decision

## Comment

### Facts

A Danish owner (O) chartered bulk carriers A and B to a charterer (C). O was A's owner and B was chartered by O and sub-chartered to C.

C stemmed bunkers to the vessels from a Danish bunker supplier, which delivered them to Skagen, Denmark; Ventspils, Latvia; and Gothenburg, Sweden. The bunker supplier invoiced C for \$174,604. It was set out in the bunker supplier's terms and conditions that all disputes should be decided in Denmark pursuant to Danish law. On 16 August 2017 C filed for bankruptcy and the invoices remained unpaid.

As a result, the bunker supplier threatened O with arrest of A and B. O subsequently brought proceedings before the Maritime and Commercial Court against the bunker supplier, claiming that it should acknowledge that it:

- did not hold a maritime lien in A and B with respect to its claims; and
- had no right to arrest A and B.

O and the bunker supplier agreed that A and B could not be arrested under Danish law, as O had not ordered the bunkers and was not liable to pay for the stems. Under Danish law, a vessel can be arrested only if the owner is liable to pay the claim for which the arrest is made.

However, the bunker supplier arrested A on 3 November 2017 in Argentina. On this basis, O made payment for the bunker stems and put up security in favour of the bunker supplier. In this context, O extended its claim in the Danish proceedings to include that the bunker supplier should acknowledge that A's arrest in Argentina had been unlawful.

In response, the bunker supplier submitted that the question of whether a vessel can be arrested outside Danish jurisdiction must be decided as a general rule in accordance with the laws and by the courts of the jurisdiction where the arrest is made. The bunker supplier therefore submitted that the Danish proceedings should be dismissed.

### Decision

The court dismissed O's claims and found the bunker supplier free of any liability to acknowledge that the arrest in Argentina had been unlawful. (1) The court stated as follows:

*The Danish courts have neither pursuant to the Danish Administration of Justice Act, S. 639, nor from any other legal sources referred to by [O] any legal basis to set aside the arrest of the vessel "A" effectuated in Argentina as unlawful under Danish law. The decision on this arrest must, thus, be made pursuant to the Arrest convention... from which it follows that*

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*all issues relating to the lawfulness of an arrest of a vessel must be decided under the laws of the state party where the arrest has been made or a petition for arrest has been filed.*

## **Comment**

O brought the Danish proceedings to avoid:

- the bunker supplier arresting A and B; and
- payment of debts for which O was not liable.

If the issue of whether the bunker supplier had a maritime lien and could effect an arrest had been decided under Danish law, the answer would have been no. By its judgment, the court rejected to decide the claim of whether the bunker supplier held a maritime lien and was entitled to arrest the vessels (pursuant to the laws of other countries) outside Denmark, as the court referred to the fact that this claim was of such a theoretical and general nature that it was not obliged to decide it. With respect to whether the arrest made in Argentina had been lawful, the court referred to the fact that there was no basis in Danish law to set aside an Argentine court decision to arrest a vessel in Argentina.

*For further information on this topic please contact [Jesper Windahl](#) at Windahl Sandroos & Co by telephone (+45 3525 3800) or email ([jw@wsco.dk](mailto:jw@wsco.dk)). The Windahl Sandroos & Co website can be accessed at [www.wsco.dk](http://www.wsco.dk).*

## **Endnotes**

(1) Maritime and Commercial Court decision of 23 August 2018 (Case S-1 7-17).

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