The Treatment of Maritime Liens within Transnational Bankruptcies
A Conflict between Admiralty and Bankruptcy Law

Georgios Kalpakidis

SCHOOL OF ECONOMICS, BUSINESS ADMINISTRATION & LEGAL STUDIES
A thesis submitted for the degree of
Master of Science (MSc) in Transnational and European Commercial Law, Mediation, Arbitration and Energy Law

February 2017
Thessaloniki – Greece
Student Name: Georgios Kalpakidis
SID: 1104150047
Supervisor: Prof. Pavlos Masouros

I hereby declare that the work submitted is mine and that where I have made use of another’s work, I have attributed the source(s) according to the Regulations set in the Student’s Handbook.

February 2017
Thessaloniki - Greece
Abstract

This dissertation was written as part of the MSc in Transnational and European Commercial Law, Mediation, Arbitration and Energy Law at the International Hellenic University.

The economic crisis that started in 2008 never ended and a consequence had negative effect in the global economy, including the transportation sector. Maritime entities, as many other businesses, confronted significant difficulties and some of them went bankrupt. The most valuable assets of a maritime company are usually its vessels and every creditor or other person with a claim will seek liquidise them in order to satisfy its claims. The controversy begins where the claims arise from the two aforesaid branches of law and which one should take priority over the other. In each case until now there is no compromising solution.

This thesis attempted to depict the controversy between the two branches of law and the proposed solutions. In order to achieve that, it was necessary to examine the nature of the maritime lien, the procedures in Admiralty and Bankruptcy law. Both branches of law have to overcome many obstacles in order for this controversy to be resolved. On the one hand, maritime liens are not everywhere the same and there is an issue of recognition in some countries. On the other hand, there rules for transnational bankruptcies but there are not adopted from every country. As a consequence, the solution of the problem becomes more difficult to be found when there are Admiralty and Bankruptcy proceedings for the same assets.

The aforesaid controversy was depicted through the analysis of three different legal regimes, the UK’s, the USA’s and Canada’s. Although these three legal regimes are considered to be similar due to the fact that all of them are connected by the common law, their development through time led them to different legal directions.

Finally, there is a small analysis of three cases which depict the how the Courts interpret this conflict between Admiralty and Bankruptcy law.

Georgios Kalpakidis
15/02/17
Preface

In 2015, I started my LLM at the International Hellenic University and with the conclusion of this dissertation, a chapter of my academic “life” closes. During this period, I learnt many things through my experiences at the University and from the difficulties I confronted writing this dissertation. Finally, at this point I would like to thank Dr. Komninos Komnios and of course my supervisor Prof. Pavlos Masouros for his essential and valuable advice for my dissertation.
Contents

ABSTRACT .................................................................................................................. III
PREFACE.................................................................................................................. I
CONTENTS ............................................................................................................... II
INTRODUCTION ...................................................................................................... 4
HISTORICAL ELEMENTS OF ADMIRALTY AND BANKRUPTCY LAW ....... 6
    THE HISTORICAL DEVELOPMENT OF MARITIME LIEN .................................. 6
    THE JUDICIAL DEFINITION OF MARITIME LIENS ........................................... 7
    THE HISTORICAL DEVELOPMENT OF BANKRUPTCY LAW ............................. 8
THE CONFLICT BETWEEN ADMIRALTY AND BANKRUPTCY LAW .......... 10
    THE ARGUMENTS ............................................................................................... 10
    TWO OPINIONS FOR THE RESOLUTION ......................................................... 15
    SUPREMACY OF ADMIRALTY .......................................................................... 16
    THE MIDDLE PATH ............................................................................................. 17
THE LAW IN THE UK, THE USA AND CANADA ............................................ 20
    MARITIME LIEN .............................................................................................. 20
    THE LEGAL REGIME CONCERNING THE MARITIME LIENS IN THE UK, THE
    USA AND CANADA .......................................................................................... 21
    FOREIGN MARITIME LIENS ........................................................................... 25
BANKRUPTCY AND REORGANIZATION IN THE UK, THE USA AND
    CANADA .......................................................................................................... 28
    UNITED KINGDOM ........................................................................................... 28
    USA .................................................................................................................... 30
    CANADA .......................................................................................................... 31
CASE LAW ............................................................................................................... 32
    THE HOLT CARGO SYSTEMS INC. v. ABC CONTAINERLINE N.V. .................. 32
    RE DAEBO INTERN. SHIPPING CO., LTD ....................................................... 32
    THE FELIXSTOWE DOCK & RAILWAY CO. v UNITED STATES LINES INC. .... 33
CONCLUSIONS ...........................................................................................................34
BIBLIOGRAPHY ......................................................................................................35
APPENDIX .................................................................................................................1
Introduction

The economic crisis of 2008, which started with the collapse of the investment bank Lehman Brothers\(^1\), still exists. Many years later, in 2016, the economies of many countries suffer and still try to recover with slow steps. Due to the worldwide connected economy, the effect of the collapse was immediate and global. European countries like Greece, Cyprus, Spain and Portugal\(^2\) had serious financial difficulties and now after many years the fear of a new economic crisis which will be more intensive is still in the spotlight.

This crisis was not contained only to the banking sector. Today, the economy of all the major developed countries is connected and involves all of its sectors. One good example is what happened in Greece and in the construction sector\(^3\). Because of the crisis the erection of new buildings stopped and the buildings already constructed could not been sold. All the professions connected to this sector immediately affected and they were many, builders, constructors, plumbers, electricians and others. The same thing happened also to the international trade. The uncertainty and the instability are the worst enemies of the markets. The oil prices\(^4\) fell as well as the prices of other commodities. The number of the foreign investments fell, the industrial production rapidly decreased and the exports contained in a high degree. The exports contained also because of the low demand in the markets which is closely connected with the dept crisis of many States. Additionally, the high unemployment rates restricted the economic ability of people to obtain goods. Consequently, when the international trade is in recession, everything that is connected with it, it will immediately be affected\(^5\). The sector of transportation and the maritime companies had many financial difficulties. The most known case which caused a storm in the

---

2 European Commission, Economic Crisis in Europe: Causes, Consequences and Responses (2009) part II.
maritime industry is the Hanjin bankruptcy\(^6\). The number 8 of the world ranking was a “victim” of the economic crisis and brought chain reactions to the whole market.

Analyzing the data from 2008, the factors that played important role to the financial exhaustion of the maritime companies and led many of them to bankruptcy are the following: Firstly, there was a sharp decline in demand for transport and all the other relevant services. One good example, which depicts the magnitude of the crisis in the beginning are the statistics concerning the port traffic in the world’s largest container ports. In 2009 the port traffic in Singapore’s port reduced by 13.5%. The relevant number for Shanghai’s port is 11\(^7\). These two large ports lost more than of the 1/10 of their yearly vessel traffic which shows the restriction of international trade and generally the impact of the crisis in the shipping industry. Furthermore, another factor was the expanding of the shipping fleets’ capacity. Many orders had been done the previous years and the delivery dates were in 2009 and in the beginning of 2010. Until this point, the two important factors were the recession in the international trade which means reduce of the transported goods and the delivery of the new vessel which increased the shipping fleets’ capacity. The next factor is that, as a consequence, there was an oversupply of tonnage. That, as a chain reaction, led the container rates down and also the chartering cost decreased more than 50\(^8\). The combination of all the aforesaid factors had as a result huge losses for companies like Maersk Line with reports loss of $2.1 billion in 2009\(^9\), other companies adopted restructuring plans like DryShips\(^10\) Inc and many other smaller or larger companies, in the absence of any other solution, they went bankrupt.

