

SEAFARER SUBJECT GUIDE

MARITIME LIEN FOR SEAFARERS' WAGES IN THE BAHAMAS

This Guide deals with the rights of seafarers of any nationality to claim a maritime lien for unpaid or underpaid wages in respect of Bahamas flagged ships, and foreign ships which are in the ports of Bahamas. These rights can be enforced in the Admiralty Court (and other courts), where they are secured and preferred by maritime liens and enforced by the arrest and forced (judicial) sale of the ships.

This document is not intended to be legal advice, nor does it constitute legal advice.

If a seafarer intends to claim his wages, he is strongly advised to consult a lawyer qualified to practise in the Bahamas.

*A full text version of this Subject Guide including footnotes will become available for subscription in due course. In the meantime if there is a specific inquiry on any Subject Guide, please contact SRI.

1. What is the maritime lien for seafarers' wages? How is it enforced?

1.1 As soon as a seaman's wages become due, the seaman may sue for unpaid wages. A claim for unpaid wages may be commenced in Bahamian Courts if the seaman's contract of employment was terminated in the Bahamas, he was discharged in the Bahamas, or the master or owner of the vessel resides in the Bahamas. The claim for wages and other sums due to the seamen, master and other employees of the ship may be secured on the vessel itself. A seaman has the same rights, liens and remedies as a master of the ship in respect of claims for unpaid wages.

1.2 The nature and extent of a maritime lien is a claim or privilege on a maritime *res* in respect of service done to it or injury caused by it. In *The Ripon City*, Gorell Barnes J in considering the issue of maritime liens and having reviewed numerous authorities said:

'The result of my examination of these principles and authorities is as follows - The law now recognises maritime liens in certain classes of claims, the principal being bottomry, salvage, wages, masters' wages, disbursements and liabilities, and damage. According to the definition above given, such a lien is a privileged claim upon a vessel in respect of service done to it, or injury caused by it, to be carried into effect by legal process. It is a right acquired by one over a thing belonging to another - a *jus in re aliena*. It is, so to speak, a subtraction from the absolute property of the owner in the thing. This right must, therefore, in some way have been derived from the owner either directly or through the acts of persons deriving their authority from the owner.'

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- 1.3 The maritime lien is enforced in the following way. A lien attaches to the vessel for the unpaid wages and other debts or causes of action. A claim in the Supreme Court of the Bahamas for unpaid wages must begin by writ supported by affidavit filed in the Admiralty Division. The Court may decide that the ship should be arrested. Once the warrant for arrest is issued, it is served on the vessel by the Admiralty Marshal. The Admiralty Marshal will secure the vessel at a docking facility, obtain an appraisal of it, and, subject to the Court's direction, ensure that the vessel is sold. The proceeds of the sale will be paid into the Court for distribution according to the order of priority of the creditors established by statute.

2. Which courts have jurisdiction over seafarers' wage claims?

- 2.1 For a wage claim and other causes of action, a seafarer has access to all the courts of the Bahamas: the magistrates' courts, the Supreme Court, the Court of Appeal and the Privy Council in London. The Supreme Court of the Bahamas sits as the Admiralty Court. The Admiralty Court has jurisdiction over a claim for unpaid wages if the contract is terminated or discharged in the Bahamas. In particular where the court invokes its admiralty jurisdiction to sell a vessel, it has jurisdiction to hear and determine any question arising as to the title to the proceeds of sale. The Privy Council is the final court of appeal.
- 2.2 The Merchant Shipping Act ('the MSA') provides a specific procedure for the enforcement of a claim for wages: a seafarer may sue in the magistrates' courts. In principle, this approach can be simpler and less costly, except that there may be long delays and adjournments because of the high volume of magistrates' cases.
- 2.3 The magistrates' courts have jurisdiction regarding some claims *in personam*. A magistrate will order payment of wages in a successful claim. If the wages are not paid within 24 hours the magistrate may issue a warrant to levy the amount of the wages awarded on the owner's personal property, which will be sold. The unpaid wages and the expenses incurred to sell the property will be paid from the proceeds of the sale. If the proceeds of the sale are not sufficient to pay the wages and expenses incurred in the distress, a levy may be imposed on the ship. However, the magistrate will not be able to order a levy on the vessel if the ship is not in the jurisdiction.
- 2.4 But, where the owner of the ship is insolvent, the ship is under arrest, or is sold by the authority of the court, or neither the owner nor master resides in or within 20 miles of the Bahamas, the claim is referred to the Supreme Court.

