



## SINGAPORE HIGH COURT HAS POWER TO ALTER PRIORITIES BETWEEN MARITIME CLAIMANTS

**In a recent landmark judgment, the Singapore High Court has ruled that it has the power to alter priorities between maritime claimants in “exceptional circumstances”.**

In *THE POSIDON* (2017) SGHC 138, Piraeus Bank (Bank) commenced two mortgagee actions in Singapore, arising from the ship owner's default under a loan agreement, and arrested two vessels, *THE POSIDON* and *THE PEGASUS*. These vessels were subsequently sold by judicial sale.

The Bank sought payment out of the balance sale proceeds for sums awarded in its favour pursuant to two in rem judgments. However, World Fuel Services Trading (World Fuel), who had supplied bunkers to the vessels on credit terms, intervened and argued that the usual order of priorities, in respect of the entitlement to the sale proceeds, should be altered to elevate their claim as necessary suppliers above the Bank's claim as mortgagees.

The usual order of priority of maritime claims in Singapore is specified in the High Court (Admiralty Jurisdiction) Act (Cap 123, 2001 Rev Ed), which ranks mortgage claims above necessities claims.

World Fuel argued that this priority should be altered because the Bank was in *de facto* control of the finances for the operational needs of the vessels at the material time, and had authorised and approved the bunker purchases. In the alternative, World Fuel argued that the Bank had "benefited" from the bunkers' supplies as they ensured the physical safety of the bank's security while they were operational, and enabled the vessels to trade and generate income for the Bank.

In a carefully reasoned judgment, Justice Belinda Ang, held that the Court has the power, where there are "exceptional" or "special" circumstances, to alter the order of

priorities, but found that no such circumstances existed in this case.

The Court gave the following guidance on what would need to be shown to warrant a departure from the established order of priorities:

- First, it must be shown that the mortgagee has knowledge of the mortgagors' insolvency
- Second, the mortgagee must be fully aware in advance of the nature and extent of the expenditure incurred by the competing claimant
- Finally, such expenditure must bring about some benefit to the mortgagee

While the order of priorities will not be lightly altered, this is the first Singapore Court decision on this issue, and is a warning to mortgagees that their priority as maritime claimants is not set in stone.

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