Maritime companies are mostly international and their vessels travel all around the world. The consequences of a bankruptcy, concerning a maritime company, are many and complicated, especially when there is a conflict between the admiralty and bankruptcy law. This conflict will be analyzed through the examination of the historical


\(^7\) Jan Hoffmann, “Shipping Out of the Economic Crisis”, [2010], UNCTAD, volume xvi, issue ii, Trade Facilitation Section.

\(^8\) Ibid.

\(^9\) Ibid.

development of the admiralty and bankruptcy law. Furthermore, in order to understand this controversy it is necessary to find and examine the proposed solutions. Finally, it will be shown how this issue is confronted in the UK, the USA and Canada through a deep analysis of the case law.

Historical Elements of Admiralty and Bankruptcy Law

In this part, there will be an analysis of the origins and basic concepts of the maritime lien and the development of the bankruptcy law through the centuries.

The Historical Development of Maritime Lien

The origin of the maritime lien can be found many years ago and there many theories about it. More specifically, there are three theories about the origin of the maritime lien and they are the following\textsuperscript{11}: Under the first theory the origin of the maritime lien is attributed to a juristic technique according to which the vessel is personified and is considered to be an entity that it has the ability to contract and to commit torts. As a consequence, in case of an accident and the commitment of a tort, the vessel itself is considered to be the offender\textsuperscript{12}. According to this theory, the vessel has liability because of the characteristics attributed to it and as a result because of its actions the right created attaches to the vessel and it must be satisfied in order for the vessel to be free. The next theory is called the \textit{procedural theory}. According to this theory the vessel is arrested after the occurrence of some event, which probably caused some kind of damage, and in order for the beneficiary to be protected, there is the maritime lien which is a security\textsuperscript{13}. By this kind of security the vessel, if it is arrested, cannot move and travel and consequently it has only expenses. It was and is considered to be a method of securing the beneficiary of the maritime lien and at the same time a pressure to the ship owner to pay what he owes. The third theory is called the \textit{conflict theory}. According to this theory the High Court of Admiralty was considered to be inferior and it did not have jurisdiction over claims \textit{in personam}. In

\begin{footnotesize}
\begin{enumerate}
\item Thomas, “\textit{Maritime Liens}” (London Stevens & Sons 1980) p 6.
\item Ibid p 7.
\item Ibid.
\end{enumerate}
\end{footnotesize}
contrast the High Court of Admiralty was not contained as regards the claims over *a res* or to the bail entered in substitution. This concept was used by the practitioners in order to establish the superiority and the characteristics of the maritime lien through the case law\(^{14}\).

**The Judicial Definition of Maritime Liens**

The judicial definition of the maritime lien is constructed through the case law. Some important cases which established and helped the development of the maritime lien are the following:

* a) In *The Bold Buccleugh* it was mentioned by Sir John Jervis: "*a maritime lien is well defined...to mean a claim or privilege upon a thing to be carried into effect by legal process...that process to be a proceeding in rem...This claim or privilege travels with the thing into whosoever's possession it may come. It is incoherent from the moment the claim or privilege attaches, and, when carried into effect by legal process by a proceeding in rem, relates back to the period when it first attached*\(^{15}\)."

* b) In *The Two Ellens* it was mentioned by Mellish L.J: "*A maritime lien must be something which adheres to the ship from the time that the fact happens which gave the maritime lien, and then continuous binding the ship until it is discharged, either by being satisfied or from the laches of the owner, or in any other way by which, by law, it may be discharged. It commences and there it continuous binding on the ship until it comes to an end*\(^{16}\)."

* c) In *The Tolten* it was mentioned by Scott L.J: *The essence of the privilege was and still is, whether in Continental or English Law, that it comes into existence automatically without any antecedent formality, and simultaneously with the cause of action, and confers a true charge on the ship and freight of a proprietary kind in favour of the privileged creditor. The charge goes with the ship everywhere, even in the hands of a purchaser for*

\(^{14}\) Ibid p 9.
\(^{15}\) [1851] 7 Moo. P. C. 267, 284.
value without notice, and has a certain ranking with other maritime liens, all of which take precedence over mortgages.”

All the aforesaid cases show the perspective of the Courts about the maritime lien and how they tried to define it. The definition of the courts, even in the early cases, is not changed over the time and this provides the Admiralty law with a very important characteristic which is the certainty. As it will be shown later, the definition of the maritime lien and most of its characteristics remain the same also in the recent cases.

The Historical Development of Bankruptcy Law

Bankruptcy is not a phenomenon of the modern world. Historical elements show that bankruptcy existed also many years ago where the debtors could not afford to repay their debt to their creditors. In England, the Parliament enacted bankruptcy rules in statute in 1571. In England and Wales, during the eighteenth century, more than 33000 businesses went bankrupt. According to the author, many other businesses went bankrupt the same period but they are not recorded because they resolved out of the law. There is data for bankruptcies back to 1691. From that period people who could not repay their debts went in prison until 1869 when the bankruptcy law was reformed in England. As it becomes clear, in many different periods of time people who had borrowed money, because of difficulties in their businesses or for other reasons, took the decision to bankrupt. Bankruptcy can be defined as a collective remedial system where all the assets of the debtor are collected and liquidated. The repayment of the creditors depends on the fact if they are secured or unsecured creditors. Many times the unsecured creditors do not receive any amount because debtor’s assets were not enough to repay all the creditors and only the secured receive the whole or part of the initial amount given to the debtor.

Every country has its own legal system and consequently its own bankruptcy rules. It is obvious that companies with assets in different jurisdictions confront many

---

difficulties regarding the bankruptcy proceedings. They have to file many petitions in different countries, something which is costly and time consuming. For this reason there were initiatives to resolve this unpleasant situation and now there are two legal instruments dealing with transnational bankruptcies. The first legal instrument is the UNICITRAL Model Law on Cross-Border Insolvency. The scope of Model Law is to provide assistance in cross-borders insolvency matters. More specifically, it provides assistance in the recognitions of foreign insolvency proceedings, in the coordination of proceedings in relation to the same debtor and for the cooperation between authorities in different States. Furthermore, the Model Law can be characterized as a set of rules which can be incorporated in the national legislation of each State in order to facilitate the proceedings between them as regards foreign bankruptcies. According to the preamble of the Model law and article 1 which refers to the scope of application, the main issues addressed by the Model Law include: the recognition of foreign proceedings, the coordination of proceedings concerning the same debtor, the rights of foreign creditors, the rights and duties of foreign insolvency representatives and the cooperation between authorities. However, Model Law does not attempt to harmonize local insolvency law. Each State, according to article 1(2), may exclude certain types of entity from the application of Model Law. Moreover, the Model Law is not compulsory for the States to adopt it. Although many States have adopted Model Law, with all the exclusions and preservations of each State, it can be mentioned that Model Law operates as a legal instrument which provides assistance to international entities which are near to bankruptcy.