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3. Can the courts refuse to hear seafarers' claims for wages?

- 3.1 The courts of the Bahamas are willing to hear a seafarer's claim for wages. A seafarer is guaranteed equal access to the courts and equal protection under the Bahamas Constitution. In accordance with the Constitution, the seafarer's case, like any other civil case, must be given a fair hearing within a reasonable time.
- 3.2 The Supreme Court's jurisdiction is restricted to circumstances where the owner of the ship is insolvent, the ship is under arrest, or is sold by the authority of the Court, or neither the owner nor master resides in or within 20 miles of the Bahamas. But, this is not a problem in practice, as in practically all cases where seafarers are owed wages, at least one of the above criteria will apply, namely, either the ship owner is insolvent, the ship is under arrest, or sold by the court, or the owner or master resides outside the Bahamas. Therefore, although conceivable, it would be extremely rare for the Supreme Court to refuse jurisdiction. There is no relevant reported case where the Supreme Court has refused to hear a claim for unpaid wages.
- 3.3 In addition, the magistrates are usually authorized to deal only with claims B\$5,000 (equivalent to US\$5,000) or under. In practice, this is also not a problem, as the Supreme Court can assume jurisdiction where the claim is for more than B\$5,000. It is also more cost effective for seafarers' claims, notably small claims below B\$5,000, to be dealt with as a group by a single lawyer representing them.

4. Who can claim seafarers' wages?

- 4.1 A seafarer or his personal representative may make a claim for unpaid wages. Such a claim may be brought by a seafarer engaged in any capacity on board a ship, a master or the personal representative of a deceased seafarer, or a master.

5. Which ships are subject to the jurisdiction of the courts?

- 5.1 Every ship that is registered in the Bahamas or is located in its internal waters (including ports, docks and harbours) is under the civil jurisdiction of the Bahamian courts.
- 5.2 The court may invoke jurisdiction *in rem* over any such case in which a maritime lien exists against a ship. An action may be commenced *in rem* for claims where the owner of the ship is insolvent; the ship is under arrest or is sold by the authority of the Supreme Court; a magistrate's court refers the claim to the Supreme Court; or neither the owner nor the master resides in or within 20 miles of the place where the seaman or apprentice is discharged or put ashore.

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6. What is included in the maritime lien for seafarers' wages?

6.1 A maritime claim for wages includes: the unpaid wages of the seafarer from the time the wages become due until the seafarer is repatriated; the accrued vacation pay; the expenses and costs of repatriation; and the maintenance of the seafarer until he is repatriated.

7. Can seafarers' wages be claimed if there is no written contract of employment?

7.1 A seafarer's claim for unpaid wages may be successful if there is no written contract. The seafarer must provide the court with evidence of an oral agreement of employment.

7.2 The MSA suggests the possibility of the court hearing a claim for unpaid wages where there is an oral contract of employment based on evidence to prove the contents of a contract or agreement between the parties, such as any log-books, papers or other documents in his possession and witnesses.

7.3 If a crew member does not have a written contract per se but has an allotment note which indicates his employment and an entitlement to wages, the seaman may commence a claim for unpaid wages in the same manner as an individual with a contract of employment.

8. Must seafarers' services have been rendered on board the ship?

8.1 The seafarer's service does not have to be rendered on board the ship. The Court of Appeal of the Bahamas in *South Riding Point Holding Ltd v. McIntosh BS* interpreted the definition of 'seaman' as defined in the Merchant Shipping Act to be inclusive of persons engaged in any capacity on board any ship whether it sails on the high seas or operates within the coastal waters of the Bahamas. Here, the Court found that a 'seaman' was every class of persons who is connected with the ship as a ship, as a seagoing instrument of navigation, or of transport of cargo from one place to another. The definition extended to services rendered by such persons in harbour just as much as to services rendered by them at sea. Therefore, a seafarer's services may be rendered on board the ship, in the harbour, and any services rendered in relation to the ship.

