

# MORE ABOUT MARITIME CLAIMS AND MARITIME LIENS IN AUSTRALIA



**After the SAM HAWK decision in September 2016 restored the status quo in the recognition of foreign maritime liens in Australia (see our briefing <http://www.hfw.com/Arrest-of-the-SAM-HAWK-October-2016>) two Federal Court decisions in November 2016 bring the year towards a close with the Federal Court's jurisdiction and application of the Admiralty Act being confirmed on established and predictable grounds.**

## **Establishing in rem jurisdiction**

The *HOUSTON*<sup>1</sup>, challenged the Federal Court's jurisdiction in proceedings involving a dispute between demise charterers and the plaintiff vessel owning interests over the withdrawal and redelivery of the chartered vessel. The plaintiff commenced in rem proceedings seeking unpaid hire and indemnity under the charter, and damages for conversion and/or detention, and

delivery up of the vessel. The plaintiff's claims were framed as proprietary maritime claims (i.e. claims relating to possession or title or ownership of a ship) and as demise charterer's liabilities, falling respectively under sections 16 and 18 of the Admiralty Act 1988 (Cth).

The defendant argued that the claims for conversion/detinue and for delivery up were misconceived and could not be characterised as proprietary maritime claims, relying on the defendant's asserted position that a) they held the vessel as gratuitous bailees following the plaintiff's notice of withdrawal, and b) that the vessel was available to be physically repossessed by the plaintiff.

The judge dismissed the application, endorsing the approach established by the High Court that jurisdiction is established by the legal characterisation of the claim and is not dependent on findings of fact. The defendant's assertion

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<sup>1</sup> *Wilmington Trust Company (Trustee) v The Ship "Houston"* [2016] FCA 1349



of facts were issues that went to the merits of the claim, but did not alter the fact that a claim for delivery up of the *HOUSTON* was a claim properly characterised as a claim “relating to possession” of a ship, as was a claim for damages for conversion and/or detinue for failure to redeliver the *HOUSTON*.

As the plaintiff had established the Court’s jurisdiction under section 16, no decision was necessary as to whether the claims for hire and indemnity were general maritime claims involving section 18 of the Admiralty Act.

### **Maritime Liens and the Australian Cross Border Insolvency Act 2008 (Cth)<sup>2</sup>**

In the context of an order recognising the Hanjin Korean rehabilitation proceedings as a “foreign main proceeding” most closely resembling a voluntary administration under the Corporations Act 2001 (Cth), the Court also ordered that until further order: “No person may enforce a charge or lien over any vessel in the possession or control of the defendant, its cargo, containers and bunker fuel and oil.” and barred any application for a warrant to arrest any Hanjin owned or chartered vessel in Australia, without leave of the Court.

However, the Court confirmed, following earlier cases, that applications for arrest can still be made to the Federal Court provided this case and other earlier identified cases are brought to the Court’s attention in making the application.



The defendant’s assertion of facts were issues that went to the merits of the claim, but did not alter the fact that a claim for delivery up of the *HOUSTON* was a claim properly characterised as a claim “relating to possession” of a ship, as was a claim for damages for conversion and/or detinue for failure to redeliver the *HOUSTON*.

HAZEL BREWER, PARTNER

In practice, while the prospects of a successful application to arrest are very limited, the possibility remains that an arrest application in support of a claim recognised in Australia as a maritime lien (claims for: salvage, damage done by a ship, wages of master and crew and master’s disbursements) could still result in an arrest warrant being granted because the security right exists from the occurrence of the event creating the maritime lien, which gives the claimant secured creditor status.

<sup>2</sup> *Tai-Soo Suk v Hanjin Shipping Co Ltd* [2016] FCA 1404



For more information, please contact the author of this briefing or any of the Australian shipping Partners below:

**Author**

**Hazel Brewer**

Partner, Perth  
T: +61 (0)8 9422 4702  
E: hazel.brewer@hfw.com

**Australian shipping Partners**

**Gavin Vallely**

Partner, Melbourne  
T: +61 (0)3 8601 4523  
E: gavin.vallely@hfw.com

**Stephen Thompson**

Partner, Sydney  
T: +61 (0)2 9320 4646  
E: stephen.thompson@hfw.com

**Nic van der Reyden**

Partner, Sydney  
T: +61 (0)2 9320 4618  
E: nic.vanderreyden@hfw.com

HFW has over 450 lawyers working in offices across Australia, Asia, the Middle East, Europe and South America. For further information about shipping issues in other jurisdictions, please contact:

**Nick Poynder**

Partner, Shanghai  
T: +86 21 2080 1001  
E: nicholas.poynder@hfw.com

**Dimitri Vassos**

Partner, Piraeus  
T: +30 210 429 3978  
E: dimitri.vassos@hfw.com

**Craig Neame**

Partner, London  
T: +44 (0)20 7264 8338  
E: craig.neame@hfw.com

**Christopher Chan**

Partner, Hong Kong  
T: +852 3983 7638  
E: christopher.chan@hfw.com

**Michael Buisset**

Partner, Geneva  
T: +41 (0)22 322 4801  
E: michael.buisset@hfw.com

**Jeremy Shebson**

Partner, São Paulo  
T: +55 (11) 3179 2903  
E: jeremy.shebson@hfw.com

**Paul Apostolis**

Partner, Singapore  
T: +65 6411 5343  
E: paul.apostolis@hfw.com

**Pierre Frühling**

Partner, Brussels  
T: +32 (0) 2643 3406  
E: pierre.fruhling@hfw.com

**Yaman Al Hawamdeh**

Partner, Dubai  
T: +971 4 423 0531  
E: yaman.alhawamdeh@hfw.com

**Stanislas Lequette**

Partner, Paris  
T: +33 1 44 94 40 50  
E: stanislas.lequette@hfw.com

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