Another supranational legal instrument concerning the international bankruptcies is the European Regulation Insolvency Proceedings. From 26 June 2017 the new Regulation (Recast) will be in force but the purpose is the same, to facilitate and try to resolve bankruptcies in Europe similarly. Article 1(1) describes the scope of application of the Regulation and stipulates it as the “application to collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator”. However, paragraph 2 of article one mentions: “This
Regulation shall not apply to insolvency proceedings concerning insurance undertakings, credit institutions, investment undertakings which provide services involving the holding of funds or securities for third parties, or to collective investment undertakings”. Article 2 makes the scope of application of the Regulation narrower and excludes from its application many entities.

Both Model Law and Regulation attempt to assist international bankruptcies but from their construction it is difficult to achieve it fully. Many problems and questions arise from the Model Law and the Regulation as regards specific issues. These are legal instruments which facilitate the proceedings but they do not resolve all the problems arising out of a bankruptcy. Consequently, many bankruptcy cases, which include also admiralty issues, are very difficult to be resolved. This is way there is a conflict between bankruptcy and admiralty for which one of them should prevail in cases that these two branches of law are engaged. This conflict between bankruptcy and admiralty will be analyzed in the next paragraphs.

The Conflict between Admiralty and Bankruptcy Law

In this part, there will be an analysis of the main arguments that support the priority one of the two branches of law over the other.

The Arguments

For long time now there is a big conflict between admiralty and bankruptcy law. There are situations and cases where these two branches of law meet each other and the results are controversial. To begin with, as it was mentioned before the reasons behind each branch of law are totally different. Admiralty law, and more specifically the maritime lien, serves different objects. Taking into consideration many factors, the finance of the ship, the international trade, the fast and the certain way that a maritime lien holder can satisfy his claims and many other characteristics that the maritime lies has, the object of the maritime lien is to fulfill commercial purposes. On the other hand, bankruptcy law has also different objects to fulfill. Every country has its own bankruptcy rules and they are designed in such a way in which also political
and social objects are satisfied. An example which depicts the conflict of admiralty and bankruptcy law is the following: The main asset that the maritime companies have are their vessels. In order to provide security or for other non-contractual reasons, the maritime lien attaches to the vessel providing the ability to his holder to satisfy himself if the ship-owner does not pay his debts. At the same time, for different reasons, the maritime company which owns a fleet may go bankrupt. That is the time when the complexity of the issue begins. There are different opinions about it. On the one hand, the idea is the recognition of the admiralty’s supremacy over maritime assets and consequently when there is a conflict, the solution will be based on admiralty law. On the other hand, the proposal is a middle path between admiralty and bankruptcy in which both procedures, under specific conditions, will survive with no impediments to maritime lien holders. The consequences of this conflict and the different opinions to resolve it, will be analyzed in the next paragraphs.

The first difference between admiralty and bankruptcy law is found in the procedural part. In bankruptcy proceedings the debtor, immediately or after a petition, enjoys the automatic stay. In this stage all the debtor’s assets are protected and its creditors cannot move against them. All the claims are “frozen” until court’s decision is rendered concerning the liquidation of the assets and the distribution of the proceeds. In contrast, admiralty court does not have such procedures. The court, if it accepts the validity of the claim of the maritime lien holder, will immediately arrest the ship and if the ship-owner does not pay the appropriate amount, the vessel will be sold through a specific procedure. The maritime lien holder will be satisfied immediately. This comparison shows the difference between the admiralty and bankruptcy and at this point, because bankruptcy, as it was mentioned, aims to a collective remedy, the maritime lien holder is almost certain that he will seek his satisfaction by means of admiralty law.

Another issue is the division between secured and unsecured creditors. In bankruptcy procedures the maritime lien holder is considered to be a secured creditor. At this point the holder will be in the first group of people who will be satisfied. However, in this procedure the holder may be found between an unknown number of secured creditors. By this way the potential amount will be diminished. On the other hand, in the admiralty court the holder will enjoy the supremacy of his right. Non-maritime claimants will be satisfied at the end, if the maritime holders satisfied their claims fully\(^\text{30}\).

The next issue concerns the principle of comity. As it was defined by the US Supreme Court in *Hilton v. Guyot*\(^\text{31}\) comity is “the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws”. States and others who are interested in different cases rely on the principle of comity. The issue, which arises, is whether or not the sale of a vessel through the bankruptcy proceedings will deliver to the new owner a vessel free and clear of maritime liens. More specifically, whether or not bankruptcy proceedings can extinguish the maritime liens, as it occurs in admiralty proceedings and it is recognized globally. This issue is controversial and many support that bankruptcy proceedings will not extinguish the maritime liens attached on the vessel. Therefore the new owner may find himself with a vessel which he thought to be free from any claims but in reality if he wants to operate the vessel he will be called to pay an additional amount. By this procedure and due to the existing uncertainty the vessels, through bankruptcy proceedings, will be sold in a lower price\(^\text{32}\). As a result there are obstacles for both parties. On the one hand the debtor may have his vessel sold for a lower price because of the danger of non-extinguished maritime liens and by this way smaller part of his debt will be erased. Furthermore, the ship-owner may face claims from maritime lien holders. In contrast, if all the procedures of sale are done according to the admiralty court procedures, there will be no challenge of the judicial judgment.

---

\(^{30}\) Ibid 578.

\(^{31}\) 159 U.S. 113 (1895).

There are two cases showing that the courts, when the decision of the sale of a vessel is not from an admiralty court but it is from a court following bankruptcy or similar proceedings, do not recognize the extinction of the maritime lien. The first case is the *Gouladris*\(^{33}\). In this case, the vessel was sold from its Egyptian owners to Greek owners and the purchase was done in Alexandria. Before this happened the vessel was salvaged by an English company under Lloyd’s standard form of salvage agreement. The Egyptian owner did not pay and then he bankrupt. After that, the Egyptian court sold his vessel. When Greek owners brought the vessel in England, it was arrested for the non-payment of the salvage reward to the salvors. The court in England decided that the maritime lien had not been extinguished and the Code used by the Egyptian court was not competent to free the vessel from the maritime lien, “*In these codes... there nowhere to be found... any right in rem, or maritime lien for salvage at all... and the if it is a sale at all it does not extinguish the salvor’s lien*\(^{34}\)”.

The court in England did not recognize the Egyptian decision and the new owners were found to confront a claim arising out from their new vessel.

The next case is *The Charles Amelia*\(^{35}\). In this case, there was a collision between two vessels and the master of one admitted his liability and in order to pay for the damage he gave to the other master a bill of exchange. However, when the liable master took the vessel to France, the owner went bankrupt. The debt was not paid and the vessel was sold to the new owners. The latter brought the vessel to England where it was arrested. The court decided that the maritime lien was not extinguished and more specifically: “*The proceedings in the French court were certainly not proceedings in rem, but apparently resembled those which would be taken in bankruptcy in this country, which would not extinguish a maritime lien... the maritime lien on this vessel still subsists*\(^{36}\)”.

