

28 October 2015  
Ref : Chans advice/178

To: Transport Industry Operators

**Arrested ship's sale proceeds**

The Hong Kong High Court issued a judgment on 30/4/2015 dealing with the legal principles in respect of the order of priorities in distributing the sale proceeds of an arrested ship. [HCA] 129/2013]

This was the plaintiff's (Asset Wonder Limited) application by notice of motion under Order 75 rule 22 for orders that the plaintiff's judgment dated 2/12/2013 ("the judgment") did have first priority against the remaining sum held by the court in respect of proceeds of sale of the vessel 'Ruby Star', the bunkers thereon and the interest thereon; the entire remaining proceeds of sale of the vessel and her bunkers together with interest thereon presently held by the court be paid out to the plaintiff in partial satisfaction of the judgment.

The legal principles

As summarised in *Mason on Admiralty Jurisprudence and Practice* (3<sup>rd</sup> ed) at paragraph 6.37 to 6.49, there is a well-settled order of priorities which is regularly applied by the court, although this order is only a prima facie ranking, subject to the court's equitable jurisdiction.

The plaintiff ably summarised the order as follows: (a) the court's bailiff fees for the arrest, preservation and sale of the vessel; (b) the expenses of arrest, preservation and sale *pendente lite*; (c) the costs of the arresting party; (d) maritime liens attached to the ship, not the sister ship, to which the claim arose; (e) secured maritime claims; and (f) unsecured maritime claims.

Application of the principles

The bailiff's fees and expenses had already been paid out from the proceeds of sale of the vessel. The plaintiff's costs for arrest, preservation and sale *pendente lite* and its party and party costs in respect of arrest and sale *pendente lite* had been agreed by a former caveator, Stellar Shipping Company LLC ("SSC") in the sum of HK\$300,000.

In respect of claims *in rem* against the vessel:

- (a) SSC, being the defendant and a former caveator in the action in question did not have a claim against the vessel and the proceeds of sale. SSC had admitted this by its letter dated 20/4/2015 to the court.

(b) Stellar Ocean Transport, a former caveator, had its writ set aside by the Court of Appeal by judgment dated 23/12/2014. Its solicitors had confirmed to the court by letter that it did not have a claim over the vessel or the proceeds.

The plaintiff therefore held the only judgment against the vessel. The plaintiff had confirmed by a check on the caveator on 21 April that there was no valid caveat against release and payment out of proceeds of sale of the vessel.

The amount of the judgment was US\$17,076,846.79. It exceeded the remaining amount of proceeds of sale of the vessel held by the court, ie US\$16,041,788.64. There was no reason why the court should depart from the *prima facie* order of priorities set out above.

The Judge was satisfied that the plaintiff should be paid the entire remainder of the proceeds of sale held by the court together with interest thereon in satisfaction of the plaintiff's party and party costs of the arrest and sale *pendente lite* and in partial satisfaction of the plaintiff's judgment.

Please feel free to contact us if you have any questions or you would like to have a copy of the Judgment.

Simon Chan  
Director  
E-mail: [simonchan@smicsl.com](mailto:simonchan@smicsl.com)

Richard Chan  
Director  
E-mail: [richardchan@smicsl.com](mailto:richardchan@smicsl.com)

10/F., United Centre, Admiralty, Hong Kong. Tel: 2299 5566 Fax: 2866 7096

E-mail: [gm@smicsl.com](mailto:gm@smicsl.com) Website: [www.sun-mobility.com](http://www.sun-mobility.com)

CIB A MEMBER OF THE HONG KONG CONFEDERATION OF INSURANCE BROKERS

