

Practical Issues relating to the Arrest of Ships

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I would like to discuss the facts of a recent admiralty arrest out of the NSW District Registry.

It is an example of what can happen when an arrest occurs at a port with limited lay berth facilities and at a time when the shipping industry has many participants in financial difficulties.

On 25 January 2009 a ship was arrested pursuant to an application for an arrest warrant. The claim was for non payment of charter party fees.

Ship was a Cape Size Bulk Coal Carrier. It was 270m long and 77, 214 gross tonnes.

The ship was arrested as it arrived at the coal terminal in the Port of Newcastle. It was not permitted to load.

Over next few weeks 5 caveats against release were filed by various creditors for substantial sums.

There are limited loading berths at the Port of Newcastle and the lay berth was not available at the time of arrest due to refurbishment. Once finished the old lay berth is going to be used as a refuelling and passenger berth. In the future there will be only a limited lay berth available.

Within days of arrest, a request was made by the Port Authority to move the ship from one berth to another to facilitate loading operations for other ships.

The Coal Terminal and Port Authority complained that the ship was affecting loading and port operations at the Port. The Ship was so wide, being cape size that it blocked the channel and so for safety reasons, the Port could not be used at night to bring other cape size ships past it.

Each request to move the ship was placed before a Judge and an order to move the ship was given. The Marshal was required to travel to Newcastle to affect each move.

The tugs required to move it from one berth to another cost about \$15,000 each time. Ship was moved from berth to berth 5 times. This whole exercise was very time consuming to the Marshal.

As the weeks passed pressure began to mount from both the Coal Terminal and the Port Authority to take the ship out to anchor. In Newcastle ships are anchored at a radius of from 3 to 8 nautical miles off the Port. It is important to note that the ship under arrest had enough bunker fuel on board to return to Korea. In these circumstances the Court was not prepared to let the ship go out to anchor.

The period of the ship being under arrest grew longer. The solicitors for the shipowner filed an appearance but no defence was filed. By the fifth week it appeared to the Marshal that this matter was unlikely to settle and that an order for sale would be made. This probability together with pressure from the Port Authority caused the Marshal to seek orders to move the ship to Port Jackson.

Substantial work was required to move the ship including organising another ship's agent, tugs, and a police escort. The cost, mainly of tugs to move the ship to Port Jackson was about \$70,000. The ship was berthed eventually at White Bay in Port Jackson.

Week 6 after arrest the matter settled. All caveats were removed and application was made to the Court to release the ship. It was released on 6 March 2009.

Marshal costs and expenses relating to this arrest were \$308,000.

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The question I leave you to ponder is:

If acting for a plaintiff in the circumstances just discussed would you risk the marshal arresting the ship at anchor or would you bare the cost of it being held in a Port?