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Adopting a New Policy in Maritime Law for Protecting Ship Mortgagees Against Maritime Liens

Authors : Mojtaba Eshraghi Arani

Abstract : Ship financing is the vital element in the development of shipping industry because while the ship constitutes the owners' main asset, she is considered a reliable security in the financiers' viewpoint as well. However, it is most probable that a financier who has accepted a ship as security will face many creditors who are privileged and rank before him for collecting, out of the ship, the money that they are owed. In fact, according to the current rule of maritime law, which was established by "Convention Internationale pour l'Unification de Certaines Règles Relatives aux Privilèges et Hypothèques Maritimes, Brussels, 10 April 1926", the mortgages, hypotheques, and other charges on vessels rank after several secured claims referred to as "maritime liens". Such maritime liens are an exhaustive list of claims including but not limited to "expenses incurred in the common interest of the creditors to preserve the vessel or to procure its sale and the distribution of the proceeds of sale", "tonnage dues, light or harbour dues, and other public taxes and charges of the same character", "claims arising out of the contract of engagement of the master, crew and other persons hired on board", "remuneration for assistance and salvage", "the contribution of the vessel in general average", "indemnities for collision or other damage caused to works forming part of harbours, docks, etc," "indemnities for personal injury to passengers or crew or for loss of or damage to cargo", "claims resulting form contracts entered into or acts done by the master". The same rule survived with only some minor change in the categories of maritime liens in the substitute conventions 1967 and 1993. The status que in maritime law have always been considered as a major obstacle to the development of shipping market and has inevitably led to increase in the interest rates and other related costs of ship financing. It seems that the national and international policy makers have yet to change their mind being worried about the deviation from the old marine traditions. However, it is crystal clear that the continuation of status que will harm, to a great extent, the shipowners and, consequently, the international merchants as a whole. It is argued in this article that the raison d'être for many categories of maritime liens cease to exist anymore, in view of which, the international community has to recognize only a minimum category of maritime liens which are created in the common interests of all creditors; to this effect, only two category of "compensation due for the salvage of ship" and "extraordinary expenses indispensable for the preservation of the ship" can be declared as taking priority over the mortgagee rights, in anology with the Geneva Convention on the International Recognition of Rights in Aircrafts (1948). A qualitative method with the concept of interpretation of data collection has been used in this manuscript. The source of the data is the analysis of international conventions and domestic laws.

Keywords : ship finance, mortgage, maritime liens, brussels convenion, geneva convention 1948
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