

Admiralty Court considers whether to release ship from arrest unless a cross-undertaking in damages is given

31/07/2018 (Commercial)

On 31 July 2018 Mr Justice Teare, sitting in the Admiralty Court, handed down judgment in *Natwest Markets PLC (formerly known as The Royal Bank of Scotland PLC) v Stallion Eight Shipping Co. SA (The M.V. Alkyon)* [2018] EWHC 2033 (Admlty). The judgment is the first to consider whether the Court's discretionary power under CPR Part 61 to release a vessel from arrest can be exercised so as to release a vessel from arrest unless the arresting party is willing to provide a cross-undertaking in damages in respect of any losses caused to the vessel owner in the event the arrest turns out to have been unjustified (in the form required of an applicant for a freezing order). In concluding that it was not open to him, sitting at first instance, to order the release of the ship on those terms, Teare J noted that the right of an *in rem* claimant to arrest a vessel and the high bar set for recovery under the tort of wrongful arrest meant that there was a real risk that a vessel owner might suffer considerable losses, with the potential for injustice. Nevertheless, he concluded that it was for Parliament or the Rules Committee to consider whether a change to the law and practice on this issue was necessary. Mr Justice Teare's decision is the first direct consideration of the application of cross-undertakings to the arrest jurisdiction for 25 years, and represents the most detailed discussion of the issue by the English Admiralty Court to date.

The Admiralty Court gave the Defendant permission to appeal to the Court of Appeal.

The judgment is [here](#).

Tim Lord QC and Geoffrey Kuehne appeared for the Defendant, instructed by Hill Dickinson LLP.

RELATED BARRISTERS

- Tim Lord QC

BRICK COURT CHAMBERS

BARRISTERS

- Geoffrey Kuhne