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Challenging Admiralty Jurisdiction: A Recent Decision

In the recent decision in *Wilmington Trust Company (Trustee) v The Ship "Houston"* [2016] FCA 1349 the Federal Court of Australia considered a challenge to its jurisdiction.

A bareboat charterparty provided that:

- owners could terminate the charter immediately, if charterers failed to pay hire on time;
- failure to pay in accordance with a notice entitled owners to terminate the charter; and
- upon termination, owners could repossess the ship but, pending physical possession, charterers held the ship as gratuitous bailee only.

Owners served a notice of default on charterers, terminating the charterparty with immediate effect. Owners issued a writ *in rem* in the Federal Court seeking payment of hire, damages for conversion and delivery up of the ship.

Owners invoked jurisdiction, alleging that their claim was a "proprietary maritime claim", being a claim related to "possession of a ship" and "title to, or ownership of, a ship" under s 4(2)(a) of the *Admiralty Act*. They proceeded *in rem* under s 16 of the Act.

Charterers challenged the Court's jurisdiction, arguing that the owners' claims in conversion and for delivery up were not proprietary maritime claims. Charterers argued that, after they received the notice of default, they held the ship as gratuitous bailee. Thus, owners' claims were misconceived because they already had possession.

Charterers also argued that, after the ship arrived at Port Hedland, Western Australia, she was available for physical possession. Thus, the delivery up claim was misconceived.

Siopis J rejected charterers' challenge to jurisdiction.

To establish jurisdiction, owners had to show that their claim bore the legal character of a kind referred to in the Act. The Judge referred to *Shin Kobe Maru* and *Global Peace*.

In the Judge's view, charterers' arguments went to the merits of owners' claims, not to the legal characterisation of those claims (see [47]).

The Judge held that owners' claims for delivery up and for damages in conversion were to be characterised as claims relating to possession under s 4(2)(a) of the Act (see [49]-[51]).

Owners had properly invoked the Court's jurisdiction.

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