

ENFORCEMENT OF SHIP MORTGAGES

A mortgagee (lender) has several remedies available to it when there is a default under the mortgage and it seeks to enforce its security. The most frequently used remedies are as follows:

To Take Possession Of The Vessel

The mortgagee may take possession by one of two methods: (i) through the courts by causing the ship to be arrested in an admiralty action in the Supreme Court of The Bahamas, or (ii) self help. Where it is anticipated that there may be some resistance or opposition to the mortgagee taking possession, it is advisable to invoke the assistance of the court through arrest in a mortgage action. Where the mortgagee opts for self-help, it may take actual possession by putting its representative on board, or where this is not possible, it may take constructive possession by doing an act which clearly evidences an intention to intervene, take possession and assume the right of ownership. Upon taking possession, the mortgagee will be entitled to the benefit of contracts relating to the enjoyment of the vessel which had previously been entered into by the mortgagor, but will be liable to pay the expenses incurred in the future operation and trading of the vessel, and will be under an obligation to ensure the performance of the ship owner's obligations.

Sale Of The Vessel

The Merchant Shipping Act confers on registered mortgagees a power to sell the mortgaged ship or share therein. The power of sale may be exercised by private treaty or public auction at any time after possession has been taken. Sales by private treaty are rare. The mortgagee will usually effect an arrest through the Supreme Court and then obtain an order for sale by the court, in which event the ship will be sold under the court order by the Admiralty Marshall. The ship is sold free of any maritime liens, and thus the mortgagee is protected from any residual liability to the purchaser for any claims which may have attached to the ship prior to delivery to the purchaser.

Foreclosure Of The Vessel

At common law a mortgagee has a right of foreclosure with respect to a ship. In a foreclosure action, the mortgagee applies to the Supreme Court for a foreclosure nisi. This gives the mortgagor the opportunity to repay the money lent on a fixed date. If the money is not paid, a foreclosure order absolute is made. The effect of this is that the mortgagee becomes sole owner of the ship, subject only to prior encumbrances.

Appointment Of A Receiver

Alternatively, the mortgagee may appoint a receiver, whose function is to collect the profits of the ship and to pay any necessary expenses pending the realization of the security.

For more information, contact:-

Vivienne Gouthro - vgouthro@higgsjohnson.com; Sterling Cooke - scooke@higgsjohnson.com

The information contained in this bulletin is provided for the general interest of our readers, but is not intended to constitute legal advice. Clients and the general public are encouraged to seek specific advice on matters of concern. This bulletin can in no way serve as a substitute in such cases. Copyright ©2015 Higgs & Johnson. All rights reserved.