In a more recent case, the U.S. court in *The Millenium I*\(^{37}\) suggested that the court in bankruptcy proceedings cannot order a ship’s sale free

---

33 [1927] Lloyd’s Rep. 120.  
34 Ibid 127.  
36 Ibid 335.  
37 419 F.3d 83 (2d Cir. 2005).
and clear of liens and claims, as only an admiralty court acting in rem can deliver a vessel free and clear of its maritime liens.\footnote{Gary F. Seitz, “Interaction Between Admiralty and Bankruptcy Law: Effects of Globalization and Recurrent Tensions (2009) 83 Tul.L.Rev.1339,1371.}

In contrast, in The Mary\footnote{13 U.S. 9 Cranch 126 (1815).} the court held: “The decisions of a court of exclusive jurisdiction are necessary conclusive on all other courts... The whole world, it is said, are parties in an admiralty cause, and therefore the whole world is bound by the decisions\footnote{Ibid 144.}”. Moreover, in the “Hellenic Lines\footnote{38 B.R 987 (S.D.N.Y 1984).}” case, the court decided that “Only an admiralty court can without question deliver a vessel free and clear of all liens... it is unclear that a foreign jurisdiction would recognize the sale of a vessel by the Bankruptcy Court\footnote{185 B.R. 25 (E.D. La. 1995).}”. From the analysis of the aforesaid cases it is possible that the most of the interested people in similar cases would prefer a judgment delivered by an admiralty court rather than a court of any other jurisdiction.

There cases where the Bankruptcy Court had initially jurisdiction over a maritime asset but in the course of the proceedings it lost its power on it. More specifically, In re Carlomagno\footnote{Gary F. Seitz, “Interaction Between Admiralty and Bankruptcy Law: Effects of Globalization and Recurrent Tensions (2009) 83 Tul.L.Rev.1339,1377.} there was again the conflict between the admiralty and the bankruptcy law. In the beginning, the case was under the jurisdiction of the bankruptcy court but during the proceedings the court lifted the automatic stay and gave permission to a creditor to arrest a vessel and enforce a mortgage in rem against the vessel. After this occurrence, the admiralty court obtained exclusive jurisdiction over the maritime asset. The vessel was sold in accordance with the admiralty procedures free and clear of liens and encumbrances\footnote{In re Carlomagno (n 17) 26,28.}. Although the owners tried to argue that the case was a bankruptcy case and they asked the stay to remain, the District Court rejected their claims and affirmed the Bankruptcy Courts decision. In this case the claim was not about a maritime lien but for a mortgage. The main point is that the procedure was in rem against a vessel. The District Court based its decision on previous cases but it did not make any reference to the conflict between admiralty and
bankruptcy and if the reason for this decision was the uncertainty of the principle of comity or any other issue.

Moreover, the bankruptcy court cannot determine personal injury cases. Personal injury tort and wrongful death claims are considered to be “noncore” proceedings and as a result these issues fall outside the scope of the bankruptcy jurisdiction. However, this fact does not mean that a maritime claim, falling within the previous two categories, is totally independent from the bankruptcy proceedings. In the American Classic Voyages a seaman sustained serious injuries while he was working in a steamboat. His attorney sent a notification to the seaman’s employer but soon after the employer filed for bankruptcy. During the procedures there was a bar date for the seaman’s claim. The court decided that the claim was barred because of the informal notification of the claim to the court. Seaman’s attorney sent a letter for the notification of the claim to the court but the court decided that this was an unacceptable way to submit official evidence. Consequently, in this conflict between admiralty and bankruptcy the involved should be careful, as the last case shows, because they may found themselves in a very difficult position.

Two opinions for the Resolution

There are many opinions about the conflict between admiralty and bankruptcy law and proposed solutions concerning the priority between them. However, there are two opinions describing the procedure and the way to achieve the solution between the two branches of law. The first one, as it will be analyzed in the next paragraphs, supports the supremacy of the admiralty over bankruptcy procedures. On the other side, the second view tries, as the author suggests in his title, to find the middle path between the two procedures and the solution depends on the stage that the proceedings are: a) admiralty proceedings before insolvency proceedings, b)
insolvency and recognition proceedings before admiralty proceedings and c) admiralty proceedings during insolvency proceedings. 

Supremacy of Admiralty

The first element for the accomplishment of the first proposed solution is an international insolvency treaty which will recognize the precedence of admiralty law over maritime assets and it would preclude any bankruptcy authority on it. According to this solution the maritime lienors would take full advantage of their rights avoiding bankruptcy procedures, the maritime lienor would save time and expenses by avoiding the petition for the automatic stay and he could file for his claim in any forum more convenient to him, there would be faster procedures in courts avoiding litigation in bankruptcy procedures for jurisdiction issues and there would not be any problems with the vessels finance. Three crucial suggested provisions for the international insolvency treaty are the following: “1) an international insolvency treaty would promote the equal treatment of bankruptcy creditors because it would pool all the debtor’s assets and rank all of the creditors under a unified system in single forum, 2) a treaty would maximize asset return by minimizing the costs of duplicative proceedings and realizing enhanced values related to economic units of sale and 3) the treaty would facilitate the reorganization of the debtor.” The main idea is that the maritime lienors will be excluded from the bankruptcy proceedings as well as the maritime assets. The secured creditors would follow the bankruptcy proceedings and they would satisfy their claims from the asset pool. However, from this pool, the vessels would be removed for the satisfaction of the maritime lienors. If any amount, after the sale and the satisfaction of the maritime lienors, was in excess it would go to the asset pool and the bankruptcy court would distribute it to the other creditors.

---


51 Ibid 2643.

52 Ibid 2645.
This idea for the resolution of the conflict between admiralty and bankruptcy law had positive elements. However, there are some issues that would make it very difficult to enforce it in practice. Firstly, an international insolvency treaty, which would recognize the supremacy of admiralty law, is very difficult to be enacted. This is because there are many differences between the several legal systems and many political reasons possibly would have impeded the whole procedure before it begins. Model law has an ancillary character in cross-border insolvencies and it does not have any provision as regards admiralty and how this conflict can be resolved. In addition, Insolvency Regulation is useful for the EU. Thus, it cannot be used for bankruptcies outside the EU. Consequently, at this point there is no international treaty which can represent the aforesaid idea. Thus, there should be negotiations for a new one or the adjustment of the Model Law but it would change totally the main scope and application it has now.

Another issue that it can be mentioned is the removal from the asset pool of the vessels. This immediately would satisfy the maritime lienors but it is possible that would leave unsatisfied the secured creditors in bankruptcy proceedings. By this way there are two categories of creditors and even the secured creditors in bankruptcy proceedings will lose in a sense their priority over the assets. An international insolvency treaty with the aforesaid characteristics possibly would confront many obstacles, not only to the minimum level of integration of bankruptcy law but also for the specific issue of the vessels’ removal from the asset pool.

Furthermore, this proposed international insolvency treaty is based mainly in the principle of comity. It would be hard, for all the jurisdictions worldwide, to be coordinated under the same rules. It is possible that some of them would stay outside or they would reserve themselves from some provisions in order to be more attractive. Also, if we examine more exhaustive this issue, if a ship-owner had a vessel with maritime liens attached on and he was bankrupt, it would be in his interests to find a jurisdiction in which if the amount after the auction of the vessel was in excess and satisfied the maritime lienors, then he could keep the balance for him. Consequently, there are many issues to be foreseen before the adoption of such a proposal.

The Middle Path
The middle path, as it is proposed, suggests the recognition of the precedence of the insolvency proceedings and at the same time the protection of the admiralty claimants by providing them the ability to proceed against their debtors and their assets wherever they are. The middle path is based on the principle of comity and distinguishes three different stages for the application of this solution: a) admiralty proceedings before insolvency proceedings, b) insolvency and recognition proceedings before admiralty proceedings and c) admiralty proceedings during insolvency proceedings. The implementation of this solution can be facilitated by the Model Law.

