

COMMENTARY ON ANSWERS TO THE THIRD GROUP OF QUESTIONS

GENERAL COMMENTS:

The focus of the third set of questions is on the effects of a judicial sale of ships and the object is to ascertain the legal effects or consequences of a judicial sale in the different jurisdictions. They are broken down into seven questions..

The questions are directly related to the effects of a judicial sale in each particular jurisdiction without consideration of the possible extra-territorial effect or implications. In other words, we are not concerned with the interpretation or effect given to the judicial sale in a particular jurisdiction by other jurisdictions.

Some 19 jurisdictions have replied to the questionnaire and I propose to categorize the replies received with a view to observing common trends which may give rise to a uniformity of approach.

In some cases the answers were imprecise and it was necessary to use deductive logic to arrive at the answer. There are cases where the answer was "yes" but in actual fact, "no" was meant. In a few cases, the specific questions were not answered and it was necessary to deduce the answer from answers to other questions. I crave the indulgence of those countries whose answers I have not properly understood.

I propose to begin by summarizing the questions before proceeding with a categorization of the answers.

SUMMARY OF THE QUESTIONS

The 1st Question is whether a judicial sale operates to transfer 100% ownership in the vessel to the purchaser.

The 2nd Question is whether a judicial sale extinguishes the previous ownership of the vessel.

The 3rd Question is whether a judicial sale extinguishes all mortgages, liens, charges or encumbrances attached to the ship before sale.

The 4th Question is whether a purchaser will acquire a clean title over the ship good against the whole world.

The 5th Question relates to registration. It asks whether a judicial sale automatically annuls the previous registration of the ship in the national ships register.

The 6th Question is whether on production of relevant documentation from the court certifying the judicial sale the Registrar of Ships will delete the previous registration or deregister the ship.

The 7th Question is whether on production of the relevant documentation from the court the purchaser will be registered as the new owner, irrespective of whether the previous ownership was deleted.

ANALYSIS OF THE ANSWERS

QUESTION 1

Whether a successful bidder gets 100% ownership of the vessel following a judicial sale.

The countries which answered in the affirmative are:-

Argentina	Germany
Malta	Sweden
Belgium	Italy
Canada	Nigeria
China	Singapore
Denmark	South Africa

Dominica	Spain
France	USA
	Venezuela

COMMENT:

All jurisdictions are unanimous that a judicial sale operates to transfer 100% ownership to the purchaser. The answer is not unexpected because it is fairly obvious that a purchaser from the right source becomes the new owner of the ship.

Whilst the relevant judicial sale may be by private treaty or auction, the question was not specific as to the nature of the judicial sale. Some of the responses specified that in order to achieve the desired result, the sale must be preceded by an auction. The countries which specifically require sale by auction are Denmark, France, Germany and Sweden.

In summary, we can say that a judicial sale, whether by private treaty or by auction, depending on the mode of sale specified by each jurisdiction, transfers 100% ownership in the vessel.

QUESTION 2

Whether previous ownership of vessel is extinguished by judicial sale

The following countries answered in the affirmative:-

Argentina, Belgium, Brazil, Canada, China, Denmark, Dominica, France, Germany, Italy, Malta, Nigeria, Norway, Singapore, S. Africa, Spain, Sweden, USA, Venezuela.

COMMENT:

Again there is unanimity on this. It is a corollary to question 1. If the buyer gets 100% ownership, then it is obvious that the previous ownership will be extinguished.

However, three jurisdictions specified some conditions to their answers. Denmark requires that the sale be conducted "properly and justifiably" in order to achieve the desired result.

Germany's condition is that the sale should have been by auction.

And Norway adds the proviso that the buyer should have paid the purchase price.

QUESTION 3

Whether judicial sale extinguishes all mortgages, liens, charges or encumbrances attached before sale.

Yes - Argentina, Brazil, Canada, China, Dominica, France, Italy, Malta, Nigeria, Singapore, S. Africa, Sweden, USA, Venezuela.

Not Necessarily: - Belgium, Denmark, Germany, Norway.

No - Spain

Comment:

Most jurisdiction agree that judicial sale extinguishes mortgages, liens, charges or encumbrances. Only Spain gave a negative response.

