

A Ship Manager's Right to Arrest:

A Tale of Two Agreements

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When can a ship manager arrest a vessel for unpaid fees? The answer hinges on a crucial distinction in Admiralty law, recently explored in *The Victor 1*. This article examines the scope of the High Court's jurisdiction for claims arising from ship management agreements, contrasting the *in rem* rights of an exclusive commercial manager against the more limited remedies available to a technical manager.

The Admiralty jurisdiction of the High Court includes the power to hear and determine claims “*arising out of any agreement relating ... to the use or hire of a ship*” by s 20(2)(h) of the Senior Courts Act 1981 (SCA 1981). Similarly, claims “*by [an] ... agent in respect of disbursements made on account of a ship*” are within the Admiralty jurisdiction by s 20(2)(p). Ship arrest is an available mode of exercise of the jurisdiction in both these categories of claims by s 21(4).

The scope of the sections – s 20(2)(h) and (p) – is not as easy to determine as they may look. Some cases falling within s 20(2)(h) or (p) may be straightforward. For example, a claim by a charterer against a shipowner under a voyage charterparty between them is plainly within s 20(2)(h), being one arising out of an agreement relating to the “use” of the ship. Similarly, a claim under a time or bareboat charterparty – an agreement relating to “hire” of the ship – would be within the section. Likewise, it is easy to see that a claim

by an agent to recover what he paid for supply of necessities to the ship would fall within the scope of s 20(2)(p).

But not all are straightforward. A difficult question that has arisen in relation to s 20(2)(h) is whether claims arising from a ship management agreement is one relating to the “use or hire” of a ship, falling within the section, and whether the management fee is covered by s 20(2)(p).

In *The Stella Nova* [1981] Com LR 200, a commercial manager’s claim for damages arising from the breach by the owners of the commercial management agreement was held to fall within the scope of the then equivalent to s 20(2)(h). This was an “unusual” case. In this case, original owners of the vessel sold her to Stella Shipping.

The sale was subject to a condition on the original owners to give a loan to Stella Shipping secured by a mortgage on the vessel, and a condition on Stella Shipping that they would retain the commercial managers used by the original owners as the commercial managers of the vessel. Stella Shipping entered into a commercial management agreement with the commercial managers, giving them the exclusive right to fix charters for the vessel. Stella shipping breached the exclusivity agreed in the commercial management agreement. Noticeably, the original owners had an interest in the commercial management even after the sale, given their secured loan on the vessel.

Subsequently, in an unrelated action, the vessel was judicially sold and a part of the proceeds of the sale was lying in the court. The commercial managers brought an action *in rem* against the proceeds under the then equivalent to s 20(2)(h). The court did not doubt that an action *in rem* can be brought against the proceeds.

Similarly, the court did not doubt that an [arbitration award](#) obtained by the commercial managers *in personam* against Stella Shipping and recognised by a judgment in terms of the award was no barrier to the action *in rem* against the vessel or its proceeds, to the extent that the award or judgment remained unsatisfied.

The court identified the crucial two-stage test to determine whether a claim falls within the then equivalent to s 20(2)(h), and answered it, as follows:

1) *How does the claim arise?*

The court answered this: “*It arises out of the management agreement.*”

2) *Does that [agreement] relate to the use or hire of [the vessel]?*

The answered this: “Yes.”

Therefore, the court held that the claim fell within the then equivalent to s 20(2)(h).

In *The Peppy* [1997] 2 Lloyd’s Rep 772, it was not disputed that a commercial manager’s claim fell within the then equivalent to s 20(2)(h), and the case proceeded on that basis.

Similarly, in *Harms Bergung Transport und Heavylift GmbH & Co KG v Harms Offshore AHT “Uranus” GmbH & Co KG* [2015] 2 Lloyd’s Rep 175, it was a common ground between the parties that a technical and commercial manager’s claim fell within s 20(2)(h), and the case proceeded on that basis.

In *The Victor 1* [2023] 2 Lloyd’s Rep 175, the court analysed and answered, albeit in passing, the questions whether a claim under a

technical and crew management agreement falls within s 20(2)(h) and whether a claim for the management fee falls within s 20(2)(p). In that course, the court dealt with the three authorities mentioned above. In this case, the owners – Savory Shipping – gave a bareboat charter of their vessel to the charterers – Ceto Shipping – for a term of three years. The technical and crew managers were Delfi, a company associated with the owners. The charterparty was in the nature of hire purchase. Pursuant to the charterparty, at the end of the charter term, the title would automatically pass to the charterers provided the charterers had paid all hire and other sums due and “*all management fees and any other sums due under the management agreement to Delfi.*”

At the end of the charter term, Delfi had a US\$2 million claim against the charterers, which the charterers disputed. The charterers applied to the court, by a Part 8 claim, for a declaration that the title had passed to them even where sums were owed to Delfi, if the charterers disputed the debt in good faith. It was not the charterers’ case that no debt was due, but rather that a debt due does not prevent the passing of title insofar as it disputed in good faith. To support that, the charterers advanced an argument that it was not necessary for the charterparty to protect Delfi because Delfi’s claim would be protected by their rights of action *in rem*. According to the charterers, Delfi’s claim would fall under s 20(2)(h) and (p); hence their rights of actions *in rem*.

The court rejected the argument. The court held “due means due”; therefore, the title would pass only if there was no outstanding sum due to Delfi, a condition which the charterers did not attempt to prove they had met. The court reasoned that this contractual interpretation would not change even if Delfi did have a separate right of action *in rem*. The court said that the charterers’ argument that the title would pass despite the existence of a debt proved “too much”.

Having held that, the court went on to consider the ss 20(2)(h) and (p) arguments. The court held that the “technical and crew management” agreement was not one related to the “use or hire” of a ship; hence not within the scope of s 20(2)(h). The court distinguished *The Stella Nova*, where the concerned agreement was a “commercial management” agreement with “exclusive” rights for the managers to fix charters for the use or hire of the ship. The court did not consider *The Peppy* and *Harms v Harms* to be of any assistance on this point, given that jurisdiction had not been disputed in those cases. As to s 20(2)(p), the court held that a “management fee” is not a “ships’ disbursement”; hence a management fee claim does not fall within the section. The court said that the charterers’ ss 20(2)(h) and (p) argument proved “too little”.

Accordingly, the court dismissed the claim for the declaration. The court left the separate factual question of whether an outstanding sum was actually due to Delfi and the consequent question of whether title passed to the charterers to be determined at a later time, if needed.

Interestingly, the case would have taken a different track had the charterers sought to prove that no outstanding sum was due to Delfi; hence the title passed to the charterers, but that was not the charterers’ case.

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