For the first category of cases, where the admiralty proceedings began before the insolvency proceedings, the question is whether or not the admiralty proceedings will continue or they will stop and the maritime assets will be included in the insolvency property. For this reason, it is important to examine article 20 paragraphs 1 and two of the Model Law: 1. **Upon recognition of a foreign proceeding that is a foreign main proceeding:**

(a) Commencement or continuation of individual actions or individual proceedings concerning the debtor’s assets, rights, obligations or liabilities is stayed;

(b) Execution against the debtor’s assets is stayed; and

(c) The right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.

2. The scope, and the modification or termination, of the stay and suspension referred to in paragraph 1 of this article are subject to [refer to any provisions of law of the enacting State relating to insolvency that apply to exceptions, limitations, modifications or termination in respect of the stay and suspension referred to in paragraph 1 of this article]. Paragraph 2 modifies the mandatory stay of paragraph one and allows the enacting State to modify it in the way it chooses. There are examples of different jurisdictions and how they adopted article 20(2) in their legislation. In the UK if the admiralty proceedings opened before the insolvency proceedings and they are completed, then the claimant is not subject to article 20(1) stay. “Completed” means

---

that there is a judicial seizure and sale before the insolvency proceedings begin. Hence, if the admiralty proceedings are not completed, the claimant cannot conclude them and it is compulsory for him to participate in the insolvency proceedings. In Canada, the law is different and there is evaluation of debtor’s position. If the debtor has possibilities to save his company the pre-existing secured claims will fall in the stay procedure. But if the debtor does not have any prospect of survival his assets will be liquidated and the pre-existing secured claims will be allowed. In the USA, article 20(1) has not been adopted to Chapter 15 of the Bankruptcy Code. It provides that all claims, even if they were existed and the procedures commenced before insolvency proceedings, will fall in the stay procedure. Hence, for the first category, it depends on the legislation of each State and the results may differ.

The second category of cases concerns the insolvency and recognition proceedings which commenced before the admiralty proceedings. This situation is more complex than the previous one. This occurs because insolvency and recognition proceedings started and after that point there is a maritime claim. Hence, in order for the maritime lienor holder to be satisfied, there must be a lift of the stay proceedings. This may bring many difficulties to the development of the proceedings because it is possible that estimations about debtor’s property will already have been made. Any assets removal from this stage would diminish the prospective amount each creditor can expect. However, it is not necessary that the stay proceedings will not be lifted. This can be justified because, as it was mentioned in previous paragraphs, maritime liens attached to vessels sold under bankruptcy proceedings will not be eliminated.

The next category of cases is considered to be the most common in practice. In this situation, after the insolvency proceedings commenced by the insolvent debtor in his COMI, admiralty creditors will seek, rapidly, to arrest debtor’s vessels to satisfy their claims. This can be avoided if a security is offered for their demands. However, P&I Clubs use the so called “cesser” clauses which will automatically, after the shipowner’s insolvency event, terminate the insurance coverage to the insured. It depends on the jurisdiction if it will recognize this clause. It is recognized in the UK but not in the USA and Canada. By this way, if the country, where the admiralty procedures

---

54 Ibid 6,7,8.
started, has not yet recognized the foreign procedures according to the Model Law, there are two scenarios for the maritime lienor holders: 1) they will have a security and as a result debtor’s vessel will be free and 2) they can satisfy their claims by a judicial sale. Necessary element is to commence the proceedings as soon as possible they learn about the insolvency proceedings.

As it was shown, through the analysis of the second idea, in order to resolve the conflict between the admiralty and bankruptcy law, there are many prerequisites which must be satisfied. First, necessary is the use of Model Law. However, Model Law is not adopted worldwide. Many States have implemented Model Law in their national legislation but still many other States have not enacted it yet. Furthermore, even the States that have implemented the Model Law, they have differences between them. One example is article 20(2) as it was mentioned earlier. The scope of Model Law is ancillary and to facilitate cross-border bankruptcies. It does not aim to the unification of insolvency law in international level. As the previous also this solution provides important elements and directions to resolve the long standing conflict between admiralty and bankruptcy. However, there many more steps before the final end of this conflict.

The Law in the UK, the USA and Canada

In this part, there will be an analysis of the maritime lien and the legal regime governing it in the UK, the USA and Canada.

Maritime Lien

As it was stressed, the origin of the maritime lien can be found many years ago and there are many theories concerning its creation. Its main characteristics are the following: The maritime lien is secret, is indelible because it travels with the vessel attached on, it arises automatically and it can be transferred to another person under specific circumstances but it cannot attach to another vessel. Furthermore, there are different categories of liens such as the common law lien, the equitable lien, the

\[56\] Ibid 14.
statutory lien. However, in this part the maritime lien will be analyzed. More specifically, the next paragraphs will be divided in three parts: i) analysis of the Conventions, ii) The legal regime concerning the maritime liens in the UK, the USA and Canada and iii) the controversy of recognition of a maritime lien in a foreign country.

**Conventions**

There were three attempts for the unification of the rules of the maritime liens. These attempts took the form of the following conventions: Convention for the Unification of Certain Rules relating to Maritime Liens & Mortgages 1925 and 1967 and the International Convention on Maritime Liens and Mortgages 1993. In these international agreements there was a reference to the maritime liens which will be recognized and their priority. By this way, the Contracting Parties would have at least to a point the same rules as regards the confrontation of the maritime liens. The conventions include also details about the treatment of maritime liens and include rules, among others, about their priority and their extinction. However, these Conventions are highly appreciated because in order for them to be adopted, it was necessary for many countries to adapt their national laws. It is worth to mention that two important countries in the maritime tradition, the USA and the UK, are not parties of the aforesaid Conventions. Only few countries are parties of one or more of the Conventions and consequently are not enforced widely.

The legal regime concerning the maritime liens in the UK, the USA and Canada

**United Kingdom**

In the UK, the maritime lien was developed through the common law. There is no statute in which the maritime liens are listed and it is necessary to examine the case law. More specifically, under English law a maritime lien arises only in relation to

---

claims for collision, salvage, bottomry bonds, seamen’s wages and master’s wages and disbursements. This categorization of the maritime liens is depicted also in The Ripon City where Gorell Barnes J. held that: “...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.” The ranking between the aforesaid liens is the following: a) salvage claims, b) collision claims, c) seamen’s wages, d) master’s claims for disbursements.

**Salvage Claims**

Salvage claims can arise when a vessel in distress is salve by another vessel. The salvors, not always, have a right to salvage if they satisfied all the necessary requirements. This right, the maritime lien, is of highest priority between the other claims. The following cases show the common law authorities: Dr. Lushington in The Gustaf observed: “The first of these obligations I hold to be the claim for salvage; for, beyond all doubt, from the earliest times, salvage has been deemed a lien on the ship. Without the exertions of the salvors, indeed, the ship itself might never have entered into the shipwright’s yard. I therefore shall hold the salvors to be entitled to priority of payment.” Sir W. Scott in The Two Friends stressed the connection of salvage with the action in rem: “every person assisting in rescue has a lien on the thing saved. He has, as it has been argued, an action in personam also; but his first and his proper remedy is in rem; and his having the one is no argument against his title to the other.” Salvage was categorised as a maritime lien in The Bold Buccleugh. Finally, in The Lyrma (No.2) the Court ranked the maritime lien arose from salvage before the seamen’s wages and by this way it is considered more important even from crew’s wages.

