

Harris & Co
Maritime law office

www.lawships.com

Haifa * Tel-Aviv * Israel



JAMES BERRY & ASSOCIATES
LEGAL CONSULTANTS



A Spotlight on vessel's arrest for unpaid bunkers by the Haifa Maritime Court

Introduction:

Located at the strategic junction between Europe, Africa and Asia, the Haifa Maritime Court governs all of the Israeli territorial waters including vessels calling at the ports of Haifa, Ashdod and Eilat.

The Establishment of the Haifa Maritime Court and main Authorities:

The Haifa Maritime Court is in fact a legacy from the British Mandate over Palestine-Israel which took place between the dates December 1917-May 1948. By a Kings-Order-In Council dated 2 February 1937 the Supreme Court of Jerusalem was constituted as a Maritime Court under the Colonial Court Admiralty Act, 1890.

On the date when the Colonial Court Admiralty Act was enacted, the relevant acts of Admiralty which were in force were the Admiralty Acts of 1840 and 1861. These, continue to apply at the Israeli Haifa Maritime Court's jurisdiction up to today.

The other rule which governs the Haifa Maritime Courts authority is the Israeli Shipping (Sea-going Vessels) Act, 1960. Chapter IV and V of this Act, which relates to maritime liens and Mortgages respectively, which adopts the continental maritime lien regime of the International Convention for The Unification of Certain Rules of Law Relating to Maritime Liens and Mortgages, 1926.

Besides its authorities relating to enforcement of maritime liens, the Haifa Maritime Court is authorized to decide matters relating to ownership and registration of vessels and on matters relating to prize and confiscation.

The Maritime Liens recognized and enforced by the Haifa Maritime Court:

The lists of recognized liens which are within the enforcement authorities of the Haifa Maritime Court are listed, inter alia, as follows:

- (1) The costs of the Court's auction sale of an arrested vessel.
- (2) Port dues of all kind and other payments for such port services in as much as payments are due either to the state, to another state or authority or have been paid to them by a third party.
- (3) The costs of preservation of an arrested vessel (from the date of its entry to the port and until its sale by the Court).
- (4) Wages.
- (5) Salvage.
- (6) Compensation for death or injuries of passengers.
- (7) compensation for damages caused as a result of collision at sea or any other navigation accident, or for damages done by a vessel to port facilities and indemnities for loss or damages to cargo or to passenger's baggage.
- (8) Payments due for a supply of "Necessaries".

Arresting a vessel for unpaid bunkers

Bunkering (the supply of fuel and oil to the vessel) is included under the category of 'supply of necessities'. Accordingly, a debt due for unpaid bunkers is recognized as an enforceable maritime lien. A vessel which navigates within the Israeli territorial waters and/or calls at any of the Israeli ports which while still owing payments due to a bunker supplier, is under the jeopardy of its arrest by the Haifa Maritime Court following a claim in rem and an arrest application, filed by the bunker supplier - the debtor.

The nature of the lien for 'Necessaries' as a contractual lien

The lien for "necessaries" is considered as a contractual lien. The wording of the sub clause 41 (8) of the Shipping Act (Vessels) 1960, is: "Claims resulting from supplies or services provided to the vessel under contracts or acts entered into by the master, acting within the scope of his authorities by law, as much as the supplies or services were necessary for the preservation of the vessel or for the continuation of its voyage, whether if claimed by the master or by the suppliers of the supplies or the services".

The nature of the lien as contractual, leads to the following two:

- First, which the bunkering (or other supply or services) must be ordered by the owners or on its behalf (for example by the master, owner's agent, owner's managers - managing company).
- Second, that only the contractual supplier is entitled to enforce maritime lien. The actual supplier even if provided the bunkering itself (as a subcontractor of the contractual supplier) is not recognized as a maritime lienee, unless the contractual supplier has waived its rights and authority to the actual supplier.

In the matter of *M/V Emmanuel Tomasos* (2014) the physical supplier's claim was denied under the reasoning that the actual supplier was not a party to the supply agreement and the owners had paid the contractual supplier. This payment, according to the Haifa Maritime court has lifted the maritime lien, although the contractual supplier did not pay its subcontractor - the physical supplier.

The documents required for supporting a claim in rem and arrest application for unpaid bunkers:

Usually, the necessary documents required for the presenting the entitlement to the maritime lien for 'necessaries' for unpaid bunkers, would be:

- The Purchase Order and related correspondence evidencing the ordering of the bunkers and the identity of the purchaser.
- Terms and Conditions of the contractual supplier, including the payments terms and interest on payments not effected on time.
- Bunker Delivery Notes signed by the master or chief engineer.
- Invoices, pro-forma invoices/debit notes.
- Correspondence relating to the unpaid payment for the bunkers, including payment arrangement which have failed.
- Interest Calculation.

Formalities requirements of the Haifa Maritime Court

- A scan copy of the POA and documents are usually sufficient for filing the arrest application.
- A supportive Affidavit is usually used for supporting the arrest application. The Affidavit can be signed before a local attorney/notary and copy scanned.
- Usually, and provided that the documents are prima facie in order and are true copies, no guarantee or deposit would be required on behalf of the Applicant. Although, formally, the Court is authorized to require a security deposit.

More Information

More information relating the Haifa Maritime Court, Shipping and Maritime Law can be found at either of the Israeli chapters of the following International Shipping guides, contributed by Harris & Co. Maritime Law Firm:

- Chambers Global Practice Guide (Shipping) of Chambers and Partners; [[Click here](#)]
- Legal 500 [[Click here](#)];
- Ship Arrest in Practice of Shiparrested.com [[Click here](#)];
- Lexology - Law Business Research 2020 [[Click here](#)];
- ICLG –The International Comparative Legal Guide: Shipping Law 2020 [[Click here](#)].

Additional articles of the firm published inter alia at "shiparrested.com" and available also at Harris & Co. website at www.lawships.com.

Harris & Co. - Maritime Law Office

The firm was established in 1996 by Adv. John Harris, a graduate of Cape Town University, after 25 years of practicing law in leading Israeli law firms. Adv. Yoav Harris graduated cum laude from the Law Faculty of Haifa University in 1999, and practiced law as a partner in leading law firms, in which he was the head of their litigation departments, and at the same time cooperating with Adv. John Harris in the maritime law field.

According to Chambers dictionary 2019 (Transport), the firm ***"has significant litigious capabilities", "operates professionally, efficiently and rapidly in order to achieve its client's goals" and "[its partners] are timely, thorough and extremely pragmatic in their approach to complex legal issues"***.

JAMES BERRY & ASSOCIATES, LEGAL CONSULTANTS - Harris & Co. - Maritime Law Office.

JAMES BERRY & ASSOCIATES, LEGAL CONSULTANTS and Harris & Co. Maritime Law Firm, are cooperating in promoting trade relations and establishing the legal platforms between UAE and Israeli traders and businessmen.

For Further information and contacts:

JAMES BERRY & ASSOCIATES

HARRIS & CO.

LEGAL CONSULTANTS

MARITIME LAW FIRM

+971 (4) 3317552

+ 972 (4) 8454040

enquiries@jamesberrylaw.ae

office@maritime-law.co.il

