

The Commercial Court has this week given judgment in the case of Eastern Pacific Chartering Inc v Pola Maritime Ltd [2021] EWHC 1707 (Comm). MFB acted for the successful respondents, Pola Maritime Ltd.

At its heart, the case is a typical balance of hire dispute. Owners of the MV DIVINEGATE, Eastern Pacific Chartering Inc, ("C") commenced proceedings in England (the "Divinegate Proceedings") for sums said to be owed by charterers, Pola Maritime Ltd ("D").

As security for its claims, C arrested the POLA DEVORA in Gibraltar on 2 July 2020. The requirements for arrest in Gibraltar are essentially the same as those in England: the party who would be liable on the claim in an action *in personam* must be the beneficial owner as respects all of the shares in the vessel. D objected to the arrest of the POLA DEVORA on the basis that they were not the beneficial owner of the vessel, but merely the time charterers. D provided a copy of the time charter, and the vessel was released.

D then brought a counterclaim in tort in the Divinegate Proceedings in England based on C's misconceived attempt to arrest the POLA DEVORA. They did so principally on the basis that the dispute resolution clause in the Divinegate Charterparty was sufficiently wide to include any claims that may arise, following one parties' failed attempt to take security over another. The relevant law and jurisdiction provision read as follows:

*"This Charter Party shall be governed by English law and any dispute arising out of or in connection with this Charter shall be submitted to the exclusive jurisdiction of the high of justice in England and Wales"* (the "Exclusive Jurisdiction Clause").

C objected to the jurisdiction of the English Court, arguing that the counterclaim should instead be decided by the Gibraltar Courts, where the misconceived arrest took place.

Both parties agreed that matters of jurisdiction as between the English Courts and the Supreme Court of Gibraltar are governed by the Brussels Convention 1968, by reason of the Civil Jurisdiction and Judgments Act 1982 (Gibraltar) Order 1997 (SI 1997/2602), which applies Schedule 1 to the Civil Jurisdiction and Judgments Act 1982 (i.e. the 1968 Brussels Convention) as if England and Gibraltar had been separate contracting states to the 1968 Convention.

Various arguments were relied on by C, but by the time of the hearing the issues had changed somewhat (as the Court recognised in its judgment), as follows: (i) whether the English Court had jurisdiction by reason of the Exclusive Jurisdiction Clause in the charterparty between C and D, (ii) whether the Court should decline jurisdiction under Article 21 or Article 22 of the Brussels Convention 1968.

As to (i), the Court concluded that the counterclaim did fall within the Exclusive Jurisdiction Clause: the case was close to *The Damianos* [1971] 1 Lloyd's Rep. 502, where Lord Denning took a "robust approach" to a clause conferring jurisdiction on London arbitrators of "any dispute arising during execution of this Charterparty," treating it as covering claims in respect of two arrests, one of which had post-dated the charter by some months.

While in *The Damianos*, the defendant had contended that the underlying merits of the dispute were "bad", so that the arrest could not be maintained, whereas in the present case the arrest was misconceived because of the identity of the vessel's owner, the Court concluded that:

*“The point that the arrest was a direct consequence of a contractual claim and therefore closely connected to the contract and the legal relationship there created, remains good whether or not the ground for attacking the validity of the arrest in the given case is that the contractual claim is “bad” or, as here, the contention that there simply is no contractual claim to found the arrest because (as the Defendant alleges) the Claimant has misidentified who is the owner of the arrested ship.”*

As to (ii), the Court dismissed any argument under Article 21, on the grounds that the “*arrest claim [in Gibraltar] plainly does not involve either the same cause of action or the same object as the Defendant’s tort claims seeking to recover damages for wrongful arrest, which are advanced solely by way of counterclaim in this jurisdiction.*”

The Court did hold, however, that Article 22 was applicable because the actions were “related”. However, the Court held that “*countervailing factors outweigh any initial presumption in favour of a stay or declining jurisdiction.*” One key consideration was that D’s counterclaim fell within the Exclusive Jurisdiction Clause in the charterparty.

The case will be of particular interest to shipping practitioners. It is often the case that arrests are made across the world without much fear of retribution, because of the belief that redress can only be sought in the arresting court, and the understandable reluctance of those faced with an arrest to pursue the claim in whichever jurisdiction happens to be seized of the arrest.

From a commercial and practical point of view, where parties have agreed that their disputes should be decided in a certain jurisdiction (and particularly where the clause conferring jurisdiction contains phrases such as “all disputes arising from” or “in connection with”), they should be held to such agreements, subject only to narrow and restricted exceptions. The ability to seek security abroad is a well-known exception, but it is open to abuse if it forces the party facing arrest to litigate any subsequent claim for relief abroad.

However, it is now clear that in principle a claim for wrongful arrest can be brought in the same jurisdiction as the underlying dispute, and does not have to be pursued in the same jurisdiction as the arrest itself. In particular, the Court has helpfully confirmed the decision in *The Damianos* – and, indeed, expanded it – so that claims for wrongful arrest can fall within the scope of an exclusive jurisdiction clause regardless of the basis on which the claim for wrongful arrest claim is brought.

In short, the decision brings welcome clarity to the law and, it is hoped, will offer parties another avenue for seeking redress in the event that arrests are wrongfully brought or pursued.