---

58 Ibid 14.5.17.
60 Ibid 10.4.3.
63 (1862) Lush 506,508.
64 (1799) 1 Ch Rob 271,277.
65 (1852) 7 Moo PCC 267.
Collision Claims

When two vessels collide, usually from negligence, a maritime lien attaches to the vessel at fault. In *The Utopia*, Sir Francis Jeune referred to the maritime lien arose from a collision: “...a ship may be made liable in an action in rem, though its then owners are not, because, by reason of the negligence of the owners, or their servants, causing a collision, a maritime lien on their vessel may have been established, and that lien binds the vessel in the hands of subsequent owners”.

Seamen’s Wages

The maritime lien, for seaman’s wages, arises without the personal liability of the ship owner. In *The Castlegate*, Lord Watson held that: “In the case of lien for wages of master and crew the Legislature has recognised the rule that it attaches to ships independently of any personal obligation of the owner, the sole condition required being that such wages shall have been earned on board the ship.” Seamen are, by this way, protected and they can assert their rights by the maritime lien.

Master’s claims for disbursements

Masters, when it is necessary, have to make purchases during the voyage for different reasons and the cost is on their own account. According to s. 41 of the Merchant Shipping Act 1995: “The master of a ship shall have the same lien for his remuneration, and all disbursements or liabilities properly made or incurred by him on account of the ship, as a seaman has for his wages.” Consequently, masters will be compensated on the basis of a maritime lien.

USA

---

68 [1893] AC 492, 499.
71 [1893] AC 38,
In the USA, the law concerning the maritime liens has differences with the UK. Firstly, in the USA there is some codification about the maritime liens. More specifically, the regulative authority can be found at the 46 U.S. Code\textsuperscript{72}. In sub-charter I\textsuperscript{73} there is a list of the maritime liens as follows: “a) arising before a preferred mortgage was filed under section 31341 of this title; b) for damage arising out of maritime tort; c) for wages of stevedore when employed directly by a person listed in section 31341 of this title; d) for wages of the crew of the vessel; e) for general average or f) for salvage including contract salvage.” Furthermore, in the USA the list of maritime liens includes more categories than the UK as for example the provider of the “necessaries” and for repair services offered to the vessel. This is a difference which will be analysed further in the next paragraphs.

In \textit{The Kesselring v. F/T Arctic Hero}\textsuperscript{74} an admiralty action brought by crewmen seeking wages for work they performed in three fishing vessels. The specific vessels sold and the crewmen asserted part of the proceeds. More specifically, the issue was if a part of the equipment, that the vessel used for navigation and it did not belong to the owners of the vessels, could be subject to maritime wage liens. The Court of Appeal affirmed the judgment of the District Court which decided that when the equipment installed to the vessel became integral part of it, necessary and essential to its navigation and consequently subject to the maritime liens regardless of who the actual owner may be.

In \textit{The California v. S.S. Bournemouth}\textsuperscript{75} the plaintiff, State of California, by and through its Department of Fish and Game, filed a complaint \textit{in rem} against the vessel S.S. Bournemouth to recover damages inured by discharging a quantity of bunker oil into the navigable water of the State of California and of the United States. The Court decided that there was a maritime lien and that an action \textit{in rem} was possible against the offending vessel for damages to compensate the loss.

\textsuperscript{72} 46 U.S. Code Chapter 313 – Commercial Instruments and Maritime Liens, Sub-charter III – Maritime Liens §§ 31341 - 31343
\textsuperscript{73} 46 U.S. Code Chapter 313 – Commercial Instruments and Maritime Liens, Sub-charter I - §31301 Definitions
\textsuperscript{74} 30 F.3d 1123 (9th Cir. 1994).
In Canada, the ranking of the maritime liens is similar with the UK because of the common law. The traditional maritime liens are the same, Life and Property Salvage, Collision damage, Master’s Disbursements and Bottomry. Additionally, the protection of the masters and crews has been established in the Canada Shipping Act 2001. More specifically, s. 86(1) provides: “The master, and each crew member, of a Canadian vessel has a maritime lien against the vessel for claims that arise in respect of their employment on the vessel, including in respect of wages and costs of repatriation that are payable to the master or crew member under any law or custom”. The aforesaid are characterized as statutory liens and they have priority in comparison with the traditional maritime liens. However, as it will be shown in the next paragraphs, Canada adopted a different position than the UK as regards the recognition of the foreign maritime liens.

Foreign Maritime Liens

As it became clear from the aforesaid categorization of the maritime liens between the three countries, there are differences and as a consequence there is a controversy concerning the recognition of the foreign maritime liens. It can be stressed, that the law of the UK, the USA and Canada is much more similar in comparison with the law of the civil law countries. However, each of these states has adopted different rules regarding the recognition of foreign maritime liens in their Courts.

The basic difference is found between the UK and the USA. There are two theories concerning the maritime liens, the personification theory (substance of the right) and the procedural (procedure) theory\(^76\). Under English law, the existence and the recognition of a foreign maritime lien will be assessed under the *lex fori*. This was decided in *Halcyon Isle*\(^77\) where Lord Diplock held that maritime liens involve “… rights


\(^77\) [1981] A.C. 221,238.
that are procedural or remedial only, and accordingly the question whether a particular class of claim gives rise to a maritime lien or not one to be determined by English law as the lex fori.” As a consequence, the foreign maritime liens that are not recognised under English cannot be enforced in the UK. The Admiralty Court will assess the filed claims and if the maritime lien is for example about the “necessaries” which is not recognised under English law, the claims will be dismissed.

In contrast, in the USA, when the Court concludes that the applicable law in a specific case, following the conflict of rules, is the law of another country where a maritime lien is recognized, then this maritime lien will be recognized also under US law. For example, in The Ocean Ship Supply v. The Leah, a Greek ship obtained necessaries from Canada and in accordance with the Canadian law that gave rise to a statutory right in rem. The vessel after that was sold and registered in Honduras which meant under the Canadian law that the maritime lien extinguished. The vessel arrested in California and there was a claim for a maritime lien for “necessaries” under the Canadian law. The Court in the US rejected the claim because it recognized that under the Canadian law the maritime lien extinguished and ordered the release of the arrested vessel. Thus, the U.S. Court recognized the foreign maritime lien but it rejected the claim only because it had extinguished under Canadian law.

In Canada, the leading case concerning the recognition of foreign maritime liens is The Ioannis Daskalelis. According to the facts, a Greek ship owned by a Panamanian company was registered for Greek mortgage. Additionally, the vessel had repairs in New York but left without paying giving rise to a possessory lien for repairs and maritime lien under U.S. law. The vessel then was arrested in Canada and the court had to decide about the two claims, the mortgage and the maritime lien, if they are recognised under the Canadian law and which one had priority. The Court decided that although under the Canadian law there was no maritime lien for the necessaries, it recognised the maritime lien which was established in the U.S. In addition, the question of the priority between the two claims was answered under the Canadian law. In contrast with the U.S. law where the specific maritime lien had priority over the mortgage, under the Canadian law the mortgage had priority. Consequently, the

---

78 729 F.2d 971, 1984 AMC 2089 (4 Cir. 1984).
Canadian Courts differentiated their position from the English Courts by recognizing a maritime lien which was established validly under foreign law and it was not recognized in Canada\textsuperscript{80}.