Belgium, Denmark, Germany and Norway have certain reservations to the automatic extinction of mortgages etc.

Belgium requires that there be de-registration of charges at the registry. Denmark requires that the sale price is distributed amongst the owners of encumbrances on the ship.

Germany says that for foreign ships, the sale extinguishes mortgages etc. For German ships, mortgages etc. will be extinguished, with the exception of those which rank ahead of creditors' claims and those which are registered in the court or in the ship's registry.
In Norway, registered non-monetary claims are not extinguished.

QUESTION 4

Whether purchaser acquires a clean title against the whole world.

Yes - Argentina, Belgium, Brazil, Canada, China, Denmark, Dominica, France, Germany, Italy, Malta, Nigeria, Singapore, S. Africa, Sweden, USA, Venezuela.

Not Necessarily: Norway, Spain.

Comment: -

Again there is almost unanimity that the purchaser acquires a clean title. Only Norway and Spain have reservations. Norway requires the buyer to respect non-monetary claims with priority over his own. Spain says, without elaborating, that the title may be good but not always clean.

QUESTION 5:

Whether judicial sale automatically annuls the previous registration (i.e. without the necessity of any action on the part of the purchaser).

No: - Argentina, Belgium, Canada, China, Denmark, Dominica, France, Germany, Malta, Nigeria, Norway, S. Africa, Singapore, Spain, Sweden.

Yes: - Brazil, Italy and Venezuela

Comment:

With the exception of Brazil, Italy and Venezuela all jurisdictions require some action before the previous registration is deemed to have been annulled.

Brazil says that upon evidence of transfer of ownership or the court's ruling, the previous registration would be automatically annulled. Italy and Venezuela simply agree that the previous registration is automatically annulled.

QUESTION 6:

Whether on production by the purchaser of relevant court order or evidence of auction sale, the Registrar will delete or de-register ship.

Yes: - Argentina, Belgium, Brazil, Canada, China, Denmark, Dominica, Italy, Malta, Nigeria, Norway, S. Africa, Spain, Sweden, USA, Venezuela. (France, no answer)

Not necessarily: - Germany, Singapore.

Comment:

In most jurisdictions, production of evidence of a judicial sale will enable the Registrar to delete or de-register previous owner. However, in Germany and Singapore the position is less certain. In Germany, the ownership remains in the register if certain criteria for entry in the German register are fulfilled. In Singapore, the operative document is the Bill of Sale, rather than the court order.

QUESTION 7:

This question relates to the registration of the new owner. It asks whether registration of the new owner is automatic upon production of relevant court documentation **without deletion of the previous owner**.

Yes: - Argentina, China, Dominica, Italy, Malta, Nigeria, Norway, Spain, Venezuela.

No: - Belgium, Brazil, Canada, Denmark, Germany, Singapore, South Africa, Sweden, USA.
(France: no answer)

Comment:

There is almost an equal division between the jurisdictions that apply automatic registration of the new owner upon production of relevant documentation and those jurisdictions which do not.

Some jurisdictions require that there should be prior proof of deletion of the previous registration of the ship, and some that there be proof of deletion from the foreign register and a certificate that the vessel is free of encumbrances. Other jurisdictions simply agree, without elaboration, that the registration of the new owner is automatic.

Malta provides that it depended on whether the register "has been closed". I would have wished for further and better particulars as to what that means.

CONCLUSIONS

From the fore-going analysis, the following conclusions may be drawn:-

1. In every jurisdiction, a judicial sale operates to transfer 100% ownership in a ship to the purchaser following a judicial sale.
2. In every jurisdiction the previous ownership of a ship is extinguished by a judicial sale.
3. In most jurisdictions a judicial sale extinguishes all mortgages, liens, charges and encumbrances which attached to the vessel before sale.

4. In almost every jurisdiction the purchaser from a judicial sale acquires a clean title against the whole world.
5. In almost every jurisdiction a judicial sale does not automatically annul the previous registration of the vessel.
6. In almost every jurisdiction production of evidence of a judicial sale will enable the registrar to delete or de-register the previous ownership.
7. In only half of the jurisdictions will the new owner be registered automatically upon production of relevant documentation.

LOUIS N.MBANEFO (SAN)