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9. What is the ranking of seafarers' claims for wages in the event that sale proceeds are distributed?

9.1 A seafarer's claim for wages is ranked high in the order of priority. The seafarer's wages will be paid after the Admiralty Marshal's costs and expenses are paid. In the case of *Casino Royale*, an application was filed by the crew members of the *Casino Royale* to seek the determination of the priorities of the claimants against the proceeds of sale of *Casino Royale*. Justice Adderley stated that where there is an action *in rem* where the Court has ordered a ship to be sold, the determination of the order of priority was strictly determined by statute. Adderley J held that the statutory framework provides that the Admiralty Marshal ranks first before any other claim (this is inclusive of the expenses incurred in selling the vessel); then wages of the master, officers and other members of the ship's employment; port, canal and other waterway fees; claims against the vessel in respect of personal injury and tortious claims; and claims for salvage and wreck removal.

10. Can wages be claimed if the employer is not the shipowner or acts illegally?

10.1 Wages can be claimed if the employer is not the shipowner. First, a claim for unpaid wages that is made in connection with a ship can be upheld, if when the cause of action arose, the employer, who would be liable on the claim in an action *in personam*, was the charterer of or in possession or control of the ship. The Court has the authority to summon the employer, who is in possession of the ship to appear before it to answer a claim for the payment of wages.

10.2 Secondly, wages can be claimed in an action *in rem* against the vessel, where the employer is not the shipowner but a charterer or other person in lawful possession or control of the ship.

10.3 There are no Bahamian cases on the point whether wages may be claimed where the employer is not the shipowner and acts illegally, such as taking unlawful possession of the ship, or if the master uses the ship to commit a crime.

10.4 But, in the English case of *The Ever Success*, the vessel was taken without the consent of the owner/defendant. It was later arrested at a foreign port. The seafarers continued to render service to the vessel over a period of several months after the arrest. In an action for unpaid wages the court opined:

'Where a seaman rendered services to a vessel he was entitled to a maritime lien for wages against the vessel, provided he had acted as a member of the crew and he did not know that he was not entitled to board the vessel to carry out the work.'

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Furthermore, in absence of some very unusual contractual provision, that service would ordinarily be measured by reference to the seaman's contract of service. Accordingly, the plaintiffs were entitled to their wages.'

10.5 Therefore, based on the *Ever Success*, a claim for wages can succeed, if the seafarer can prove that his service was rendered to the vessel and he did not know that he was not entitled to board the vessel to do the work.

11. Can the seafarer's maritime lien for wages be abandoned or waived by agreement?

11.1 A seaman's lien is incapable of being renounced or waived by the seaman or the owner by any agreement. The MSA states:

'A seaman shall not by any agreement be deprived of any remedy for the recovery of his wages to which, in the absence of the agreement, he would be entitled, abandon his right to wages in case of the loss of the ship or abandon any right that he may have or obtain in the nature of salvage, and any stipulation in any agreement inconsistent with this or any other provision of this Act shall be void.'

12. When is the seafarer's maritime lien for wages forfeited or not recognised or extinguished?

12.1 An individual who is entitled to a maritime lien may forfeit his right if he delays in enforcing it or does something inconsistent with the lien. Also, a maritime lien may not be recognised if the vessel is seized by the government.

12.2 A maritime lien for wages may be extinguished upon payment of the debt owed to the seafarer or master. The owner may pay bail into the court that can satisfy the claim in the event the applicant's claim is successful.

12.3 In the *M/V SS Rembrandt*, the maritime lien was extinguished by consent order. It was ordered that the Admiralty Marshal was at liberty to execute the bill of sale in favour of the plaintiff or its nominees and release the *Rembrandt* to the plaintiff on being paid the amount owed representing the balance of the expenses of the arrest.