In \textit{The Reiter Petroleum Inc v The Ship “Sam Hawk”}\textsuperscript{81}, the Australian Court rejected the claim for recognition of a maritime lien in Australia. The facts of the case are the following: A vessel registered in Hong Kong was supplied bunkers by a Canadian company in Istanbul. At the time, the vessel was on time charter by an Egyptian company which did not pay for the supply. Reiter Petroleum demanded payment by the owner of the vessel but he did not pay. After that, the vessel was arrested in Australia. The claim was for the unpaid invoice of the supplied bunkers and it was based on the US laws because of a clause in the contract. Alternatively, the supplier company argued that a maritime lien can be established under the Canadian law because it carried business there. The Court, after the analysis of the necessary steps that it followed to take its decision, dismissed the claims. In this case, as the Court highlighted, there was no enforceable maritime lien against the vessel. A maritime lien could not be created against the ship owner due to the Supply Contract because he was not a party. Finally, as regards the recognition of foreign maritime liens the court held that the foreign law under which a maritime lien was claimed has to be the \textit{lex causae} according to Australian choice of law and the rights arising under that foreign law had to fit with the description of a maritime lien in Australian law. The Australian approach follows the English concerning the recognition of foreign maritime liens. Finally, this approach of the Court shows the complexity of the procedure in recognizing foreign maritime liens and the difficulties that a maritime lien holder can confront.

Maritime liens, as it was shown, are not the same everywhere. This fact creates problems regarding their recognition in different places. Although the three analyzed jurisdictions have many in common, they have also differences. Every country has adopted its own system for the recognition of the maritime liens and as a result, each one of them must be examined separately in order to verify if a maritime lien exists under its law and the rules that it has adopted for the recognition of foreign

\textsuperscript{80} \textit{The Lanner}, [2009] 1 Lloyd’s Rep. 566.
\textsuperscript{81} [2016] Lloyd’s Rep. 639.
maritime liens. Finally, in the absence of the ratification of the Convention/s for the unification of the rules for the maritime liens, the different legal regimes regarding the recognition of the foreign maritime liens can create significant difficulties to the maritime lien holders.

Bankruptcy and Reorganization in the UK, the USA and Canada

In this part, there will be an analysis of the bankruptcy and reorganization legal regime in the UK, the USA and Canada.

United Kingdom

_Schemes of Arrangement_82

The Schemes of Arrangement is not considered to be an insolvency procedure but a Companies Act procedure which can facilitate companies in financial distress to restructure their debt. In order for the aforesaid aim to be achieved it is necessary to be an arrangement between the company and the majority of its creditors. The majority of the creditors must represent the 75% in value of a particular class83. If the essential majority is achieved the restructuring plan will be imposed to the dissenting creditors84. This legal structure is also preferred from companies that do not have important assets in England and they transferred its COMI85 in England to take advantage of these provisions. In _Re Van Gansewinkel_86 Snowden J highlighted the following regarding the cross-border schemes of arrangement: “…In recent years schemes of arrangement have been increasingly used to restructure the financial obligations of overseas companies that do not have their COMI or an establishment or any significant assets in England… The English Court has been satisfied that neither Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings… nor Council Regulation (EC) No 44/2001 on jurisdiction and enforcement of judgments…

---

82 Companies Act 2006 – Part 26 Arrangements and Reconstructions ss 895-899
84 Ibid 15.3.3.
85 Center of Main Interests .
86 [2015] EWHC 2151 (Ch) [4]-[5]-[6].

-28-
has prevented the court from having jurisdiction... The use of schemes of arrangement in this way has been prompted by an understandable desire to save the companies from formal insolvency proceedings which would be destructive of value for creditors and lead to substantial loss of jobs... In circumstances such as these, there is a considerable commercial imperative, and indeed pressure, on the court to approve a scheme of arrangement.” English courts accept foreign companies to restructure their debt in England. Many companies across Europe, in order to avoid other national laws which would have a negative effect on their interests, choose to restructure their debt in England. In Re Hellas Telecommunications (Luxembourg) II SCA\textsuperscript{87} the company moved its COMI in England to use the specific insolvency regime. The court accepted that the COMI changed and that the company can restructure its debt in England. In this case the company took all the necessary steps to move its COMI in order to avoid any implication with the European Regulations. However, after the result of the recent referendum in the UK which leads it out of Europe, it is uncertain if European companies will choose the UK to restructure their debt.

\textit{Winding up}

The winding up of a ship owning company can be done with two ways, by creditor’s voluntary winding and a winding up by the court. The legal regime for the winding up is governed by the Insolvency Act 1986 and more specifically for the two aforesaid categories the relevant sections are the following: ss 97-106 for the creditor’s voluntary winding up and ss 117-162 for winding up by the court\textsuperscript{88}. In the winding up there is the automatic stay which blocks all the actions against the debtor’s property in order to preserve it. However, there are shipping cases where the courts allowed actions although the winding up procedure has already started. In \textit{Re Rio Grande Do Sol Steamship Co}\textsuperscript{89} although the winding up procedure had started the Court of Appeal allowed the enforcement of a maritime lien. Also, in \textit{Re Aro Lmt}\textsuperscript{90} a creditor had a statutory lien had issued a writ but had not served it or arrested the

\textsuperscript{87} [2009] EWHC 3199 (Ch), [2010] BCC 295.
\textsuperscript{89} (1877) 5 Ch D 282 (CA).
\textsuperscript{90} [1980] Ch 196 (CA).
ship at the time of the winding up order. He was allowed to continue and he was considered to be a secured creditor. In such cases the court can exercise its discretion and allow the lien holder to proceed with the enforcement of the lien.

USA

In the USA there is the Chapter 7 for liquidation, Chapter 11 for Reorganization and Chapter 15 for Ancillary and Cross-Border Issues. The cases filed for reorganization under chapter 11 in their majority are rejected or converted to a chapter 7. In order for the petition to be accepted for the chapter 11 some prerequisites must be satisfied first. It is necessary that the debtor has a real plan to improve the financial situation of his company. This encompasses a plan that in general will depict a well structured plan which will combine increasing income and decreasing expenses. In the procedural part, the debtor is necessary to have the approval of his creditors. The debtor will propose the reorganization plan including the available assets and he needs the court’s approval and the vote of his creditors affirming the plan. The plan must have a structure and should illustrate the future actions of the company in order to show that the proposed plan is sustainable. The debtor in order to achieve the success of his plan it is crucial to have the consent of the majority of his creditors. This can be succeeded by the creation of classes of claims where the debtor has the chance to allocate the creditors in the classes in such a way in order for each class to approve his plan. However, the claims cannot be dissimilar between them and if the debtor tries to manipulate the classes profoundly, the court possibly will not approve the plan. If on the other hand he succeeds and the majority of each class approves the plan, then it will be imposed by the court to the dissenting creditors. In addition, under § 362 of chapter 11 there is the automatic stay where no action can be taken against the debtor’s property.

