



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.

For more information, please contact the authors of this briefing:

SCOTT PILKINGTON

Partner, Singapore

T +65 6411 5357

E scott.pilkington@hfw.com

MAGDALENE CHEW

Director, AsiaLegal LLC, Singapore

T +65 6538 4384

E magdalene@asialegal.com.sg

WILLIAM PYLE

Associate, Singapore

T +65 6411 5323

E william.pyle@hfw.com

HFW has over 450 lawyers working in offices across Australia, Asia, the Middle East, Europe and the Americas. For further information about our shipping capabilities, please visit hfw.com/shipping

hfw.com

© 2017 Holman Fenwick Willan LLP. All rights reserved.

Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice. Holman Fenwick Willan LLP is the Data Controller for any data that it holds about you. To correct your personal details or change your mailing preferences please contact Souhir Jemai on +44 (0)20 7264 8415 or email souhir.jemai@hfw.com

Beirut Brussels Dubai Geneva Hong Kong Houston Kuwait London Melbourne Paris Perth Piraeus Riyadh São Paulo Shanghai Singapore Sydney