

ADMIRALTY SUIT AND PLEADINGS

Plaint

In the title of the plaint in a suit in rem, after the name of the ship which is sued, its nationality is usually stated followed by the words "together with its engines, boats, gear, tackle, apparel furniture and papers and everything belonging to it whether on board or ashore", and a statement as to its location. Some draftsmen include in the title "The Owners and other parties interested in the first defendant ship" as the second defendants. The Plaint should be very clear as regards maritime claim/ lien. Affidavit in Support to the Plaint should be drawn up and filed along with the Plaint.

Judge's order or Interim application for arrest and its affidavit in support

The Judge's order or Interim application for the arrest of the ship will direct that the ship be arrested at any hour of the day or night, including Sundays and holidays, and that it may not be arrested if payment of the sum stated in the order, comprising the amount of the claim in the suit and the ad valorem court fee and the sheriff's poundage, is paid on behalf of the ship or satisfactory security for the claim is furnished. The affidavit in support should state as to why the Judges Order should be allowed, this affidavit should also mention that notice to consul has been given, wherever applicable.

Undertaking, Certificate et al

An undertaking from the Plaintiff securing cost and damages should be given to the court by way of an affidavit when an application for arrest of the Defendant vessel is made.

A Certificate from the Prothonotary or the registry should be obtained prior to making an application for arrest of the vessel stating that a search of the caveat against arrest register has been taken and that no caveat are filed or has been filed, depending on the search result and if a caveat exist, a notice to the caveator has to be given.

Warrant for Arrest

The warrant for arrest when issued by the Court's registry will be served by the bailiff of the Marshal or of the Sheriff or his substitute, in some cases direct service who is required to effect the service by affixing (i.e. attaching and not just holding in position by hand) the original warrant of arrest for a short time (the duration should be about 10 to 15 minutes) on any mast of the ship or on the outside of any suitable part of the ship's superstructure, then removing the original and leaving a duplicate thereof affixed in its place. (This mode of service is enjoined in the case of service of the writ of summons, see *infra*, on the ship.).

There have been occasions where persons entrusted with the service are not competently instructed as to the mode of the service, which is of particular importance in a suit in rem, and, indeed, there have been instances where service has been effected on the master or a mate by delivering the duplicate of the warrant to him and obtaining his acknowledgment on the original. This would constitute bad service as would service on any other person on board the ship - *The Marie Constance*. There have been no instances of the arrest having been impugned on account of bad service.

There is no provision made in the Rules for effecting service on a ship lying at a port other than that in whose registry the writ has been

issued. This lacuna puts the plaintiff to the expense of taking the marshal's/sheriff's substitute to that port to arrest the ship and there is also the possibility of the ship sailing away before service can be accomplished.

To avoid this possibility it is advisable that the registry should be requested by a praecipe (after obtaining order from the Court to that effect) to give telegraphic/facsimile, email intimation to the Port authorities and to the Commissioner of Customs at the particular port of issue of the warrant for arrest of the ship and instruct that officer not to grant port clearance to the ship, pending arrival of the warrant of arrest. Alternatively, while obtaining an order of arrest the Warrant of Arrest should be dispensed with and an order should be obtained that all authorities should act on fax and email copies.

Whereas the Admiralty Rules require that the warrant shall be returned within a stipulated period from the service thereof.

The Calcutta and Madras Rules provide that, after expiration of 12 days from the return of the warrant for arrest, if no appearance shall have been entered in the suit the advocate for the plaintiff may cause the suit to be set down for hearing and also provide that, if when the suit comes up before the court, the judge is satisfied that the plaintiff's claim is well founded he may pronounce the claim and may order the ship to be sold with or without previous notice and the proceeds of the sale paid into the registry or make such order in the premises as he deems fit.

The warrant of arrest issued by the said two High Courts is in its form citatory, calling upon the owners and all parties interested in the ship to appear before the court, is deemed sufficient notice to all whom it may concern regarding the suit. It, however, does not require them to file a written statement to the suit.

In the cause title the defendant is styled as below:

M. V. XXXXXXXXX, vessel flying a xxxxx)
flag together with her hull, tackle,)
engines, machinery, paraphernalia)
and all her appurtenant on board)
presently lying and being at stream/port)
and harbour/jetty of xxxx, xxxxx and all)
persons claiming to be interested)
in the vessel)
...DEFENDANT.