Chapter 15 regulates issues regarding Cross-Border Insolvency Issues. The purpose of chapter 15, as it referred, is the following: “(2) greater legal certainty for

---

92 Stewart F. Peck, “Navigating the Murky Waters of Admiralty and Bankruptcy Law” (Tulane Law Review, Vol. 87, June 2013) 989
trade and investment; (3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor; (4) protection and maximization of the value of the debtor's assets; and (5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.93” The recognition of foreign bankruptcy procedures is done through the court. However, the debtor is not immediately protected by the automatic stay. This protection will be provided after the approval from the court but if the debtor believes that his creditors will take actions against his assets then he may seek protection for the period between the filing of the petition and before the hearing in the court where it will be decided if the petitioner will be eligible to chapter 15.94 Furthermore, chapter 15 has been structured in order to implement the Model Law and by this way to provide solutions and deal with cross border insolvencies. A foreign debtor with assets in the USA can file a petition for chapter 15. As it was shown in previous paragraphs, the foreign debtor may own a small amount of money or property in the USA in comparison with his total debt but USA judges are willing to recognize such petitions.95

Canada

The major federal statutes in Canada concerning the Insolvency law are the Bankruptcy and Insolvency Act –BIA and the Companies’ Creditors Arrangement Act –CCAA. As in the USA, also in Canada there is the automatic stay concerning the liquidation and the restructuring procedures. For the first one the purpose is to protect the debtor’s property from the action of creditors in for it to be distributed in accordance with the Acts and for the purpose for the second procedure is to protect the company in financial distress by providing the necessary legal framework to survive. Additionally, in 2009 important amendments applied regarding both

94 Alfred Josep Falzone III, “Two Households, Both Alike In Dignity: The International Feud Between Admiralty And Bankruptcy” (Brooklyn Journal of International Law, Vol.39:3, 2014) 1185

Case Law

In this part, three cases will be examined in order to show how the Courts Interpret the Conflict between Admiralty and Bankruptcy.

The Holt Cargo Systems Inc. v. ABC Containerline N.V.

In The Holt Cargo Systems Inc. v. ABC Containerline N.V. a Belgian ship was arrested at Halifax in connection with an action in rem. The action in rem based on a maritime lien for stevedoring services provided in the U.S. The ship’s Belgian owner went bankrupt and after a few months the appointed trustees obtained an order of the Quebec Superior Court which recognized the Belgian bankruptcy order. Furthermore, they tried to postpone the admiralty proceedings in order for the vessel to be part in the bankruptcy proceedings. However, the Federal Court, Trial Division declined to approve the Canadian bankruptcy court’s orders to include the ship in the bankruptcy proceedings. This decision was upheld from the Federal Court of Appeal. More specifically, the Federal Court of Appeal emphasized that a maritime lien which was validly created under the law of a foreign country (USA), it will be recognized also in Canada and it will the priority that it would have if it had been created under the Canadian maritime law. In this case, the Canadian court recognized the foreign maritime lien and it gave priority to the admiralty proceedings against the bankruptcy proceedings.

Re Daebo Intern. Shipping Co., Ltd

In Re Daebo Intern. Shipping Co., Ltd, Daebo, a company organized under the Laws of the Republic of Korea and with activities in shipping dry bulk cargoes, applied for rehabilitation in Korea. The Court in Korea issued a stay order in order to prevent creditor to foreclose Daebo’s assets. Moreover, Daebo had assets in the USA because its vessels often dock in the U.S. ports. Consequently, Daebo’s representative filed a

---

96 BIA, s. 267-284; CCAA, Part IV, ss. 44-46.
motion to postpone an action against a vessel in Louisiana on the grounds that the Korean Court issued a stay order. The Bankruptcy Court in the US held that the Korean’s Court stay order intended to have worldwide effect and consequently the vessel was protected against any action. In this case, the US Court gave priority to the stay order and as a consequence to the bankruptcy proceedings.

The Felixstowe Dock & Railway Co. v United States Lines Inc.\textsuperscript{100}

In \textit{The Felixstowe Dock & Railway Co. v United States Lines Inc.}, the United State Lines was a company incorporated in the U.S. and also registered in England. Its main activities were concerning shipping business. However, due to financial difficulties the company filed a petition for Chapter 11 in order to reorganize its debt and for protection of its assets. According to the reorganization plan that was filed under Chapter 11, the company wanted to stop all its operations in England and Europe and to keep only the operations in the U.S. By this way, the European and English trade creditors would be in a disadvantageous position and sought payment through the English court. They obtained \textit{Mareva} injunctions and by this way the assets located in England could not be removed. In the application to set aside the \textit{Mareva} injunctions, the Court held the restraining order made by the United States bankruptcy court was an order \textit{in personam} which did not have to be accorded recognition by the English courts. The Court, in this case, did not accept the foreign reorganizations plan and took into consideration the negative effect that it would have to the local creditors.

\textsuperscript{100} [1989] Q.B. 360.
Conclusions

The economic crisis that started in 2008 never ended and a consequence had negative effect in the global economy, including the transportation sector. Maritime entities, as many other businesses, confronted significant difficulties and some of them went bankrupt. In case of maritime companies, the procedure of bankruptcy maybe proved challenging because of the conflict between two branches of law, Admiralty and Bankruptcy law. The most valuable assets of a maritime company are usually its vessels and every creditor or other person with a claim will seek liquidise them in order to satisfy its claims. The controversy begins where the claims arise from the two aforesaid branches of law and which one should take priority over the other. In each case until now there is no compromising solution.

This thesis attempted to depict the controversy between the two branches of law and the proposed solutions. In order to achieve that, it was necessary to examine the nature of the maritime lien, the procedures in Admiralty and Bankruptcy law. Both branches of law have to overcome many obstacles in order for this controversy to be resolved. On the one hand, maritime liens are not everywhere the same and there is an issue of recognition in some countries. On the other hand, there rules for transnational bankruptcies but there are not adopted from every country. As a consequence, the solution of the problem becomes more difficult to be found when there are Admiralty and Bankruptcy proceedings for the same assets.

The aforesaid controversy was depicted through the analysis of three different legal regimes, the UK's, the USA's and Canada's. Although these three legal regimes are considered to be similar due to the fact that all of them are connected by the common law, their development through time led them to different legal directions.

Finally, the controversy between Admiralty and Bankruptcy law is difficult to be resolved in the near future. First of all, there are no common rules globally in use for the recognition of the maritime liens, although there are three conventions for this issue. In addition, there is no a global recognized bankruptcy legal regime and a compromise solution between all these different rules about their priority can be characterized not only difficult but also ambitious.
Bibliography

Books

8. Yvonne Baatz, Maritime Law, (3 edn, informa law)

Articles

3. European Commission, Economic Crisis in Europe: Causes, Consequences and Responses (2009) part II.


Websites


## Appendix

### Table of Cases

#### UK

3. Castlegate, The [1893] AC 38
5. Gouladris [1927] Lloyd’s Rep. 120
10. Ripon City, The [1897] P 226
15. Two Friends, The (1799) 1 Ch Rob 271
17. Van Gansewinkel, Re [2015] EWHC 2151 (Ch)

#### Singapore


#### USA

7. Kesselring v. F/T Arctic Hero, The 30 F.3d 1123 (9th Cir. 1994).
8. Mary 13 U.S. 9 Cranch 126 126 (1815).

#### Canada

Australia


Table of Statutes

1. 46 U.S. Code Chapter 313
2. Bankruptcy and Insolvency Act (Canada)
3. Canada Shipping Act 2001
4. Companies Act 2006 (UK)
5. Companies’ Creditors Arrangement Act (Canada)
7. Insolvency Act 1986 (UK)
8. Merchant Shipping Act 1995 (UK)
9. Regulation (EU) 2015/848
10. UCITRAL Model Law on Cross-Border Insolvency
11. US bankruptcy Code