

AMELIA CACACE (IMO 9472713 / jauge 6001) : « General cargo » datant de 2008. Pavillon maltais, armateur Italien. Le navire a été inspecté le 22 juin 2009 par les inspecteurs de la sécurité des navires du port de Rouen. En raison de défaillances sur le système propulsif le navire a fait l'objet d'une détention. L'armateur a abandonné le navire et son équipage. Les travaux de réparation n'ont pas été engagés. Le navire est sous le coup d'au moins 5 saisies conservatoires pour impayés dont une saisie conservatoire au tribunal de New York. Navire toujours immobilisé dans le port de Rouen.

Source : Mission parlementaire – Démantèlement des navires – Groupe 2 – page 100
http://www.le-havre.vessels-in-france.net/fichiersdoc/20100628_demantelement_des_navires.pdf

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Article 37 - Merchant Shipping Act Chapter 234 of the laws of Malta

The First Hall Civil Court on 11th June, 2009 in the case 'Glory Wealth Shipping Pte Ltd, vs Peninsula Enterprise SpA, held (among other things) that a claimant, having an action in rem against a vessel under Maltese law, was also entitled to obtain an injunction against another vessel belonging to its same debtor under article 37 Merchant Shipping Act Chapter 234 of the laws of Malta.

The First Hall Civil Court had to decide in the circumstances whether a 'sister ship' injunction was legally possible in terms of Article 37.

Article 37 lists the grounds when a claimant could request the issuance of this injunction. The facts in this case were as follows: the foreign company Glory Wealth Shipping PTE Ltd had claims against Peninsula Enterprises SPA, amounting to USD 6,744,219 in relation to the vessel mv Kang Yu which was registered in the Hong Kong Registry of Ships.

As the same company / debtor, Peninsula was also the registered owner of the Malta registered vessel mv **Amelia Cacace, (IMO No 9472713)**. Glory Wealth Shipping sought to preserve its rights by obtaining an Article 37 injunction against mv Amelia Cacace.

Glory Wealth Shipping proceeded by filing legal action in Malta, for an article 37 injunction to prohibit dealings, its sale, the registration of further mortgages and the issuance of a deletion certificate by the Malta Registrar of Ships and Seamen.

By virtue of the court decree dated 10th October 2008, an article 37 injunction was registered over the vessel, mv Amelia Cacace.

In reply, Peninsula, contested the issuance of this injunction.

It was submitted that :

- (i) a sister ship injunction was not legally possible under Article 37;
- (ii) Glory Wealth Shipping had no right to obtain an injunction and nor did this court have the authority to issue an injunction in the circumstances.

Peninsula argued that Article 37(10) of the Merchant Shipping Act did not open the door to sister ship injunctions. An amendment to our law was necessary for this to be possible.

The fact, it said that Glory Wealth Shipping had an action *in rem* against the vessel mv Amelia Cacace, did not mean that an article 37 injunction was also possible against this vessel.

On 11th June 2009, the First Hall Civil Court gave judgement by accepting Glory Wealth Shipping requests, and by rejecting Peninsula's restrictive interpretation of Article 37.

The court did not consider the remedy provided by Article 37, in isolation and as distinct and separate from that provided under Chapter 12 provisions.

The Court noted that Glory Wealth Shipping acknowledged receipt of a part payment (USD 400,000) on an account basis. There was also an arbitration award (in part) condemning Peninsula to pay the outstanding balance of charter hire (USD 482, 015) but the issue of damages was still pending and still had to be determined. The court considered the nature of an Article 37 injunction. This type of injunction under our Merchant Shipping Act was a special remedy, which did not affect the operations of a vessel, but prohibited its sale and the creation of further mortgages; re: *Gauci Maistre noe vs Dingli noe (PA)* dated 27/08/98.

It was issued on the basis of a *prima facie* claim, provided this claim was subsequently judicially determined (re: *Dingli et noe vs Barbara et noe (PA)* dated 30/06/2000.

Prior to ordering the issuance of the injunction, the court did not have to investigate the merits of the claim, re: *Frendo vs Caruana (PA)* 1/12/1995.

The court considered that sub – paragraph (10) of Art 37 which listed the claims when an injunction could be obtained. Glory Wealth Shipping had an action *in rem* against the vessel, mv Amelia Cacace.

A person having an action *in rem*, was also entitled to request an Article 37 injunction in the light of sub paragraph 10 (a) (v) of Article 37, injunction in the light of sub paragraph 10 (a) (v) of Article 37, pointed out the Court.

Art 37 of the Merchant Shipping Act had to be read and construed in the context of other provisions of Chapter 12 of the Laws of Malta, which regulated actions *in rem* and notably Articles 742 (B) (C) and (D) of Chapter 12 of the Laws of Malta.

For these reasons the Court ordered that for a period of six months from the date of this judgement, there could do no dealings, no sales, and no borrowing in respect of the vessel mv Amelia Cacace or in shares therein.

It prohibited further the registration of any mortgages over this vessel as well as the issuance of any deletion certificate in respect of this same vessel. The Malta Registrar of Ships and Seamen had to be notified of this court order, concluded the Court.

Source : Ganado & Associates Advocates - Shipping & Maritime Law Bulletin – 20/08/2009

http://www.le-havre.vessels-in-france.net/fichiersdoc/20090820_Shipping_Maritime_Law_Bulletin_P2.pdf