

# Court removes need for bailiffs to board ships to execute arrests

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### Introduction

The Netherlands has long been considered one of the most favourable jurisdictions in which to arrest a ship. A recent Aruba Court ruling is set to enhance this reputation by further liberalising the procedural rules, removing the need for a bailiff to board a ship in order to execute an arrest.

The decision is expected to play a role in ship arrest cases throughout the Kingdom of the Netherlands where bad weather conditions, or even deliberate obstruction, may prevent bailiffs from boarding ships.

### Facts

The case concerned the offshore tug Maridive 702. On 9 July 2019 the Aruba Court gave leave to arrest (attach) the tug. When the bailiff approached the vessel some seven miles off the coast of Aruba, he was prevented from boarding due to the prevailing sea conditions. However, his assistant managed to board and arranged for communication between the master and the bailiff, during which the master was informed that the ship was being arrested. The following day, the tug left Aruba's territorial waters.

The claimants commenced summary proceedings against the master and shipowner, requesting that the tug return to territorial waters or be subject to penalties.

The shipowner and master defended the application, arguing that the arrest had not been validly executed according to the applicable procedural rules that require a ship arrest to be executed on board. They also challenged the Aruba Court's jurisdiction to rule on the application.

### Decision

The court found that the circumstances surrounding the arrest were sufficient to validate the arrest, taking into account the fact that the bailiff had been on board a tender alongside the tug and that his boarding of the tug had been prevented only by the sea conditions. It also highlighted the fact that meaningful communication had taken place between the master and bailiff, during which the bailiff had informed the master that the tug was under arrest.

Further, the court held that despite the fact that the tug had left Aruba's territorial waters, it was competent to rule on the application under prevailing procedural rules which permit it to rule on any dispute in connection with a conservatory ship arrest irrespective of whether the ship is still in its jurisdiction. The court also ruled that it holds jurisdiction in any event where a domestic legal order has been affected by an act to frustrate the effect of a validly executed conservatory arrest.

The court further dealt with the question of whether the shipowner and master could be ordered to bring the tug back into territorial waters. The action to remove the ship from territorial waters was considered by the court to constitute a wrongful act. To remedy the effects of the wrongful act, the order against the master and owners was considered appropriate and was thus awarded.

The vessel was ordered to return to territorial waters within eight hours or face a penalty of \$500,000 a day up to a maximum of \$21 million.

### Comment

## AUTHOR

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This latest ruling may come as a surprise to some practitioners, but will surely be welcomed by claimants and bailiffs where prevailing weather conditions prevent a bailiff from boarding a ship. It will also play a role in cases in which crew try to prevent bailiffs from coming on board, which has occasionally occurred on ships sailing in transit on the river Scheldt towards Antwerp.

*For further information on this topic please contact [Haco van der Houven van Oordt](#) at AKD by telephone (+31 88 253 50 00) or email ([hvanoordt@akd.nl](mailto:hvanoordt@akd.nl)). The AKD website can be accessed at [www.akd.nl](http://www.akd.nl).*

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