

SALE PROCEEDS OF THE PROPERTY OR SHIP, SOLD BY COURT

An application concerning the sale of the property or ship that is under arrest or the application concerning the proceeds of sale of property or ship sold by the court is heard in open court and notice for hearing of the application is served on all parties to the claim; all parties that have filed caveat against the sale proceeds or all persons who have requested cautions against release with regard to the property or the proceeds of sale; and upon the Sheriff or the the Marshal. Notice for hearing of the application shall also be served upon the owner or the vessel interest as the remainder of the sale proceeds, if any, shall be returned to the owner of the vessel/ vessel interest.

An order for sale before judgment may only be made by the Admiralty judge. Unless the Admiralty judge orders otherwise, a determination of priorities may only be made by the Admiralty judge when the proceeds of sale are paid into court by the Sheriff or the Marshal.

On order for valuation and sale of the property or ship is passed by the court, the terms and conditions for sale of the ship is thereafter finalised by the Sheriff or the Marshal in consultation with the parties. The ship is sold as per terms and conditions. On ship being sold to the highest bidder, the Sheriff or the Marshal shall receive the full sale price from the buyer as per schedule and terms setout by the Sheriff or the Marshal. This sale proceeds is invested by the Sheriff or the Marshal in a nominated bank account and is later transferred to the designated bank account of the High Court in the said Admiralty suit whereby the ship is sold.

There is little jurisprudence on the issue of the distribution of the proceeds of sale of a vessel. However, the order of priority of payment in an admiralty sale should be as per 9 (1) of the Admiralty Act (2017).

The fund should be disbursed first to those that are responsible for the creation and the establishment of the fund from which all of the creditors will benefit. Thereafter, the other creditors will be entitled depending on the class of creditor or claim in which they fall. The manner in which competing interests within the same level of claim (i.e. two claims of the same level or class) is on a pro-rata basis.

It may be suggested that the general order of payment from the proceeds of the admiralty sale could be as follows:

1. Costs and expenses of the sale of the vessel to create the fund (i.e. the ship broker's commission, advertising costs and related expenses to facilitate the sale). It is submitted that this should come first in priority as it was necessary to incur these expenses to liquidate the asset into a fund that can be shared by all.

2. The costs of maintaining the vessel while under arrest as opposed to the costs of maintaining the vessel itself such as berthage expenses or the expenses for the maintenance of the arrest of the vessel from the period when the arrest began until it was sold. These are expenses that are incurred while the vessel is "in custodia legis" and serve to benefit all of the parties interested in the sale of the vessel.

3. The legal costs of the party arresting the vessel for their costs and expenses incurred in arresting the vessel. It is suggested that it would be inequitable that the party that expended money to affect the arrest should not be reimbursed for those expenses related to the arrest since they served to benefit all claimants.

4. Maritime Liens or the liens that survive changes in ownership of the vessel. These claims "run" with the vessel.

5. Possessory Liens existing at the time of the arrest.

6. Marine mortgages.

7. Claims arising as a result of rights in rem, which run from the date of arrest.